

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Appeal of the Decision of
the California Thoroughbred Breeders
Association, dated April 16, 2013

Case No. SAC 13-0018

KATY COWAN
Appellant

**CALIFORNIA THOROUGHBRED
BREEDERS ASSOCIATION**
Appellee

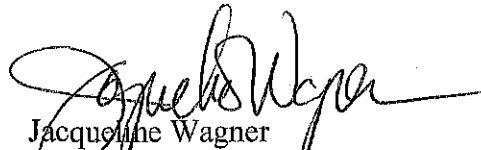
DECISION

The attached Proposed Decision is hereby adopted by the California Horse Racing Board as its Decision in the above-entitled matter.

The Decision shall become effective on October 25, 2013.

IT IS SO ORDERED ON October 24, 2013.

CALIFORNIA HORSE RACING BOARD
David Israel, Chairman


Jacqueline Wagner
Assistant Executive Director

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4 **BEFORE THE CALIFORNIA HORSE RACING BOARD**
5 **OF THE STATE OF CALIFORNIA**

6 IN THE MATTER OF THE APPEAL OF) Docket No.: SAC-13-0018
7 THE DECISION OF THE CALIFORNIA)
8 THOROUGHBRED BREEDERS)
9 ASSOCIATION, DATED APRIL 16, 2013)
10 Appellee,)
11 vs.)
12 KATY COWAN)
13 Appellant.)
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19 **PROPOSED DECISION**

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21 The matter was submitted to the California Horse Racing Board (hereinafter CHRB) for a
22 decision to be rendered based on the submitted briefs, by Richard P. Margarita, a Hearing Officer
23 designated under California Horse Racing Board Rule 1414 (Appointment of Referee) at the
24 California Horse Racing Board, 1010 Hurley Way, Suite 300, Sacramento, California.

25 The Appellee, California Thoroughbred Breeders Association (hereinafter CTBA), was
26 represented by H. Douglas Burge, General Manager.

27 The Appellant, Katie Cowan, was represented by Richard R. Rice, from the Law Office of
28

1 Richard R. Rice, Encinitas, California.

2 This matter was submitted to the CHRB, appealing the decision by the California
3 Thoroughbred Breeders Association, dated April 16, 2013.

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6 **PROCEDURAL BACKGROUND**
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8 The issue presented is whether Appellant, Katie Cowan, is entitled to CTBA breeders
9 awards in the total amount of \$21,894.97 for the years 2007, 2008, in 2009. Appellant was the
10 breeder of a thoroughbred horse known as "Fantasy Free." Appellant claims that she had not
11 previously received any notice from the CTBA that she was entitled to the awards for the years
12 2007, 2008, and 2009. The CTBA did in fact pay the Appellant awards due to her for 2010 totaling
13 approximately \$11,863.59. The CTBA purportedly based in his decision to withhold from Appellant
14 the awards due for years 2007, 2008, in 2009 pursuant to California Business and Professions Code
15 Section 19617.4 (c). California Business and Professions Code Section 19617.4 (c) states that any
16 award premium remaining uncollected for two consecutive years from that date of disbursement
17 shall be deemed null and void. The official registering agency shall deposit the amount of the
18 uncollected award premium into the breeder fund existing at that time. Breeders awards in any given
19 year must be dispersed by March 31 of the following year (California Business and Professions
20 Code Section 19617.2 (D) (5)).
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1 **LIST OF EXHIBITS**

2 **APPELLANT EXHIBITS:**

- 3 Appellant Exhibit # 1: Letter from Katy Cowan to Mr. Douglas Burge, dated March 27, 2013
4 (Admitted)
- 5 Appellant Exhibit # 2: Letter and decision from California Thoroughbred Breeders
6 Association attorney Daniel Q. Schiffer to Miss Katie Cowan, dated
7 April 16, 2013. (Admitted)
- 8 Appellant Exhibit #3: Declaration of Katie Cowan, Appellant, dated June 13, 2013.
9 (Admitted)

10 **APPELLEE'S EXHIBITS:**

- 11 Appellee Exhibit A: No Evidence of Submission of Exhibit to Hearing Officer (Not
12 Admitted)
- 13 Appellee Exhibit B: No Evidence of Submission of Exhibit to Hearing Officer (Not
14 Admitted)
- 15 Appellee Exhibit C: No Evidence of Submission of Exhibit to Hearing Officer (Not
16 Admitted)
- 17 Appellee Exhibit D: No Evidence of Submission of Exhibit to Hearing Officer (Not
18 Admitted)

19 **FACTUAL FINDINGS**

20 **I.**

21 Appellant Katie Cowan, was the owner of Fantasy Free's dam, Cat Ballado, at the time that
22 Fantasy Free was born, and therefore the legal breeder of record.

23 **II.**

24 Appellant Katie Cowan, was the breeder of the thoroughbred horse known as "Fantasy
25 Free."

26 **III.**

1 Fantasy Free was born in the State of California, therefore making him eligible for the
2 breeders awards for races held in the state.

3 IV.

4 Fantasy Free was sold at an auction as a weanling, and therefore never
5 registered with the CTBA by Appellant, Katie Cowan. Fantasy Free was
6 registered with the CTBA by the subsequent owners, Curt and Lila Lanning.

7
8 V.

9 At some time, the CTBA became aware Appellant was the breeder, and it published
10 Appellant's name on the list of persons entitled to unclaimed awards in the February 2012 and
11 March 2012 issues of California Thoroughbred, CTBA's official publication.

12
13 VI.

14 after Appellant saw her name in the March 2012 issue of California Thoroughbred, she
15 became aware that she was entitled to the unclaimed awards.

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17 VII.

18 The CTBA paid Appellant the awards due to her for the year 2010, totaling \$11,863.59,
19 pursuant to the fact that she was the breeder for Fantasy Free.

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21 VIII.

22 The CTBA refused to pay Appellant the awards she would have otherwise received as the
23 breeder for Fantasy Free for years 2007, 2008, and 2009, which totaled \$21,894.47, based on the
24 fact that she was untimely in submitting her request for payments.

1 **IX.**

2 On or about April 16, 2013, the CTBA responded in writing to Appellant and refused to pay
3 her the awards she would have otherwise been due for years 2007, 2008, and 2009, claiming that
4 they were forfeited pursuant to California Business and Professions Code Section 19617.4 (c).

5
6 **X.**

7 The CTBA determined that the breeders awards earned by "Fantasy Free" for the years
8 2007, 2008, and 2009 were not claimed by Appellant, the breeder of "Fantasy Free, within two
9 years of the date of the distribution of the awards, and therefore, as required by Business and
10 Professions Code Section 19617.4 (C), those awards were determined to be null and void and
11 returned to the breeders awards pool for distribution in the future.

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13 **XI.**

14 The California Horse Racing Board, by and through the Administrative Hearings Unit and
15 Ms. Sharyn Jolly, sent a Notice to both parties dated June 19, 2013 for this action. The notice
16 specifically stated that, "...A response brief by both parties is due on or before July 25, 2013. All
17 briefs shall be filed with the California Horse Racing Board, 1010 Hurley Way, Sacramento, CA.
18 95825 and served to each opposing party..."

19
20 **APPLICABLE LAWS AND REGULATIONS**

21
22 California Business and Professions Code Section 19617, which is entitled, "Definitions",
23 states:

24 The following definitions shall govern the construction of this section and Section

25 19617.2:

1 (a) "Breeder" means a person who is registered as a breeder of a California-bred
2 thoroughbred with the official registering agency and is named on the applicable
3 Certificate of Registration issued by the Jockey Club of New York.

4 (b) "Qualifying race" means the following:

5 (1) In the case of breeder awards, all races in this state, all graded stakes races
6 conducted within the United States, and other stakes races as designated by the
7 official registering agency.

8 (2) As qualified by paragraph (5), in the case of owner premiums, certain claiming
9 races, as defined by paragraph (4), and all allowance races, including maiden special
10 weights. No owner premiums shall be paid on California-bred restricted races
11 pursuant to Section 19568.

12 (3) As qualified by paragraph (5), in the case of stallion awards, all nonclaiming
13 races and certain claiming races, if the nonclaiming races and the certain claiming
14 races are conducted in this state during racing meetings where more than one-half of
15 the races on every racing program are for thoroughbreds, all graded stakes races
16 conducted within the United States, and other stakes races as designated by the
17 official registering agency.

18 (4) "Certain claiming races" means thoroughbred races in the central and southern
19 zone with a minimum claiming level of forty thousand dollars (\$40,000) for winners
20 and thoroughbred races in the northern zone with a minimum claiming level of
21 twenty thousand dollars (\$20,000) for winners.

22 (5) No owner premium or stallion award shall be paid on races with purses of less
23 than fifteen thousand dollars (\$15,000). In determining whether a race complies with
24 the definition in paragraph (4), the official registering agency shall base its
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1 determination on the actual amount of the purse at the time the race was conducted
2 and shall not take into consideration any postrace adjustments to that purse.

3 (c) "Eligible earnings" means the following:

4 (1) In the case of breeder awards, the annual amount earned by a California-bred
5 thoroughbred for finishing first, second, or third in qualifying races.

6 (2) In the case of owner premiums, the annual amount earned by a California-bred
7 thoroughbred for winning qualifying races.

8 (3) In order for earnings from a qualifying race to be considered as eligible earnings,
9 a California-bred thoroughbred shall be registered as such with the official
10 registering agency before the date entries were taken by the association for the
11 qualifying race in which that horse earned purse money.

12 (4) In the case of stallion awards, the annual amount earned by California-conceived
13 or California-bred foals of an eligible thoroughbred stallion in winning qualifying
14 races plus the amount earned by those foals for finishing second or third in a stakes
15 race in this state, for finishing first, second, or third in a graded stakes race within the
16 United States, and for finishing first, second, or third in other stakes races as
17 designated by the official registering agency.

18 (5) For purposes of this section, the maximum purse considered earned in any
19 qualifying race within this state shall be three hundred thirty thousand dollars
20 (\$330,000) for a win, one hundred twenty thousand dollars (\$120,000) for a second,
21 and ninety thousand dollars (\$90,000) for a third place finish and the maximum purse
22 considered earned in any qualifying race outside of this state shall be one hundred
23 sixty-five thousand dollars (\$165,000) for a win, sixty thousand dollars (\$60,000) for
24 a second, and forty-five thousand dollars (\$45,000) for a third place finish.
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1 (6) In determining the purse earned in any qualifying race that is a stakes race, the
2 amount earned shall be based solely on the added money, with no consideration to be
3 given to other sources of the purse, such as nomination, entry, or starting fees,
4 bonuses, and sponsor contributions, or any combination thereof.

5 (7) On or before February 15 of any year, it is the ultimate responsibility of the
6 stallion owner to advise the official registering agency of any and all purses earned
7 during the preceding year that shall be considered in determining the amount of the
8 stallion award to which the owner is entitled.

9 (8) On or before February 15 of any year, it is the ultimate responsibility of the
10 breeder to advise the official registering agency of any and all purses earned during
11 the preceding year in graded stakes races outside of this state by horses bred by
12 breeder.

13 (d) "Eligible thoroughbred stallion" means a thoroughbred stallion that was
14 continuously present in this state from February 1 to June 15, inclusive, of the
15 calendar year in which the qualifying race was conducted, and if the sire left this state
16 after June 15 of the calendar year in which the qualifying race was conducted, the
17 sire returned to and was present in this state by February 1 of the following calendar
18 year and thereafter remained until June 15 of that year. If a sire dies in this state and
19 stood his last season at stud in this state, he shall thereafter continue to be considered
20 an eligible thoroughbred stallion.

21 (1) Notwithstanding any provision to the contrary, a thoroughbred stallion shall be
22 considered an eligible thoroughbred stallion only if its owner has filed a claim for
23 stallion award on or before February 15 of the calendar year immediately following
24 the calendar year for which the awards are being distributed and is registered with the
25 official registering agency.
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1 (2) The official registering agency shall establish procedures for the registration of
2 stallions and may charge a fee for that registration.

3 (3) This subdivision shall apply only to thoroughbred stallions standing at stud in this
4 state before January 1, 2010, and as to foals conceived in this state before January 1,
5 2010.

6 (e) "Eligible thoroughbred stallion" means a thoroughbred stallion that was
7 continuously present in this state from February 1 to June 15, inclusive, of the year
8 2010 or any subsequent calendar year in which he stood at stud and fathered the
9 participant in the race. If a sire dies in this state in the year 2010 or any subsequent
10 year and stood his last season at stud in this state, or was standing at stud in this state
11 on the date of his death in the year 2010 or any subsequent year, he shall thereafter
12 continue to be considered an eligible thoroughbred stallion regarding a race
13 participant fathered by him in that season.

14 (1) Notwithstanding any provision to the contrary, a thoroughbred stallion shall be
15 considered an eligible thoroughbred stallion only if the stallion owner has filed a
16 claim for stallion award on or before February 15 of the calendar year immediately
17 following the calendar year for which the awards are being distributed and the
18 stallion and the stallion owner are registered with the official registering agency.

19 (2) The official registering agency shall establish procedures for the registration of
20 stallions and stallion owners and may charge a fee for that registration.

21 (3) This subdivision shall apply only to thoroughbred stallions standing at stud in this
22 state on or after January 1, 2010, and as to foals conceived in this state on or after
23 January 1, 2010.

24 (f) "Official registering agency" means the California Thoroughbred Breeders
25 Association.
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1 (g) "Owner" means the person who is registered with the paymaster of purses on the
2 date the qualifying race was conducted as the owner of the California-bred
3 thoroughbred earning purse money in that race.

4 (h) "Quotient," for any fund, means the amount allocated to that fund pursuant to
5 subdivision (b) of Section 19617.2 divided by the aggregate eligible earnings of the
6 horses applicable to that fund. In calculating the quotient for each of the funds, any
7 retroactive purse payments with respect to a race shall not be considered after the
8 disbursement of the fund.

9 (i) "Stallion owner" means the person who is the owner of the eligible thoroughbred
10 stallion as of December 31 of the calendar year in which that sire's foals had eligible
11 earnings or the person who owned the eligible thoroughbred sire on the date that the
12 stallion died. This subdivision shall only apply to thoroughbred stallions standing at
13 stud in this state before January 1, 2010, and as to foals conceived in this state before
14 January 1, 2010.

15 (j) "Stallion owner" means the person who is the owner of the eligible thoroughbred
16 stallion as of December 31 of each calendar year in which the eligible thoroughbred
17 stallion stands at stud in this state as to all of that sire's foals (1) that were conceived
18 in this state in that calendar year and (2) that thereafter have eligible earnings. If the
19 eligible thoroughbred stallion dies prior to December 31 of a year in which that
20 stallion stands at stud in this state, the person who owned the eligible thoroughbred
21 stallion on the date that the stallion died shall be the stallion owner for that year. This
22 subdivision shall only apply to thoroughbred stallions standing at stud in this state on
23 or after January 1, 2010, and as to foals conceived in this state on or after January 1,
24 2010.
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1 California Business and Professions Code Section 19617.2, which is entitled,
2 "Thoroughbred racing; deposits with official registering agency; administrative costs;
3 payments by agency," states:

4
5 (a) Except as otherwise provided in this chapter, any association conducting a race
6 meeting that includes thoroughbred racing shall deposit with the official registering
7 agency 0.54 percent of the total amount handled ontrack in daily conventional and
8 exotic parimutuel pools resulting from thoroughbred wagers made in this state. These
9 deposits shall be made at the following intervals:

10
11 (1) For any meeting of 20 racing days or less, the requisite deposit shall be made not
12 later than seven days immediately following the last day of that meeting.

13 (2) For any meeting of more than 20 racing days, the initial deposit shall be made not
14 later than 27 racing days after the commencement of that meeting and every 20
15 racing days thereafter, with a final deposit made not later than seven days following
16 the last day of that meeting. The initial deposit for that meeting shall be based upon
17 the applicable amount handled during the first 20 racing days of the meeting, and
18 deposits thereafter shall be based upon the applicable amount handled during the
19 ensuing periods of 20 racing days with the last deposit being based upon the
20 applicable amount handled from the end of the last 20-racing-day period for which a
21 deposit has been made to the end of the meeting.

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23
24 (b) After deducting a sum equal to 5 percent of the total deposits made pursuant to
25 subdivision (a) and the total deposits made pursuant to Section 19602, the amount to
26 compensate the official registering agency for its administrative cost and for
27 expenses it incurs for educational, promotional, and research programs, the official
28

1 registering agency shall for computational purposes distribute annually the balance of
2 the deposits in the following manner:

3 (1) To the California-bred race fund, 10 percent to be used for the promotion of
4 California-bred races and from which purses are to be provided or supplemented for
5 California Cup Day, other California-bred races, and, upon the approval of the
6 official registering agency, races featuring California-breds. This fund shall be
7 administered by the official registering agency. Any funds not used for those
8 purposes during any year, up to 1 percent of the total breeder, stallion, and owner
9 award receipts, shall remain in the California-bred race fund to be distributed for the
10 purposes of this paragraph the following year. Any funds remaining thereafter shall
11 be redistributed to augment the funds referred to in subdivision (c), and shall be
12 allocated to the breeder fund and to the stallion fund as provided in that subdivision.
13 It is the intent of the Legislature that all funds used for purses shall supplement and
14 not supplant existing purses for California-breds.
15

16 (2) To the owner fund for the purpose of owner premiums pursuant to Section
17 19614.4.

18 (3) To the California-bred bonus program, 15 percent of the amount remaining to be
19 used for the payment of bonuses to California-bred horses in maiden allowance races
20 in California. This bonus program shall be administered by the official registering
21 agency.
22

23 (c) The funds remaining after the distributions made pursuant to subdivision (b) shall
24 be distributed as follows:
25

26 (1) To the breeder fund 75 percent, from which breeder awards are to be paid.

27 (2) To the stallion fund 25 percent, from which stallion awards are to be paid.
28

1
2 (d) The official registering agency shall make the following payments to the owner,
3 breeder, and stallion owner so as to encourage agriculture and the breeding of higher
4 quality horses in this state:

5 (1) The owner shall be paid an owner premium pursuant to Section 19614.4.

6 (2) The breeder shall be paid a breeder award equal to the quotient for the breeder
7 fund multiplied by the eligible earnings of the horse bred by the breeder.

8 (3) The stallion owner shall be paid a stallion award equal to the quotient for the
9 stallion fund multiplied by the eligible earnings of the stallion owner's eligible
10 thoroughbred stallion.

11 (4) Owner premiums for California-bred horses shall be listed in the racing program
12 alongside the advertised purse, and shall be distributed to the owner pursuant to
13 Section 19614.4 at the same time as the purse.

14 (5) The breeder and stallion awards shall be paid not later than March 31 of the
15 calendar year immediately following the calendar year for which the awards or
16 premiums were earned.
17

18
19 California Business and Professions Code Section 19617.4 (c), which is entitled, "Official
20 registering agency; investment of funds; insufficient funds; uncollected awards or
21 premiums; disputes respecting awards; annual report, states:
22

23
24 (a) The official registering agency shall invest the funds deposited with it, and the
25 interest earned on those deposits shall be a part of the total deposits distributable
26 under subdivisions (b) and (c) of Section 19617.2.

1 (b) In the event there are insufficient funds to make the distributions described in
2 Section 19617.2, there shall be no additional assessments made against any
3 association or the state to fund the deficiencies.
4

5 (c) Any award or premium remaining uncollected for two consecutive years from that
6 date of disbursement shall be deemed null and void. The official registering agency
7 shall deposit the amount of the uncollected award or premium into the breeder fund
8 existing at that time.
9

10
11 (d) Any dispute with respect to a breeder award, owner premium, or stallion award
12 shall be decided by the official registering agency, which may demand and inspect
13 any registration certificate or record, or require the submission of claims forms,
14 affidavits, and declarations or make that inspection and require submissions of that
15 information. The decision of the official registering agency shall be subject to review
16 by the board pursuant to subdivision (e).
17

18 (e) A decision made by the official registering agency with respect to a breeder
19 award, owner premium, or stallion award may be appealed to the board. The appeal
20 shall be submitted in writing to the board in such manner and at such time as to
21 permit the board, in the exercise of reasonable diligence, to determine the appeal
22 prior to the time at which distribution of that award or premium is to be made. The
23 board's decision on this matter shall be final and binding upon all parties.
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1 (f) The official registering agency shall report annually to the board, which in turn
2 shall report annually to the Governor and Legislature, with respect to the funds
3 deposited pursuant to subdivision (a) of Section 19617.2.
4

5 Government Code Section 11520, which is entitled, "defaults and uncontested cases,"
6 states:

7 (a) If the respondent either fails to file a notice of defense or to appear at the hearing,
8 the agency may take action based upon the respondent's express admissions or upon
9 other evidence and affidavits may be used as evidence without any notice to
10 respondent; and where the burden of proof is on the respondent to establish that the
11 respondent is entitled to the agency action sought, the agency may act without taking
12 evidence.
13

14 (b) Notwithstanding the default of the respondent, the agency or the administrative
15 law judge, before a proposed decision is issued, has discretion to grant a hearing on
16 reasonable notice to the parties. If the agency and administrative law judge make
17 conflicting orders under this subdivision, the agency's order takes precedence. The
18 administrative law judge may order the respondent, or the respondent's attorney or
19 other authorized representative, or both, to pay reasonable expenses, including
20 attorney's fees, incurred by another party as a result of the respondent's failure to
21 appear at the hearing.
22

23 (c) Within seven days after service on the respondent of a decision based on the
24 respondent's default, the respondent may serve a written motion requesting that the
25 decision be vacated and stating the grounds relied on. The agency in its discretion
26 may vacate the decision and grant a hearing on a showing of good cause. As used in
27 this subdivision, good cause includes, but is not limited to, any of the following:
28

1 (1) Failure of the person to receive notice served pursuant to Section 11505.

2 (2) Mistake, inadvertence, surprise, or excusable neglect.

3
4 Title 4 of California Code of Regulations, Section 1487, which is entitled, "Address of
5 Licensees", states:

6
7 Each licensee, applicant for license, or registrant of the Board shall file with the
8 Board his permanent and his current mailing address and shall report in writing to the
9 Board any and all changes to addresses, giving both his old and his new address.

10
11 Title 4 of California Code of Regulations, Section 1811, which is entitled, "Registration of
12 Cal-Bred", states:

13
14 The breeder or owner of a California-bred horse shall register such horse with the
15 Board recognized agencies for such registration: the California Thoroughbred
16 Breeders Association if a Thoroughbred, the California Harness Horse Breeders
17 Association if a Standardbred, the Pacific Coast Quarter Horse Racing Association if
18 a Quarter Horse, the Cal-Western Appaloosa Racing, Inc., if an Appaloosa, or the
19 Arabian Racing Association of California if an Arabian.

20
21 Title 4 of California Code of Regulations, Section 1812, which is entitled, "registration
22 required for Cal-Bred Eligibility", states:

23
24 Unless the breeder or owner of a California-bred horse has registered the same with
25 the official registering agency for the California-bred horses and attested that the
26 horse is a California-bred, such horse is ineligible for entry in races for California-

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1 bred horses. The breeder of such horse is not entitled to a California-bred breeder's
2 award for such horse.

3
4 **DISCUSSION OF ISSUES**

5 **I. APPELLANT'S CLAIM THAT APPELLEE FAILED TO TIMELY FILE THEIR**
6 **REPLY BRIEF IS UNFOUNDED**

7 Appellant claims that they received the Appellee's reply brief after the July 25, 2013
8 deadline for the submission of reply briefs. Therefore, Appellant asserts that Appellee's response
9 should be disregarded and stricken from the record. Appellee's reply brief was received by the
10 CHRB on July 23, 2013 at 1:49 p.m., which is duly stamped and reflected on the back side of the
11 last page of Appellee's original, signed reply brief. Appellant's original filed reply brief was received
12 by the CHRB on July 25, 2013, which is duly stamped and reflected on the back side of the first
13 page of Appellant's reply brief.

14
15 Both briefs were filed within the appropriate time period, and in compliance with the Notice
16 sent by CHRB employee Ms. Sharyn S. Jolly to the parties and dated June 19, 2013. Therefore,
17 briefs filed by both parties will be considered in this deliberative process. Appellant's claim of
18 Appellee filing an untimely brief is unfounded.

19
20 **II. APPELLANT'S CLAIM TO AWARDS FOR YEARS 2007, 2008, and 2009 ARE**
21 **TIME BARRED**

22 The Appellant's claim that she is entitled to breeders awards from the CTBA for the
23 years 2007, 2008, and 2009 are time barred. Although Appellant registered Fantasy Free with the
24 Jockey Club, she did not register with the CTBA as the breeder of Fantasy Free. Although Appellant
25 argues that the CTBA never made an effort to contact her and inform her she was entitled to the
26 awards, she asserts that she should nevertheless receive the awards for the years 2007, 2008, and
27

1 2009 and the total amount of \$21,894.47. Appellant clearly admits that once she saw her name
2 published in California Thoroughbred, she contacted the CTBA and requested payment of all past
3 awards.

4
5 Appellant admits that she moved from Kentucky to New York in August 2007 and continued
6 to receive forwarded mail from the Jockey Club to her new address. She never received any
7 forwarded mail from the CTBA. Appellant fails to recognize the fact that she had the ability at all
8 times to provide a forwarding address to the CTBA if she believed that she may be a future recipient
9 of CTBA awards. The California legislature enacted California Business and Professions Code
10 section 19617.4 (c) for the specific reason to void any award or premium remaining uncollected for
11 two consecutive years from the date that of disbursement, and requiring the registering agency to
12 deposit the amount of the uncollected award or premium into the breeder fund existing at that time.
13 Otherwise, a party could arguably receive notice more than two years after the fact, and then,
14 attempt to claim an award, regardless of their own unclean hands and lack of due diligence to notify
15 an association like the CTBA of their whereabouts. Title 4 of California Code of Regulations,
16 Section 1811 is controlling. It specifically requires that the breeder or owner of a California-bred
17 horse shall register such horse with the Board recognized agencies for such registration, the
18 California Thoroughbred Breeders Association if a Thoroughbred. Had Appellant duly and properly
19 registered Fantasy Free as a horse which she bred, the notice requirements argued by Appellant
20 would be more persuasive. Instead, Appellant's argument is unpersuasive and not controlling.
21 Appellant's own inaction should not render her as being denied her due process rights. Rather, the
22 CTBA acted in an appropriate manner when notified by the Appellant that she was the breeder of
23 Fantasy Free and paid her the award for year 2010. Any and all due process arguments by Appellant
24 fail.
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1 CTBA acted in a lawful manner when they refused to make payments to the
2 Appellant for the years 2007, 2008, in 2009. Although Appellant duly notes the legal maxim
3 that "equity abhors a forfeiture", equity also does not reward one enters a dispute or an
4 action with unclean hands. Therefore, Appellant should not be relieved of statutory time
5 limits as set forth in California Business and Professions Code Section 19617.4 (c).
6

7
8 CONCLUSION/PROPOSED DECISION

9
10 For the foregoing reasons and evidence presented, it is the hearing officer's proposed ruling
11 that the original decision by the CTBA be affirmed.

12 DATED: 9/12/13

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15 RICHARD P. MARGARITA, ESQ.
16 Hearing Officer
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