

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Appeal of the Board of
Stewards Official Ruling #037, Del Mar
Thoroughbred Club, dated August 16, 2013

Case No. SAC 13-0037

VICTOR ESPINOZA
CHRB License #224499

Appellant

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 February 24, 2014.

IT IS SO ORDERED ON February 21, 2014

CALIFORNIA HORSE RACING BOARD
Chuck Winner, Chairman



Rick Baedeker
Executive Director

1
2 **BEFORE THE CALIFORNIA HORSE RACING BOARD**
3 **OF THE STATE OF CALIFORNIA**

4 CALIFORNIA HORSE RACING BOARD) Docket No.: SAC-13-0037
5)
6 Complainant,) Hearing Date: October 5, 2013
7 vs.) Time: 10:00 A.M.
8)
9 VICTOR ESPINOZA)
10)
11 Appellant.)
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17 **PROPOSED DECISION**

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19 The matter was heard on October 5, 2013 by Richard P. Margarita, a Hearing Officer
20 designated under California Horse Racing Board (CHRB) rule 1414 (Appointment of Referee) at
21 Santa Anita Race Park, Arcadia, California.

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23 The Appellant, Victor Espinoza, was present and represented by Darrell J. Vienna, his
24 attorney. Appellant called two witnesses to testify on his behalf, Mike Smith, a jockey, and Board
25 Steward Kim Sawyer. Appellant also testified at the hearing.

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27 The California Horse Racing Board (hereinafter referred to as CHRB), Complainant, was
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1 represented by Del Mar Board of Stewards Kim Sawyer. Also present was CHRBR Investigator Rick
2 Amieva, a Supervisory Investigator and Del Mar Board of Stewards Luis Jauregui.

3 The proceedings were recorded by court Reporter Michelle Derieg.

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5 **I. PROCEDURAL BACKGROUND**

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7 The issue presented at this hearing, was an appeal from the Del Mar Board of Stewards
8 Ruling DMTD # 037, issued on August 16, 2013, regarding Appellant's conduct in race number
9 seven (7). Appellant rode the race horse "Vibrato Jazz" in the seventh race at Del Mar Race Track
10 on August 15, 2013. On August 16, 2013, The Del Mar Board of Stewards Ruling suspended
11 Appellant Espinoza for three (3) days for violation of California Horse Racing Board Rule Number
12 1699, specifically noting "Riding Rules – Careless Riding." The Del Mar Board of Stewards that
13 unanimously issued the ruling were Tom Ward, Kim Sawyer, and Luis Jauregui.

14 On August 19, 2013, a notice of appeal of Stewards' Ruling DMTD #037 was filed pursuant
15 to Business and Professions Code Section 19517 and CHRBR Rule 1761.

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17 On August 19, 2013, a request for a stay of the suspension was filed by Appellant with the
18 California Horse Racing Board ("CHRBR") and was denied on the same day.

19 On August 21, 2013, the Honorable Judith F. Hayes, Judge of the Superior Court of the State
20 of California, County of San Diego, issued an order enjoining and restraining the CHRBR from
21 enforcing the Stewards' Ruling against Appellant.

22 Subsequently, the Parties to this action through their respective Counsel of Record stipulated
23 that this restraint on the CHRBR would continue until the instant appeal had been heard and
24 determined.
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2 At the outset of the hearing, Appellant's attorney presented an Opening Brief to this Hearing
3 Officer and provided a copy to the Board of Stewards. Neither the Board of Stewards nor this
4 Hearing Officer had received this Opening Brief prior to October 5, 2013. The Board of Stewards
5 objected to the late submission of the Opening Brief. This Hearing Officer offered to the Board of
6 Stewards an opportunity to continue the matter and hearing to a later date, within the next thirty (30)
7 days, based on the issues presented in the Opening Brief. After taking a brief recess, the Board of
8 Stewards decided that they would continue without a continuance. Appellant's counsel withdrew the
9 Opening Brief from submission on the hearing date.

10 The record was closed, pending submission of written briefs by the parties, and the matter
11 deemed submitted on October 5, 2013.

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13 **LIST OF EXHIBITS**

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15 **CALIFORNIA HORSE RACING BOARD EXHIBITS:**

16 CHRB Exhibit 1: DVD Video recording of Seventh Race on August 15, 2013 at Del Mar
17 Thoroughbred Club.

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19 **APPELLANT'S EXHIBITS:**

20 Appellant Exhibit A: DMTD Ruling #037 relative to Appellant Espinoza with a notation date of
21 August 16, 2013

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23 Appellant Exhibit B: Official Ruling by the CHRB Board of Stewards, Del Mar Thoroughbred
24 Club, regarding Appellant, Victor Espinoza, dated August 16, 2013, Ruling
25 number DMTD #037.
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1 **FACTUAL FINDINGS**

2 **I.**

3 Appellant, Victor Espinoza is a horse jockey.

4 **II.**

5 Appellant’s California Horse Racing Board Jockey license number is 224499.

6 **III.**

7 Appellant, Victor Espinoza, rode the horse “Vibrato Jazz” in the seventh race at Del Mar
8 Thoroughbred Club on August 15, 2013.

9 **IV.**

10 On August 16, 2013, the CHRB Board of Stewards, Del Mar Thoroughbred Club,
11 suspended Appellant for three (3) days for violation of CHRB Rule 1699 (Riding Rules – Careless
12 Riding). In the Official Ruling by the CHRB Board of Stewards at Del Mar Thoroughbred Club, it
13 stated in part, “...for failure to make the proper effort to maintain a straight course in the stretch,
14 causing interference which resulted in the disqualification of his mount from first to second
15 position...”

16 **V.**

17 “Vibrato Jazz” interfered with race horse “Affrettando” in the seventh race at DelMar
18 Thoroughbred Club.

19 **VI.**

20 “Vibrato Jazz” was disqualified by the Board of Stewards for the seventh race at Del Mar
21 Thoroughbred Club on August 15, 2013.

22 **APPLICABLE LAWS AND REGULATIONS**

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26 4 C.C.R. Section 1688, which is entitled, “Use of Whips,” states:
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1 (a) In all races where a jockey will not ride with a whip, an announcement shall be
2 made over the public address system of such fact.

3 (b) Although the use of a whip is not required, any jockey who uses a whip during a
4 race is prohibited from whipping a horse:

5 (1) on the head, flanks, or on any part of its body other than the shoulders or hind
6 quarters;

7 (2) during the post parade except when necessary to control the horse;

8 (3) excessively or brutally causing welts or breaks in the skin;

9 (4) when the horse is clearly out of the race or has obtained its maximum placing; or

10 (5) persistently even though the horse is showing no response under the whip.

11 (c) Correct uses of the whip are:

12 (1) showing horses the whip before hitting them;

13 (2) using the whip in rhythm with the horse's stride; and

14 (3) using the whip as an aid to maintain a horse running straight.

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17 4 C.C.R. Section 1699, which is entitled, "Riding Rules," states:

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19 During the running of the race:

20 (a) A leading horse is entitled to any part of the course but when another horse is
21 attempting to pass in a clear opening the leading horse shall not cross over so as to
22 compel the passing horse to shorten its stride.

23
24 (b) A horse shall not interfere with or cause any other horse to lose stride, ground or
25 position in a part of the race where the horse loses the opportunity to place where it
26 might be reasonably expected to finish.

1 (c) A horse which interferes with another and thereby causes any other horse to lose
2 stride, ground or position, when such other horse is not at fault and when such
3 interference occurs in a part of the race where the horse interfered with loses the
4 opportunity to place where it might, in the opinion of the Stewards, be reasonably
5 expected to finish, may be disqualified and placed behind the horse so interfered
6 with.

7 (d) Jockeys shall not ride carelessly or willfully so as to permit their mount to
8 interfere with or impede any other horse.

9 (e) Jockeys shall not willfully strike or strike at another horse or jockey so as to
10 impede, interfere with, intimidate, or injure.

11 (f) If a jockey rides in a manner contrary to this rule, the mount may be disqualified
12 and the jockey may be suspended or otherwise disciplined by the Stewards.

13
14 California Business and Professions Code Section 19517, which is entitled,

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16 “Overrule of stewards' decision by board; preponderance of the evidence,” states:

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18 (a) The board, upon due consideration, may overrule any steward's decision other
19 than a decision to disqualify a horse due to a foul or a riding or a driving infraction in
20 a race, if a preponderance of the evidence indicates any of the following:

- 21 (1) The steward mistakenly interpreted the law.
22 (2) New evidence of a convincing nature is produced.
23 (3) The best interests of racing and the state may be better served.

24 (b) However, any decision pertaining to the finish of a race, as used for purposes of
25 parimutuel fund distribution to winning ticketholders, may not be overruled.

26 Furthermore, any decision pertaining to the distribution of purses may be changed
27 only if a claim is made in writing to the board by one of the involved owners or
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1 trainers, and a preponderance of the evidence clearly indicates to the board that one
2 or more of the grounds for protest, as outlined in regulations adopted by the board,
3 has been substantiated. The chairperson of the board may issue a stay of execution
4 pending appeal from a steward's decision if the facts justify the action.
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6 4 C.C.R. Section 1761, which is entitled, "Appeal from Decision of Stewards,"
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8 states:

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10 (a) From every decision of the stewards, except a decision concerning the
11 disqualification of a horse due to a foul or a riding or driving infraction, an appeal
12 may be made to the Board.
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14 (b) Appeals shall be made in writing, stating the reason or reasons for the appeal, and
15 shall be signed by the appellant, appellant's attorney, or appellant's representative.
16 Appeals shall be received by a Board employee at any of its offices, not later than
17 seventy-two (72) hours from the date of the decision of the stewards unless the Board
18 for good cause extends the time for filing.

19 (c) An appeal shall not affect a decision of the stewards until the appeal has been
20 sustained or dismissed or a stay order issued by the Chairman.
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22 DISCUSSION OF ISSUES

23 I. APPLICABLE BURDEN OF PROOF

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25 The Appellant had the burden of proof to refute, by a preponderance of evidence
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1 Standard, that the ruling issued by the Del Mar Thoroughbred Club Board of
2 Stewards, was such that any of the following occurred: (1) The steward mistakenly
3 interpreted the law, (2) new evidence of a convincing nature is produced, or (3) the best
4 interests of racing and the state may be better served.¹

5
6 **II. APPELLANT ESPINOZA’S CONDUCT DURING THE SEVENTH RACE**
7 **AT DEL MAR THOROUGHBRED CLUB ON AUGUST 15, 2013 WAS**
8 **NEITHER CARELESS NOR WILFUL – NEW EVIDENCE**
9 **CONTRAVERTS STEWARD’S PRIOR RULING**

10 Extensive testimony was heard from Jockey Mike Smith, who provided expert testimony on
11 behalf of Appellant. He testified that he has over thirty two (32) years of racing horses as a jockey.
12 Mr. Smith viewed Exhibit 1, the DVD video recording of the seventh race at Del Mar Thoroughbred
13 Club on August 15, 2013, which is the subject of this appeal. He opined that Appellant was not
14 careless.

15 Mr. Smith testified that he has been a jockey in over 30,000 races, won over 5,000 races, and
16 earned in excess of \$240 million. He has won the Kentucky Derby, Preakness, Belmont, and
17 Breeder's Cup Classic. He has also received the Eclipse Award for Outstanding Jockey. (RT: pp.15 -
18 16).

19 Mr. Smith has also received the Mike Venezia Memorial Award for Extraordinary
20 Sportsmanship and Citizenship, the George Woolf Memorial Jockey Award, and has been inducted
21 in the National Museum of Racing and Hall of Fame. (RT: pp. 16).

22 Mr. Smith testified that each horse responds individually as they are all different. (RT: pp.
23 18). Mr. Smith also testified that based on his thirty (30) years of experience, the use of the whip is
24 appropriate in some cases to aid a horse to maintain a straight course during the race. (RT: pp. 19).

25 Mr. Smith testified that pursuant to CHRP Rule 1688, a whip can be correctly used to
26 maintain a horse to run straight. (RT: pp. 19).

27 ¹ Reference is made to Business and Professions Code Section 19517.

1 Mr. Smith opined that the rider on the horse’s back would be in the best position to judge
2 whether he should use the whip to maintain a horse running straight. He further opined that nobody
3 else would be better situated in his opinion to determine when to use a whip (RT: pp. 20).

4 Mr. Smith stated that he had reviewed the part of the seventh race on August 15, 2013 at
5 DelMar involving the disqualification of “Vibrato Jazz” and the subsequent suspension of
6 Appellant Espinoza. (RT: pp. 20).

7 Mr. Smith testified that the manner in which Mr. Espinoza used the whip on “Vibrato Jazz”
8 to maintain a straight path were reasonable ways for a jockey to maintain a straight course under the
9 circumstances presented in the seventh race on August 15, 2013. (RT: pp. 25).

10 Mr. Smith also opined that he did not consider the conduct by Mr. Espinoza in the seventh
11 race on August 15, 2013 to be careless. (RT: pp. 25). Mr. Smith further opined that, “... Mr.
12 Espinoza was riding hard, trying to win a race, the very end of a race. He’s hitting left – handed. He
13 moved out. When he moved out, he switched sticks probably about as fast as you can. He went right
14 – handed to straighten him back out...” (RT: pp. 25).

15 When Mr. Smith was further questioned, he stated that had Mr. Espinoza continued to come
16 out, that would be careless. He did not deem Mr. Espinoza’s conduct to be careless. (RT: pp. 28).

17 Mr. Smith stated that he thought Mr. Espinoza did a great job to straighten him (Vibrato
18 Jazz) out. He then stated, “I wouldn’t call it careless.” (RT: pp. 29).

19 On cross examination, Mr. Smith was asked the preferential way to correct a horse, with
20 either a whip or the reins first. Mr. Smith stated, “... It could be one or the other. It just depends.
21 Either one. Some work – it just depends... There’s a hundred different situations that I could sit here
22 and tell you. One doesn’t necessarily work better than the other sometimes. Sometimes they do
23 depending on what part of the race you’re at and where you’re at and what you would do. At this
24 part of the race, I would go with the whip because I’m also going for the win...” (RT: pp. 33).

25 Mr. Smith, when questioned what he would do, stated, “I don’t know what I would do. I
26 wasn’t in that situation, so for me to tell you exactly what I would’ve done, I don’t know. It just all
27 depends on what you’re feeling. These are quick – a fifth of a second decisions. I mean, I couldn’t
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1 sit here and honestly tell you. I know I would've probably did what he did. Grab the inside rein,
2 switch my stick to the right.” (RT: pp 34).

3 On redirect examination, Mr. Smith was asked how much time transpired from the first time
4 that Mr. Espinoza used the left-handed whip until he began to switch to the right hand. Mr. Smith
5 estimated it was a half a second. (RT: pp 37).

6 Ms. Kim Sawyer, one of the Stewards that issued the suspension to Appellant, also testified
7 at the hearing, and was called to testify by Appellant. She is a licensed Steward for the State of
8 California and has been since 2005. She was serving as a Steward on August 15, 2013 at Del Mar
9 Thoroughbred Club during the seventh race. (RT: pp. 39).

10 Ms. Sawyer testified that Appellant was suspended for, “his lack of effort to maintain a
11 straight course in the stretch run.” (RT: pp. 51). When questioned whether Mr. Espinoza made any
12 effort to maintain a straight course, she replied, “If you consider the use of the whip an effort, in my
13 opinion, the proper effort is to use your reins first.” (RT: pp. 51). She then testified that, “I don’t
14 feel that Mr. Espinoza corrected his drift in a proper – timely manner.”(RT: pp. 51). Ms. Sawyer,
15 when questioned about the use of a left-handed whip during the August 16, 2013 review of the
16 video of the seventh race at Del Mar on August 15, 2013 with the Appellant, stated, “We said he
17 made the proper effort to maintain his drift inward.” (RT: pp. 52).

18 Ms. Sawyer then stated that it was not the issue of Mr. Espinoza using the left-handed whip,
19 but the issue of his correction of the outward drift of “Vibrato Jazz.” (RT: pp. 52).

20 When Ms. Sawyer was questioned as to whether she commended Mr. Espinoza’s riding of
21 “Vibrato Jazz” on August 15, 2013, she stated that she may have said, “That the attempt he made to
22 correct his inward drift was a proper correction.” (RT: pp. 53).

23 Ms. Sawyer testified about Mr. Espinoza correcting his inward drift properly, and stated, “he
24 went and switched to his left – handed stick to make that adjustment. Then he – with the left –
25 handed stick, he hit his horse three times. His horse continually drifted out with three, four or five –
26 being fair, let’s say three paths. Three to four paths, where I felt he had sufficient time to reach
27 down and grab the horses’ rein rather than to continually hit him with the whip.” (RT: pp 56). She
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1 then opined that Appellant should have grabbed the left rein at that point when “Vibrato Jazz”
2 started moving outward. (RT: pp. 56).

3 Ms. Sawyer initially stated that the time from the initiation of the first left-handed whip to
4 the switching to the right-handed was approximately two (2) seconds. She then, upon further review
5 of Exhibit 1 (the video) clarified her testimony that it was approximately “closer to” one second in
6 time. (RT: pp. 57 - 58).

7 Ms. Sawyer was questioned as to the estimate of time that Mr. Espinoza had to decide to use
8 the left rein or the right-handed whip to correct the horses’ outward deviation. Ms. Sawyer stated
9 they were, “split-second decisions”. (RT: pp. 64). Ms. Sawyer then testified, “I do not feel his drift
10 was deliberate but we wouldn’t be sitting here. He would’ve corrected it.... I feel it was careless
11 because he didn’t correct it in time....” (RT: pp. 64).

12 Ms. Sawyer read the ruling, Exhibit A, into the record. It stated, “In our opinion, we feel Mr.
13 Espinoza could have made a better effort by guiding his mount with the reins, not only with his
14 stick.” Ms. Sawyer then stated that she agreed with that statement as it was the basis for the
15 suspension of Mr. Espinoza. (RT: pp. 66-67).

16 When subsequently questioned about the three (3) day suspension ruling issued on August
17 16, 2013 against Appellant, Ms. Sawyer stated, “Do I agree he made any effort to maintain a
18 straight course? No.” She then went on to respond, “... well we should’ve said ‘made’. We probably
19 should’ve said ‘made’ and ‘lack of effort’”. She further responded that the Board of Stewards ruling
20 did not say that. (RT: pp. 67).

21 When further questioned, Ms. Sawyer testified when asked if the minutes and the ruling
22 don’t adequately reflect her position stated, “not after watching it repeatedly again.... Yeah, I think
23 it solidifies it...” (RT: pp. 68).

24 On re-cross examination, Ms. Sawyer testified that she has been disciplined at least once in
25 the past for mistakes made in reaching decisions as a Steward. (RT: pp. 70).

26 Pursuant to 4 C.C.R. Section 1688, correct uses of a whip includes “using the whip as
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1 an aid to maintain a horse running straight.” The language in 4 C.C.R. Section 1688 is
2 discretionary, not mandatory, as to the use of a whip by a jockey. The evidence is very
3 clear, even from Ms. Sawyer, that Mr. Espinoza had a split second(s) to decide which
4 method(s) to employ, to straighten out “Vibrato Jazz”, a horse that Mr. Espinoza described
5 as behaving unusual. Appellant’s feel for the horse at that given moment and his more than
6 reasonable good faith efforts to maintain “Vibrato Jazz on a straight course, traveling over
7 thirty miles an hour, should not be substituted or second guessed, absent a showing of
8 carelessness and recklessness. Appellant was neither reckless, careless, nor wilful in his
9 conduct during the seventh race at Del Mar Thoroughbred Club on August 15, 2013.
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12 Ms. Sawyer’s testimony is critical to the finding that there was some confusion in the
13 interpretation of the law with the corresponding facts. She opined that Mr. Espinoza made no effort
14 to maintain a course, then modified her answer and responded that she should have ruled that Mr.
15 Espinoza had a lack of effort. (RT: pp. 67). Subsequently, Ms. Sawyer, when asked if the minutes
16 and ruling did not adequately reflect her position, stated, “it solidified it”. (RT: pp 68). Ms.
17 Sawyer’s testimony is controverted by the testimony of Mr. Smith, Mr. Espinoza, and most
18 importantly, the DVD video of the seventh race, Exhibit 1.

19 Mr. Espinoza testified that he has ridden over 20,000 races, has earned over \$100 million,
20 won the Kentucky Derby, Preakness, and the Breeders’ Cup. (RT: pp. 71-72).

21 During the course of Appellant’s testimony, several times he viewed and re-viewed the
22 video of the August 15, 2013, seventh race, Exhibit 1.

23 Appellant described in extensive detail how “Vibrato Jazz” acted and responded during the
24 seventh race. He described “Vibrato Jazz” head turned to the right and turned out early in the
25 stretch. He stated that he turned his (Vibrato Jazz) head out because the horse was “lagging in.”
26 (RT: pp. 72). He then described that when he turned the horses head out, he did not get the response
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1 that he wanted because although “Vibrato Jazz” turned his head to the outside, his body was going
2 inside. (RT: pp. 72-73).

3 Appellant further described his conduct during the race, when he stated that he hit “Vibrato
4 Jazz” in the head three times left-handed because he was trying to avoid an accident with all the
5 horses on the inside, and he was trying to straighten him (Vibrato Jazz) out. He described “Vibrato
6 Jazz” movement as, “so quick to the outside”. (RT: pp.73). Appellant described “Vibrato Jazz”
7 behavior as unusual. He did not consider “Vibrato Jazz” to be an experienced horse. Appellant
8 stated that when “Vibrato Jazz” veered out, he used a right whip on the horse. He did that because
9 he wanted to keep the horse straight. (RT: pp. 74).

10 Appellant then described where he left-handed hit the horse (Vibrato Jazz) and the horse
11 veered out, but Appellant could not see the horse “Affrettando” behind him and to the right. (RT:
12 pp. 75).

13 Appellant testified that at one point he used the right-handed stick to correct the outward
14 drift of “Vibrato Jazz” and to maintain a straight course. When asked if he used the reins because
15 the Stewards felt that he should not have used the reins rather than the whip, Appellant responded,
16 “I used a little bit of both.” (RT: pp. 76).

17 Appellant, when asked why he did not use the direct rein and pull “Vibrato Jazz” head to
18 the left, responded, “So, he lags in. The only reason it’s difficult because when I pulled the rein to
19 either direction, either to the right or to the left, what the horse does, turned his head. If I pull it to
20 the right, turn his head to the right, but his body goes to the other way. So, it was difficult to me to
21 do the reins. I tried in the beginning and it didn’t work, so that’s why I try to straighten him out with
22 the whip.” (RT: pp77).

23 Appellant then testified that he used his best efforts to maintain a straight course with
24 “Vibrato Jazz.” (RT: pp.78).

25 Appellant testified that he has been suspended on prior occasions for riding violations but
26 has never filed an appeal in his twenty (20) years of horse racing until he was suspended for the
27 seventh race on August 15, 2013 at Del Mar. (RT: pp. 78).

1 Appellant then stated, "I feel like I did the right thing to correct the horse as I was supposed
2 to do. It was not like I rode a reckless ride. I think I did the best I can to just keep the horse straight.
3 I can-- you know, it's a difficult horse to ride so that's how I feel like that was the horse. I feel like it
4 was the horse's problem, not my problem in this case. (RT: pp. 79).

5 Appellant stated that he agreed with the Stewards' decision that "Vibrato Jazz" should have
6 been disqualified from the seventh race on August 15, 2013. (RT: pp. 79). Appellant testified that
7 his conduct was "not careless." (RT: pp. 79).

8 On cross examination, Appellant was asked if he looked over to his right to see if anyone
9 (horse and Jockey) was there as "Vibrato Jazz" was drifting out. Appellant stated that he did not
10 look over to his right and said, "...when I - when we ride the horses, we always look forward.
11 Because if you look any direction, sometimes you can move the horse with your body and if he's --
12 the horses move so quick, by the time, maybe the horse go the other direction. That's why." (RT:
13 pp. 85).

14 This hearing officer deemed the testimony of jockey Mike Smith and Appellant, Victor
15 Espinoza, to be very credible. Both Mr. Smith and Mr. Espinoza were very forthright in their
16 testimony and answered all questions without hesitation and/or any evasiveness.

17 Pursuant to California Business and Professions Code Section 19517 (1), it is this
18 Hearing Officer's opinion that the Steward's Ruling proposing a three (3) day suspension of
19 Appellant Victor Espinoza, be overruled. This is based on the more than clear and
20 convincing evidence presented by Appellant, including, but not limited to, the testimony of
21 the Steward, Ms. Sawyer. It is this Hearing Officer's opinion that Ms. Sawyer mistakenly
22 misinterpreted the law when applying the relevant and demonstrated facts to the law. The
23 evidence clearly does not reflect that Appellant was careless or wilful when "Vibrato Jazz"
24 moved into the path of "Affrettando."
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1 But, clearly, the video evidence, coupled with the testimony of Mr. Smith and
2 Appellant, reflect more than reasonable conduct by Appellant in his conduct while riding
3 “Vibrato Jazz”, which was neither careless nor wilful.
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5 Additionally, under California Business and Professions Code Section 19517 (2), it is
6 this Hearing Officer’s opinion that new evidence of a convincing nature was produced by
7 the Appellant, specifically the expert testimony of jockey Mike Smith, and his thorough
8 review of Exhibit 1, and corresponding testimony of the “non-careless” conduct of Appellant
9 during the seventh race at Del Mar Thoroughbred Club on August 15, 2013. Furthermore,
10 there is no record of any testimony by Appellant at the Board of Stewards meeting with
11 Appellant on August 16, 2013, when they issued their proposed three (3) day suspension.
12 Absent evidence of such a transcript of Appellant’s testimony, his own testimony at the
13 October 5, 2013 hearing should also be deemed new evidence of a convincing nature,
14 justifying the overruling of the Stewards August 16, 2013 decision.
15

16 **CONCLUSION/PROPOSED DECISION**
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18 Based on the aforementioned facts and circumstances, it is this Hearing Officer’s proposed
19 ruling that the Board of Stewards proposed three (3) day suspension of Appellant Victor Espinoza be
20 overturned and set aside.
21

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23 DATED: 1/12/14
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26 RICHARD P. MARGARITA, ESQ.
27 Hearing Officer
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