

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of:

**Appeal from the Decision of the Board of
Stewards of the Protest occurring in the
sixth race at Del Mar Race Track on
August 6, 2009**

Case No. SAC 10-0045
OAH No. L2009121211

**GERARD PICCIONI
CHRB License #070266
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 August 24, 2010.

IT IS SO ORDERED ON August 19, 2010.

**CALIFORNIA HORSE RACING BOARD
Keith Brackpool, Chairman**

By: 

**Kirk E. Breed
Executive Director**

BEFORE THE
CALIFORNIA HORSE RACING BOARD
STATE OF CALIFORNIA

In the Matter of the Appeal from the
Decision of Stewards of the Protest
of:

GERARD PICCIONI,

Appellant.

Case No. 09DM077

OAH No. 2009121211

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PROPOSED DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, in Los Angeles on June 15, 2010. The California Horse Racing Board was represented by Jennie M. Kelly, Deputy Attorney General. Appellant Gerard Piccioni, trainer, represented himself. James Demaio, owner, was also present.

Stipulated facts and documentary evidence having been received and oral argument heard, the Administrative Law Judge submitted this matter for decision on June 15, 2010, and finds as follows:

FACTUAL FINDINGS

1. Appellant Gerard Piccioni is the trainer of the thoroughbred racing horse So Behold, which is owned by Omnia Racing Stable and John and Jim DeMaio.
2. Craig's Storm is a four-year old Bay gelding and a thoroughbred racing horse owned by Craig A. and Sharon M. Mobley.
3. On or about August 2, 2009, Craig's Storm was entered by its trainer Frank J. Monteleone into the Sixth Race scheduled for August 6, 2009, at the Del Mar Thoroughbred Club. The racing office at the Del Mar Thoroughbred Club assigned the weight of 120 pounds to be carried by Craig's Storm in the Sixth Race. The assigned weight was placed on the Entry Blank or Card for Craig's Storm. The racing office's assignment of the weight of 120 pounds to Craig's Storm was wrong under the conditions of the race. Craig's Storm should have been assigned to carry the weight of 122 pounds.

4. The assignment of weight for Craig's Storm at 120 pounds as well as those for other horses entered to run in the Sixth Race for August 6, 2009, was publicized and distributed in the "overnight" approximately 96 hours before the race as well as in the Daily Racing Form and the Official Program. No objection was filed under California Horse Racing Board Rule 1752 before the race that Craig's Storm was not qualified to enter the race or that the weight it was to carry was incorrect under the conditions of the race.¹

5 On August 6, 2009, Craig's Storm ran and won the Sixth Race at the Del Mar Thoroughbred Club by one length. Craig's Storm carried the assigned weight of 120 pounds for the race. So Behold was the second place finisher and Quityerbellyaching was the third place finisher in the same race.

6. After the race, on August 7, 2009, the Stewards learned that racing officials had assigned the wrong weight to Craig's Storm and informed other race participants of the error.

7. On August 9, 2009, Gerard Piccioni, the trainer for So Behold, and Kristin Mulhall, the trainer for Quityerbellyaching, filed protests about the result of the Sixth Race with the Board of Stewards, complaining that Craig's Storm "carried the incorrect weight" under the conditions of the race and should be disqualified from winning the Sixth Race and that the attendant purse redistributed.

8. On August 30, 2009, the Board of Stewards held a formal hearing on the protests. Piccioni was the sole protestant to appear at the formal hearing. The Board of Stewards heard testimony from Piccioni, Monteleone, and the racing secretary at the Del Mar Thoroughbred Club as well as arguments from Piccioni and Monteleone. During the formal hearing, Piccioni conceded that there was no fraud or willful conduct involved in the weight assigned to or carried by Craig's Storm and contended that Craig's Storm gained an unfair advantage by being allowed to carry the wrong weight for the race. On September 10, 2009, the Board of Stewards issued a Statement of Decision, denying the protests and upholding the result of the Sixth Race.

9. In the Statement of Decision, the Board of Stewards determined that Piccioni filed a valid protest that the wrong or incorrect weight was assigned to Craig's Storm under conditions of the race and that the horse gained an unfair advantage. The Board of Stewards first found that whether Craig's Storm gained any advantage by a two-pound weight difference was speculative inasmuch as the protest was filed with respect to the assignment of weight to the horse. The Board of Stewards further found that it had great latitude or discretion in adjudicating a protest because Rule 1759 provides that, if a protest against a horse which has won is declared valid, then the horse "may be disqualified." The Board of Stewards thereupon determined that Piccioni's protest must be dismissed. The Board of Steward opined that disqualification of a horse after a race has become official should be undertaken only in extreme circumstances because "finality is an important pillar of racing." The Board of Stewards found that the assignment of the weight to Craig's Storm was publicized before the race and the incorrect weight assignment was "discoverable and could have been quickly remedied had some objection

¹ Rules refer to the regulations of the California Horse Racing Board found at California Code of Regulations, title 4, sections 1400 et seq.

been made before the race was run.” The Board of Stewards ruled that it was inappropriate to change the result of the race in these circumstances and, to do so, would create a disincentive to correct this kind of error before the race.

10. On September 11, 2009, Piccioni filed an appeal of the decision of the Board of Stewards in his capacity as the trainer of So Behold and on behalf of the owners of the horse. This matter ensued.

11. In this appeal, the parties stipulated to the facts in this matter. Piccioni argues that the trainer of Craig’s Storm was responsible for ensuring that his horse was assigned and carried the correct weight and the racing officials should have enforced the race conditions and corrected the weight assigned to Craig’s Storm. Piccioni contends that Craig’s Storm gained an unfair advantage by being allowed to race at a wrongly assigned weight of 120, which was two pounds less than the weight that it should have been assigned by racing officials.

12. The Condition Book of the Del Mar Thoroughbred Club for the 2009 summer season provides, in part: “Owners and trainers when entering horses in races are cautioned to check carefully the eligibility of their horse and the allowances claimed in all races. Under the universal rules of racing an owner or trainer is responsible for the eligibility and the weight the horse carries.”

* * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Grounds do not exist to over-rule the Statement of Decision of the Board of Stewards under Business and Professions Code, section 19517, subdivision (a), in that appellant did not establish that the Board of Stewards made an incorrect decision or abused its discretion in making its decision in denying his protest, based on Findings 1 – 12 above.

2. Discussion—Business and Professions Code, section 19517, subdivision (a), provides that the California Horse Racing Board may over-rule any decision of the Board of Stewards, other than a decision to disqualify a horse due to a foul or a riding or a driving infraction in a race, if the preponderance of the evidence indicates any of the following: (1) the Stewards mistakenly interpreted the law; (2) new evidence of a convincing nature is produced; or (3) the best interests of racing and the state may be better served.

In this appeal, appellant ostensibly contends that the Board of Stewards mistakenly interpreted the law by denying his protest and failing to disqualify Craig’s Storm for having

been assigned and allowed to race at the wrong weight. Paraphrasing his argument, appellant also claims that the trainer of Craig's Storm and racing officials at the Del Mar Thoroughbred Club were responsible for having the correct weight assigned to the horse and the interests of racing would be better served by holding the trainer and racing officials responsible for their oversight and/or error and disqualifying Craig's Storm.²

California Code of Regulations, title 4, section 1420, subdivision (r), defines protest as a formal complaint filed after a race with the Stewards or the California Horse Racing Board protesting the right of any horse to a place, purse, or award in the race, or protesting any decision of the Stewards relating to the eligibility, participation, or placing of any horse in a race. Rule 1755 provides, in pertinent part, that a protest to the Stewards may be made on any of the following grounds: (a) any ground for objection set forth in the rules or regulations; (b) the official order of finish, as determined by the Stewards, was incorrectly posted; (c) a jockey, driver, trainer, or owner of a horse which started in the race was ineligible to participate in racing as provided in the regulations of the California Horse Racing Board; (d) the weight carried by a horse was improper by reason of fraud or willful misconduct; or (e) an unfair advantage was gained in violation of the rules.

Rule 1420, subdivision (m), defines objection as a formal complaint filed before a race with the Stewards or the California Horse Racing Board objecting to the eligibility of any horse to compete in the race or the right of any person to participate in the race. Rule 1751 provides, in pertinent part, that objections to the participation of a horse entered in any race must be made to the Stewards not later than one hour before the scheduled post time of the race in which such horse is entered. Rule 1752 states that an objection to a horse entered to race shall be made on the following grounds or reasons: (a) a misstatement, error, or omission in the entry under which a horse is to run; (b) that the horse which is entered to run is not the horse it is represented to be at the time of entry, or that the age is erroneously given; (c) that the horse is not qualified to enter under the conditions specified for the race, or that the allowances are improperly claimed or not entitled the horse, or that the weight to be carried is incorrect under the conditions of the race; (d) that the horse is owned in whole or in part by a person ineligible to participate in racing or otherwise ineligible to own a race horse as provided in the regulations; or (e) that the horse was entered without regard to an existing lien as otherwise prohibited in the regulations.

Rule 1686 states that the trainer and owner shall be responsible for the weight "carried" by the horse after the jockey has been weighed out for the race by the clerk of scales. Rule 1894 provides that trainers are responsible for the condition of horses in their care and are presumed to know the rules. Rule 1887 adds that the trainer is the absolute insurer of and responsible for the condition of the horses entered in a race, regardless of the acts of third parties. The trainer of a horse may be fined and his license suspended, revoked, or ruled off if a chemical tests prove positive showing the presence of any prohibited drug

² No new evidence was presented at the hearing on this appeal. The parties stipulated to the facts.

substance in the trainer's horse. Rule 1902 provides, in pertinent part, that no licensee shall engage in any conduct prohibited by this Division nor shall any licensee engage in any conduct which by its nature is detrimental to the best interests of horse racing.

Here, the issue before the Board of Stewards was whether Craig's Storm should be disqualified after winning a race because the horse was assigned the incorrect weight under conditions of the race. In the formal hearing and in this appeal, appellant has argued that Craig's Storm gained an unfair advantage by being assigned the wrong weight. Appellant's arguments were not persuasive. First, as determined by the Board of Stewards, the claim that Craig's Storm was assigned the wrong weight should have been made before the race as the subject of an objection under Rule 1752. The assignment of the wrong weight was clearly publicized before the race. Once a race was completed and results finalized and posted, the best interests of horse racing would not be served by over-turning the results due to an error in weight assignment that could have been easily corrected before the race. Second, appellant did not prove that Craig's Storm gained an unfair advantage after erroneously being assigned the wrong weight or that the horse gained an unfair advantage "in violation of the rules." As determined by the Board of Stewards, any advantage gained by the "assignment" of the wrong weight was speculative and no evidence or argument was presented that the assignment by racing officials of the wrong weight was made in violation of any specific horse racing rule.

In conclusion, it must be found that appellant failed to carry his burden of showing by a preponderance of the evidence that the decision of the Board of Stewards in denying his protest should be over-ruled because the Board of Stewards mistakenly interpreted the law or that the best interests of racing would be better served by over-turning the decision.


* * * * *

WHEREFORE, the following Order is hereby made:

ORDER

The Statement of Decision of the Board of Stewards made at the Del Mar Thoroughbred Club on September 10, 2009, is affirmed. The appeal of Gerard Piccioni from the Statement of Decision and the denial of his protest regarding Craig's Storm having won the Sixth Race at the Del Mar Thoroughbred Club on August 6, 2009, is denied.

Dated: July 13, 2010


Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings