

BEFORE THE CALIFORNIA HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of:
Appeal of the Board of Stewards Official
Ruling #071, Hollywood Park Racing Assn.,
dated July 14, 2011

Case No. Sac 11-0019

JOSEPH TALAMO
CHRB License #291800
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 November 18, 2011.

IT IS SO ORDERED ON November 17, 2011.

CALIFORNIA HORSE RACING BOARD
Keith Brackpool, Chairman



Kirk E. Breed
Executive Director

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In the Matter of:)
Appeal of Stewards Official)
Ruling #071, Hollywood Park)
Racing Assn.,)
Dated July 14th, 2011)

JOSEPH TALAMO)
CHRB License # 291800)
Appellant.)

)

Case No. SAC 11-0019

PROPOSED DECISION

This appeal was heard by attorney Steffan Imhoff, an Appellate Judge designated under Rule 1414 by the California Horse Racing Board (CHRB), at Del Mar, California, at the Del Mar Race Track Executive Offices on August 26th, 2011.

Rick Amieva, Investigator, represented the CHRB.

Attorney Bing Bush represented the Appellant, Joseph Talamo.

Mr. Talamo was present and testified on his own behalf.

Don Pierce, retired Jockey, testified for Talamo.

Jay McClellan, Jockey agent, also testified for Talamo

Steward Kim Sawyer testified for the CHRB.

Steward Tom Ward also testified for the CHRB.

The proceedings were transcribed by Barbara Weinstein, Hearing Reporter.

Alexandra De Koster acted as Court Clerk.

Safety Steward Luis Jauregui was present and ran the films.

William Westermann, Senior CHRB Investigator was also present.

The appeal was submitted for decision on August 26, 2011.

PROCEDURAL BACKGROUND

This appeal concerns appellant's race riding during the running of the 4th race at Hollywood Park Race Track on July 10th, 2011. The race was a maiden allowance contest for Thoroughbreds three year old and upward at one mile and one sixteenth on the all-weather track. Talamo rode the number 8 horse, Maestro, to victory over eight rivals. Having detected potential interference by Talamo's mount the Stewards conducted an inquiry into the stretch run of the race. The Stewards ruled that Talamo's mount came out, bumped, and interfered with his rival, number 2, Balladry ridden by Rafael Bejarano. Therefore, the Stewards unanimously ruled that Maestro was disqualified and placed second behind Balladry who was elevated to first place. Appellant does not challenge the validity of that disqualification in this appeal.

Because of this disqualification Talamo was called in for a film review with the Stewards on July 14, 2011. Following the review the Stewards, on a majority vote, issued a ruling suspending appellant.

According to the Steward's Minutes for that date:

“This ruling was issued after Mr. Talamo met with the Stewards to discuss the disqualification in the fourth race Sunday. It was the majority opinion that Mr. Talamo had four strides to correct his outward drift before the infraction occurred; Steward Chaney felt that the blame could be attached to the horse.”

Therefore, the Stewards issued the following ruling:

Jockey, **Joseph Talamo**, is suspended for **THREE (3) RACING DAYS (July 24, 27, and 28, 2011)** for failure to make the proper effort to maintain a straight course in the stretch and causing interference while riding “Maestro” in the fourth race at Hollywood Park on July 10th, 2011. This constitutes a violation of California Horse Racing Board rule #1699 (Riding Rules – Careless Riding). Term of suspension shall not prohibit participation in designated races pursuant to California Horse Racing Board rule #1766 (Designated Races).

The majority ruling was dated July 14th, 2011.

Appellant, through counsel has filed a timely notice appealing Order HRT#071. The suspension has been stayed by the Los Angeles County Superior Court.

The hearing on appeal of Order HRT#071 was conducted in Del Mar, California on August 26th, 2011 at the Del Mar Race Track Executive Offices.

This appeal to the CHRB is authorized by Rule 1761. Appellant has the burden of proof on appeal under Rule 1764.

The focus of the hearing was whether or not the films of the race showed careless riding, as defined by Rule 1699, or whether the blame could be attributed to Maestro.

Under the provisions of Business and Professions Code Section 19517(a), the CHRB may only overrule a Stewards' Decision if a preponderance of the evidence shows either that the Stewards mistakenly interpreted the law, new evidence of a convincing nature is produced or the best interest of racing may be better served.

DISCUSSION

A.) Summary of Evidence

1.) The Film:

The Film of the Race (Exhibit 3) has a good view of the stretch run that was at issue in this case. At around the 8th Pole, Balladry is on the outside with Maestro to his inside and Lord Vronsky to Maestro's inside. Lord Vronsky drifts out slightly coming close to Balladry but not making contact. During this time Talamo uses a right handed whip four times with his mount basically staying on a straight course shortly thereafter, past the 16th Pole, Maestro starts to drift out badly. Talamo uses a right hand whip but Maestro moves into the whip and drifts out towards Balladry. Maestro continues to move out bumping

hard with Balladry and knocking him off balance shortly before the finish line. Right after the bump Talamo pulls on the left rein moving his horse away from his rival.

2.) *Appellant's Evidence:*

a.) *Joe Talamo:*

Joe Talamo testified in his own defense and denied riding carelessly under Rule 1699. He stated he was surprised when his mount came out under right handed whipping in late stretch when he had not done so previously. He agreed that the disqualification was justified but testified that the horse was to blame and he made every reasonable effort to control his mount.

b.) *Don Pierce:*

Mr. Pierce is a retired Hall of Fame Jockey who testified on Talamo's behalf. Before he retired he had ridden in over 29,000 races. It was his opinion that Talamo tried to straighten his horse prior to his contact with Balladry but was unable to do so.

c.) *Jay (Scottie) McClellan:*

Mr. McClellan is Talamo's Jockey Agent. He has been a Jockey Agent for 39 years and has represented many of the leading Jockeys in Thoroughbred Racing. He believes the Stewards have a hard job and has a lot of respect for their decisions. Therefore, he has always advised his Jockeys' not to appeal a steward's ruling. However, in this case he felt strongly that Talamo was not at fault and for the first time he filed an appeal. It was his opinion that Talamo did the best that he could in a difficult situation when his horse unexpectedly turned into the whip. He laid blame on the teacher not the student.

3.) *Evidence from the Board:*

a.) *Stewards Sawyer and Ward:*

Steward Kim Sawyer and Tom Ward testified on behalf of the Board. They were the two Stewards who issued the order suspending Talamo in this case. Both of them testified that Talamo simply did not make a sufficient effort to keep a straight course. In particular they emphasized that Talamo was trying to control Maestro's drift outward with a right handed whip instead of using his reins. The Stewards have made it very clear to all of the Jockeys riding at Del Mar that the preferred method of controlling their mounts is with the use of the reins and not the whip.

B) *Controlling Law*

The Stewards have general authority and supervision over all licensees, including licensed Jockeys such as Mr. Talamo (Rule 1527). That authority includes their ability to impose a fine or suspension (Rule 1528).

At issue in this appeal is Rule 1699 - Riding Rules.

During the running of the race;

- a.) A leading horse is entitled to any part of the course but when another horse is attempting to pass in a clear opening the leading horse shall not cross over so as to compel the passing horse to shorten its stride.
- b.) A horse shall not interfere with or cause any other horse to lose stride, ground or position in a part of the race where the horse loses the opportunity to place where it might be reasonably expected to finish.

- c.) A horse which interferes with another and thereby causes any other horse to lose stride, ground or position, when such horse is not at fault and when such interference occurs in a part of the race where the horse interfered with loses the opportunity to place where it might, in the opinion of the Stewards, be reasonably expected to finish, may be disqualified and placed behind the horse so interfered with.
- d.) **Jockeys shall not ride carelessly, or willfully, so as to permit their mount to interfere with or impede any other horse.**
- e.) Jockeys shall not willfully strike or strike at another horse or jockey so as to impede, interfere with, intimidate, or injure.
- f.) **If a Jockey rides in a manner contrary to this rule, the mount may be disqualified and the Jockey may be suspended or otherwise disciplined by the Stewards (emphasis added).**

C) *Appellant's Contentions*

Appellant contends that he made every reasonable effort to keep his mount, Maestro, on a straight course and avoid interfering with his rival Balladry. He further contends that he did not ride carelessly under Rule 1699. This is admittedly a close case. Appellant is supported in this appeal by the testimony of two legendary Southern California racing figures- Jockey Agent Scottie McClellan and Hall of Fame Jockey Don Pierce. On the other hand two extremely experienced Stewards, Tom Ward and Kim Sawyer, testified that Talamo did ride carelessly under section 1699 when he failed to use the reins to correct his mount's outward drift until after Maestro collided with Balladry near the finish line.

Two Michael Baze cases are instructive. In the first case Michael failed to use his reins to control his mount and his appeal was denied (SAC 06-0050). In a later case Michael did use the reins to correct his mount's direction and his appeal was granted (SAC 09-0054). The Stewards have consistently held that the use of the reins is to be the primary method of controlling their mount's direction. Here Talamo tried to control his mount with right handed whipping and was surprised when his mount turned outward into the whip. However an experienced Jockey such as Talamo should be prepared for a horse reacting this way. It is true that most horses move away from the whip most of the time, but they also frequently go in the other direction.

One other factor comes into play in resolving this case. Jockeys are required to use their best efforts to win every race that they participate in. However, as previously noted, they are also required to not ride carelessly and to avoid colliding with their rivals' mounts. When these two obligations are in conflict a Jockey must choose to ride safely and avoid contact with other horses. This is one way to protect both the Jockeys and the Thoroughbred horses that they ride in their risky business. In this case it is well known that Joe Talamo is a fiery competitor who rides to win. Here that competitive spirit led him to make an insufficient effort to keep his horse on a straight course in violation of rule 1699.

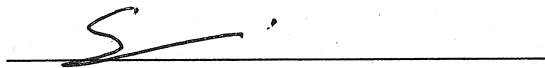
There is therefore substantial evidence to support the Stewards' Decision to suspend Talamo for careless riding. *Shapiro v. San Diego City Council*, (2002) 96 CA4th 904,912. Appellant has failed to meet his burden of proof to show by a preponderance of the evidence that the Stewards' decision should be reversed (Rule 1764).

ORDER

Official Ruling HRT# #071(SAC11-0019), dated July 14, 2011, imposing a 3(three) day suspension on Appellant Joseph Talamo, Lic. #291800, for careless riding under Rule 1699 in the 4th race at Hollywood Park Race Track on July10, 2011 is hereby AFFIRMED.

The Stewards shall specify the days that the suspension will be effective.

DATED: 09-23-2011



STEFFAN IMHOFF

Designated Appellate Judge