ROB BONTA
Attorney General of California
GARY S. BALEKJIAN
Supervising Deputy Attorney General
State Bar No. 168652
300 South Spring Street, Suite 1702
Los Angeles, CA 90013-1230
Telephone: (213) 269-6480
Fax: (916) 731-2119
E-mail: Gary.Balekjian@doj.ca.gov
Attorneys for Respondent
California Horse Racing Board

Exempt from filing fees pursuant to Government Code section 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

JERRY HOLLENDORFER,

Petitioner,

v.

CALIFORNIA HORSE RACING BOARD,

Respondent.

Case No. 37-2020-00016369-CU-WM-CTL

RESPONDENT CALIFORNIA HORSE RACING BOARD'S OPPOSITION TO PETITION FOR WRIT OF ADMINISTRATIVE MANDAMUS (Code Civ. Proc. § 1094.5)

IMAGED FILE

Date: October 7, 2022
Time: 1:30 p.m.
Dept: C-65
Judge: The Honorable Ronald F. Frazier
Trial Date: None set
Action Filed: May 28, 2020

Filed Concurrently with:
1. Respondent's Opposition Brief in Response to Plaintiffs' CCP § 1085 Brief
2. Respondent's Evidentiary Objections to Petitioner's Compendium of Evidence
3. Proposed Order re Evidentiary Objections to Petitioner's Compendium of Evidence
4. Respondent's Compendium of Evidence

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

Page

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES
(continued)

Page

STATUTES

TABLE OF AUTHORITIES
(continued)

Page

Respondent, the California Horse Racing Board (CHRB), submits the following opposition to the Petition for Writ of Administrative Mandamus pursuant to Code of Civil Procedure section 1094.5 filed by Petitioner Jerry Hollendorfer.

INTRODUCTION

The petition for writ of administrative mandamus should be denied. Petitioner was not a party to either of the two administrative proceedings conducted by the CHRB, and has no standing to challenge the results of those proceedings. The CHRB conducted one administrative hearing between the California Thoroughbred Trainer's Association (CTT) and the Stronach Group entities, the Los Angeles Turf Club (LATC) and the Pacific Racing Associations (PRA), relating to a dispute regarding terms in a contract between those two parties, referred to as a Race Meet Agreement (RMA). The CHRB adopted the hearing officer's decision that the dispute was moot because the term of the RMA expired. The CHRB began a second administrative hearing process between the CTT and the Del Mar Turf Club (DMTC) relating to the same disputed language in the RMA between the CTT and the DMTC, but the parties later settled their dispute and withdrew their request for a CHRB hearing. Petitioner, while a member of the CTT, was not a party to either RMA. Because he was a CTT member, he authorized CTT to negotiate and enforce the RMAs on his behalf; that does not give him standing here.

Even if Petitioner did have standing, the petition should still be denied. As to the LATC administrative process, the CHRB correctly decided that the matter was moot. Subsequent actions by the CHRB to impose the terms of the RMA on later race meets because parties could not agree on the terms of a RMA was unforeseeable, and is irrelevant to whether the CHRB's mootness decision was correct at the time based on the administrative record before the CHRB. As to the DMTC proceeding, there was no hearing, and the CHRB never issued an administrative decision that would be subject to judicial review under C.C.P section 1094.5. The CHRB accepted the parties' representation of settlement and never rendered a decision. Thus, that aspect of Petitioner's cause of action is not ripe for adjudication now.

Petitioner has no standing to challenge the outcome of either administrative proceeding conducted by the CHRB, and his petition under C.C.P. section 1094.5 should be denied.

STATEMENT OF FACTS

A. The CHRB Is Charged with Protecting the Public and the Industry.

Horse racing under the pari-mutuel wagering system was created by constitutional amendment in 1933. (Cal. Const., Art. IV, § 19, subd. (b).) The expressed intent of the Horse Racing Law is to allow pari-mutuel wagering on horse races and: (1) Assure protection of the public; (2) Encourage agriculture and the breeding of horses in this state; (3) Provide uniformity of regulation for each type of horse racing; and (4) Provide for maximum expansion of horse-racing opportunities in the public interest. (Bus. & Prof. Code, § 19401, subds. (a)-(d).)[1]

To accomplish these objectives, the constitutional amendment created the California Horse Racing Board (CHRB/Board) to oversee the industry's activities in this state. The California Horse Racing Law, codified at Section 19400, et. seq., and the rules and regulations promulgated under Title 4 of the California Code of Regulations, govern this case. (§§ 19412, 19590-19608.8.) The CHRB is vested with all powers necessary to carry out the purposes of the Horse Racing Law. (§ 19440, subd. (a)(1); § 19562; title 4, Cal. Code Regs., § 1400, et seq.)

B. The CTT Represents Individual Trainers in Negotiating RMAs.

The Horse Racing Law requires every licensed Thoroughbred racing association to enter into a Race Meet Agreement (RMA) with the official organization representing the interests of licensed Thoroughbred trainers prior to the start of each such race meet. (CHRB Rule 2044.) Though not a party to this action, the California Thoroughbred Trainers (CTT) acts as the official organization representing the interests of licensed Thoroughbred trainers in the State of California. (§ 19613.) Pursuant to CHRB Rule 2044 (Agreements to Be Filed), since 1995 the CHRB has required licensed Thoroughbred racing associations to enter into a RMA with the CTT. Thus, the CTT is charged with statutory and regulatory duties to negotiate, among other matters, the terms and conditions under which individual licensed trainers participate in licensed race meets. (FAP ¶¶ 18, 19). The RMAs existed between the CTT and the relevant racing

[1] Further statutory references are to the Business and Professions Code unless specifically noted.

associations. (FAP ¶¶ 20, 48-50; Petitioner's Amended Notice of Lodgment of Administrative Record (AR), AR 00046-64 [CTT/PRA RMA]; AR00066-84 [CTT/Santa Anita RMA].)

C. Petitioner Is a Thoroughbred Trainer and Member of the CTT.

Petitioner is a trainer who has been licensed by the CHRB for over 40 years as a trainer and owner. (FAP ¶¶ 11, 12.) As a licensed Thoroughbred trainer in good standing, Petitioner is, and was at all relevant times, a member of CTT. (FAP ¶ 21.) "[E]ach licensed trainer, including Petitioner, who participates or seeks to participate in a race meet does so bound by and subject to the terms of the required RMA between the CTT – as the official acknowledged horsemen's organization – and the licensed racing association." (FAP ¶ 51; CHRB Rule 2041.)

D. The Racing Associations Ban Petitioner After Six of His Horses Died Between December 2018 and June 2019 at Tracks Operated by the Stronach Group.

During the 2018-2019 winter and spring race meets conducted at Santa Anita Park Racecourse ("Santa Anita"), 31 horses suffered catastrophic breakdowns. (FAP ¶ 29.) Four of Petitioner's horses died at Santa Anita during its 2018-2019 season. (FAP ¶ 33, Exh. G, p. 2.) Two of Petitioner's horses died at Golden Gate Fields before the Santa Anita 2018-2019 season started. (FAP, Exh. G, p. 2.) On June 22, 2019, the Stronach Group (which operates the racing associations at Golden Gate Fields and Santa Anita) issued a press release stating that Petitioner, a CTT member, "was no longer welcome to stable, race, or train his horses at any of [TSG's] facilities" because his "record in recent months at both Santa Anita and Golden Gate Fields has become increasingly challenging and does not match the level of safety and accountability [the race tracks] demand." (FAP ¶ 49, 54; AR 4, AR 5, 90.) DMTC issued a similar statement a couple weeks later. (FAP ¶ 54, 170).

E. The CTT's Complaints Regarding Petitioner.

On July 12, 2019, the CTT filed a complaint with the CHRB requesting an investigation of the exclusion of Petitioner from the summer race meet at Del Mar. (FAP ¶ 56; AR 00390-393.)

On July 24, 2019, on Petitioner's behalf, the CTT filed a second complaint with the CHRB – as against LATC and PRA – based on their exclusion of Petitioner from Santa Anita and Golden Gate Fields. (FAP ¶ 80; AR 00041-42.)

F. Petitioner's Complaints.

On July 23, 2019, Petitioner filed complaints under Section 19573 and CHRB Rule 1765. (FAP ¶ 60.) The next day, the CHRB responded that it would not grant a hearing on the basis of a racing association's action under Rule 1989, Removal or Denial of Access, which provides that "Any person may be removed or denied access for any reason deemed appropriate by [an] association, fair or simulcast facility notwithstanding the fact that such reason is not specified in the rules." The letter referred to CHRB Rule 1485, License Subject to-Conditions and Agreements, stating "that 'Possession of a license does not confer any right upon the holder thereof to employment at or participation in a race meeting or to be within the inclosure.' These regulations reflect the Board's longstanding position on this issue." (FAP, Exh. A.)

On September 26, 2019, Petitioner filed an urgent Second Complaint with Respondent; this one against the LATC. That complaint was based on LATC's refusal to accept a valid race entry submitted to the Racing Office at Santa Anita earlier in the day. (FAP ¶ 83.) As will be discussed in the CHRB's opposition to Petitioner's petition for traditional mandamus under C.C.P. Section 1085, the CHRB properly investigated his complaint and determined in its discretion that no rules were violated. (FAP, Exh. D, p. 2.)

G. The CHRB Held a Hearing on the CTT's Complaint That PRA and LATC Violated the RMA and Decided the Dispute Was Moot.

The CHRB appointed Hearing Officer Patrick J. Kane (Officer) who presided over the action pursuant to CHRB Rule 1414. The Officer held a scheduling conference and the parties agreed to a briefing schedule. (AR 6; AR 00388-389.) Following submission of the parties' briefs, the Officer found the dispute appropriate for disposition without holding a hearing. (AR 4, 6.) The following exhibits were entered into the record: Exhibit "l," The Race Meet Agreement Between the PRA and the CTT; Exhibit "2," The Race Meet Agreement Between the LATC and the CTT; Exhibit "3," The Stronach Group Press Release Dated June 22, 2019; Exhibit "4," Correspondence to Charles Winner, Chairman of the CHRB, Dated July 24, 2019; Exhibit "5," The September 26, 2019 Order Setting the Briefing Schedule; Exhibit "6," Petitioner's Opening Brief Dated November 1, 2019; Exhibit "7," Respondents' Brief Dated December 6, 2019;

Exhibit "8," Petitioner's Reply Brief Dated December 16, 2019; Exhibit "9," Respondents' Request for Judicial Notice; and Exhibit "10," a ruling on CTT's Evidentiary Objections.

The Officer found that the CTT and PRA (both PRA and PRA II) entered into a RMA on or about November 14, 2018, to hold a race meet at Golden Gate Fields from December 26, 2018 until December 25, 2018. (AR 3, 4-5.) The Officer found that the CTT and LATC executed an RMA governing the race meeting at Santa Anita Park from December 26, 2018 to December 25, 2019. (AR 3, 5.) Both RMAs appeared identical. (AR 5.)

The Officer found that on "June 22, 2019, the Stronach Group, the entity overseeing Respondents LATC, PRA and PRA II, issued a press release stating that CTT member Jerry Hollendorfer ("Trainer") 'was no longer welcome to stable, race, or train his horses at any of [Respondents'] facilities' because Trainer's 'record in recent months at both Santa Anita and Golden Gate Fields has become increasingly challenging and does not match the level of safety and accountability [Respondents'] demand.'" (AR 5.)

The Officer found that on July 24, 2019, the CTT submitted a formal complaint to the CHRB pursuant to California Code of Regulations, Title 4, section 2043 claiming Respondents violated certain provisions of the RMAs, referring to Exhibit 4. Specifically, the CTT alleged that the "unilateral decision of [Respondents] to eliminate [Trainer's] participation in racing and training at [Respondents'] tracks under [Respondents'] 'safety and accountability' procedures is violative of Section 5 of the [RMAs]." (AR 5.)

Section 5 of the RMAs provided in pertinent part that:

> Track may, in its discretion, establish rules, regulations, and security procedures that may limit or eliminate Applicant's ability to participate in racing or training activities at Track or any auxiliary training facility, subject to the agreement of the CTT. The agreement of CTT shall be a condition precedent to any execution of a decision by Track to limit or eliminate Applicant's ability to participate in racing or training activities at Track or any auxiliary training facility.

(AR 6, citing Exhs. 1-2, AR 46-64, quoted portion at AR 50.)

The Officer determined he had the ability to adjudicate the Dispute pursuant to CHRB Rule 2043 (Cal. Code Regs. Tit. 4 § 2043), and that the CTT had to prove that the LATC/PRA violated the RMAs by a preponderance of the evidence. (AR 6.) The Officer denied respondents' request to take judicial notice of a news article, but took notice of three superior court orders. (AR 7-8.) The Officer ruled on CTT's evidentiary objections. (AR 8, citing Exh. 10, AR 00359-387.)

The Officer ruled that any supposed violation of the RMAs was moot. The Officer reasoned that "[The CTT's] assertion that [the LATC/PRA parties] violated Section 5 of the Agreements is moot because the Agreements are no longer enforceable against either [the CTT] or [the LATC/PRA parties] as they are 'applicable only to thoroughbred race meetings conducted by [the LATC/PRA parties] under license from the CHRB for the period commencing December 26, 2018 through December 25, 2019.'" (AR 00048 [GGF RMA]; AR 00068 [LATC RMA] at ¶ 1.) As a result, the instant Dispute should be dismissed on mootness grounds." (AR 8.) The Officer found that the CTT sought declaratory relief, and that meant that CTT had to show that the Dispute was a proper subject of declaratory relief, which it did, and that the Dispute concerned an actual controversy involving justiciable questions relating to the CTT's rights or obligations. The Officer found the CTT could not demonstrate an actual controversy because the RMAs expired on December 25, 2019. "Thus, [the CTT] cannot meet the second element of a declaratory relief claim since the Dispute now improperly seeks redress for 'past wrongs.'" (Citing *Gafcon, Inc. v. Ponsor & Associates* (2002) 98 Cal.App.4th 1388, 1403 ["[D]eclaratory relief operates prospectively, and not merely for the redress of past wrongs."].) (AR 9.)

The Officer separately found that CHRB Rule 2043's language also supported the mootness finding. (AR 10.) "[The CTT] cannot be granted any relief Section 2043 provides because the expired Agreements cannot be the basis of an "actual controversy to adjudicate" as require. "Nor can this Officer order compliance with the terms of the Agreements since they became unenforceable as of December 25, 2019." (AR 10, ref. to Exhs. l-2 at ¶ 1.)

Finally, the Officer rejected the CTT's argument that the issue is not moot because it involves a matter of public interest that is likely to recur. (AR 10.) The Officer determined that "[b]ecause the Dispute requires a factual determination to be resolved by considering the

Agreements at issue, and because any dispute thereunder must be resolved on a case-by-case basis, this Officer finds the Dispute does not concern a broad public interest. (AR 10.) The Officer further reasoned, "Nor is there is any probability that the Dispute will likely recur because any future dispute between [the CTT] and [the LATC/PRA parties] will solely concern whatever race meet agreement is in place at that time as opposed to the Expired Agreements." (AR 11.) The Officer ruled that no exception to the mootness doctrine applied. "Simply put, [the CTT's] ability to seek a declaration as to whether [the LATC/PRA parties] violated Section 5 of the Agreement expired at the same time the Agreements did. Thus, [the CTT's] remedy against [the LATC/PRA parties], as it relates to the Agreements, is to pursue a fully matured claim for breach of contract, if such a claim exists." (AR 11.) The CHRB adopted the Proposed Decision on February 20, 2020, effective February 24, 2020. (AR 2.)

H. The CTT and DMTC Settled Their Dispute and the CTT Withdrew Its Request for a Hearing by the CHRB.

On or about December 24, 2019, counsel for the CTT advised the CHRB that the CTT and the DMTC settled their dispute regarding the Rule 2043 complaint assigned to CHRB hearing officer Patrick Kane. Counsel for the CTT advised that the CTT "is hereby withdrawing its complaint; consequently there is no need to proceed with the hearing of that complaint." (AR 332; AR00394 -404 [settlement agreement].)

I. Petitioner's Civil Action Here.

Petitioner filed this action on May 28, 2020, alleging causes of action for mandamus under Code of Civil Procedure section 1085 and 1094.5, and for a statutory violation of Government Code section 815.6. The gravamen of the First Amended Petition (FAP) is that the CHRB allegedly refused to conduct a hearing regarding LATC's and DMTC's refusal to grant Petitioner stabling and accept his race entries under Business and Professions Code and CHRB rules. The Petition seeks a writ of mandate pursuant to either Code of Civil Procedure section 1094.5 or Code of Civil Procedure section 1085 compelling the CHRB to hold such a hearing. (FAP, ¶¶ 157 [1085 writ], 187 [1094.5 writ].) As discussed here and in its concurrently-filed opposition to Petitioner's traditional mandamus petition, the CHRB conducted the administrative processes

relating to the RMAs pursuant to complaints by the CTT, and properly investigated Petitioner's complaints and determined no violation of the Horse Racing Law occurred.

STANDARD OF REVIEW

Code of Civil Procedure, section 1094.5 governs judicial review of decisions of administrative agencies. (*Coombs v. Pierce* (1991) 1 Cal.App.4th 568, 575.) This court is to exercise its independent judgment and also afford a strong presumption of correctness concerning the administrative findings. (*Manriquez v. Gourley* (2003) 105 Cal.App.4th 1227, 1233 citing to *Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 817.)

The burden of proof rests on Petitioner. His burden is to convince the court that the CHRB's decisions were contrary to the weight of the evidence. (*Drummey v. State Board of Funeral Directors* (1939) 13 Cal.2d 75, 85.) Petitioner must satisfy this burden in the face of the presumption that official duty has been regularly performed. (Evid. Code, § 664.) This presumption applies to hearings before administrative agencies. (*Mednik v. State Dept. of Health Care Services* (2009) 175 Cal.App.4th 631; *Chosick v. Reilly* (1954) 125 Cal.App.2d 334; *Santa Clara Federation of Teachers, Local 2393 v. Governing Bd. of Santa Clara Unified School Dist*. (1981) 116 Cal.App.3d 831.) Absent contrary evidence, it is presumed that a decision of an administrative agency was made after consideration of evidence and that the agency proceeded in the manner required by law. (*Cooper v. State Bd. of Public Health* (1951) 102 Cal.App.2d 926.)

Petitioner must also satisfy his burden by demonstrating not only error below but prejudicial error. Under Code of Civil Procedure, Section 1095.4, subdivision (b), the inquiry is whether there has been any prejudicial abuse of discretion. The court in *Dami v. Department of Alcoholic Beverage Control* (1959) 176 Cal.App.2d 144, noted: "Due process cannot become a blunderbuss to pepper proceedings with alleged opportunities to be heard at every ancillary and preliminary stage, or the process of administration itself must halt. Due process insists upon the opportunity for a fair trial, not a multiplicity of such opportunities. Due process is not a frozen Draconian code but the concept that in some one of multifarious procedures the accused shall be afforded before judgment the right to a full hearing. The form of the procedure is not vital, only the substance of the right." (*Dami, supra,* 176 Cal.App.2d at 151.)

ARGUMENT

I. PETITIONER DOES NOT HAVE STANDING TO CHALLENGE THE FEBRUARY 2020 DECISION ON THE PRA/LATC MATTER.

A. Petitioner Was Not a Party the CHRB's Administrative Hearing, and Therefore Cannot Seek Judicial Review of the CHRB's Decision.

There is no dispute that Petitioner was not a party to the administrative hearing process between the CTT and The Stronach Group's racing associations (PRA/LATC) before Hearing Officer Kane. There is no dispute that the CTT and PRA/LATC, the parties to the subject RMA, participated in the hearing process. (AR 2-13.)

By way of this writ, Petitioner is asking this court to allow him to stand in the shoes of CTT and pursue judicial review of the administrative decision that he was not a party to. This is exactly the type of serious due process problem raised by the California Supreme Court in *Pacific Legal Found. v. California Unemployment Insurance Appeals Board* (1981) 29 Cal.3d 101, 108-111. There, the California Unemployment Insurance Appeals Board appealed a judgment declaring its decision that a claimant was eligible for benefits was invalid. The Pacific Legal Foundation sought declaratory relief under Unemployment Insurance Code sections 409 through 409.2, but was not a party to the administrative proceeding before the Board.[2] The Supreme Court noted that allowing a person who was not a party during the agency's administrative action to challenge and perhaps set aside that action would result in due process concerns. "Indeed, if the section were interpreted to mean that third persons not affected by 'adjudicatory aspects' of the original proceeding could bring an action to which the original disputants were not parties -- in which adjudicative facts, as well as orders directly concerning those disputants could be reexamined -- there would be serious due process problems." (*Id*. at pp. 108-111.)

Such is the case here. All of the parties to the adjudicatory proceeding before the CHRB's Hearing Officer (to determine whether the race meet agreement provisions had been violated)

[2] Unemployment Insurance Code section 409.2 is patterned after Government Code section 11350, which gives "interested persons" the right to "obtain a judicial declaration as to the validity of any regulation . . . and allows those affected by a regulation to test its legality before risking violation." (*Pacific Legal Foundation, supra*, 29 Cal.3d at pp. 108-109.) Thus, even if Petitioner alleged a claim for declaratory relief under Government Code section 11350 he would have no standing to pursue that claim either per *Pacific Legal Foundation*.

chose not to seek judicial review of the decision by way of a C.C.P. section 1094.5 petition for writ of administrative mandamus to the superior court. The parties to that proceeding chose not to demand a hearing after briefing, and neither party filed a petition for rehearing of the mootness decision. Therefore, the decision should not be vulnerable to challenge by someone who was not a party to the underlying case. (*See Pacific Legal Found., supra*, 29 Cal.3d at pp. 108-111.)

Moreover, since Petitioner was not a party to the underlying proceeding, he was not an appellant who could appeal the decision of the CHRB Board. (See *Comerica Bank v. Runyon* (2017) 16 Cal.App.5th 473, 479 [Nonparty cannot appeal because she is not and never has been a party to this lawsuit]; see also *City of Alameda v. Carleson* (1971) 5 Cal.3d 730, 736 ["It is generally held …that only parties of record may appeal; consequently one who is denied the right to intervene in an action ordinarily may not appeal from a judgment subsequently entered in the case."].) Petitioner has no standing to bring this administrative mandamus cause of action.

B. Petitioner Was Not a Third-Party Beneficiary Under the 2018-2019 Race Meet Agreement.

Petitioner was not a third-party beneficiary to the 2018-2019 RMAs. The RMAs plainly state that the only parties subject to the 2018-2019 RMAs are CTT and PRA/LATC, or the CTT and the DMTC. The language of a contract "govern[s] its interpretation, if the language is clear and explicit and does not involve an absurdity." (Code Civ. Proc., § 1638.) Petitioner is, and was at all relevant times, a member of the CTT. (FAP ¶ 21.) "[E]ach licensed trainer, including Petitioner, who participates or seeks to participate in a race meet does so bound by and subject to the terms of the required RMA between the CTT – as the official acknowledged horsemen's organization – and the licensed racing association." (FAP ¶ 51; CHRB Rule 2041.).

Therefore, Petitioner is bound by the CTT's enforcement of the RMA, and cannot independently do so as a third-party beneficiary to the RMA. Petitioner is not a third-party beneficiary of the RMA. Section 24(h) of the RMAs, entitled "No Third-Party Beneficiaries," plainly states that the RMA provisions "are not intended to be for the benefit of, or enforceable by, any party other than Track or CTT," and that "Except for Track and CTT, no party shall have

any right to rely upon or enforce any of the terms and provisions of this Agreement other than the indemnification of obligations set forth in this Agreement." (AR 59.)

The explicit language of the RMAs demonstrates that the CTT and the racing associations intended that they should be the only parties who can enforce the RMA. Petitioner cannot claim to be a third-party beneficiary because that position clearly contradicts the expressed expectations of the CTT and PRA/LATC and is expressly disclaimed in the RMA. If the CTT and the racing associations did not both intend for Petitioner to be able to bring his own lawsuit to enforce the provisions of the 2018-2019 RMA, then he lacks standing to enforce the 2018-2019 RMA as a third-party beneficiary. (See *Blank v. Kirwan* (1985) 39 Cal. 3d 311, 331 [party who was "not legally interested in the contracts as to which he seeks a declaration of validity" could not "state a cause of action for declaratory relief"]; *Lafferty v. Wells Fargo Bank* (2013) 213 Cal. App. 4th 545, 570 [plaintiffs lacked standing to seek declaratory relief when plaintiffs were not party or third party beneficiary to the contract].) Petitioner lacks standing, and thus, the Court cannot and should not reach any other issue challenging the CHRB's administrative decision in the LATC matter or the decision by CTT and DMTC to settle their dispute and withdraw their request for a CHRB hearing.

II. THE CHRB'S ADMINISTRATIVE DETERMINATIONS WERE CORRECT

A. The CHRB Correctly Ruled That the CTT's Action Was Moot Because the 2018-2019 RMA is Not a Legally Operative Contract Beyond Its Stated Expiration Date.

Even if Petitioner had rights under the RMA, the matter is moot. An issue becomes moot when "the question addressed was at one time a live issue in the case, but has been deprived of life because events occurring after the judicial process was initiated." (*Wilson & Wilson v. City Counsel of Redwood City* (2011) 191 Cal. App. 4th 1559, 1553, internal quotations omitted.) In other words, an issue is moot when a court cannot "grant the plaintiff any effectual relief." (*Id*. at 1573.) A court should "not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it." (*Vernon v. State of California* (2004) 116 Cal. App. 4th 114, 120, internal quotations omitted.)

The RMA between the CTT and the LATC states that "the provisions of this Agreement shall be applicable only to the thoroughbred race meetings conducted by Track under license from the CHRB for the period commencing December 26, 2018 through December 25, 2019[.]" (AR 48, ¶ 1.) In the hearing officer's decision adopted and approved by the CHRB, the CHRB found that the 2018-2019 RMA "expired on December 25, 2019 mooting all issues involved in the [d]ispute" over its terms. (AR 9.) The CHRB further found that "any future dispute between [the CTT] and [the LATC/PRA] will solely concern whatever race meet agreement is in place at that time as opposed to the Expired Agreements." (AR 11.)

The CHRB therefore dismissed the CTT's complaint against The Stronach Group entities. The CHRB's decision explained that even the CTT's "ability to seek a declaration as to whether [The Stronach Group entities] violated Section 5 of the Agreement expired at the same time the Agreements did." (AR 11.) Furthermore, there has not been modifications to the RMAs that extend its scope. Section 24(a) of the RMA states that the RMA can only be changed by written agreement signed by the CTT and the racing association. Neither side presented a written agreement modifying the RMA to extend its effective dates. Accordingly, the CHRB correctly ruled that the exceptions to the mootness doctrine are inapplicable because "(1) the Agreements expired; and (2) the Dispute is unlikely to recur." (AR 11, citing *Wilson & Wilson v. City Council of Redwood City, supra,* 191 Cal.App.4th at p. 1574 ["If events have made such relief impracticable, the controversy has become 'overripe' and is therefore moot."].

B. The CTT and DMTC Settled Their RMA Dispute and Withdrew the Request for Hearing, so the CHRB Never Issued an Administrative Decision Subject to Judicial Review.

1. Petitioner has waived this issue by not briefing it.

Petitioner raised the issue of the CTT/DMTC complaint in his FAP (FAP, § 187(a)), but has not briefed the issue. The issue is therefore waived. (*City of Merced v. American Motorists Ins. Co.* (2005) 126 Cal.App.4th 1316, 1326 ["When a brief does not contain a legal argument with citation to authority, this court may treat an issue as waived and pass it without consideration."].)

2. Petitioner's lack of briefing concedes he cannot challenge the settlement.

There is no dispute that the CTT and the DMTC settled their dispute and withdrew their request for a CHRB administrative hearing. (AR 332.) The RMA explicitly states that its provisions "are not intended to be for the benefit of, or enforceable by, any party other than track and CTT. Except for track and CTT, no party shall have the right to rely upon or enforce any of the terms and provisions of this agreement...." (AR 59, para. h; FAP, §§ 17-21.) Petitioner's failure to argue and cite to law and the record demonstrates that his argument has no merit.

III. PETITIONER'S REQUEST FOR JUDICIAL NOTICE SHOULD BE DENIED.

Petitioner again seeks to have this court judicially notice documents that are complete hearsay, including twelve CHRB meeting transcripts (Exhs. 1-12), a "The Mercury News" article (Exh. 49), and an extensive 76-page CHRB report in March of 2020 entitled "Report on Fatalities at Santa Anita Park from 12/30/18 through 3/31/19." (Exh. 64.)

As to the hearing transcripts, The CHRB does not disagree that the CHRB meeting transcripts (RJN Exhs. 1-12) evidence an "official act" that such meetings actually occurred at a specific date and time within the meaning of Evidence Code § 452, subdivision (c). But in a mandamus proceeding, "[I]t would never be proper to take judicial notice of evidence that (1) is absent from the administrative record, and (2) was not before the agency at the time it made its decision. This is so because only relevant evidence is subject to judicial notice." (See *Western States Petroleum Association v. Superior Court* (1995) 9 Cal.4th 559, 574, footnote 4.)

However, Petitioner presumes that the transcripts are noticeable government records without offering any argument or authority to support his presumption. (*City of Merced v. American Motorists Ins. Co., supra*, 126 Cal.App.4th at p. 326.) Petitioner has failed to meet his burden to demonstrate on what grounds and in what manner each of the 12 meeting transcripts are judicially noticeable. Moreover, Petitioner seeks to use them for an improper purpose by culling them for ad hoc statements by board members in an effort to prove the truth of the matters asserted. But the law is clear that a court cannot take judicial notice of the existence of facts asserted in every document of a court file. (See *Day v. Sharp* (1975) 50 Cal.App.3d 904, 914.)

Specifically, a court cannot take judicial notice of hearsay allegations as being true just because they are part of a record or file subject to notice. (*Ibid*.)

Both the news article and the CHRB report suffer from the same infirmities. Neither are relevant, and both are hearsay within hearsay. (*Id*.; Evid. Code, §§ 1200, et seq.)

IV. IF THE COURT DETERMINES THE LATC MATTER WAS INCORRECTLY DECIDED, THE APPROPRIATE REMEDY IS REMAND TO CHRB FOR A HEARING.

If the Court determines that the CHRB improperly decided or denied a hearing, and that the determination of rights and responsibilities under the RMA are not moot, then the appropriate remedy would normally be to remand the case for a new hearing, but this court does not have jurisdiction over the parties to the RMA. Typically, our Supreme Court has made clear that where a court finds that an administrative agency's "decision lacks evidentiary basis, a hearing was denied or it was otherwise erroneous, it is the proper procedure to remand the matter to the agency for further and proper proceedings rather than for the court to decide the matter on the merits." (*Fascination, Inc. v. Hoover* (1952) 39 Cal.2d 260, 269; See also *Voices of the Wetlands v. State Water Resources Control Bd.* (2011) 52 Cal.4th 499, 535 [remanding matters to administrative agency "promotes orderly procedures, and the proper distinction between agency and judicial roles."]; Code Civ. Proc., § 1094.5, subd. (f) ["The court shall enter judgment either commanding respondent to set aside the order or decision, or denying the writ. Where the judgment commands that the order or decision be set aside, it may order the reconsideration of the case in light of the court's opinion and judgment and may order respondent to take such further action as is specially enjoined upon it by law, but the judgment shall not limit or control in any way the discretion legally vested in the respondent."].)

Here, the issue is not whether additional evidence can be introduced before the Board on remand. This was never requested or even suggested. Petitioner was not a party, and cannot involve himself in the proceeding now. The parties to the RMA are not parties to this case and the court has no jurisdiction to order them back to an administrative hearing. The record and submissions before the CHRB's Hearing Officer plainly demonstrated that the dispute was moot by the terms of the agreement to be construed, and neither party objected to the CHRB's decision,

sought reconsideration or rehearing, or brought a petition for writ of mandate challenging the CHRB's administrative determinations. As to the DMTC matter, the CHRB accepted the parties' settlement of the matter and no administrative decision was ever approved by the CHRB. There is no error requiring remand.

V. RESPONDENT REQUESTS A STATEMENT OF DECISION.

Pursuant to Code of Civil Procedure section 632, the CHRB timely requested that a Statement of Decision as to all controverted issues be issued should this petition be granted. (Answer to FAP, p. 36:3-4.)

CONCLUSION

The CHRB properly adjudicated the dispute between the CTT and the Stronach Group racing associations as moot because the applicable RMA's term expired. Petitioner was a member of the CTT and was bound by the terms of the RMA providing that only the CTT could challenge a track decision under the RMA to refuse stalls and entries. He has no standing to seek judicial review of that determination, and is not a third-party beneficiary under the RMAs. As to the DMTC, the CTT settled its dispute and so advised that the CHRB that it was withdrawing its request for an administrative hearing over the terms of that RMA. Petitioner Hollendorfer's petition for writ of administrative mandamus should therefore be denied.

Dated: September 16, 2022

Respectfully submitted,

ROB BONTA
Attorney General of California

GARY S. BALEKJIAN
Supervising Deputy Attorney General
Attorneys for Respondent
California Horse Racing Board

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DECLARATION OF SERVICE BY E-MAIL

Case Name: **Jerry Hollendorfer v. California Horse Racing Board**
Case No.: **37-2020-00016369-CU-WM-CTL**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter.

On **September 16, 2022,** I served the attached **RESPONDENT CALIFORNIA HORSE RACING BOARD'S OPPOSITION TO PETITION FOR WRIT OF ADMINISTRATIVE MANDAMUS (Code Civ. Proc. § 1094.5)** by transmitting a true copy via electronic mail, addressed as follows:

Drew J. Couto, Esq
Couto & Associates
E-mail Address: drew@coutoesq.com
Attorney for Petitioner, Jerry Hollendorfer

Robert L. Kenny, Esq.
Attorney at Law
Law Office of Robert L Kenny
E-mail Address: rkenny@kennylaw.net
Attorney for Petitioner, Jerry Hollendorfer

Leif Kleven
Law Office of Leif Kleven
E-mail Address: leif@leifkleven.com
Attorney for Petitioner, Jerry Hollendorfer

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on September 16, 2022, at Los Angeles, California.

Precious Armstrong
Declarant

P. Armstrong
Signature

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