

**DEPARTMENT 86 LAW AND MOTION RULINGS**

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**Case Number:** 20STCP00144 **Hearing Date:** December 1, 2023 **Dept:** 86**RUIS RACING, LLC v. CALIFORNIA HORSE RACING BOARD**

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**[Tentative] ORDER GRANTING PETITION AFTER REMAND**

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Petitioner, Ruis Racing, LLC, seeks an order commanding Respondent, the California Horse Racing Board, to set aside its December 9, 2020 administrative decision in *Disqualification of the Horses Justify and Hoppertunity*, CHRB Case No. 20SA0195. Petitioner also requests the court set aside Respondent's "decision of April 2021 in which it refused to overturn the Stewards' Decision per Business and Professions Code section 19517, thus making the refusal arbitrary and capricious under Code of Civil Procedure section 1085." (Opening Brief 2:9-11.) "This Court is also asked to enter and order the mandatory disqualification and forfeiture required under Rule 1859.5 without remand to CHRB." (Opening Brief 2:12-13.) At the center of the controversy is Petitioner's position Respondent improperly dismissed proceedings involving a horse that allegedly tested positive for a prohibited substance.

Respondent opposes the petition.

On May 26, 2023, after two hearings on the petition, the court issued an interlocutory remand order providing the Stewards with an opportunity to comply with *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 514-515 (*Topanga*).

On August 8, 2023, the Stewards issued their Amended and Supplemental Statement of Decision of the Board of Stewards (Remand Decision) affirming its December 9, 2020 decision with further explanation to comply with *Topanga*.

The parties have submitted post-remand briefing and provided further oral argument on the petition.

The petition is granted.

## STATUTORY SCHEME

California regulates horse racing pursuant to the state's plenary police power. (*Flores v. Los Angeles Turf Club* (1961) 55 Cal.2d 736, 741.) Pursuant to the Horse Racing Law codified at Business and Professions Code sections 19400 *et seq.*, Respondent is vested with “[j]urisdiction and supervision over meetings in this State where horse races with wagering on their results are held or conducted . . .” (Bus. & Prof. Code, § 19420.) Respondent also has the authority to “prescribe rules, regulations, and conditions . . . under which all horse races with wagering on their results shall be conducted in this State.” (*Id.*, § 19562.)

Respondent’s rule-making power is also plenary. (*Flores v. Los Angeles Turf Club, supra*, 55 Cal.2d at 741; *Epstein v. California Horse Racing Board* (1963) 222 Cal.App.2d 831, 835.) “ [I]t is no longer open to question that the Legislature . . . and the state Constitution . . . have, in the exercise of the state's conceded police power to regulate race tracks, validly delegated plenary rule-making power to the racing board. . . .” *Flores v. Los Angeles Turf Club, supra*, 55 Cal.2d at 741 [citations omitted].)

Consistent with its authority, Respondent has adopted numerous horse racing regulations or rules.[\[1\]](#)

“The Rules delegate considerable power to the stewards.” (*Fipke v. California Horse Racing Board* (2020) 55 Cal.App.5th 505, 514-515.) Rule 1527, for example, grants stewards “general authority and supervision over all licensees and other persons attendant on horses . . .” (Rule 1527.) Pursuant to Rule 1528, stewards “may suspend the license of anyone whom they have the authority to supervise or they may impose a fine or they may exclude from all inclosures in this State or they may suspend, exclude and fine.” (Rule 1528.) Finally, Rule 1530 provides, “[s]hould any case occur which may not be covered by the [Rules] or by other accepted rules of racing, it shall be determined by the stewards in conformity with justice and in the interest of racing.” (Rules 1530.)

## STATEMENT OF THE CASE

On April 7, 2018, the horse *Justify* ran in the ninth race at Santa Anita Racetrack and finished first. (AR 2872.) A post-race urine sample taken from *Justify* showed the presence of scopolamine, a substance prohibited by Respondent’s rules and regulations, in his system. (AR 2872.) Respondent thereafter undertook an investigation of the matter. (AR 2505.)

In August 2018, during an executive session, Respondent’s members voted unanimously to accept the staff recommendation of Rick Baedeker, Respondent’s Executive Director, and Dr. Rick Arthur, Respondent’s Equine

Medical Director, and formally declined to move forward with any charges against *Justify*'s owner and/or trainer.[2] (AR 2505.) Respondent dismissed the matter pursuant to Business and Professions Code section 19577, subdivision (d).[3] Respondent's decision, to at least one of its members, was then considered "final" and the matter "was closed as of August, 2018." (AR 2505,[4] 2765-2768.)

Two years later, on August 27, 2020, Respondent filed a complaint[5] against its licensees associated with the horse *Justify*—the owners, jockey, and trainer (*Justify* Parties) for hearing by the Board of Stewards (Stewards).[6] The complaint alleged: "The CHRB hereby files a complaint against [the *Justify* Parties] for violation of CHRB Rule 1859.5." (AR 1008-1009.)[7] The complaint issued by Respondent instructed:

Pursuant to Business and Professions Code Section 19420, 19440, and CHRB Rules, **the stewards are empowered to impose penalties for violation of any provision of the CHRB Rules.** Such penalties may consist of suspension of any license, fines, and exclusion from all racing enclosures under the jurisdiction of the Board or by any combination of these penalties. (Emphasis added.)

Rule 1859.5 provides:

A finding by the stewards that an official test sample from a horse participating in any race contained a prohibited drug substance as defined in this article, which is determined to be in class levels 1-3 under Rule 1843.2 of this division, unless a split sample tested by the owner or trainer under Rule 1859.25 of this division fails to confirm the presence of the prohibited drug substance determined to be in class levels 1-3 *shall require disqualification* of the horse from the race in which it participated and forfeiture of any purse, award, prize or record for the race, and the horse shall be deemed unplaced in that race. Disqualification shall occur regardless of culpability for the condition of the horse. (Emphasis added.)

The Stewards conducted a hearing on the complaint on October 29, 2020. (AR 2704-2711.) Respondent appeared at the hearing and prosecuted the complaint. (AR 2713.) Respondent argued the complaint was "not barred by any applicable statute of limitations, and the fact that the board may have chosen not to pursue administrative action one time does not bar it from pursuing action at a later time." (AR 2723.) Respondent advised the purpose of the hearing before the Stewards was to "adjudicate" the issue of whether *Justify* should be disqualified based on the horse's post-race urine test evidencing a prohibited substance. (AR 2724.) Respondent advised the Stewards of "the simple truth . . . there has never been a full hearing on the merits before the Board of Stewards or a final decision by the Stewards with respect to the matter at issue in [the] complaint[]." (AR 2724. See also AR 2856)

During the hearing, Respondent also argued *Justify* should be disqualified from the April 7, 2018 race where he placed first pursuant to Rule 1859.5. Stipulated facts established *Justify* participated in the race, and *Justify*'s official urine sample contained a prohibited substance. (AR 2721.) Finally, Respondent demonstrated

the prohibited substance, scopolamine, was classified as a Class 3 substance at the time of the race. [8] (AR 2725-2729, 2742-2743.)

In response, the *Justify* Parties argued it would be improper to disqualify *Justify* from the April 7, 2018 race because (1) Respondent had already dismissed the matter after a thorough investigation and found *Justify*'s positive urine test resulted from environmental contamination, (2) Respondent brought the complaint more than two years after the race, (3) scopolamine was later re-classified as a Class 4 substance by ARCI and Rule 1853.2 provides substance classifications are "based on" ARCI guidelines, and (4) disqualifying *Justify* under these facts would violate principles of fairness and due process. (AR 2747-2750, 2833-2846.)

The *Justify* Parties called two witnesses to testify: (1) Dr. Arthur and (2) Dr. Steven Barker, former director of the official drug testing laboratory of the Louisiana Racing Commission. (AR 2753-2817.) The *Justify* Parties also submitted declarations from Chuck Winner, former Chairman of Respondent, and two expert witnesses, Dr. Barker and Mike Levy, a bloodstock agent. (AR 2488- 2490, 2597, 2684-2885, 2707-2709.)

On December 9, 2020, the Stewards issued a statement of decision. (AR 2869-2878.) While the Stewards found that scopolamine was a Class 3 prohibited substance at the time of the race (grounds requiring disqualification pursuant to Rule 1859.5), the Stewards also found Respondent had two years earlier, in August 2018, "voted unanimously, in executive session, to follow staff recommendations and formally declined to move forward with any charges in the *Justify* matter" pursuant to Business and Professions Code section 19577, subdivision (d). (AR 2874.)

The Stewards decided—given Respondent's prior dismissal of complaints against *Justify* in August 2018 and the lack of new facts—not to disqualify *Justify* and dismissed Respondent's complaint. (AR 2878.)

On January 22, 2021, Respondent advised Petitioner it considered the matter closed. Respondent advised Petitioner it had "determined that it [could] neither accept [Petitioner's] appeal [of the Stewards' December 9, 2020 decision] nor hear [Petitioner's] request to overrule the Stewards' Decision in the matter of the disqualification of the horse *Justify*." (AR 3025.)

This proceeding ensued.

After briefing and argument, the court issued an interlocutory remand order. The court remanded the matter to the Stewards to provide the Stewards with an opportunity to explain how it reached its decision to dismiss Respondent's complaint pursuant to *Topanga*.

On August 8, 2023, the Stewards issued their Remand Decision affirming the December 9, 2020 decision to dismiss Respondent's complaint with further explanation to facilitate judicial review.

## STANDARD OF REVIEW

Petitioner argues Respondent (through the Stewards):

(1) prejudicially abused its discretion in rendering its decision, in contravention of Code of Civil Procedure section 1094.5, by not proceeding in a manner prescribed by law and making findings which were not based on the weight of the evidence, and (2) failed to discharge its mandatory duty to disqualify and order forfeiture of the winnings under Rule 1859.5 once it found all the elements therefor. (Opening Brief 2:4-9.)

Petitioner also claims Respondent (through the Stewards) did not have authority to dismiss the *Justify* matter (including the issues of disqualification and purse forfeiture) in August 2018 pursuant to Business and Professions Code section 19577, subdivision (d).<sup>[9]</sup> Petitioner argues the statute contains a carve-out for issues of disqualification and purse forfeiture.

Finally, Petitioner claims Rule 1859.5 imposes a ministerial duty upon Respondent and, as a result, “there should have been an automatic disqualification and forfeiture of purse.” (Opening Brief 8:10-14.)<sup>[10]</sup>

Respondent asserts:

[t]he decision whether to disqualify a horse pursuant to Rule 1859.5 involves the use of discretion. Here, the Stewards conducted a five-hour-long hearing wherein they weighed evidence, heard witness testimony, ruled on evidentiary objections, considered multiple legal arguments put forth by the parties including laches, due process, and fairness, and drafted a 10-page Statement of Decision which contained findings of facts, a determination of issues, discussion, and order. All of these acts involved the use of discretion. (Opposition 6:14-19.)

Judicial review of an agency decision pursuant to Code of Civil Procedure section 1094.5 is limited to the administrative record compiled by the agency, and the agency's findings of fact must be upheld if supported by “substantial evidence.” (*State Bd. of Chiropractic Examiners v. Superior Court* (2009) 45 Cal.4th 963, 977.) “Writ review under Code of Civil Procedure section 1085 is even more deferential; the agency's findings must be upheld unless arbitrary, capricious, or entirely lacking evidentiary support.” (*Ibid.*)

“The nature of the administrative action or decision to be reviewed determines the applicable type of mandate.” (*Bunnett v. Regents of University of California* (1995) 35 Cal.App.4th 843, 848.)

A petition for a writ of administrative mandate under Code of Civil Procedure section 1094.5 may be brought only “for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer.” (Code Civ. Proc., § 1094.5, subd. (a).)

Petitioner challenges the Stewards’ administrative decision which is attributable to Respondent. The Stewards conducted a hearing and took evidence. The Stewards considered the evidence and determined the underlying facts. Petitioner asserts review here is “clearly 1094.5.” The court therefore finds the Stewards’ decision is properly reviewed under Code of Civil Procedure section 1094.5. (*People v. Tulare County* (1955) 45 Cal.2d 317, 319.)

Under Code of Civil Procedure section 1094.5, subdivision (b), the issues for review of an administrative decision are: whether the respondent has proceeded without jurisdiction, whether there was a fair trial, and whether there was a prejudicial abuse of discretion. An abuse of discretion is established if the respondent has not proceeded in the manner required by law, the decision is not supported by the findings, or the findings are not supported by the evidence. (Code Civ. Proc., § 1094.5, subd. (b).)

There are two possible forms of judicial review in administrative mandate: (1) independent judgment or (2) substantial evidence. (*Id.*, subd. (c).) Code of Civil Procedure section 1094.5 does not specify which cases are subject to independent review, leaving that issue to the courts. (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 811 (*Fukuda*).) In cases reviewing decisions which affect a vested, fundamental right, the trial court exercises independent judgment on the evidence. (*Bixby v. Pierno* (1971) 4 Cal.3d 130, 143.) In all other cases, the court determines whether the findings are supported by substantial evidence in light of the whole record. (See Code Civ. Proc., § 1094.5, subd. (c).)

The parties agree judicial review here is by substantial evidence. (Opening Brief 17:4-7; Opposition 9:2-4.)[\[11\]](#)

On substantial evidence review, “the trial court will affirm the administrative decision if it is supported by substantial evidence from a review of the entire record, resolving all reasonable doubts in favor of the findings and decision.” (*M.N. v. Morgan Hill Unified School Dist.* (2018) 20 Cal.App.5th 607, 616.) The court must “accept all evidence which supports the successful party, disregard the contrary evidence, and draw all reasonable inferences to uphold the [administrative decision]. [Citation.] Credibility is an issue of fact for the finder of fact to resolve [citation], and the testimony of a single witness, even that of a party, is sufficient to provide substantial evidence to support a finding of fact. [Citation.]” (*Doe v. Regents of the University of California* (2016) 5 Cal.App.5th 1055, 1074.)

Under this “deferential” standard of review, the court presumes the correctness of the administrative ruling. (*Patterson Flying Service v. California Dept. of Pesticide Regulation* (2008) 161 Cal.App.4th 411, 419; see also *Doe v. Regents of the University of California, supra*, 5 Cal.App.5th at 1073 [substantial evidence standard is “extremely deferential standard of review”].)

Evidence Code section 664 also creates a presumption “that official duty has been regularly performed.” (Evid. Code, § 664.) “In a section 1094.5 proceeding, it is the responsibility of the petitioner to produce a sufficient record of the administrative proceedings; ‘ . . . otherwise the presumption of regularity will prevail, since the burden falls on the petitioner attacking the administrative decision to demonstrate to the trial court where the administrative proceedings were unfair, were in excess of jurisdiction, or showed’ prejudicial abuse of discretion.” (*Elizabeth D. v. Zolin* (1993) 21 Cal.App.4th 347, 354.) This presumption of correctness includes giving great weight to the agency’s credibility determinations even where the standard of review is independent judgment. (*Fukuda, supra*, 20 Cal.4th at 819.)

“[W]hether an agency has proceeded lawfully is a legal question that the trial court and appellate court both review de novo.” (*Stewart Enterprises, Inc. v. City of Oakland* (2016) 248 Cal.App.4th 410, 420.) The court exercises its independent judgment on legal issues.

In addition, Petitioner asserts Respondent improperly denied its request pursuant to Business and Professions Code section 19517 to set aside the Stewards’ December 9, 2020 decision. Apparently conceding Respondent’s decision whether to set aside the Stewards’ decision was discretionary, Petitioner argues Respondent abused its discretion because it “acted arbitrarily and capriciously in failing to overturn the Stewards’ order.” (Opening Brief 12:13.) Petitioner’s claim against Respondent therefore sounds in Code of Civil Procedure section 1085.

“Where there is review of an administrative decision pursuant to Code of Civil Procedure section 1085, courts apply the following standard of review: Judicial review is limited to an examination of the proceedings before the [agency] to determine whether [its] action has been arbitrary, capricious, or entirely lacking in evidentiary support, or whether [it] has failed to follow the procedure and give the notices required by law.” (*Pomona Police Officers’ Assn. v. City of Pomona* (1997) 58 Cal.App.4th 578, 584 [*cleaned up*].)

## ANALYSIS

### **The Stewards’ December 9, 2020 Decision:**

Petitioner contends given the undisputed facts and the Stewards’ findings, Rule 1859.5 required the Stewards to disqualify *Justify*.

As noted earlier, Rule 1859.5 states:

A finding by the stewards that an official test sample from a horse participating in any race contained a prohibited drug substance as defined in this article, which is determined to be in class levels 1-3 under Rule 1843.2 of this division, unless a split sample tested by the owner or trainer under Rule 1859.25 of this division fails to confirm the presence of the prohibited drug substance determined to be in class levels 1-3 shall require disqualification of the horse from the race in which it participated and forfeiture of any purse, award, prize or record for the race, and the horse shall be deemed unplaced in that race. Disqualification shall occur regardless of culpability for the condition of the horse.

Respondent contends otherwise. Respondent asserts the rule does not impose a ministerial, mandatory, nondiscretionary duty. Respondent argues the Stewards must still exercise “significant discretion to perform the duty.” (Opposition 11:24-28 [citing *California Public Records Research, Inc. v. County of Yolo* (2016) 4 Cal.App.5th 150, 178 (setting fees for copies requires exercise of discretion).])

Respondent’s position seemingly conflicts with *Lavin v. California Horse Racing Bd.* (1997) 57 Cal.App.4th 263, and the Court’s characterization therein of Rule 1859.5 as a summary disqualification rule. That is, “[a] rule which pronounces unequivocally that any contaminated horse will not be permitted to win a race is consistent with [Respondent’s] responsibility to protect the integrity of the sport of horse racing . . . .” (*Id.* at 270.)

In *Lavin v. California Horse Racing Bd.*, the Court considered a challenge to Rule 1859.5 and its mandatory disqualification provision. The challengers suggested the rule conflicted with the discretionary nature of disqualification under Business and Professions Code section 19582.5.

The Court rejected the challenge explaining:

A declaration of ineligibility in every instance of violation does not mean that discretion has not been exercised. It means only that [Respondent] has made the decision, within its discretionary and plenary powers, that a general rule of blanket disqualification is the most effective statutory implement to accomplish its objective of allowing only drug-free horses to race . . . . We find that, contrary to the urging of the respondents, this strict rule is consonant with the provisions of the Horse Racing Law. (*Id.* at 270.)

The Court explained Respondent was:

well within the scope of its delegated authority in adopting a summary penalty rule rather than a case-by-case rule of determination. Such a rule does work to fully and effectively implement the purposes and intent of the Horse Racing Law which, as stated by the statute, is to ‘preserve and enhance the integrity of horseracing . . . .’ (§ 19580, subd. (a).) Clearly, this

was the rationale underlying the enactment of section 19582.5. The Legislature simply delegated to [Respondent] the power to implement the method by which that policy would be effected. The legislative history supports the verity of this conclusion. (*Id.* at 269.)

Respondent's attempt to distinguish *Lavin v. California Horse Racing Bd.* is unpersuasive. Where the Stewards make the findings specified by Rule 1859.5, disqualification is required. Disqualification necessarily requires forfeiture of any purse won by the offending horse.

There can be no question the facts found by the Stewards required *Justify* to be disqualified under Rule 1859.5:

"On April 7, 2018, the horse *Justify* ran in the ninth race at Santa Anita Racetrack and finished first." (AR 2872.)

"A post race urine sample . . . was taken from the horse and analyzed at the UC Davis Maddy Equine Analytical Laboratory and showed the presence of Scopolamine, a substance prohibited by the rules and regulations of the California Horse Racing Board (hereinafter CHRB)." (AR 2872.)

"CHRB rule 1859.5 states a horse shall be disqualified from a race if a test sample from a horse participating in a race contained a prohibited drug substance which is determined to be in class levels 1-3 under CHRB rule 1843.2 (Classification of Drug Substances)." (AR 2873.)

"At the time of the race[] in 2018 the CHRB Penalty Categories Listing by Classification has Scopolamine listed as a class 3 substance." (AR 2873.)

The Stewards reported had they "heard the *Justify* and *Hoppertunity* complaints prior to August 23, 2018, both horses would have been disqualified." (AR 2877.) Nonetheless, despite the facts found by the Stewards requiring disqualification under Rule 1859.5 and their recognition the rule is "absolute in that if a horse is found to be in violation of the rule the horse shall be disqualified" (AR 2875), the Stewards never reached the consequence of *Justify's* positive test for a prohibited substance.

Instead, the Stewards explained Respondent had already "ruled on this matter, in executive session, at the August 23, 2018 [] meeting in Del Mar, California and voted to not move forward with complaints." (AR 2878.) The Stewards found Respondent had the authority at that time to dismiss the matter. (AR 2878.) The Stewards then concluded they should dismiss Respondent's complaint.[12]

Despite Respondent's request of the Stewards at the hearing on Respondent's complaint, the Stewards decided:

Even if this panel were to disagree with [Respondent's] decision to dismiss these matters or the way [Respondent] handled the situation it cannot be argued that [Respondent] lacked the authority to do so. The law specifically allows such actions to take place and [Respondent] followed the law.

### ORDER

After considering the evidence and testimony presented [the complaint is] dismissed. [Respondent] has already ruled on this matter, in executive session, at the August 23, 2018 [] meeting in Del Mar, California and voted not to move forward with complaints. (AR 2878.)

### The Stewards' Remand Decision

The Stewards' Remand Decision clarifies its earlier decision to dismiss Respondent's complaint involving *Justify*.

First, the Stewards found "the dismissal of this matter by [Respondent] by unanimous vote in executive session at the meeting held on August 23, 2018 in Del Mar, California effectively dismissed administrative prosecution of the underlying facts that give rise to the *Disqualification* Complaint[]." (Remand Decision 2.) The Stewards noted "[t]he parties to the administrative proceeding have not established that [Respondent] acted formally to undo its dismissal. The August 23, 2018 action by [Respondent] therefore remains in effect. The Stewards have no legal authority to review or set aside this action." (Remand Decision 2.) The Stewards made clear their assessment that Respondent's "statutorily authorized dismissal barred the Stewards' proceeding." (Remand Decision 4.)

The Stewards explained their lack of legal authority given the circumstances as follows:

The Stewards' proceeding is barred because they do not have the authority to reverse [Respondent's] members' vote. The lack of authority follows from: (1) the recognition that [Respondent] is the controlling authority over horse racing, exercising plenary constitutional power over that subject matter; (2) the recognition that the Stewards are a subordinate body, delegated power by [Respondent] to act for it in certain matters; and (3) the lack of express statutory authority for the Stewards to set aside an adjudicatory decision of [Respondent]. (Remand Decision 5.)

Second, the Stewards found Respondent's "decision to prosecute" the complaint against the *Justify* Parties "not sufficient to establish that the Stewards have the authority to adjudicate" the complaint. (Remand Decision 5.) The Stewards noted they had not been presented with any evidence "of any formal action by [Respondent's] Members that rescinds or otherwise sets aside the dismissal from the Del Mar Meeting." (Remand Decision 5.) The Stewards dismissed the "parties mutual agreement that the Stewards should proceed" as insufficient to overcome Respondent's earlier "formal action" to dismiss the matter against the *Justify* Parties. (Remand Decision 5.) The "existence of the[] complaint[]", according to the Stewards, "merely raises the question of whether or not [it is] administratively justiciable, . . ." (Remand Decision 9.)

Third, the Stewards explained the underlying facts “compel disqualification under Rule 1859.5.” (Remand Decision 4.) “Rule 1859.5 operates to mandate a disqualification of . . . Justify . . . under these facts, as noted in the original Statement of Decision. . . . The Rule affords no discretion to refuse to disqualify the horse[] on these facts. Rule 1859.5 does not permit a discretionary judgment as to disqualification when a sample meets the conditions set forth in the Rule.” (Remand Decision 6.) Further, the “facts introduced by the parties place Justify . . . within the mandate for disqualification set forth in Rule 1859.5.” (Remand Decision 8.) Moreover, had the Stewards considered the matter prior to Respondent’s August 23, 2018 meeting, they would have disqualified *Justify*. (Remand Decision 8.)

The court finds the Stewards erred when they found they had no authority to adjudicate the disqualification complaint filed by Respondent involving *Justify*. Contrary to their understanding, the court finds Respondent expressly charged and empowered the Stewards with the authority to adjudicate the Rule 1859.5 complaint. The Stewards, however, appear to have overlooked that specific direction from Respondent.

As a preliminary matter, Respondent “may delegate to stewards . . . any of its powers and duties that are necessary to carry out fully and effectuate the purposes of” the Horse Racing Law. (Bus. & Prof. Code, § 19440, subd. (b).) As recognized by the Stewards, they “are a subordinate body, delegated power by [Respondent] to act for it in certain matters.” (Remand Decision 5.) The Stewards “exercise authority over horse racing – including enforcement action and adjudications concerning the prohibitions on dosing horsing with certain substances – through a delegation from [Respondent].” (Remand Decision 8.)

The Stewards understood litigation resulted from Respondent’s August 23, 2018 decision not “to move forward with any charges in the Justify matter.” (Remand Decision 4 [Fact 24].) The Stewards also knew resolution of the litigation—a settlement agreement—required Respondent to file the complaint against the *Justify* Parties. (Remand Decision 4 [Fact 25].)[13]

While the Stewards explain they had no evidence of “any official action to set aside [Respondent’s] dismissal,” the complaint expressly “empowered” the Stewards “to impose penalties for violation of any provision of the CHRB Rules.” (AR 1008.)[14] The delegation of power from Respondent to the Stewards (pursuant to Business and Professions Code section 19440) specified the Stewards had the authority—even in the face of Respondent’s prior dismissal—to impose any appropriate penalty for a violation of Rule 1859.5. (AR 1008.) Given Respondent’s plenary authority over all aspects of the sport and the Stewards’ subordinate role, it is disingenuous to suggest Respondent’s complaint “merely raises the question” of whether the complaint is subject to adjudication by the Stewards. (Remand Decision 9.)[15] The Stewards expressly recognize in the Remand Decision that Respondent made a “decision to prosecute.” (Remand Decision 5.) While there may be no evidence in the administrative record Respondent expressly set aside its prior dismissal, at a minimum, Respondent’s decision to file the complaint effectively did so.[16]

Moreover, as if the complaint standing alone is not sufficient, Respondent’s actions made crystal clear Respondent expressly authorized the imposition of penalties against the *Justify* Parties.[17] Respondent appeared at the hearing, fully and actively prosecuted the complaint, and argued *Justify* should be

disqualified. To suggest Respondent did not intend for its complaint to be adjudicated ignores the active efforts Respondent made to disqualify *Justify*. The facts do not suggest Respondent merely filed a complaint to comply with a settlement agreement with no intent to prosecute it. Respondent expressly requested the Stewards disqualify *Justify*.

The court finds the Stewards erred when they determined they had no authority to adjudicate the complaint. Respondent's statements and acts expressly empowered the Stewards to do so.

### **Standing and the Challenge to the Stewards' Decision:**

Respondent argues Petitioner lacks standing to challenge the Stewards' December 9, 2020 decision because it did not appear as a party at the evidentiary hearing before the Stewards. [\[18\]](#)

Generally, a party must be "beneficially interested" to obtain a writ of mandate. (Code Civ. Proc., § 1086.) "The requirement that a petitioner be 'beneficially interested' has been generally interpreted to mean that one may obtain the writ only if the person has some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large. [Citations.] As Professor Davis states the rule: 'One who is in fact adversely affected by governmental action should have standing to challenge that action if it is judicially reviewable.' (Davis, 3 Administrative Law Treatise (1958) p. 291.)" (*Carsten v. Psychology Examining Com.* (1980) 27 Cal.3d 793, 796-797.) The beneficial interest must be direct and substantial. (*Parker v. Bowron* (1953) 40 Cal.2d 344, 351; *Braude v. City of Los Angeles* (1990) 226 Cal.App.3d 83, 87.)

Relying on *Pacific Legal Foundation v. Unemployment Ins. Appeals Bd.* (1981) 29 Cal.3d 101, Respondent argues a non-participant at an administrative hearing, such as Petitioner, should not be permitted to challenge the agency's action. (*Id.* at 108-111.) Respondent argues as a non-party to the administrative action, Petitioner could not and did not appeal the Stewards' decision to Respondent.

Respondent's argument is largely undeveloped. Contrary to Petitioner's position, *Pacific Legal Foundation v. Unemployment Ins. Appeals Bd.* does not address the challenge of a non-party to an administrative decision. The case concerns standing pursuant to Unemployment Insurance Code section 409.2.

The court's previous rejection of Respondent's reliance upon *County of Alameda v. Carleson* (1971) 5 Cal.3d 730 and *Comerica Bank v. Runyon* (2017) 16 Cal.App.5th 473 continues to stand. The cases are distinct—procedurally and factually—from the issues raised here.

Finally, the court previously found Petitioner appears to be beneficially interested in the outcome of this proceeding and has alleged facts that it will suffer an adverse impact from the Respondent's decision. (TAP ¶ 12 [\$400,000 at stake for second place finisher].) Most importantly, the proceeding before the Stewards was

a requirement of the settlement agreement entered into between Petitioner and Respondent. That is, the proceeding occurred to benefit Petitioner.

The court rejects Respondent's challenge to Petitioner's standing.

**Respondent's "Decision" Denying Relief Under Business and Professions Code Section 19517:**

Petitioner contends Respondent abused its discretion when it failed to set aside the Stewards' December 9, 2020 decision. Petitioner argues Respondent arbitrarily and capriciously exercised its authority, and it is entitled to relief under Code of Civil Procedure section 1085. (Opening Brief 2:9-11.)

While Petitioner's claim is brief and somewhat unclear, as the court understands it, Petitioner contends the evidence it presented to Respondent could have led to only one decision—a decision to overrule the Stewards' decision pursuant to Business and Professions Code section 19517. (Opening Brief 21:14-28.)

Neither Petitioner's Opening Brief nor its Reply Brief sets forth the relevant facts on this issue.[\[19\]](#) The same is true of Respondent's Opposition Brief. From the administrative record, the court can discern the following facts:

After the Stewards issued their decision, Petitioner wrote to Respondent on December 9, 11 and 15, 2020 requesting Respondent overrule the decision pursuant to Business and Professions Code section 19517. (AR 3001, 3008, 3009.)

Respondent advised Petitioner it had received Petitioner's letters and placed the matter on its agenda for a meeting scheduled January 21, 2021. (AR 3010.)

On January 14, 2021, other parties (WinStar Farm LLC, China Horse Club, Head of Plains Partners LLC, Starlight Racing, Mike Smith, Flavien Prat, Michael Pegram, Karl Watson, Paul Weitman and Bob Baffert) advised Respondent they opposed Petitioner's request. (AR 3012.)

The following day Petitioner responded to the other parties' objections through correspondence to Respondent. (AR 3020.)

On January 22, 2021, Respondent advised Petitioner that it had “determined that it can neither accept your appeal nor hear your request to overrule the Stewards’ Decision in the matter of the disqualification of the horse Justify.” (AR 3025.) Respondent also advised it considered the matter closed. (AR 3025.)

Thereafter, Petitioner wrote to Respondent on the issues. (AR 3028, 3032.) Petitioner’s March 2, 2021 correspondence included evidence that had not been considered by the Stewards. (AR 3036, 3038, 3041.)

On March 25, 2021, Respondent again advised Petitioner it considered the “Justify matter closed.” (AR 3042.) Respondent thereafter on April 27, 2021 indicated it had no response to Petitioner’s proposal the matter be remanded to the Stewards and would not have such a response until after the court ruled on the competing motions to enforce the settlement agreement. (AR 3044.)

Respondent’s April 27, 2021 “decision” appears to suggest Respondent had not made any decision. Thus, there is no controversy for this court to adjudicate. On this record, judicial review is premature. If Respondent thereafter made and communicated a decision to Petitioner, the court cannot locate that decision in the administrative record.

To the extent Petitioner contends some other decision by Respondent—such as an inability to consider Petitioner’s appeal or request to overrule the Stewards’ decision—constitutes an abuse of discretion, that decision has not been briefed on the merits. That is, the court cannot determine whether Respondent’s position on the appeal or consideration of Petitioner’s request Respondent overrule the Stewards was correct.

Accordingly, the court cannot find on this record and briefing Respondent abused its discretion with its April 2021 decision. Petitioner’s claim otherwise is rejected.

## **CONCLUSION**

Based on the foregoing, the Stewards’ December 9, 2020 decision and the Remand Decision are set aside. The petition is granted.

The Stewards’ December 9, 2020 decision and Remand Decision make clear if the Stewards had adjudicated the complaint they would have found a violation of Rule 1859.5. “The Rule affords no discretion to refuse to disqualify the horse[] on these facts.” (Remand Decision 6.) The Stewards have no discretion. (Remand Decision 6.) The Stewards noted had they “heard the Justify . . . complaint[] prior to August 23, 2018 [the] horse[] would have been disqualified.” (AR 2877.)

As the Stewards have already determined what the result would be if they could reach the issue of disqualification on the evidence before them, the court will issue a writ directing the Stewards to set aside their December 9, 2020 decision and Remand Decision and to make a new order disqualifying *Justify*. Based on the twice-stated clear position of the Stewards, the court finds there is “no reason for remand” of the matter as there is “no real doubt” the Stewards would have disqualified *Justify* if they understood that Respondent provided them with such authority when Respondent filed the complaint against the *Justify* Parties. (See *Griego v. City of Barstow* (2023) 87 Cal.App.5th 133, 142.)

The court’s direction to the Stewards to set aside their December 9, 2020 decision and Remand Decision does not otherwise “limit or control in any way the discretion legally vested in [R]espondent.” (Code Civ. Proc., § 1094.5, subd. (f).)[20]

### IT IS SO ORDERED.

December 1, 2023

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Hon. Mitchell Beckloff

Judge of the Superior Court

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[1] The regulations promulgated by Respondent are at the California Code of Regulations, title 4, sections 1400-2063. For ease, the court refers to Respondent’s regulations herein as the Rules.

[2] The presence of scopolamine “was almost not the result of intentional administration, but rather the result of innocent environmental contamination from hay.” (AR 2505.)

[3] Business and Professions Code section 19577, subdivision (d) provides:

“The executive director shall report to the board a finding of a prohibited drug substance in an official test sample within 24 hours of the confirmation of that prohibited drug substance in the split sample by the independent laboratory, or within 24 hours of waiver of the split sample testing by the owner or trainer. Any recommendation to the board by the executive director to dismiss the matter shall be by mutual agreement with the equine medical director. The authority for the disposition of the matter shall be the responsibility of the board.”

[4] It appears this individual was no longer a member of Respondent on August 25, 2020 when Respondent entered into a settlement agreement with Petitioner.

[5] Respondent filed the complaint to comply with the terms of a settlement agreement entered into with Petitioner. Petitioner initiated this proceeding complaining about Respondent’s dismissal of the action. (AR 2716, 2875.)

[6] According to Petitioner, the Stewards are a three person panel. (Opening Brief 8 fn. 1.)

[7] Respondent also filed a complaint against its licensees associated with the horse, *Hoppertunity*. Petitioner, however, does not challenge Respondent's actions as to that horse.

[8] On January 1, 2019, scopolamine was re-classified as a Class 4 substance by the Association of Racing Commissioners International (ARCI). (AR 2874.)

[9] The parties' settlement agreement disposed of this issue.

[10] Petitioner's reference to a ministerial duty merely suggests the Stewards were required to order disqualification and forfeiture of the purse given its findings all of the requisite elements of Rule 1859.5 had been met.

[11] While Petitioner disputes the court's statement concerning the parties' agreement, Petitioner's briefing acknowledges the Stewards' factual findings are reviewed by substantial evidence. The court recognizes it exercises its independent judgment on legal issues. (Opposition 17:3-7. ["Whether the Stewards' Decision involves an issue of law *or is characterized as a finding purportedly supported by substantial evidence* (a proposition belied by the record and evidentiary admissions made by CHRB), it is, nonetheless, void as contrary to the legislative intent."][Emphasis added].)

[12] Petitioner expends much effort arguing claim and issue preclusion. As noted by Respondent, the Stewards did not make any such findings. (Opposition 17:20-23 [citing AR 2869-2878].) Moreover, Petitioner provides no analysis of whether the Stewards could only rely on principles of claim and/or issue preclusion to dismiss the complaint. (See Rule 1530.)

[13] Evidence before the Stewards revealed Petitioner (the settling party, Ruis Racing LLC) owned the horse *Bolt d'Oro*. (AR 1081.) It also demonstrated *Bolt d'Oro* finished in second place behind *Justify*. (AR 1016.)

[14] The Remand Decision does not address the authorization language to the Stewards in the complaint.

[15] It strains credulity that a state agency would enter into a settlement agreement providing the other party with illusory relief. That is, why would Respondent settle litigation with Petitioner knowing its complaint could not (as a legal matter) be adjudicated. To the extent the agency did mislead Petitioner, equitable estoppel would likely preclude the agency from depriving the other party with the benefit of its bargain. (See Evid. Code, § 623.)

[16] While the Stewards repeatedly focus on "formal" action by Respondent, nothing in the Stewards original decision or the Remand Decision cites any legal authority suggests Respondent could not impliedly set aside a prior dismissal decision by filing a complaint. (Remand Decision 2 ["acted formally"].)

[17] Given Respondent's position before the Stewards at the hearing on its complaint, principles of estoppel suggest it should be precluded from asserting a different position in this proceeding.

[18] Respondent therefore revives an unsuccessful argument made on demurrer to Petitioner's third amended petition.

[19] The petition references an April 21, 2021 decision. The court cannot locate any evidence of such a decision in the administrative record. There is a letter dated April 27, 2021 (AR 3044) seemingly terminating the discussion about any potential future action by Respondent.

[20] That the court has not limited the "discretion legally vested in the [R]espondent" is consistent with Respondent's request that "[i]f the Court determines that the Stewards' decision was incorrectly decided, the appropriate remedy is remand to [Respondent]." (Opposition 20:1.) Nothing herein is intended to limit

Respondent's statutory or regulatory authority in connection with the Stewards and any decision made pursuant to this court's order. (See Bus. & Prof. Code, § 19517; Rule 1761.)

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