

that caused his horse to run toward the outside. His horse crossed directly in front of horse number six, Purrfect Kitten, and moved approximately four paths toward the outside. As Simpson's horse crossed in front of Purrfect Kitten, Purrfect Kitten altered its course and moved toward the rail and then a few paths toward the inside.

State Stewards Eric Smith and Joseph Ortiz and Association Steward Robert Pace held an inquiry on July 28, 2019, which was the day after the race, with Simpson and Arrieta present, to watch videos of the race and review them. On August 2, 2019, the stewards issued ruling number 193017 that assessed a penalty of \$750.00 against Simpson "for permitting his mount 'Sonero' to drift out several lanes in the stretch and into the path of another horse during the running of the fifth race at Fairmount Park on 27 July 2019." (Board ex. D). Prior to the incident on July 27, 2019, the stewards had at least two discussions with Simpson regarding riding safety and Racing Board rules. The discussions were the result of two previous incidents with the petitioner. After the first incident, Simpson received a verbal warning. The second incident occurred during a race on June 18, 2019, and on June 25, 2019, the stewards issued ruling 193011 that assessed a penalty of \$100.00 against Simpson "for allowing his mount My Darling Sofia to impede the progress of another horse near the quarter-pole during the running of the sixth race at Fairmount Park on 18 June, 2019, which resulted in My Darling Sofia being disqualified from first place and placed sixth." (Board ex. C).

The \$750.00 penalty that was assessed on August 2, 2019 was imposed at a higher amount because it was the third incident.

Based on testimony of the witnesses and the film of the race, the Board finds that Simpson's actions constituted interference. Mr. Simpson could have prevented this incident simply by not intentionally allowing his mount to drift out several lanes in the stretch and into the path of another horse. Instead, Mr. Simpson switched to whipping his horse with his left hand and thereafter his horse drifted into the path of another horse while Mr. Simpson continued to whip with his left hand.

These actions are a violation of IRB Rule 1416.5(a).

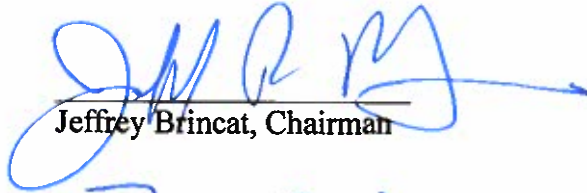
THEREFORE, the Board Orders that Javour Simpson be assessed a civil penalty of \$750.00 for violating IRB Rule 1416.5(a) during the running of the fifth race at Fairmount Park on July 27, 2019.

This is a final administrative decision subject to Administrative Review Law. The petitioner may challenge this decision by filing an action for administrative review within 35 days.

This document may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one document.

Signature Page to follow.

BOARD ORDER SIGNATURES
JAVOUR SIMPSON v ILLINOIS RACING BOARD
2019 T 04



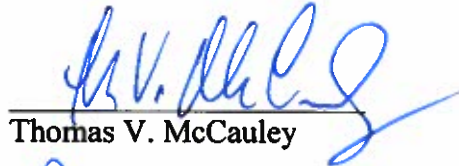
Jeffrey Brincat, Chairman



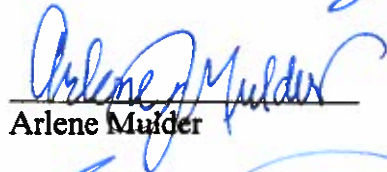
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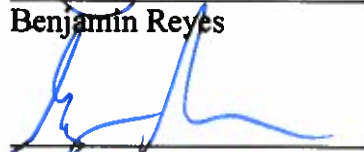
Arlene Muider



Edgar Ramirez



Benjamin Reyes



Gregory W. Sronce

Action taken by the Board at it's
November 19, 2019 meeting



Domenic DiCera,
Executive Director



Date Executed

**STATE OF ILLINOIS
RACING BOARD**

**In the Matter of
JAVOUR SIMPSON**

Petitioner

v.

ILLINOIS RACING BOARD

**19-RB-001
IRB # 2019 T 04**

**ADMINISTRATIVE LAW JUDGE’S REPORT
TO THE ILLINOIS RACING BOARD**

Appearances: Javour Simpson, appeared *pro se*; John Gay, General Counsel, appeared for the Illinois Racing Board

Synopsis:

This matter concerns whether Javour Simpson (“petitioner”) should pay a penalty of \$750 for permitting his mount to drift out several lanes in the stretch and into the path of another horse during the running of the fifth race at Fairmount Park on July 27, 2019. The Illinois Racing Board (“Board”) alleges that petitioner violated section 1416.5(a) of the Board Rules, which states that crossing or weaving in front of any horse may constitute interference or intimidation for which the offending jockey may be disciplined. (11 Ill. Admin. Code §1416.5(a)). The petitioner argued during his opening statement that it was the first time that he rode that horse, and the horse unexpectedly pulled to the right in front of another horse.

A hearing was held at Fairmount Park on Wednesday, August 21, 2019, during which Chief State Steward Eric Smith and jockey Reynier Arrieta testified on behalf of

the Board. The petitioner also testified.¹ After observing the witnesses, reviewing the transcript of the hearing, and considering the evidence presented, I make the following report to the Board:

Proposed Findings of Fact:

1. The petitioner was the jockey who rode Sonero, which was the number 2 horse in the fifth race at Fairmount Park on July 27, 2019. (Board Ex. A)
2. Reynier Arrieta (“Arrieta”) was the jockey who rode Purrfect Kitten, which was the number 6 horse in the race. (Board Ex. A)
3. Eric Smith is the Chief State Steward at Fairmount Park and is employed by the Board. (Tr. p. 10) He was one of three stewards who observed the fifth race on July 27, 2019. The other two stewards were Joseph Ortiz, who is employed by the Board, and Robert Pace, who is employed by Fairmount Park. (Tr. pp. 18-19; Board Ex. D)
4. During the stretch of the race, the petitioner was whipping his horse, Sonero, with his left hand that caused his horse to run toward the outside. His horse crossed directly in front of horse number 6, Purrfect Kitten, and moved approximately four paths toward the outside. (Board Ex. B; Tr. pp. 24-25)
5. As the petitioner’s horse crossed in front of Purrfect Kitten, Purrfect Kitten altered its course and moved toward the rail and then a few paths toward the inside. (Board Ex. B; Tr. pp. 41-43, 46)
6. On July 28, 2019, which was the day after the race, the stewards met with both jockeys (the petitioner and Arrieta) to watch videos of the race and review them. (Tr. pp. 26-29, 46-47)

¹ Because of the petitioner’s strong accent, his wife was present as his interpreter.

7. On August 2, 2019, the stewards issued ruling number 193017 that assessed a penalty of \$750.00 against the petitioner “for permitting his mount ‘Sonero’ to drift out several lanes in the stretch and into the path of another horse during the running of the fifth race at Fairmount Park on 27 July, 2019.” (Board Ex. D)
8. Prior to the incident on July 27, 2019, the stewards had at least two discussions with the petitioner regarding riding safety and Racing Board rules. The discussions were the result of two previous incidents with the petitioner. After the first incident, the petitioner received a verbal warning. (Tr. pp. 28-29)
9. The second incident occurred during a race on June 18, 2019, and on June 25, 2019, the stewards issued ruling number 193011 that assessed a penalty of \$100.00 against the petitioner “for allowing his mount My Darling Sofia to impede the progress of another horse near the quarter-pole during the running of the sixth race at Fairmount Park on 18 June, 2019, which resulted in My Darling Sofia being disqualified from first place and placed sixth.” (Board Ex. C)
10. The \$750.00 penalty that was assessed on August 2, 2019 was imposed at a higher amount because it was the third incident. (Tr. p. 29)

Witnesses Called by the Board:

Eric Smith (“Smith”). Smith is the Chief State Steward for the Board at Fairmount Park and has been in that position for 3 years. (Tr. p. 10) His duties include interpreting and applying the rules of the Board and the Illinois Horse Racing Act to the action that takes place on the racecourse. (*Id.*) Prior to becoming a state steward, he was a racing official for approximately 10,000 races at various racetracks on the East Coast, and he was the Executive Director of the New Mexico Horseman’s Association. (Tr. pp. 10-11) He also

worked for Equibase, which compiles all the past performance data that is included in the daily racing programs. (Tr. p. 11)

As a steward, Smith has judged between 1,500 and 1,800 races. (Tr. p. 11) Smith has a Bachelor's degree from the racetrack industry program at the University of Arizona and passed the steward's accreditation class and continuing education requirements for the "Racing Officials Accreditation Program." (*Id.*) He explained the training that he has undergone, and he stated that he is familiar with the Board's rule regarding safe riding and interference. (Tr. pp. 11-13) He identified a copy of Board rule 1416.5 as the rule regarding safe riding and interference. (Tr. pp. 14-15; 11 Ill. Admin. Code §1416.5). He also identified a copy of Board rule 1402.50, which is the rule that grants stewards the authority to enforce rules such as rule 1416.5. (Tr. pp. 13-14; 11 Ill. Admin. Code §1402.50) Smith was offered and accepted as an expert witness on judging thoroughbred racing. (Tr. pp. 15-17)

On July 27, 2019, Smith was working at Fairmount Park during the fifth race. (Tr. p. 17) He was familiar with what happened during the race, and he described it as follows:

As the horses came out of the far turn and entered the top of the stretch, Mr. Simpson was in approximately the third or fourth path from the rail, and as they approached the wire, he was striking his horse with a left-handed whip, and the horse drifted out towards the grandstand and crossed several paths over in front of a horse ridden by Reynier Arrieta. (Tr. pp. 17-18)

Smith was working with two other stewards on July 27, 2019, Joseph Ortiz and Robert Pace. (Tr. p. 18) Smith identified Board Exhibit A as a copy of the daily program pages for the fifth race at Fairmount Park on July 27, 2019. (Tr. pp. 19-20) He stated that the

petitioner was the rider of horse number 2, Sonero, and Arrieta was the rider of horse number 6, Purrfect Kitten. (Tr. pp. 20-21)

Smith also identified a digital video disc (DVD) containing a recording of the race and marked as Board Exhibit B. (Tr. pp. 21, 29) Smith was asked questions and provided a narrative while watching the recording of the race. (Tr. pp. 22-29) The video provided a front view with the horses running towards the camera. (Board Ex. B) Smith identified the petitioner's horse as being on the right side with the petitioner wearing a white helmet cover. (Tr. p. 22) Arrieta's horse was on the left with a red blinker mask, and Arrieta was wearing a black helmet cover. (*Id.*) Smith stated that as the horses entered the top of the stretch, the petitioner struck his horse with a right-handed whip, and then he switched to the left-handed whip. (Tr. pp. 23-24) Smith stated that as the petitioner was using the left-handed whip, his horse crossed directly in front of Arrieta's horse and moved out at least four paths causing Arrieta's horse "to take up and duck inside of him." (Tr. pp. 24-25)

Smith testified that typically when a horse is hit with a left-handed whip, the horse will go in the direction away from the side he is being struck on. (Tr. p. 25) Smith stated that because the jockey is controlling the horse with the reins, if the jockey is using the left hand to hold the whip, then he is also more on the right rein than on the left rein. (*Id.*) Smith stated that the jockey is pushing the horse to the outside (away from the inside rail) in two different ways unless the jockey takes tight control of the reins that are in the horse's mouth to keep him on a straight path or steer away from the direction that the whip is turning him. (*Id.*) Smith stated that the petitioner continued to strike the horse left-handed even as he was going out; "he's already crossed in front of the other

horse and he's still left handed." (Tr. p. 26) Smith opined that the petitioner made no attempt to correct the horse's path. (*Id.*)

Smith opined that the petitioner violated rule 1416.5 because "[the petitioner] clearly crossed in front of another horse when --- without sufficient clearance and caused the other horse to alter his course." (Tr. p. 27) The day after the race, the three stewards met with the petitioner and Arrieta to review the video with them. (Tr. p. 28) Smith stated that this is the first year that the petitioner has been riding at Fairmount Park, and prior to July 27, 2019, Smith has had at least two discussions with the petitioner regarding riding safety and Racing Board rules. (Tr. pp. 28-29) Smith explained that the three stewards decided to assess a penalty of \$750.00 because the stewards have a "progressive discipline matrix" for assessing penalties. (Tr. p. 29) Smith said that generally after a jockey has his first incident of interference or unsafe riding, he is given a verbal warning. (Tr. p. 29) If there is a second incident, a fine in the range of \$100 to \$250 is usually imposed. (*Id.*) If there is a third incident, then there is a larger fine. (*Id.*)

Smith testified that the petitioner was previously given a verbal warning for unsafe riding.² (Tr. p. 38) Smith identified Board Exhibit C as steward ruling number 193011 from Fairmount Park that assessed a \$100.00 penalty against the petitioner "for allowing his mount My Darling Sofia to impede the progress of another horse near the quarter-pole during the running of the sixth race at Fairmount Park on 18 June, 2019, which resulted in My Darling Sofia being disqualified from first place and placed sixth." (Tr. pp. 30-31; Board Ex. C) Smith testified that with respect to the fifth race on July 27, 2019, the three stewards unanimously agreed to assess the petitioner a penalty because the petitioner "made no attempt to correct his horse from veering out into the path of

another horse, because he did cross the path of another horse when he wasn't clear." (Tr. p. 32) Smith said that the stewards concluded that petitioner violated Board rule 1416.5, which is interference in a race. (*Id.*)

Smith identified a copy of Board rule 1402.70 as the rule that gives the stewards the authority to impose civil penalties up to \$5,000. (Tr. pp. 32-33; 11 Ill. Admin. Code §1402.70) Smith also identified Board Exhibit D as a copy of steward ruling 193017 from Fairmount Park that was issued on August 2, 2019 and assessed the petitioner a \$750.00 penalty "for permitting his mount 'Sonero' to drift out several lanes in the stretch and into the path of another horse during the running of the fifth race at Fairmount Park on 27 July, 2019." (Tr. pp. 33-34; Board Ex. D) The ruling is signed by all three stewards, and it indicates that the rules violated are 1416.5(a), 1402.50, and 1402.70. (Tr. p. 34) Finally, Smith identified Board Exhibit E as a copy of the racing day minutes for July 27, 2019. (Tr. pp. 35-36) The minutes indicate that for the fifth race, horse number 2 (ridden by the petitioner) came out several lanes in the stretch and "cut off" horse number 6 (ridden by Arrieta). (Tr. pp. 36-37; Board Ex. E) The minutes also state as follows: "Order of finish was not affected because #6 finished ahead of #2, however SIMPSON was placed on the MOVIES LIST for a possible violation of the interference rule and unsafe riding." (Board Ex. E) Smith testified that at the movie session the stewards pointed out that they believed it was unsafe practice and interference because there was a lack of an attempt to correct the course of the horse bearing out and "it caused the other horse to bear in." (Tr. pp. 37-38) Smith testified that the petitioner and Arrieta were at the movie session, but he could not remember whether the other jockeys were also there. (Tr. pp. 38-39)

² The details regarding the first incident were not provided.

Under cross-examination, Smith was asked to again show on the video what he considered to be interference. (Tr. pp. 40-41) Smith explained that as the petitioner's horse started to head to the outside, Arrieta slowed his horse by pulling his horse several paths to the inside; Smith opined that Arrieta "altered course to go in" to avoid hitting the petitioner's horse from behind. (Tr. pp. 41-42)

During re-direct examination, Smith again pointed out on the video that as the petitioner's horse crossed in front of Arrieta's horse, Arrieta turned his horse's head toward the rail by giving him the left rein. (Tr. pp. 42-43) Smith stated that the horse that Arrieta was riding angled its head toward the rail, and the horse altered three or four paths between the top of the stretch and the wire. (Tr. p. 43)

Reynier Arrieta ("Arrieta"). Arrieta has been a jockey for a total of nine years: five years as a quarter horse jockey and four years as a thoroughbred jockey. (Tr. p. 44) He has ridden in approximately 700 races. (Tr. p. 45) When Arrieta was asked if he could describe the proper way to cross in front of another jockey, he said that it was proper if you are leaning in front of them and you do not interfere with their riding. (Tr. p. 45) He explained that you need to "have your distance clear enough to cross without them having to pull up their horses and, you know, find another hole to go around." (*Id.*) He said that you look around to make sure to keep your distance and not "clip heel." (Tr. pp. 45-46)

Arrieta testified that he has ridden at Fairmount Park approximately 500 times and recalled riding on July 27, 2019. (Tr. p. 46) He said there was a problem in the race down the stretch because he "had to stop riding [his] horse, whipping him and pull his head to the side because number 2 crossed in front of [him]." (*Id.*) Arrieta watched the video and stated that the petitioner's horse was "drifting out of control," and the

petitioner had no control of his horse. (Tr. p. 48) Arrieta testified that the petitioner's horse was drifting towards him, and Arrieta had to stop riding his horse and whip him and bring him to the inside rail to avoid clipping heels with the petitioner's horse. (*Id.*) Arrieta testified that if the petitioner's horse had not crossed in front of him, he would not have changed positions and would have kept a straight course. (*Id.*)

Arrieta testified that it is dangerous when horses clip heels because "we go down," and there is a possibility of injury to the jockeys and the horses. (Tr. pp. 48-49) He said that the video shows that both he and the petitioner were hitting left, but Arrieta's horse was going straight. (Tr. p. 49) Arrieta testified that he has ridden races with the petitioner before and has had concerns about the safety of the race "plenty of times." (*Id.*) Arrieta did not give specific examples of other safety concerns with the petitioner.

There was no cross-examination of Arrieta.

Witness Called by the petitioner:

Javour Simpson ("Simpson" or "petitioner"). The petitioner testified that he was "like two lengths in front." (Tr. p. 51) He said that Arrieta "never stopped riding." (*Id.*) The petitioner testified that his horse was drifting, but it is similar to when a car drifts in front of you; when a car switches lanes in front of you, then you switch lanes. (Tr. pp. 51-52) He said that Arrieta has complained every week about the petitioner following him when "there was nothing." (Tr. p. 52) He said that on the same race day, all of the jockeys did not want to ride with him. (Tr. p. 53) He referred to the racing day minutes in Board Exhibit E that include the following:

Race 2—OBJECTION – Liz Thurman, rider of 4th place finisher COMMANDER'S CASTLE lodged a claim of foul against Javour Simpson, the rider of first place finisher SEEYALATERBYE alleging interference in the far turn. After speaking with the riders and reviewing

video the stewards determined the claim of foul was without merit and it was disallowed.

Race 3 – The jockey colony protested the disallowed claim of foul in the previous race and threatened to refuse to ride. Stewards met with the riders and reminded them that the Stewards are the arbitrators of what constitutes a foul and those who refused to ride could be subject to penalties. All riders are required to meet with the stewards on Tuesday 7/30 prior to the first race. (Board Ex. E)

The petitioner believes that he has been harassed by the other jockeys. (Tr. p. 55) The petitioner also pointed out that during the fifth race the horses never clipped heels, and Arrieta did not change his stride. (Tr. p. 56)

During cross-examination, the petitioner admitted that during the fifth race on July 27, 2019 he started down the stretch by whipping with his right hand and then he switched to his left hand. (Tr. p. 57) After he switched to his left hand, his horse moved over in front of Arrieta's horse. (Tr. p. 58) The petitioner also admitted that although there was a claim of foul against him in the second race, there was no ruling against him. (*Id.*) There was no fine, and he was not suspended for the second race. (*Id.*) When asked if the stewards were fair in the second race, the petitioner responded, "They're always fair." (*Id.*) He then said, "It's just the riders that day." (*Id.*) He admitted that the riders do not sign their names to the stewards' rulings. (Tr. p. 59)

On re-direct, the petitioner stated, "please, I don't think it's fair they fine me for this race."

Issue and Arguments

Board rule 1416.5(a) provides as follows:

When clear, a horse may be taken to any part of the course, provided that crossing or weaving in front of any horse may constitute interference or intimidation for which the offending jockey may be disciplined. 11 Ill. Admin. Code §1416.5(a).

The Board argues that this case comes down to a judgment call, and the stewards are empowered with enforcing the rules for the safety of the riders and horses and for the integrity of the races. (Tr. p. 60) The Board contends that the petitioner has been told repeatedly about safe riding practices and rule violations, and he was previously issued a verbal warning and a \$100 fine, which he did not appeal. (Tr. pp. 60-61) The Board argues that the video shows that when the petitioner crossed Arrieta's horse, Arrieta reacted by moving his horse closer to the rail, which shows that the petitioner's actions affected Arrieta's right to a clear path going forward. (Tr. p. 61) The Board argues that the stewards decided that the petitioner's actions created an unsafe environment for the other riders and the horses in that race. (Tr. p. 62) Based on their previous interactions and knowledge of the petitioner's riding at Fairmount Park, the stewards settled on a fine of \$750, which the Board believes is an appropriate fine. (*Id.*)

In response, the petitioner said that he is "begging for leniency." (Tr. p. 63) He said that the fine should not be imposed because Arrieta "never pull up." (*Id.*) He said he was "like two lanes in front of him. So clear." (*Id.*) He contends that he was "so clear" of clipping heels. (*Id.*)

At the end of the hearing, I asked the Board's counsel if there was a side-view video of the race, and he said that he asked for a copy of the video from Fairmount Park, and the video that was shown was what he received. (Tr. p. 64) Counsel stated that he gave the petitioner the opportunity to "issue discovery, copies of any evidence he wanted to," but the petitioner did not provide any evidence. (*Id.*) In response, the petitioner indicated that at the movie session he was shown several angles, and he does not know why they only showed the one angle during this hearing. (Tr. pp. 64-65) He said from

this video you cannot see how far the petitioner was from Arrieta. (Tr. p. 65) The Board's counsel responded by saying that the petitioner had the opportunity to cross-examine Smith about any other angles that were available, and he did not elect to do that. (*Id.*)

When I reviewed the video of the race, which was Board Exhibit B, there were three consecutive views of the horses running down the stretch with the view of the horses running towards the viewer. As the video continued to play, however, there were also three consecutive views of the horses running down the stretch with a side-view from the outside rail. The side-view from the outside rail provides a better perspective for seeing how far the petitioner was in front of Arrieta when he crossed in front of him and whether Arrieta slowed the pace of his horse or pulled up on the reins.

From both videos, it is clear that at the top of the stretch, the petitioner was whipping his horse with his right hand. He then switched to whipping with his left hand, and soon thereafter his horse crossed toward the outside in front of Arrieta's horse while the petitioner continued to whip with his left hand. Arrieta was whipping with his left hand both before and after the crossing. The issue raised by the petitioner is whether his horse was "clear" for the crossing. From the side-view video, right before the crossing, there appears to be a little more than a horse-length (maybe a horse and a half length) between Arrieta's horse and the horse that was in front of him, and at the time of the crossing, the petitioner's horse was very close to Arrieta's horse. It does not appear, at least from this viewer's perspective, that Arrieta slowed the pace of his horse or pulled up on the reins of his horse. Arrieta did, however, alter the course of his horse toward the rail because of the crossing.

The Board has the burden of proving by a preponderance of the evidence, which means that it was more likely than not, that the petitioner's actions constituted interference. 11 Ill. Admin. Code §204.85(a) The word "interfere" means "To come between so as to be a hindrance or obstacle; impede." American Heritage Dictionary, Second College Edition at 669. Because the petitioner's horse crossed closely in front of Arrieta's horse, Arrieta's horse had to alter its course toward the rail. The closeness of the crossing also raises safety concerns. As the Board has argued, this case comes down to a judgment call. The record supports the stewards' decision.

Respectfully submitted



Linda Olivero
Administrative Law Judge

Date: September 12, 2019