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TRAINERS AT THE 2004 BELMONT**

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Weeks after the 2004 Belmont Stakes, the actual race is still engendering considerable comment on the propriety of the rides of jockeys Jerry Bailey and Alex Solis as well as the instructions given by trainers Nick Zito and Bobby Frankel to the jockeys riding the horses they trained at the Belmont. The purpose of this article is to examine the conduct of these people under the applicable rules of racing.

The Rules

While the wording of the rules is hardly uniform across American racing states, there is considerable similarity in the ultimate gist of these rules. Riders are supposed to give their best efforts to win the race, and trainers must give only such instructions to riders as may be necessary to assure the best performance of the horse.

In New York State, the host state of the Belmont, the rule is contained in 9 NYCRR §4035.4. “All horses are expected to give their best efforts in races in which they run, and any instructions or advice to jockeys to ride or handle their mounts otherwise than for the purpose of winning are forbidden and will subject all persons giving or following such instructions or advice to disciplinary action by the stewards and the commission.”

Other states have similar rules. In California “trainers shall be present at the paddock to supervise the saddling of the horse and shall give instructions to assure the best performance of the horse. Jockeys going to the post in any race shall race their mount to win, shall give their best efforts in the race to their mount and the public, and shall ride their mount out until the finish line is passed. No person shall, or attempt to, instruct, induce or otherwise solicit any jockey or trainer to ride or perform in a manner contrary to this rule.” 4 CCR §1692. Similarly, 4 CCR §1884 adds to this requirement by providing, “No jockey shall take his horse back without reasonable cause, or intentionally ride wide on the turns, or otherwise cause his mount to lose ground when there is not reasonable cause for such loss, or otherwise ride in a manner which is inconsistent with using the best efforts of the horse he is riding.”

The Model Rules supported by both national organizations (the North American Pari-Mutuel Regulators Association and the Association of Racing Commissioners International) representing racing commissioners are similar. Their joint model rules state for jockeys: “A jockey shall give a best effort during a race, and each horse shall be ridden to win.” PMRMR-008-030 D. (1). For trainers, the rule is, that a trainer is responsible for “instructing the jockey to give his/her best effort during a race and that each horse shall be ridden to win.” PMRMR-008-020 (C).25.

It is not that different in foreign countries. In the United Kingdom under the rules of the Jockey Club, Rule 155 provides “ (i).Every horse which runs in a race shall be run on its merits. (ii) It shall be the duty of a trainer to ensure that adequate instructions to

achieve the objective contained in sub-rule (i) above are given to the Rider of any horse in his care.” Rule 158 bans those rides where a “rider has failed to take all reasonable and permissible measures throughout the race to ensure that his horse is given a full opportunity to win or of obtaining the best possible placing.”

Thus, it is pretty clear what the rules are. A trainer has to instruct the jockey to win, and the jockey is supposed to ride the horse to obtain the best possible placement of the horse. These are the Vince Lombardi rules of racing. "Winning is not everything--but making effort to win is." "There is no room for second place." You can't race to complete the bottom half of the exacta

That's where the Belmont comes in. Although his horse Birdstone won the race Nick Zito was alleged to have said that he was running his horses (He ran both Birdstone and Royal Assault.) to finish second behind Smarty Jones. Trainer Bobby Frankel said that his instructions to Master David jockey Jose Santos will be to "beat everyone else." Neil Milbert, "Triple Threat," Chicago Tribune, June 4, 2004

Additionally, many people alleged that jockey Jerry Bailey on Eddington and Alex Solis on Rock Hard Ten rode their horses in an attempt not to win the race but to simply cause the defeat of Smarty Jones.

If Nick Zito or Bobby Frankel instructed their riders to try to finish second and if Bailey and/or Solis simply tried to make sure that Smarty Jones lost, they certainly would have violated 9NYCRR §4035.4. However, a review of the facts of each case should show no violation of the rule.

The Instructions

Nick Zito at the times of the post position draw for the Belmont was alleged to have said that he wanted his horses to finish second. Even after the Belmont which was won by his horse Birdstone, his un-Vince Lombardi like desire for a second place finish was reiterated. "Trainer Nick Zito and owner Marylou Whitney were equally self-deprecating, saying in a half-serious but sincere manner that they advised their own rider before the race, for the greater good of horse racing, to please finish second." Mike Downy, "Reagan Was Hero, Just Like Smarty," Chicago Tribune, June 6, 2004. "All week, he insisted he would be thrilled if one of his two entries placed second to Smarty Jones." Mickey Herskowitz, "No Need for Prado, Zito to Apologize," Houston Chronicle, June 6, 2004. "We kept saying to Prado, Be second." Michael Pointer, "Ouch That Smarts," Indianapolis Star, June 6, 2004 (quoting owner Mary Lou Whitney on her and Zito's instructions.)"

At the post position draw, Zito allegedly said, (a) "I'd be happy being second to Smarty Jones... There's nothing wrong with that." Neil Milbert, "Smarty's Showtime," Chicago Tribune, June 5, 2004. (b) "Where do you sign up for second place?" ..But if we finished second to Smarty Jones, what would be wrong with that?" Bill Christine, "Smarty Jones Races for Place in History ," Los Angeles Times, June 5, 2004. (c)

"Where do I sign up now for finishing second to Smarty Jones?" Pohla Smith, "Eight Make Plans, Hope For Major Belmont Upset," Pittsburgh Post Gazette, June 4, 2004 and (d) "Where do I sign now for second?"... "To Smarty Jones? Why not? There's nothing wrong being second to a hero," Richard Rosenblatt, "Smarty Jones Odds-On Favorite To Take Belmont, Sweep Triple Crown," AP June 3, 2004.

But there's a world of difference between saying you'd like to be able to finish second to a superstar horse and actually instructing a rider to finish second. Zito didn't do the latter. All he stated was that it might be a good performance for his horses to finish second to a Triple Crown winner. That's not an instruction to complete the under half of the exacta. He gave a realistic assessment of his horses' prospects. That's not telling his jockeys to throw the race. Clearly Zito did nothing wrong. Zito might fashion himself the Charles Barkley of thoroughbred racing, Tim Wilkin, "Trainers' War Of Words Heats Up," Albany Times Union, June 9, 2004. but he didn't actually say anything overly controversial here. Saying it would be good to finish second to Smarty Jones isn't saying we've conceded the race to Smarty Jones.

Frankel, however, was closer to going over towards having his horse Master David shoot for second place. He told Neil Milbert of the Chicago Tribune "Anybody in his sane mind thinks we're running for second... In years past you could always pick out a horse who had a chance to beat them. But there's nobody close to this horse." Neil Milbert, "Smarty's Showtime," Chicago Tribune, June 5, 2004. Frankel also said, "Santos [the rider of Master David] was encouraging. He thinks he has a chance. I don't." Pohla Smith, "Eight Make Plans, Hope For Major Belmont Upset," Pittsburgh Post Gazette, June 4, 2004. "'Say Smarty Jones is three or four in front down the backside, I don't want my jockey chasing him to try to beat him,' Frankel said. 'I want to try to beat the rest of them.'" Jennie Rees, Can Smarty Be Beaten?, Louisville Courier Journal, June 5, 2004.

But even though Frankel went further than Zito in downgrading his horses chances, he certainly did not issue any "Don't-win instruction" Instead he explicitly told people of his desire to win and his recollection that even Spectacular Bid lost the Belmont. " 'Things happen,' Frankel said. 'Horses stumble. I'm not wishing anyone bad luck, but things happen. I had a filly beat the other day in California that I'm still scratching my head over.'" Id. He told Neil Milbert "I definitely want to beat him[Smarty Jones], but to be honest, if I do I won't feel that good about it." Milbert, "Smarty's Showtime," supra. Again, Frankel did not issue any instructions to lose the race. He just doubted the ability of the horses in the race to beat Smarty Jones. In the case of Master David, he certainly was correct.

The Jockeys

Somewhat more contentious than the trainer remarks were the actions of the jockeys. It was alleged that Jerry Bailey on Eddington and Alex Solis on Rock Hard Ten put excessive pressure on Smarty Jones in the second-third of the mile and one-half Belmont. After a very moderately run .first half mile of the Belmont(48.65 seconds), these two horses started to press the pace. They obligated Stewart Elliott, the rider of

Smarty Jones, to run considerably faster in that portion of the race thereby softening up Smarty Jones for Birdstone's successful stretch run. The second half mile of the Belmont was run in 46.79 seconds. By contrast the last half mile was run in 52.06 seconds. Eddington finished fourth. Rock Hard Ten finished fifth. Both horses finished 12 lengths behind Birdstone. Roy Chapman the owner of Smarty Jones said a week after the race that the two jockeys sacrificed their horses to make Smarty Jones lose. "I never saw two riders ride so hard to lose a race in my life. They just were out for one thing: making sure Smarty didn't win... It was very obvious what happened. They were not out to win the race. They were out to ruin the race." Pat Forde, "Jockeys Ganged Up On Smarty, Owner Says," Louisville Courier-Journal, June 13, 2004.

John Servis, the trainer of Smarty Jones, similarly said, "Like I said from the beginning, those guys had nothing to lose, so they sacrificed their horses to push him along." George Kimball, "The 136th Belmont Stakes," Boston Herald, June 7, 2004. Dick Jerardi of the Philadelphia Daily News wrote, "If there were any criticism, it should have been directed at jockeys Alex Solis and Jerry Bailey, who seemed far more intent on getting Smarty Jones beat than in actually winning the race. Dick Jerardi, "Blame Jockeys, But Not On Smarty's Back," Philadelphia Daily News, June 7, 2004. Jockey Eibar Coa, watching the race from the jockey's room at Monmouth Park said, "'(Bailey) really cost him the race...He should have thought about the business. (Elliott) had to move early, he made him lose the race.'" Howard Bass, "Jockeys, Fans Bemoan Tough Loss," Asbury Park Press, June 6, 2004. Even before the race, trainer John Servis seemed to be apprehensive that other riders might gang up on Smarty Jones "As I've said before, he'll have a bull's-eye on his back. The other horses have nothing to lose, and that's going to be a factor. Stewart is going to have to be on his game." Ron Indrisano, "History At Stakes," Boston Globe, June 5, 2004. "'I think some things are going to happen that are totally uncharacteristic for a normal race.' He did not elaborate, except to say trainers of the other horses could give their jockeys 'any kind of off-the-wall instructions' in how to ride the race and compromise Smarty Jones' chances." Ray Kerrison, "Headline: Expect 'Smarty' To Reign Today: But He'll Have 'Bull's-Eye On His Back,'" New York Post, June 5, 2004.

If what Roy Chapman had said was true that the riders were simply trying to make Smarty lose, that certainly would be a violation of New York Rule 4035.4. The riders would not have given their best efforts to win the Belmont. But even assuming that Bailey and Solis rushed their horses into contention to challenge Smarty Jones, there is nothing legally wrong with their actions in the Belmont. Riders are allowed their choice of strategies, and unless that strategy is totally irrational, it's permissible and legal. It's what makes horse racing. In this case, the alternative strategy of Bailey and Solis - not challenging Smarty Jones and allowing him to set an uncontested moderate pace - might be viewed by many people as an even more certain way of getting their own horses beaten. If you allow an overwhelming favorite to gallop slowly on the lead, that can't be a good way to ride a race to win. Instead, it makes some sense to try to challenge and put pressure on an overwhelming favorite like Smarty Jones. This was especially true of Jerry Bailey on Eddington who was racing towards the outside of Smarty Jones (and there was some question as to how Smarty Jones would react to the presence of a horse lapped

outside him) and who had been trained to show aggressiveness and speed at the Belmont. A large number of articles before the Belmont noted the likelihood that Eddington would race forwardly and aggressively in the Belmont. (See Bob Fortus, "In The Driver's Seat," New Orleans Time-Picayune, June 5, 2004; Pohla Smith, supra; Tom Keyser, "No Matter What The Draw, 'Jones' The One To Beat," Baltimore Sun, June 3, 2004; Jennie Rees, "The Belmont Stakes; Smarty and J-Lo? That's a Neigh-Lo," Louisville Courier Journal, June 3, 2004; Joe Drape, "26th Time May Be the Charm," New York Times, June 3, 2004. The riders concluded that if they wanted a chance to win the race, they had to challenge Smarty. Challenging Smarty Jones early was a high-risk strategy, but it was also not in any manner an irrational strategy.

Had Bailey and/or Solis engaged in conduct that could objectively have been considered to be aimed solely at disrupting Smarty's chances, there would have been a potential basis for penalizing the riders. For example, if they had tried to bump or jostle Smarty, or forced Smarty unnecessarily wide, or interfered with Smarty, there would be a greater basis for concluding that they had not tried to win the race. There were no such allegations. Without such allegations, or some admission by the riders about their conduct, it would be totally arbitrary to penalize Solis and/or Bailey.

In this way, the 2004 Belmont differs markedly from the 1988 Preakness. In that race, it was alleged that trainer Woody Stephens and jockey Pat Day on Forty Niner tried to make sure that the Kentucky Derby winner Winning Colors, trained by Wayne Lukas and ridden by Gary Stevens, would not win the Preakness. Both Forty Niner and Winning Colors ran together on the lead for the first three quarters of a mile of the race. Winning Colors ultimately finished third, and Forty Niner finished seventh in a race won easily by Risen Star. In that race, it was alleged by many that Day had frequently bumped Winning Colors, forced Winning Colors excessively wide, and had ridden in a manner designed not to have Forty Niner pass Winning Colors but simply to continue to keep Forty Niner abreast of Winning Colors. See Andrew Beyer, "Confronting It Head-On, Sabotage in Preakness Becomes Crystal Clear," Washington Post, May 29, 1988. The Daily Racing Form even wrote an editorial denouncing Woody Stephens' actions. "The editorial declared that trainer Woody Stephens 'set out to insure the defeat of Winning Colors rather than concentrate on how he would plan to win the race with his own horse, Forty Niner.' The editorial applied phrases like 'contemptuous action,' 'unsportinglike conduct' and 'dishonorable tactics' to the 74-year-old hall-of-fame horseman." Andrew Beyer, "Racing Form Under Fire After Taking Rare Shot," Washington Post, June 7, 1988. Eugene Klein, the owner of Winning Colors called Woody Stephens a "despicable, jealous old man" who should be "ruled off the track." "Scorecard," Sports Illustrated, June 6, 1988 Even this criticisms did not lead to any charges against Stephens or Day. The stewards found the ride blameless and concluded that there were no serious bumpings during the race. Any so-called brushings were caused by both horses. See "Stewards Find Day Blameless; Preakness Ride Okay," Washington Post, May 27, 1988. If there was no reason for penalties in the 1988 Preakness, there certainly was no reason for official action in the 2004 Belmont.

The Future

In any event, the point should be that the trainers and riders violated no rules or laws at the Belmont. Trainers probably need to be more circumspect in their remarks, (even if they envision themselves as Charles Barkley) and riders ought to be obligated in questionable cases to give stewards an official description of their tactics. The sad fact is, however, that American thoroughbred racing has been extremely lax in regulating cases where riders and trainers are employing questionable tactics in what may be viewed as an attempt not to win a race. In the United Kingdom, there were 235 enquiries into questionable effort rides and the stewards requested 3,336 poor performance reports in 2003. America does not even maintain statistics on these issues. While there were no violations at the Belmont, greater effort has to be made by stewards across America to guard against instances where there is suspicion that riders and trainers do not intend their horses to win.