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DECISION ON APPEAL, Appeal # 07-01
BRICK HOUSE, #634 vs. *WHISPER*, #355
J/105 Mayfest Regatta
Host: St. Francis YC; Race Date: 5/13/07

July 8, 2007

SUMMARY OF SITUATION

This incident took place in Race #5 of a five-race series. At about 75 seconds prior to the start signal, *BRICK HOUSE* (on starboard tack) and *WHISPER* (on port tack) were reaching below the line toward each other on opposite tacks. As the two boats approached each other, they first altered course to weather. Then, they both altered course to leeward. A collision followed as the bow of *WHISPER* contacted *BRICK HOUSE* forward of the starboard chain plate. Damage occurred and both boats retired from the race. Both boats filed protests and a hearing took place later on the same day. *BRICK HOUSE* was disqualified for breaking RRS 16.1 and 14(a), and has submitted this appeal.

FACTS FOUND BY PC

1. Wind velocity was 15 knots from the west, current was 1-2 knots from the east, water was relatively flat.
2. About 75 seconds prior to the start, *BRICK HOUSE* (*BH*) and *WHISPER* (*W*) were running the line on opposite tacks.
3. *BH* (on starboard tack) was on a converging course with *W* (on port tack).
4. *W* headed up to avoid *BH*; and *BH*, not seeing *W* head up, also altered course to windward.
5. Both boats then headed down in an attempt to avoid a collision.
6. A collision ensued and *BH* was holed forward of the starboard chain plate. *W* sustained significant damage to her steering system.
7. Both boats retired.
8. The diagram of *W* was endorsed by the protest committee.

PC: CONCLUSIONS AND RULES THAT APPLY

1. *W* was required by RRS 10 to keep clear.

2. When right of way boat *BH* altered course up then down, she failed to give *W* room to keep clear and therefore broke RRS 16.1 as clarified by ISAF Case 60.

3. Both boats were required by RRS 14(a) to avoid contact and attempted, but failed, to do so. *BH* broke RRS 14(a). *BH*'s course alteration made it unreasonable for *W* to avoid the collision.

PC: DECISION

1. *BH* is DSQ.

2. *W* is given redress: *W* is awarded points for this race equal to her average points in the preceding four races of the series.

BASIS FOR APPEAL BY BRICK HOUSE:

1. *BH* contends that the facts found, together with the diagram of *W* are inconsistent with the rules alleged to have been broken: In position #1, prior to *W*'s course alteration, *BH* would have passed safely to weather of *W*. By heading up, *W* broke RRS 10 and prevented *BH* from avoiding contact (RRS 14).

2. *BH* contends that by initially heading up (after position #1), *BH* gave more room (not less) for *W* to pass safely to leeward of *BH*.

3. The position of both boats at the time of contact (per both diagrams) shows that *BH* had made a much greater course alteration compared to that of *W*, as *BH* attempted to avoid contact. Thus, the PC erroneously switched the burden of complying with RRS 14 to the right-of-way boat ("a right-of-way boat need not act to avoid contact until it is clear that the other boat is not keeping clear....").

4. The phrase in facts found, "not seeing #355 (*W*) head up" is not supported by any fact (oral or written testimony), but is instead an erroneous conclusion.

5. The PC failed to record significant testimony to the effect that *W* did not have a lookout on her bow during the seconds immediately prior to contact, although *BH* did have a lookout on her bow (*BH* contends that Case 107, referencing a good lookout, is applicable).

6. The PC overlooked Case 50 in arriving at their conclusions (Case 50 supports "when the committee finds that S did change course and that there was reasonable doubt that P could have crossed ahead of S if S had not changed course, then P should be disqualified.")

7. *BH* contends that the PC's reference to Case 60 is inappropriate as Case 60 involves significantly different circumstances (as listed by *BH*).

8. *BH* contends that an applicable reference (better comparison) is Case 88, which discusses two boats in similar circumstances to this situation (as discussed by *BH*), even though contact did not occur in Case 88.

DECISION OF APPEALS COMMITTEE:

The Committee's facts and its new diagram clearly show that the two boats were on a collision course as they converged on opposite tacks below the starting line. At position #3 on the diagram, *W* had altered course to windward to avoid *BH* which had continued in a straight line. At position #4, *BH* had altered course to windward, after which the two boats were again on a collision course. At position #4 the two boats were just over one boat length part, and closing very rapidly. Next, the two boats simultaneously bore off sharply to avoid a collision, but they were unsuccessful and contact occurred. The parties are reminded that the facts found, together with the Committee's supplementary diagram, are not subject to appeal.

The Appeals Committee rules that *W* initially and appropriately altered course to windward in accordance with her obligation under RRS 10. Subsequently, *BH* altered course to windward but did so too late for *W* to respond and keep clear. Consequently, *BH* broke RRS 16.1. Both boats made reasonable attempts to avoid contact and consequently neither boat broke RRS 14.

The Appeals Committee sustains the Protest Committee's decision to award redress to *W* per RRS 62.1(b). *BH* should be scored as retired, not DSQ.

THE APPEALS COMMITTEE OF THE YACHT RACING ASSOCIATION OF SAN FRANCISCO BAY

Thomas V. Allen, Jr. Chairman

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