



**YACHT RACING ASSOCIATION
QUARTERS 35S, FORT MASON
SAN FRANCISCO, CALIFORNIA, CA 94123
415-771-9500 - fax 415-276-2378
E-mail = info@yra.org**

DECISION ON APPEAL, Appeal # 05-10
JAZZY vs. MARILYN vs. SWEET SENSATION
GGYC Midwinter #2, December 3, 2005

April 19, 2006

SUMMARY OF SITUATION:

Three boats were involved in an incident as they approached the start line of the GGYC midwinter race on December 3, 2005. All three were on a beam reach, starboard tack, with *SWEET SENSATION* (a 1D35) ahead and to weather, *JAZZY* (a 1D35) slightly overlapped behind and to leeward of *SWEET SENSATION*, and *MARILYN* (a J/44) possibly overlapped behind and to leeward of *JAZZY*. As the boats got closer to the start line, they converged and contact occurred between *JAZZY* and *MARILYN*, resulting in damage. *JAZZY* hailed and displayed her protest flag, which she carried throughout the race. *JAZZY* subsequently delivered a valid protest against *MARILYN*.

A protest hearing was convened on December 15, in accordance with the Sailing Instructions, but only *MARILYN* and *JAZZY* attended. When the PC realized that a third boat may have been involved, the hearing was recessed so the PC could include *SWEET SENSATION*. The hearing was reconvened on January 26, 2006 at which time *SWEET SENSATION* was disqualified for breaking Rule 11 and *JAZZY* was disqualified for breaking Rules 11 and 14. On January 27, *JAZZY* requested that the hearing be re-opened to consider new evidence. After email communications between *JAZZY* and the PC, the PC decided NOT to re-open and so advised *JAZZY* on February 8. *JAZZY*'s appeal arrived at US SAILING on February 22, 2006.

FACTS FOUND BY PC (on 1-26-06):

1. Wind was from the north at approximately 10 knots. There was a slight ebb current (toward the west).
2. *JAZZY* (middle) and *SWEET SENSATION* (windward) approached the starting line on a starboard beam reach. *JAZZY*'s bow is in a continuing overlap, 12 to 18 inches to leeward of *SWEET SENSATION*'s stern.
3. *MARILYN* (leeward) is on a beam reach overlapped and converging with *JAZZY*, and approximately one boat length to leeward of her.
4. *JAZZY* is hailing *SWEET SENSATION* to "come up," but *SWEET SENSATION* does not respond to the hail.
5. *JAZZY* abruptly alters course to port placing her directly in front of *MARILYN*.
6. *MARILYN* (a significantly heavier and larger boat) hails *JAZZY* and attempts to fall off to avoid *JAZZY*.
7. Contact occurs between *MARILYN* and *JAZZY* resulting in damage to *JAZZY*.

CONCLUSIONS OF PC, RULES THAT APPLY, AND DECISION:

1. *SWEET SENSATION* broke Rule 11 by not keeping clear of *JAZZY*. Rule 15 does not apply to *SWEET SENSATION* as the overlap had continued for a period of time with the same close separation.
2. The alteration of course by *JAZZY* was not as a result of the close proximity to *SWEET SENSATION*.

3. JAZZY broke Rule 11 by not keeping clear of *MARILYN* and Rule 14 by her alteration of course resulting in a failure to avoid contact with *MARILYN*.
4. *MARILYN*, being a larger and significantly heavier boat, was not given an opportunity to avoid contact with JAZZY, therefore *MARILYN* broke no rule.
5. JAZZY and *SWEET SENSATION* are disqualified.

BASIS FOR APPEAL BY JAZZY:

PC adopted numerous **improper procedures** that prejudiced JAZZY's position, including:

1. On 12/15/05, PC misled JAZZY by implying that witnesses would not be appropriate or required at the hearing, so JAZZY did not bring her witnesses to the second part of the hearing on 1/26/06. After the PC realized that there had been a misunderstanding on this subject, PC made its own judgment to the effect that the misunderstanding was not "significant." Later, PC's clarified its position about witnesses and subsequently based its decision to NOT reopen by declaring more witness testimony was not necessary.
2. At the first part of the hearing on 12/15/06, PC insisted that documentary evidence relating to the incident, supplied by JAZZY, be turned over to *MARILYN*, but PC did not permit JAZZY to hear *MARILYN*'s version of the incident before recessing the hearing. The effect was to allow *MARILYN* an extra six weeks to prepare a rebuttal and assemble favorable witnesses when the hearing resumed on 1/26/06. This prejudiced JAZZY's case negatively.
3. PC improperly suggested that JAZZY's motives for the protest may have been to establish financial responsibility (email dated 1/29/06).
4. PC's reason for NOT reopening was improperly founded when it declared that the PC must believe that it had made a "significant error," when the rules really only require there be "new evidence" to reopen (see email dated 1/29/06).
5. PC improperly stated that "several witnesses saying the same thing" is not relevant (email dated 1/29/06).
6. PC member (T. Roberts) suggested that only the "original witnesses" of JAZZY be allowed to testify, but the rules do not support such a restriction, so the suggestion is not appropriate.
7. In spite of JAZZY's contention that "new evidence" was available from several witnesses, including some from other boats (email dated 2/3/06), PC rejected this claim and refused to reopen, suggesting there is no indication as to significant new evidence (email dated 2/8/06).

Findings of **facts are inconsistent with evidence** and/or Rules, as follows:

1. The finding of fact, "of a sudden alteration of course by JAZZY," is inconsistent with the testimony of witness McCormick relative to "convergence being seen 10 seconds away."
2. The PC's diagram is inconsistent with the testimony of witness McCormick that "*MARILYN* was going at max speed for the line, while JAZZY was in a luffing position with *SWEET SENSATION*."
3. JAZZY objects to the PC's conclusion that *MARILYN* (being larger and heavier) was not given an opportunity to avoid contact with JAZZY. JAZZY believes that it is the obligation of *MARILYN* to take her size and maneuverability into account in deciding suitable tactics in close quarters with smaller boats.
4. JAZZY's potential witness would have testified that JAZZY did NOT err by suddenly altering course to leeward, but instead that *MARILYN* erred by NOT altering course to avoid a boat that had previously been to windward and clear ahead.

In summary, JAZZY is requesting that AAC order that the hearing be reopened and/or re-adjudicated based on the above rationale.

DECISION:

JAZZY brings up several issues relating to this incident, and the AAC comments as follows:

1. **Did the PC mislead JAZZY regarding taking testimony from witnesses?** RRS 63.6 states clearly that the PC shall take testimony from the parties and from their witnesses. RRS 63.3(a) states, in part, “any witness, other than a member of the protest committee, shall be excluded (from the hearing) except when giving evidence.” The misinterpretation of a casual comment by the PC chair is not an acceptable reason for reopening this hearing. All parties are obligated to understand these procedural rules, just as they must understand right-of-way rules.
2. **Did the divulging of GPS tracking data to MARILYN prejudice JAZZY’s case?** There is no evidence that JAZZY’s GPS data was even considered by the PC in composing either the facts or their conclusions, so AAC believes the GPS information was not relevant.
3. **Were comments and/or the paraphrasing of RRS 68 during the email exchanges relevant?** AAC saw no evidence that the decision not to reopen was affected by RRS 68 implications.
4. **Did not JAZZY’s suggestion of “new evidence” qualify for re-opening under RRS 66?** The possibility that “new evidence” might result from more testimony from other witnesses does not trigger the application of RRS 66. For RRS 66 to be applicable, the PC must be convinced that “significant new evidence” has become available that might be relevant. JAZZY’s email communications did not cite any specific possibilities of significant new evidence.
5. **Should not conflicting testimony from different witnesses suggest faulty facts?** It is quite common for parties and their witnesses to report different descriptions of what happened. It is the responsibility of the PC to listen to the available testimony, ask questions, resolve possible conflicts in their subsequent deliberations, and then “find the facts” (per RRS 63.6). The “facts found” by the PC are not subject to appeal (per RRS 70.1).
6. **Are the conclusions and decisions of the PC consistent with the declared facts?** The conclusions and decisions of the PC are based on the facts found, together with their personal interaction with the parties and witnesses during the hearing. The AAC believes that the PC’s conclusions and decisions are reasonable and consistent with the facts found.

Considering all of the above, the AAC sees no justification for reopening the hearing or re-adjudicating this incident. The decision of the PC is upheld and the appeal of JAZZY is denied.

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

Thomas V. Allen, Jr. Chairman

copy: MARILYN (Peter Szasz), 639 Marlin Ct., Redwood City, CA 94065
SWEET SENSATION (Gary Fanger), Grand Prix Sailing Academy, Pier 38 on the
Embarcadero, San Francisco, CA 94107)
JAZZY (R. S. Turnbull), 910 Arrowrock Place, Sunnyvale, CA 94087
Protest Committee (John Super), P. O. Box 410483, San Francisco, CA 94141-0483
Appeals Committee Members, via email