



THE YACHT RACING ASSOCIATION of SAN FRANCISCO BAY
1070 MARINA VILLAGE PARKWAY, SUITE 202-G
ALAMEDA, CALIFORNIA 94501
Phone: 415-771-9500; Fax: 415-276-2378
E-mail: info@yra.org

DECISION ON APPEAL

Appeal #2013-04
LIVELY v *SPINDRIFT* & *FLIGHT RISK*
Great Pumpkin Regatta – Pursuit Race
27 October 2013
Richmond YC, Pt Richmond, CA

13 February 2014
Revised – 15 February 2014

SUMMARY OF SITUATION:

On Sunday 27 October 2013, *LIVELY*, *SPINDRIFT*, & *FLIGHT RISK* were approaching the finish line on a beat. *LIVELY* was on starboard tack with *FLIGHT RISK* to windward of and overlapped with *LIVELY*. *SPINDRIFT*, on port tack, was approaching both *LIVELY* and *FLIGHT RISK*. *SPINDRIFT* and *LIVELY* collided followed shortly by a collision between *LIVELY* and *FLIGHT RISK*. *LIVELY* hailed protest but did not fly a protest flag.

FACTS FOUND BY THE PROTEST COMMITTEE:

1. *LIVELY* is on starboard approaching the finish line.
2. *FLIGHT RISK* was also on starboard and to windward and overlapped with *LIVELY*.
3. *SPINDRIFT* was on port approaching the finish line.
4. *LIVELY* hailed 'starboard' to *SPINDRIFT* and hailed *FLIGHT RISK* to 'come up'.
5. Contact occurred between *SPINDRIFT* and *LIVELY* causing serious damage to the port side of the boat.
6. Then contact between *FLIGHT RISK* and *LIVELY* occurred causing serious on the starboard side of the boat.
7. *LIVELY* hailed protest in a timely manner.
8. A protest flag was not flown.
9. The diagram of boat *LIVELY* was endorsed by the PC.

PC's CONCLUSIONS AND RULES THAT APPLY:

1. Rules that apply: 61.1(a)(4), 10, 11.
2. *SPINDRIFT*, a port tack boat, failed to stay clear of *LIVELY*, a starboard tack boat.
3. *FLIGHT RISK*, a windward boat, failed to stay clear of *LIVELY*, a leeward boat.

PC's DECISION:

SPINDRIFT and *FLIGHT RISK* are disqualified.

BASIS FOR APPEAL

SPINDRIFT appealed based on the following:

1. The Protest Committee (PC) erred in their interpretation of RRS 61.1(a)(4) with regard to the requirements of a protesting boat to notify the protested boat of their intent to protest.
2. The PC made no significant effort to notify all of the parties to the protest.
3. RRS 63.6 states that the PC shall take the evidence of the parties present at the hearing and other evidence it considers necessary.
4. The PC relied on the testimony of only one party to the protest and made no effort to seek any independent verification of any of the facts presented.
5. The PC made no effort to notify *SPINDRIFT* of their decision. *SPINDRIFT* only became aware she had been protested when she saw that they had been disqualified in the final results.

DECISION OF APPEALS COMMITTEE:

The appeal is upheld. The PC shall, at the earliest practical time, hold a new hearing at a time and place mutually agreeable to the parties that desire to attend. The PC shall specifically consider the validity of the protest with regard to the requirements of RRS 61.1(a) in addition to taking evidence and finding facts as required in RRS 63.6.

The PC failed to properly notify the competitors of the time and place of the hearing as required by RRS 63.2 by failing to follow the procedures described in the Notices to Competitors section of the Sailing Instructions. Additionally, while only applicable to the racing on Saturday, the section on Protests in the Sailing Instructions is unacceptably vague and provides no useful information to the competitors aside from the filing time limit.

The AAC is concerned by the actions of the Race Committee (RC), PC, and RYC in the handling of the communications with *SPINDRIFT*. Communication regarding the protest and the request to reopen the hearing should have been directly between the PC and *SPINDRIFT* rather than through third parties and in writing to the best extent possible. As an example, *SPINDRIFT* made a request to reopen the protest hearing in an e-mail to Gary Troxel, RYC Commodore, on 1 November 2013. It is evident from Mr. Troxel's e-mail response on 5 November 2013 that the PC was aware of this request. However, the PC stated in a response to the AAC that no 'official request' was received. RRS 66 does not specify the means for requesting that a hearing be reopened. By allowing a third party to be an intermediary in the communications between the PC and *SPINDRIFT* the request was not properly considered.

Addressing the specific issues raised by the appellant the AAC notes that:

- **Interpretation of RRS 61.1(a)(4)**
At this time the AAC has made no determination as to the validity of the protest under RRS 61.1(a) as this will be an issue determined at the hearing.
- **RRS 63.6, Taking Evidence and Finding Fact**
It is up to the PC to determine what other evidence they deem is necessary to decide the protest. The only requirement is that the PC take evidence from those parties present. Under RRS 63.3(b), the PC may proceed with a hearing without all (or any) of the parties present provided that they all have been properly notified per RRS 63.2.
- **RRS 65.1, Informing the Parties and Others**
The AAC has made no finding on this point. It is not known if the PC posted the protest decision and the Sailing Instructions are mute on the procedure that the PC will follow.
- **Hails of "protest", "starboard", "leeward"**
The hails of "starboard" and "leeward" are not required by the RRS. It is incumbent on all boats to be aware of their situation and the boats around them by keeping a proper watch. While these hails can be used to demonstrate that a boat is aware of their current situation, the lack of hails is not evidence of a lack of awareness. The hail of "protest" is required by RRS 61.1(a). However, this requirement is waived if the requirements of RRS 61.1(a)(1), RRS 61.1(a)(3), or RRS 61.1(a)(4) are satisfied.

- **The protesting boat changed course failing to provide room as required by RRS 16.1**
This is an issue of fact for the PC to determine at the hearing.
- **The protesting boat misrepresented the damage to their boat**
This is an issue of fact for the PC to determine at the hearing.

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

A handwritten signature in black ink that reads "JOHN CHRISTMAN". The signature is stylized with a large, sweeping initial "J" and "C".

John Christman, Chairman
(email: john@christman.org)

copy: Vickie Gilmour, PC Chair, via email
Deborah Stern, *SPINDRIFT*, via e-mail
Javier Jerez, *LIVELY*, via e-mail
Dan Gaudy, *FLIGHT RISK*, via e-mail
Appeals Committee Members, via email
Yacht Racing Association of San Francisco Bay, via email
US Sailing, via email