



**THE YACHT RACING ASSOCIATION of SAN FRANCISCO BAY**  
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DECISION on APPEAL: AAC 16-06; Sausalito YC Protest Committee decision of Encore v. French Kiss  
Sausalito Yacht Club Sunset Series Race 3 - 23 August 2016

November 2, 2016

### **SUMMARY OF SITUATION**

On the evening of August 28, 2016 a number of PHRF boats participated in a race of the Sunset Series which was contested on five evenings between July 26 and September 20. An incident occurred between two boats in Division D, *French Kiss* and *Encore*, near the Race Committee Signal boat at the start of race 3. *Encore* filed a protest which was heard by the Protest Committee on the evening of August 31, 2016. A written copy of the decision of that hearing was received by *French Kiss* on the evening of September 2. On the evening of September 3, *French Kiss* requested the Protest Committee reopen the hearing. The Request to Reopen was denied by the Protest Committee on the morning of September 5.

US Sailing received a request to appeal the decision of the Protest Committee on September 19, 2016 from *French Kiss*. The appeal was forwarded to the Appeals Committee of the Yacht Racing Association of San Francisco Bay on September 20, 2016.

### **FACTS FOUND BY PROTEST COMMITTEE:**

- ) Validity - Incident results in damage that is obvious to the boats. *Encore* informs *French Kiss* of intent to protest ashore prior to the protest time limit upon learning of *French Kiss*' identity. Hearing continued per 61.1 (a) (4).
- ) *Encore* and *French Kiss* approaching the starting line on starboard tack to start.
- ) *French Kiss* sailing a higher course and clear astern of *Encore*.
- ) *Encore* alters course to windward as she approaches and clears the stern of RC Signal Boat.
- ) *French Kiss* sailing with greater speed contacts *Encore*'s port stern with bow.
- ) Damage to *Encore*'s stern pulpit and *French Kiss*' bow pulpit.

### **CONCLUSIONS, APPLICABLE RULES, AND DECISION OF PC:**

#### **Protest:**

- ) *French Kiss* as clear astern boat was required to keep clear of *Encore* breaking rule 12
- ) *French Kiss* failed to avoid contact with *Encore* breaking rule 14
- ) *French Kiss* is Disqualified from race #3

#### **Request to Reopen:**

- ) No significant error was made, nor does the request provide significant new evidence.
- ) Request to reopen is denied

#### **APPELLANT BASIS FOR APPEAL:**

- J The Protest Committee conclusions in the protest hearing failed to conclude Encore, clear ahead, broke rule 16.1
- J After the reopen request was made, additional witnesses have come forward
- J Relevant information that had been presented at the 8-31-2016 hearing was not considered by the PC
- J The appellant asks the decision be reversed or alternatively, the hearing should be reopened for new witnesses

#### **ASSOCIATION APPEALS COMMITTEE DECISION:**

The appeal is denied. The decision of the Protest Committee is upheld.

The Association Appeal Committee notes that on September 2 the appellant received a written copy of the decision from the Protest Committee for the protest hearing of August 31. The appellant filed an appeal on September 19 which, in part, included that decision. The AAC did not consider that part of the appeal as it was filed more than 15 days after the appellant received the written decision (see rule R2.1(a)).

Regarding the decision of the Protest Committee to deny the Request to Reopen the original hearing; the AAC notes the appellant in that request essentially makes the case that the PC interpreted photographic and other evidence presented at the hearing differently than the appellant and the PC should reopen the hearing to change the facts and to find the appellant was a leeward boat and to then apply rule 16.1 (incorrectly) to the windward boat and reverse the original decision.

A difference between the appellant and the PC in the interpretation of some of the evidence presented at a hearing is not by itself an error on the part of the PC. The PC is required to take all the evidence of the parties and their witnesses and then find facts.

The PC found facts and based a decision on them in the original hearing.

The PC may reopen a hearing when it decides that it may have made a significant error, or when significant new evidence becomes available within a reasonable time and it may also do so if a party asks to reopen a hearing. The appellant has not made the case that the PC made a significant error and should have reopened on their own accord, or that new evidence became available in a reasonable time, as all photographs were presented at the original hearing. The decision to deny the Request to Reopen the hearing was within the latitude given the PC under the rules.

After the Request to Reopen filed with the PC the appellant, in the appeal letter, asserted that new witnesses have come forward. This information was not presented to the PC in any Request to Reopen. Since this information was not part of any decision of a PC, any action on this assertion is beyond the reach of the AAC.

Best Regards,

The Appeals Committee of the Yacht Racing Association of San Francisco Bay  
Michael Gross, Chair

Cc:

Mr. Borton, *French Kiss*, Appellant

Mr. Zarwell, Protest Committee Chair

Mr. Roesler, *Encore*, Party

Appeals Committee Members:

John Christman

Paul Kamen

John Siegel