

NEW JERSEY RACING COMMISSION
WEDNESDAY, SEPTEMBER 22, 2021
TELEPHONE MEETING

A public meeting of the New Jersey Racing Commission ("NJRC" or "Commission") was held on Wednesday, September 22, 2021 by telephone.

The following were present:

Pamela J. Clyne, Chairman
Michael J. Arnone, D.D.S., Commissioner
Lawrence DeMarzo, Commissioner
Francis X. Keegan, Jr., Commissioner
Charles E. Tomaro, Commissioner
Glen Vetrano, Commissioner
Judith A. Nason, Executive Director
Jeffrey Nielsen, Associate Counsel, Governor's Authorities Unit
SDAG George Cohen

Executive Director Nason read the following resolution:

"This meeting today conforms with the Open Public Meetings Act, and as per the requirements of the statute, notification of this meeting has been filed with the Secretary of State and with the following newspapers: Daily Racing Form, Bergen Record, Asbury Park Press, Courier-Post and the Star Ledger.

WHEREAS, in order to protect the personal privacy and to avoid situations wherein the public interest might be disserved, the Open Public Meetings Act permits bodies to exclude the public from that portion of a meeting at which certain matters are discussed.

NOW, THEREFORE, BE IT RESOLVED that consistent with N.J.S.A. 10:4-12(b), the Commission will now adjourn to Executive Session to obtain legal advice protected from disclosure by the attorney-client privilege on the following matters:

1. Legal advice concerning the interlocutory review of OAL order to consolidate Cullipher, Johnson, Harrison, McDermott, Melander, Norman, Pelling and Torro v. New Jersey Racing Commission, OAL Docket Nos. RAC 7204-20N, 7849-20N, 7854-20N, 7841-20N, 7202-20N, 09996-20N, 7843-20N, 03580-21N, 7861-20N, 7203-20N and 7845-20N.
2. Legal advice concerning the permit holders' requests to waive the requirements of N.J.A.C. 13:74-2.4(b) (OTW Progress Benchmarks) for 2021 due to the ongoing effects of the public health emergency.

3. Consider the application for emergency relief and the OAL order denying emergent relief in Don Tiger v. New Jersey Racing Commission, OAL Docket No. RAC 07166-21.
4. Other legal advice.

Discussion of the above matters falls within the exceptions under the law; specifically, matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the Commission's attorney to exercise his ethical duties as a lawyer, and/or matters involving pending or anticipated litigation."

Commissioner Keegan motioned to adjourn into Executive Session. Commissioner Tomaro seconded the motion. All of the Commissioners voted to affirm. The Commission then adjourned to Executive Session.

Commissioner Arnone made a motion to adjourn from Executive Session into the Public Session. Commissioner Keegan seconded the motion and all of the Commissioners voted yes.

The Executive Session ended.

CONSIDER APPROVAL OF THE PUBLIC AND EXECUTIVE SESSION MINUTES OF THE JULY 21, 2021 COMMISSION MEETING.

Commissioner Arnone made a motion to approve the public and executive session minutes of the July 21, 2021 Commission meeting. Commissioner Tomaro seconded the motion. The Commissioners voted yes with the exception of Commissioner Vetrano who abstained.

CONSIDER THE RATIFICATION OF THE CANCELLATION OF RACING AT MONMOUTH PARK ON AUGUST 22, 2021 DUE TO THE EFFECTS OF TROPICAL STORM HENRI.

Executive Director Nason stated that on August 22, 2021, Tropical Storm Henri produced extreme weather conditions in New Jersey. Racing Secretary John Heims emailed the Commission to request permission to cancel racing at Monmouth Park due to high winds and heavy rains, which were presenting unsafe racing conditions. Based upon the reported heavy rain and wind gusts up to 45 mph, the Executive Director approved the cancellation subject to the Commissioners' ratification.

Commissioner Keegan made a motion to ratify the approval granted to Monmouth Park for the cancellation of racing on August 22, 2021 due to Tropical Storm Henri. Commissioner Arnone seconded the motion and all of the Commissioners voted yes.

CONSIDER THE REQUEST OF THE NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION TO AMEND THE 2021 THOROUGHBRED RACE DATES AT THE MEADOWLANDS.

Executive Director Nason stated that at the November 18, 2020 public meeting, the Racing Commission allocated the dates of October 1, 2, 8, 9, 15, 22, 23, 29, and 30 to the New Jersey Thoroughbred Horsemen's Association ("NJTHA") to conduct thoroughbred racing at the Meadowlands.

Executive Director Nason explained that on September 10, 2021, John Heims, In-House Counsel for Monmouth Park, on behalf of Darby Development, LLC and the NJTHA filed a letter requesting the cancellation of thoroughbred racing on Friday, October 22nd and Friday, October 29th. Executive Director Nason explained that the letter indicates that the request to cancel these two race dates is part of an agreement reached with the standardbred industry that will allow the Meadowlands Racetrack to host the Breeders' Crown races on October 22, 23, 29 and 30. Executive Director Nason pointed out that cancelling these two days would reduce the total number of allocated thoroughbred race dates to 64.

Executive Director Nason stated that on September 13, 2021, NJTHA Executive Director Michael Musto indicated that the NJTHA consents to the schedule change.

Commissioner Keegan moved that the Commission amend the 2021 thoroughbred race dates at the Meadowlands. Commissioner Arnone seconded the motion and all of the Commissioners voted yes.

CONSIDER APPROVAL OF THE OFFICIALS, POOLS, POST-TIMES AND PRICES FOR THE 2021 THOROUGHBRED MEET AT THE MEADOWLANDS.

Executive Director Nason stated that the Commissioners must consider the racing and wagering format for the thoroughbred meet at the Meadowlands. Executive Director Nason explained that the meet will consist of seven days of turf racing on October 1, 2, 8, 9, 15, 23 and 30th with a 7:00 pm post-time. In addition, she stated wagering will include win, place, show, Daily Double, exacta, trifecta, superfecta, Pick 3, 4 and 5 and the Jersey 6. The Executive Director indicated that a list of the officials and wagering minimums was included in the meeting packet.

Commissioner Tomaro motioned to approve the racing and wagering format. Chairman Clyne seconded the motion and all of the Commissioners voted yes.

CONSIDER THE APPROVAL OF THE FAR HILLS SPECIAL STEEPLECHASE MEET'S OFFICIALS, POOLS, POST-TIMES AND PRICES.

Executive Director Nason stated that the one-day meet on October 16th at Moorland Farm is the 100th running of the Far Hills steeplechase meet. She pointed out that the meet was cancelled last year due to the pandemic and the public health emergency. The Executive Director stated that the Far Hills race meeting has resulted in the donation of more than \$18 million to support local healthcare organizations.

Executive Director Nason explained that the gates open at 8:00 am with a post-time of 1:00 pm. The wagering format will include win, place, show, exacta, trifecta, superfecta and Pick 3. The Executive Director indicated that a list of the officials and wagering minimums was included

in the Commissioners' meeting packet. She also indicated that the races will be simulcast as an official race day utilizing Monmouth Park's contracts.

Executive Director Nason explained that all onsite pari-mutuel wagering will be conducted through the 4NJBets account wagering system and there will not be any pari-mutuel wagering machines onsite this year. Executive Director Nason indicated that patrons will be encouraged to open an account with 4NJBets and wager using their cell phones.

Chairman Clyne made a motion to approve the racing and wagering format for the Far Hills special steeplechase meet. Commissioner Keegan seconded the motion and all of the Commissioners voted yes.

CONSIDER THE REQUEST OF NEW MEADOWLANDS RACETRACK TO AMEND THE 2021 STANDARD BRED RACE DATES.

Executive Director Nason explained that on September 13th, General Manager and COO Jason Settlemoir filed a request to add standardbred racing at New Meadowlands Racetrack on October 22, 23, 29 and 30 to host the prestigious Breeders Crown races. She indicated that the request also asked to cancel live racing on Thursday, December 16th and Thursday, December 30th. She stated that if the request is granted, it would increase the number of standardbred race days allocated to the Meadowlands from 90 to 92.

Executive Director Nason noted that Executive Administrator Al Ochsner submitted an email on September 17, 2021 indicating that the SBOANJ agrees with the amended date request.

Executive Director Nason explained that the racing and wagering format for the additional dates are consistent with the format already approved by the Commission. She stated that the post-time will be 6:15 pm on Friday, October 22nd and Friday, October 29th. She indicated that post-time will be noon on Saturday, October 23rd and Saturday, October 30th and the thoroughbreds will start racing at 7:00 pm on those two days.

Commission Vetrano made a motion to approve the New Meadowlands Racetrack's amended race date request. Commissioner Arnone seconded the request and all of the Commissioners voted yes.

CONSIDER THE REQUEST OF FREEHOLD RACEWAY TO AMEND ITS 2021 RACE DATES.

Executive Director Nason explained that on September 7, 2021, General Manager Howard Bruno filed a request to add live racing on Friday, December 31st. She further explained that the racing and wagering format for the additional day is consistent with the format already approved by the Commission. Executive Director Nason indicated that the additional race day would increase the number of race dates allocated to Freehold Raceway to 83. Executive Director Nason stated that the SBOANJ agrees with the request to add December 31st.

Commissioner Keegan motioned to approve Freehold Raceway's request to amend the 2021 race dates. Commissioner Vetrano seconded the motion and all of the Commissioners voted yes.

CONSIDER THE DISTRIBUTION OF THE CASINO SIMULCASTING SPECIAL FUND MONIES ACCUMULATED IN 2020.

Executive Director Nason indicated that the Commission has received written requests from each of the racetracks and the horsemen's organizations regarding the Casino Simulcasting Special Fund ("CSSF") monies accumulated in 2020. She explained that the distribution of these monies is not at issue for the Commission to consider. The Executive Director explained that the question to consider is whether the Commission is ready to close the record. She explained that in past years, the Commission has appointed two Commissioners to the CSSF Committee. The Committee then considers the requests and reports back with recommendations to the Commission at the next public meeting. The Executive Director indicated that the distribution of the monies will then formally be considered at that public meeting.

Executive Director Nason explained that the racetracks and horsemen's organizations were contacted by email on September 13, 2021 to ask whether they would like to make verbal comments at today's meeting to add any information to their written requests. She indicated that no racetrack or horsemen's organization asked to make verbal comments.

Executive Director Nason asked if the Commission wanted to close the record.

Commissioner Arnone made a motion to close the record. Commissioner Keegan seconded the motion and all of the Commissioners voted yes.

Executive Director Nason then asked if the Commissioners wanted to appoint two or three Commissioners to the CSSF Committee to review the submissions and report back to the full Commission with recommendations. Executive Director Nason explained that in the past Chairman Clyne and Commissioner Keegan have served on the CSSF Committee and that Commissioner Tomaro has expressed an interest in serving on the Committee.

Commissioner Arnone made a motion to appoint Chairman Clyne, Commissioner Keegan and Commissioner Tomaro to the CSSF Committee. Commissioner DeMarzo seconded the motion and all of the Commissioners voted yes.

CONSIDER INTERLOCUTORY REVIEW OF OAL ORDER TO CONSOLIDATE CULLIPHER, JOHNSON, HARRISON, MCDERMOTT, MELANDER, NORMAN, PELLING AND TORRO V. NEW JERSEY RACING COMMISSION, OAL DOCKET NOS. RAC 7204-20N, 7849-20N, 7854-20N, 7841-20N, 7202-20N, 09996-20N, 7843-20N, 03580-21N, 7861-20N, 7203-20N AND 7845-20N.

Executive Director Nason explained that the Office of Administrative Law ("OAL") issued an Order, which consolidated 11 contested cases that involve 8 different trainers, 11 races and 10 different horses that tested positive for Phenylbutazone. She also explained that the Deputy

Attorney General (“DAG”) representing Commission filed a request for interlocutory review asking the Commission to overturn the consolidation of these cases for trial.

Executive Director Nason stated that N.J.A.C. 1:1-17.3, which applies to a motion to consolidate, requires the consideration of six factors. She explained that these factors include: the identity of parties; the questions of fact and law respectively involved; the saving in time, expense, duplication and inconsistency if heard together; the danger of confusion, delay or undue prejudice to any party; and the advisability of handling the controversies in a single proceeding.

Executive Director Nason indicated that the submissions of the attorneys have been provided to the Commissioners and briefly summarized some of the arguments they presented. The DAG representing the Commission points out the identities of the parties are different (except that three trainers have two cases each) and there are different questions of fact in each matter. Each matter involves a different horse, trainer, samples, chains of custody, test results and test reports. Arguing that consolidation would lead to the danger of confusion and highly prejudice Respondent, the DAG points out that “[p]resenting the necessary evidence to sustain these violations for even one case is a challenging task - doing it for 11 distinct cases simultaneously would be impossible.”

Executive Director Nason explained that counsel for the Petitioners argues that the ALJ correctly consolidated the 11 cases. She stated that counsel points out that the Commission is a party to all 11 cases. In each case, the trainer argues that he did not receive notice of the threshold change and the laboratory results cannot be trusted.

Executive Director Nason explained that in response, the DAG points out that commonality of defense is not one of the six factors to be considered in weighing consolidation. Although the Petitioners may save time in presenting their defense, consolidation would place an overwhelming burden on Respondent to prove such facts for each trainer and his respective horse. The DAG adds that any danger of inconsistent results among the cases is mitigated by the fact that each matter will be heard by the same Administrative Law Judge (“ALJ”).

Executive Director Nason stated that the matter before the Commissioners is to decide if the cases should remain consolidated as ordered by the ALJ.

Chairman Clyne made a motion that the Commission reverse the Order that consolidates these cases for trial and authorize the Executive Director to issue the draft Final Determination and Order on the Commission’s behalf. Commissioner Keegan seconded the motion. All of the Commissioners voted yes with the exception of Commissioner Vetrano who voted no. The motion carried.

CONSIDER ALLOCATION OF PURSE SUBSIDIES TO THE THOROUGHBRED AND STANDARD BRED INDUSTRIES FOR FISCAL YEAR 2022.

Executive Director Nason explained that N.J.S.A. 5:5-99.1 authorizes the appropriation of horse racing purse subsidies. The recipients filed the required annual report for FY2021 with the

Commission on September 20, 2021 and the Commission forwarded the report to the Governor's Office and Legislature on September 21, 2021.

Executive Director Nason explained that the State has appropriated \$15 million in purse subsidies for FY2022. The statute requires that the Commission allocate the \$15 million equally between the thoroughbred and standardbred industries. She also explained that of the funds allocated to the thoroughbred industry, the Commission must allocate 100 percent to Monmouth Park overnight purses. Of the funds allocated to the standardbred industry, the Commission must allocate 60 percent to Meadowlands overnight purses; 16 percent to Freehold overnight purses; 12 percent to the New Jersey Sire Stakes purses; 6 percent to purse bonuses for New Jersey sired horses; and 6 percent for breeders awards purses.

Executive Director Nason indicated that these percentages work out to be \$7.5 million to Monmouth Park, \$4.5 million to New Meadowlands Racetrack, \$1.2 million to Freehold Raceway, \$900,000 to the New Jersey Sire Stakes, \$450,000 to standardbred purse bonuses for New Jersey sired horses, and \$450,000 to standardbred breeders awards purses.

Commissioner Arnone motioned to allocate the purse subsidy monies for FY2022 as required by statute. Chairman Tomaro seconded the motion and all of the Commissioners voted yes.

CONSIDER THE PERMIT HOLDERS' REQUEST TO WAIVE THE REQUIREMENTS OF N.J.A.C. 13:74-2.4(b) (OTW PROGRESS BENCHMARKS) FOR 2021 DUE TO THE CONTINUATION OF THE PUBLIC HEALTH EMERGENCY THROUGH JUNE 4, 2021.

Executive Director Nason explained that on September 9th, the three racetrack permit holders filed a request asking the Commission to waive N.J.A.C. 13:74-2.4(b) for another year due to the continuation of the public health emergency through June 4, 2021 and the recent spike in COVID-19 cases. She further explained that the permit holders also assert that because of the volatile price of building materials, further OTW development would not be prudent at this time. The Executive Director indicated that on September 17th, the Commission received a letter from former permit holder, Atlantic City Race Course, which joins in the request.

Executive Director Nason explained that N.J.A.C. 13:74-2.4(b)(1) requires that each permit holder shall file an application with the Commission seeking an initial off-track wagering license to open a new off-track wagering facility by December 31, 2020. She explained that last year, the permit holders asked the Commission to waive the rule for 2020 due to the pandemic and public health emergency, which closed the racetracks for several months. Executive Director reminded the Commissioners that at the November 2020 meeting, the Commission granted the waiver, which then allowed the permit holders until December 31, 2021 to file an application to open a new OTW. The rule also requires the permit holder to demonstrate that the proposed OTW is in a suitable location and other factors.

Executive Director Nason indicated that the permit holders and former permit holder are now asking the Commission to waive N.J.A.C. 13:74-2.4(b) for 2021, which would give them until December 31, 2022 to comply with the requirements of the rule.

She explained that the waiver rule allows the Commission to waive the progress requirements for calendar year 2021 if the Commission determines that “such a waiver will benefit the horse racing industry in this State.”

Chairman Clyne stated that she believes that granting the permit holders’ request to waive the rule for 2021 would benefit our horse racing industry. She pointed out that the public health emergency continued through June 4, 2021. Chairman Clyne added that the Commission should accept that the public health emergency, the recent spike in COVID-19 cases, and the volatile price of building materials have interfered with the permit holders’ ability to locate, purchase or lease suitable property for an OTW and to file an application by the end of this year.

Chairman Clyne made a motion that the Commission waive the rule for 2021 and extend the deadline for filing an application until December 31, 2022. Commissioner Keegan seconded the motion and all of the Commissioners voted yes.

CONSIDER THE APPLICATION FOR EMERGENCY RELIEF AND THE OAL ORDER DENYING EMERGENT RELIEF IN DON TIGER V. NEW JERSEY RACING COMMISSION, OAL DOCKET NO. RAC 07166-21.

Executive Director Nason explained that in the Meadowlands Pace on July 17, 2021, the NJRC’s Board of Judges determined that the horse “Charlie May” interfered with three other horses. She further explained that the Judges disqualified “Charlie May,” moved the horse from 1st to 9th place and declared the race official. Executive Director Nason indicated that Don Tiger, the horse’s owner, filed a notice of appeal and the Commission transmitted the matter to the OAL as a contested case on August 23, 2021.

Executive Director Nason explained that on September 15, 2021, counsel for the Petitioner sent an email to the DAG who is representing the Commission in the contested case. Petitioner’s counsel copied the NJRC and the OAL on the email, which requested emergency relief pursuant to N.J.A.C. 1:1-12.6. Executive Director Nason explained that the Petitioner sought an Emergency Order staying the disqualification of “Charlie May” in the Meadowlands Pace and establishing that both “Charlie May” and “Lawless Shadow” are the winner for the purposes of entry into the Little Brown Jug on September 23, 2021. She stated that the Petitioner requested that a telephone hearing be scheduled on September 16th to hear the emergency application.

Executive Director Nason explained that ALJ Andrew M. Baron, who is handling the contested case, decided to hear the application. ALJ Baron scheduled a conference on September 15, 2021, accepted legal submissions from the parties on September 16, 2021, conducted an emergent hearing and issued an Order Denying Emergent Relief on September 17, 2021.

Executive Director Nason indicated that in the OAL Order, the ALJ concluded that the Petitioner has not satisfied any of the four prongs of the test for emergency relief and that emergent

relief cannot be granted at this time. Citing N.J.A.C. 1:1-12.6, which requires that an application for emergency relief shall be filed with the agency head, the ALJ also concluded that jurisdiction over the application is properly vested with the Racing Commission.

Executive Director Nason explained that on September 20, 2021, the Commission issued an amended agenda adding the consideration of the OAL Order and application for emergency relief to the agenda for this meeting. The application, legal briefs and OAL Order have been provided to the Commissioners.

Executive Director Nason noted that the entry box for the Little Brown Jug closed on September 20, 2021 and the horse "Charlie May" was not entered in the race.

Executive Director Nason asked the Commissioners to consider the OAL Order and the application for emergency relief.

Chairman Clyne stated that she does not think that the ALJ had jurisdiction to hear the application. She also stated that the rule requires that the application be decided by the agency head, which is the Commission, and, as a result, the Commission needs to issue a decision on the application.

Chairman Clyne motioned that the Commission deny the application for emergency relief and authorize the Executive Director to issue the draft Order. Chairman Clyne indicated that she does not believe that Petitioner demonstrated any of the required factors. She added that the application appears to be moot as the entry box for the Little Brown Jug closed on September 20th and the horse "Charlie May" is not entered in the race. Commissioner DeMarzo seconded the motion and all of the Commissioners voted yes.

Executive Director Nason indicated that Part A of the formal agenda is concluded and stated Part B contains items for discussion and information.

ITEMS FOR DISCUSSION AND INFORMATION

Executive Director Nason announced that the financial status is available and may be requested if anyone would like a copy. She also announced that breakdowns of the New Jersey wagering on the 2021 Meadowlands Pace, Haskell Stakes and Hambletonian Day are also available.

Executive Director Nason then opened the meeting to the public by phone for any comments or to bring new business to the Commission's attention.

Reporter Lynne Snierson from Bloodhorse.com asked for clarification on the amended thoroughbred dates at the Meadowlands. Executive Director Nason indicated that the thoroughbreds will race on October 1, 2, 8, 9, 15, 23 and 30.

Executive Director Nason asked if there were any additional questions or comments. There were no additional questions or comments. Executive Director then thanked the Commissioners and everyone on the call.

Commissioner Arnone moved that the meeting be adjourned. Chairman Clyne seconded the motion and all of the Commissioners voted yes.

ATTEST:



Judith A. Nason, Executive Director