

NEW JERSEY RACING COMMISSION
WEDNESDAY, SEPTEMBER 21, 2022
FREEHOLD RACEWAY
“RENAISSANCE DINING ROOM”
FREEHOLD, NEW JERSEY

A public meeting of the New Jersey Racing Commission (“NJRC” or “Commission”) was held on Wednesday, September 21, 2022 in the Renaissance Dining Room located at Freehold Raceway in Freehold, New Jersey.

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
Jeffry Nielsen, Esq., Associate Counsel, Governor's Authorities Unit (by phone)
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 Monmouth Park’s request for New Jersey Racing Commission consent to the acceptance of fixed odds wagers on certain out-of-state races as required by the Interstate Horseracing Act.
2. Legal advice concerning the settlement agreement in the matter of Ronald Burke v. NJRC, OAL Docket No. RAC 04322-21S.
3. Legal advice concerning the initial decision in the matter of Joseph Bongiorno v. NJRC, OAL Docket No. RAC 05607-21.

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

CONSIDER APPROVAL OF THE EXECUTIVE AND PUBLIC SESSION MINUTES OF THE JULY 20, 2022 COMMISSION MEETING.

Commissioner Keegan made a motion to approve the public and executive minutes of the July 20, 2022 Commission meeting. Chairman Clyne seconded the motion and all the Commissioners voted yes.

CONSIDER APPROVAL OF THE PUBLIC SESSION MINUTES OF THE AUGUST 31, 2022 SPECIAL COMMISSION MEETING.

Commissioner Tomaro made a motion to approve the public and executive minutes of the August 31, 2022 Commission meeting. Chairman Clyne seconded the motion and all the Commissioners voted yes.

CONSIDER RATIFICATION OF THE CANCELLATION OF RACING AT NEW MEADOWLANDS RACETRACK ("NMR") ON SEPTEMBER 8, 2022 DUE TO INSUFFICIENT ENTRIES.

Executive Director Nason explained that on September 3, 2022, General Manager and Chief Operating Officer Jason Settlemoir requested approval of the cancellation of racing at NMR due to insufficient entries. After consulting with Standardbred Breeders and Owners Association of New Jersey ("SBOANJ") President Mark Ford, Mr. Settlemoir stated that NMR and the SBOANJ agreed that cancelling racing on September 8, 2022 and racing only on September 9th and 10th that week would be in the best interest of racing.

The Executive Director approved the cancellation of racing subject to the ratification of the Commission.

Commissioner Keegan made a motion to ratify the cancellation of racing. Chairman Clyne seconded the motion and all of the Commissioners voted yes.

CONSIDER APPROVAL OF THE OFFICIALS, POOLS, POST-TIMES AND PRICES FOR THE 2022 THOROUGHBRED MEET AT THE MEADOWLANDS RACETRACK.

Executive Director Nason stated that the Commission is being asked to approve the racing and wagering format for the thoroughbred meet at the Meadowlands. The Executive Director explained that the meet will consist of nine days of turf racing on September 23, 24, 30 and October 1, 7, 8, 14, 21 and 22 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. Executive Director Nason indicated that a list of the officials and wagering minimums was included in the meeting packet.

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

Executive Director Nason stated that the Commission is being asked to approve the racing and wagering format for the Far Hills Special Steeplechase meet on October 15th at Moorland Farm. She stated that this is a fine day of steeplechase racing for a very good cause. Over the years, 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 one-day meet will begin with the gates opening 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 pointed out 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 DISTRIBUTION OF THE CASINO SIMULCASTING SPECIAL FUND MONIES ACCUMULATED IN 2021.

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 monies accumulated in 2021. She stated that the monies from 2021 total \$209,253.71. The Executive Director explained that the distribution of these monies is not at issue for the Commission to consider at today's meeting. She explained that the question to consider is whether the Commission is ready to close the record. The Executive Director

explained that in past years, the Commission has appointed three Commissioners to the CSSF Committee. The Committee 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 be formally considered at the November public meeting.

Executive Director Nason explained that the racetracks and horsemen's organizations were contacted 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 Tomaro made a motion to close the record. Commissioner DeMarzo seconded the motion and all of the Commissioners voted yes.

Executive Director Nason then asked if the Commissioners wanted to reappoint three Commissioners to the CSSF Committee to review the submissions and report back to the full Commission with recommendations. Executive Director Nason stated that last year Chairman Clyne, Commissioner Keegan and Commissioner Tomaro served on the CSSF 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 ALLOCATION OF PURSE SUBSIDIES TO THE THOROUGHBRED AND STANDARD BRED RACING INDUSTRIES FOR FISCAL YEAR 2023.

The Executive Director explained that State has appropriated \$25 million in purse subsidies for Fiscal Year 2023. The statute requires that the Commission allocate the \$25 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 explained that these percentages work out to be \$12.5 million to Monmouth Park, \$ 7.5 million to New Meadowlands Racetrack, \$ 2 million to Freehold Raceway, \$ 1.5 million to the New Jersey Sire Stakes, \$750,000 to standardbred purse bonuses for New Jersey sired horses, and \$750,000 to standardbred breeders awards purses.

Executive Director Nason stated that the recipients of the funds filed the required annual report for last fiscal year with the Commission on September 1st and the Commission forwarded the report to the Governor's Office and Legislature on September 7th. As a result, the Commission may consider allocating the purse subsidies.

Commissioner Arnone motioned to allocate the purse subsidy monies for FY2023 as required by statute. Chairman Tomaro seconded the motion and all of the Commissioners voted yes.

CONSIDER MONMOUTH PARK'S REQUEST FOR NEW JERSEY RACING COMMISSION CONSENT TO THE ACCEPTANCE OF FIXED ODDS WAGERS ON CERTAIN OUT-OF-STATE RACES AS REQUIRED BY THE INTERSTATE HORSERACING ACT.

Executive Director Nason indicated that last year, Governor Murphy approved the Fixed Odds Wagering Act, N.J.S.A. 5:5-190 et seq. Fixed odds wagering is a form of horse racing wagering against odds offered by a bookmaker in which account holders may lock in their odds when the bet is first placed and no fluctuation in potential payout may occur. The Executive Director pointed out that fixed odds wagering is regulated by the Division of Gaming Enforcement.

Executive Director Nason explained that Monmouth Park started by accepting fixed-odds wagers on its own, in-state races. However, the racetrack is seeking to expand by accepting fixed odds wagers on out-of-state races. For interstate wagers, the Interstate Horseracing Act, 15 USCS §§3001 et seq. requires the consent of the racing commission in the state where the wager is accepted and the consent of the racing commission in the state where the race is conducted.

Executive Director Nason informed the Commission that on August 29, 2022, Monmouth Park and BetMakers, LLC filed a joint request, which asks the Commission to consent to the acceptance of fixed odds wagers in 2022 on certain thoroughbred, quarter horse and harness races conducted at 17 out-of-state racetracks located in Arizona, Delaware, Florida, Illinois, Kentucky, Louisiana, Minnesota, New York, Ohio, Oregon, Virginia and Washington. Executive Director Nason indicated that a list of the officials and wagering minimums was included in the meeting packet.

She stated that NJRC staff recommend that the Commission consent to the acceptance of fixed odds wagers at the specified racetracks in these 12 states in calendar year 2022.

Commissioner Vetrano made a motion to consent to Monmouth Park's and BetMakers' acceptance of fixed odds wagers on the requested out-of-state races in 2022. Commissioner Keegan seconded the motion and all of the Commissioners voted yes.

CONSIDER APPROVAL OF THE 2022 BUDGET FOR THE STANDARD BRED BREEDERS AND OWNERS ASSOCIATION OF NEW JERSEY.

Executive Director Nason explained that the SBOA submitted a 2022 budget. The budgeted income for 2022 is \$2,508,000 which is \$183,500 higher than its 2021 budget. The SBOA anticipates that \$1,834,750 will be dedicated to benevolent programs. This works out to be 73.16% of its funding, which exceeds the 70% minimum required by N.J.A.C. 13:71-1.25(g) by \$79,150.

Commissioner Vetrano made a motion to approve the SBOANJ's 2022 budget. Commissioner Keegan seconded the motion and all of the Commissioners voted yes.

CONSIDER THE SETTLEMENT AGREEMENT IN THE MATTER OF RONALD BURKE V. NJRC, OAL DOCKET NO. RAC 04322-21S.

Executive Director Nason explained that on December 12, 2020, the horse "Tru Lou," trained by Ronald Burke, finished first in the first race at the Meadowlands Racetrack. Post-race testing discovered the presence of dextrophan in the horse's urine sample. Split sample testing by the laboratory at Texas A&M confirmed the positive.

She pointed out that after conducting a hearing, the Board of Judges issued a ruling on April 27, 2021, which determined that the trainer violated N.J.A.C. 13:71-23.1, N.J.A.C. 13:71-23.6 and N.J.A.C. 13:71-23.7 and imposed a 15-day suspension and \$500 fine, disqualified the horse, ordered loss of purse monies and issued ½ Multiple Medication Violation ("MMV") point. The trainer appealed, requested a stay, which was granted, and the matter was transmitted to the OAL.

Executive Director Nason informed the Commission that counsel for the parties have negotiated a proposed settlement agreement. Pursuant to the proposed settlement, the trainer would withdraw his appeal, waive his right to a hearing, agree to a 10-day suspension and \$500 fine, forfeit the purse monies and receive ½ of a MMV point. In addition, the trainer would have a record of violating N.J.A.C. 13:71-23.1, N.J.A.C. 13:71-23.6 and N.J.A.C. 13:71-23.7.

Commission Tomaro made a motion to approve the settlement agreement. Chairman Clyne seconded the motion and all of the Commissioners voted yes.

CONSIDER THE INITIAL DECISION IN THE MATTER OF JOSEPH BONGIORNO V. NJRC, OAL DOCKET NO. RAC 05607-21.

Executive Director Nason explained that in the 7th race at the Meadowlands Racetrack on May 29, 2021, Petitioner Joseph Bongiorno was driving "Pat Stanley N" on the lead in the homestretch. Horses passed "Pat Stanley N," which appeared to be slowing down, Petitioner continued to urge the horse and "Pat Stanley N" fell, causing other horses and drivers to fall.

The Board of Judges conducted a hearing on June 11, 2021 and issued Amended Ruling No. 21MDH76, finding that Petitioner committed multiple violations of N.J.A.C. 13:71-20.15 by failing to keep the lines reasonably taut during the race, using more than wrist action in whipping the horse, raising his whipping arm above his shoulder and continuing to urge the horse after it was no longer responding. The Board of Judges found that the culmination of these actions, each of which is a violation of N.J.A.C. 13:71-20.15, placed Mr. Bongiorno in a position of being unable to respond when the horse Pat Stanley N stumbled and fell, unseating Mr. Bongiorno as well as two other drivers. As a result, the judges decided that Petitioner also violated N.J.A.C. 13:71-7.29(a)(13) for conduct detrimental to the sport. For these violations, the judges imposed a 20-day suspension and \$5,000 fine.

Petitioner filed an appeal and requested a stay, which was granted, and the matter was transmitted to the Office of Administrative Law as a contested case.

In an August 2, 2022 Initial Decision, Administrative Law Judge Kimberly A. Moss ("ALJ") concluded that Petitioner violated N.J.A.C. 13:71-20.15(c)3 and 4 for driving in an exaggerated manner, failing to keep the lines taut and using the whip with his arm raised above his shoulder. The ALJ reversed the Board of Judges' determination that Petitioner continued to use the whip while the horse was not responding. The ALJ made no findings and reached no conclusion regarding the judges' determination that Petitioner violated N.J.A.C. 13:71-7.29(a)(13) for conduct detrimental to the sport. Finally, the ALJ reduced the penalties imposed by the Board of Judges from a 20-day suspension and \$5,000 fine to a 7-day suspension and \$1,000 fine.

On August 19, 2022, Deputy Attorney General Eric A. Reid, who represented the NJRC at the OAL, filed exceptions to the Initial Decision, asking that the Commission restore the violations and penalties imposed by the Board of Judges. No reply was filed and the record closed.

Executive Director Nason pointed out that the Commission can adopt, reject or modify the initial decision.

Chairman Clyne made the following motion:

"I move that we modify the Initial Decision and authorize the Executive Director to issue the draft Final Decision on the Commission's behalf. Although it accepts some of the ALJ's findings regarding the driver's multiple violations of the whipping rule, the Final Decision sets forth the Commission's determination that Petitioner also violated the rule by continuing to use the whip to urge the horse after it was not responding in the home stretch.

The Final Decision also sets forth the Commission's finding that Petitioner engaged in conduct detrimental to the sport by driving the horse in such a manner that he did not have control of the horse and was not able to respond properly when it stumbled.

Finally, for the reasons set forth in the Final Decision, I agree with the Board of Judges that a 20-day suspension and \$5,000 fine are the appropriate penalties."

Commissioner Keegan seconded the motion and all of the Commissioners voted yes.

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

AGENDA ITEMS FOR DISCUSSION AND INFORMATION

Executive Director Nason pointed out that copies of the breakdown of New Jersey wagering on the 2022 Meadowlands Pace, the 2022 Haskell Stakes and the 2022 Hambletonian Day are available at the entrance.

The Executive Director asked if anyone would like to comment or bring new business to the Commission's attention. Hearing none, the Executive Director thanked everyone for attending the meeting and asked if there was a motion to adjourn.

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

ATTEST:



Judith A. Nason, Executive Director