

**NEW JERSEY RACING COMMISSION
WEDNESDAY, FEBRUARY 27, 2019
MONMOUTH PARK RACETRACK
“LIBRARY ROOM”
OCEANPORT, NEW JERSEY**

A meeting of the New Jersey Racing Commission was held on Wednesday, February 27, 2019 in the Library Room located at Monmouth Park Racetrack in Oceanport, New Jersey.

The following were present:

Pamela J. Clyne, Chairman
Michael J. Arnone, Commissioner
Francis X. Keegan, Jr., Commissioner
Judith A. Nason, Acting Executive Director
SDAG George Cohen

Acting Executive Director Nason read the following statement:

“This meeting today conforms with Chapter 231, P.L. 1975, called 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 Newark 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 grant of an initial sports wagering license to the New Jersey Thoroughbred Horsemen’s Association for Monmouth Park Racetrack;
2. Legal advice concerning the grant of an initial sports wagering license to New Meadowlands Racetrack, LLC for New Meadowlands Racetrack;
3. Legal advice concerning the interlocutory review of the Order of Consolidation in John Colasanti v. New Jersey Racing Commission, OAL Docket Nos. RAC 11895-18 and RAC 18173-18; and
4. Other legal matters.

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 adopt the resolution to adjourn. Chairman Clyne seconded the motion. All of the Commissioners present voted to affirm. The Commission then adjourned to Executive Session.

Commissioner Arnone made a motion to adjourn from Executive Session into the Public Session. Chairman Clyne seconded the motion and the Commissioners voted to affirm. The Executive Session ended.

CONSIDER APPROVAL OF THE PUBLIC AND EXECUTIVE SESSION MINUTES OF THE JANUARY 23, 2019 COMMISSION MEETING

Commissioner Keegan made a motion to approve the public and executive minutes of the January 23, 2019 public meeting. Chairman Clyne seconded the motion and all Commissioners voted yes.

CONSIDER THE ALLOCATION OF HORSE RACING PURSE SUBSIDIES TO THE THOROUGHBRED AND STANDARD BRED INDUSTRIES IN ACCORDANCE WITH P.L. 2019, c. 36 (S2992)

Acting Executive Director Nason stated that on February 14, 2019, Governor Murphy signed the bill S2992 into law. S2992 appropriates to the Racing Commission, out of the State's General Fund, \$20 million annually in the current fiscal year in each of the four fiscal years thereafter for horse racing purse subsidies. The law requires that the Commission allocate the \$20 million equally between the thoroughbred and the standardbred industry. Of the funds allocated to the thoroughbred industry, the law requires that 100% shall be allocated to Monmouth Park overnight purses. Of the funds allocated to the standardbred industry, the law requires that 60% shall be allocated to Meadowlands' overnight purses, 16% to Freehold overnight purses, 12% to the New Jersey Sire Stakes purses, 6% to purse bonuses for New Jersey-sired horses and 6% for breeders' awards purses. This bill provides much needed revenue to the racing industry for purses. Acting Executive Director Nason indicated that this matter is before the Commission today to formally allocate the monies as provided by law.

Commissioner Arnone asked who were the parties that determined the allocation of the monies. Acting Executive Director Nason responded that members of the racing industry were involved in discussions with the Legislature. Dennis Drazin, Esq., President and CEO of Darby Development, LLC, indicated that the standardbred racetrack, horsemen and breeding organization were involved in allocating the standardbred money, and the thoroughbred horsemen's organization was involved in how to allocate the money to Monmouth Park and the thoroughbred purses. Mr. Drazin indicated that the concern on the part of the thoroughbred industry was to ensure that the money was allocated for the use of purses and not allocated in another area. Jason Settlemaier, COO/General Manager of the New Meadowlands Racetrack,

added that the Meadowlands and the SBOA of New Jersey were actively involved in the allocations in addition to the New Jersey Sire Stakes.

Chairman Clyne motioned that the Commission allocate the following amounts of monies to the horse racing industry as required by the purse subsidy bill: \$10 million to Monmouth Park overnight purses; \$6 million to New Meadowlands Racetrack overnight purses; \$1.6 million to Freehold Raceway overnight purses; \$1.2 million to New Jersey Sire Stakes purses; \$600,000 to purse bonuses for New Jersey sired horses; and \$600,000 to breeders awards purses.

Commissioner Arnone seconded the motion and all Commissioners voted yes

CONSIDER THE GRANT OF AN INITIAL SPORTS WAGERING LICENSE TO THE NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION FOR MONMOUTH PARK RACETRACK

Acting Executive Director Nason stated the following:

"On June 13, 2018 the New Jersey Racing Commission issued an initial sports wagering license to the THA pursuant to the transactional waiver process authorized by N.J.A.C. 13:74D-1.3 and the first sports wagering in New Jersey was accepted at Monmouth Park the next day. On August 9, 2018, the THA filed an application for the sports wagering license and the matter was referred to our investigators for review. By letter dated February 15, 2019, I determined the application to be complete and placed this issue on the agenda for today's public meeting. The matter is before the Commission to decide whether to formally grant the initial sports wagering license to the THA. The record before the Commission is voluminous as it includes the application and the attachments submitted by the THA. Pursuant to N.J.A.C. 13:74D-2.1, the THA has the burden of establishing its financial stability, integrity and responsibility by clear and convincing evidence. The THA has the same burden for demonstrating its character, honesty and integrity. Next, the THA must establish that it is in compliance with the sports wagering rules of the Division of Gaming Enforcement. Finally, the THA must demonstrate that it is in good standing with the Racing Commission and that it has complied with all statutes and the rules and orders of the Commission."

Chairman Clyne asked Dennis Drazin, Esq. to comment on the THA's financial stability and integrity. Mr. Drazin stated that an independent audit of Darby Development has concluded that they are not aware of any relevant conditions or events that would prevent Darby Development from meeting its obligations in 2019 and the same would hold true for the THA because in effect the THA has hired Darby in order to operate the racetrack for them and they are reimbursed for outstanding amounts that have been spent on their behalf. In particular, Mr. Drazin stated that Monmouth Park will race 61 days, with the approval of the Commission, with 7 days racing at the Meadowlands and one date at Far Hills. He indicated that Darby Development has entered into a number of agreements subsequent to sports betting becoming relevant, which includes the original agreement with William Hill, wherein this vendor runs the operation with their own employees, and they guarantee the money (up to \$25 million) that is required by the Division of Gaming Enforcement and the Racing Commission in order to pay the bettors. In addition to this agreement, Mr. Drazin indicated that in March 2018, Darby Development entered into an account wagering service agreement and in connection with this

agreement, the revenues are guaranteed to a certain extent and these revenues have been sufficient with the other revenues that are received from Monmouth Park's operations in order to meet the debt obligations. Mr. Drazin stated that a portion of the debt does not have to be paid for quite some time, if at all. The debt that is of concern is that money owed to the State of New Jersey which represents the \$9 million the THA borrowed from the State. He indicated that the money that is received from account wagering for the THA and Darby Development is applied to the Sports Authority and they deduct the loans that are due from that revenue.

Mr. Drazin indicated that there is also money owed by the NJTHA to his law firm of Drazin and Warshaw, to him personally, and to Darby Development which they have been unable to pay. He pointed out that the Commission should be aware that the agreement the Commission approved acknowledges that any incentive bonuses or monies that are due that are a significant amount, are not payable until the State of New Jersey is paid off in full. He does not anticipate that this money owed will be paid until 2024 at the earliest.

Mr. Drazin then pointed out to the Commission that every year the horsemen would like to pay him, but they cannot afford to make the payment, therefore, when a matter is successfully litigated by Drazin and Warshaw on behalf of the THA, the THA Board of Directors have voted to use those monies to pay the management fees to Darby Development. Mr. Drazin indicated that the State is paid first, the Racing Commission obligations are paid next, then the outstanding bills and the last concern is that Darby receive the management fee and Drazin and Warshaw receive legal fees and to alleviate any concerns, this process will continue.

Mr. Drazin wanted the Commission to understand that to date, through December 31, 2018, William Hill has paid Monmouth Park both for revenue share and capital reimbursement, \$1,813,896 and that the vendor which operates one of the skins paid \$63,323, therefore, additional income is coming in. In addition to the initial licensing fee, the skins pay annual revenues. Mr. Drazin concluded that this demonstrates Monmouth Park is on solid footing and is on the right track.

Chairman Clyne made the following motion:

"I believe that the THA has demonstrated its suitability for licensure by clear and convincing evidence as required by the rule. The THA is well known to the Commission. It has been the thoroughbred permit holder at Monmouth Park and the Meadowlands since 2012. In addition, the THA has held the license for the Woodbridge OTW since 2012 and the license for the Hillsborough OTW since 2015. As the operator of Monmouth Park and the manager of the two OTWs, the account wagering system and the exchange wagering system, Darby Development is also well known to the Commission. Both the THA and Darby are in good standing with the Commission. On January 11, 2019, the Division of Gaming Enforcement notified the Commission that since beginning sports wagering on June 14, 2018, Darby has been in compliance with all statutory and regulatory requirements applicable to sports wagering operations, which include the cash reserves requirement.

For these reasons, I move that the Commission find that the THA has satisfied the standards in the rule by clear and convincing evidence. Based upon this finding, I move that the Commission grant the initial sports wagering license to the THA for Monmouth Park and

authorize the Acting Executive Director to issue the Final Determination and Order on the Commission's behalf. "

Commissioner Arnone seconded the motion and all Commissioners voted yes

CONSIDER THE GRANT OF AN INITIAL SPORTS WAGERING LICENSE TO NEW MEADOWLANDS RACETRACK, LLC FOR NEW MEADOWLANDS RACETRACK

Acting Executive Director Nason stated the following:

"On June 25, 2018, the New Jersey Racing Commission issued an initial sports wagering license to New Meadowlands Racetrack, LLC pursuant to the transactional waiver process authorized by N.J.A.C. 13:74D-1.3. New Meadowlands racetrack began accepting sports wagers on July 14, 2018. On August 13, 2018, NMR filed the application for the sports wagering license and the matter was referred to our investigators for review. By letter dated, February 15, 2019, I determined the application to be complete and placed this issue on the agenda for today's meeting.

The matter before you is to decide whether to formally grant the initial sports wagering license to NMR. The record before you is, once again, voluminous as it includes the application and attachments submitted by NMR. I've already summarized the requirements of N.J.A.C. 13:74D-2.1, which sets forth the requirements NMR must demonstrate by clear and convincing evidence."

Commissioner Keegan asked Jason Settlemoir how the racetrack is doing and is sports wagering meeting your expectations. Jason Settlemoir, COO for the New Meadowlands Racetrack, LLC, thanked the Commission for having him speak today and thanked Dennis Drazin, Esq. for being the driving force behind sports wagering. He stated that the New Meadowlands Racetrack has partnered with FanDual and the racetrack took its first bet on July 14, 2018 and began online with FanDual on September 1, 2018, and the racetrack partnered with Pointsbet for online wagering which began on September 12, 2018. Mr. Settlemoir indicated that taxable gross revenue for 2018 was \$16,138,000 was at the retail facility, and online for 2018 was \$15,375,000 for a total of over \$31,500,000. To date for 2019, taxable gross revenue at the retail facility is \$1,069,000 and online is approximately \$5.9 million for a total of over \$7 million. Mr. Settlemoir indicated that for years 2018 and 2019 through January 31st, the taxable gross revenue and retail at the racetrack are over \$17.3 million and online over \$21,250,000 for a total of \$38,582,882 million which is 34% of the industry. As the industry in 2018 did just over \$94 million and from 2019 to the end of January, almost \$19 million for taxable gross revenue of \$112 million and direct gaming taxes paid by the Meadowlands in 2018 (from July 14, 2018 to January 31, 2018), \$3,764,000 and in 2019 to date, \$866,000 with a total of \$4,630,831. Jason Settlemoir indicated that the location of the New Meadowlands Racetrack has far exceeded the racetrack's expectations.

Commissioner Keegan also asked Mr. Settlemoir if the racetrack is going to be turned over to accommodate thoroughbred racing. Mr. Settlemoir responded that Monmouth Park will be racing on the turf in 2019 and is possibly doing something additional in 2020.

Commissioner Keegan made the following motion:

“I believe that New Meadowlands Racetrack, LLC has also demonstrated its suitability for licensure by clear and convincing evidence. NMR has been a permit holder at New Meadowlands Racetrack since 2011 and the holder of the license for the Bayonne OTW since 2012. NMR is well known to the Commission and is in good standing. On January 11, 2019, the Division of Gaming Enforcement notified the Commission that since beginning sports wagering on July 14, 2018, NMR has been in compliance with all statutory and regulatory requirements for sports wagering operations.

As a result, I move that the Commission find that New Meadowlands Racetrack, LLC has satisfied the standards in the rule by clear and convincing evidence. I therefore move that the Commission grant the initial sports wagering license to New Meadowlands Racetrack, LLC and authorize the Acting Executive Director to issue the Final Determination and Order on the Commission’s behalf.”

Chairman Clyne seconded the motion and all Commissioners voted yes.

CONSIDER THE READOPTION OF THE SPORTS WAGERING RULES AT N.J.A.C. 13:74D

Acting Executive Director Nason stated that the Commission is being asked to consider the readoption of the proposed sports wagering rules which were advertised in the November 5, 2018 New Jersey Register. She indicated that the Commission received comments on the proposal which were provided to the Commissioners. In response to the comments, the Acting Executive Director stated that the Commission amended its proposal to eliminate the proposed repeal of section N.J.A.C. 13:74D-1.3 as the repeal was premature. It was noted that the amendment is not substantive in nature and will not affect the readoption.

Chairman Clyne made a motion that the Commission readopt the sports wagering rules with the amendment recommended by staff. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER THE INTERLOCUTORY REVIEW OF THE ORDER OF CONSOLIDATION IN JOHN COLASANTI V. NEW JERSEY RACING COMMISSION, OAL DOCKET NOS. RAC 11895-18 AND RAC 18173-18

Acting Executive Director Nason stated that this matter involves two separate contested cases which were consolidated at the Office of Administrative Law. The Commission transmitted Colasanti(1), which involves the imposition of a two-year suspension and \$1,000 fine for working with and transporting race horses without a license, to the OAL on August 8, 2018. The Commission transmitted Colasanti(2), which involves the denial of a stable employee’s license based in large part upon an expunged conviction, to the OAL on December 10, 2018. Acting Executive Director Nason stated that at the OAL, counsel for Colasanti filed a motion to have the two cases consolidated and the ALJ granted the motion. On February 15, 2019, the Deputy Attorney General representing the Commission filed a request for Interlocutory Review.

The DAG argues that the ALJ erred when she consolidated the cases as the alleged conduct in Colsanti(1) makes up only a small part of the license denial in Colasanti(2). The DAG cites the pertinent facts and considerations that form the basis for the license denial and points out the different burdens of proof in the two cases. The DAG argues that consolidation will cause confusion and asks the Commission to reverse the ALJ's Order of Consolidation. Counsel for Colasanti opposes the request for Interlocutory Review and argues that the Commission does not have the authority to review or reverse the OAL's Order. Counsel also argues that the ALJ correctly consolidated the two cases and that all six factors support consolidation. The OAL Order, the attorney's submissions and the applicable rules have been provided to the Commission. The Acting Executive Director indicated that this matter is now before the Commission to decide whether to grant the DAG's request to reverse the ALJ and order that the two cases be heard separately.

Christina Harvey, Esq., on behalf of John Colasanti, asked to be heard. It was noted that had not filed a request to be heard. Christina Harvey, Esq. stated that it was her understanding that under the Open Public Meetings Act when the Commission considered the request, that she would be entitled to address the Commission. The Commission granted Ms. Harvey's request to be heard.

Ms. Harvey stated that there are three jurisdictional issues that she believes bar the appeal. First, it is out of time and that the regulations are very clear in that it must be filed within five working days and it was filed on the sixth day so it is not within time. And she cited a Supreme Court case to the Commission that there is a procedural issue in which she does not believe the Commission should be hearing and that it would be take away the independence of the OAL in determining these matters. The third issue is that the appeal itself contains items that were never submitted to the ALJ in consideration of the motion so those should not be considered by the Commission. Ms. Harvey stated that she believes that there is no reason to deny consolidation, that consolidation favors both parties, that the Commission actually gains an advantage from having these issues heard together because the first is a violation which then provides support for the denial, so it does not make sense, and it should be heard together because of judicial economy and that there is a taxpayer resource issue that if they are separate, there are two separate cases of discovery that have to take place, of trials involving the exact same witnesses, so it is a waste of everyone's time if they are taken separately. She also feels that in the license denial if you take away the violation that forms the basis for Colasanti(1) then you are left with an illegal basis to consider the denial of the license because as a matter of law, an expunged matter cannot be considered. Ms. Harvey asked the Commission to deny the interlocutory appeal.

SDAG George Cohen asked Ms. Harvey as to why she said the filing was out of time because if the decision was issued on Friday, February 8th, then five business days would be Monday through and including Friday. Ms. Harvey stated because of the way the rule is written, it literally says within the time so you would count that first day.

Acting Executive Director Nason pointed out that the record in this matter is before the Commission and they have had the chance to review it.

Commissioner Keegan stated that he believed the two cases should be heard separately. He moved that the Commission grant the request and authorize the Acting Executive Director to issue the Final Determination and Order on the Commission's behalf. Chairman Clyne seconded the motion and all Commissioners voted yes.

ITEMS FOR DISCUSSION AND INFORMATION

There being no further discussion or comments from the public, Commissioner Keegan moved that the meeting be adjourned. Chairman Clyne seconded the motion and it was approved unanimously.

ATTEST:

Judith A. Nason, Acting Executive Director