

**NEW JERSEY RACING COMMISSION
WEDNESDAY, MAY 21, 2025 MONMOUTH PARK
LIBRARY ROOM – ADMINISTRATION BUILDING – 2ND FLOOR
175 OCEANPORT AVE., OCEANPORT, NEW JERSEY**

A public meeting of the New Jersey Racing Commission (“NJRC” or “Commission”) was held on Wednesday, May 21, 2025 at Monmouth Park in the Library Room, Administration Building, 2nd Floor located at 175 Oceanport Avenue in Oceanport, New Jersey.

The following were present:

Jennifer Beck, Commissioner
Lawrence DeMarzo, Commissioner
Arlene Quinones Perez, Esq., Commissioner (virtually)
Charles E. Tomaro, Commissioner
Michael Venuto, Commissioner
Glen Vetrano, Commissioner (virtually)
Sara Ben-David, Acting Executive Director
Levi Klinger-Christiansen, Deputy Attorney General
Samuel Kovach-Orr, Associate Counsel, Governor’s Authorities Unit
Alessandra Baldini, Sr. Counsel, Office of the Attorney General (virtually)

Acting Executive Director Ben-David 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 an initial decision in *Mark S. Toth v. New Jersey Racing Commission*, OAL Docket No. RAC 06480-22.
2. Legal advice concerning a settlement agreement in *Keith Torro v. New Jersey Racing Commission*, OAL Docket No. RAC 05263-2024S.
3. 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 Tomaro motioned to adjourn into Executive Session. Commissioner Venuto seconded the motion. All of the Commissioners voted to adjourn.

The Commission then adjourned to Executive Session at 12:32 p.m. There was a delay in beginning the Executive Session due to technical difficulties. The Executive Session started at 12:50 p.m.

Commissioner Venuto motioned to move back to the public session. Commissioner DeMarzo seconded the motion. All of the Commissioners agreed.

Acting Executive Director Ben-David opened the public session of the meeting with some announcements. She advised that in addition to being conducted in person, the meeting was being live-streamed. She explained that through its website, the New Jersey Racing Commission has made a link and phone number available that members of the general public may use to attend the meeting virtually through Microsoft Teams. She also pointed out, for everyone's awareness, that Microsoft Teams was being used to record the meeting. Minutes will be available on the Commission's website following the Governor's review period, as required by *N.J.S.A. 5:5-22.1*.

Acting Executive Director Ben-David stated that it is the intent of the New Jersey Racing Commission to continue to conduct in-person meetings, with virtual attendance available as an option for members of the public to utilize as well as for any Commissioner who is unable to attend in person. She acknowledged that it was the first time we were live-streaming from Monmouth Park.

Acting Executive Director Ben-David thanked Brandon Emde and Donovan Richards from the IT team for assisting with the setup and for being at the meeting to provide any technical support that may be needed. She also thanked the Racing Commission's Executive Assistant Nanci Reid and Trudy SanJose for acting as moderator and back-up moderator as well as State Investigators Kara Vesci and Joe Sczerbowicz who were pulled in to provide additional support.

CONSIDER APPROVAL OF THE PUBLIC AND EXECUTIVE SESSION MINUTES OF THE MARCH 19, 2025 MEETING

Commissioner Tomaro made a motion to approve the public and executive minutes of the March 19, 2025 Commission meeting. Commissioner DeMarzo seconded the motion, and all other Commissioner voted yes.

CONSIDER THE APPROVAL OF A REQUEST BY MEADOWLANDS RACETRACK TO CHANGE THE POST-TIME ON JULY 5, 2025

Acting Executive Director advised that she would be asking employees of the Racing Commission to present certain items. She stated that Tom Salerno, our Assistant Director Racetrack Operations, would present item 3.

Assistant Director Salerno stated that by email dated April 8, 2025, New Meadowlands Racetrack had requested a change in post-time for live racing on Saturday, July 5, 2025, from 6:20 p.m. to 7:00 p.m. Assistant Director Salerno advised that the request is being made to accommodate a soccer game crowd at MetLife Stadium. He further explained that New Meadowlands is planning on scheduling 10 races with fireworks following the races.

Commissioner DeMarzo made a motion that the Commission approve the change in post-time on July 5, 2025 from 6:20 p.m. to 7:00 p.m. Commissioner Venuto seconded the motion, and all Commissioners voted yes.

CONSIDER THE RATIFICATION OF A SERVICES AGREEMENT BETWEEN THE HORSERACING INTEGRITY AND SAFETY AUTHORITY AND THE NEW JERSEY RACING COMMISSION

Acting Executive Director Ben-David explained that the Horseracing Integrity and Safety Authority ("HISA") was established by federal legislation enacted on December 27, 2020. It requires HISA to develop and implement a racetrack safety program and an anti-doping and medication control program. HISA's racetrack safety rules became effective on July 1, 2022.

Acting Executive Director Ben-David explained that for the past three years, HISA has entered a services agreement with the Commission to implement its racetrack safety program. In 2022, a services agreement was executed by the Executive Director and ratified at a public meeting. Substantially similar services agreements were executed in 2023 and 2024. The services agreement executed for the 2024 season expired on December 31, 2024.

Acting Executive Director Ben-David stated that pursuant to her authority, she has executed a services agreement for the 2025 season subject to ratification by this Commission. This year's agreement is essentially the same as the service agreements that were executed in prior years, with the exception of certain paragraphs or areas which required revisions due to either the passage of time or changes in personnel or policy.

Acting Executive Director Ben-David indicated these exceptions were detailed in the Commissioners' meeting packets. For example, this year and going forward, the services agreement will be subject not only to the Commissioners' ratification but also to the further ratification of the Attorney General of New Jersey.

Acting Executive Director Ben-David stated that otherwise, the services agreement contains the same terms as the agreements executed in prior years. It provides for the Commission's veterinarians to perform the services they performed at Monmouth Park in June 2022 and thereafter and to undertake reasonable efforts to carry out the duties and responsibilities of the Regulatory Veterinarian/Lead Veterinarian in HISA's racetrack safety rules. The Commission also agrees to provide the services of its stewards to enforce HISA's racetrack safety rules, conduct hearings for violations that occur in New Jersey, and perform other specified duties. In return, HISA agrees to compensate the Commission for the actual cost and expenses incurred by the Commission in providing the services performed by its veterinarians and stewards. HISA also agrees to indemnify the Commission and its employees from claims, loss, liability, and costs connected with the services provided.

Commissioner DeMarzo made a motion to ratify the services agreement subject to further ratification by the Attorney General. Commissioner Tomaro seconded the motion, and all Commissioners voted yes.

CONSIDER THE RATIFICATION OF A LETTER AGREEMENT AMONG THE HORSERACING INTEGRITY AND WELFARE UNIT, THE HORSERACING INTEGRITY AND SAFETY AUTHORITY, AND THE NEW JERSEY RACING COMMISSION

Acting Executive Director Ben-David explained that HISA is required to develop and implement an anti-doping and medication control program. To implement that program, HISA must enter an agreement with either USADA or another entity equally qualified to act as a medication regulation agency. HISA has chosen to contract with Drug Free Sport International. For its work on horseracing matters, Drug Free Sport International formed HIWU. HIWU adopted anti-doping and medication rules which became effective on May 22, 2023.

Acting Executive Director Ben-David advised that for the past two years, HIWU has entered a letter agreement with the Commission for limited services. In 2023, a letter agreement was executed by the Executive Director and ratified at a public meeting. A substantially similar letter agreement was executed in 2024. The letter agreement executed for the 2024 season expired on December 31, 2024.

Acting Executive Director Ben-David stated that pursuant to her authority as Acting Executive Director, she has executed a letter agreement for the 2025 season subject to ratification by the Commission. This year's letter agreement is essentially the same as the letter agreements that were executed in prior years, with the exception of certain paragraphs or areas which required revisions due to either the passage of time or changes in personnel or policy and advised that these exceptions were detailed in the Commissioners' meeting packet. She advised that similar to the HISA services agreement, the letter agreement will be subject not only to the Commissioners' ratification but also to the further ratification of the Attorney General of New Jersey.

Acting Executive Director Ben-David stated that otherwise, the letter agreement contains the same terms as the letter agreements executed in the past two years. The Commission agrees that on race day, its stewards will select horses for post-race testing and a Commission employee will place the testing tags on the halters of the selected horses immediately after the race. HISA agrees to pay the Commission the actual costs of the services performed by the Commission's employees.

Commissioner Tomaro made a motion to ratify the letter agreement subject to further ratification by the Attorney General. Commissioner Venuto seconded the motion, and all Commissioners voted yes.

CONSIDER THE APPROVAL OF THE NEW JERSEY RACING COMMISSION'S FY2025 PROGRAM BUDGET

Acting Executive Director Ben-David stated that the Commission's projected net operating budget is \$7,170,709.53. She explained that the Commissioners' meeting materials indicate that the net operating budget is a decrease of 5.1% from the FY2024 net operating budget but, in going over the materials for today's meeting, she realized a mistake was made in calculating that percentage. The projected net operating budget for FY2025 is actually a decrease of 9.0% from the FY2024 net operating budget which was \$7,883,562.37.

Acting Executive Director Ben-David explained that the Commission's net operating budget consists of: (1) expenditures for salaries and benefits plus (2) inter-departmental assessments minus (3) the "carry forward," meaning any cost savings from the last fiscal year. The projected decrease for FY2025 is due to projected reductions in salaries and benefits, an adjustment by the Financial Management Office in how costs for legal services are projected as an inter-departmental assessment, and an increase in the carry forward.

Acting Executive Director Ben-David stated that the Commission earns interest from its bank accounts, and it also takes in revenue from licensing and permitting fees. Taking the Commission's net operating budget of \$7,170,709.53 and subtracting these interest and revenue amounts yields a total operating budget "net of revenue of interest" of \$5,129,259.21, which is a decrease from \$5,615,628.94 in FY2024.

Commissioner Tomaro made a motion to approve the Commission's FY2025 program budget. Commissioner Beck seconded the motion and all Commissioner voted yes.

CONSIDER AN INITIAL DECISION IN *MARK S. TOTH V. NEW JERSEY RACING COMMISSION*, OAL DOCKET NO. RAC 06480-22

Acting Executive Director Ben-David stated that this initial decision concerns an incident which occurred at Meadowlands Racetrack on April 1, 2022. She explained that on

that date, the horse “Always a Force” owned by the Petitioner, Mark S. Toth, was a participant in the fourth race. The petitioner was present at the racetrack to watch the race. While the race was occurring, he was standing in the apron behind the fence and close to the finish line. Although initially in the lead, “Always a Force” was ultimately passed by three other horses near the end of the stretch. As the horses were about to cross the finish line, the petitioner threw his program at the racetrack. The wind carried the program backwards toward the fence. The program ultimately landed on the racetrack approximately a foot or two beyond the fence and approximately forty feet away from the closest horse. The program did not hit any of the human or equine participants or disrupt the race.

Acting Executive Director Ben-David stated that after conducting a hearing, the Board of Judges found that the petitioner had violated *N.J.A.C. 13:71-1.7*, *N.J.A.C. 13:71-1.19*, and *N.J.A.C. 13:71-7.32(a)3* and 4. She explained that the first regulation prohibits any person from disturbing the peace or making himself obnoxious at a racetrack. The second regulation authorizes the Board of Judges to punish any person who has acted to the detriment of racing or violated the rules. The third regulation allows for an owner’s license to be suspended, revoked, or subject to a fine for misconduct or acts detrimental to the sport or a violation of a rule of the Commission. For these violations, the Judges imposed a 180-day license suspension and a fine of \$5,000.

Acting Executive Director Ben-David stated that the petitioner appealed and requested a stay. The stay was granted, and the matter was transmitted to the Office of Administrative Law as a contested case.

Acting Executive Director Ben-David advised that at the OAL, the petitioner filed a motion for summary decision. The Commission opposed the petitioner’s motion and cross-moved for summary decision. The ALJ issued a decision finding that neither party was entitled to summary decision in full because material facts were in dispute and required a hearing.

Acting Executive Director Ben-David advised that a hearing was conducted on July 8, 2024, and the ALJ issued an initial decision on March 3, 2025. In that initial decision, the ALJ found that petitioner had violated the Commission’s regulations which she just cited. However, in considering the penalty, the ALJ reduced the suspension and fine from 180 days and \$5,000 to 20 days and \$2,000.

Acting Executive Director Ben-David stated that the ALJ made four findings which led her to conclude the original suspension and fine were excessive. (1) The ALJ came to a different conclusion than the Judges regarding the petitioner’s intent. The Judges found the petitioner intentionally threw his program onto the track. The ALJ found the petitioner intended to throw the program but stopped short of finding that he intended to throw it onto the track, finding instead that he was careless in his actions. (2) The ALJ found no harm or disturbance had occurred. (3) The ALJ found this incident was the petitioner’s only violation in two decades. (4) The ALJ found the Commission had an “admitted reliance on the USTA penalty records,” yet such records did not contain any similar penalty for a first offense involving disturbing the peace and other cases involving intentional actions were punished less severely.

Acting Executive Director Ben-David explained that the initial decision was before the Commission to adopt, reject, or modify. She advised that staff believes that the ALJ erred in several of her findings.

First, the ALJ erred in finding that the petitioner was merely careless. Upon viewing the video evidence, there can be no doubt that the petitioner intentionally threw the program outward, which caused it to land on the track. The video evidence was further supported by the credible testimony of Assistant Director Tom Salerno who witnessed the incident first-hand while working in his former capacity as Presiding Judge at Meadowlands Racetrack. The petitioner testified at the OAL that the program ended up on the track by accident. However, the petitioner made several representations in direct conflict with each other. These inconsistencies should have prompted the ALJ to find the petitioner's testimony not credible.

Acting Executive Director Ben-David further explained that while the ALJ was correct in finding that no serious harm or injury occurred as a result of the petitioner's actions, it is not appropriate for this good fortune to be considered as part of the penalty assessment as it would literally give the petitioner the benefit of which way the wind happened to be blowing on April 1, 2022. The petitioner should be held accountable for his act of throwing a program toward a race, not the wind pushing it down. The seriousness of the act itself must be sufficiently considered and weighed. The petitioner's action could have caused a pile-up of horses, which would have resulted in serious injury or even death.

Acting Executive Director Ben-David stated that the ALJ correctly considered that this incident represents the petitioner's only violation in two decades. Nonetheless, a serious violation, though it may be a first violation, is still serious. Finally, the ALJ's finding that the Commission relied on USTA penalty records is simply inaccurate. Assistant Director Tom Salerno testified at the hearing that the Judges found no similar violation of someone throwing something onto a racetrack near a field of horses. The ALJ also misconstrues prior Commission decisions as supporting a reduced penalty.

Acting Executive Director Ben-David stated that the ALJ's suggested penalty of 20 days and \$2,000 would impose on the petitioner the same penalty that was imposed in *Fox v. New Jersey Racing Commission*. *Fox* involved a veterinarian who became confrontational with a Commission investigator, did not cooperate when asked a question, supplied records four days after their due date, and exhibited intemperate behavior. Confrontational behavior with state racing officials, like the behavior in *Fox*, compromises the ability of the Commission to do its job. However, Acting Executive Director Ben-David continued that the threat to the safety of racing in such cases is not the same as the act of throwing an object onto the racetrack while the horses are about to cross the finish line in a matter of seconds. Petitioner's action created an immediate threat to the lives of the equine and human participants in a race. Simply put, Petitioner's conduct carries distinct and more severe consequences and deserves to be punished more severely.

Acting Executive Director Ben-David stated that it is within the Commission's discretion to decide what suspension period and fine amount is appropriate.

Commissioner Venuto stated that after extensive discussion and detailed review of the record, it is believed that Mr. Toth exercised terrible judgment, displayed unacceptable and careless conduct, and the Racing Commission expects a higher standard of care. He moved to affirm the staff recommendation of a \$5,000 fine and affirm the findings of the Board of Judges. Commissioner Venuto stated that the Commissioner commends the work of Tom Salerno on this issue, however, based on the ALJ's findings of this being the petitioner's first and only offense in 20 years, it is recommended that the Commission amend the suspension from 180 days to 30 days. Commissioner Beck seconded the motion. All Commissioners voted yes except for Commissioner Perez who voted no.

Acting Executive Director stated that with 5 votes, that would be the decision.

CONSIDER A SETTLEMENT AGREEMENT IN *KEITH TORRO V. NEW JERSEY RACING COMMISSION*, OAL DOCKET NO. RAC 05263-2024S

Acting Executive Director Ben-David asked Regulatory Officer Beth Laurenzano to present this item. Regulatory Officer Laurenzano explained that on December 9, 2023 the horse "My Name is Hairy" trained by Keith Torro finished first in the fourth race at Freehold Raceway. Post-race testing revealed the presence of Minoxidil in the horse. Torro did not request a split sample.

Regulatory Officer Laurenzano advised that a hearing was held before the Commission's Board of Judges, and the Board determined that Minoxidil was present in the urine of the horse in violation of *N.J.A.C. 13:71-23.1* (Intent of Medication) and *N.J.A.C. 13:71-23.6(a)(b)(c)* and (d) (Trainer is Absolute Insurer).

Regulatory Officer Laurenzano indicated that on March 28, 2024 the Board issued a ruling imposing a thirty-day license suspension, \$1,000 fine, disqualification from sharing in the purse and four Multiple Medication Violation ("MMV") points. Torro appealed this decision, and the matter was transmitted to the Office of Administrative Law ("OAL") for a de novo hearing. Mr. Torro proposed a settlement prior to the hearing and the parties agreed that he would serve a fifteen-day suspension, pay a \$500 fine, forfeit the purse monies, accept one half of an MMV point, withdraw his appeal, and waive his right to a hearing. He would have a record of violating the aforementioned regulations.

Regulatory Officer Laurenzano stated that staff recommends accepting the terms of the proposed settlement agreement.

Commissioner Beck asked to comment and stated that she feels that not just in New Jersey but certainly across the country the issue of horse racing and performance enhancing drugs is a very serious one, and it's one that this Commission does take very seriously. She stated that a moment ago, the Commission voted on a horse owner who got very upset and threw a pamphlet, and that case has been going on now in excess of 3 years. She feels the prior issue pales in comparison to drugging a horse. Commissioner Beck stated that she does not agree to the settlement where the Commission is cutting in half the recommendation of

the Board of Judges and setting a tone for how we view this very serious issue. She stated that she does not know Keith Torro or anything other than there was testing done and this drug was present maybe even in trace amount. Commissioner Beck does not feel that the Commission should back down from a penalty here when it is treating other people differently for a much lesser violation.

Acting Executive Director Ben-David stated that the staff's recommendation is to approve the settlement agreement. She explained that the recommendation does not come from a place that drugs in this industry are acceptable. The thinking is that the settled amounts are consistent with the way this drug has been handled in the past. She advised that it is the decision of the Commission whether to accept the settlement.

Acting Executive Director made a motion to approve the settlement agreement. Commissioners Tomaro and Perez both seconded the motion. All Commissioners voted yes with the exception of Commissioner Beck who voted no. With 5 votes, the settlement agreement was approved.

ITEMS FOR DISCUSSION AND INFORMATION

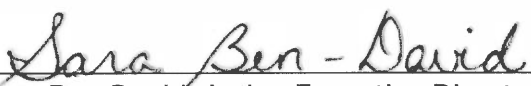
Acting Executive Director Ben-David advised that there were items on the agenda for discussion or informational purposes. The first item is the breakdown of New Jersey wagering on the Kentucky Derby.

Acting Executive Director Ben-David stated that the second item is the 2023 independent audit of Darby Development LLC and affiliates. She acknowledged receipt of that document.

Acting Executive Director Ben-David asked if anyone would like to comment or bring new business to the Commission's attention. She advised those attending virtually that they could use the "raise hand" button to be acknowledged and unmuted.

There being no comments, Acting Executive Director Ben-David asked for a motion to adjourn. Commissioner Tomaro made a motion to adjourn. Commissioner Venuto seconded the motion, and all Commissioner voted yes.

ATTEST:


Sara Ben-David, Acting Executive Director