

**NEW JERSEY RACING COMMISSION
WEDNESDAY, JANUARY 16, 2013
NEW MEADOWLANDS RACETRACK
HAMBLETONIAN ROOM, PEGASUS LEVEL
EAST RUTHERFORD, NEW JERSEY**

A meeting of the New Jersey Racing Commission was held on Wednesday, January 16, 2013, in the Hambletonian Room of the New Meadowlands Racetrack, located in East Rutherford, New Jersey.

The following were present:

Anthony T. Abbatiello, Commissioner
Manny E. Aponte, Commissioner (by phone)
Peter J. Cofrancesco, III, Commissioner (by phone)
Francis X. Keegan, Jr., Commissioner
Frank Zanzuccki, Executive Director
DAG Judith A. Nason

The following were absent:

Anthony R. Caputo, Commissioner
Pamela J. Clyne, Commissioner

Executive Director Frank Zanzuccki read the following statement:

“This meeting today conforms with Chapter 231, P.L. 1975, called the “Open Public Meeting Law,” 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 the provision of N.J.S.A. 10:4-12(b), the New Jersey Racing 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 adoption of Off-Track Wagering and Account Wagering Proposed Amendments: N.J.A.C. 13:74-1.1 and 2.4 and Proposed New Rules: N.J.A.C. 13:74-1.3, 2.7 and 2.8;
2. Legal advice concerning the matter of Frederic Esposito v. New Jersey Racing Commission, OAL Docket No. RAC 03743-2011S;
3. Legal advice concerning the matter of Dennis Watson v. New Jersey Racing Commission, OAL Docket No. RAC 03750-2011S; and
7. Other legal advice and/or status of pending litigation.

Discussion of the above matters fall 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 her ethical duties as a lawyer and/or matters involving pending or anticipated litigation."

It was noted that Commissioner Aponte and Commissioner Cofrancesco are participating by telephone.

Commissioner Abbatiello motioned to adopt the resolution to adjourn. Commissioner Cofrancesco seconded the motion. The Commission then adjourned to Executive Session.

The Commission ended the execution session and Commissioner Abbatiello moved to reconvene the public session. Commissioner Keegan seconded the motion and the Commission concurring, the public session resumed.

CONSIDER APPROVAL OF THE MINUTES OF THE PUBLIC AND EXECUTIVE SESSIONS OF THE OCTOBER 3, 2012, NOVEMBER 14, 2012 AND NOVEMBER 30, 2012 COMMISSION MEETINGS

Commissioner Abbatiello made a motion to approve the public and executive minutes of the October 3, November 14, and November 30, 2012 public meetings. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF THE BILLS

Commissioner Aponte made a motion to approve the bills as certified to by staff. Commissioner Keegan seconded the motion and all Commissioners voted to approve the bills as certified to by staff.

CONSIDER THE REQUEST OF THE APPROVED CASINOS TO ENTER INTO AN AGREEMENT (WHICH MAY CALL FOR THE PAYMENT OF NOT MORE THAN 9 PERCENT OF THE CASINO PARI-MUTUEL POOL TO THE SENDING TRACK) TO RECEIVE THE SIGNAL OF THE FOLLOWING RACES PURSUANT TO N.J.S.A. 5:12-201b:

Kentucky Oaks from Churchill Downs on May 3, 2013

Kentucky Oaks from Churchill Downs on May 4, 2013

Preakness Stakes from Pimlico Racetrack on May 18, 2013

Commissioner Keegan motioned to approve the request of the casinos. Commissioner Abbatiello seconded the motion and all Commissioners voted yes.

CONSIDER RATIFICATION OF THE APPROVAL GRANTED FOR THE FOLLOWING HANDICAPPING CONTESTS:

Winners Simulcast Series Challenge held at Winners Bayonne on January 3, 2013

World Harness Handicapping Championship Qualifier to be held at the New Meadowlands Racetrack on January 19, 2013

Winners Simulcast Series Challenge held at Winners Bayonne on December 6, 2012

Commissioner Keegan made a motion to ratify approval granted to the New Meadowlands Racetrack for the noted handicapping contests. Commissioner Abbatiello seconded the motion and all Commissioners voted yes.

CONSIDER RATIFICATION OF APPROVAL GRANTED CONCERNING FORMAT CHANGES TO THE NEW MEADOWLANDS RACETRACK 2013 STANDARD BRED MEETING AND TWO 2012 DATES SCHEDULED IN DECEMBER 2012

Commissioner Keegan motioned to ratify approval granted to the New Meadowlands Racetrack concerning its format changes. Commissioner Abbatiello seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF OFFICIALS, POOLS, POST-TIMES, ETC. FOR FREEHOLD RACEWAY'S 2013 WINTER/SPRING MEET

There was no action taken on this item as it was placed on the agenda in error.

CONSIDER APPROVAL OF THE NEW JERSEY'S JOCKEY'S HEALTH AND WELFARE TRUST 2013 BUDGET

Executive Director Zanzuccki responded to a question from the Commission concerning when the deficit of approximately \$20,000 is expected to be added to the Trust account. The Executive Director explained that the Commission has received a letter from John F. Heims, Esq., attorney for the Jockey's Health and Welfare Trust, indicating that the deficit will be made up during the year in the receipt of receivables from collections of over \$151,000 in premiums and through anticipated racing deductions of \$150,000. The Executive Director stated that according to the financial statements submitted by the Jockey's Health and Welfare Trust, there was a balance in the escrow account at the end of December 31, 2011, of \$355,000 and the Commission has utilized the balance to cover expenditures because the contributions to the plan by the members were not sufficient to cover these costs. The Executive Director estimated that assuming the Trust conforms to this budget, and based upon what has been paid for 2012, there should be a balance in the Trust on December 31, 2012 of \$187,000. Because there will be a sufficient balance to cover any contingencies which occur and as such, staff recommended approval of the budget.

Commissioner Keegan made a motion to approve the 2013 budget. Commissioner Abbatiello seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF THE STANDARD BRED BREEDERS' AND OWNERS' ASSOCIATION 2013 BUDGET

The Executive Director recommended that the matter be tabled pending legal review because the SBOA has made some modifications to the budget which require advice from counsel. Commissioner Keegan made a motion to table consideration of the budget pending legal review. Commissioner Abbatiello seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF THE THOROUGHBRED BREEDERS' ASSOCIATION OF NEW JERSEY 2013 BUDGET

Executive Director Zanzuccki stated that the TBA estimates expenditures for 2013 to be approximately \$218,000 and anticipates generating in-house revenue of just less than \$19,000, which will result in a request for use of funds from the Breeders' Award Account of \$199,000. These expenditures for 2013 are below the budget estimate of the previous year and the amount of funds requested from the Breeders' Award Account is also less than the previous year. The Executive Director indicated that the TBA has supplied the Commission with the proposed budget and actual expenditures for 2012 and the proposed 2013 budget information.

The Executive Director asked several questions of Michael Campbell, Executive Director of the TBA including an inquiry regarding the handling of legal fees. Mr. Campbell responded that the TBA was involved in two legal actions in 2012, however, the TBA does not anticipate any legal expenses in 2013. The Executive Director then inquired as to membership dues. Mr. Campbell responded that the Racing Commission had previously asked the TBA to remove the dues from the budget.

Commissioner Keegan made a motion to approve the budget. Commissioner Abbatiello seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF THE THOROUGHBRED HORSEMEN'S ASSOCIATION 2013 BUDGET

Executive Director Zanzuccki indicated that the THA is anticipating income under the statutory 2.9 percent account of approximately \$786,000 and total expenditures of \$1,178,000, producing a deficit of approximately \$391,000. According to the budget as submitted, the THA has indicated that they will make up that deficit from unidentified other sources. The Executive Director noted that the budget as submitted meets the 70/30 requirements for benevolent program as contained in the regulations. He also noted that the Commission is not considering a budget for the Horsemen's Interest Account because there is no balance remaining in the account. The account was closed in the last calendar year and the remaining money in the account was forwarded to the Backstretch Community Assistance Program. The Executive Director explained that the Public Purpose Budget as submitted by the THA, anticipates income of \$168,000 and expenditures of \$180,000, producing a deficit of approximately \$11,000.

The Commission called upon Michael Musto, Executive Director of the THA, to identify the source of funds that will be used to offset the deficits as projected in both of the budgets. Mr. Musto stated for the year 2013, the THA is estimating purses to be 26 million dollars and the THA is negotiating with DARBY for use of 2.9 percent of statutory funds, use of four percent of funds from workers compensation and an additional one percent that is negotiated off the top of purses of 1.5 percent.

The Executive Director asked Mr. Musto for clarification. Because, based upon the discussion at the meeting, the THA's use of monies remained unclear, the Executive Director stated that further discussion was necessary.

The Executive Director recommended that the Commission limit consideration of the budget for the year 2013.

Commissioner Aponted motioned to approve the budget for 2013 only. Commissioner Abbatiello seconded the motion and all Commissioners voted yes.

**CONSIDER ADOPTION OF OFF-TRACK WAGERING AND ACCOUNT WAGERING
PROPOSED AMENDMENTS: N.J.A.C. 13:74-1.1 AND 2.4 AND PROPOSED NEW
RULES: N.J.A.C. 13:74-1.3, 2.7 AND 2.8**

The Executive Director stated that at a prior Commission meeting approval was granted to advertise these proposed amendments and new rules. The rules appeared in the New Jersey Register and the comment period expired on January 4, 2013. No written comments were received and the Commission can now consider adoption of these rules. The Executive Director indicated that the rules contain the benchmarks that must be followed by permit holders in order to retain their rights for any unissued off-track wagering license that they possess.

Michael Musto, Executive Director of the THA, asked to make a statement concerning the proposed rules. The Executive Director stated that the comment period has expired and all interested parties had an opportunity to provide written comments during that time, therefore, the record is closed and no comments are permitted.

Commissioner Abbatiello motioned to adopt the rules. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER THE MATTER OF FREDERIC ESPOSITO V. NEW JERSEY RACING COMMISSION, OAL DOCKET NO. RAC 03743-2011S

Executive Director Zanzuccki stated that the Commissioners are in receipt of an Initial Decision issued from the Office of Administrative Law recommending that Mr. Esposito be granted a license and staff has prepared a proposed final decision which has been presented to the Commission recommending that the OAL decision be rejected and that Mr. Esposito's license be denied for several reasons as detailed in the proposed Final Decision.

The Executive Director indicated that Mr. Esposito was present in the audience and expressed an interest to address the Racing Commission. He recommended that Mr. Esposito's statement be limited to no more than five minutes and following his comments, he recommended that DAG Julie Barnes also be given the opportunity to respond for no more than five minutes. Commissioner Keegan motioned to allow Mr. Esposito to speak. Commissioner Abbatiello seconded the motion and all Commissioners voted yes.

Mr. Frederic Esposito stated that he is licensed in two neighboring states—New York and Pennsylvania—without cause or incident. He stated to the Commissioners that in the Initial Decision of Judge Reba, the ALJ found he provided sufficient evidence of good and moral character required by N.J.A.C. 13:71-7.3 (which is refusal to issue a renewal license) and concluded that he be recommended for a license to train in New Jersey. Mr. Esposito stressed that all jurisdictions were given the same identical evidence and overwhelming documentation of his rehabilitation and change of lifestyle. He continued by saying that the NJRC in denying him a license in January 2011 when he was not training or actively involved in horses, and was acquiring a license at that time, did not make any special effort to give any consideration to any evidence and documents filed on his behalf. Mr. Esposito stated that the NJRC has denied his license application strictly on the basis of his prior conviction, ignoring all of his evidence and documentation, and constituting an abusive discretion in the exercise of the NJRC's regulatory authority. Mr. Esposito claimed that the NJRC ignored the application of the New Jersey Rehabilitated Convicted Offenders Act in Devine v. NJRC, wherein Judge Dubin specifically instructs the Executive Director to analyze the factors contained in that Act. Mr. Esposito continued by saying that the NJRC also ignored case precedent which exists in the case of Devine v. NJRC and instead of applying discretion the NJRC applied discrimination in denying him a license, and had his documents been reviewed and his proof of rehabilitation been counted, he firmly believes that he should have been granted a license.

DAG Julie Barnes addressed the Commission. She noted that exceptions were filed in this matter and feels very strongly that there was significant omission made by Judge Reba in his decision. While it may be laudable as to what Mr. Esposito has done over the past years, which is shown in his letters of recommendation, it is a very flagrant disregard of the rules and regulation that Mr. Esposito was training a horse on a New Jersey licensed farm while he was not licensed to do so himself. This clearly strikes at the heart of the word integrity and as the Commission is aware, to possess a license by the NJRC an individual must possess the requisite integrity and character. DAG Barnes advised that Mr. Esposito is not new to this sport in that he was previously licensed in New Jersey. He has an obligation to be familiar with the rules and regulations of this State and be well aware that he cannot train a horse on a licensed farm when he is not licensed in the State. She asked that the request from Mr. Esposito to be licensed be rejected. The Commissioners inquired if Mr. Esposito was rejected a license if he could reapply in 2014 and DAG Barnes indicated conceivably he could.

There were no questions asked of Mr. Esposito.

Commissioner Keegan asked Executive Director Zanzuccki to read the following proposed motion on his behalf.

The Commission has been provided with the Initial Decision of the Administrative Law Judge, the record and a draft Final Decision. In the Initial Decision, the ALJ concluded that Petitioner, Frederic Esposito, should be recommended for and granted licensure in New Jersey as a driver/trainer of standardbred horses. The ALJ considered Petitioner's criminal conviction in the State of New York for "Promoting Gambling in the Second Degree" in 1998. Although he recognized that convictions for bookmaking or other illegal forms of gambling are of special concern in the racing industry, the ALJ nevertheless decided that Petitioner's conduct in consorting with bookmakers 14 years ago and his conviction for "Promoting Gambling," without more, should not prevent him from obtaining a license. Upon considering the evidence which Petitioner submitted to show he has been rehabilitated, the ALJ found that Petitioner submitted sufficient evidence of good moral character as required by the Commission's rules. The ALJ concluded that Petitioner should be granted a driver/trainer license.

However, in finding that Petitioner is suitable for licensure, the ALJ completely disregarded Petitioner's admission under oath that he had been training a race horse at a licensed farm in New Jersey without being licensed to do so in this State.

The record establishes that Petitioner's wife, Alice Esposito, purchased a race horse on November 16, 2010, she obtained a New Jersey owner's license on or about December 10, 2010 and she stabled the horse at Crystal Brook Farm in Colts Neck, New Jersey. Petitioner obtained a New York trainer's license on December 8, 2010 and a Pennsylvania trainer's license in May 2011. At the OAL hearing, which was held on March 29, 2012, Petitioner testified that he started racing in March 2011. He stated that his wife's horse actively raced in Pennsylvania and New York and when it did so, he was the trainer of record.

At this hearing, Petitioner also testified that he trains his wife's race horse, which was stabled on a licensed farm here in New Jersey, without a New Jersey trainer's license. From the record, one could easily conclude that Petitioner had been training his wife's race horse in New Jersey for more than a year -- from March 2011, when he resumed his participation in racing, through March 29, 2012, the date of the hearing where he admitted to training her horse.

Training a race horse stabled at a licensed off-track stabling facility in New Jersey without a New Jersey trainer's license is a clear violation of N.J.A.C. 13:71-7.26. Only a trainer licensed in the State of New Jersey may train a race horse in New Jersey. The trainer must be licensed in New Jersey even if the race horse does not race in New Jersey. Petitioner's testimony also establishes additional violations of New Jersey's rules. He testified that in addition to training his wife's race horse, he also transports the horse from the licensed farm where it is stabled in New Jersey to Pennsylvania and to New York when the horse races in those states. Petitioner is not licensed to do so.

The Commission's rules are not mere guidelines; they constitute the law of this State. The violation of these rules carries severe consequences and the penalties which this Commission may impose include denial of licensure in this State. In addition to Petitioner's admitted violations of the Commission's rules, the record documents other facts that the Commission has had to consider in determining whether Petitioner has established his suitability for licensure. At issue is Petitioner's 1998 conviction in New York. Petitioner obtained a "Certificate of Relief from Disabilities" from the State of New York in June 2008 and submitted extensive evidence in support of his claimed rehabilitation since his conviction in 1998. In considering the circumstances of this conviction, the Commission has been mindful of the requirements of the Rehabilitated Convicted Offenders Act.

Pursuant to law, the Commission has the legal authority to adopt, modify or reject the ALJ's Initial Decision. Based upon the ALJ's failure to address the entire record before him, which included evidence of Petitioner's violations of this Commission's rules, I move that the Commission reject the Initial Decision.

The Commission has reviewed the entire record, including the testimony, documents offered into evidence and post-hearing submissions, which is adequate to allow this Commission to issue a Final Decision regarding Petitioner's suitability for licensure in New Jersey. Commission staff has provided us with a draft Final Decision which we have reviewed. With this motion, I MOVE that the Commission direct staff to issue the draft Final Decision as the decision of this Commission in accordance with N.J.S.A. 52:14B-10.

The Final Decision identifies, in a comprehensive and detailed manner, the Commission's reasons for rejecting the Initial Decision, the record before us, our findings of fact and conclusions of law, our consideration of each of the factors required by the Rehabilitated Convicted Offenders Act and our ultimate determination that Petitioner has failed to meet his burden of establishing his suitability for licensure in the State of New Jersey. For the reasons set forth in the Final Decision, I move that Petitioner's application for a driver/trainer license shall be hereby denied.

Commissioner Cofrancesco seconded the motion and all Commissioners voted yes.

CONSIDER THE MATTER OF DENNIS WATSON V. NEW JERSEY RACING COMMISSION, OAL DOCKET NO. RAC 03750-2011S

Commissioner Keegan made a motion to adopt the Initial Decision of ALJ Reba as the final decision in this matter. Commissioner Abbatiello seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF THE NEW JERSEY RACING COMMISSION PROGRAM BUDGETS FOR FY 2013

The Executive Director stated that the \$8,193,000 budget represents a 15 percent decline from the 2012 budget of \$9,600,000. He indicated that the budget would have been reduced further, however, because of factors beyond the control of the Commission concerning fringe benefits and legal fees associated with courts actions involving the Commission, no further reductions were possible.

Commissioner Abbatiello motioned to approve the budget. Commissioner Keegan seconded the motion and all Commissioners voted yes.

ITEMS FOR DISCUSSION AND INFORMATION

Review of Permit Holders OTW Progress Reports

The Executive Director informed the Commission as to the contents of the progress reports filed by Freehold Raceway, Penn National Gaming, New Meadowlands Racetrack, Atlantic City Race Course, and the Thoroughbred Horsemen's Association.

There being no further discussion or comments from the public, Commissioner Aponte moved that the meeting be adjourned subject to the provisions of the "Open Public Meeting Act." Commissioner Abbatiello seconded the motion and it was approved unanimously.

ATTEST:

A handwritten signature in cursive script, appearing to read "Frank Zanzuccki", is written over a horizontal line.

Executive Director Frank Zanzuccki