

**NEW JERSEY RACING COMMISSION
WEDNESDAY, JANUARY 23, 2019
FREEHOLD RACEWAY
RENAISSANCE DINING ROOM
FREEHOLD, NEW JERSEY**

A meeting of the New Jersey Racing Commission was held on Wednesday, January 23, 2019 in the Renaissance Dining Room located at Freehold Raceway, in Freehold, New Jersey.

The following were present:

Pamela J. Clyne, Chairman
Michael J. Arnone, Commissioner (by phone)
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 Initial Decision in David Miller v. New Jersey Racing Commission, OAL Docket No. RAC 15043-17 and Burke Racing Stables, LLC, et al., v. New Jersey Racing Commission, OAL Docket No. RAC 17327-17;
2. Legal advice concerning the Initial Decision in Tara Hynes v. New Jersey Racing Commission, OAL Docket No. RAC 15041-16;
3. Legal advice concerning the New Jersey Thoroughbred Horsemen’s Association’s budgets (2.9% statutory and .6% public purpose) for 2019;
4. Legal advice concerning the New Jersey Thoroughbred Horsemen’s Association’s budgets (2.9% statutory and .6% public purpose) for 2015 through 2018; and
5. 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 Keegan 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 NOVEMBER 21, 2018 COMMISSION MEETING

Commissioner Keegan made a motion to approve the public and executive minutes of the November 21, 2018 public meeting. Chairman Clyne seconded the motion and all Commissioners voted yes.

CONSIDER THE INITIAL DECISION IN THE MATTER OF DAVID MILLER V. NEW JERSEY RACING COMMISSION, OAL DOCKET NO. RAC 15043-17 AND BURKE RACING STABLES, LLC, ET AL., V. NEW JERSEY RACING COMMISSION, OAL DOCKET NO. RAC 17327-17

Acting Executive Director Nason stated that the Commission must determine whether to adopt, reject or modify the Initial Decision that was issued in these two matters. Both of these matters were consolidated at the OAL. The Acting Executive Director summarized that on August 5, 2017, the Hambletonian Stakes was held at the New Meadowlands Racetrack. In the homestretch, the sulky of the horse "What the Hill," driven by David Miller and owned by Burke Racing Stables, came into contact with the front left hoof of "Garden Angel AS" causing the horse to break stride and lose ground. "What the Hill" continued on to finish the race in first place. The Judges placed the inquiry sign and ultimately disqualified "What the Hill" and placed him 9th behind "Garden Angel AS" in the order of finish. After a hearing, the Judges imposed a three-day suspension on David Miller, for violation of N.J.A.C. 13:71-20.6(a)1,2,8, and 10. David Miller and Burke Racing Stables appealed and the OAL conducted a hearing on June 28, 2018. The OAL issued an Initial Decision on December 11, 2018. The ALJ agreed with and affirmed the Board of Judges' disqualification of "What the Hill" based upon then Presiding Judge John Tomasello's expertise, his very credible testimony and very compelling explanation for the disqualification. The ALJ found that the decision to suspend David Miller for three days was appropriate also in addition to the disqualification of the horse. A copy of the race and the entire OAL record was available for the Commissioners to review.

Chairman Clyne moved that the Commission adopt the Initial Decision of the ALJ for the reasons set forth therein. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER THE INITIAL DECISION IN THE MATTER OF TARA HYNES V NEW JERSEY RACING COMMISSION, OAL DOCKET NO. RAC 15041-2016S

Acting Executive Director Nason stated that the Commission must determine whether to adopt, reject or modify the Initial Decision. The Acting Executive Director summarized that the issue was an altercation between two licensed trainers—Leah Posner and Tara Hynes. The altercation took place in the paddock parking lot at Freehold Raceway on August 26, 2016. The Judges conducted a hearing and ordered a 15-day suspension and \$1,000 fine on Tara Hynes for violation of N.J.A.C. 13:71-7.29(a) 4,5,9 and 13. Tara Hynes appealed the matter and it was transmitted to the OAL which conducted a hearing on December 6, 2017, April 18, 2018 and June 11, 2018. The OAL issued an Initial Decision on November 30, 2018. The ALJ found there was insufficient evidence to conclude that Tara Hynes struck Leah Posner with her truck. The ALJ also found that even if contact did occur, any such contact was accidental. The ALJ concluded that there was insufficient evidence in the record supporting the penalties imposed by the Commission.

Acting Executive Director Nason indicated that staff makes two recommendations. First, the Commission adopt the Initial Decision as staff believes there is insufficient evidence in the record that was provided to the OAL based upon in part because Leah Posner failed to testify at the OAL. SDAG George Cohen clarified that Leah Posner not only failed to testify, she failed to appear for the hearing. The Acting Executive Director indicated the second recommendation is that the Commission refer this matter to the Board of Judges to conduct a hearing to determine if Ms. Posner's failure to testify constitutes failure to cooperate and whether a penalty should be imposed.

Commissioner Keegan motioned to adopt the Initial Decision. Chairman Clyne seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF CHARITY DAYS FOR 2019

The Acting Executive Director indicated that the Commission must designate a total of 5 race dates per permit as charity race dates. Three days are designated for the developmentally disabled, one day is for the Backstretch Benevolence Program and one day is for the Horse Park of New Jersey and for retired racehorses. Chairman Clyne made a motion to approve the charity days for 2019. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER THE APPROVAL OF THE THOROUGHBRED BREEDERS' ASSOCIATION OF NEW JERSEY'S BUDGET FOR 2019

Acting Executive Director Nason stated that the total 2019 expense budget is \$250,311 and the projected income is \$81,300. The TBA is requesting Commission approval for a payment of \$169,011. There were no questions asked of the TBA.

Commissioner Keegan motioned to approve the 2019 TBA budget. Chairman Clyne seconded the motion and all Commissioners voted yes.

CONSIDER THE APPROVAL OF THE STANDARD BRED BREEDERS' & OWNERS' ASSOCIATION OF NEW JERSEY'S BUDGET FOR 2019

Acting Executive Director Nason stated that the SBOA submitted its 2019 budget with income and expenses totaling \$1,977,500, and the budgeted income and expenses exceeded the 2018 budget by \$41,500. The Acting Executive Director indicated that with the SBOA and the THA, their use of statutory money, 70% of expenditures must be utilized for benevolence programs. The SBOA 2019 proposed use of money for benevolence programs is 71.93% which does comply with the N.J.A.C. 13:71-1.25. There were no questions asked of the SBOA.

Chairman Clyne motioned to approve the 2019 SBOA budget. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER THE APPROVAL OF THE STANDARD BRED BREEDERS' & OWNERS' ASSOCIATION OF NEW JERSEY'S BUDGETS FOR 2016 THROUGH 2018

Acting Executive Director Nason indicated that the Commission has a backlog of SBOA budgets and although the SBOA filed its budgets in a timely fashion for 2016, 2017 and 2018, the Commission has not acted on them. The Commission is now being asked to consider the budgets. The summary of the budgets is: in 2016, the proposed budget was \$2,116,500 and the actual budget for 2016 as reported the next year was \$1,979,424. The percentage in regard to the money used for benevolence programs was reported as 78.9% which exceeds the statutory threshold. In 2017, the proposed budget was \$1,936,000 and the actual budget reported was \$2,013,097 and the percentage of money used for benevolence programs was reported as 73.4% which also exceeded the required threshold. In 2018, the proposed budget was \$1,936,000 and the actual income reported was \$1,766,990 and the percentage used for benevolence programs was reported as 72%. There were no questions asked of the SBOA.

Commissioner Keegan motioned to approve the 2016, 2017 and 2018 SBOA budgets. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER THE NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION'S BUDGETS (2.9% STATUTORY AND .06% PUBLIC PURPOSE) FOR 2019

Acting Executive Director Nason stated that in regard to the 2.9% statutory budget, the THA is projecting income and expenditures totaling \$754,000. The public purpose budget is projected as \$156,000. The statutory budget is in compliance with N.J.A.C. 13:70-1.30 requiring that more than 70% is expended for benevolence programs. The Acting Executive Director explained that the THA submits the .6% public purpose budget as a result of a 2005 settlement agreement between the Commission and the THA. At that time, the Sports Authority was operating the Meadowlands and Monmouth Park and the THA negotiated with the Sports Authority regarding how much monies the Authority would pay to the THA. At the time, the Sports Authority agreed to pay an additional .6% which the court called "public purpose monies." The court required the THA to submit a budget regarding these monies to the Commission for approval. The Sports Authority ceased operating the Meadowlands in 2011 and

Monmouth Park in 2012 when the racetracks were leased. As a result, the Commission sought legal advice as to whether the public purpose monies still exist given that the Sports Authority is not paying additional money to the THA. This matter was discussed with counsel in executive session and based upon the determination that public purpose monies no longer exist, staff is recommending that the Commission take no action on the public purpose budgets as the monies have not existed since 2012. There were no questions asked of the THA.

Chairman Clyne motioned to approve the 2019 THA budget and the Commission takes no action on the public purpose budget. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER THE NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION'S BUDGETS (2.9% STATUTORY AND .06% PUBLIC PURPOSE) FOR 2015 THROUGH 2018

Acting Executive Director Nason stated that as with the SBOA budgets, the THA also has a backlog regarding the THA budgets. Although the Commission approved the THA 2.9% budget for 2015, the 2015 and 2016 public purpose budgets were tabled pending legal advice. In addition, the Commission has not considered the THA's 2017 and 2018 budgets. As previously stated, staff recommends no action be taken on the public purpose budgets for these years. The summary of the 2.9% statutory budgets for years 2016, 2017 and 2018 is as follows: The proposed budget is \$754,000 for each year. The actual budget for 2016 as reported by the THA was \$706,207. In all three years the proposed percentage for benevolence programs was 79.18%. For 2016 the actual percentage that was used for benevolence programs that was reported was 74.86%. For 2017, the actual budget reported was \$723,417 and the actual percentage used for benevolence was reported at 76.3% for 2017. And finally, in 2018, the actual budget reported was \$767,103 and the actual percentage reported was 82.1%. There were no questions asked of the THA.

Commissioner Keegan motioned to approve the 2015, 2016, 2017 and 2018 2.9% budgets and the Commission takes no action on the public purpose budget. Chairman Clyne seconded the motion and all Commissioners voted yes.

ITEMS FOR DISCUSSION AND INFORMATION

Drug Testing Statistics for 2018

The Acting Executive Director read the following 2018 statistics regarding the equine and human drug testing programs:

- Equine: 25,431 total samples were tested which resulted in 34 positives.
of that, there were 20,217 standardbred samples tested with 27 positives
and 5,214 thoroughbred samples tested with 6 positives
- Human: 305 fluid samples were tested which resulted in 3 positives as
compared to 357 fluid samples tested in 2017 resulting in 8 positives

Financial Status

It was noted that the financial status was available in the room.

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

ATTEST:

Judith A. Nason, Acting Executive Director