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OAL Docket Nos. RAC 600-13
RAC 601-13

Agency Docket Nos. NJRC-7-H-12-FR
NJRC-6-H-12-FR
(Consolidated)

THOMAS TURANO AND THEODORE)
THROCKMORTON,)
)
Petitioners,)
)
v.)
)
NEW JERSEY RACING COMMISSION,)
)
Respondent.)

FINAL DECISION

The New Jersey Racing Commission ("Commission") has reviewed the Initial Decision in which Administrative Law Judge ("ALJ") Jeff S. Masin concluded that Petitioner, Thomas Turano, and Petitioner, Theodore Throckmorton, each violated N.J.A.C. 13:71-26.5 by knowingly assisted in ten-percentage schemes at Freehold Raceway while each was employed and licensed as a pari-mutuel clerk. The ALJ also concluded that Turano violated N.J.A.C. 13:71-26.7 by failing to cooperate with the Commission's investigation into his involvement in the ten-percentage schemes.



Finding them to be based upon sufficient, competent and credible evidence, the Commission adopts the ALJ's findings of fact, including his determination of the witnesses' credibility, in accordance with N.J.S.A. 52:14B-10(c) and incorporates them herein by reference. The Commission also adopts the ALJ's conclusions of law but modifies the ALJ's order with respect to the penalties imposed on Turano for the reasons set forth herein.

The ALJ determined that Turano and Throckmorton violated N.J.A.C. 13:71-26.5 which mandates that "[n]o person shall conspire with any other person for the commission of, or connive with any other person in any corrupt or fraudulent practice in relation to racing, nor shall he commit such an act on his own behalf." Whereas the ALJ imposed a six-month suspension on Turano for his violation of N.J.A.C. 13:71-26.5, he imposed a six-month suspension and \$1,500 fine on Throckmorton for his violation of N.J.A.C. 13:71-26.5. Although Throckmorton's penalty history recorded a prior violation of a Commission rule, the ALJ determined that the violation occurred "quite some time ago" and it should not impact the penalty warranted here. Initial Decision at 27.

The ALJ also determined that Turano violated N.J.A.C. 13:71-26.7 which mandates that "all persons licensed in any capacity by the Commission shall give every possible cooperation, aid and assistance" to any person "who may be investigating or prosecuting any matter involving a violation of ... any rules or

regulations of the Commission." The rule goes on the state that "[f]ailure to cooperate will subject the person or persons involved to a fine, suspension or both." Ibid. At the OAL, the Commission sought a six-month suspension and \$2,500 fine, the penalty imposed by the Commission's Board of Judges in Ruling No. 12FRE50, dated October 5, 2012, for Turano's violation of N.J.A.C. 13:71-26.7. Although the ALJ correctly recognized that Turano's "failure to cooperate adds to the reasons for a significant penalty," he only imposed a \$2,000 fine. Initial Decision at 27.

The result of the ALJ's order is that Throckmorton received a six-month suspension and \$1,500 fine for his violation of N.J.A.C. 13:71-26.5 and Turano received a six-month suspension and \$2,500 fine for his much more serious conduct which violated both N.J.A.C. 13:71-26.5 and N.J.A.C. 13:71-26.7.

On August 12, 2014, Deputy Attorney General Susan C. Sharpe, the attorney representing the Commission at the OAL, filed written exceptions with the Commission pursuant to N.J.A.C. 1:1-18.4 taking exception to the penalty the ALJ imposed upon Turano. Counsel pointed out that in rejecting the penalty sought by the Commission at the OAL for Turano's violation of N.J.A.C. 13:71-26.7, the ALJ eliminated the six-month suspension determined appropriate by the Board of Judges and reduced the fine they determined appropriate by \$500. See Transcript of March 24, 2014 Hearing, T.9-23 to T.10-7; T.71-5 to -15. Counsel for Throckmorton

and Turano did not file exceptions with the Commission or reply to the exceptions filed by DAG Sharpe.

The facts of what occurred and the licensees' violations of this Commission's rules are not in dispute. Turano's failure to cooperate constituted an egregious violation of our rules and this conduct, in connection with his knowing assistance in ten-percent schemes in violation of N.J.A.C. 13:71-26.5, warrants a penalty much more severe than that imposed by the ALJ.

In weighing Turano's conduct and the penalty to be imposed, the Commission is mindful that "the business of racing and the legalized gambling attendant thereupon are strongly affected by a public interest, and close legislative regulatory supervision is highly appropriate." Jersey Downs, Inc. v. Division of New Jersey Racing Commission, 102 N.J. Super. 451, 457 (App. Div. 1968). The Legislature has vested the Commission with broad powers "necessary or proper to enable it to carry out fully and effectually all the provisions and purposes of [the Racing Act of 1940]," N.J.S.A. 5:5-22, including "full power to prescribe rules, regulations and conditions under which all horse races shall be conducted," N.J.S.A. 5:5-30, and under which all licenses are issued. N.J.S.A. 5:5-33. Courts in this State have repeatedly recognized the Commission's expertise in regulating the conduct of races and parimutuel wagering and have afforded its decisions substantial deference. See, e.g., De Vitas v. New Jersey Racing Commission, 202

N.J. Super. 484 (App. Div. 1985); Dare v. State, 159 N.J. Super. 533 (App. Div. 1978); Jersey Downs, Inc. v. Division of New Jersey Racing Commission, supra, 102 N.J. Super. at 457.

In carrying out our broad regulatory powers, the Commission promulgated strict rules mandating that all persons licensed in any capacity by the Commission shall give every possible cooperation, aid and assistance to our investigators. Turano's failure to cooperate in violation of N.J.A.C. 13:71-26.7 goes to the very essence of the Commission's ability to strictly regulate the horse racing industry and thus warrants a more severe penalty than that recommended by the ALJ.

At the OAL, the Commission sought the same penalties imposed by the Board of Judges. T.9-23 to T.10-7; T.71-5 to -15. The OAL hearing regarding these two contested cases, which were consolidated, was conducted de novo and the ALJ is not bound by the Judges' determinations of fact, violation or penalty. However, in reviewing the Initial Decision, the Commission may and, under the circumstances presented here, must review the penalties imposed by the ALJ. The gravity of a licensee's violation of our rules is heightened any time that licensee refuses to cooperate with an investigator. Here, the record at the OAL establishes that the Board of Judges carefully considered the penalty they imposed upon Turano for his violation of N.J.A.C. 13:71-26.7.

As noted by the ALJ, Turano failed to make any good faith

attempt to cooperate, such as by contacting the Commission through a lawyer or union official about his alleged privacy concern, and instead chose to simply ignore the Commission's repeated requests.

Initial Decision at 26. Although the ALJ further stated that this "failure to cooperate adds to the reason for a significant penalty," he then rejected the penalty sought by the Commission -- decreasing the fine from \$2,500 to \$2,000 and eliminating the additional six-month suspension entirely. Allowing the penalty imposed by the ALJ to stand would undoubtedly send a message to licensees that the only consequence of refusing to cooperate with Commission investigators is, at most, a monetary one. This Commission cannot allow any such message to be sent and must instead seek to deter licensees from failing to cooperate in Commission investigations. Licensure in this industry "is a privilege and not a right." See Wendling v. N.J. Racing Comm'n, 279 N.J. Super. 477, 482 (App. Div. 1995).


Based upon our expertise within this highly-regulated industry and discretion as Commissioners, it is our judgment that we must modify the ALJ's order to impose a six-month suspension and \$2,500 fine for Turano's violation of N.J.A.C. 13:71-26.7 which suspension shall be imposed and run consecutively after the six-month suspension imposed for Turano's violation of N.J.A.C. 13:71-26.5. The Commission adopts the ALJ's findings of fact, conclusions of law and his order regarding the six-month suspension

and \$1,500 fine imposed upon Throckmorton.

The Commission orders the issuance of rulings setting forth the findings of violations and the penalties imposed upon each of the licensees as set forth in this Final Decision.

NEW JERSEY RACING COMMISSION

By: _____


Frank Zanzuccki
Executive Director

Dated: September 23, 2014