

**NEW JERSEY RACING COMMISSION
WEDNESDAY, APRIL 6, 2016
“RENAISSANCE DINING ROOM”
FREEHOLD RACEWAY
FREEHOLD, NEW JERSEY**

A meeting of the New Jersey Racing Commission was held on Wednesday, April 6, 2016 in the Renaissance Dining Room, located at Freehold Raceway, Freehold, New Jersey.

The following were present:

Pamela J. Clyne, Chairman
Anthony T. Abbatiello, Commissioner
Michael J. Arnone, Commissioner
Peter J. Cofrancesco, III, Commissioner (by phone)
Anthony G. DePaola, Commissioner
David C. Gruskos, Commissioner
Francis X. Keegan, Jr., Commissioner
Peter T. Roselle, Commissioner (by phone)
Frank Zanzuccki, Executive Director
SDAG George Cohen
DAG Alan Stephens

The following were absent:

Manny E. Aponte, Commissioner

Executive Director Frank Zanzuccki 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 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 New Jersey Thoroughbred Horsemen's Association 2016 Budgets (2.9% Statutory and .06% Public Purpose);
2. Legal advice concerning the distribution of \$53,576.60 of the Casino Simulcasting Special Fund Monies (Accumulated in 2014) that were not allocated at the September 15, 2016 meeting;
3. Legal advice concerning the Initial Decision in the matter of Alejandro Maymo v. NJRC, OAL Docket No. RAC 8691-2014;
4. Legal advice concerning the Initial Decision in the matter of Jane Cibelli v. NJRC, OAL Docket No. RAC 13821-2015; and
5. Other matters requiring legal advice.

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 his ethical duties as a lawyer and/or matters involving pending or anticipated litigation.”

It was noted that Commissioner Cofrancesco is participating by telephone.

Commissioner Keegan motioned to adopt the resolution to adjourn. Chairman Clyne seconded the motion. The Commission then adjourned to Executive Session.

Commissioner DePaola made a motion to adjourn from Executive Session. Commissioner Keegan seconded the motion and the Commissioners voted to affirm. The Executive Session ended. During the public session, Commissioner Roselle joined the meeting by telephone.

CONSIDER APPROVAL OF THE PUBLIC AND EXECUTIVE SESSION MINUTES OF THE FEBRUARY 10, 2016 COMMISSION MEETING

Commissioner Cofrancesco made a motion to approve the public and executive minutes of the February 10, 2016 public meeting. Commissioner Keegan seconded the motion and all Commissioners voted yes with the exception of Commissioner DePaola and Commissioner Gruskos who abstained.

CONSIDER THE REQUEST OF THE NEW MEADOWLANDS RACETRACK FOR APPROVAL OF THE DECISION TO CANCEL LIVE RACING ON SATURDAY, FEBRUARY 13, 2016 AS SCHEDULED IN ACCORDANCE WITH THEIR RACING PERMIT, DUE TO THE EXTREMELY COLD WEATHER CONDITIONS

Commissioner Keegan motioned to approve the decision of the New Meadowlands Racetrack to cancel live racing on February 13, 2016 due to weather conditions. Chairman Clyne seconded the motion and all Commissioners voted yes. Mark Ford, President of the SBOA, stated that there is a possibility of rescheduling the date during the third week of November.

CONSIDER THE REQUEST OF THE NEW MEADOWLANDS RACETRACK FOR PERMISSION TO UNCOUPLE TWO HORSES ENTERED IN AN OVERNIGHT EVENT TRAINED BY ONE INDIVIDUAL BUT HAVING A BONAFIDE SEPARATE OWNERSHIP

Executive Director Zanzuccki stated that the New Meadowlands is seeking to uncouple two horses entered in an overnight event (with purses of \$10,000 or more) trained by one individual for a 60-day trial basis. It was noted that Freehold Raceway has made a similar request, however, the request does not include the uncoupling to be conducted on a trial basis. Instead, Freehold has asked to uncouple horses in all overnight races because of the Raceway's lower purse structure. The New Meadowlands was asked if they would prefer that the request include uncoupling to occur in all overnight races and without respect to being limited to only a trial basis and the racetrack was in agreement. The Executive Director noted that in regard to thoroughbred racing, Monmouth Park has been granted approval to uncouple horses of the same trainer if the horse has bonafide separate ownership in all of the races conducted during the meet at Monmouth Park. He recommended that approval should be granted to the Meadowlands Racetrack and Freehold Raceway without restrictions on purse amount or time frame.

Chairman Clyne motioned to approve the New Meadowlands' request to uncouple same trainer entries having bonafide separate ownership in all overnight races regardless of purse amount during the entire race meet. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER THE REQUEST OF FREEHOLD RACEWAY FOR PERMISSION TO UNCOUPLE TWO HORSES ENTERED IN AN OVERNIGHT EVENT TRAINED BY ONE INDIVIDUAL BUT HAVING A BONAFIDE SEPARATE OWNERSHIP

Commissioner Arnone motioned to approve Freehold Raceway's request to uncouple same trainer entries with bonafide separate ownership in all races regardless of purse amount. Commissioner Abbatiello seconded the motion and all Commissioners voted yes with the exception of Commissioner Roselle who was disconnected from the phone call.

CONSIDER THE REQUEST OF DARBY DEVELOPMENT, LLC ON BEHALF OF THE THOROUGHBRED HORSEMEN'S ASSOCIATION TO AMEND THE RACE DATES FOR THE MONMOUTH AT MEADOWLANDS 2016 FALL MEET

Executive Director Zanzuccki indicated that Darby Development, LLC has asked that this matter be tabled due to a conflict with the proposed dates to be run at the Meadowlands Racetrack with the scheduled Breeders' Crown events which take place at the Meadowlands Racetrack. Commissioner DePaola motioned to table the item. Commissioner Arnone seconded the motion and all Commissioners voted yes including Commissioner Roselle who had rejoined the conference call.

CONSIDER THE REQUEST OF DARBY DEVELOPMENT, LLC ON BEHALF OF THE THOROUGHBRED HORSEMEN'S ASSOCIATION FOR APPROVAL OF DEPARTMENT HEADS, RACING OFFICIALS, RACE FORMAT, DAILY WAGERING FORMAT, POST TIME, ETC. FOR MONMOUTH PARK'S 2016 RACE MEETING

The Executive Director noted that the request includes price increases to various items including admission, season passes, programs and parking. John Heims, Esq., on behalf of Monmouth Park, addressed the Commission concerning the price increases. Chairman Clyne motioned to approve the race format and department heads and racing officials for the Monmouth Park 2016 race meeting. Commissioner Gruskos seconded the motion and all Commissioners voted yes.

CONSIDER THE NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION 2016 BUDGETS (2.9% STATUTORY AND .06% PUBLIC PURPOSE)

The Executive Director indicated that staff recommends this item be tabled for the purpose of obtaining additional information. Commissioner Keegan motioned to table the agenda item. Commissioner Gruskos seconded the motion and all Commissioners voted yes.

CONSIDER NOTICE OF RECEIPT OF PETITION FOR RULEMAKING REGARDING "GROUP BET," N.J.A.C. 13:70-29.65

There was no action taken on this item as the petitioner withdrew the petition for rulemaking.

CONSIDER THE INITIAL DECISION IN THE MATTER OF ALEJANDRO MAYMO V. NEW JERSEY RACING COMMISSION, OAL DOCKET NUMBER RAC 8691-14

Chairman Clyne motioned to accept the Initial Decision of the Administrative Law Judge to suspend Alejandro Maymo for 15 days and to impose a \$500 fine. Commissioner DePaola seconded the motion and all Commissioners voted yes.

CONSIDER THE INITIAL DECISION IN THE MATTER OF JANE CIBELLI V. NEW JERSEY RACING COMMISSION, OAL DOCKET NO. RAC 13821-15

Executive Director Zanzuccki read the following introduction:

On May 17, 2015, a horse trained by Jane Cibelli tested above the regulatory threshold for methylprednisolone after finishing 1st in the 10th race at Monmouth Park. A split sample confirmed that the drug exceeded the regulatory threshold of 100 picograms per milliliter for blood plasma. In Ruling No. 15MON48, the Board of Stewards imposed a 15-day suspension and \$500 fine for violation of N.J.A.C. 13:70-14A.1 and -20.7. The Board of Stewards also ordered loss of purse. Cibelli appealed the 15-day suspension and \$500 fine and the matter was transmitted to the OAL.

At the OAL, the DAG representing the Commission filed a motion for summary decision and the parties filed a Joint Stipulation of Material Facts, certifications and legal briefs. The DAG's motion asked the ALJ to find that Cibelli violated N.J.A.C. 13:70-14A.1 and -20.7 and to affirm the 15-day suspension and \$500 fine as the appropriate penalty.

On March 2, 2016, the ALJ issued an Initial Decision. Finding that Cibelli violated N.J.A.C. 13:70-14A.1 and -20.7, the ALJ determined that the sole issue was whether a 15-day suspension and \$500 fine was an appropriate penalty. In examining this issue, the ALJ looked at the ARCI's "Uniform Classification Guidelines for Foreign Substances and Recommended Penalties." The ALJ concluded, erroneously, that this Commission incorporated the ARCI's Uniform Classification Guidelines and its Recommended Penalties by reference when it amended N.J.A.C. 13:70-14A.7 in 2014. The Commission did not. In amending N.J.A.C. 13:70-14A.7, the Commission incorporated the ARCI's enhanced penalties for Multiple Medication Violations, a provision which is not at issue here.

Based upon this erroneous conclusion, the ALJ determined that "[t]he ARCI Model Rules are the controlling authority." Noting that the ARCI's Recommended Penalty for a Class 4 drug (with a Class C penalty) is a \$1,000 fine (absent mitigating circumstances), the ALJ concluded that "[t]he Board of Stewards had no statutory or regulatory authority to impose the fifteen-day suspension." The ALJ then concluded that the \$500 fine was within the legal authority of the Board of Stewards and that it should be affirmed as the sole penalty.

The DAG representing the Commission filed exceptions with the Commission and the attorney for Cibelli filed a reply. The Commission has had the opportunity to receive legal advice in executive session. The Commission may adopt, reject or modify the Initial Decision. Alternatively, the Commission may remand the Initial Decision back to the ALJ pursuant to the OAL's rules for further action on issues or arguments incompletely or erroneously considered.

As pointed out in the exceptions, the Commission's rules grant our Stewards the broad powers to impose suspensions for violations of the Commission's rules. The ALJ clearly erred when he concluded that the Commission had adopted and was bound by the ARCI's Uniform Classification Guidelines for Foreign Substances and Recommended Penalties and that the Stewards, therefore, had no authority to suspend.

Staff, therefore, recommends that the Commission remand this matter to the ALJ to conduct a hearing, accept legal briefs and correct the record regarding the Stewards' authority to issue a suspension in connection with a violation of N.J.A.C. 13:70-14A.1 and -20.7 and regarding the appropriateness of the penalties the Stewards originally imposed.

Chairman Clyne made the following motion:

I move that the Commission remand this matter to the ALJ to conduct a hearing, accept legal briefs and correct the record regarding the Stewards' authority to issue a suspension in connection with a violation of N.J.A.C. 13:70-14A.1 and -20.7 and regarding the appropriateness of the penalties the Stewards originally imposed.

I also move that the Commission direct staff to prepare and file the necessary paperwork to order the remand of this matter to the Office of Administrative Law.

Commission DePaola seconded the motion and all Commissioners voted yes.

CONSIDER DISTRIBUTION OF \$53,576.60 OF THE CASINO SIMULCASTING SPECIAL FUND MONIES (ACCUMULATED IN 2014) THAT WERE NOT ALLOCATED AT THE SEPTEMBER 16, 2015 MEETING

At this time Commissioner Roselle disconnected from the conference call as he was recused from this agenda item.

Executive Director Zanzuccki read the following introduction:

At the September meeting, the Commission approved the allocation of \$125,012.56 to each of the three existing racetracks pursuant to paragraphs d(1) and d(2) of N.J.S.A. 5:12-205. The Commission also approved the allocation of \$53,576.60 to the SBOA and \$26,788.40 each to the THA and TBA pursuant to paragraph d(3) of the statute. Finally, the Commission voted to table consideration of the \$53,576.60 in CSSF monies that the CSSF Committee recommended for Atlantic City Race Course in order to obtain legal advice and allow the racetracks and horsemen's associations to comment on how these monies should be distributed.

By letter dated February 9, 2016, the Commission notified the racetracks, the horsemen's associations and Greenwood Racing that it would accept comments regarding the distribution of the this money. The Commission received comments from all of these entities which were circulated by letter dated March 1, 2016. The Commission then received additional comments from the TBA, dated March 7, 2016. All of these comments are part of the record before the Commissioners.

The Executive Director asked if any of the racetracks or horsemen's groups wanted to supplement the record. There was no one that wished to do so. He then continued with the introduction.

The CSSF Committee met on March 16, 2016 to consider these comments and to discuss distribution of the \$53,576.60. The Committee's recommendations were provided to each Commissioner and they are part of the record.

First, the Committee considered whether the CSSF monies should be distributed to Atlantic City Race Course or any of the three existing racetracks pursuant to d(1) or d(2) of N.J.S.A. 5:12-205. The Committee recommends that they should not.

Regarding Atlantic City Race Course, the Committee determined that ACRC should not receive any of these monies because the racetrack permanently ceased all racing and simulcasting operations in January 2015. Allocating CSSF funds to a closed facility would have no positive impact on the racing industry in New Jersey moving forward.

Second, regarding the three operating racetracks, the Committee determined that the Commission already allocated the appropriate amount of CSSF monies to Monmouth Park, the Meadowlands and Freehold Raceway pursuant to d(1) and d(2) of the statute at the September 2015 meeting. As a result, the Committee recommends that the Commission move on to priority d(3) of the statute to determine if the \$53,576.60 should be allocated to any of the horsemen's associations.

The Committee considered the monies already allocated to the SBOA, THA and TBA at the September meeting pursuant to d(3). Noting that the \$53,576.60 was originally earmarked for a thoroughbred racetrack, the Committee recommends that these monies be distributed to assist the thoroughbred racing industry where it would be most beneficial and have the greatest impact. The Committee considered the proposals submitted by each of the horsemen's associations for the use of these monies and determined that all of the remaining CSSF monies should be allocated to the TBA.

Two members of the Committee, Chairman Clyne and Commissioner Keegan, are present here today and I turn the floor over to them to talk about their reasons for this recommendation.

Chairman Clyne stated that the Committee met for approximately one hour and carefully considered all of the industry members' requests. The Chairman indicated that the Committee first considered whether to allocate funds to a racetrack that is not operational. She indicated that allocating the money to a closed racetrack did not make sense to the Committee as the purpose of the funds is to promote and enhance the racing industry. The next issue that was considered was whether to distribute the remaining money to the three existing racetracks and the Chairman indicated that the Committee felt that the three racetracks had been allocated their fair share in the Commission's initial distribution in September. The Chairman then stated that the Committee determined not to divide the amount of money, \$53,576.60, among the horsemen's associations because it would have been an insignificant amount. Finally, the Chairman stated that the Committee determined the TBA had the greatest need for the funds and believed that this is where the racing industry begins— with the breeding of horses and that allocating the money to the TBA will provide the most benefit and have the greatest impact to the racing industry. The Chairman wished that each of the interested parties could have received the remaining money but the Committee knew this was not possible.

Commissioner Keegan stated that even though Atlantic City Race Course was operating in 2014, the funds were not distributed until 2015 and the Race Course closed their doors in January 2015. The Committee determined not to award the money to a racetrack that was not operational. Commissioner Keegan felt that the Committee made a good decision in not allocating the money to Atlantic City Race Course because Atlantic City is no longer participating in racing and the purpose of the funds is to promote and enhance the racing industry. Commissioner Keegan acknowledged that the TBA has experienced shortfalls during the year and hoped the awarded money would aid the thoroughbred breeding industry. Commissioner Keegan stated that while the Commission is aware of preserving equality between the two breeds, the Committee initially considered these funds for a thoroughbred racetrack so it was decided that the money should be distributed to the thoroughbred industry where it will provide the most benefit.

Commissioner DePaola and Commissioner Gruskos both thanked the Committee on their hard work and recommendation in allocating the funds to the TBA.

Chairman Clyne made the following motion:

When the Committee first considered the allocation of the CSSF monies accumulated in 2014 prior to our September meeting, the Committee initially recommended that these monies be allocated to the Atlantic City Race Course -- a thoroughbred racetrack. Since then, the Commission has obtained comments from the industry and legal advice regarding the allocation of these monies. The Committee has reconsidered the allocation of the \$53,576.60 in accordance with the four categories in the statute.

I move that the Commission accept the recommendation of the CSSF Committee by allocating the entire \$53,576.60 to the TBA pursuant to priority d(3) of the statute. I agree with the Committee's recommendation that the entire amount be awarded to one horsemen's group where it would be most beneficial and have the greatest impact.

As did the Committee, I believe that the TBA submitted the most compelling reasons to receive the funds since they are in dire need of additional monies to fund their breeders' incentive program. In its submissions, the TBA pointed out that the loss of racing dates and New Jersey's inability to compete with other state-bred incentive award programs has led to a dramatic decrease in the number of thoroughbred horses born in New Jersey, as well as a loss of open space, farms and revenue, as the monies available from wagering for New Jersey breeder incentives have dwindled. Allocating the entire \$53,576.60 to the TBA is much needed and it will go a long way in helping the TBA in its efforts to provide an adequate number of NJ-Bred horses to compete at Monmouth Park and the Meadowlands. Although the health benefit programs of the SBOA and THA are certainly worthwhile endeavors, their economic situations, as presented in their submissions to the Commission, do not appear to be as dire as that of the TBA.

This concludes my motion.

Commissioner DePaola seconded the motion and all Commissioners voted yes with the exception of Commissioner Roselle who was recused and who was no longer connected to the conference call.

ITEMS FOR DISCUSSION AND INFORMATION

Acknowledge Receipt of the Thoroughbred Breeders' Association's Audited Financial Statements for the Year Ended December 31, 2015

Acknowledge Receipt of the Standardbred Breeders' & Owners 'Association's Audited Financial Statements for the Year Ended December 31, 2015

The Executive Director stated that staff will review the audited financial statements of the TBA and the SBOA and inform the Commission of any issues.

Comment was heard from Robert Matthies, Vice President of the TBA, who thanked the Commission for their fair and impartial decision in allocating the remaining 2014 Casino Simulcasting Special Fund Monies to the TBA.

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

ATTEST:



Executive Director Frank Zanzuccki