

**NEW JERSEY RACING COMMISSION
THURSDAY, AUGUST 11, 2011
LIBRARY ROOM
MONMOUTH PARK
OCEANPORT, NEW JERSEY**

A meeting of the New Jersey Racing Commission was held on Thursday, August 11, 2011, in the Library Room of Monmouth Park, located in Oceanport, New Jersey.

The following were present:

Dennis A. Drazin, Chairman
Anthony T. Abbatiello, Commissioner
Manny E. Aponte, Commissioner
Anthony R. Caputo, Commissioner (via telephone)
Francis X. Keegan, Jr., Commissioner
Frank Zanzuccki, Executive Director
DAG Judith A. Nason

The following were absent:

Peter J. Cofrancesco, III, 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:

Rather than read each item that is on today's public agenda, I will just incorporate that today's agenda under the items that we may need legal advice on in executive session.

Chairman Drazin motioned to adopt the resolution to adjourn. Commissioner Abbatiello seconded the motion and the Commission adjourned to Executive Session.

The Executive Director indicated that Commissioner Caputo was participating by telephone.

Chairman Drazin made a motion to reconvene back into public session. Commissioner Abbatiello seconded the motion and all of the Commissioners voted yes.

The Executive Director stated that the first and only agenda item includes the consideration of the application of Monmouth Park Racing, LLC (Morris Bailey is the sole member of Monmouth Park & Entertainment, LLC, who, in turn, is the sole member of the Monmouth Park Racing, LLC) to acquire a Permit to operate Monmouth Park Racetrack, pursuant to a Memorandum of Understanding ("MOU") entered into by Morris Bailey and the New Jersey Sports & Exposition Authority ("NJSEA"), the current racing permit holder for Monmouth Park Racetrack, to be supplemented by a lease agreement to be entered into between the NJSEA and the applicant.

a) In addition, subject to Racing Commission approval, regarding the above item, consider the application of Monmouth Park Racing, LLC to transmit and receive, at Monmouth Park Racetrack, interstate and intrastate simulcast horse race meetings/races to and from all horse racing racetracks/outlets that are presently approved for the permit holder Monmouth Park Racetrack.

b) Subject to any Racing Commission approval regarding the above item, consider the application of Monmouth Park Racing, LLC, to participate in casino simulcasting to the same extent that is presently approved for the permit holder at Monmouth Park Racetrack.

c) Subject to any Racing Commission approval regarding the above matter, consider the application and/or petition of Monmouth Park OTW, LLC (Morris Bailey is the sole member of Monmouth Park & Entertainment, LLC, who, in turn, is the sole member of Monmouth Park OTW, LLC), on the effective date that Monmouth Park Racing, LLC assumes operational control of Monmouth Park Racetrack, for Monmouth Park OTW, LLC (or any entity controlled by Monmouth Park & Entertainment, LLC) to be issued a license authorizing it to assume operation and control of Favorites at Woodbridge, an Off-Track Wagering Facility pursuant to an assignment by the NJSEA and

d) Subject to any Racing Commission approval regarding the above items consider whether Monmouth Park Account Wagering, LLC (Morris Bailey is the sole member of Monmouth Park & Entertainment, LLC, who, in turn, is the sole member of Monmouth Park Account Wagering, LLC), is suitable as a “qualifier” to the account wagering license held by the New Jersey Sports and Exposition Authority, and if so, whether Monmouth Park Account Wagering, LLC, may therefore, acquire an interest related to the account wagering licensee (limited to the revenue share generated by said licensee as set forth in the above-referenced Memorandum of Understanding between the NJSEA and Monmouth Park Racing, LLC).

The Executive Director acknowledged the presence of Mr. Bailey and Charles Kelly, who is Mr. Bailey’s attorney and indicated that the floor was theirs to make an opening statement and a presentation regarding these request.

Chairman Drazin indicated that he needed to make a statement. The Chairman stated that he was recusing himself from the determinations by the Racing Commission. He indicated that he had been advised by the Commission Ethics Officer that it would be appropriate for him to do so while certain perceptions are in the air so he was going to leave the front and go sit in the audience. The Chairman then moved into a seat in the audience.

The Executive Director noted for the record that the Commission still maintained a quorum. In addition to the three Commissioners present, Commission Caputo was participating by phone.

Charles Kelly introduced himself as an attorney with McElroy, Deutsch, Mulvaney & Carpenter which represents Mr. Bailey and his related entities that were described. Mr. Kelly provided the Commission a flow chart identifying the entities and the relationship among them.

Mr. Kelly made the following statement to the Commission:

“As you know, Mr. Bailey and for ease of discussion, I’m going to refer to Monmouth Park & Entertainment, LLC as Mr. Bailey, just so there’s no confusion. Monmouth Park, LLC as noted, is the sole member of the three entities which have three different petitions/applications pending here today. Mr. Bailey’s first application and I’m assuming everybody has gotten a copy of the applications that were filed and the MOU that was attached to it. We’re making an application here with the Racing Commission today to approve the agreement that’s been entered into between Mr. Bailey and the Sports Authority.

I'll just jump into the applications starting with the horse race permit application that's filed, that's governed by N.J.S.A. 5:5-38 and 47, and the regulation 13:70-30.1. Essentially, Mr. Bailey has complied with all of the requirements that would deem necessary for the regulations and the statutes. He has demonstrated, I believe, beyond a doubt that he is a "well-suited entity" which is found under the amendment to the new statute and regulations. He's been thoroughly vetted I believe by the Racing Commission through the investigation which was complemented by the Casino Control Commission investigation that was recently done in conjunction with Mr. Bailey's acquisition of Resorts in Atlantic City. We believe Mr. Bailey's intentions to maintain the track throughout the 2011 race meet exactly the way the Authority has set it up to be completed is consistent with the requirements of the regulations and the statutes and just ask if you have any questions."

There were no questions with respect to be a permit holder of Monmouth Park racetrack and Mr. Kelly moved on to address the next request.

Mr. Kelly stated that with regards to the transfer of the existing OTW license at Favorites at Woodbridge from the Authority, Mr. Bailey has complied with all the requirements under the statute and regulations, he has been vetted by the Commissions and deemed a well-suited entity. Mr. Kelly pointed out that by taking over Monmouth Park, and the OTW in Woodbridge, Mr. Bailey is providing a tremendous benefit to the racing community in New Jersey especially in light of the current state of racing and the policies of the Governor and Legislature to no longer be in the business of horse racing.

There being no questions by the Commissioners with respect to the license to operate the off-track wagering parlor at Woodbridge, New Jersey, Mr. Kelly addressed Mr. Bailey's petition pertaining to the account wagering, which was, for technical purposes, filed by Monmouth park Account Wagering, LLC, also owned by Mr. Bailey. Mr. Kelly indicated that pursuant to the MOU with the Authority, Mr. Bailey is entitled to a certain percentage of the revenues generated from the account wagering system and that Mr. Bailey was requesting that the Commission acknowledge he is qualified under the statute and the regulations to accept that revenue. Pointing out that the requirements for the OTW license and an account wagering license are virtually the same, Mr. Kelly asserted that they have established that Mr. Bailey is qualified under the standards applicable to OTWs and account wagering. Mr. Kelly clarified that Mr. Bailey was not seeking a transfer of the account wagering license from the Authority to Monmouth park Account Wagering, LLC, at this time.

Upon the conclusion of Mr. Kelly's presentation, the Executive Director asked, in regards to all three requests, if the Commission were to approve the applications, does Mr. Bailey or Mr. Kelly know of any reason why racing, simulcasting or any off-track wagering at the OTW parlor would be interrupted the transfer of the permit?

Mr. Kelly responded that they did not know of any such reason and indicated that at this point, we expect a seamless transition from the Authority to Bailey's entities at all of these venues.

The Executive Director then indicated that he had a question for Lennon Register who was present on behalf of the Sports Authority.

The Executive Director asked Mr. Register if he was familiar with the applications as contained on our Racing Commission meeting agenda and Mr. Register responded that he was. Mr. Register explained that the Authority went through a formal bid process and both selection committee and its board of directors selected Morris Bailey as the best applicant to take over these operations. The Executive Director asked if the Authority joins in the applications as presented by Mr. Bailey and Mr. Register responded yes.

The Executive Director also stated if the Authority was okay with the timing as requested by Mr. Bailey regarding the various licensees and Mr. Register again responded yes.

The Executive Director noted for the record that a MOU signed by Mr. Bailey and the Authority was filed with the Commission and circulated to the Commissioners.

The Executive Director indicated that he had questions for the New Jersey Thoroughbred Horsemen's Association and that the Executive Director of the Horsemen's Association, Michael Musto, was presenting. Noting that the THA has various contracts and has provided consents to the Sports and Exposition Authority for various things, including simulcasting, Executive Director Zanzuccki asked if these same consents have been given to Mr. Bailey. Executive Director Michael Musto responded that the consents have been given to Mr. Bailey. Executive Director Zanzuccki then asked if Mr. Musto saw any reason why racing would be interrupted as a result of the transfer of this permit to Mr. Bailey. Mr. Musto responded "none whatsoever."

The Executive Director asked the Commissioners if they had any questions and there were none. The Executive Director complimented Mr. Bailey and Mr. Kelly for the thorough job they did in filing the applications and providing information .

At this time, Commissioner Keegan read the following proposed motion:

“On July 7, 2011, Monmouth Park Racing, LLC (“MPR”), filed an application to, among other things, acquire a permit to conduct a horse race meeting at Monmouth Park Racetrack, all pursuant to a signed Memorandum of Understanding or “MOU” it has with the Authority. Mr. Bailey is the sole member of Monmouth Park Entertainment, LLC, which in turn, is the sole member of applicant MPR. Accordingly, if the Racing Commission approves the request, Monmouth Park will be operated by Mr. Bailey, through limited liability company MPR.

Monmouth Park & Entertainment , LLC, which is wholly controlled by Morris Bailey, is essentially the parent to LLC’s formed to allow Bailey to acquire additional and related interests in New Jersey racing. These LCC’s , in addition to MPR, are as follows: Monmouth Park Off Track Wagering, LLC (“MPOTW”), formed to acquire interests in New Jersey Off-Track Wagering; and Monmouth Park Account Wagering, LLC (“MPAW”), formed to acquire interests in New Jersey account wagering.

Through this application, as amended or supplemented, the following specific relief is sought by Bailey:

- > Approval of the Monmouth Park-Authority transaction, and the issuance of a permit to MPR to operate Monmouth Park. Bailey desires “...to takeover operations of Monmouth Park Racetrack immediately upon the issuance of the racetrack operator Permit.”
- > Approval for MPR to transmit and receive, at Monmouth Park, interstate and intrastate simulcast horse race meetings/races to and from all horse racing racetracks/outlets that are presently approved for permit holder Monmouth Park Racetrack.
- > Approval for MPR to participate in casino simulcasting to the same extent that is presently approved for permit holder Monmouth Park Racetrack.
- > Approval, on the effective date that MPR assumes operational control of Monmouth Park Racetrack, for MPOTW to be issued a license authorizing it to assume operation and control of the Woodbridge OTW Facility pursuant to an assignment by the New Jersey Sports & Exposition Authority.

- > Approval, on the effective date that MPR assumes operational control of Monmouth Park Racetrack, for MPAW to acquire a 50% revenue share from the account wagering licensee/the Authority (that is, 50% of the Authority's revenue share as derived by it as operator of the New Jersey account wagering system).

In considering this matter, the Racing Commissioners were provided with the results of the staff's investigation, as concerns the Bailey-Authority transaction, and as concerns Mr. Bailey's background. Pursuant to a release provided by Mr. Bailey, the Commission was also privy to the Division of Gaming Enforcement's investigation results regarding Mr. Bailey, as concerns his recent acquisition of an ownership interest in the Atlantic City resorts Casino Hotel. We also received information from the parties to the transaction, both prior to today and at this proceeding. We also consulted with Racing Commission legal counsel as appropriate.

MPR has indicated that it intends to continue racetrack operations/race schedules of Monmouth Park consistent with the approvals secured by the Authority. As concerns Mr. Bailey personally, I would note that he has been a licensed race horse owner in this and other states for many years. Based upon the Commission's review, coupled with Mr. Bailey's own substantial personal experience in business, gaming and horse racing, he appears qualified to be granted the relief he seeks. Additionally, our background investigation into Mr. Bailey reflects that he is qualified, in terms of his good character, to assume such interests in New Jersey racing.

I believe that the application of MPR for a permit to operate Monmouth Park, with the continuation of live racing at Monmouth Park, consistent with the present permit holder's approvals, would be in the public interest as set forth in N.J.S.A. 5:5-22 et seq., specifically as provided in N.J.S.A. 5:5-43 and 44. I also believe that the issuance of such a permit, and approval of the requested race schedule, is consistent with the interests of the applicant, the industry participants and, as I said, the public. Such an approval is additionally consistent with the goal of achieving reasonable continuity in thoroughbred racing this year. The approval of Mr Bailey's application, with the same race schedule as allocated to the Authority as the present permit holder for Monmouth Park, will continue to serve to promote the thoroughbred industry, maintain and enhance the employment which thoroughbred racing provides, encourage horses to stay in New Jersey, provides the maximum possible revenue to the state and to our horsemen, help maintain the competitive position in relation to neighboring states, and provides a continuation recreational opportunities for New Jersey residents who desire to attend Monmouth Park racing.

I therefore move that the Commission approve the issuance of a Monmouth Park permit to Mr. Bailey consistent with his agreement with the Authority, subject to the following conditions:

- 1) the permit issued to MPR, to operate Monmouth Park, shall be provisional;
- 2) the final approval of the permit shall be subject to the signing of the lease by each party thereto, on or before December 31, 2011, and the Racing Commission review of the lease for regulatory sufficiency, and the continuing investigation;
- 3) that all conditions applicable to the Authority's operation of Monmouth Park shall equally apply to MPR, and if MPR believes that any such condition should not apply, it must seek to have those conditions removed in writing through written application to the Executive Director; and
- 4) the issued permit shall be conditional upon compliance with all laws, rules, and directives of the Racing Commission which may be implicated."

Commissioner Abbatiello seconded the motion addressing item 2 on the agenda and all four of the participating Commissioners voted yes.

Commissioner Keegan then proceeded with a motion for item 2(a) on the agenda as follows:

"With regard to MPR's request to engage in interstate and intrastate simulcasting at Monmouth Park, MPR has indicated that it presently intends to engage in simulcasting activities to the same extent as the Authority. I believe that Mr. Bailey's request, which is essentially to conduct intrastate and interstate common pool and separate pool simulcasting with the facilities presently approved for the Authority at Monmouth Park, is consistent with the Simulcasting Racing Act, N.J.S.A. 5:5-110 et seq and our related rules. I, as part of this motion, I therefore advocate approval subject to the following conditions:

- 1) that any approval is conditioned upon final approval of MPR's racetrack permit, and the continuing investigation;
- 2) that all conditions applicable to the Authority's simulcast operations at Monmouth Park shall equally apply to MPR, and if MPR believes that any such condition should not apply, it must seek to have those conditions removed through application to the Executive Director; and

- 3) the conditional relief granted shall be subject to compliance with all laws, rules, and directives of the Racing Commission which may be implicated.”

Commissioner Abbatiello seconded the motion and all four of the Commissioners voted yes.

Commissioner Keegan proceeded with the following motion regarding item 2(b) on the agenda:

“As concerns Mr. Bailey’s request to participate in casino simulcasting, MPR has indicated that it presently intends to engage in casino simulcasting activities to the same extent as the Authority. I believe that Commission approval of MPR’s request would be consistent with the Casino Simulcasting Act and Chapter 72 of the New Jersey Administrative Code (Title 13, Casino Simulcasting). I recommend, as part of this motion for approval of the request, the following conditions:

- 1) that any approval be conditioned upon final approval of MPR’s racetrack permit and the continuing investigation ;
- 2) that all conditions applicable to the Authority’s casino simulcast operations related to Monmouth Park shall equally apply to MPR, and if MPR believes that any such condition should not apply, it must seek to have those conditions removed through application to the Executive Director;
- 3) the conditional relief granted shall be subject to compliance with all laws, rules, and directives of the Racing Commission which may be implicated.”

Commissioner Abbatiello seconded the motion and all four Commissioners voted yes.

Commissioner Keegan proceeded with the following motion regarding items 2(c) and 2(d) on the agenda:

“Let me now turn to Mr. Baileys application through MPOTW, to be granted a license to operate the Woodbridge OTW, which license is now held by the Authority. I believe that the investigation, and what we have heard here today, demonstrates that Mr. Bailey is qualified to hold the OTW license. Mr. Bailey has indicated that, for the present time, he intends to use existing staff of the Woodbridge OTW, and therefore, no persons will for the time being require investigation as individual license applicants. Accordingly, I conclude

that Mr. Bailey has established by clear and convincing evidence that he and his intended employees, being the same ones now employed by the Authority and licensed by this Commission, are qualified in all aspects to hold the license applied for, that the transfer of the Woodbridge OTW license will not be inimical to the best interests of the public and the horse racing industry in this state, and that all of the requirements of the “Off-Track and Account Wagering Act” and the Commission’s rules have been met. I therefore, as part of this motion, believe that approval to this request of Mr. Bailey is warranted. Particularly, that the application of MPOTW should be provisionally approved consistent with the “Off-Track and Account Wagering Act and Title 13, Chapter 74 of the Commission’s rules, including N.J.A.C. 13:74.4.1. This provisional approval is:

- 1) conditioned upon final approval of MPR’s racetrack permit, and the continuing investigation;
- 2) that all conditions applicable to the Authority’s Woodbridge OTW license, as related to the Woodbridge OTW, shall equally apply to MPOTW, and if MPOTW believes that any such condition should not apply, it must seek to have those conditions removed through written application to the Executive Director;
- 3) that the Racing Commission is not at this time approving any other transaction anticipated in the MOU, relating to any future rights that Mr. Bailey may have with regard to the New Jersey Off-Track wagering system. The Racing Commission’s decision is limited to the Woodbridge OTW, and particularly, the assignment of the operational and financial rights to the Woodbridge OTW consistent with the MOU. The Racing Commission understands, from its review of this matter, that the applicant intends, until further notice to the Commission, to operate the Woodbridge OTW in a manner consistent with that way it has been operated by the Authority this year;
- 4) the conditional relief granted shall be subject to compliance with all laws, rules, and directives of the Racing Commission which may be implicated; and
- 5) that the Commission’s action is subject to review and approval of the Attorney General. Neither Mr. Bailey, MPOTW, or any related entity may receive a transfer of the Woodbridge OTW, or related rights, until and unless the Attorney General favorably reviews and approves this determination.

Mr. Bailey's, that is "MPAW's" intended present interest with regard to the account wagering system is to receive a 50% revenue stream, from the Authority's revenue as derived from its continued operation of the New Jersey account system, retroactive to June 1, 2011. Because of the significant financial interest that Mr. Bailey is to assume with regard to revenues accruing to the Authority, as a result of its account wagering operation, while he is not required to hold an account wagering license as a result of this interest, Mr. Bailey must "qualify" to the personal background/good character suitability standards which would enable him to in fact hold such license. This, I find, has been done.

I therefore move that the Racing Commission approve Mr. Bailey's request, subject to the following conditions:

- 1) final approval of MPR's racetrack permit and the continued investigation;
- 2) that the interest of Monmouth Park Wagering Account Wagering, LLC, is limited to the 50% share of the Authority's revenue in account wagering as described in the MOU;
- 3) the representations of Mr. Bailey as set forth in a Certification provided to the Racing Commission, which certification concerns the interest subject of this application, and his compliance therewith;
- 4) that the Racing Commission is not at this time approving any other transaction anticipated in the MOU or otherwise, relating to any future rights that Mr. Bailey, MPAW or entities subject to Mr. Bailey's control may seek with regard to the New Jersey account wagering system. The Racing Commission's decision today is in all respects limited to the application before it, and here particularly, to the assignment of revenue rights derived by the Authority incident to its operation of the account wagering system; and
- 5) that the Commission's action is subject to review and approval of the Attorney General. Neither Mr. Bailey, MPAW, or any related entity, may receive any benefit resulting from this determination until and unless the Attorney General favorably reviews and approves our decision in writing.

This, my fellow Commissioners, concludes my motion."

Commissioner Abbatiello seconded the motion.

In discussing the motion, Commissioner Aponte pointed out that his lack of questions to Mr. Bailey, or to anyone else here today is because this has been a great package. Commissioner Aponte thanked Mr. Bailey for taking on this endeavor and Racing Commission staff under the direction of Mr. Zanzuccki for doing such a good job of compiling and organizing the voluminous information and rushing this package out. Commissioner Aponte also thanked the Attorney General's office for doing such a good job in thoroughly answering all of the questions and also the Governor's office.

There being no further discussion, all four Commissioners voted yes.

The Executive Director noted that all items on the agenda were concluded.

Commissioner Keegan made a motion to adjourn which was seconded by Commissioner Aponte.

Mr. Bailey thanked the Commission for their approval and for the hard work done to get to this point. "The fact is I now feel that I'm embarking on a venture that we're all going to be partners in, working with the Commission, with the horsemen, with the Sports Authority. I think we could really elevate the racing industry here in the State so I'm very excited about the future. Thank you for your help."

The Commissioners extended their thanks and congratulations to Mr. Bailey.

All Commissioners voted in favor of the motion to adjourn and the meeting concluded.

ATTEST:

Executive Director Frank Zanzuccki