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Commissioners

JUDITH A. NASON
Acting Executive Director

FINAL DETERMINATION AND ORDER

IN THE MATTER OF THE CONSOLIDATION OF JOHN COLASANTI V. NEW JERSEY RACING COMMISSION, OAL DOCKET NOS. RAC 11895-18 AND RAC 18173-18

WHEREAS, on August 8, 2018, the New Jersey Racing Commission transmitted John Colasanti v. New Jersey Racing Commission, OAL Docket No. RAC 11895-18 to the Office of Administrative Law as a contested case;

WHEREAS, on December 10, 2018, the Commission transmitted John Colasanti v. New Jersey Racing Commission, OAL Docket No. RAC 18173-18 to the Office of Administrative Law as a contested case;

WHEREAS, on February 8, 2019, Administrative Law Judge Sarah G. Crowley issued an order consolidating the two matters;

WHEREAS, on February 15, 2019, the Commission received a request from Deputy Attorney General Jonathan S. Sussman seeking interlocutory review of ALJ Crowley's consolidation order;

WHEREAS, on February 18, 2019 Christina Vassiliou Harvey, Esq. filed an objection to the request on Colasanti's behalf;

WHEREAS, on February 19, 2019, Acting Executive Director Judith A. Nason determined that the Commission would review the ALJ's order at its February 27, 2019 public meeting;

WHEREAS, the ALJ's order of consolidation is governed by N.J.A.C. 1:1-17.3;

WHEREAS, an agency's interlocutory review of an ALJ's order is governed by N.J.A.C. 1:1-14.10;



WHEREAS, when reviewing an ALJ's Order of Consolidation, an agency must evaluate the ALJ's analysis of the factors enumerated in N.J.A.C. 1:1-17.3(a);

AND THE COMMISSION FINDING THAT ALJ Crowley erred by failing to comprehensively analyze the factors listed in N.J.A.C. 1:1-17.3(a);

AND THE COMMISSION FINDING THAT the burden of proof in OAL Docket No. 11895-18 belongs to the Respondent and the factual background of this matter involves Petitioner's alleged violation of multiple regulations of the Commission requiring licensure;

AND THE COMMISSION FINDING THAT the burden of proof in OAL Docket No. 18173-18 belongs to the Petitioner and the factual background of the matter involves numerous other factors relating to the Petitioner's suitability for licensure;

AND THE COMMISSION FINDING THAT factor one weighs in favor of consolidation because the parties are the same;

AND THE COMMISSION FINDING THAT factor two weighs against consolidation because the nature of the facts and law in the two matters are vastly different;

AND THE COMMISSION FINDING THAT factor three weighs against consolidation because the minimal similarities in the factual backgrounds of the two matters make it unnecessarily problematic to try these matters thoroughly, competently and fully in a single proceeding;

AND THE COMMISSION FINDING THAT factor four weighs against consolidation because the vast differences in the factual backgrounds and burdens of proof in the two matters would cause confusion should the matters be tried together;

AND THE COMMISSION FINDING THAT factor five weighs against consolidation because it is not advisable to try such inapposite matters together in a single proceeding;

AND THE COMMISSION FINDING THAT factor six neither weighs against nor for consolidation;

AND THE COMMISSION FINDING THAT the totality of the factors weigh against consolidation of the two matters.

IT IS THEREFORE ORDERED THAT the Order of Consolidation, dated February 8, 2015, which consolidates these two matters is hereby reversed;

IT IS FURTHER ORDERED THAT the Office of Administrative Law shall hear these two cases separately as two distinct contested cases.

This Order memorializes the actions taken by the Commission at its public meeting on February 27, 2019.

NEW JERSEY RACING COMMISSION

By: Judith A. Nason
Judith A. Nason, Acting Executive Director

Dated: March 4, 2019