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OAL Docket No. RAC 05607-21  
Agency Docket No. NJRC-11-H-21-MD

**JOSEPH BONGIORNO,**

Petitioner,

v.

**NEW JERSEY RACING COMMISSION,**

Respondent.

**AMENDED  
FINAL  
DECISION**

JUDITH A. NASON  
*Executive Director*

In an August 2, 2022 Initial Decision, Administrative Law Judge Kimberly A. Moss ("ALJ") concluded that Petitioner, driver Joseph Bongiorno, violated N.J.A.C. 13:71-20.15(c)3 and 4 for riding in an exaggerated manner, failing to keep the lines taut and using the whip with his arm raised above his shoulder while driving "Pat Stanley N" in the 7<sup>th</sup> race at the Meadowlands Racetrack on May 29, 2021. Initial Decision at 14. The ALJ reversed the Board of Judges' determination that Petitioner continued to use the whip while the horse was not responding. *Ibid.* The ALJ made no determination regarding Petitioner's violation of N.J.A.C. 13:71-7.29(a)(13) for conduct detrimental to the sport. Finally, the ALJ reduced the penalties from a 20-day suspension and \$5,000 fine to a 7-day suspension and \$1,000 fine. *Ibid.*

In the May 29, 2021 race, the horse "Pat Stanley N," driven by Petitioner, tired in the homestretch, stumbled and fell, causing other horses and drivers to fall. *Id.* at 9. The New Jersey Racing Commission's ("NJRC" or "Commission")



Board of Judges conducted a hearing on June 11, 2021 and determined that Petitioner “displayed exaggerated movement with the whip, using more than wrist action and raising his whipping arm to a level above shoulder height” in violation of N.J.A.C. 13:71-20.15. Id. at 9-10; Ruling No. 21MDH76 (Amended)(Exhibit R-4). The Board of Judges also determined that Petitioner “continued to use the whip to urge his horse after the horse was no longer responding” in violation of N.J.A.C. 13:71-20.15. Ruling No. 21MDH76.

The Board of Judges also concluded that Petitioner violated N.J.A.C. 13:71-7.29(a)(13) for “conduct detrimental to the sport.” Ibid. Upon finding the afore-mentioned whipping violations, the Board of Judges determined that “[t]he culmination of these actions ... placed Mr. Bongiorno in a position of being unable to respond when the horse PAT STANLEY N stumbled and fell, unseating Mr. Bongiorno as well as two other drivers.” Ibid. The Board of Judges concluded that Petitioner’s actions violated N.J.A.C. 13:71-20.15 and N.J.A.C. 13:71-7.29(a)13 and imposed a 20-day driving suspension and a \$5,000 fine. Ruling No. 21MDH76.

The Board of Judges found multiple violations of the NJRC’s rules. N.J.A.C. 13:71-20.15(c)(4) mandates that “[d]rivers shall not move their whipping arm in an exaggerated manner and the lines shall remain reasonably taut during the race.” N.J.A.C. 13:71-20.15(c)(3) states that “[w]hipping shall be restricted to wrist action only and the whipping arm shall not be raised above the driver’s shoulder height.” N.J.A.C. 13:71-20.15(b)(4) states that the driver shall not “continue to use the whip when a horse is not advancing its position in the race.” As indicated above, N.J.A.C. 13:71-7.29(a)(13) states that the license of any driver may be suspended and a fine imposed for “conduct detrimental to the sport.”

Petitioner appealed and requested a stay of the penalties. The NJRC transmitted the matter to the Office of Administrative Law (“OAL”) as a contested case and granted a stay.

At the OAL, Acting Presiding Judge Scott Egger and Presiding Judge Peter Koch testified to explain Petitioner’s multiple violations of N.J.A.C. 13:71-20.15, the NJRC’s whipping rule, and N.J.A.C. 13:71-7.29(a)(13) for conduct detrimental to the sport. The ALJ found both judges to be credible, knowledgeable and without bias. Initial Decision at 8. The ALJ accepted the judges’ testimony and concluded that Petitioner “was riding in an exaggerated manner, the lines were not taut and when using the whip at times his whipping arm was raised above his shoulder in violation of N.J.A.C. 13:71-20.15 (c) 3 and 4.” Id. at 12. The NJRC accepts the ALJ’s findings of fact and conclusion.

Next, the ALJ found and then concluded that prior to the horse’s fall, “the horse was not responding to the urging of BonGiorno [*sic*] in the home stretch.” Id. at 12. However, despite this clear finding and conclusion, the ALJ inexplicably “ordered that the determination of NJRC that BonGiorno used the whip while the horse was not responding is reversed.” Id. at 14.

The NJRC accepts the ALJ's finding and conclusion that the horse was not responding to Petitioner's urging in the home stretch. The NJRC rejects the ALJ's reversal of the judges' determination that Petitioner improperly used the whip while the horse was not responding.

The NJRC finds that Petitioner violated N.J.A.C. 13:71-20.15(b)(3) and (4) when he continued to use the whip while the horse was not responding or advancing in position. See Race Video Recording, Exhibit J-1 at 0:26 to 0:30. In addition to the video recordings of the race, which establish that Petitioner continued to urge the horse with the whip when the horse was not responding, both Acting Presiding Judge Egger and Presiding Judge Koch testified that this violation occurred. Acting Presiding Judge Egger testified that Petitioner continued to urge the horse, which was tiring. T.28-20 to -21; T.28-23 to T. 29-1; T.32-20 to -21; T.38-20 to -22. Presiding Judge Koch also testified that Petitioner continued to urge the horse even when the horse was not responding. T.52-3 to -6; T.54-9 to -11; T.59-17 to -18; T.63-15 to -19.

The ALJ made no findings and failed to address the Board of Judges' determination that Petitioner violated N.J.A.C. 13:71-7.29(a)(13) by engaging in conduct detrimental to the sport. After detailing Petitioner's multiple violations of the whipping rule, the Board of Judges determined that "the culmination of these actions ... placed Mr. Bongiorno in a position of being unable to respond when the horse PAT STANLEY N stumbled and fell, unseating Mr. Bongiorno as well as two other drivers." Ruling No. 21MDH76. As a result, the Board of Judges determined that in addition to violating N.J.A.C. 13:71-20.15, the whipping rule, Petitioner also violated N.J.A.C. 13:71-7.29(a)(13) by driving in such a manner that he was unable to properly respond when his horse stumbled. Ibid.

Although extensive testimony was presented at the OAL, the ALJ made no finding of fact nor conclusion of law related to Petitioner's violation of N.J.A.C. 13:71-7.29(a)(13). After review of the record, the Commission finds that Petitioner engaged in conduct detrimental to the sport by driving "Pat Stanley N" in such a manner, e.g., loose reins, whipping violations and continuing to urge a horse that was not responding, that Petitioner did not have complete control of the horse and was not able to react and support the horse when it stumbled and fell. As a result, the NJRC concludes that Petitioner violated N.J.A.C. 13:71-7.29(a)(13).

At the OAL, the video recordings of the race were entered into evidence. Exhibits J-1 to J-4. Both judges testified regarding Petitioner's driving in the homestretch, the horse's stumble and fall and the subsequent accident. Acting Presiding Judge Egger testified that he does not believe that Petitioner caused the accident. T.29-16 to -17. However, Acting Presiding Judge Egger stated that by driving without reasonably taut reins, Petitioner "was not in a position to prevent it." T.29-16 to -19. He explained that "the urging was too much, the reins were not taut, the whip was too high and ... Mr. Bongiorno was in no position to prevent that from happening, and that's part of his responsibility as a driver, for the safety for the best interest of racing..." T.38-15 to -22. See also T.28-11 to -15; T.29-18 to -19; T.30-21 to T.31-2; T.33-8 to -10.

Acting Presiding Judge Egger explained that “[a] driver can keep a horse right ... if a driver has more control and reasonably taut lines ... he may be able to keep something like that from happening.” T.29-23 to T.30-3. Reiterating that he doesn’t believe Petitioner caused the accident, Acting Presiding Judge Egger pointed out that as a driver, Petitioner has “some responsibility to try and prevent something like that, and he was in no position with the way he was urging that horse to prevent that from happening.” T.30-4 to -8.

Presiding Judge Koch also testified that because Petitioner had his whipping arm above his shoulder, failed to maintain the reins in a reasonably taut manner and continued to urge the horse when it was not responding, that Petitioner “was unable to react when the horse stumbled and fell...” T.52-1 to -7. Presiding Judge Koch explained the need to control the horse with taut reins that keep the bit in the horse’s mouth: “The tauter the lines are, the more control you have of the bit in the horse’s mouth...” T.52-20 to -22. Stressing the importance of driver safety, Presiding Judge Koch testified that Petitioner “did not have complete control of the horse as the lines were flying ... and when a dangerous situation came up, he was not able to react...” T.52-10 to -17.

When asked about the 20-day suspension and \$5,000 fine imposed by the Board of Judges, Presiding Judge Koch acknowledged that lesser fines and suspensions have been imposed for violations of the whipping rule. T.53-4 to -6. However, Presiding Judge Koch explained that the 20-day suspension and \$5,000 fine was warranted in this case because of Petitioner’s lack of control of the horse and inability to react when the horse stumbled and fell. T.53-6 to -10.

Based upon the findings set forth above, the NJRC rejects the ALJ’s imposition of a 7-day suspension and \$1,000 fine. The ALJ did not explain her reduction of the penalty.<sup>1</sup> Although she affirmed Petitioner’s violation of N.J.A.C. 13:71-20.15(c)(3) and (4), the ALJ inexplicably reversed the judges’ determination that Petitioner used the whip while the horse was not responding after she specifically found that the horse was not responding to Petitioner’s urging. See Initial Decision at 12 and 14. Moreover, the ALJ failed to consider Petitioner’s violation of N.J.A.C. 13:71-7.29(a)(13).

In issuing this Final Decision, the NJRC independently determines the appropriate penalties for Petitioner’s multiple violations of N.J.A.C. 13:71-20.15 and his violation of N.J.A.C. 13:71-7.29(a)(13). Based upon the Commission’s review of the record, the NJRC finds that the 20-day driving suspension and \$5,000 fine imposed by the Board of Judges are the appropriate penalties. In this race, Petitioner committed four separate violations of N.J.A.C. 13:71-20.15 by

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<sup>1</sup> The ALJ may not have accurately considered the penalties imposed by the NJRC’s Board of Judges as she reported three different penalties in the Initial Decision. The ALJ correctly reported the 20-day suspension and \$5,000 fine on page 4. However, thereafter, the ALJ indicated that the judges imposed a 20-day suspension and \$500 fine on page 10 and reported that the Petitioner received a 20-day suspension and \$2,000 fine on page 13.

moving his whipping arm in an exaggerated manner, raising his whipping arm above shoulder height, failing to keep the reins reasonably taut and continuing to urge the horse when it was not responding. Although the Commission does not find that Petitioner caused the horse's fall and subsequent accident, the NJRC agrees that Petitioner engaged in conduct detrimental to the sport by driving "Pat Stanley N" in an unsafe manner whereby he did not have complete control of the horse and could not react and support the horse when it stumbled and ultimately fell.

In determining the appropriate penalties, the NJRC must also weigh Petitioner's considerable penalty history. The ALJ did not find Petitioner to be credible and specifically took issue with his testimony that he was "not a whipping guy." Initial Decision at 8. The record indicates that Petitioner has committed 32 prior whip-related violations from 2012 to 2021. Ibid.; id. at 14. See also T.96-23 to T.102-5. A 20-day driving suspension and \$5,000 fine is warranted.

For the reasons set forth above, the Commission hereby modifies the Initial Decision and orders that Petitioner's license to drive shall be suspended for 20 days and a \$5,000 fine shall be imposed for his multiple violations of N.J.A.C. 13:71-20.15 and his violation of N.J.A.C. 13:71-7.29(a)(13). NJRC staff are directed to issue a ruling setting forth the dates of the suspension and the due date for the payment of the fine.

NEW JERSEY RACING COMMISSION

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

Date: November 10, 2022