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Commissioners

FINAL DETERMINATION AND ORDER

JUDITH A. NASON
Executive Director

IN THE MATTER OF THE CONSOLIDATION OF ROBERT W. CLEARY v. NEW JERSEY RACING COMMISSION; OAL DOCKET NO. RAC 05864-21N; JAMES KING, JR. v. NEW JERSEY RACING COMMISSION; OAL DOCKET NO. 06047-21N; MICHAEL FIUMENERO v. NEW JERSEY RACING COMMISSION; OAL DOCKET NO. 07163-21S; WILLIAM R. BENA v. NEW JERSEY RACING COMMISSION; OAL DOCKET NO. 07217-21S; AND NIKOLAS DRENNEN v. NEW JERSEY RACING COMMISSION; OAL DOCKET NO. RAC 07864-21N.

WHEREAS, the New Jersey Racing Commission (“Commission” or “NJRC”) has transmitted the above-referenced contested cases to the Office of Administrative Law;

WHEREAS, on March 1, 2022, Administrative Law Judge (“ALJ”) Matthew G. Miller issued an Order, which consolidated the five contested cases (“Order of Consolidation”);

WHEREAS, on March 8, 2022, Deputy Attorney General Eric A. Reid filed a request on behalf of Respondent for interlocutory review of the Order of Consolidation with the Commission;

WHEREAS, on March 10, 2022, the Commission issued a letter notifying the parties that the NJRC will review the Order of Consolidation at the March 23, 2022 public meeting;



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WHEREAS, when reviewing an ALJ's consolidation order, an agency must evaluate the ALJ's analysis of the factors enumerated in N.J.A.C. 1:1-17.3;

AND THE COMMISSION FINDING THAT factor one weighs against consolidation as the identity of the parties are different in each case;

AND THE COMMISSION FINDING THAT factor two weighs against consolidation because the cases involve six different post-race samples taken from different horses after different races with different chains of custody, different tests, different test results and different test reports;

AND THE COMMISSION FINDING THAT factor three weighs against consolidation because although consolidation may save the Petitioners time in presenting common defenses, consolidation would place an unnecessary burden on Respondent and unfairly prejudice its ability to thoroughly, competently, and fully adjudicated all five cases together;

AND THE COMMISSION FINDING THAT factor four weighs against consolidation because the dissimilar facts related to the collection of the horses; samples, documentation of the chains of custody for the collection and shipping of the samples, documentation of the chains of custody at the laboratory, testing the samples, analysis of the test results, and the reporting of the test results in the data packets create a distinct danger of confusion and undue prejudice to Respondent if all five contested cases are consolidated;

AND THE COMMISSION FINDING THAT factor five, the advisability generally of disposing of all aspects of the controversy in a single proceeding, weighs against consolidation given the danger of confusion and undue prejudice to Respondent;

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 five contested cases;

AND THE COMMISSION FINDING THAT contested cases which involve a positive test result for the same drug, the same attorney representing the Petitioners and the potential for similar defenses do not present sufficient commonality to meet the standards for consolidation set forth in N.J.A.C. 1:1-17.3;

IT IS THEREFORE ORDERED THAT the Order of Consolidation, dated March 1, 2022, which consolidates these contested cases is hereby reversed.

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

This Final Determination and Order memorializes the actions taken by the Commission at its public meeting on March 23, 2022.

NEW JERSEY RACING COMMISSION

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

Dated: April 8, 2022