

**NEW JERSEY RACING COMMISSION  
WEDNESDAY, NOVEMBER 14, 2012  
RACING COMMISSION OFFICE  
140 EAST FRONT STREET, FOURTH FLOOR  
TRENTON, NEW JERSEY**

A meeting of the New Jersey Racing Commission was held on Wednesday, November 14, 2012, in the Racing Commission office located at 140 East Front Street, in Trenton, New Jersey.

The following were present:

Anthony T. Abbatiello, Commissioner  
Manny E. Aponte, Commissioner  
Anthony R. Caputo, Commissioner  
Pamela J. Clyne, Commissioner  
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:

1. Legal advice concerning the allocation of racing dates for thoroughbred and standardbred permit holders for 2013 for the following:  
  
NJSEA Meadowlands Standardbred FR Park Racing, LP  
NJSEA Meadowlands Thoroughbred Greenwood ACRA, Inc.  
Monmouth Park Racing, LLC;
2. Legal advice concerning the distribution of the Casino Simulcasting Special Fund accumulated in 2011, pursuant to N.J.S.A. 5:12-205d;
3. Legal advice concerning the Single Pool Wagering proposed rules.
  - a. Consider approval for the advertisement for public comment, in the New Jersey Register, of proposed new horse racing (thoroughbred racing) rules (“Single Pool Wagering”), N.J.A.C. 13:70-29A
  - b. Consider approval of the advertisement for public comment, in the New Jersey Register, of proposed new horse racing (thoroughbred racing) rules (“Single Pool Wagering”), N.J.A.C. 13:71-27A;
4. Legal advice concerning the matter of Michael Gulotta, On Behalf of All Owners of Crys Dream v. New Jersey Racing Commission; OAL Docket No. RAC 09712-2011N;
5. Legal advice concerning the matter of Frederic Esposito v. New Jersey Racing Commission, OAL Docket No. RAC 03743-2011S;
6. Legal advice concerning the approval of the New Jersey Racing Commission program budgets for FY 2013;
7. Other legal advice and/or status of pending litigation.

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

It was noted that Commissioner Abbatiello and Commissioner Caputo are participating by telephone.

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

The Commission ended the execution session and Commissioner Abbatiello moved to reconvene the public session. Commissioner Keegan seconded the motion and the Commission concurring, the public session resumed.

#### CONSIDER APPROVAL OF THE MINUTES OF THE PUBLIC AND EXECUTIVE SESSIONS OF THE OCTOBER 3, 2012 COMMISSION MEETING

Commissioner Keegan made a motion to table the minutes and consider them at the November 28, 2012 Commission meeting. Commissioner Abbatiello seconded the motion and all Commissioners voted yes.

#### CONSIDER APPROVAL OF THE BILLS

Commissioner Aponte made a motion to approve the bills as certified to by staff. Commissioner Keegan seconded the motion and all Commissioners voted to approve the bills as certified to by staff.

#### CONSIDER RATIFICATION OF THE WINNERS SIMULCAST SERIES CHALLENGE HANDICAPPING CONTEST CONDUCTED ON NOVEMBER 8, 2012 AT THE WINNERS BAYONNE OFF-TRACK WAGERING FACILITY

Commissioner Abbatiello motioned to ratify approval granted to Winners Bayonne Off-Track Wagering facility to conduct the Series Challenge Handicapping Contest. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER THE ALLOCATION OF RACING DATES FOR THOROUGHBRED AND STANDARD BRED PERMIT HOLDERS FOR 2013

Executive Director Zanzuccki read the following statement:

In preparation of this day, all interested parties were invited to forward comments in writing to the Commission for consideration. All the 2013 applications have been filed and requested dates have been announced. Each Commissioner has been supplied with the law of date allocations and the history and statistics of prior racing seasons and written comments received from the industry. You now have another opportunity to summarize your positions.

The meeting, in terms of the presentations of the applicants and horsemen's groups, will proceed in the following order:

We will begin with the thoroughbred date request. A representative from Atlantic City Race Course will present their application. Following this presentation, a representative of the NJTHA will present its 2013 Monmouth Park proposed thoroughbred schedule, followed by its Meadowlands thoroughbred schedule. Comments from the THA and the members of the public will follow the racetrack presentations. The Commission will then consider a motion concerning thoroughbred dates and vote on the requested dates.

Following the vote on thoroughbred dates, the Commission will then hear the presentation from Freehold Racetrack, followed by presentations from representatives New Meadowlands Racing, LLC, concerning its proposed 2013 Meadowlands' standardbred racing schedule. Comments from the SBOA and members of the public will follow. Once again, following this presentation, the Commission will consider a motion and vote on the requested dates.

In considering the allocation of 2013 racing dates for both thoroughbred and standardbred racing, the Commission is required to give due consideration to the public interest factors enumerated in the statute. Briefly, those factors are:

1. Protect the State's revenue.
2. Provide for continuity of racing and year-round racing so as to promote the racing industry and maintain and enhance the employment which is provided to this State.
3. Provide recreational opportunity for residents.
4. Maintain and improve this State's competitive position with regard to neighboring racing states.

While these are the main factors, the Commission must also recognize and address such issues as stabling, horse availability, the effect of overlapping racing dates, the financial situation of the various racetracks, the erosion of live racing dates, and the overall status of the racing industry.

### **THOROUGHBRED RACE DATES**

#### **Atlantic City Race Course**

Maureen Bugdon, President of Atlantic City Race Course (“ACRA”) indicated that ACRA relies upon its written submission, which stands on its own merits, in support of ACRA’s request for six days of racing on April 25, 26, 27, 28, 30 and May 1 and 2. There were no questions for Ms. Bugdon.

#### **Monmouth Park and Meadowlands Racetrack (thoroughbred)**

Michael Musto, on behalf of the THA, stated that the thoroughbred horsemen are applying for 61 days at Monmouth Park, from May 11 through October 6, and are applying for 10 days at the Meadowlands Racetrack from October 11 through November 2, with night time racing on the turf track.

A discussion occurred concerning whether the New Meadowlands Racetrack can accommodate evening racing at the facility. Alex Dadoyan, Director of Racing Operating at the NMR, LLC, stated that currently there is an issue with the THA conducting its thoroughbred meet at the racetrack because the completion of the new grandstand is scheduled to be completed in mid-November, and as part of that construction process, the turf course would not be available until after October 1<sup>st</sup>, and the racetrack will no longer be able to light the turf course. Mr. Dadoyan acknowledged that there is an agreement between the NMR and the THA which allows the THA the ability to race at the facility with the THA incurring any cost associated with the meet. Executive Director Zanzuccki pointed out that the contract between the NMR and the THA is a private agreement and indicated if that if the parties cannot come to an agreement, or if they come to another solution, an amended dates application can be filed and presented to the Commission. Mr. Musto asked the Commission to rule on this matter. The Executive Director reiterated that this is a private agreement between the parties, pointed out that a legitimate request for race dates was presented to the Commission which is not in conflict with any other race dates, and recommended to the Commission that the Commissioners consider the dates request and encourage the parties to work out a solution that will satisfy everyone.

Thoroughbred Horsemen's Association

There were no comments from the THA, in its capacity as representative of the thoroughbred horsemen, or any interested party, regarding the thoroughbred date requests.

Executive Director Zanzuccki proposed the following motion:

The Racing Commission has received 2013 race date applications for thoroughbred racing from Monmouth Park, the Meadowlands Racetrack and Atlantic City Race Course. The Racing Commission has also considered materials from staff and any commentary offered.

The application of the NJTHA for the Meadowlands Racetrack, thoroughbred, proposes a 10-day, all turf racing meet from October 11 through November 2, 2013. The application for Monmouth Park submitted by the NJTHA, encompasses 61 race dates commencing May 11, 2013 and ending October 6, 2013.

The application of Atlantic City Race Course for 2013 consists of a six-day meet to be held on April 25, continuing on the 26, 27, 28, 30 and May 1, 2013.

The 2013 race date applications reflect an aggregate of 77 dates. As required by statute, the NJTHA, the horsemen's group representing the thoroughbred sector, has approved the reduction from the minimum date requirements of 141 thoroughbred dates.

I believe that approval of the thoroughbred race date applications is in the public interest as set forth in N.J.S.A. 5:5-22, et seq., specifically defined in the section 43 and 44. I believe that approval of these dates is consistent with the Racing Commission's obligation to endeavor to allocate to each applicant the dates requested in the respective applications after giving due consideration to all factors involved including the interests of such applicants, the industry participants, and the public.

I believe an approval of the thoroughbred race date application, while not achieving a year-round circuit, does provide for reasonable continuity of racing from April 25 to November 2, 2013. This schedule shall serve to: promote the thoroughbred industry, maintain and enhance the employment which thoroughbred racing provides, encourages horses to stay in New Jersey, provides the maximum possible revenue to the State and to the New Jersey horsemen, will help the state maintain its competitive position in relation to neighboring states, and provides for recreational opportunities for New Jersey residents who desire to attend thoroughbred races.

In making this motion, I note that the dates applied for satisfy the conditions of the Off-Track and Account Wagering Act, as amended, and approval would, therefore, be compatible with the issuance to the New Jersey Sports and Exposition Authority of the account wagering license.

In making this motion, which calls for the approval of the race date applications, consistent with conditions recommended by staff, consideration was given of the dates proposed by the other breed of racehorses. In making respective allocations of race dates for each horse breed, the Commission is mindful of the benefits of providing a continuity of thoroughbred and standardbred racing between and amongst each horse race breed, to the extent feasible, while minimizing harmful intrastate competition.

I, therefore, move for the following:

- 1) Approval of the 2013 application of the Atlantic City Race Course for a six-day meet;
- 2) Approval of the 2013 thoroughbred race date application of the NJTHA for a 10-day meet at the Meadowlands Racetrack;
- 3) Approval of the 2013 thoroughbred race date application of the NJTHA to conduct 61 race dates at Monmouth Park Racetrack; and
- 4) As part of the motion, I propose that the Executive Director be authorized to issue Orders of Allocation, including conditions, consistent with the determination of the full Commission.

Commissioner Keegan motioned to accept the proposed motion. Commissioner Abbatiello seconded the motion and all Commissioners voted yes.

#### STANDARD BRED RACE DATES

##### Freehold Raceway

Howard Bruno, General Manager of Freehold Raceway, requested a 90-day meet beginning February 28 through May 25, and August 29 through December 21, consisting of racing three days per week, to be conducted throughout the entire year. Mr. Bruno indicated that Freehold Raceway is willing to move the dates in order to accommodate the standardbred horsemen, but is not willing to increase the dates. Commissioner Abbatiello

asked Mr. Bruno why the raceway does not offer racing in the months of January and February while there is an abundance of horses available to race. Mr. Bruno responded that the raceway is willing to look at racing during those months, however, due to the amount of purse funds available, the raceway is seeking to reduce days by eliminating racing in January and February. Commissioner Abbatiello stated that the standardbred horsemen have indicated that there is 1.5 million in the purse account for 2013 and asked Mr. Bruno if this amount would keep the purse distribution at the same level, even with extra days of racing. Mr. Bruno indicated that with 90 days of racing, the raceway would be able to maintain the purse level. He added that racing additional days would require an additional \$20,000 a day to pay for regulatory costs thus totaling \$600,000 in additional funding. Mr. Bruno advised the Commission that Freehold is still open to compromising with the horsemen.

#### New Meadowlands Racetrack

Alex Dadoyan, appeared on behalf of the NMR and requested 82 standardbred dates, beginning January 3 and running through Hambletonian Day on August 3. He indicated that NMR hoped to have the new grandstand facility open and operational in mid-November 2013 which will lead into a small 11-day meet beginning on November 23 through December 28.

#### Standardbred Breeders' and Owners' Association

Thomas Luchento, President of the SBOA, indicated the horsemen's support for the New Meadowlands Racetrack date request. It was noted for the record that the Commission is in receipt of written approval for the reduction in dates of the NMR. Mr. Luchento stated that the horsemen oppose the reduction in race dates in connection with Freehold Raceway's 90-day request. He indicated that the number of dates and continuity in racing is important because the standardbred horsemen must obtain points to obtain their health and welfare benefits and the SBOA has asked Freehold to conduct 120 days of racing. Executive Director Zanzuccki asked Mr. Luchento if any consideration has been given to reducing or amending the requirements to obtain health benefits. Mr. Luchento responded that the SBOA has reduced the required number of starts to 30 percent during 2012, and the membership has still experienced difficulty in qualifying for benefits.



Mr. Bruno responded that Freehold Raceway proposed to spread the race dates over 37 to 38 weeks, by adding more races daily in order to increase the racing opportunities. Executive Director Zanzuccki asked if there is continuing discussion between the parties over the racing schedule for 2013. Mr. Bruno responded yes, that Freehold is open to discussions with the standardbred horsemen. Mr. Luchento commented that he feels Freehold is not inclined to race the additional days because it does not want to pay staffing and operational costs of the raceway.

Michael Schottland, Esq., asked to be heard and commented that Freehold Raceway is part of a mega facility that operates all over the state and in Pennsylvania, and that it, in his opinion, can afford to put more funds into the raceway.

Dennis Dowd, Esq., asked to be heard. He stated that a statute requires that Freehold “*shall* schedule 192 days” with the exception only if they have the written consent of the horsemen. Mr. Dowd indicated that Freehold does not have consent, therefore, its application for race dates is defective. The Executive Director pointed out that the statute Mr. Dowd referred to applies to pre-requisites for a permit holder to obtain an off-track wagering or account wagering license. The Executive Director indicated there is also a statute which indicates that Commission must award dates by December 1<sup>st</sup> to racetracks that have filed their applications before October 15. The statute also states that the Commission shall endeavor to award the dates as requested as long as the dates are in the best interest of the public. The Executive Director recommended to the Commission that no action be taken with respect to Freehold’s dates and that the Commission encourage the parties to negotiate a resolution. He noted that the Commission is scheduling a public meeting on November 28 and would encourage the parties to continue to negotiate and return to the Commission on the twenty-eighth. The Director stated that absent an agreement, the Commission will have to consider what implications the 90-day race meet has not only on live racing, but how the dates will implicate off-track and account wagering in 2013, not only for Freehold Raceway, but for the entire state.

Thomas Luchento, President of the SBOA, asked the Commission if the standardbred horsemen have the right to oppose the dates requested by the permit holders. The Executive Director responded that the Commission has traditionally provided the horsemen an opportunity to comment on the date requests, but there is not a statutory right of the horsemen to dictate race dates. The statute allows for the horsemen to agree to a number of days less than the mandatory minimum.

Michael Musto, Executive Director of the NJTHA, indicated his opposition to the New Meadowlands harness meet in the fall of 2013 based upon NMR's agreement with the thoroughbred horsemen which agreement directs all of the simulcasting revenues (both standardbred and thoroughbred) from that period to be allocated to the thoroughbreds. Mr. Musto asked whether the New Meadowlands Racetrack intends to stop simulcasting during the construction period. Mr. Dadoyan replied that the construction will cause limited disruption and simulcasting will continue to operate.

There were no further comments on the standardbred race dates.

Executive Director Zanzuccki proposed the following motion:

The Racing Commission has received 2013 race date applications for standardbred racing from the New Meadowlands Racetrack and Freehold Raceway. The Racing Commission has also considered materials from staff and additional commentary here today.

The application for racing at the New Meadowlands Racetrack - harness - seeks approval to race a total of 82 dates. Racing will be held in 2013 from January 3, through August 3, and then again from November 23 through December 28, 2013.

The 2013 Freehold Raceway application proposes to race 90 days from February 28 through May 25 and August 29 through December 21.

The dates requested reflect an aggregate of 172 harness dates. I note that the SBOA has approved the reduction of dates for the New Meadowlands Racetrack, down to 82 dates, and they have indicated here today they have not approved the reduction for mandatory racing dates of 192 dates for Freehold Raceway at this point in time. As I mentioned prior, I would recommend as part of this motion that no action be taken with respect to the Freehold date application today, and that we encourage the parties to meet and negotiate and return to us on November 28, or prior to that date, with an agreement on dates and we will consider it at that time. If the parties cannot agree, the Commission will consider the dates and the consequences of those dates if they remain at 90 and what effect they may have on off-track wagering and account wagering on a state-wide basis.

With respect to the New Meadowlands' application, I believe the race date application is in the public interest as forth in N.J.S.A. 5:5-22, et seq., specifically defined in the Section 43 and 44. I believe that approval of the dates for the New Meadowlands is consistent with the Racing Commission's obligation to endeavor to allot to each applicant the dates requested in the respective applications after giving due consideration to all factors

involved including the public interests of such applicants, the industry participants, and the public.

The proposed schedule of racing dates at the New Meadowlands allows for an orderly transition of standardbred horses, provides for continuity of standardbred racing, and reflects a schedule for close to year-round harness racing. This schedule will serve to promote the standardbred racing industry, maintain and enhance the employment which it provides, provide revenue to the state and horsemen, help the State maintain and improve its competitive position in relation to neighboring states, and provide for recreational opportunities for New Jersey residents who choose to visit the New Meadowlands Racetrack.

In making this motion, I note that with respect to the New Meadowlands' dates request and the Off-Track and Account Wagering Act, as amended, the approval would therefore be compatible with the issuance to the New Jersey Sports and Exposition Authority of an account wagering license. However, as I mentioned, unless we receive an agreement with Freehold and the SBOA by November 28, those application and licenses could be affected as well.

In making this Motion, which calls for the approval of the race date applications consistent with conditions recommended by staff, consideration was given of the dates proposed by the other breed of racehorse. In making respective allocations of race dates for each horse breed, the Commission is mindful of the benefits of providing a continuity of thoroughbred and standardbred racing between and amongst each horse race breed to the extent feasible, while minimizing harmful intrastate competition.

I, therefore, move for the following:

- 1) Approval of the 2013 harness race date application of the New Meadowlands Racing, LLC for a total of 82 dates;
- 2) Defer action on the 2013 application of Freehold Raceway for 90 dates, to be reconsidered at the November 28 meeting;
- 2) As part of this motion, I propose that the Executive Director be authorized to issue Orders of Allocation, including conditions, consistent with the determination of the full Commission.

Commissioner Keegan motioned to accept the proposed motion. Commissioner Abbatiello seconded the motion and all Commissioners voted yes.

**CONSIDER THE PETITION OF THE NEW JERSEY SPORTS AND EXPOSITION AUTHORITY FOR APPROVAL TO RENEW THE ACCOUNT WAGERING LICENSE FOR 2013**

The Executive Director proposed the following motion:

The Authority presently uses totalisator platform and related services of Sportech Racing, LLC in connection with account wagering. I would suggest that the Racing Commission also consider the continued qualification of Sportech to conduct such services for 2013 which matter is listed on the agenda as part of item A.8 C.2. I would note in making this suggestion that the Authority's 2013 account wagering license application indicates that the Authority's extended services agreement with Sportech expires December 31, 2012 and that the Authority will notify the Commission when a vendor for 2013 is selected. Accordingly, I move that any approval as to the continued qualification of Sportech should be conditioned upon it being selected as the vendor to the account wagering system for 2013.

There were not comments or questions concerning this request.

Commissioner Abbatiello motioned to accept the proposed motion. Commissioner Clyne seconded the motion and all Commissioners voted yes.

**CONSIDER THE PETITION OF THE NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION, INC. FOR APPROVAL FOR 2013, TO CONTINUE TO BE DESIGNATED AS A QUALIFIER TO THE ACCOUNT WAGERING SYSTEM AND TO THEREBY CONTINUE TO RECEIVE A SHARE OF THE ACCOUNT WAGERING REVENUE FROM THE AUTHORITY (THE LICENSE HOLDER OF THE ACCOUNT WAGERING SYSTEM)**

Comment was received from Christina Harvey, Esq., on behalf of the NJTHA. Ms. Harvey stated that the NJTHA filed their petition for the renewal on October 10 and will rely on that petition.

Commissioner Abbatiello motioned to approve the petition of the NJTHA. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER THE PETITION OF THE NEW MEADOWLANDS RACETRACK, LLC FOR APPROVAL FOR 2013, TO CONTINUE TO BE DESIGNATED AS A QUALIFIER TO THE ACCOUNT WAGERING SYSTEM AND TO THEREBY CONTINUE TO RECEIVE A SHARE OF THE ACCOUNT WAGERING REVENUE FROM THE AUTHORITY (THE LICENSE HOLDER OF THE ACCOUNT WAGERING SYSTEM)

Commissioner Abbatiello motioned to approve the petition of the NMR, LLC. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER THE PETITION OF THE PERMITTED RACETRACKS, AND RELATED ENTITIES, FOR APPROVAL TO RENEW THE FOLLOWING OFF-TRACK WAGERING LICENSES:

- a) Toms River Township 1/1/13 through 12/31/13
- b) Vineland City 1/1/13 through 12/31/13
- c) Bayonne City 1/1/13 through 12/31/13
- d) Woodbridge 1/1/13 through 12/31/13

Christina Harvey, Esq., on behalf of the NJTHA, stated she wants to bring to the Commission's attention that there is pending litigation involving the NJTHA and ACRA, LLC and Freehold Raceway Off-Track, LLC which relates to whether or not the off-track wagering facilities at Toms River and Vineland are appropriate. She stated that the NJTHA would also like to object on the basis of the statute requiring the required race dates that are not going on at Freehold, they are requesting that this matter in regard to a) and b), the Toms River and Vineland off-track wagering permits, go to the Office of Administrative Law and they would like to, in the meantime, have a stay while this matter relates to the pending appeals in the Appellate Division, In the Matter of the Governor's Veto, Docket No. A5571-11T3 and to the matter in Chancery Court in Monmouth County under Docket No. Monmouth C13712. The NJTHA also commented in support of their petition for renewal of the off-track wagering license at Woodbridge.

Dennis Dowd, Esq., on behalf of the SBOA, joined in the NJTHA's objection to the renewal of the license for the Toms River OTB, particularly in light of the fact that no letter has been given by the SBOA to consent to the reduction in Freehold race dates and, therefore, he believes that the Commission cannot act on the Toms River application based upon the Commission's prior comments that there is no horsemen's consent to reduce the days. Mr. Dowd then asked why there is no reference to Freehold being designated as a qualifier to share in the account wagering revenue. The Executive Director indicated that

Freehold Raceway shares in the account wagering revenue through the Participation Agreement and not through an assignment as a qualifier. Mr. Dowd objected to this situation arguing that unless Freehold is licensed, they should not be participating in the revenue from the handle.

There being no further discussion, the Executive Director proposed the following motion:

The Racing Commission has received applications to renew the off-track wagering licenses for calendar year 2013, concerning the operating Toms River, Vineland City, Bayonne City and Woodbridge off-track wagering facilities in addition to the applications and materials submitted by the parties.

The Racing Commission has been provided with materials from its staff, which includes proposed orders and proposed license conditions, should the Racing Commission determine to grant one or more of the license renewal requests. In reviewing these materials, I would note that the license conditions in each case properly include the condition that the decision of this Commission is subject to the review and approval of the Attorney General.

Based upon my review, I find that each operational OTW applicant continues to meet the legal requirements set forth in the "Off-Track and Account Wagering Act," that each applicant continues to meet all legal requirements set forth in the rules of the Racing Commission, inclusive of N.J.A.C. 13:74-2.2, and that each applicant is in substantial compliance with the conditions and license terms individually imposed upon it, for each to hold the license applied for and to operate the respective off-track wagering facility.

I will note that because the Racing Commission did not award racing dates to Freehold at this meeting, that the approval of the Toms River OTB will also be deferred until the November 28 meeting and at that time, the Commission will have had the opportunity to consult with counsel, and hopefully the parties will have come to an agreement. However, if no agreement is reached, the Commission will consider the consequences of not racing the mandatory minimum number of days or having horsemen's approval to race less, what impact that has on the Toms River OTB operation, and possibly on the operation of the other OTBs and account wagering in the State.

I therefore move that each of the other renewal application be approved, and as part of this motion, I further move that: this Racing Commission authorize the Executive Director to issue the proposed orders and related license conditions as to each applicant, and

that the issuance of each renewal license is subject to and conditional upon the approval of the Attorney General.

Commissioner Abbatiello moved to accept the motion. Commissioner Keegan seconded the motion and all Commissioners voted yes.

## **SIMULCASTING**

### **Casino Simulcasting**

Consider approval of Bally's Park Place, Inc. (Bally's Atlantic City), Marina District Development Company, LLC (Borgata Hotel Casino and Spa), the Boardwalk Regency Corporation (Caesars Atlantic City), Harrah's Atlantic City Operating Company (Harrah's Resort Atlantic City), Showboat Atlantic City Operating Company, LLC (Showboat Casino Hotel), and Trump Taj Mahal Casino Resort to receive simulcast horse races (thoroughbred and standardbred) from approved out-of-state tracks, through December 31, 2013, pursuant to N.J.S.A. 5:12-199

Commissioner Abbatiello motioned to approve the item subject to Racing Commission Schedule A. Commissioner Keegan seconded the motion and all Commissioners voted yes.

Consider approval of the following racetrack permit holders to conduct casino simulcasting (to casinos approved or to be approved), through December 31, 2013, for dates granted pursuant to their respective 2013 annual applications for horse race meetings: Monmouth Park, Meadowlands Racetrack (thoroughbred permit) Freehold Raceway, New Meadowlands Racetrack and Atlantic City Race Course

Commissioner Aponte motioned to approve the item subject (with the exception of Freehold Raceway) to Schedule B. Commissioner Abbatiello seconded the motion. Michael Musto, representing the NJTHA, inquired as to why the request does not include the Meadowlands Racetrack, thoroughbred permit, as the NJTHA is also seeking to conduct casino simulcasting to the casinos. Executive Director Zanzuccki indicated that the omission was due to an oversight and Commissioner Aponte amended his motion to include the Meadowlands Racetrack. Commissioner Keegan seconded the motion and all Commissioners voted yes.

Consider the request of Sportech Racing, LLC, to act as a hub facility at the Mount Laurel Data Center, through December 31, 2013, concerning: casino simulcasting pursuant to N.J.S.A. 13:71-1.1, et seq. to Bally's, the Borgota, Caesars, Harrah's, Showboat and the Taj Mahal, and to any other casinos to be approved for casino simulcasting

Commissioner Abbatiello motioned to approve the agenda item subject to Sportech Racing, LLC having renewed its agreements for 2013 as concerns the provisions of its services, and subject to conditions contained in Schedule D. Commissioner Keegan seconded the motion and all Commissioners voted yes.

Consider the applications for approval of the attached list of out-of-state racetracks to participate in casino simulcasting (to casinos approved or to be approved) for selected dates through 2013

Commissioner Keegan made a motion to approve the agenda item subject to Schedule C. Commissioner Abbatiello seconded the motion and all Commissioners voted yes.

### **Racetrack Simulcasting**

Consider a request of the approved New Jersey racetracks to conduct inter and intra-state, common pool and separate pool simulcasting with approved racing facilities and off-track betting locations

The Executive Director noted for the record that the request does not include Freehold Raceway because no 2013 dates have been awarded to the permit holder. Commissioner Abbatiello motioned to approve the agenda item subject to Schedules F, G and H, the Federal Interstate Horse Racing Act and all State statutes. Commissioner Keegan seconded the motion and all Commissioners voted yes.

Consider a request of Sportech Racing, LLC, to act as a hub facility at the Mount Laurel Data Center to handle approved simulcast and live wagering activities in connection with the following racetracks: New Meadowlands Racetrack, Monmouth Park, Meadowlands Racetrack (thoroughbred), Freehold Raceway and Atlantic City Race Course

Commissioner Abbatiello motioned to approve the agenda item subject to Schedule D and subject to Sportech Racing, LLC having renewed its agreements for 2013 as concerns the provisions of these services. Commissioner Aponte seconded the motion and all Commissioners voted yes.



**New Jersey Account Wagering and Off-Track Wagering**

Consider a request of the New Jersey Sports and Exposition Authority to conduct account wagering with all approved racing facilities

Commissioner Aponte motioned to approve the agenda item subject to Schedules F, G and H. Commissioner Abbatiello seconded the motion and all Commissioners voted yes.

Consider a request of Sportech Racing, LLC, to act as a hub facility at the Mount Laurel Data Center through December 31, 2013 concerning account wagering and off-track wagering pursuant to N.J.A.C. 13:74 et seq.

Commissioner Abbatiello motioned to approve the agenda item subject to conditions contained in Schedule C and subject to Sportech Racing, LLC having renewed its agreements for 2013 as concerns the provisions of these services. . Commissioner Keegan seconded the motion and all Commissioners voted yes.

Consider the application for approval of the attached list of in-state and out-of-state racetracks to participate in simulcasting (with off-track wagering facilities approved or to be approved) through December 31, 2013

Commissioner Abbatiello motioned to approve the agenda item subject to conditions contained in Schedules F, G and H. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER THE REQUEST OF THE RACETRACKS, APPROVED CASINOS, NEW JERSEY ACCOUNT WAGERING SYSTEM AND APPROVED OFF-TRACK WAGERING FACILITIES TO CONDUCT ADVANCE WAGERING (FULL OR PARTIAL CARD) ON THE FOLLOWING RACES OF NATIONAL INTEREST: ARC DE TRIOMPHE, BELMONT STAKES, BREEDERS CROWN DAY, BREEDERS CUP (ULTRA PICK 6), CANE PACE, CLAIMING CROWN, DUBAI RACING, ELITOPP (SWEDEN), FLORIDA DERBY, KENTUCKY DERBY, HAMBLETONIAN ELIMINATIONS DAY, HAMBLETONIAN DAY, HASKELL INVITATIONAL, JAPAN CUP, MEADOWLANDS PACE DAY, MELBOURNE CUP, PENNSYLVANIA DERBY, PREAKNESS, PRIX D' AMERIQUE RACE, SANTA ANITA DERBY, SANTA ANITA HANDICAP, TRAVERS, AND WOODFORD RESERVE.

Commissioner Caputo motioned to approve the request of the racetracks, casinos and

account wagering and off-track wagering facilities to conduct advance wagering on the listed races of national interest, subject to conditions which include that no advance wagering can take place until the program information has been received from the host track, advance wagering is approved by the supervisor of mutuels and all wagering shall be in compliance with the common pool procedures and regulations of the Commission. Commissioner Keegan seconded the motion and all Commissioners voted yes.

**CONSIDER THE REQUEST OF THE RACETRACKS, APPROVED CASINOS, NEW JERSEY ACCOUNT WAGERING SYSTEM AND APPROVED OFF-TRACK WAGERING FACILITIES TO OFFER 2013 SPECIAL WAGERS OF NATIONAL INTEREST AND CONDUCT ADVANCE WAGERING.**

Commissioner Keegan motioned to approve the request of the racetracks, casinos and account wagering and off-track wagering facilities to offer special wagers of national interest and conduct advance wagering on those races, subject to conditions which include compliance with Schedule G and other conditions as previously imposed in prior years and which conditions will be identified in the Racing Commission's approval letter. Commissioner Abbatiello seconded the motion and all Commissioners voted yes.

**CONSIDER THE DISTRIBUTION OF THE CASINO SIMULCASTING SPECIAL FUND ACCUMULATED IN 2011, PURSUANT TO N.J.S.A. 5:12-205d**

Executive Director Zanzuccki noted for the record that pursuant to the requirements of N.J.A.C. 13:70-1.33 to 1.41 and 13:71-1.28 to 1.36, the Commission solicited requests from the interested parties and that information received was circulated. He indicated that, at this time, the interested parties may make any additional oral comments concerning the 2011 Casino Simulcasting Special Fund monies and at the conclusion of the comments, staff will prepare a transcript which will be circulated to the Commissioners. The Executive Director stated that staff recommends a committee be formed of Commissioners to review the request and make a formal recommendation to the Commission. In addition, staff also recommended that following today's oral comments that the record be closed.

At this time, the Racing Commission allowed oral comment from the industry.

Atlantic City Race Course: Maureen Bugdon, President of Atlantic City Race Course, stated that the Commission has a very good opportunity to take a look at what occurred during Breeders' Cup weekend in the state of New Jersey because of the casinos shutting down due to Hurricane Sandy. She indicated that despite the chaos throughout the State, she believes that Atlantic City Race Course was the only location, despite the

evacuation of the barrier islands, to see an increase in handle as a result of no casinos simulcasting the Breeders' Cup. Ms. Bugdon stated that she felt that this is an indication who would benefit with the closure of casino simulcasting parlors—which is Atlantic City Race Course. Ms. Bugdon asked that the Commission consider this statement in addition to Atlantic City's written submission.

New Jersey Sports and Exposition Authority: Ralph Marra, Esq. stated that there were no additional comments from the Sports Authority.

New Meadowlands Racetrack: Alex Dadoyan indicated that the Sports Authority was the permit holder during 2011, therefore, NMR, LLC has no comment.

Freehold Raceway: Howard Bruno indicated he had no comments.

SBOA: Thomas Luchento stated the horsemen have no additional comment.

THA: Michael Musto stated the thoroughbred horsemen have no additional comment.

TBA: Michael Campbell stated that he has no additional comment.

The Executive Director recommended that the Commission make a motion to close the record and to appoint a committee to consider the information submitted and to report back at a subsequent meeting of the Racing Commission for a recommended distribution of the fund. The Executive Director noted for the record that Commissioners Keegan, Cofranceso and Aponte have volunteered to be members of the committee.

Commissioner Abbatiello motioned to accept the recommended motion of the Executive Director. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF THE NEW MEADOWLANDS' 2013 HARNESS WAGERING FORMAT, ADMISSION PRICES, DEPARTMENTS HEADS, ETC.

The New Meadowlands Racetrack introduced Jason Settlemoir, as the newly appointed General Manager for the racetrack. The Commission welcomed Mr. Settlemoir.

Commissioner Abbatiello motioned to approve the 2013 harness race format as submitted by the New Meadowlands Racetrack. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER THE REQUEST OF THE BACKSTRETCH ADVISORY BOARD FOR APPROVAL OF THE 2013 BACKSTRETCH PROGRAM BUDGET

The Executive Director stated that special recognition be given to Christopher Samaha, Executive Director of the Backstretch Advisory Program, and Michael Musto, Executive Director of the NJTHA, for their efforts in evacuating persons from the backstretch area at Monmouth Park due to Hurricane Sandy.

The Executive Director indicated that staff recommends the budget in the amount of \$168,500 be approved as submitted.

Commissioner Abbatiello motioned to approve the budget. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL FOR THE ADVERTISEMENT FOR PUBLIC COMMENT, IN THE NEW JERSEY REGISTER, OF PROPOSED NEW HORSE RACING (THOROUGHBRED RACING) RULES (SINGLE POOL WAGERING), N.J.A.C. 13:70-29A AND PROPOSED NEW HARNESS RACING (STANDARD BRED RACING) RULES, (SINGLE POOL WAGERING) N.J.A.C. 13:71-27A

Commissioner Abbatiello motioned to approve the rule proposal for advertisement. Commissioner Clyne seconded the motion and all Commissioners voted yes.

CONSIDER THE MATTER OF MICHAEL GULOTTA, ON BEHALF OF ALL OWNERS OF CRYSDREAM V. NJRC, OAK DOCKET NO. RAC 09712-2011N

Executive Director Zanzuccki noted that Mr. Schottland, on behalf of Mr. Gulotta and the other owners of Crys Dream, has requested approval to comment briefly to the Commission and staff recommends, as has been the past practice, to grant that request to a limited period of five minutes. Commissioner Abbatiello motioned to hear the additional comments of Mr. Schottland. Commissioner Keegan seconded the motion and all Commissioners voted yes.

Mr. Schottland addressed the Commission and reviewed the events of the case. He indicated that the matter contains extraordinary events and asked that the Commission overrule the recommendations of staff and not uphold the reciprocity of the Canadian penalty. Commissioner Caputo asked Mr. Schottland why he feels that reciprocity should not be upheld. Mr. Schottland replied that the Commission's rule of reciprocity is not absolute and the statute states that when there is a conflict between the Racing Commission

rules and the rules of the United States Trotting Association, as was in this matter, the rules of the Commission shall govern. He emphasized that the policy of New Jersey is to punish the trainer and not the horse or the owner and that this is the problem of the issue of reciprocity in this case.

The Commission then heard from Michael Gulotta. Mr. Gulotta indicated that he has participated in racing for twenty years and has never received a drug positive. He stated that he has worked closely with the standardbred industry in obtaining an agreement with the Governor to privatize the Meadowlands Racetrack. He believes that he has not been treated fairly in that he was allowed to enter and race the horse and have the horse tested, and he has not been paid its earnings.

DAG Julie Barnes stated that she represented the Commission in this matter before the OAL. She indicated that there was a well-established record in this matter and ample documentation was submitted to the OAL, all of which is now part of the record before the Commission, as well as certifications on both sides of the case. DAG Barnes stated that she feels the ALJ got the case wrong and that reciprocity is an extremely important concept in this sport, particularly in a sport which is mobile and where participants in the northeast travel extensively. The concept of reciprocity she stated is one that should continue in this sport as it moves forward. DAG Barnes indicated that it is irrelevant what penalty New Jersey would have issued in this case and the meaning of reciprocity is in upholding the action of another jurisdiction.

Commissioner Clyne made the following motion:

The Commission has been provided with the Initial Decision of the Administrative Law Judge, the record and a draft Final Decision. In the Initial Decision, the ALJ strikes down the Commission's grant of reciprocity to a ruling issued by the Ontario Racing Commission ("ORC") in connection with the horse CRYSDREAM's post-race positive test result for a Class II drug which occurred at Mohawk Racetrack in Ontario, Canada. The ALJ's recommended decision is largely based upon her conclusion that a grant of reciprocity to the ORC ruling would be contrary to the public policy of New Jersey and this Commission.

Upon review of the ALJ's conclusions, reasoning and reliance upon the legal support she selected, it is evident that the ALJ misunderstands the nature and weight that must be afforded to this State's and this Commission's public policies and laws, which are essential to the regulation of the horse racing industry. Clearly, the ALJ misconstrues the applicability and importance of reciprocity in this State.

This Commission has agreed, through the adoption of our administrative rules, to observe suspensions and declarations of ineligibility issued by other governing regulatory bodies. When presented with an official ruling which suspends or declares a licensee or horse ineligible to compete, this Commission grants reciprocity to that ruling and that licensee or horse is deemed ineligible to compete here in New Jersey during the same period of time he or she is suspended there. This grant of reciprocity is crucial to preserving the integrity of racing, guarding the safety of racing participants and protecting the interests of the public.

The violation of the rules of racing in another racing jurisdiction runs contrary to the integrity of racing not only there but also in all forums where a licensee seeks to compete. While this Commission expects a licensee to abide by our rules, we also expect that a licensee or applicant for a license will abide by the rules of all other jurisdictions where they choose to race. Without reciprocity, a licensee who has violated the rules of racing could continue to race simply by picking up and moving across the border to another state or country. Our reciprocity rules clearly place licensees on notice that an individual or horse who is ineligible to compete in another state or country should not and cannot expect to relocate to this state and race here.

In reaching the conclusions of law set forth in her Initial Decision, the ALJ clearly miscalculates the importance of reciprocity to the regulation of horse racing and fails to understand the fundamental need for uniformity in its application. The ALJ misinterprets the Commission's rules and makes several other material errors which, I believe, cannot be allowed to stand. The ALJ's errors are identified in detail in the draft Final Decision. I believe that this draft Final Decision accurately identifies and applies the law and those public policies that are essential to the horse racing industry.

**I MOVE** that the Commission **reject** the Initial Decision and **direct** staff to issue the draft Final Decision as the decision of this Commission in accordance with N.J.S.A. 52:14B-10. As set forth therein, this Final Decision of the Commission shall include the following orders:

1. The Board of Judges' Ruling No. 11MDH37, dated July 14, 2011, declaring the horse CRYSDREAM ineligible to race in New Jersey for the 90-day period of June 29, 2011 through and including September 26, 2011 as issued in the Ontario Racing Commission Ruling No. SB 42631 is affirmed.
2. The horse CRYSDREAM was ineligible to race in New Jersey for the 90-day period of June 29, 2011 through and including September 26, 2011 as a result of this Commission's grant of reciprocity to Ontario Racing Commission Ruling No. SB 42631.

3. The horse CRYSDREAM is disqualified from participation in the Hambletonian Oaks elimination race conducted at the Meadowlands Racetrack on July 30, 2011 and the Hambletonian Oaks conducted at the Meadowlands Racetrack on August 7, 2011.

4. All purse money attributed to the finish of the horse CRYSDREAM in the July 30, 2011 and August 7, 2011 races shall be forfeited and redistributed in accordance with the finish of those horses in the race that were eligible to compete.

5. All purse money attributed to the finish of the horse CRYSDREAM in the July 30, 2011 and August 7, 2011 races shall continue to be held by the Meadowlands Racetrack until the period for the appeal of this Final Decision and Order to the Appellate Division of the Superior Court of New Jersey shall have expired. If Petitioners timely file an appeal of this Final Decision and Order, all purse money attributed to the finish of the horse CRYSDREAM in the July 30, 2011 and August 7, 2011 races shall continue to be held by the Meadowlands Racetrack until the Appellate Division issues its decision on the appeal.

Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER THE MATTER OF FREDERIC ESPOSITO V. NEW JERSEY RACING COMMISSION, OAL DOCKET NO. RAC 03743-2011S

Commissioner Keegan made a motion to table the matter. Commissioner Clyne seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF THE NEW JERSEY RACING COMMISSION PROGRAM BUDGETS FOR FY 2013

At the request of the Attorney General's Office to table this item, Commissioner Keegan motioned to table the Commission's 2013 budget. Commissioner Clyne seconded the motion and all Commissioners voted yes.

ITEMS FOR DISCUSSION AND INFORMATION

The Executive Director stated that notice of 2013 Racing Commission meeting dates is available and will be provided to the industry.

The Director indicated that the Commission has not received the Financial Statements of the New Jersey Jockey's Health and Welfare Trust and, therefore, cannot acknowledge the receipt of the statements.

Maureen Bugdon, President of Atlantic City Race Course, asked that the Commission acknowledge the efforts of ACRA in regard to the recovery from Hurricane Sandy. Ms. Bugdon stated that the race course provided parking space and meals for those persons involved in the electrical recovery process. Mr. Kulina, on behalf of Monmouth Park, stated that approximately 400 people were sheltered in the grandstand area of the racetrack. Mr. Settlemoir, on behalf of the New Meadowlands Racetrack, stated that that racetrack also provided shelter to those people affected by the storm and that Mr. Gural provided a donation to the relief effort.

There being no further discussion or comments from the public, Commissioner Keegan moved that the meeting be adjourned subject to the provisions of the "Open Public Meeting Act." Commissioner Clyne seconded the motion and it was approved unanimously.

ATTEST:



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Executive Director Frank Zanzuccki