

NEW JERSEY RACING COMMISSION
WEDNESDAY, MAY 15, 2019
MONMOUTH PARK
“LIBRARY ROOM”
OCEANPORT, NEW JERSEY

A meeting of the New Jersey Racing Commission was held on Wednesday, May 15, 2019 in the Library Room located at Monmouth Park in Oceanport, New Jersey.

The following were present:

Pamela J. Clyne, Chairman
Francis X. Keegan, Jr., Commissioner
Michael J. Arnone, Commissioner
Judith A. Nason, Acting Executive Director
SDAG George Cohen

Acting Executive Director Nason read the following statement:

“This meeting today conforms with Chapter 231, P.L. 1975, called the ‘Open Public Meetings Act,’ 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 N.J.S.A. 10:4-12(b), the 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 initial decision in Marc Joseph Sharp v. New Jersey Racing Commission;
2. Legal advice concerning the initial decision in Jake Leamon v. New Jersey Racing Commission;
3. Legal advice concerning the proposed settlement agreement in Chris Scicluna v. New Jersey Racing Commission; and
4. Other legal matters.

Discussion of the above matters falls 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 his ethical duties as a lawyer, and/or matters involving pending or anticipated litigation.

Commissioner Arnone motioned to adopt the resolution to adjourn. Commissioner Keegan seconded the motion. All of the Commissioners voted to affirm. The Commission then adjourned to Executive Session.

Commissioner Keegan made a motion to adjourn from Executive Session into the Public Session. Chairman Clyne seconded the motion and the Commissioners voted to affirm. The Executive Session ended.

Chairman Clyne decided to change the agenda and consider Item 9 on the agenda prior to considering any of the other agenda items.

CONSIDER THE APPOINTMENT OF AN EXECUTIVE DIRECTOR

Chairman Clyne spoke of the familiarity of the persons in the room with Active Executive Director Judith A. Nason. Chairman Clyne then recalled the career progression and achievements of Acting Executive Director Nason and that she has served with honesty and integrity and that it has been an honor and pleasure to serve with her for the past seven years. Chairman Clyne then made a motion to appoint Judith A. Nason as the Executive Director of the New Jersey Racing Commission.

Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF THE PUBLIC AND EXECUTIVE SESSION MINUTES OF THE MARCH 20, 2019 COMMISSION MEETING

Commissioner Arnone made a motion to approve the public and executive minutes of the March 20, 2019 Commission meeting. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER A RESOLUTION ON BEHALF OF GLORIA J. THAYER, EXECUTIVE ASSISTANT

Executive Director Nason spoke on behalf of Gloria J. Thayer and read a resolution into the record. The resolution read as follows:

WHEREAS, Gloria J. Thayer, who was employed by the State of New Jersey for a total of 40 years, began her service to the New Jersey Racing Commission in May 1984;

WHEREAS, Gloria J. Thayer served as Executive Assistant to several Executive Directors of the Racing Commission, providing valuable assistance that was critical to their ability to carry out the duties of that office;

WHEREAS, Gloria J. Thayer earned the respect, trust and admiration of the Commissioners and staff by ensuring that the Racing Commission's public meetings were organized, conducted professionally and documented with detailed minutes;

WHEREAS, Gloria J. Thayer, whose work consistently met the gold standard of excellence, was entrusted with carrying out important duties essential to the regulation of horse racing by ensuring that appeals were litigated, rules were adopted and positives were prosecuted;

WHEREAS, the Racing Commission and its staff will greatly miss her expertise, good humor, gracious presence and steady hand;

NOW, THEREFORE, BE IT RESOLVED that the members and staff of the New Jersey Racing Commission pay tribute to Gloria J. Thayer for her long and distinguished career of public service, for her loyal dedication to the regulation of the New Jersey horse racing industry and for the unfailing professionalism she displayed in her many years as Executive Assistant.

BE IT FURTHER RESOLVED that on the 15th day of May 2019, this Resolution shall be recorded upon the permanent record of the New Jersey Racing Commission and a copy, signed by the members of the Racing Commission, be presented to Gloria J. Thayer in further appreciation of her devoted service to the New Jersey Racing Commission and the State of New Jersey.

Commissioner Keegan made a motion to adopt the resolution. Chairman Clyne seconded the motion and all Commissioners voted yes.

CONSIDER THE REQUEST OF NEW MEADOWLANDS RACETRACK AND FREEHOLD RACEWAY FOR A TEMPORARY WAIVER OF N.J.A.C. 13:71-16.5 TO ALLOW THE UNCOUPLING OF HORSES WITH COMMON OWNERS OR TRAINERS

Executive Director Nason stated that at the March 20th Commission meeting, the Commission permitted Darby Development to waive the thoroughbred coupling rule on an experimental basis with the caveat that the Executive Director will have sole discretion to terminate the waiver.

On April 10th, New Meadowlands Racetrack made a written request to the Commission to waive the standardbred coupling rule for the remainder of the 2019 racing season. New Meadowlands explained that coupling reduces its opportunity to provide the best wagering product to its customers.

On April 27th, Freehold Raceway joined in the request that the Commission grant a temporary waiver of the standardbred coupling rule to allow the racetrack to provide more wagering options and betting interests which would increase handle.

The requests of the permit holders is made pursuant to N.J.A.C. 13:71-1.34(b) which states that the Commission may grant a waiver if it determines that the waiver will benefit the horse racing industry in this State.

Jason Settlemoir of New Meadowlands spoke in support of the request. He stated that waiving the coupling rule would allow New Meadowlands to increase the average field size, provide more betting interests and increase the total handle.

Commissioner Arnone had a question for Mr. Settlemoir regarding the potential for one of the uncoupled horses committing a foul or attempting to influence the race in favor of the horse with which it was previously coupled. Mr. Settlemoir responded that racing integrity is of the utmost importance to New Meadowlands and that they would be vigilant in penalizing any horse, trainer or owner should they observe what they felt was any sort of intentional foul or attempt to influence the race.

Howard Bruno of Freehold Raceway impressed upon the Commission that the uncoupling of horses would be done “as needed” at Freehold Raceway in order to increase the betting interests.

John Heims of Darby Development stated that Darby has not had any issues with the uncoupling of horses in the thoroughbred industry thus far.

Chairman Clyne moved that the “Commission allow the temporary waiver of the standardbred coupling rule for the remainder of 2019 at the New Meadowlands Racetrack and Freehold Raceway to allow for the uncoupling of common trainers and common ownership interests. I believe that the experiment will benefit the harness racing industry. I include in this motion the provision that the Executive Director be granted the sole discretion to terminate this experiment at any point if she determines that it is warranted.”

The chairman made the motion. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER THE PROPOSAL OF N.J.A.C. 13:71-20.25, PYLONS, WHICH REGULATES THE USE OF PYLONS AT STANDARD BRED TRACKS

Executive Director Nason explained that the Pylon rule would be a new rule that would regulate the use of pylons at the standardbred racetracks. It would regulate the size, color and spacing of the pylons at the standardbred tracks and would define what actions would be a violation of the rule. The proposed rule is consistent with the pylon rules of Pennsylvania, Indiana, Ontario and the United States Trotting Association.

Commissioner Keegan moved that the Commission approve the proposal of the pylon rule for public comment.

Chairman Clyne seconded the motion and all Commissioners voted yes.

CONSIDER THE INITIAL DECISION IN MARC JOSEPH SHARP V. NEW JERSEY RACING COMMISSION, OAL DOCKET NO. RAC 15587-17

Executive Director Nason gave background regarding the matter. After a race, a horse trained by Marc Joseph Sharp tested positive for very low levels of methamphetamine. The Board of Stewards conducted a hearing and issued a ruling imposing a \$1,500 fine and disqualified the horse from sharing in the purse. Sharp appealed and the matter was transmitted to the OAL. After a hearing, the OAL issued an initial decision on March 8, 2019 reversing the \$1,500 fine and purse disqualification. The ALJ reversed based upon evidence of methamphetamine contamination in the negative control samples at the lab. As a result, the ALJ found that the contamination “casts doubt on the accuracy of the result and the penalties that flow from them.” The DAG representing the Commission filed exceptions, the attorney representing Sharp filed a response and the record was closed.

Commissioner Keegan moved that Commission adopt the initial decision.

Commissioner Arnone seconded the motion and the Commissioners all voted yes.

CONSIDER THE INITIAL DECISION IN JAKE LEAMON V. NEW JERSEY RACING COMMISSION, OAL DOCKET NO. RACE 06921-18

Executive Director Nason gave background on the matter. The State Police conducted a barn search of Steve Elliot Stables at White Birch Farms. Steve Elliot was not present due to a recent surgery but Jake Leamon showed the officers around and unlocked Steve Elliot’s office for them. In the office, several drugs and paraphernalia were discovered. The Commission’s Board of Judges conducted a hearing and found that both Elliot and Leamon violated the Commission’s rules and issued penalties to each. The Judges determined that Leamon was the trainer responsible for the barn in Elliot’s absence and should be held equally liable. Elliot accepted his penalty but Leamon appealed. The case was transmitted to the OAL. The OAL conducted a hearing and issued an initial decision reversing the penalties against Leamon because the ALJ found that Elliot was the principal trainer, had control of the barn and took responsibility for the substances found. The ALJ also found that Leamon was not the acting trainer and that Leamon was not in possession of the substances found in Elliot’s office. As a result, the ALJ determined that the penalties against Leamon should be dismissed. The DAG representing the Commission filed exceptions.

Chairman Clyne stated that “the ALJ found that Elliot was not absent from the stable, Leamon was not acting trainer and that the needles, drugs and other substances were not in Leamon’s possession. These findings make it extremely difficult for us to do anything other than adopt. As a result, I move that the Commission adopt the initial decision.”

Commissioner Arnone seconded the motion and all Commissioners voted yes.

CONSIDER THE SETTLEMENT AGREEMENT IN CHRIS SCICLUNA V. NEW JERSEY RACING COMMISSION, OAL DOCKET NO. RAC 10370-18

Executive Director Nason gave background on the matter. On March 14, 2018, Commission investigators discovered three hypodermic needles and vitamin substances on the farm of trainer Chris Scicluna. The Board of Judges conducted a hearing, found Scicluna was in violation of the Commission's rules and issued a penalty consisting of a 90-day license suspension. Scicluna appealed the decision. Counsel for Scicluna and the DAG negotiated a settlement that would allow Scicluna to serve a 30-day suspension and pay a \$1,500 fine. The cost and inconvenience of an OAL hearing would be avoided if the Commission approves the settlement.

Commissioner Arnone made a motion to accept the settlement agreement.

Chairman Clyne seconded the motion and all Commissioners voted yes.

The Executive Director noted that the items on the formal agenda were concluded, pointed out documents available to the public, and the floor was opened for new business.

Commissioner Arnone spoke of the positive impact that the pylon rule will have on the harness racing industry. The proposal of this rule is consistent with the industry's concerns about the safety and health of the horses and drivers.

Daniel Lopez, a thoroughbred breeder in the State of New Jersey, asked about a request filed by the Thoroughbred Breeders' Association for the approval of the payment of out-of-state breeder's awards.

Executive Director Nason explained that the TBA made a request to place an item on the March 2019 agenda. The request was placed on the agenda but the matter was withdrawn by the TBA. As a result, the Commission never considered the request. She explained that the Commission has jurisdiction when the TBA files a request for approval but not if the matter is withdrawn. Executive Director Nason recommended that any questions or complaints about the actions of the TBA be discussed with the TBA Board.

Amy Goldstein, an attorney advising Mr. Lopez, asked for clarification regarding the request for NJRC approval and the withdrawal.

Executive Director Nason explained that the Commission never acted on the request of the TBA because it was withdrawn. She explained that a TBA decision to pay out-of-state awards would require the approval of the Commission. However, the determination whether or not to pay out-of-state awards lies within the discretion of the TBA.

Bruce Alexander, a thoroughbred trainer, made two requests of the Commission in regard to the safety and welfare of racehorses. He presented the idea of waiving the claiming rule and reduce the claiming exemption from 6 months to 90 days. He stated that the way the rule is written takes away the effectiveness and does not incentivize the owner to do the right thing. His second idea is to hire a safety steward as they have done at NYRA and Delaware Park. The safety steward would be an overseer of sorts to make sure that the safety regulations are being followed by the racetracks.

There was no other new business.

Commissioner Keegan moved to adjourn the meeting. Chairman Clyne seconded the motion and it was approved unanimously.

ATTEST:

Judith A. Nason, Executive Director