

**NEW JERSEY RACING COMMISSION
WEDNESDAY, MARCH 18, 2020
MONMOUTH PARK
"LIBRARY ROOM"
OCEANPORT, NEW JERSEY**

A meeting of the New Jersey Racing Commission was held on Wednesday, March 18, 2020 in the Library Room located at Monmouth Park in Oceanport, New Jersey.

The following were present:

Pamela J. Clyne, Chairman (Telephone)
Francis X. Keegan, Jr., Commissioner (Telephone)
Michael J. Arnone, Commissioner (Telephone)
Glen Vetrano, Commissioner (Telephone)
Judith A. Nason, Executive Director
Stephanie A. Brown, Governor's Authorities Unit (Telephone)
SDAG George Cohen (Telephone)

Executive Director Nason read the following statement:

"This meeting today conforms with 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 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 request of Darby Development, LLC to continue the temporary waiver of N.J.A.C. 13:70-6.5 on an experimental basis to allow the uncoupling of horses at the 2020 Monmouth Park meets;
2. Legal advice concerning the application of Darby Development, LLC for approval pursuant to N.J.S.A. 5:5-189 to utilize thoroughbred purse monies to fund 2020-2021

workers' compensation insurance premiums for thoroughbred horse racing industry employees;

3. Legal advice concerning modification, pursuant to N.J.A.C 13:70-1.40, of the decision and penalty imposed in ruling number 19MON86 regarding trainer Gregory Sacco;
4. Legal advice concerning the Stipulation of Dismissal with Prejudice in the matter of Ecurie Reve Avec Moi, Inc./Dream With Me Stable, Inc. v. New Jersey Racing Commission and Francesco Zanzuccki, Civil Action No. 11-04639.
5. Other legal advice.

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 into Executive Session. 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 Vetrano seconded the motion and the Commissioners voted to affirm. The Executive Session ended.

Executive Director Nason informed everyone that three items were added to the public agenda as a result of Executive Order No. 104 and its closure of the racetracks. The items have been added to the end of the agenda.

CONSIDER APPROVAL OF THE PUBLIC AND EXECUTIVE SESSION MINUTES OF THE JANUARY 22, 2020 COMMISSION MEETING.

Commissioner Vetrano made a motion to approve the public and executive minutes of the January 22, 2020 Commission meeting. Commissioner Keegan seconded the motion and all the Commissioners voted yes.

CONSIDER APPROVAL OF THE 2020 HAMBLETONIAN FUTURE WAGER

Executive Director Nason stated the New Meadowlands Racetrack is requesting approval for the 2020 Hambletonian Future Wager. Some of its features include a 17% takeout, win only

wagering with a \$1.00 dollar minimum. Any approval granted would be subject to the conditions contained in Schedule H.

Mr. Dennis Drazin Chairman/CEO of Darby Development, LLC asked if this is a pari-mutuel wager or a fixed odds wager. Executive Director Nason responded it is a pari-mutuel wager.

Commissioner Clyne made a motion to approve the New Meadowlands Racetrack to offer the 2020 Hambletonian Future Wager. Commissioner Keegan seconded the motion and all the Commissioners voted yes.

CONSIDER RATIFICATION OF THE APPROVAL GRANTED TO THE NEW MEADOWLAND RACETRACK'S REQUEST FOR CHANGES IN POST-TIME AND WAGERING FORMAT

Executive Director Nason stated in January, the New Meadowlands Racetrack requested to change its post-time and wagering format (listed in agenda packet) from 7:15 p.m. to 6:55 p.m. She mentioned the survivor wager was eliminated. In addition, the track asked to change post-time to 6:30 p.m. on July 18th only due to a concert scheduled on this date. Executive Director Nason approved this request subject to the ratification of the Commission.

Commissioner Keegan made a motion to ratify the approval granted to the New Meadowlands Racetrack's request for changes in post-time and wagering format. Commissioner Arnone seconded the motion and all the Commissioners voted yes.

CONSIDER APPROVAL OF NEW MEADOWLANDS RACETRACK'S REQUEST TO CHANGE POST-TIME TO 7:15 PM BEGINNING APRIL 3, 2020

Executive Director Nason stated the New Meadowlands Racetrack tried an earlier post-time to maximize wagering dollars but Mr. Jason Settlemoir, COO/General Manager of the New Meadowlands Racetrack indicated the earlier post time did not prove successful. They are requesting approval to move the post-time to 7:15 p.m. This would be the new post-time once racing resumes.

Commissioner Vetrano made a motion to approve the request of the New Meadowlands Racetrack to change its post-time to 7:15 p.m. beginning on April 3, 2020. Commissioner Keegan seconded the motion and all the Commissioners voted yes.

CONSIDER THE APPROVAL OF THE RACE AND WAGERING FORMAT FOR THE 2020 MONMOUTH PARK MEET

Executive Director Nason stated due to present circumstances, there will be changes in the start dates due to the items that have been added to the end of the agenda. In this item, the Commission is being asked to consider the race and wagering format that is included in the packet. All races will offer Win, Place, Show, Exacta, Trifecta, Double, Pick Three, Superfecta, Pick 4 and Ten Cent Superfecta wagering. Post-time will be 12:50 p.m. on weekends and 5 p.m. on Fridays and noon on Haskell Day presently scheduled for July 18, 2020. The Executive Director informed the Commission that Mr. Dennis Drazin CEO/Chairman of Darby Development was present at the meeting if they would like to ask him any questions about this agenda item. No questions were asked by the Commission.

Commissioner Arnone made a motion to approve the race and wagering format for the 2020 Monmouth Park meet. Commissioner Keegan seconded the motion and all the Commissioners voted yes.

CONSIDER RATIFICATION OF THE APPROVAL GRANTED TO FREEHOLD RACEWAY TO CANCEL RACING ON FEBRUARY 7, 2020 DUE TO A SHORTAGE OF ENTERED HORSES

Executive Director Nason stated Howard Bruno, General Manager of Freehold Raceway filed this request. He indicated that there were not enough horses available to fill the race card. Freehold was having difficulty supporting live racing three days per week. Freehold Raceway put forth additional efforts in an attempt to gain additional entrants but were unsuccessful in those efforts. By email dated February 4, 2020, Executive Director Nason approved the cancelation of racing on February 7, 2020 subject to ratification by the Commission at today's meeting.

Commissioner Keegan made a motion to ratify the approval granted to Freehold Raceway's request to cancel racing on February 7, 2020 due to a shortage of entered horses. Commissioner Arnone seconded the motion and all the Commissioners voted yes.

CONSIDER THE REQUEST OF DARBY DEVELOPMENT, LLC TO CONTINUE THE TEMPORARY WAIVER OF N.J.A.C. 13:70-6.5 ON AN EXPERIMENTAL BASIS TO ALLOW OF HORSES UNCOUPLING OF HORSES AT THE 2020 MONMOUTH PARK AND MEADOWLAND'S MEETS

Executive Director Nason stated that the Commission has received a request from Darby Development, LLC to continue the temporary waiver of N.J.A.C. 13:70-6.5 on an experimental basis to allow the uncoupling of horses at the 2020 Monmouth Park and the New Meadowlands Racetrack thoroughbred meets. On February 5, 2020, the New Jersey Racing Commission received

a written request asking the Commission to continue to waive the thoroughbred coupling rule for 2020 to allow separate betting interests in the case of common ownership or a common trainer.

Executive Director Nason indicated that Darby Development, LLC included a certification from General Manager William Anderson as well as other documents that the company had filed with the Commission in connection with a prior uncoupling request. In their request, Darby Development, LLC argues that the Commission should continue to allow uncoupling to address the shortage of race horses and increase the bet worthiness of their product. They point out that the coupling rule predates and does not address the troubled times that racetracks are facing in horse racing regarding the shortage of horses. General Manager Anderson certifies that there were no identifiable issues with uncoupling last year. Mr. Anderson asserts that allowing uncoupling will benefit horse racing by increasing interest through an a larger field and result in a greater handle as well as an improved and more marketable race product.

Executive Director Nason stated that the Commission has considered and approved similar thoroughbred uncoupling requests in 2018 and also in 2019 with the provision that the Executive Director shall have the sole discretion to terminate the experiment. The Commission has also considered and approved a similar standardbred uncoupling request earlier this year. The request for a waiver was made pursuant to N.J.A.C. 13:70-1.39 which states in part that the Commission may grant a waiver if it determines that such a waiver will benefit the horse racing industry in this State. Staff is not aware of any negative impact from uncoupling in connection with the 2018 or 2019 waiver. If the Commission, decides to waive the coupling rule for 2020, the Executive Director asked the Commission to consider granting her the authority to terminate the waiver experiment if she deems there are any problems. The Executive Director informed everyone as a result of approving this waiver for the past three years, staff is preparing proposed amendments to both the thoroughbred and standardbred coupling rules to evoke permanent changes that will benefit the racing industry. The Executive Director announced she expects to present the proposed amendments at a future Commission meeting.

The Executive Director asked if anyone had any questions or comments. There were no questions or comments. The Executive Director then asked the Commissioners if they believed uncoupling in 2020 will benefit the horse racing industry in the State.

Commissioner Clyne stated based on the evidence, it would benefit the horse racing industry in the State. Executive Director Nason indicated staff is in agreement with this assessment.

Commissioner Clyne made a motion to waive N.J.A.C. 13:70-6.5 for 2020 and granted the Executive Director sole authority to terminate the waiver if at any point if she believes it is warranted. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER THE APPLICATION OF DARBY DEVELOPMENT, LLC FOR APPROVAL PURSUANT TO N.J.S.A. 5:5-189 TO UTILIZE THOROUGHBRED PURSE MONIES TO FUND THE 2020-2021 WORKERS' COMPENSATION INSURANCE PREMIUM FOR THOROUGHBRED HORSE RACING INDUSTRY EMPLOYEES

Executive Director Nason stated the premium for the thoroughbred portion of the workers' compensation policy is estimated to be \$1,455,616 dollars. These estimates may change but currently the 4% deduction that is authorized by statute from thoroughbred purses in 2020, which are projected to be \$28 million dollars, will yield approximately \$1.12 million dollars towards the cost of the premium. As a result, there is a deficit of approximately \$335,616 dollars in funding the thoroughbred assessment for 2020-21. On February 20, 2020, Darby Development, LLC submitted an application on behalf of the Thoroughbred Horsemen Association (THA) seeking the Commission's approval to use purse monies for the policy premiums amount up to the amount of \$1.5 million. Darby submitted a contractual agreement of the THA for this use of purse money. The total amount includes the 4% deduction authorized by statute. The Commission may approve the use of thoroughbred purse monies for the proposed purpose if it finds that the redistributed monies will be used to advance, preserve and enhance the overall economic wellbeing of the thoroughbred horse racing industry in New Jersey. The Commission has approved similar requests to use purse money to pay the workers' compensation premium in 2017, 2018 and 2019.

The Executive Director asked Mr. Dennis Drazin or Mr. John Heims if they had any comments.

Mr. Drazin stated that he is in the process of providing information to the Executive Director on the impact of the coronavirus and how it might affect revenues. He wanted to be candid with the Commission and stated that they may not generate \$28 million dollars in purses. Mr. Drazin asked for permission to make up whatever the difference is from the purse amount not just the \$335,616 dollars that was referenced. Executive Director Nason responded that is why Darby frames the request to use up to \$1.5 million dollars in purse money. She further explained they are just trying to be prudent to make sure the cost of the premium gets covered.

Commissioner Clyne asked Mr. Drazin if there have been any reported cases of Coronavirus at Monmouth Park. Mr. Drazin stated he was unaware of any cases at Monmouth Park.

Executive Director Nason asked the Chairman and the Commissioners if they find that this use of purse money will be used to advance, preserve and enhance the overall economic wellbeing of the thoroughbred horse racing industry in New Jersey.

Commissioners Vetrano, Chairman Clyne and Commissioner Arnone agreed the purse money will be used to advance, preserve and enhance the overall economic wellbeing of the

thoroughbred horse racing industry in New Jersey. Executive Director Nason said that is consistent of what the Commission has found in the past.

Chairman Vetrano motioned to approve the use of up to \$1.5 million dollars in purse money to pay the 2020-21 thoroughbred workers' compensation premium. Commissioner Arnone seconded the motion and all Commissioners voted yes.

CONSIDER THE APPROVAL OF THE 2020-2021 BUDGET OF THE NEW JERSEY JOCKEY'S HEALTH AND WELFARE TRUST

Executive Director Nason stated that the 2020 estimated budget is \$207,849.12 which is 13.5% higher than the 2019 approved budget of 183,170.04. Pursuant to statute, \$150,000 dollars of off-track wagering and account wagering breakage and uncashed ticket monies on out-of-state races shall be distributed to the jockey's health and welfare trust. In addition to the annual statutory contribution of \$150,000 dollars, the trust has estimated that it will receive contributions of \$68,082 dollars from active and retired riders resulting in a projected net surplus of \$10,232.88.

Executive Director Nason asked Mr. John Heims he had any comments on this matter. Mr. Heims had no comment.

Chairman Arnone motioned to approve the 2020-21 Budget of the New Jersey Jockey's Health and Welfare Trust. Chairman Clyne seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF THE NEW JERSEY RACING COMMISSION'S FY2020 PROGRAM BUDGET

Executive Director Nason stated the fiscal year 2020 projected budget is \$7,036,439 dollars. This is an overall increase in the amount of \$419,830 dollars. This is a 6.35% overall increase compared to the budget approved for FY2019 which was \$6,616,609 dollars. Of this overall increase, \$299,469 dollars is attributed to increases in the operating accounts which includes \$200,000 for a licensing system upgrade. Technology in our licensing system is pushing towards the obsolete side so we budgeted \$200,000 to upgrade our licensing system and it also includes \$55,000 dollars for three live-scan fingerprint machines that we must install in our licensing offices as the State Police is no longer processing ink and roll fingerprints. Although this budget is higher than FY2019, it is significantly lower than FY2018 budget which was \$7,517,983 dollars.

Chairman Vetrano motioned to approve the New Jersey Racing Commission's FY2020 program budget. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER THE APPROVAL OF THE THROUGHbred BREEDERS' ASSOCIATION OF NEW JERSEY'S PROPOSED BUDGET FOR THE YEAR 2020

Executive Director Nason stated the total 2020 expense budget is \$263,273 dollars and that exceeds the 2019 budget of \$250,442 dollars. The actual 2019 expenditures were \$245,938 dollars. The budgeted income for 2020 is \$62,600 dollars. The 2019 budgeted amount was \$74,760. The actual expenditures were \$57,894 dollars. The projected income includes: the New Jersey Thoroughbred Festival projected revenue of \$20,000, the Stallion Auction revenue which is projected to generate \$25,000 dollars, \$7,300 dollars in membership dues and \$7,200 in foal registrations. The request from the Commission is for \$200,673 dollars.

Commissioner Vetrano motioned to approve the Thoroughbred Breeders' Association of New Jersey's proposed budget for the year 2020. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER THE MODIFICATION, PURSUANT TO N.J.A.C. 13:70-1.40, OF THE DECISION AND PENALTY IMPOSED IN RULING NUMBER 19MON86 REGARDING TRAINER GREGORY SACCO

In this ruling, the Board of Stewards determined that thoroughbred trainer Gregory Sacco violated N.J.A.C. 13:70-1.15, 6.1, 6.54, 6.57 14.4 16.2 and 16.4 when he entered and subsequently scratched PJ's Ego from a Monmouth Park race on July 28, 2019. The Board of Stewards imposed a \$5,000 dollar fine. This matter has been placed on the agenda to ask the Commission to consider modifying the decision and penalty. The Board of Stewards imposed this penalty without having considered all of the important facts and the penalty imposed, therefore, may be inadequate.

The following facts have been taken from the investigative report and transcript of the Board of Stewards hearing. On July 28, 2019, Mr. Sacco scratched PJ's Ego (due to injury) which was entered in the second race at Monmouth Park later that day. The Stewards sent a Racing Commission Veterinarian to examine the horse. The horse was not there. The veterinarian was told that the horse had not been at Monmouth Park for several months due to an injury yet there were two published workouts for the horse. According to Mr. Sacco, clocker Jonny Tyrone Artis had incorrectly entered the workouts on July 14th and July 21st for the wrong horse and he indicated that it was PJ's Hidden Jewel that had worked out those two days not PJ's Ego. Mr. Sacco told the Racing Commission investigators that he believed that Mr. Artis had misunderstood him and recorded the workouts for the wrong horse. On October 3rd, the Board of Stewards conducted a hearing regarding the scratch and the erroneous workouts for the horse. At the hearing, Mr. Sacco contended that when identifying a horse that is working, Mr. Artis requires that the trainer provide the name of the horse's dam and year the working horse was born. Mr. Sacco stated PJ's Ego and PJ's Hidden Jewel both have the same dam and were born one year apart. According to Mr. Sacco,

Mr. Artis must have heard the wrong year. Staff reviewed the ruling and ordered a transcript from the hearing. After reviewing the transcript, staff became concerned that the Board of Stewards decided this matter and imposed a penalty without the benefit of having a complete record. As a result, Executive Director Nason directed the Racing Commission Supervising Investigator to continue the investigation by re-interviewing Mr. Artis to find out more facts as to how the horse was misidentified. A Racing Commission investigator re-interviewed Mr. Artis and that investigative report has been provided to the Commission. Executive Director Nason did not state publically any information from that report as the investigation is not yet concluded. When determining the appropriate penalty should be a \$5,000 dollar fine, the Board of Stewards did not have access to the information in the second investigative report.

Executive Director Nason stated N.J.A.C. 13:70-1.40 requires notice to Mr. Sacco with the opportunity to submit information to the Commission in writing. The Executive Director sent the required notice to Mr. Sacco by letter dated March 6, 2020. Mr. Sacco responded and his response was provided to each of the Commissioners. The Executive Director asked that the Commissioners vacate the decision and penalty in ruling number 19MON86 and send the matter back to the Board of Stewards with the following instructions: The Board of Stewards shall continue the hearing started on October 3, 2019; accept the second investigative report into evidence; make every effort to obtain the testimony of Clocker Artis, either in person or by telephone; accept all other relevant evidence, including any additional testimony by Mr. Sacco; and impose an appropriate penalty based upon the complete record.

Chairman Clyne made a motion to strike down ruling number 19MON86 and send the matter back to the Board of Stewards to continue the hearing. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER THE STIPULATION OF DISMISSAL WITH PREJUDICE IN THE MATTER OF ECURIE REVE AVEC MOI, INC./DREAM WITH ME STABLE, INC. V. NEW JERSEY RACING COMMISSION AND FRANCESCO ZANZUCCKI, CIVIL ACTION NO. 11-04639

Executive Director Nason stated that, for the Commission's consideration and approval, is a proposed settlement agreement in the form of a draft Stipulation of Dismissal with Prejudice. This settlement, if approved, would resolve the litigation reference above. The terms of the settlement are confidential until the settlement agreement has been finalized. Therefore, details of this agreement will not be disclosed in public at this time.

Commissioner Vetrano made a motion to authorize Executive Director Nason to enter into the settlement agreement in accordance with the proposed terms. Chairman Clyne seconded the motion and all Commissioners voted yes.

CONSIDER RATIFICATION OF THE CANCELLATION OF RACING AND SIMULCASTING AT FREEHOLD RACEWAY ON MARCH 13, 14, 20 AND 21, 2020

Freehold Raceway needed to close the racetracks on these days due to issues related to possible Covid-19 contamination by horsemen racing at the track. General Manager Howard Bruno indicated that the track is bringing in professional cleaners to disinfect all areas of the racetrack. Staff reached out to the SBOA, which indicated that they did not object to the cancellation of racing on those dates in order to address the possible contamination. Executive Director Nason approved the cancellation subject to the Commission's ratification at today's meeting.

Commissioner Vetrano made a motion to ratify the cancellation of racing and simulcasting at Freehold Raceway on March 13, 14, 20 and 21, 2020. Chairman Clyne seconded the motion and all Commissioners voted yes.

CONSIDER RATIFICATION OF THE CANCELLATION OF RACING AND SIMULCASTING AT NEW MEADOWLANDS RACTRACK ON MARCH 13 AND 14, 2020.

New Meadowlands Racetrack was asked to cancel live racing on March 13 and 14, 2020 in an effort to eliminate events that would attract 250 attendees or more given the unprecedented situation presented by Covid-19. New Meadowlands Racetrack agreed to honor that request. Staff reached out to the SBOA, which indicated that it did not object to the cancellation of racing on those two days. The Executive Director approved the cancellation subject to the Commission's ratification at today's meeting.

Chairman Clyne made a motion to ratify the cancellation of racing and simulcasting at the New Meadowlands Racetrack on March 13 and 14, 2020. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF THE CANCELLATION OF LIVE RACING AND SIMULCASTING AT NEW MEADOWLANDS RACETRACK AND FREEHOLD RACEWAY DURING THE PENDENCY OF EXECUTIVE ORDER 104 AND ANY APPLICABLE EXECUTIVE ORDER THAT MAY BE ISSUED.

On March 16, 2020, Governor Murphy issued Executive Order 104 which suspends the operations of numerous types of business around the State as part of the State's mitigation strategy to combat Covid-19 and reduce the rate of community spread. Paragraph 7 of this Executive Order mandated the closure of racetracks, including stabling facilities, effective 8 p.m. on March 16, 2020. The Executive Order provides that these facilities are to remain closed to the public for as