

**NEW JERSEY RACING COMMISSION
WEDNESDAY, MARCH 24, 2021
TELEPHONE MEETING**

A public meeting of the New Jersey Racing Commission was held on Wednesday, March 24, 2021 by telephone.

The following were present:

Pamela J. Clyne, Chairman
Francis X. Keegan, Jr., Commissioner
Michael J. Arnone, Commissioner
Glen Vetrano, Commissioner
Judith A. Nason, Executive Director
Lauren Nathan-LaRusso, Esq., Governor's Authorities Unit
SDAG George Cohen

Executive Director Nason read the following resolution:

"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 approval of the updated internal control procedures of TVG network related to geolocation and account holder verification.
2. Legal advice concerning the request of the Jockey's Guild to stay N.J.A.C. 13:70-11.12, 11.12A and 11.12B pending a final determination on appeal.
3. 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 Keegan motioned to adjourn into Executive Session. Commissioner Arnone 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. Commissioner Vetrano seconded the motion and all of the Commissioners voted yes.

The Executive Session ended.

CONSIDER APPROVAL OF THE PUBLIC SESSION MINUTES OF THE JANUARY 27, 2021 COMMISSION MEETING.

Commissioner Keegan made a motion to approve the public session minutes of the January 27, 2021 Commission meeting. Commissioner Vetrano seconded the motion and all of the Commissioners voted yes.

CONSIDER RATIFICATION OF THE APPROVAL GRANTED TO FREEHOLD RACEWAY TO CANCEL RACING ON FEBRUARY 19, 2021 DUE TO SEVERE WEATHER CONDITIONS.

Executive Director Nason explained that New Jersey experienced extreme weather with heavy snow and blizzard-like conditions on February 18 and 19, 2021. Various locations within Mercer County reportedly received between 6 to 12 inches of snow mixed with sleet and freezing rain. As a result, State offices were closed on February 18th with a delayed opening on February 19th. On Friday, February 19, 2021, Howard Bruno, Freehold Raceway's General Manager, contacted the Commission to request cancellation of racing at Freehold Raceway due to the severe weather conditions. Given the dangerous weather conditions on February 19, 2021, Executive Director Nason approved the cancellation of racing subject to the Commission's ratification.

Commissioner Vetrano asked whether cancelled race dates are added to the race calendar at a later date so they can be made up. Executive Director Nason responded that a permit holder can choose to do that but traditionally, if a race date is canceled as a result of inclement weather, it is considered an act of God and it counts towards the mandatory minimum. She added that a permit holder can nevertheless choose to re-schedule the race date.

Chairman Clyne made a motion to ratify the approval granted to Freehold Raceway for the cancellation of racing on February 19, 2021 due to extreme weather and snow conditions. Commissioner Arnone seconded the motion and all of the Commissioners voted yes.

CONSIDER THE REQUEST OF DARBY DEVELOPMENT, LLC TO CONTINUE THE WAIVER OF N.J.A.C. 13:70-6.5 TO ALLOW THE UNCOUPLING OF HORSES AT THE 2021 MONMOUTH PARK AND MEADOWLANDS MEETS.

Executive Director Nason explained that on February 16th, the Commission received a written request from Darby Development, LLC asking that the Commission continue to waive the thoroughbred coupling rule for 2021 to allow separate betting interests in the case of common

ownership or a common trainer during the thoroughbred meets at Monmouth Park and the Meadowlands. She noted that the Commission waived this rule in 2018, 2019 and 2020 on an experimental basis and that In-House Counsel and Racing Secretary John Heims reported that there have not been any identifiable issues with uncoupling.

Executive Director Nason stated that in a prior certification, Darby's General Manager, William Anderson, points out that the Commission's coupling rule was adopted when trainers competed for stalls at Monmouth Park. However, all racing states have been struggling with a dwindling horse population. Mr. Anderson indicates that waiving the coupling rule will benefit horse racing by allowing the tracks to offer more marketable races, increasing the wagering handle and generating additional purse money.

Executive Director Nason explained that the request for a waiver is made pursuant to N.J.A.C. 13:70-1.39(b) 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." Darby Development, LLC has reported positive results from the waiver in 2018, 2019 and 2020. She indicated that Commission staff is not aware of any negative impact from the prior waiver of the coupling rule. She also noted that the Commission waived the standardbred coupling rule for 2021 at the November 2020 meeting.

Executive Director Nason asked the Commissioners if they believe waiving the coupling rule in 2021 will benefit our horse racing industry. Commissioner Vetrano indicated he did and pointed out that if the Commission did it for the standardbreds why would we not want to do it for the thoroughbreds. All of the other Commissioners agreed with Commissioner Vetrano.

Executive Director Nason asked if anyone had any questions or comments. There were no questions or comments.

Commissioner Keegan made a motion to waive N.J.A.C. 13:70-6.5 for 2021 and grant the Executive Director the authority to terminate the waiver if at any point if she believes it is warranted. Chairman Clyne seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF THE 2021-2022 BUDGET OF THE NEW JERSEY JOCKEY'S HEALTH AND WELFARE TRUST.

Executive Director Nason stated that the Jockey's Health and Welfare Trust's estimated budget for 2021 is \$178,764.60 which is \$29,084.52 lower than last year's approved budget of \$207,849.12. This is a reduction of 14%. Pursuant to statute, \$150,000 of breakage from off-track wagering and account wagering 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, the trust has estimated that it will receive contributions of \$54,957 from active and retired riders, resulting in a projected net surplus of \$26,192.40.

Chairman Clyne motioned to approve the 2021-2022 budget of the New Jersey Jockey's Health and Welfare Trust. Commissioner Vetrano seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF THE NEW JERSEY RACING COMMISSION'S FY2021 PROGRAM BUDGET.

Executive Director Nason explained the estimated program budget for FY2021 is \$7,014,737, which is \$21,702 less than the approved FY2020 budget, which was \$7,036,439. This is a less than one percent reduction; specifically, the reduction is .31%. This budget is comparable to the budget approved for FY2020. Executive Director Nason noted that both the FY2021 and FY2020 budgets are significantly lower than the Commission's budget in FY2018 which was over \$7.5M dollars.

Commissioner Keegan motioned to approve the New Jersey Racing Commission's FY2021 program budget. Commissioner Arnone seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF THE NEW JERSEY THOROUGHBRED HOESMEN'S ASSOCIATION'S STATUTORY BUDGET FOR 2021.

Executive Director Nason explained that the New Jersey Thoroughbred Horsemen's Association submitted its proposed 2.9% statutory budget for calendar year 2021. The statutory budget is funded by statutes, such as N.J.S.A. 5:10-7, which direct that a portion of sums deposited in pari-mutuel wagering pools be directed "for programs designed to aid the horsemen."

She further explained that the THA anticipates \$522,000 in revenue which is \$58,000 higher than its reduced 2020 budget, which was \$464,000 that was reduced due to the COVID-19 pandemic. Given the anticipated increase in revenue, the budget includes \$449,000 for direct benefits, which is an increase of \$74,362 over last year's budget. The THA is also reducing administrative costs by reducing its Executive Director's salary in anticipation of receiving paycheck protection program money from the federal government in the amount of \$20,770.

Executive Director Nason indicated that the 2.9% statutory budget appears to be in compliance with N.J.A.C. 13:70-1.30, which requires that a minimum of 70% of the statutory revenue be spent on benevolence programs. Pursuant to the 2021 budget, 86.02% of the statutory revenue will be spent on benevolence programs as compared to 2020 where 80.74% was spent on direct benefits.

Commissioner Vetrano motioned to approve the Thoroughbred Horsemen's Association of New Jersey's proposed budget for the year 2021. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF THE UPDATED INTERNAL CONTROL PROCEDURES OF TVG NETWORK RELATED TO GEOLOCATION AND ACCOUNT HOLDER VERIFICATION.

Executive Director Nason explained that the New Jersey account wagering system, 4NJBets, was statutorily limited to accepting wagers placed by New Jersey residents while they

are located in this State. On November 6, 2020, the Legislature amended the Off-Track and Account Wagering Act to allow New Jersey residents who are outside of the state to place wagers using the New Jersey account wagering system. The amendments authorize the account wagering licensee to accept such wagers “if placing such a wager while located in that jurisdiction is not inconsistent with the law of that jurisdiction or with federal law.”

On November 12, 2020, Executive Director Nason spoke with Darby Development, LLC’s Chairman and CEO Dennis Drazin and TVG Network’s General Counsel John Hindman regarding the statutory changes. She indicated that before 4NJBets could accept wagers from New Jersey residents located in other states, TVG, as the account wagering platform provider, must update the account wagering internal control procedures to detail how TVG will verify the patrons’ locations and determine that the acceptance of the wager is not inconsistent with state or federal law. She also indicated that the updated procedures would need to be submitted to the Commission for its approval.

On February 12, 2021, TVG filed updated account wagering internal control procedures which: 1) establish geolocation checks for desktop and mobile users to verify they are present in a state where pari-mutuel wagering is legal and 2) impose multiple verifications processes to ensure New Jersey residency during the initial account wagering set up and subsequent wagering to ensure the patron is eligible to wager with 4NJBets.

The New Jersey Sports and Exposition Authority, which is the account wagering licensee, and Darby Development, which is the account wagering manager, have reviewed the updated internal control procedures and filed written statements indicating that they find the updated procedures acceptable.

Executive Director Nason informed the Commissioners that should they approve the proposed updated internal control procedures of TVG Network related to geolocation and account holder verification, TVG Network may implement the changes and the account wagering system could commence accepting wagers from New Jersey residents located in other states if and when the Commission’s minutes clear the Governor’s review period.

Chairman Clyne motioned to approve the updated internal control procedures related to geolocation and account holder verification that were submitted by TVG Network. Commissioner Vetrano seconded the motion and all Commissioners voted yes.

CONSIDER THE REQUEST OF THE JOCKEY’S GUILD TO STAY N.J.A.C. 13:70-11.12, 11.12A AND 11.12B PENDING A FINAL DETERMINATION ON APPEAL.

Executive Director Nason referenced the new riding crop rules, adopted last year, which prohibit the use of the riding crop except when necessary for the safety of the horse or rider and indicated that the new rules will be implemented when Monmouth Park opens for training and racing this spring.

She informed the Commission that on November 5, 2020, the Jockey’s Guild, Inc. (“Guild”) filed a notice of appeal with the Superior Court of New Jersey challenging the adoption

of the riding crop rules as arbitrary, capricious or unreasonable and void because the Commission enacted the rules with only four Commissioners.

On February 25, 2021, Nancy A. Del Pizzo, Esq., counsel for the Guild, filed an application with the Commission requesting a stay of the new riding crop rules. On March 12th, Deputy Attorney General Steven M. Gleeson, who represents the Commission in the Guild's appeal, filed a letter brief opposing the stay request. The documents and correspondence related to the stay request have been provided to the Commissioners.

Executive Director Nason advised the Commission that in considering a stay request, the NJRC utilizes the well-established, three-prong test which requires the moving party to demonstrate that: 1) a stay is needed to prevent irreparable harm, 2) a likelihood of eventual success on the merits of the claim and 3) that a balancing of the hardships weighs heavily in favor of a stay.

Executive Director Nason informed the Commission that on March 17th, Ms. Del Pizzo and DAG Gleeson both filed requests to address the Commission verbally regarding the stay request. She stated that whether to allow verbal comments from counsel regarding this matter lies within the discretion of the Commissioners and pointed out that in the past, when permissible, the Commission has allowed verbal comment from counsel limited to the scope of the written submissions. The Commission has also considered limiting the time allotted to each attorney due to the length of the meeting.

Executive Director Nason asked the Commissioners if they wanted to hear verbal comments from Ms. Del Pizzo and DAG Gleeson regarding the stay request. Chairman Clyne, Commissioner Keegan and Commissioner Vetrano agreed that they wanted to hear from both attorneys and allotted each of them five minutes to speak.

Executive Director Nason called Ms. Del Pizzo so she could address the Commission verbally. She informed Ms. Del Pizzo that the Commission granted her request to be heard and has allotted her five minutes to speak.

After thanking the Executive Director and Commission, Ms. Del Pizzo advanced numerous arguments in support of the Guild's stay request and in opposition to the letter brief filed by DAG Gleeson. Ms. Del Pizzo argued that the stay request meets the test outlined in the Crowe v. De Gioia case and asserted how the Guild had established all three prongs of the test.

Regarding the likelihood of success on the merits prong, Ms. Del Pizzo argued that the rules are void because the Commission acted without a quorum. Ms. Del Pizzo's arguments included her citation of N.J.S.A. 5:5-23 which, she asserted, requires nine commissioners with a majority being necessary for a quorum. Ms. Del Pizzo distinguished the 1991 formal Attorney General opinion cited by the DAG and noted its failure to reference the NJRC or the King v. NJRC case.

Regarding the prong requiring a balancing of the hardships and public interest, Ms. Del Pizzo's arguments included the assertion that DAG Gleeson failed to address the public interest.

She stated that the new rules, which contain the harshest restriction in the nation, became effective in October 2020. Noting that the Commission has not yet enforced the rules, Ms. Del Pizzo argued that it makes sense to stay the rules during the pendency of the appeal because that will maintain the status quo until the court weighs in. Ms. Del Pizzo stated that the Guild is aware of certain jockeys and owners who are planning not to race in New Jersey this year because the new rule is viewed as inherently increasing the risk to the life of the rider. Referencing the lower amount of purses in New Jersey and the higher potential for monetary sanctions due to the rule, Ms. Del Pizzo asserted that it won't be affordable for jockeys to race in this state. She warned that Monmouth Park will not have enough riders to run a 12 horse race card and the domino effect that may have on farm and agricultural businesses in the state.

Regarding the irreparable harm prong, Ms. Del Pizzo stated that there is a grave potential risk to the lives of the jockeys and the horses because this rule is like no other rule in the nation. Pointing out that jockeys must make split second decisions and need to use the riding crop to advance the horse to get the horse and the rider out of a dangerous situation, Ms. Del Pizzo argued that the stewards will not be able to comprehend the circumstances and that if jockeys want to preserve income or avoid penalties, they are going to be forced to risk their life and not use the crop to advance the horse out of dangerous situations.

Executive Director Nason advised Ms. Del Pizzo that her arguments were nearing seven minutes in length and she asked counsel to please bring her comments to a conclusion.

Stating she was nearly finished, Ms. Del Pizzo argued that the new rules make a sport that is inherently dangerous even more dangerous and the Commission can avert these dangers by granting a stay and maintaining the status quo. Advancing an analogy to tennis, she explained the role and importance of muscle memory.

Finally, Ms. Del Pizzo complained that two of its members, who are professional jockeys in New Jersey, wanted to address the Commission but they were not allowed to do so. Stating that the Guild found this appalling, Ms. Del Pizzo indicated that if her client needs to file an emergent motion with the Appellate Division, they will make the court aware of that. Ms. Del Pizzo thanked the Commission and asked it to maintain the status quo by granting the stay request pending appeal.

Executive Director Nason called DAG Gleeson, informed him that the Commission granted his request to be heard and has allotted him five minutes.

DAG Gleeson thanked the Executive Director and the Commission for hearing him. Summarizing the three prongs of the test and pointing out that moving party has the burden of showing all three prongs by clear and convincing evidence, DAG Gleeson argued that the Guild has failed to show any irreparable harm that would come about by allowing the new rules to go forward this spring when thoroughbred racing reopens. DAG Gleeson asserted that arguing that this rule is different from other jurisdictions does not constitute irreparable harm. Noting that the Commission has full authority to make its own rules for racing in this state, DAG Gleeson stated the fact that different racing authorities have different rules is not irreparable harm. DAG Gleeson pointed out that the new rules directly address safety by permitting use of riding crops when

necessary for the safety of either the rider or the horse. As a result, DAG Gleeson argued there is no irreparable harm based on safety concerns because the rules adequately address safety.

Discussing the common law and N.J.S.A. 5:5-29, DAG Gleeson argued that the Guild has not shown a likelihood of success on the merits because the Commission has acted with a quorum when enacting the new rules. DAG Gleeson pointed out that the Guild has not shown that the Commission's actions in passing these rules were in any way arbitrary, capricious or unreasonable. Outlining the rulemaking process the Commission followed when enacting the new rules, DAG Gleeson argued that the Commission followed the procedures required by the Administrative Procedure Act and there has not been any showing that it was arbitrary, capricious or unreasonable.

Finally, DAG Gleeson pointed out that his letter brief addressed the public interest and that a balancing of hardships absolutely favors denying the stay. The Commission has the authority to regulate horse racing in the public interest and to do so for the benefit of the human and animal participants. DAG Gleeson asserted that the new rules were about protecting and maximizing equine welfare by limiting the use of riding crops and permitting use only when necessary to protect the safety of the rider or the animal. Stating that the Guild has not shown any of the necessary factors, DAG Gleeson stated the Commission should deny the request for a stay.

Executive Director Nason thanked DAG Gleeson and asked the Commissioners if they had any comments, questions or discussion.

Chairman Clyne stated she did not think that Guild demonstrated all three requirements for a stay.

First, she did not think that the Guild had shown that its members will suffer irreparable harm if the stay isn't granted. Pointing out that most of these arguments were in the rule comments that the Guild filed with the Commission, Chairman Clyne stated that the Commission responded to these concerns in the rule adoption. Jockeys have always needed to be aware of different rules in different states. The rules allow the jockey to use the riding crop if he or she believes it is necessary for safety. If a jockey uses the riding crop, Chairman Clyne explained that our stewards will conduct a hearing and allow the jockey to explain why use of the riding crop was necessary. They can watch the recording of the race at the hearing and the jockey can explain. If the stewards agree that use of the riding crop was necessary to control the horse for the safety of the horse or rider, penalties won't be imposed.

Second, Chairman Clyne stated that with regard to the issue of a quorum, she did not think the Guild had shown a likelihood of success in the appeal. She stated the Commission has four Commissioners and needs three for a quorum. She pointed out that when the Commission proposed and adopted these rules, all four Commissioners were present at the meetings.

Chairman Clyne concluded by stating that she did not think that the Guild had shown that the interests weigh in favor of a stay. She stated that she thinks that the interests weigh against granting a stay. She pointed out that when the Commission adopted the new rules, the Commission repealed the prior rule which prohibited using the riding crop in an abusive or reckless manner. If

the Commission grants the stay, there will not be any rule in place to protect the horses from use of the riding crop. Chairman Clyne stated that this clearly weighs against granting the stay request.

Chairman Clyne made a motion to deny the stay request and authorize the Executive Director to issue the draft stay decision upon the conclusion of the Governor's review period for meeting minutes. Commissioner Keegan seconded the motion. The Commissioners voted yes with the exception of Commissioner Arnone who voted no. The motion carried.

Commissioner Vetrano expressed concern that a couple of jockeys were not given the opportunity to weigh in and give comments during the public meeting. Executive Director Nason informed Commissioner Vetrano that the Commission reached out for legal advice. Because the parties are represented by counsel in the appeal, the recommendation was that the verbal presentations at the public meeting be limited to the attorneys for the two parties in the appeal. Commissioner Vetrano stated he thought that was unfortunate. He pointed out the importance of hearing from professionals in the field. Commissioner Vetrano stated that he places weight on the fact the Commission is not tying the hands of the jockeys and stewards. He believes the stewards are industry leaders who will weigh in if they believe the jockey was in harm and will allow the jockey to use the riding crop when need be.

Executive Director Nason pointed out that when the Commission proposed this rule there was a sixty day comment period and the Commission received, reviewed, considered and responded to all of comments including those filed by the Jockey's Guild.

Executive Director Nason indicated that Part A of the formal agenda had been concluded and stated Part B contains items for discussion and information.

ITEMS FOR DISCUSSION AND INFORMATION

Executive Director Nason indicated the availability of drug testing statistics for New Jersey for calendar year 2020. In 2020, there were 20,439 tests conducted on standardbred blood and urine samples which resulted in 38 positives. There were 5,436 tests conducted on thoroughbred blood and urine samples which resulted in 8 positives. Included in these numbers of tests is out-of-competition testing. There were 119 tests performed on blood samples with no positives. The total tests conducted in 2020 were 25,875 which resulted in 46 positives which compares to 2019 where there were 28,937 tests conducted with 45 positives. Finally, regarding human testing, the Commission tested 102 samples in 2020 and there were 2 positives. In 2019, there were 231 samples tested with 7 positives.

Regarding the second item on the agenda, Executive Director Nason advised the public that the financial status is now available.

Regarding the third item on the agenda, Executive Director Nason acknowledged receipt of the audited financial statements of the Standardbred Breeders and Owners Association of New Jersey for the year ended December 31, 2020.

Executive Director Nason opened the phone line to allow the public to comment and bring new business to the Commission's attention.

The Commission experienced momentary technical difficulties with the telephone which were rectified and the public meeting resumed.

Executive Director Nason asked if anyone wanted to bring new business to the attention of the Commission.

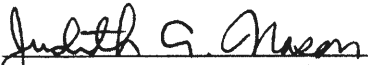
Christopher Moreck, a citizen of New Jersey and a racing fan, asked what the timetable was for the update. Mr. Moreck stated he travels frequently and the new update would make it convenient for him to use his account in another state. Executive Director Nason responded that the Commission must submit its meeting minutes to the Governor's Office for review. Upon the conclusion of the review period, TVG can move forward, implement the new internal control procedures and start accepting wagers in conformance with the new procedures.

Jason Settlemoir, COO and General Manager of New Meadowlands Racetrack, stated he wanted to thank Governor Murphy, the Governor's Office, Executive Director Nason, John Tomasello and Commission staff for the great job that they have been doing during the pandemic. Executive Director Nason thanked Mr. Settlemoir for all the great work being done at New Meadowlands Racetrack.

Executive Director Nason asked if there were any additional questions or comments. There were no additional questions or comments.

Chairmen Clyne moved that the meeting be adjourned. Commissioner Keegan seconded the motion and all of the Commissioners voted yes.

ATTEST:



Judith A. Nason, Executive Director