

NEW JERSEY RACING COMMISSION
WEDNESDAY, MAY 19, 2021
TELEPHONE MEETING

A public meeting of the New Jersey Racing Commission was held on Wednesday, May 19, 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 initial decision in Ann DePietro v. New Jersey Racing Commission, OAL Docket No. RAC 11899-18.
2. Legal advice concerning the initial decision in Aparna Battula v. New Jersey Racing Commission, OAL Docket No. RAC 07184-20.
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."

The Commission then adjourned to Executive Session.

Commissioner Keegan motioned to adopt the resolution to adjourn into Executive Session. Commissioner Arnone seconded the motion and all of the Commissioners voted yes.

Commissioner Vetrano motioned to adjourn from Executive Session into the Public Session. Commissioner Keegan seconded the motion and all of the Commissioners voted yes.

The Executive Session ended.

CONSIDER APPROVAL OF THE PUBLIC AND EXECUTIVE SESSION MINUTES OF THE MARCH 24, 2021 COMMISSION MEETING.

Commissioner Arnone motioned to approve the public and executive session minutes of the March 24, 2021 Commission meeting. Commissioner Keegan seconded the motion and all of the Commissioners voted yes.

CONSIDER APPROVAL OF THE RACE AND WAGERING FORMAT FOR THE 2021 MONMOUTH PARK MEET.

Executive Director Nason stated that on April 26, 2021, Darby Development, LLC filed a request seeking approval of Monmouth Park's racing and wagering format in 2021.

Executive Director Nason explained that the Monmouth Park meet is scheduled to begin on May 28, 2021, post-time will be 5:00 pm on Fridays and 12:15 pm on Saturdays and Sundays. The post-time for Haskell Day, which is scheduled for July 17th, will be 12:00 pm. Monmouth Park requested permission to offer up to 14 races per day. The track plans to run 6 races on Friday evenings. Executive Director Nason informed the Commissioners that the program and parking prices as well as minimum wagers and other format details were included in their meeting packet. She stated all races will offer win, place, show, exacta, trifecta, superfecta, pick 3, and double wagering per management's discretion. Pick 4 wagers will also be offered in various races.

She also pointed out that the racing officials are the same as those approved in 2020. Regarding the Department Heads, two positions have been eliminated: Vice-President Finance and Vice-President Food and Beverage. In addition, Monmouth Park has added the position of Controller.

Commissioner Vetrano motioned to approve the race and wagering format for the 2021 Monmouth Park race meeting. Commissioner Arnone seconded the motion and all of the Commissioners voted yes.

CONSIDER CONTINUATION OF THE PURSE REPAYMENT GUARANTEE BY THE NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION FOR 2021.

Executive Director Nason stated that in 2020, due to laboratory testing delays, the Thoroughbred Horsemen's Association ("THA") asked the Commission to release thoroughbred

purse money 11 days after the race is declared official if the Commission did not receive final test results for the post-race samples. She explained that in the event that a test subsequently came back positive, the THA guaranteed that purse monies would be paid back into the purse account within 14 days. The Commission conducted a special meeting on August 24, 2020 and accepted the purse repayment guarantee.

Executive Director Nason pointed out that Monmouth Park and the THA filed a letter, dated April 29, 2021, stating that they are seeking to continue this policy for 2021. The THA submitted a Board resolution, dated May 7, 2021, which guarantees that it will repay the purse within 14 days for purses that were paid out on the 11th day without the Commission having received the final test report.

Commissioner Keegan motioned to accept the THA's continuation of the purse repayment guarantee for 2021. Chairman Clyne seconded the motion and all of the Commissioners voted yes.

CONSIDER THE INITIAL DECISION IN ANN DEPIETRO V. NEW JERSEY RACING COMMISSION, OAL DOCKET NO. RAC 11899-18

Executive Director Nason stated that the Commission must determine whether to adopt, reject or modify the initial decision. Executive Director Nason summarized the facts and procedural history as follows. On February 14, 2018, Racing Commission Investigator Joseph Sczerbowicz conducted a random search of Congress Hill Farm, a licensed off-track stabling facility, in Jackson, New Jersey. In Petitioner's stabling area, Sczerbowicz witnessed a person, later identified as John Colisanti, latch but not padlock the door of Petitioner's tack room. In the tack room, Sczerbowicz discovered 30 injectable bottles, 83 single needles and 44 syringes with needles. Of the injectable bottles, 21 bottles were either empty or had residual contents. However, one bottle contained the antibiotic Liquamycin and two bottles contained phenylbutazone.

While at Congress Hill Farm, Sczerbowicz witnessed Colisanti, who is not licensed by the NJRC, place a race horse in cross-ties. Thereafter, Sczerbowicz also witnessed Colisanti transporting horses trained by Petitioner to Freehold Raceway on multiple occasions.

The Board of Judges conducted a hearing on June 22, 2018 and thereafter issued Ruling No. 18FRE44, which imposed a 6-month suspension and \$1,000 fine for possession of the hypodermic needles, syringes and other drug instruments on a licensed off-track stabling facility. The judges imposed a consecutive 6-month suspension and \$1,500 fine for Petitioner's possession of the prescription legend drugs. Finally, the judges imposed a 15-day suspension and \$500 fine for allowing an unlicensed person to care for and transport certain race horses trained by Petitioner.

Executive Director Nason pointed out that Colisanti's violations by participating in racing without a license were addressed in a separate hearing and appeal. The Commission considered those violations at the January 22, 2020 meeting.

Executive Director Nason explained that the Petitioner appealed and the Commission transmitted the matter to the Office of Administrative Law ("OAL"). On March 9, 2020, the OAL issued the initial decision in this matter. On April 21, 2020, NJRC staff applied for and received

a 45-day extension of time to consider the initial decision. During this period of time, Governor Murphy issued Executive Order 127 (April 14, 2020), which mandates that “[i]n any contested case, any pending deadline . . . for adopting, rejecting or modifying a recommended report and decision, shall be extended by the number of days of the Public Health Emergency declared in Executive Order 103 (2020) plus an additional 90 days.” The Public Health Emergency remains ongoing and consideration of the initial decision is timely.

Executive Director Nason stated that on March 30, 2020, Howard A. Taylor, Esq. filed exceptions to the initial decision on behalf of Petitioner. On April 17, 2020, Deputy Attorney General Jonathan S. Sussman filed exceptions on behalf of the Commission. As a result, the record is now closed and the NJRC may consider the initial decision, which the Commission may adopt, reject or modify.

Executive Director Nason explained that the Administrative Law Judge (“ALJ”) upheld the charge that Petitioner violated N.J.A.C. 13:71-7.29(a)(13) and N.J.A.C. 13:71-23.9(a) by possessing 30 injectable bottles, 83 single needles, 44 syringes with needles, Liqueamycin and phenylbutazone at the licensed off-track stabling facility. However, the ALJ reduced the penalties imposed by the Board of Judges. Utilizing a criminal law doctrine of merger, the ALJ imposed a 6-month suspension and \$2,500 fine.

Executive Director Nason informed the Commission that the ALJ also concluded that Petitioner violated N.J.A.C. 13:71-7.26(d) by failing to prevent an unlicensed individual from being involved in the care and custody of the horses she trained. The ALJ also concluded Petitioner violated N.J.A.C. 13:71-1.19 by engaging in conduct detrimental to the sport. The ALJ affirmed the penalties imposed by the Board of Judges, which were a 15-day suspension and a \$500 fine.

As a result, the ALJ imposed suspensions totaling 6 months and 15 days and fines totaling \$3,000.

Chairman Clyne motioned that the Commission approve the draft final decision and authorize the Executive Director to issue it. In making this motion, Chairman Clyne stated:

“The final decision accepts most of the ALJ’s findings and conclusions. But it rejects the ALJ’s use of the criminal law merger doctrine and rejects her reduction of the penalties for the trainer’s possession of the 30 injectable bottles, 83 needles, 44 syringes with needles, and the prohibited prescription drugs. The final decision finds that the appropriate penalties for possessing these needles, syringes, vials and drugs are a 1-year suspension and \$2,500 fine. The final decision also adopts the ALJ’s imposition of the 15-day suspension and \$500 fine for allowing an unlicensed person to be involved in the care and transport of horses she trained. In total, the final decision concludes that the appropriate penalties in this matter are a 380-day suspension and \$3,000 fine. Finally, the final decision corrects an implied finding by the ALJ by clarifying that the Commission’s rule prohibits possession of the injectable bottles as well as the possession of the prohibited drugs that may be in the vials.”

Commissioner Keegan seconded the motion and all of the Commissioners voted yes.

CONSIDER THE INITIAL DECISION IN APARNA BATTULA V. NEW JERSEY RACING COMMISSION, OAL DOCKET NO. RAC 07184-20.

Executive Director Nason stated that the Commission must determine whether to adopt, reject or modify the initial decision. The Executive Director summarized the facts and procedural history as follows. On July 29, 2019, the Commission confiscated 83 injectable vials and 36 needles from Petitioner's tack room at Monmouth Park. In an investigative interview, Petitioner admitted that the confiscated items were hers and that she had injected one horse with Banamine and ACTH at Monmouth Park in July 2019. The Board of Stewards conducted a hearing on August 3rd and 4th, 2019. In Ruling No. 19MON46, the Board of Stewards suspended Petitioner's license to train horses pending receipt of the testing results for the confiscated substances. Petitioner was already serving a suspension from August 1, 2019 through and including August 15, 2019 for a May 19, 2019 dexamethasone positive at Monmouth Park. As a result, the suspension for the matters at issue here commenced on August 16, 2019.

After the Commission received the testing results, the Board of Stewards continued the hearing on June 22, 2020 and issued Ruling No. 20MON2 which imposed multiple suspensions totaling 9 years and fines totaling \$18,500. Petitioner appealed and the Commission transmitted the matter to the Office of Administrative Law ("OAL") and requested that the hearing be expedited as Petitioner's stay request had been denied.

The OAL issued the initial decision on April 1, 2021. Howard A. Taylor, Esq. filed exceptions to the initial decision on behalf of Petitioner on April 8, 2021. Deputy Attorney General Dominic L. Giova filed exceptions on behalf of Respondent on April 14, 2021. Mr. Taylor filed a reply to these exceptions on April 16, 2021. On April 20, 2021, NJRC staff applied for and received a 45-day extension of time to consider the initial decision.

Executive Director Nason continued by pointing out that with the filing of the exceptions, the record is now closed and the Commission may consider the initial decision, which the Commission may adopt, reject or modify.

The Executive Director summarized that at the OAL, the NJRC withdrew Count 3 of the charges because a confirmatory test came back negative. In addition, due to lack of evidence, the ALJ dismissed the charges that Petitioner employed a veterinarian who was not licensed by the NJRC, administered numerous medications improperly and made false or misleading statements to the stewards during the hearing.

The ALJ upheld the charges that Petitioner violated N.J.A.C. 13:70-14A.8 by possessing hypodermic needles, syringes, and the prescription legend drugs flunixin, dexamethasone, and methocarbamol in her stabling area. However, the ALJ reduced the penalties imposed by the Board of Stewards.

Noting that this is the same ALJ that decided the DePietro case, which the Commission just considered, Executive Director Nason informed the Commission that in finding two distinct infractions, the Board of Stewards had imposed a 6-month suspension and \$2,500 fine for Petitioner's possession of hypodermic needles and a 1-year suspension and \$2,500 fine for her

possession of the injectable foreign substances. Utilizing a criminal law doctrine of merger, the ALJ found that “Counts Two and Four should merge for the purposes of penalties.” The ALJ reduced the penalties for Petitioner’s violation of N.J.A.C. 13:70-14A.8 to a 1-year suspension and \$4,000 fine.

Executive Director Nason stated that the ALJ upheld the charge that Petitioner injected the horse “Banker’s Island” at Monmouth Park with Banamine and ACTH in July 2019. The ALJ found that the penalty imposed by the NJRC’s Board of Stewards, which was a 1-year suspension and \$2,500 fine, is an appropriate penalty. As a result, the ALJ imposed suspensions totaling two years and fines totaling \$6,500.

Chairman Clyne motioned that the Commission approve the final decision drafted by staff and authorize the Executive Director to issue it. In making this motion, Chairman Clyne stated:

“Although the final decision accepts most of the ALJ’s findings and conclusions, it rejects the ALJ’s use of the criminal merger doctrine and her recommended penalties for Petitioner’s possession of 83 injectable vials and 36 needles and the prohibited drugs. The final decision finds that the appropriate penalties for possession of the vials, needles and drugs are a 1-year and 6-month suspension and \$5,000 fine. The final decision also adopts the ALJ’s imposition of a 1-year suspension and \$2,500 fine for injecting the horse “Banker’s Island” in July 2019. Considering Petitioner’s penalty history, which includes two other drug positives, the final decision concludes that the appropriate penalties in this matter are suspensions totaling 2 years and 6 months and fines totaling \$7,500. Finally, the final decision also clarifies that the Commission’s rules prohibit the possession of injectable vials on racetrack property, as well as prohibiting drugs that may be in the vials.”

Commissioner Keegan seconded the motion and all of the Commissioners voted yes.

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 acknowledged that the Commission has the breakdown of New Jersey wagering for the 2021 Kentucky Derby Day. The statistics are available if anyone would like a copy.

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

A trainer by the name of Kelly Breen asked if the riding crop rule could be changed prior to the opening of Monmouth Park this year.

Executive Director Nason responded that the Commission cannot comment on the rule because Jockey’s Guild filed an appeal regarding the riding crop rule and the appeal is pending in the Appellate Division.

Mr. Breen then asked if the appeal were dropped before the beginning of the meet, could someone come and talk to the Commission about the riding crop rule?

Executive Director Nason stated if the appeal were dropped the Commission could talk about the rule. She pointed out that the riding crop rule was adopted by the Commission and it became law.

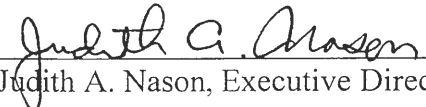
Mr. Breen stated that as a trainer and horse owner, it appears as though there is nothing that can be done about the new rule prior to the Monmouth Park meet. He asked the Executive Director if that was fair to say.

Executive Director Nason stated that was fair to say.

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

Commissioner Arnone motioned that the meeting be adjourned. Chairman Clyne seconded the motion and all of the Commissioners voted yes.

ATTEST:



Judith A. Nason, Executive Director