

NEW JERSEY RACING COMMISSION
WEDNESDAY, JULY 21, 2021
TELEPHONE MEETING

A public meeting of the New Jersey Racing Commission ("NJRC" or "Commission") was held on Wednesday, July 21, 2021 by telephone.

The following were present:

Pamela J. Clyne, Chairman
Michael J. Arnone, D.D.S., Commissioner
Lawrence DeMarzo, Commissioner
Francis X. Keegan, Jr., Commissioner
Charles E. Tomaro, Commissioner
Judith A. Nason, Executive Director
Jeffrey Nielsen, Associate Counsel, Governor's Authorities Unit
SDAG George Cohen

Executive Director Nason called the meeting to order and welcomed new Commissioners Lawrence DeMarzo and Charles E. Tomaro to the New Jersey Racing Commission.

Executive Director Nason then 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 Elizabeth Carotenuto v. New Jersey Racing Commission, OAL Docket No. RAC 04196-19.
2. Legal advice concerning the initial decision in the consolidated matter of Danielle Dailey v. New Jersey Racing Commission, OAL Docket No. RAC 06904-19 and Doreen Dailey v. New Jersey Racing Commission, OAL Docket No. RAC 06905-19.
3. Legal advice concerning the initial decision in Trevor Gallimore v. New Jersey Racing Commission, OAL Docket No. RAC 14166-19.

4. 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 adjourn into Executive Session. Commissioner Keegan seconded the motion. All of the Commissioners voted to affirm. The Commission then adjourned to Executive Session.

Chairman Clyne made a motion 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 MAY 19, 2021 COMMISSION MEETING.

Commissioner Arnone made a motion to approve the public and executive session minutes of the May 19, 2021 Commission meeting. Chairman Clyne seconded the motion. The Commissioners voted yes with the exception of Commissioner DeMarzo and Commissioner Tomaro who abstained.

CONSIDER APPROVAL OF THE PUBLIC SESSION MINUTES OF THE JUNE 16, 2021 SPECIAL MEETING.

Commissioner Arnone made a motion to approve the public session minutes of the June 16, 2021 Commission meeting. Commissioner Keegan seconded the motion. The Commissioners voted yes with the exception of Commissioner DeMarzo and Commissioner Tomaro who abstained.

CONSIDER APPROVAL OF NEW MEADOWLANDS RACETRACK'S REQUEST TO AMEND ITS 2021 RACE DATES.

Executive Director Nason explained that on July 6, 2021, New Meadowlands Racetrack filed a request to amend its 2021 race dates to add live racing on Friday, September 3rd and drop racing on Thursday, December 23rd. She stated if the request is approved, New Meadowlands Racetrack will still be scheduled to race 90 days in 2021.

Executive Director Nason explained that by email dated July 20, 2021, Executive Administrator Al Ochsner indicates that the Standardbred Breeders' and Owners' Association of New Jersey has no problem with this revision.

Commissioner Arnone made a motion to approve the amended race date request of New Meadowlands Racetrack. Chairman Clyne seconded the motion and all of the Commissioners voted yes.

CONSIDER APPROVAL MONMOUTH PARK'S REQUEST TO AMEND ITS 2021 RACE DATES.

Executive Director Nason explained that on July 7, 2021, Monmouth Park filed a request to amend its 2021 race dates to add live racing on Friday, September 10, 17, and 24. Currently, Monmouth Park is scheduled to race 53 days. The added days will increase the number of live race dates to 56 at Monmouth Park.

Executive Director Nason stated that Michael Musto, Executive Director of the New Jersey Thoroughbred Horsemen's Association ("NJTHA"), has indicated that the NJTHA's Board approves the request to schedule the additional, three days in September.

Chairman Clyne made a motion to approve the amended race dates request of Monmouth Park. Commissioner Keegan seconded the motion and all of the Commissioners voted yes.

CONSIDER APPROVAL OF THE OFFICIALS, POOLS, POST-TIME, PRICES AND WAGERING FORMAT FOR FREEHOLD RACEWAY'S 2021 SUMMER/FALL MEET.

Executive Director Nason explained that on June 3, 2021, Freehold Raceway filed a request to approve its racing and wagering format for its summer/fall meet. The meet will begin on August 27th and continue through December 18th. Post-time will be 12:30 p.m. She also explained that the department heads and wagering format will remain the same as those the Commission approved for the winter/spring meet earlier this year, except for a change in Announcer who will be Edison Hatter.

Commissioner Keegan moved that the Commission approve Freehold Raceway's racing and wagering format for the 2021 summer/fall meet. Commissioner Arnone seconded the motion and all of Commissioners voted yes.

CONSIDER THE ADOPTION OF NEW RULE N.J.A.C. 13:71-20.25 (PYLONS).

Executive Director Nason explained that at its May 15, 2019 public meeting, the Commission voted to propose new rule N.J.A.C. 13:71-20.25, which regulates the use, color, size and placement of pylons. Pylons are flexible, cylindrical-shaped stakes that mark the inner boundaries of harness racetracks. The use of pylons is a safety feature that allows a horse to avoid a potentially dangerous situation on the track by crossing into the inner boundary to reach safety.

She further explained that the proposed new rule requires that pylons shall be 30 inches above the ground, set at a 30 degree inward angle, be placed 40 feet apart around the turns and placed 60 feet apart in the straightaways.

Executive Director Nason advised the Commission, if adopted, the new rule will establish consistency in determining what actions constitute a violation and in the penalties imposed. For example, the new rule provides that it will be a violation if a horse or part of a sulky travels inside the pylons when the horse is on stride or when not forced to do so by the actions of another driver or horse. The rule requires that when a horse is forced to cross inside the pylons due to interference, the driver must attempt to return to the racetrack as soon as is safely possible.

Executive Director Nason pointed out that a Notice of Proposal was published at 51 N.J.R. 1101 on July 1, 2019. In response to the rule proposal, the Commission received comments from Howard Bruno, General Manager of Freehold Raceway, and a person identifying herself as “Jean Public.”

Executive Director Nason indicated that comments, a summary of the comments and draft responses have been provided to the Commissioners. She stated Commission staff believe that the proposed new rule will promote safety and improve officiating by establishing clear violations and consistent penalties. As a result, Commission staff recommend adoption of the new rule.

Chairman Clyne motioned to adopt the new pylon rule. Commissioner Keegan seconded the motion and all of the Commissioners voted yes.

CONSIDER THE ADOPTION OF AMENDMENTS TO N.J.A.C. 13:70-2.1 AND N.J.A.C. 13:70-14.16 (EQUINE FATALITY REPORT).

Executive Director Nason explained that at the October 23, 2019 meeting, the Commission voted to propose amendments to these two rules to promote equine welfare. The new amendments will allow the Commission to collect data regarding equine breakdowns and take steps intended to prevent as many racing-related or training-related fatalities as possible.

She further explained the amendments to the rule would require that a post-mortem necropsy shall be conducted upon any horse that dies on the racetrack during racing or training and upon any horse that dies within one hour after racing or training on a racetrack. The amendments require that the necropsy shall be conducted, by a qualified veterinarian at a facility designated by the Commission, to determine the cause of death and other relevant information about the condition of the deceased horse. Provisions are also included in the amendments with respect to the handling of the body of the deceased horse and designation of the financially responsible party, which is the horse’s owner.

Executive Director Nason stated that the amendments require that verbal notice of the horse’s death shall be given by the trainer or the trainer’s designee to the State Steward or to a NJRC veterinarian within one hour after the death. In addition, the amendments require that equine fatality reports shall be filed with the Commission’s State Steward or Chief State Veterinarian within 48 hours after the death and that the attending veterinarian shall submit treatment records for the horse for the 30-day period preceding the horse’s death to the State Steward.

Executive Director Nason pointed out that the Notice of Proposal was published at 51 N.J.R. 1746 on December 2, 2019. In response, the Commission received comments from Dennis

A. Drazin, Chairman and CEO of Darby Development, LLC and Matt Iuliano, Executive Vice President and Executive Director of The Jockey Club, who commented on behalf of the Thoroughbred Safety Committee. In response to Mr. Drazin's comments, staff drafted non-substantive changes, not requiring additional notice and comment, which clarify that verbal notice of the horse's death must be given by the trainer or the trainer's designee.

Executive Director Nason indicated that the comments, a summary of the comments and draft responses have been provided to the Commissioners. She stated that NJRC staff believe that the proposed amendments will promote equine welfare and greater safety for race participants by allowing the Commission to collect data on causes of equine death and to identify factors that may contribute to equine breakdowns and fatalities. It is anticipated that this data may also lead to the enhanced monitoring of at-risk horses and help ensure that the horses receive proper care prior to being allowed to race. For these reasons, Executive Director Nason stated that NJRC staff recommend that the Commission approve the draft Notice of Adoption and vote to adopt the rule amendments.

Chairman Clyne motioned to adopt the rule amendments. Commissioner DeMarzo seconded the motion.

Executive Director Nason asked if there was any discussion on the matter. Commissioner Arnone pointed out the importance of keeping track of the horses under each trainer's care, custody and control. Executive Director Nason responded that the trainers must list their horses in the stabling agreements with Monmouth Park and pointed out that the Equine Fatality Report amendments will assist the Commission in keeping track of the horses.

Hearing no further discussion, the Executive Director polled the Commissioners and all of the Commissioners voted yes.

CONSIDER THE ADOPTION OF AMENDMENTS TO N.J.A.C. 13:71-4.1 AND N.J.A.C. 13:71-20:24 (EQUINE FATALITY REPORT).

Executive Director Nason stated that at the October 23, 2019 meeting, the Commission also voted to propose amendments to the standardbred equine fatality report rule and definitions rule.

Executive Director Nason pointed out that the proposed amendments were published at 51 N.J.R. 1751 on December 2, 2019. In response to the proposal, the Commission received comments from Mr. Drazin, who also commented on the thoroughbred proposal, and from a person who identified herself as "Jean Public." In response to Mr. Drazin's comments, staff drafted non-substantive changes, not requiring additional notice and comment, which clarify that verbal notice of the horse's death must be given by the trainer or the trainer's designee.

Executive Director Nason indicated that the comments, a summary of the comments and draft responses have been provided to the Commissioners. She stated that NJRC staff believe that the proposed amendments will promote equine welfare and greater safety for race participants and

therefore recommend that the Commission approve the draft Notice of Adoption and vote to adopt the rule amendments.

Commissioner Tomaro motioned to adopt the rule amendments. Chairman Clyne seconded the motion and all of the Commissioners voted yes.

CONSIDER THE ALLOCATION OF \$5 MILLION IN SUPPLEMENTAL PURSE SUBSIDIES TO THE THOROUGHBRED AND STANDARD BRED INDUSTRIES.

Executive Director Nason explained that N.J.S.A. 5:5-99.1 authorizes horse racing purse subsidies. The State of New Jersey initially appropriated \$15 million in purse subsidies for FY2021. However, the State recently issued a supplemental appropriation of \$5 million in purse subsidies for FY2021. On July 2, 2020, the racing industry filed the required annual report for FY2020. As a result, the Commission may allocate these supplemental purse subsidies for FY2021.

Executive Director Nason informed the Commissioners that the statute requires that the Commission allocate purse subsidies equally between the thoroughbred and standardbred industries. Of the funds allocated to the thoroughbred industry, the Commission must allocate 100 percent to Monmouth Park overnight purses. Of the funds allocated to the standardbred industry, the Commission must allocate 60 percent to Meadowlands overnight purses; 16 percent to Freehold overnight purses; 12 percent to the New Jersey Sire Stakes purses; 6 percent to purse bonuses for New Jersey sired horses; and 6 percent for breeders awards purses.

Executive Director Nason stated the percentages worked out as follows:

\$2.5 million allocated to Monmouth Park,
\$1.5 million to New Meadowlands Racetrack,
\$400,000 to Freehold Raceway,
\$300,000 to the New Jersey Sire Stakes,
\$150,000 to standardbred purse bonuses for New Jersey sired horses, and
\$150,000 to standardbred breeders awards purses.

Chairman Clyne motioned that the Commission allocate the \$5 million dollars supplemental purse subsidies as required by statute for FY 2021. Commissioner Keegan seconded the motion and all of the Commissioners voted yes.

CONSIDER THE INITIAL DECISION IN ELIZABETH CAROTENUTO v. NEW JERSEY RACING COMMISSION, OAL DOCKET NO. RAC 04196-19.

Executive Director Nason explained that on February 15, 2019, Petitioner, who is a licensed trainer, allowed Christopher Rand, an unlicensed person, to assist with a horse in the paddock at the Meadowlands Racetrack. After conducting a hearing, the Board of Judges determined that Petitioner violated N.J.A.C. 13:71-7.26(d), N.J.A.C. 13:71-7.29(a)(1) and N.J.A.C. 13:71-7.29(a)(13) and imposed a 30-day suspension and \$2,500 fine. Petitioner appealed and the matter was transmitted to the Office of Administrative Law ("OAL") as a contested case.

She further explained that on April 7, 2021, the OAL issued an initial decision, which found that Petitioner violated N.J.A.C. 13:71-7.26(d) for employing an unlicensed person to attend to a horse in a paddock and reduced the penalty to a 10-day suspension and \$500 fine. The Administrative Law Judge (“ALJ”) found that Petitioner did not violate N.J.A.C. 13:71-7.29(a)(1) by failing “to obey the instructions of a racing official” or violate N.J.A.C. 13:71-7.29(a)(13) for “conduct detrimental to the sport.” Finding exigent circumstances related to Petitioner’s illness that night, the ALJ reduced the penalty to a 10-day suspension and \$500 fine.

Executive Director Nason explained that on April 20, 2021, the Deputy Attorney General (“DAG”), who represented the Commission, filed exceptions on behalf of Respondent. No reply to the exceptions was filed and the record before the Commission closed. She informed the Commissioners that consideration of the initial decision is timely pursuant to the extension set forth in Executive Order 127.

Executive Director Nason indicated that the initial decision is before the Commission to adopt, reject or modify and that NJRC staff provided the Commissioners with a draft final decision in their meeting packet.

Chairman Clyne made “a motion to approve the draft final decision and authorize the Executive Director to issue it on the Commission’s behalf.” She stated that “[t]he final decision modifies the initial decision and finds that the appropriate penalty is a 30-day suspension and \$2,500 fine. The final decision adopts the ALJ’s conclusion that Petitioner violated N.J.A.C. 13:71-7.26(d). However, it rejects the ALJ’s conclusion that Petitioner did not violate N.J.A.C. 13:71-7.29(a)(1) and N.J.A.C. 13:71-7.29(a)(13). It also rejects his conclusion that the penalty should be reduced.” Commissioner Keegan seconded the motion and all of the Commissioners voted yes.

CONSIDER THE INITIAL DECISION IN THE CONSOLIDATED MATTER OF DANIELLE DAILEY v. NEW JERSEY RACING COMMISSION, OAL DOCKET NO. RAC 06904-19 AND DOREEN DAILEY v. NEW JERSEY RACING COMMISSION, OAL DOCKET NO. RAC 06905-19.

Executive Director Nason explained that Danielle Dailey and her mother, Doreen Dailey, are both licensed trainers. On April 20, 2019, Danielle Dailey was the trainer of Rockaholic, which was entered in a claiming race at the Meadowlands Racetrack. Prior to the race, Danielle and Doreen Dailey discovered that Brandon Mongiello was going to put in a claim on Rockaholic. Doreen Dailey contacted one of her owners who agreed that Doreen could put in a claim for Rockaholic on her behalf. There were three claims on the horse and Doreen Dailey won the lottery. Mr. Mongiello filed a complaint and the NJRC looked into the matter.

Executive Director Nason pointed out that after conducting hearings, the Board of Judges issued a ruling finding that both trainers violated N.J.A.C. 13:71-14.5, N.J.A.C. 13:71-14.10 and N.J.A.C. 13:71-7.29(a)(13) and imposing a 30-day suspension and \$2,500 fine on each trainer. The Board of Judges also declared the claim of Rockaholic void. In the rulings, the judges found that the two trainers worked together, citing the fact that Doreen Dailey warmed up Rockaholic

prior to the race for Danielle Dailey. The judges also considered that the two trainers are stabled in the same barn at Joi De Vie Farm.

Executive Director Nason stated that both trainers appealed the suspensions and fines. The judges' decision to void the claim was not appealed. The NJRC transmitted the matter to the OAL as a contested case and the two matters were consolidated.

Executive Director Nason explained that on June 26, 2020, the OAL issued an initial decision which dismissed the violations and penalties imposed on Danielle Dailey, concluded that Doreen Dailey violated N.J.A.C. 13:71-14.10 and N.J.A.C. 13:71-7.29(a)(13) and reduced the penalties imposed on her to a 10-day suspension and \$1,000 fine. The ALJ found that it was Doreen Dailey's intention, when she entered a claim for Rockaholic, "to prevent Mr. Mongiello from being successful with his claim."

She stated the ALJ rejected the argument that the two trainers collaborated to prevent Mr. Mongiello from claiming the horse and found that the two trainers do not train horses together. As a result, the ALJ dismissed the violations and penalties imposed on Danielle Dailey and reduced the penalties imposed on Doreen Dailey to a 10-day suspension and \$1,000 fine.

Executive Director Nason informed the Commission that the DAG representing the Commission filed exceptions to the initial decision. Counsel for Danielle Dailey filed a reply to these exceptions and the record before the Commission closed. She stated that consideration of the initial decision is timely pursuant to the extension set forth in Executive Order 127.

Executive Director Nason indicated that the initial decision is before the Commission to adopt, reject or modify and that NJRC staff recommend that the Commission adopt the initial decision.

Commissioner Arnone motioned to adopt the initial decision. Chairman Clyne seconded the motion and all of the Commissioners voted yes.

CONSIDER THE INITIAL DECISION IN TREVOR GALLIMORE v. NEW JERSEY RACING COMMISSION, OAL DOCKET NO. RAC 14166-19.

Executive Director Nason explained that on July 14, 2019, the horse "She Makes Me Smile", trained by Petitioner, won the tenth race at Monmouth Park. Post-race testing discovered the presence of Phenylbutazone and Flunixin, which are both NSAIDs. Split sample testing at Texas A&M Veterinary Medical Diagnostic Laboratory confirmed the presence of Phenylbutazone and Flunixin.

Executive Director indicated that after conducting a hearing on September 18, 2019, the Board of Stewards determined that Petitioner violated N.J.A.C. 13:70-14A.6, N.J.A.C. 13:70-14A.9(f)(3), and N.J.A.C. 13:70-20.7. The stewards imposed a 15-day suspension, \$500 fine, disqualified the horse and ordered loss of purse. Petitioner appealed and the matter was transmitted to the OAL as a contested case.

Executive Director Nason stated that on May 11, 2021, the OAL issued an initial decision, which found that Petitioner violated N.J.A.C. 13:70-14A.6, N.J.A.C. 13:70-14A.9, and N.J.A.C. 13:70-20.7. The initial decision also found that the appropriate penalties were a 15-day suspension, \$500 fine, disqualification of the horse and loss of purse. Petitioner filed exceptions. The DAG who represented the Commission filed a reply to the exceptions and the record before the Commission closed. She then stated that consideration of the initial decision is timely pursuant to the extension set forth in Executive Order 127.

Executive Director Nason indicated that the initial decision is before the Commission to adopt, reject or modify and that NJRC staff recommend that the Commission adopt the initial decision, which is consistent with the ruling issued by the Board of Stewards.

Chairman Clyne motioned to adopt the initial decision. Commissioner Keegan seconded 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 announced that the financial status is available and may be requested if anyone would like a copy. She also announced that the breakdown of the New Jersey wagering for the 2021 Belmont Stakes day is also available.

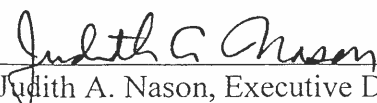
Executive Director Nason then opened the meeting to the public by phone for any questions and comments.

Dennis A. Drazin, Chairman and CEO of Darby Development, LLC, asked if the Commission could issue a formal statement about the Haskell in an effort to correct the misinformation that has been disseminated to the public by the media. After listening to Mr. Drazin's concerns, Executive Director Nason indicated that the NJRC's Board of Stewards will be conducting a hearing regarding the incident in the Haskell and informed him that the Commission will consult with counsel on the issue of issuing a formal statement.

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 Tomaro seconded the motion and all of the Commissioners voted yes.

ATTEST:



Judith A. Nason, Executive Director