

**NEW JERSEY RACING COMMISSION
WEDNESDAY, JANUARY 25, 2023
FREEHOLD RACEWAY
RENAISSANCE DINING ROOM
FREEHOLD, NEW JERSEY**

A public meeting of the New Jersey Racing Commission ("NJRC" or "Commission") was held on Wednesday, January 25, 2023 in the Renaissance Dining Room located at Freehold Raceway in Freehold, New Jersey.

The following were present:

Pamela J. Clyne, Chairman
Michael J. Arnone, D.D.S., Commissioner (by phone)
Lawrence DeMarzo, Commissioner (by phone)
Francis X. Keegan, Jr., Commissioner
Charles E. Tomaro, Commissioner (by phone)
Glen Vetrano, Commissioner (by phone)
Judith A. Nason, Executive Director
Tom Holl, Esq., Associate Counsel, 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. Consider the initial decision in the matter of Eric Abbatiello v. NJRC, OAL Docket No. RAC 07160-21.
2. 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."

Chairman Clyne 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.

Commissioner Keegan made a motion to adjourn from Executive Session into the Public Session. Chairman Clyne seconded the motion and all of the Commissioners voted yes.

CONSIDER APPROVAL OF THE EXECUTIVE AND PUBLIC SESSION MINUTES OF THE NOVEMBER 16, 2022 COMMISSION MEETING.

Commissioner Arnone made a motion to approve the public and executive minutes of the November 16, 2022 Commission meeting. Chairman Clyne seconded the motion and all the Commissioners voted yes with the exception of Commissioner Vetrano who abstained.

CONSIDER APPROVAL OF CHARITY DAYS FOR 2023.

Executive Director Nason explained that pursuant to statute, the Commission must designate five race days per permit as charity racing days. Three of those days are to be designated to benefit the developmentally disabled, one day for backstretch benevolency programs and one day to benefit the Horse Park and retired racehorses.

Executive Director Nason pointed out that in 2022, the designated racing days generated over \$27,000 for the charities. Executive Director Nason stated that staff prepared a proposed list of charity racing days intended to result in the highest amount of revenue for the charities. The selected days are before the Commission for approval.

Commissioner Keegan moved that the Commission approve the list of charity days for 2023. Chairman Clyne seconded the motion and all Commissioners voted yes.

CONSIDER THE GRANT OF A SPECIAL STEEPLECHASE PERMIT TO THE NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION FOR THE STEEPLECHASE MEET AT MOORLAND FARM ON OCTOBER 21, 2023.

Executive Director Nason stated that in October 2022, the New Jersey Thoroughbred Horsemen's Association ("NJTHA") filed an application for a special permit to conduct the steeplechase meet at Moorland Farm on October 21, 2023. She explained that the Commission needed to table this matter at the November meeting because the statutory notice period was still pending. The notice period concluded on November 24, 2022. She stated that neither the Borough of Far Hills nor Bedminster Township filed an objection to the special steeplechase meet. As a result, the Commission may now consider granting the special permit.

Chairman Clyne made a motion to approve the grant of the special permit to the NJTHA. Commissioner Keegan seconded the motion and all of the Commissioners voted yes.

CONSIDER APPROVAL OF THE NEW MEADOWLANDS RACETRACK'S ("NMR") REQUEST TO ADD A PICK 8 WAGER TO THE WAGERING FORMAT.

Executive Director Nason stated that by letter dated December 14, 2022, NMR requested Commission approval to add a Pick 8 wager to the 2023 wagering format. She explained that if approved, the Pick 8 wager would be in addition to the wagering format that was approved at the November meeting, which includes, win, place, show, exacta, trifecta, superfecta, pentafecta, Double, Pick 3, 4, 5, 6, and 7 and a survivor wager.

Commissioner Vetrano made a motion to approve the addition of a Pick 8 wager to NMR's 2023 wagering format. Chairman Clyne seconded the motion and all of the Commissioners voted yes.

CONSIDER THE ADOPTION OF AMENDMENTS TO N.J.A.C. 13:70-23.2 AND N.J.A.C. 13:70-23.3 AND THE REPEAL OF N.J.A.C. 13:70-23.4 TO REQUIRE THE PAYMENT OF FINES BY THE DATE SET FORTH IN THE APPLICABLE RULING.

Executive Director Nason explained that at its July 20, 2022 meeting, the Commission voted to propose amendments to N.J.A.C. 13:70-23.2 and N.J.A.C. 13:70-23.3 and the repeal of N.J.A.C. 13:70-23.4, which would remove the obsolete requirement that penalties shall be paid to the horsemen's accountant within 48 hours and replace it with the requirement that fines shall be paid to the Commission's licensing office on or before the due date indicated in the applicable ruling. She explained that the proposed amendment would also require that a racing official imposing a fine or suspension must report it to the Commission's Executive Director in addition to the Racing Secretary.

She stated that the proposed amendments and repeal were published for public comment at 54 N.J.R. 1904 on October 3, 2022. She indicated the NJRC did not receive any comments on the proposal. As a result, the Commission may now consider adopting the proposed amendments and repeal. Staff recommend that the Commission approve the adoption.

Chairman Clyne made a motion to adopt the proposed amendments and repeal. Commissioner Keegan seconded the motion and all of the Commissioners voted yes.

CONSIDER THE ADOPTION OF THE AMENDMENT TO N.J.A.C. 13:71-1.20 TO REQUIRE THE PAYMENT OF FINES BY THE DATE SET FORTH IN THE APPLICABLE RULING.

Executive Director Nason stated that the proposed amendment to the standardbred rule would change the current requirement that fines shall be paid to the race secretary within 48 hours. She explained that like the thoroughbred amendments, the standardbred amendment would require that fines shall be paid to the Commission's licensing office on or before the due date in the applicable ruling.

Executive Director Nason stated that the proposed amendment was published for public comment at 54 N.J.R. 1905 on October 3, 2022. She indicated that the NJRC did not receive

any comments on the proposal. Staff recommend that the Commission adopt the proposed amendment to N.J.A.C. 13:71-1.20.

Chairman Clyne made a motion to approve the proposed amendment. Commissioner Keegan seconded the motion and all of the Commissioners voted yes.

CONSIDER THE INITIAL DECISION IN ERIC ABBATIELLO V. NEW JERSEY RACING COMMISSION, OAL DOCKET NO. RAC 07160-21.

Executive Director Nason explained that on January 28, 2021, the Board of Judges conducted a hearing and determined that driver Eric Abbatiello (“Petitioner”) violated N.J.A.C. 13:71-20.15(d)(3), while driving the horse “Sheer Talent” in the 8th race at Freehold Raceway on January 14, 2021. Finding that Petitioner impermissibly used the whip between the horse’s legs, the Board of Judges imposed a 5-day driving suspension and \$500 fine. Petitioner appealed and requested a stay. The stay was granted and the matter was transmitted to the Office of Administrative Law (“OAL”) as a contested case.

Executive Director Nason stated that on November 21, 2022, Administrative Law Judge Susan M. Scarola (“ALJ”) issued an initial decision, which dismissed the appeal because Petitioner failed to appear at the hearing on November 18, 2022. On the day of the hearing, counsel for Petitioner notified the ALJ that Petitioner would not be appearing because Petitioner thought that the hearing was scheduled for November 17, 2022. Counsel stated Petitioner made plans on November 18, 2022 that he cannot change.

Executive Director Nason indicated that the ALJ issued an initial decision explaining the basis for her conclusion that the Petitioner failed to provide good cause for his failure to appear at the hearing. The ALJ found that Petitioner’s excuse, that he thought the hearing was scheduled for November 17, 2022, was not credible because Petitioner did not appear at the OAL on November 17th and did not attempt to contact the OAL on that day. Finding that Petitioner failed to proffer a reasonable explanation for his failure to appear at the hearing on November 18, 2022, the ALJ ordered that the case shall be dismissed pursuant to N.J.A.C. 1:1-14.4(c)(2). Counsel for Petitioner, who also did not appear at the hearing, did not file exceptions to the initial decision.

Executive Director Nason indicated the initial decision is before the Commission to adopt, reject or modify. She noted that staff recommend that the Commission adopt the initial decision, thereby accepting the ALJ’s conclusion that Petitioner failed to provide good cause or a reasonable explanation for his failure to appear at the hearing.

Chairman Clyne made a motion to adopt the initial decision. Commissioner Keegan seconded the motion.

Commissioner DeMarzo asked the Executive Director if the case would be returned to the Board of Judges as per N.J.A.C. 13:71-3.6. Executive Director Nason responded if the Commission adopts the initial decision, the NJRC will issue a ruling imposing the penalties and referring the matter back to the Board of Judges to conduct a hearing to determine if this was a frivolous appeal in accordance with N.J.A.C. 13:71-3.6.

There being no additional discussion, all of the Commissioners voted yes.

CONSIDER APPROVAL OF THE PROPOSED 2023 BUDGET OF THE THOROUGHBRED BREEDERS' ASSOCIATION OF NEW JERSEY.

Executive Director Nason explained that on December 14, 2022, the Thoroughbred Breeders' Association of New Jersey ("TBA") submitted a proposed budget for 2023. However, yesterday afternoon, the TBA submitted a revised budget for 2023. As a result, staff recommend that the Commission table this matter. If tabled, the revised budget will be placed on the agenda for the next Commission meeting, which is March 22, 2023 at New Meadowlands Racetrack.

Chairman Clyne made a motion to table this matter and revisit it at the next Commission meeting. 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 explained Part B contains items for discussion and information.

ITEMS FOR DISCUSSION AND INFORMATION

Executive Director Nason stated that the Commission acknowledges receipt of the independent auditor's report and consolidated financial statements for Darby Development, LLC and Affiliate for December 31, 2020 and December 31, 2021.

Finally, Executive Director Nason asked if anyone at the meeting wished to comment or had any new business to discuss. Hearing none, Chairman Clyne made a motion to adjourn the meeting. Commissioner Keegan seconded the motion and it was approved unanimously.

ATTEST:



Judith A. Nason, Executive Director