

NEW JERSEY RACING COMMISSION
WEDNESDAY, MARCH 22, 2023
NEW MEADOWLANDS RACETRACK
“PINK” SKYBOXES, GRANDSTAND BUILDING, 3RD LEVEL
EAST RUTHERFORD, NEW JERSEY

A public meeting of the New Jersey Racing Commission (“NJRC” or “Commission”) was held on Wednesday, March 22, 2023 in the “Pink” Skyboxes, Grandstand Building, 3rd Level located at New Meadowlands Racetrack in East Rutherford, New Jersey.

The following were present:

Pamela J. Clyne, Chairman (by phone)
Michael J. Arnone, D.D.S., Commissioner (by phone)
Lawrence DeMarzo, Commissioner
Francis X. Keegan, Jr., Commissioner (by phone)
Charles E. Tomaro, Commissioner (by phone)
Glen Vetrano, Commissioner
Judith A. Nason, Executive Director
Tom Holl, Esq., Associate Counsel, Governor's Authorities Unit (by phone)
SDAG George Cohen
DAG Nicole Adams

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 legal advice on the settlement agreement in Ann DePietro v. New Jersey Racing Commission, OAL Docket No. RAC 03717-21S.
2. Consider legal advice on the initial decision in Michael Dini v. New Jersey Racing Commission, OAL Docket No. RAC 11222-20.
3. Consider legal advice on the initial decision in Alexandra Goldin v. New Jersey Racing Commission, OAL Docket No. RAC 10335-21.

4. Consider legal advice on the initial decision in Don Tiger v. New Jersey Racing Commission, OAL Docket No. RAC 07166-21.
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 Vetrano motioned to adjourn into Executive Session. Commissioner DeMarzo seconded the motion. All of the Commissioners voted to affirm.

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

CONSIDER APPROVAL OF THE PUBLIC AND EXECUTIVE SESSION MINUTES OF THE JANUARY 25, 2023 MEETING.

Commissioner Keegan made a motion to approve the public and executive minutes of the January 25, 2023 Commission meeting. Commissioner DeMarzo seconded the motion and all the Commissioners voted yes.

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

Executive Director Nason stated that on February 23rd, Vice President Bill Knauf filed a request seeking approval of Monmouth Park's racing and wagering format in 2023.

Executive Director Nason stated that the Monmouth Park meet is scheduled to begin on May 13, 2023, post-time on Saturdays and Sundays and the two Mondays will be 12:40 pm with the exception of Haskell Day on Saturday, July 22nd which will be noon. The post-time on Fridays will be 2:00 pm. Monmouth Park requests permission to offer up to 14 races per day.

Executive Director Nason informed the Commissioners that 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 noted that the department heads and racing officials are the same as those approved in 2022 with the exception of Track Announcer and Controller.

Commissioner Vetrano motioned to approve the race and wagering format for the 2023 Monmouth Park race meeting. Chairman Clyne seconded the motion and all of the Commissioners voted yes.

CONSIDER APPROVAL OF THE NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION'S STATUTORY BUDGET FOR 2023.

Executive Director Nason explained that the New Jersey Thoroughbred Horsemen's Association ("THA") has submitted its proposed 2.9% statutory budget for calendar year 2023. 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 \$600,000 in revenue which is \$20,000 higher than its 2022 budget. Given the anticipated increase in revenue, the budget includes \$509,000 for direct benefits, which is an increase of \$20,000 over last year's budget. She 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 2023 budget, 84.83% of the statutory revenue will be spent on benevolence programs.

Chairman Clyne motioned to approve the THA's proposed budget for the year 2023. Commissioner Vetrano seconded the motion and 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 January 24, 2023, the Thoroughbred Breeders' Association of New Jersey submitted a proposed, revised budget for 2023. The budgeted income for 2023 is \$60,300. The projected in-house revenue for 2023 includes: \$15,000 for the New Jersey Thoroughbred Festival due to a sponsorship agreement with Malouf Auto Group and BCB Community Bank and \$25,000 for the New Jersey Stallion Auction. Other income includes membership dues, foal registrations and stallion registrations. The total expense budget for 2023 is \$269,546. Subtracting the proposed 2023 in-house revenue of \$60,300 from the proposed expense budget, results in a request for Commission approval of \$209,246.

Commissioner Keegan made a motion to approve the proposed 2023 budget for the Thoroughbred Breeders' Association of New Jersey. Commissioner DeMarzo seconded the motion and all of the Commissioners voted yes.

CONSIDER APPROVAL OF THE 2023-2024 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 is for May 1, 2023 through April 30, 2024. The estimated budget is \$192,515.76, which is \$15,759.72 lower than last year's approved budget of \$208,275.48. She stated that this is a reduction of 7.6%.

Executive Director Nason explained that pursuant to statute, \$150,000 of breakage from off-track wagering and account wagering and uncashed ticket monies on out-of-state races are distributed to the New Jersey Jockey's Health and Welfare Trust. She further explained that in addition to the annual statutory contribution of \$150,000, the trust has estimated that it will receive contributions of \$57,534 from active and retired riders resulting in a projected net surplus of \$15,018.

Commissioner Vetrano motioned to approve the 2023-2024 budget of the New Jersey Jockey's Health and Welfare Trust. Chairman Clyne seconded the motion and all of the Commissioners voted yes.

CONSIDER APPROVAL OF THE NEW JERSEY RACING COMMISSION'S FY2023 PROGRAM BUDGET.

Executive Director Nason stated that the NJRC's projected FY2023 budget is \$8,026,104 which is a 7.9% increase over the FY2022 budget of \$7,438,240.

Executive Director Nason explained that the increase is due to a \$302,865 increase in salaries and fringe benefits and a \$285,000 increase in non-salary operating expenses. Regarding salaries and benefits, although salaries increased in FY2023 by \$42,270, the cost of fringe benefits for State employees increased by \$260,595 due to a 7.4% increase in the cost of benefits.

She further explained that despite the 7.9% budget increase, the racing costs that will be billed to the racetrack permit holders will be substantially lower in FY2023 due to a \$1.2 million revenue increase, which is attributed to the resumption in collecting monies from expired pari-mutuel wagering tickets. Executive Director Nason pointed out that as a result of this revenue increase, it is estimated that there will be a 13.28% decrease in billing for racing costs. She stated that racing costs in FY2023 are estimated to be \$4,383,773, which will be a reduction of \$671,032 if compared to FY2022.

Commissioner Vetrano made a motion to approve the NJRC's FY2023 program budget. Chairman Clyne seconded the motion and all of the Commissioners voted yes.

CONSIDER THE SETTLEMENT AGREEMENT IN ANN DEPIETRO V. NEW JERSEY RACING COMMISSION, OAL DOCKET NO. RAC 03717-21S.

Executive Director Nason explained that on November 28, 2020, the horse "Shaving Mug," trained by Ann DePietro ("Petitioner"), finished 1st in the eleventh race at Freehold Raceway. Post-race testing discovered the presence of dextrophan in the horse's urine sample. Split sample testing was not requested.

She stated the Board of Judges conducted a hearing and imposed a 15-day suspension, \$500 fine, disqualification of the horse, loss of purse and two Multiple Medication Violation ("MMV") points for violation of N.J.A.C. 13:71-23.1, N.J.A.C. 13:71-23.6, and N.J.A.C. 13:71-23.7. The Petitioner appealed the decision and the matter was transmitted to the Office of Administrative Law ("OAL") on April 16, 2021 as a contested case.

Executive Director Nason stated that prior to hearing, Petitioner and counsel for the Commission negotiated a proposed settlement agreement. Pursuant to the proposed agreement, Petitioner would agree to serve a 20-day suspension, forfeit the purse monies, accept one MMV point, withdraw her appeal and waive her right to a hearing. Petitioner would have a record of violating N.J.A.C. 13:71-23.1, N.J.A.C. 13:71-23.6, and N.J.A.C. 13:71-23.7. She noted that staff recommends approval of the settlement agreement.

Commissioner Tomaro made a motion to approve the settlement agreement and Commissioner DeMarzo seconded the motion and all of the Commissioners voted yes.

CONSIDER THE INITIAL DECISION IN MICHAEL DINI V. NEW JERSEY RACING COMMISSION, OAL DOCKET NO. RAC 11222-20.

Executive Director Nason explained that on September 19, 2020 the Board of Stewards determined to demote the number 3 horse “Sunshine Charlie” from 3rd place to 6th place in the sixth race at Monmouth Park because the horse interfered with two horses in violation of N.J.A.C. 13:70-11.1. Immediately after the race, the stewards posted the inquiry sign and the jockey on the 4 horse, “Sand Dune,” lodged a complaint claiming interference by the 9 horse, “Quiberon Bay.” However, the stewards determined that the 3 horse was the initial cause of the interference, and the bumping of the 9 into the 4 did not then affect the advancement of the 4.

Petitioner, Michael Dini, the trainer of “Sunshine Charlie,” appealed and the matter was transmitted to the OAL on November 25, 2020 as a contested case.

On February 2, 2023, Administrative Law Judge Susan M. Scarola (“ALJ”) issued an initial decision which affirmed the stewards’ decision to demote “Sunshine Charlie” from 3rd place to 6th place for interference. No exceptions were filed and the record before the Commission closed.

Executive Director Nason stated that in the initial decision, the ALJ found the NJRC’s Presiding Steward to be credible and accepted his testimony regarding the interference and placement of the horses. Finding that “Sunshine Charlie” entered into the lane of the 2 horse, causing the 2 to slow and cut off the 4 horse, the ALJ determined that the jockeys on the 2 and 4 were compelled to stop riding to prevent an accident. The ALJ also found that while the 9 horse may have caused some bumping, this happened after the interference caused by the 3 horse and the 2 and 4 horses were no longer advancing.

The ALJ concluded that the video recordings of the race supported the Board of Stewards’ determination that “Sunshine Charlie” interfered with the 2 and 4 horses in violation of N.J.A.C. 13:70-11.1. The ALJ also concluded that it was proper to move “Sunshine Charlie” from 3rd place to 6th place.

The Executive Director indicated that the Commission can adopt reject or modify the initial decision and that staff recommend that the Commission adopt the initial decision.

Commissioner Vetrano made a motion to adopt the initial decision. Commissioner DeMarzo seconded the motion and all of the Commissioners voted yes.

CONSIDER THE INITIAL DECISION IN ALEXANDRA GOLDIN V. NEW JERSEY RACING COMMISSION, OAL DOCKET NO. RAC 10335-21.

Executive Director Nason explained that this case involves two stacking violations. On September 25, 2020, the horse “Cheyenne Ryan Lee,” which was trained by Alexandra Goldin (“Petitioner”), finished 1st in the fifth race at the Meadowlands Racetrack. The horse’s post-race blood sample tested positive for Phenylbutazone and Flunixin, both of which are NSAIDs. On October 31, 2020, “Cheyenne Ryan Lee” finished 2nd in the seventh race at the Meadowlands Racetrack. The horse’s post-race blood sample again tested positive for both Phenylbutazone and Flunixin. Petitioner did not request split sample testing for either sample.

After conducting a hearing on January 15, 2021, which was thereafter continued on October 27, 2021, the Board of Judges issued Amended Ruling No. 21MDH80, which found that Petitioner violated N.J.A.C. 13:71-23.1, N.J.A.C. 13:71-23.6, and N.J.A.C. 13:71 23.8(f)(3) and imposed a 15-day suspension, \$500 fine, disqualification of the horse, loss of purse, and ½ MMV point for each of the two stacking violations.

On December 1, 2021, Petitioner appealed and requested a stay of the penalty. Staff granted a stay and transmitted the matter to the OAL as a contested case.

On February 1, 2023, ALJ JoAnn Candido issued the initial decision, which affirmed the determination of the Board of Judges regarding the rules violated and the penalties imposed. No exceptions were filed and the record closed.

The Executive Director explained that a stacking violation takes place when a horse tests positive for two NSAIDs in the same post-race sample. In the initial decision, the ALJ correctly applied N.J.A.C. 13:71-23.8(f), which prohibits the presence of two NSAIDs in the same sample, to the post-race blood samples of the horse trained by Petitioner in the September 25th and October 31st races. Executive Director Nason explained that the Commission can adopt, reject or modify the initial decision and staff recommend the Commission adopt the initial decision.

Commissioner Vetrano made a motion to adopt the initial decision. Commissioner Tomaro seconded the motion and all of the Commissioners voted yes.

CONSIDER THE INITIAL DECISION IN DON TIGER V. NEW JERSEY RACING COMMISSION, OAL DOCKET NO. RAC 07166-21.

Executive Director Nason explained that in the Meadowlands Pace on July 17, 2021, the NJRC’s Board of Judges witnessed an incident during the race on the final turn and posted the “inquiry” sign. The judges reviewed the video recordings of the race from multiple angles. All three judges agreed that that the 9 horse, “Charlie May,” broke stride in the final turn and interfered with three other horses. The Board of Judges disqualified “Charlie May,” who crossed the finish

line first, placed “Charlie May” ninth and declared the race official. By letter dated July 19, 2021, Don Tiger (“Petitioner”), the owner of “Charlie May,” filed a notice of appeal and the Commission transmitted the matter to the OAL as a contested case.

The Executive Director summarized the procedural history and initial decision. At the OAL, ALJ Andrew M. Baron conducted a hearing via Zoom on December 15, 2021 and January 27, 2022. The ALJ issued an initial decision on February 10, 2023. In the initial decision, the ALJ ordered that the determination of the NJRC’s Board of Judges must be reversed as it was arbitrary, capricious and unjust. The ALJ decided that the determination of the NJRC’s Board of Judges violated Petitioner’s fundamental due process rights and the rights of the wagering public. The ALJ ordered that “Charlie May” should be reinstated as the winner of the Meadowlands Pace.

On February 23, 2023, counsel for respondent, which is the NJRC, filed exceptions to the initial decision. On February 27, 2023, counsel for Petitioner filed a reply to the exceptions. With the filing of the reply to the exceptions, the record before the NJRC closed and the NJRC may now consider the initial decision.

The initial decision, the OAL record, including the transcripts and video recordings, the exceptions and the reply to exceptions have been provided to the Commission.

Pointing out that the initial decision speaks for itself, the Executive Director stated that the ALJ’s determinations include the following. The ALJ found that even if “Charlie May” did slightly break stride, it was a safety measure only to ensure that a major collision could be avoided with several of the horses. According to the ALJ, the actions of “Charlie May’s” driver were appropriate under the circumstances and did not interfere with the progress of any other horses in the race. Also, finding that the inquiry was flawed because it was rushed and the judges did not interview the drivers, the ALJ concluded that the inquiry was not conducted in accordance with well recognized industry and regulatory standards, was arbitrary and capricious, must be reversed and “Charlie May” should be reinstated as the winner of the Meadowlands Pace.

Executive Director Nason pointed out that the Commission can adopt, reject or modify the initial decision.

Chairman Clyne made the following motion:

“My motion will be that the Commission approve the final decision drafted by staff. The final decision would reject the initial decision because of the numerous errors therein and it explains the reasons for the rejection. The final decision would affirm the judges’ disqualification of “Charlie May,” for interference with the 6, 8 and 10 horses in the final turn, and it upholds the order of finish declared official by the Board of Judges.

As indicated in the final decision, the best and most important evidence is the video recording of the race. The video clearly shows “Charlie May,” which was the 9 horse, going off-stride in the final turn and interfering with horses 6, 8 and 10, causing both the 6 and the 8 to also break and go off-stride. The video also shows that although the 4 horse was beginning to tire in the final turn, it did not slow down drastically or nearly cause an accident as found by the ALJ.

The Board of Judges followed the correct procedures during the inquiry. The judges were not required to interview any of the drivers in the race during the inquiry and there was no need to do so after this race. All relevant facts are documented clearly and obviously in the video recording of the race.

Finally, the final decision would also reject other findings and conclusions that the ALJ erroneously reached.

As a result, I move that the Commission approve the final decision and authorize the Executive Director to issue it on the Commission's behalf. This concludes my motion."

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

Executive Director Nason noted that the final decision will be issued after the conclusion of the review period for the minutes.

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

ITEMS FOR DISCUSSION AND INFORMATION

1. Drug Testing Statistics for 2022

Executive Director Nason summarized the drug testing statistics for 2022 and compared them to the testing results for 2021. In 2022, there was an 8% decrease in the number of samples tested due, in part, to a decrease in the number of races conducted. However, in 2022, there was a 56% decrease in the number of positives when compared to 2021.

In 2022, the Commission tested 11,755 standardbred blood and urine samples, which resulted in 27 positives. In 2021, the NJRC tested 12,996 standardbred samples, which resulted in 51 positives.

In 2022, the Commission tested 2,633 thoroughbred blood and urine samples which resulted in 3 positives. In 2021, the NJRC tested 2,655 thoroughbred samples, which resulted in 17 positives.

In total, in 2022, the Commission tested 14,388 samples which resulted in 30 positives. In 2021, the Commission tested a total of 15,651 samples, which resulted in 68 positives.

Finally, regarding human testing, the Commission tested 87 samples and there were 2 positives. This compares to 74 samples tested in 2021 with 0 positives.

The Executive Director asked if anyone would like to comment or bring new business to the Commission's attention.


Don Tiger, who is the owner of "Charlie May," thanked the Commission and stated he disagreed with Chairman Clyne's analysis. He also summarized some news articles which he stated involved officiating errors in basketball, baseball and horse racing. Mr. Tiger reported that changes will be made in professional baseball to increase transparency during instant replays.

Mr. Tiger asserted that the Commission's judges failed to exhaust any and all measures by not interviewing the drivers. He encouraged the Commission to increase transparency during inquiries by allowing the public to hear what the judges are saying.

The Executive Director thanked Mr. Tiger for his comments and asked if there were any additional questions or comments. There were no additional questions or comments.

Commissioner Arnone moved that the meeting be adjourned. Commissioner Vetrano seconded the motion and all of the Commissioners voted yes.

ATTEST:



Judith A. Nason, Executive Director