

**NEW JERSEY RACING COMMISSION
WEDNESDAY, SEPTEMBER 20, 2023
MONMOUTH PARK
“LIBRARY ROOM”
OCEANPORT, NEW JERSEY**

A public meeting of the New Jersey Racing Commission (“NJRC” or “Commission”) was held on Wednesday, September 20, 2023 in the “Library Room,” located at Monmouth Park racetrack in Oceanport, New Jersey.

The following were present:

Michael J. Arnone, D.D.S., Commissioner
Arlene Quinones Perez, Esq., Commissioner
Charles E. Tomaro, Commissioner (by phone)
Glen Vetrano, Commissioner (by phone)
Judith A. Nason, Executive Director
Laura A. Wilton, Esq., Assoc. Counsel, Governor’s Auth. Unit (by phone)
Sara Ben-David, Counsel to the Attorney General (by phone)
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 Monmouth Park’s request for a waiver of N.J.A.C. 13:70-11.12 (Riding Crop Prohibited) and N.J.A.C. 13:70-11.12A (Emergency Use of the Riding Crop) for the Far Hills special steeplechase meet.
2. Legal advice concerning the initial decision in the matter of Ray Baynes v. New Jersey Racing Commission, OAL Docket No. RAC 05992-21.

3. Legal advice concerning the initial decision in the matter of Joseph Bongiorno v. New Jersey Racing Commission, OAL Docket No. RAC 07989-19.
4. Legal advice concerning the initial decision in the matter of Marvin D. Richards v. New Jersey Racing Commission, OAL Docket No. RAC 01335-22.
5. Legal advice concerning the settlement agreement in Gregory D. Sacco v. New Jersey Racing Commission, OAL Docket No. RAC 00530-22.
6. Legal advice concerning the allocation of purse subsidies to the thoroughbred and standardbred racing industries for Fiscal Year 2024.
7. 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 Vetrano seconded the motion. All of the Commissioners voted to adjourn.

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

Executive Director Nason began by stating that the Racing Commission has a new Commissioner and she introduced Commissioner Arlene Quinones Perez. On behalf of the racing community, Commission members and staff, Executive Director Nason welcomed Commissioner Perez.

CONSIDER APPROVAL OF THE EXECUTIVE AND PUBLIC SESSION MINUTES OF THE JULY 19, 2023 COMMISSION MEETING

Commissioners Vetrano abstained from voting on the minutes since he was not present at the last meeting. Commissioner Perez also abstained since she had not yet been sworn in to the Commission. Although Commissioner

Arnone and Commissioner Tomaro voted to approve, the motion did not carry. As a result, the approval of the minutes will be added to the agenda of the November 15, 2023 meeting.

CONSIDER NEW MEADOWLANDS RACETRACK'S REQUEST TO ADD LIVE RACING ON DECEMBER 7, 2023 AND CANCEL NOVEMBER 24, 2023

Executive Director Nason stated that on July 18, 2023, General Manager and Chief Operating Officer Jason M. Settlemaier filed a request seeking to amend New Meadowlands Racetrack's ("NMR") race dates for 2023. The request seeks approval to cancel live racing on Friday, November 24, 2023 due to a home Jets football game at MetLife Stadium. NMR would like to replace that race date with the addition of live racing on Thursday, December 7, 2023.

Commissioner Arnone made the motion to approve the request. Commissioner Tomaro seconded the motion and all Commissioner voted yes.

CONSIDER THE APPROVAL OF THE FAR HILLS SPECIAL STEEPLECHASE MEET'S OFFICIALS, POOLS, POST-TIMES AND PRICES

Executive Director Nason advised that the Commission is being asked to approve the racing and wagering format for the Far Hills Special Steeplechase meet on October 21st at Moorland Farm. She stated that this is an excellent day of steeplechase racing for a very good cause. Over the years, the Far Hills race meeting has resulted in the donation of more than \$20 million to support local healthcare organizations.

Executive Director Nason explained that the one-day meet will begin with the gates opening at 8:00 am. First-race post-time is 1:00 pm. The wagering format will include win, place, show, exacta, trifecta, superfecta and Pick 3. A list of the officials and wagering minimums is included in the meeting packet. The races will be simulcast as an official race day utilizing Monmouth Park's contracts.

She stated that all onsite pari-mutuel wagering will again be conducted through the 4NJBets account wagering system. There will not be any pari-mutuel wagering machines onsite. Patrons will be encouraged to open an account with the 4NJBets and wager using their cell phones.

Commissioner Arnone made the motion to approve the racing and wagering format for the Far Hills Special Steeplechase meet. Commissioner Tomaro seconded the motion and all Commissioners voted yes.

CONSIDER MONMOUTH PARK'S REQUEST FOR A WAIVER OF N.J.A.C. 13:70-11.12 (RIDING CROP PROHIBITED) AND N.J.A.C. 13:70-11.12A (EMERGENCY USE OF THE RIDING CROP) FOR THE FAR HILLS SPECIAL STEEPLECHASE MEET

Executive Director Nason stated that on August 9th, John F. Heims, In-House Counsel for Monmouth Park, filed a request asking the Commission to waive these two riding crop rules for the Far Hills Special Steeplechase meet on October 21st. She said Monmouth Park states that if the Commission waives the riding crop rules, the racetrack will institute "house" rules that are identical to the riding crop rules adopted by the Horseracing Integrity and Safety Authority ("HISA") which are applicable to thoroughbred racing.

The Far Hills Steeplechase meet will offer steeplechase races and one flat race. HISA's riding crop rules apply to the flat race. However, HISA's rules do not apply to steeplechase races.

Executive Director Nason indicated that in the flat race, HISA's riding crop rules allow the jockey six overhand strikes and unlimited underhand strikes on the shoulder. HISA's rules contain numerous restrictions on the use of the riding crop. Because HISA does not regulate steeplechase races, the NJRC's riding crop rules are not preempted and they will apply to the steeplechase races. The NJRC's riding crop rules prohibit the use of the riding crop except when necessary for the safety of the horse or rider.

She advised that to promote uniformity, Monmouth Park is asking the NJRC to waive its riding crop rules for the steeplechase races in favor of Monmouth Park instituting house riding crop rules that are identical to HISA's riding crop rules. If the waiver is granted, the effect will be that uniform riding crop rules apply to all of the races that day.

Executive Director Nason explained that to enforce the racetrack's riding crop rules, Monmouth Park will establish a Committee comprised of racing officials who will review each race. Mr. Heims states that Monmouth Park will impose the following mandatory penalties, all of which also include forfeiture of the jockey's percentage of the purse. A first offense will result in a \$500.00 fine and 3-day suspension from riding. A second offense will result in a \$2,500.00 fine and a 7-day suspension. A third offense will result in a \$5,000.00 fine and dismissal from the grounds for the remainder of the race meeting. The suspensions will be imposed during Monmouth Park's 2024 meet and will include the 2024 Far Hills meet.

She further explained that the Commission may waive N.J.A.C. 13:70-11.12 and 11.12A if the Commissioners believe that the "waiver will benefit the horse racing industry in this State." The result of a waiver would be that the jockeys will be able to follow uniform riding crop rules for all races that day.

Commissioner Arnone made the motion to waive the Commission's riding crops rules at the Far Hills steeplechase meet. Commissioner Perez seconded the motion and all Commissioners voted yes.

CONSIDER THE DISTRIBUTION OF THE CASINO SIMULCASTING SPECIAL FUND MONIES ACCUMULATED IN 2022

Executive Director Nason stated that the Commission has received written requests from each of the racetracks and the horsemen's organizations regarding the Casino Simulcasting Special Fund ("CSSF") monies accumulated in 2022. The monies from 2022 total \$353,160.99. She explained that the distribution of these monies is not at issue today. The question today is whether the Commission is ready to close the record and refer this matter to the committee. In past years, with six Commissioners, the Commission has appointed three Commissioners to the CSSF Committee. The Committee considers the requests and reports back with recommendations to the Commission at the next public meeting. The distribution of the monies would then be considered at the November meeting.

Executive Director Nason explained that prior to the meeting, the racetracks and horsemen's organizations were asked whether they would like to make verbal comments at today's meeting to supplement their written requests. No racetrack or horsemen's organization asked to make verbal comments.

Executive Director Nason asked if the Commission wanted to close the record.

Commissioner Arnone made the motion to close the record. Commissioner Vetrano seconded the motion and all Commissioners voted yes.

Executive Director Nason stated that the second question is who should serve on the CSSF Committee to review the submissions and report back to the full Commission with recommendations. She explained that last year, Chairman Clyne, Commissioner Keegan and Commissioner Tomaro served on the CSSF Committee.

She went on to say that as everyone is aware, Chairman Clyne retired earlier this year and is enjoying life in Ohio. Commissioner Keegan and Commissioner Tomaro have indicated that they are willing to again serve on the Committee. Commissioner Vetrano has expressed an interest and willingness to serve on the Committee.

Commissioner Arnone made a motion to appoint Commissioners Keegan, Tomaro and Vetrano to the committee. Commissioner Perez seconded the motion and all Commissioners voted yes.

CONSIDER THE INITIAL DECISION IN THE MATTER OF RAY BAYNES V. NEW JERSEY RACING COMMISSION, OAL DOCKET NO. RAC 05992-21

Executive Director Nason advised that the Board of Judges at Freehold Raceway determined that Ray Baynes (“Petitioner”), violated the Commission’s whipping rules while driving “Skyline Hanover” in the second race on May 7, 2021. This was Petitioner’s second violation of the rule and the judges imposed a 10-day driving suspension and \$1,000 fine.

The Petitioner appealed and the matter was transmitted to the Office of Administrative Law (“OAL”) as a contested case. On July 31, 2023, the Administrative Law Judge (“ALJ”) issued an initial decision which affirmed the judges’ findings of violation and the penalties imposed. No exceptions were filed and the record before the Commission closed.

Executive Director Nason stated that the ALJ was not persuaded by Petitioner’s testimony that the horse was small, he could not reach the horse with the whip, and that he was tapping the horse -- not whipping it. Rejecting this testimony, the ALJ concluded that the video clearly showed that Petitioner struck the horse with the whip approximately twenty-two times without pause while losing ground to other horses in violation of N.J.A.C. 13:71-20.15(b)(2), (3) and (4).

She explained that the initial decision is before the Commission to adopt, reject or modify. Staff recommend that the Commission adopt the initial decision.

Commissioner Arnone made the motion to adopt the initial decision. Commissioner Perez seconded the motion and all Commissioners voted yes.

CONSIDER THE INITIAL DECISION IN THE MATTER OF JOSEPH BONGIORNO V. NEW JERSEY RACING COMMISSION, OAL DOCKET NO. RAC 07989-19

Executive Director Nason stated that the Board of Judges at Freehold Raceway determined that Joseph Bongiorno (“Petitioner”) demonstrated a lack of judgment when driving “Julio’s Girl” in the seventh race at Freehold Raceway on May 3, 2019 in violation of N.J.A.C. 13:71-20.10(b) and imposed a 5-day driving suspension. Petitioner appealed and the matter was transmitted to the OAL as a contested case.

On July 12, 2023, the ALJ issued an initial decision which affirmed the judges’ determination of violation and penalty imposed. No exceptions were filed and the record before the Commission closed.

Executive Director Nason stated that the ALJ found Presiding Judge Thomas Salerno to be credible and accepted his testimony that Petitioner used poor judgment in vacating the second spot early and that he used his horse harder than necessary by taking his horse to the outside and challenging the leader too soon when he had the perfect ride in front of him. These actions caused “Julio’s Girl” to tire early and finish in fifth place. The ALJ also accepted Presiding Judge Salerno’s testimony that the wagering public must be protected from a driver’s lack of judgment that removes a favorite from contention.

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

Commissioner Arnone made the motion to adopt the initial decision. Commissioner Perez seconded the motion and all Commissioners voted yes.

CONSIDER THE INITIAL DECISION IN THE MATTER OF MARVIN D. RICHARDS V. NEW JERSEY RACING COMMISSION, OAL DOCKET NO. RAC 01335-22

Executive Director Nason stated that on September 3, 2021, the horse “Awesomenewyear,” trained by Marvin Richards (“Petitioner”), finished first in the sixth race at Monmouth Park. The horse’s post-race urine sample tested positive for oxazepam and ibuprofen. Petitioner requested split sample testing, which confirmed the presence of the two drugs.

She stated that after conducting a hearing, the Board of Stewards found that Petitioner violated N.J.A.C. 13:70-1.15, 14A.1(b) and 14A.6. The stewards imposed a 1-year suspension, \$5,000 fine, disqualification of the horse, loss of purse and 2.5 MMV points. Petitioner appealed and the matter was transmitted to the OAL as a contested case.

Executive Director Nason indicated that on August 10, 2023, the ALJ issued an initial decision which affirmed the stewards’ determination of violation and the penalties imposed. No exceptions were filed and the record before the Commission closed.

She stated that at the OAL, Petitioner did not dispute that the horse tested positive for oxazepam and ibuprofen in violation of the NJRC’s rules. Instead, he argued that the penalties were excessive.

Executive Director Nason indicated that the ALJ accepted Presiding Steward Stephen Pagano’s testimony that the NJRC uses the Uniform Classification Guidelines of the Association of Racing Commissioners International (“ARCI Guidelines”) which classify oxazepam, a benzodiazepine, as a Class 2 drug with a Class A penalty. The ARCI Guidelines classify ibuprofen, which is an NSAID, as a Class 4 drug with a Class C penalty.

Executive Director Nason stated that the ALJ rejected Petitioner's testimony that the ARCI Guidelines were faulty and should not have been applied in this instance. Although the ALJ accepted Petitioner's evidence of three rulings from other states issuing penalties for oxazepam positives, the ALJ rejected Petitioner's contention that these rulings should have affected his penalty because the rulings were not recent and did not provide complete background information.

She added that the ALJ rejected Petitioner's testimony regarding possible environmental contamination because he failed to provide any information in support of this claim. Accordingly, the ALJ affirmed the stewards' determination regarding the rules violated and the penalties imposed.

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

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

CONSIDER THE SETTLEMENT AGREEMENT IN GREGORY D. SACCO V. NEW JERSEY RACING COMMISSION, OAL DOCKET NO. RAC 00530-22

Executive Director Nason stated that trainer Gregory Sacco ("Petitioner") entered two horses in the second race on July 28, 2019 at Monmouth Park. One of the horses, "PJ's Ego," was ineligible. Petitioner scratched the horse due to illness hours before the race. When Commission staff attempted to confirm the illness, it was determined that PJ's Ego was not stabled at Monmouth Park.

Executive Director Nason explained that after conducting a hearing, the Board of Stewards found that Petitioner knowingly and willfully entered an ineligible horse to race that was stabled on an unlicensed farm in New Jersey and provided false and misleading information to the clockers, investigators and stewards regarding two published workouts for the ineligible horse. The stewards determined that Petitioner violated multiple NJRC rules, which included N.J.A.C. 13:70-1.15, 6.1, 6.54, 6.57 and 14.4. The stewards issued Ruling No. 20MON29 which imposed a 60-day suspension and a \$5,000 fine.

Petitioner appealed and the matter was transmitted to the OAL as a contested case. Executive Director Nason stated that counsel for the parties have negotiated a proposed settlement agreement. Pursuant to the terms of the agreement, Petitioner would serve a 20-day suspension and pay a \$20,000 fine, withdraw his appeal and waive his right to a hearing.

Executive Director Nason explained that the decision whether to approve the proposed settlement agreement lies within the Commissioners' discretion. Staff recommend approval.

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

CONSIDER ALLOCATION OF PURSE SUBSIDIES TO THE THOROUGHBRED AND STANDARD BRED RACING INDUSTRIES FOR FISCAL YEAR 2024

Executive Director Nason stated that the State of New Jersey has appropriated \$20 million in purse subsidies for Fiscal Year 2024.

She explained that an allocation consistent with the statutory requirements of the past 5 years would be to allocate the \$20 million equally between the thoroughbred and standardbred industries. Of the funds allocated to the thoroughbred industry, 100 percent would go to Monmouth Park overnight purses. Of the funds allocated to the standardbred industry, 60 percent would go 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 that using these percentages, the allocation would be:

- \$10 million to Monmouth Park,
- \$6 million to New Meadowlands Racetrack,
- \$1.6 million to Freehold Raceway,
- \$1.2 million to the New Jersey Sire Stakes,
- \$600,000 to standardbred purse bonuses for New Jersey sired horses; and
- \$600,000 to standardbred breeders awards purses.

Commissioner Vetrano made the motion to allocate the purse subsidies for Fiscal Year 2024 using the same percentages as in prior years. Commissioner Arnone seconded the motion and all Commissioners voted yes.

CONSIDER RATIFICATION OF THE CANCELLATION OF RACING AT FREEHOLD RACEWAY ON SEPTEMBER 8, 2023 DUE TO EXTREME HEAT

Executive Director Nason advised that on September 8th, the heat index at Freehold Raceway was 106°F at 12:30 pm, which was the scheduled first-race post-time. The first race was delayed for 30 minutes to evaluate whether the extreme heat would continue. Temperatures continued to rise and the heat index quickly reached 108°F. General Manager Howard Bruno requested

approval to cancel the day's racing card due to the extreme heat and Executive Director Nason approved the cancellation of racing subject to ratification by the Commission at today's public meeting.

Commissioner Arnone made the motion to ratify the cancellation of racing on September 8th. Commissioner Tomaro seconded the motion and all Commissioners voted yes.

ITEMS FOR DISCUSSION AND INFORMATION

The Executive Director advised that copies were available of the breakdown of New Jersey wagering on the Meadowlands Pace, July 15, 2023, Haskell Day, July 22, 2023 and on Hambletonian Day, August 5, 2023.

Executive Director Nason stated that the next scheduled Commission meeting is November 15, 2023 at the Racing Commission office in Trenton.

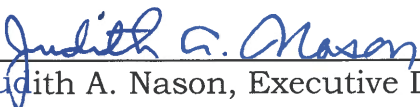
Finally, the Executive Director asked if anyone would like to comment or bring new business to the Commission's attention.

Rebecca Linke, a member of the public in attendance, asked if Executive Director Nason could explain the John Tomasello situation. Executive Director Nason stated that Mr. Tomasello is no longer an employee of the Racing Commission as of September 8, 2023 and that she cannot comment on personnel matters.

There were no additional comments or questions.

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

ATTEST:



Judith A. Nason, Executive Director