

NEW JERSEY RACING COMMISSION
WEDNESDAY, APRIL 24, 2024
NEW JERSEY RACING COMMISSION
TRENTON OFFICE 140 EAST FRONT STREET
TRENTON, NEW JERSEY

A special public meeting of the New Jersey Racing Commission (“NJRC” or “Commission”) was held on Wednesday, April 24, 2024 at the New Jersey Racing Commission’s office located at 140 East Front St., Trenton, New Jersey.

The following were present:

Glen Vetrano, Commissioner
Lawrence DeMarzo, Commissioner (by phone)
Francis X. Keegan, Jr., Commissioner (by phone)
Arlene Quinones Perez, Esq., Commissioner (by phone)
Charles E. Tomaro, Commissioner (by phone)
Michael J. Arnone, D.D.S., Commissioner (by phone- joined at item 3)
Judith A. Nason, Executive Director
Samuel Kovach-Orr, Assoc. Counsel, Governor’s Auth. Unit
Sara Ben-David, Counsel to the Attorney General
DAG Levi Klinger-Christiansen

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 approval of the Joint Petition of the New Jersey Thoroughbred Horsemen’s Association, Inc. (“NJTHA”) and Darby Development, LLC (“Darby”) to transfer the race permits, off-track wagering licenses, simulcasting approvals and right to receive account wagering revenue from the NJTHA to Darby.

2. Legal advice concerning action on the petition for rulemaking filed on behalf of Monmouth Park to amend N.J.A.C. 13:70-29.52.
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.

Commissioner Vetrano motioned to adjourn into Executive Session. Commissioner Perez seconded the motion. All of the Commissioners voted to adjourn.

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

CONSIDER RATIFICATION OF A SERVICES AGREEMENT BETWEEN THE HORSERACING INTEGRITY AND SAFETY AUTHORITY ("HISA") AND THE NEW JERSEY RACING COMMISSION.

Executive Director Nason stated that in 2022 and 2023, Commission staff negotiated a services agreement with HISA to provide the services of the Commission's veterinarians and stewards. Executive Director Nason noted that the Commission ratified these agreements at the July 20, 2022 public meeting and the May 24, 2023 meeting. By its terms, each agreement expired at the end of the calendar year on December 31st. Executive Director Nason stated that Commission staff have negotiated an extension of the services agreement through December 31, 2024 and the extended agreement is before the Commissioners for ratification or rejection.

Executive Director Nason advised that in the agreement, the Commission agrees to provide the services of its regulatory veterinarians, who will continue to perform the services they performed at Monmouth Park in June 2022 and thereafter and to undertake reasonable efforts to carry out the duties and responsibilities of the Regulatory Veterinarian/Lead Veterinarian in HISA's racetrack safety rules. Executive Director Nason stated that the Commission also agrees to provide the services of its stewards to enforce HISA's racetrack safety rules, conduct hearings for violations that occur in New Jersey and perform other specified duties.

Executive Director Nason explained that in return, HISA agrees to compensate the Commission for the actual cost and expenses incurred by the NJRC in providing the services performed by its veterinarians and stewards.

Executive Director Nason reiterated that the agreement requires ratification or rejection by the Commission.

Commissioner Vetrano made a motion to ratify the agreement. Commissioner Perez seconded the motion and all Commissioners voted yes.

CONSIDER RATIFICATION OF A LETTER AGREEMENT AMONG THE HORSERACING INTEGRITY AND WELFARE UNIT, THE HORSERACING INTEGRITY AND SAFETY AUTHORITY AND THE NEW JERSEY RACING COMMISSION

Executive Director Nason stated that on May 22, 2023, the Horseracing Integrity and Welfare Unit ("HIWU") assumed control of HISA's Anti-Doping and Medication Control Program for thoroughbred racing. Executive Director Nason noted that last year, the Commission entered into a limited Letter Agreement, with HIWU and HISA, which expired on December 31, 2023. The Commission ratified this agreement at its July 19, 2023 meeting.

Executive Director Nason stated that Commission staff have negotiated an extension of the Letter Agreement through December 31, 2024 and the Letter Agreement is before the Commission for ratification or rejection.

Executive Director Nason explained that pursuant to the terms of the Letter Agreement, the Commission agrees that on race day, our stewards will select horses for post-race testing and a NJRC employee will place the testing tags on the halters of the selected horses immediately after the race. HISA agrees to pay the NJRC the actual costs of the services performed by the NJRC's employees.

Commissioner Michael J. Arnone, D.D.S. joined the meeting by telephone.

Commissioner Vetrano made a motion to ratify the agreement. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER ACTION ON THE PETITION FOR RULEMAKING FILED ON BEHALF OF MONMOUTH PARK TO AMEND N.J.A.C. 13:70-29.52.

Executive Director Nason stated that on December 13, 2023, the Commission received a petition for rulemaking from John F. Heims, Esq., In-House Counsel for Monmouth Park. The petition asked the Commission to amend N.J.A.C. 13:70-29.52, which is the Pick N rule, by adding a subsection (p) that would allow the racetrack, upon 48-hour notice to the Commission, to elect to pay out an entire Pick (N) pool, including the carryover, on a selected day in accordance with subsection (l) of the rule. Petitioner states that the purpose

of the request for rulemaking is that the proposed change will allow the racetrack to remain competitive with out-of-state racetracks and to maximize handle and profits.

Executive Director Nason explained that the Commission considered the petition at its January 24, 2024 meeting and decided to refer the petition to staff for further deliberations for up to 90 days. The purpose of the referral was to review the wagering rules of other state racing commissions and to assess the effect of the change proposed by Petitioner.

Executive Director Nason stated that staff has summarized their findings for the Commissioners and the Commission must now either deny the petition or grant the petition and initiate rulemaking.

Executive Director Nason advised that staff recommend that the Commission grant the petition for rulemaking. Based upon a review of the ARCI's Model "Pick N" Rule and the "Pick N" rules in California, Kentucky, New York and Delaware, staff are drafting proposed amendments to N.J.A.C. 13:70-29.52. Upon obtaining the necessary pre-approvals, staff will place a draft Notice of Proposal to amend the "Pick N" rule before the Commission at a future public meeting.

Commissioner Vetrano made the motion to grant the petition and initiate rulemaking. Commissioner Tomaro seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF THE JOINT PETITION OF THE NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION, INC. ("NJTHA") AND DARBY DEVELOPMENT, LLC ("DARBY") TO TRANSFER THE RACE PERMITS, OFF-TRACK WAGERING LICENSES, SIMULCASTING APPROVALS AND RIGHT TO RECEIVE ACCOUNT WAGERING REVENUE FROM THE NJTHA TO DARBY

Executive Director Nason stated that on February 29, 2024, the Commission received a Joint Petition on behalf of the NJTHA and Darby ("Joint Petition") seeking approval of the transfer by the NJTHA to Darby of its three race permits, two off-track wagering ("OTW") licenses, NJRC simulcasting approvals and the right to receive account wagering revenue. The assets to be transferred include the thoroughbred permits for Monmouth Park and the Meadowlands and the special steeplechase permit for the Far Hills Steeplechase Meet. The NJTHA also seeks to transfer the licenses for the Favorites at Woodbridge and Favorites at Hillsborough OTWs.

Executive Director Nason advised that in addition, the NJTHA seeks to transfer the racetrack and OTW simulcasting approvals which the NJRC granted to the NJTHA as the permit holder and the OTW licensee. Finally, the NJTHA

seeks to transfer its right to receive account wagering revenue from the New Jersey Sports and Exposition Authority (“NJSEA” or “Authority”).

Executive Director Nason noted that in the 2012 Racetrack Ground Lease Agreement, the Authority granted the NJTHA the right to receive 50% of the NJSEA’s “Available Net Project Revenues” as defined in the account wagering participation agreement. The right to receive this revenue will be transferred to Darby.

Executive Director Nason stated that the record before the Commission is voluminous and briefly summarized some of the facts advanced in the Joint Petition and attached documents.

Quoting language from the Joint Petition, Executive Director Nason advised that the NJTHA Board has voted on several occasions that “the preferred structure of running Monmouth Park was to have Darby be the licensee and permit holder of Monmouth Park and its related operations.” At a meeting on December 28, 2023, the NJTHA Board “authorized Darby to take over and assume the lease obligations for Monmouth Park in exchange for Darby forgiving debt owed to it under the Management Agreement with the NJTHA.”

Executive Director Nason noted that thereafter, on January 18, 2024, the NJSEA’s Board of Commissioners adopted Resolution 2024-54, which approves the transfer of the NJTHA’s interests as lessee of Monmouth Park to Darby, subject to Darby obtaining all necessary permits, approvals and consents.

Executive Director Nason stated that in support of the transfers, the Joint Petition points out that the NJTHA has relied upon Darby for the day-to-day management of thoroughbred racing since 2012 and states that Darby has been able to turn Monmouth Park into a profit-making attraction. According to the Joint Petition, Darby will continue to run the racetrack as it has done since 2012 and continue to rely on sports betting income to continue Monmouth Park’s operations. The Joint Petition states that if approved by the Racing Commission, there will be no change in the financial outlook of thoroughbred horseracing in New Jersey.

Executive Director Nason invited Dennis Drazin to address the Commission.

Mr. Drazin explained that in 2011, the Hanson Commission, which was formed by Governor Christie, made a recommendation to privatize the two state-owned racetracks. Mr. Drazin stated that at the time he was Chairman of the NJRC and thought that was the place he could help the industry. He then came to the realization that the best place for him was helping the horsemen save Monmouth Park and racing in New Jersey.

Mr. Drazin advised that Darby entered into an operating agreement with the NJTHA who entered into a lease with the NJSEA for Monmouth Park. At that time, the State of New Jersey and the NJSEA were losing 13 million dollars a year and racing was in desperate need of help without the benefit of purse subsidies.

Mr. Drazin stated that Governor Christie took the position that racing had to stand on its own and control its own destiny. The horsemen relied upon Darby as the operating company and on Mr. Drazin's experience as an advisor to the horsemen and as a consultant in an independent contractor capacity.

When Darby was formed, the members hired Dennis Drazin to operate Monmouth Park and serve as Chairman and CEO. Mr. Drazin noted that they have been operating the racetrack since 2012 successfully. Pointing out that the racetrack lost money for many years, Mr. Drazin stated that racing probably would not exist at this time in New Jersey if not for sports betting.

Mr. Drazin noted that his law firm, his brothers and he all contributed to making sure that the horsemen, racing and breeding would survive in New Jersey. He stated that through the approved management agreement, there were profit incentives and monies owed on an annual basis.

Mr. Drazin advised that right now the track is profitable. However, they have incurred other debts such as the NJSEA stating that it would no longer pay the Racing Commission costs, which is about \$1.6 million per year, and will not pay HISA/HIWU costs, which are about \$1.8 million per year. The purpose is not to talk about what Darby has been able to do to date, but to advise that this transaction is needed to make racing survive.

Mr. Drazin explained that this lease transaction, which has been extended for 85 years, is about the sustainability of racing and making sure that racing is here for generations to come.

Mr. Drazin stated that the horsemen knew they couldn't accomplish saving racing on their own. The horsemen relied upon Darby throughout the course of the last thirteen years to succeed and to survive.

Mr. Drazin advised that Darby is in the best position to run Monmouth Park and grow it. Mr. Drazin summarized some of the developments that will take place on the grounds in connection with Morris Bailey, real estate partner, with 50% of the development proceeds dedicated to Darby, not for Darby to keep but to sustain racing into the future.

Mr. Drazin concluded by urging the Commission to support the petition submitted by Darby and the NJTHA. He stated that this petition is about the survival of Monmouth Park and ensuring that racing and breeding will continue in New Jersey.

Executive Director Nason asked if the structure of Darby or the structure of Elite Equine Consultants would be altered by the transfer. Mr. Drazin responded that there will be no change in the structure. Mr. Drazin stated that there is a possibility that his two brothers may resign and he would become the only member of Darby. He further advised that Elite is not involved in the day-to-day operations of the racetrack.

Executive Director Nason then asked Mr. Drazin to confirm that Darby foresees no negative changes to the outlook of thoroughbred racing if the Commission approves the transfer. Mr. Drazin indicated that he did not anticipate any negative impact.

Commissioner Vetrano stated that Mr. Drazin has the passion and the expertise to sustain horse racing into the future and thanked him for his time and efforts. Commissioner Vetrano indicated that as long as the NJTHA is on board and there would be no changes, he believed this transaction would be good for the industry.

Executive Director Nason then invited Michael Musto, Executive Director of the NJTHA, to speak.

Mr. Musto added that if it weren't for Mr. Drazin advising the NJTHA to put in an application to lease Monmouth Park, he wouldn't be standing here today. Mr. Musto stated that he felt the lease should be transferred to Darby where it belongs since his organization is not built to run a racetrack. Mr. Musto stated that without Mr. Drazin's passion, New Jersey thoroughbred racing would not be where it is today.

Executive Director Nason asked Mr. Musto to confirm that the NJTHA wanted the transfer to Darby and Mr. Musto responded yes.

Executive Director Nason mentioned that the Joint Petition states that the NJTHA wishes to return to its original mission as a horsemen's representative and benevolence organization and asked if this is correct. Mr. Musto replied that the NJTHA's purpose was to take care of the horsemen, represent the horsemen and take care of the people in the backstretch.

Executive Director Nason asked if the NJTHA would continue to handle the 2.9% statutory revenue for programs to benefit the thoroughbred horsemen. Mr. Musto responded yes.

Commissioner DeMarzo thanked Mr. Drazin and Mr. Musto for their presentations and asked Mr. Drazin for his thoughts on the pocket veto of the purse subsidies bill.

Mr. Drazin responded by stating that he had a conversation with the Governor who reportedly told him that the purse subsidies would get done at the right time through the budget process and not in a lame duck session. Mr. Drazin stated that he trusted the Governor and that he believes that subsidies will be provided during his term. He also stated that he believes the Governor wants to protect racing.

Commissioner Vetrano made the following motion:

I move that the Commission approve the transfer by the NJTHA to Darby of its three race permits, two OTW licenses, simulcasting approvals and right to receive account wagering revenue. The record before the Commission supports a finding that Darby has established, by clear and convincing evidence, that it and its employees are qualified to hold the OTW licenses and that the transfer will not be contrary to the public interest or the best interests of the horse racing industry in this State. The record also supports this finding for the transfer of the race permits and the simulcasting approvals attached to the permits.

Darby and Dennis Drazin are well-known to the Commission. Darby has been operating Monmouth Park and conducting the thoroughbred meet at the Meadowlands since 2012 and the Far Hills Special Steeplechase Meet since 2018. Darby has also managed the Woodbridge OTW since 2012 and the Hillsborough OTW since 2015. The requested transfer will serve to maintain the status quo.

Darby and Mr. Drazin have substantial experience and expertise. Mr. Drazin has indicated that the structure of Darby and Elite Equine Consultants will be unchanged by the transfer. Mr. Drazin and Mr. Musto have confirmed that the NJTHA and Darby foresee no change to the financial outlook of thoroughbred racing if the transfer is approved by the NJRC.

As indicated in Resolution 2024-54, the Authority also supports the requested transfer from the NJTHA to Darby.

For these reasons, I move that the Commission approve the transfer of the permits, OTW licenses, simulcasting approvals and right to receive account wagering revenue. This motion authorizes the Executive Director to sign the draft orders, upon the conclusion of the Governor's review of the minutes of this meeting, and to forward the transfer of the two OTW licenses to the Attorney General for his review and approval.

This concludes my motion.

Commissioner Tomaro seconded the motion and all Commissioners voted yes except for Commissioner Arnone who was no longer participating in the meeting by telephone.

Commissioner Perez thanked Mr. Drazin and Mr. Musto for their enthusiasm in putting this transaction together. The Commissioner stated that it is nice to have someone focused on ensuring that racing in New Jersey becomes more sustainable as we continue to move forward.

Executive Director Nason congratulated Mr. Drazin, Darby and the NJTHA.

Mr. Drazin then thanked the Commission and Executive Director Nason for her time and efforts and wished her well in her upcoming retirement.

ITEMS FOR DISCUSSION AND INFORMATION

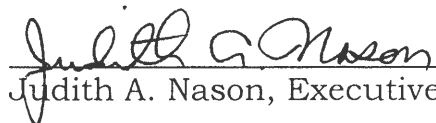
The Executive Director acknowledged receipt of Darby Development, LLC's Consolidated Financial Statements and Independent Auditor's Report for the years ended December 31, 2022 and December 31, 2021.

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

There were no additional comments or questions.

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

ATTEST:



Judith A. Nason, Executive Director