

NEW JERSEY RACING COMMISSION
WEDNESDAY, JULY 24, 2024
MONMOUTH PARK
"LIBRARY ROOM"
OCEANPORT, NEW JERSEY

A public meeting of the New Jersey Racing Commission ("NJRC" or "Commission") was held on Wednesday, July 24, 2024 in the "Library Room" at Monmouth Park racetrack, Oceanport, New Jersey.

The following were present:

Lawrence DeMarzo, Commissioner
Glen Vetrano, Commissioner
Charles E. Tomaro, Commissioner (by phone)
Arlene Quinones Perez, Esq., Commissioner (by phone)
Tom Salerno, Assistant Director
Samuel Kovach-Orr, Assoc. Counsel, Governor's Auth. Unit
Sara Ben-David, Counsel to the Attorney General
SDAG George Cohen
Levi Klinger-Christiansen, DAG

Assistant Director Salerno 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 appointment of an Acting Executive Director.
2. Legal advice concerning the Initial Decision in Saffie A. Joseph, Jr. v. New Jersey Racing Commission, OAL Docket No. RAC 08874-21.
3. Legal advice concerning the Initial Decision in Ted Suleski v. New Jersey Racing Commission, OAL Docket No. RAC 01592-20.

4. Legal advice concerning the Initial Decision in Peter R. Walder v. New Jersey Racing Commission, OAL Docket No. RAC 00330-22.
5. Legal advice concerning the Initial Decision in Kenneth Santo Tisa v. New Jersey Racing Commission, OAL Docket No. RAC 04818-22.
6. 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 adjourn.

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 MAY 22, 2024 MEETING

Commissioner Vetrano made a motion to approve the public and executive minutes of the May 22, 2024 Commission meeting. Commissioner DeMarzo seconded the motion and all Commissioners voted yes.

CONSIDER THE ADOPTION OF A RESOLUTION IN TRIBUTE TO JUDITH A. NASON

Assistant Director Salerno read the following resolution.

WHEREAS, Judith A. Nason, who was employed by the State of New Jersey for a total of 31 years, began her career as a Deputy Attorney General in the Division of Law in 1993, and was named Deputy Director of the Racing Commission in November, 2014;

WHEREAS, Judith A. Nason served as Acting Director of the Commission since July 18, 2018 before being appointed to Executive Director on May 15, 2019;

WHEREAS, Judith A. Nason has been a passionate and tireless advocate dedicated to the advancement of equine welfare and the protection of horses that race in this State;

WHEREAS, Judith A. Nason guided the Racing Commission through times of great change including the COVID-19 pandemic and the implementation of the federal Horseracing Integrity and Safety Act in New Jersey;

WHEREAS, Judith A. Nason earned the respect, trust and admiration of the Commissioners, staff and the horse racing industry;

WHEREAS, the Racing Commission and its staff will greatly miss her professionalism, insight and wisdom;

NOW, THEREFORE, BE IT RESOLVED that the members and staff of the New Jersey Racing Commission pay tribute to Judith A. Nason for her long and distinguished career of public service, for her dedication to maintaining the highest level of integrity within New Jersey's horse racing industry and for the steady leadership and unwavering professionalism she displayed in her many years as Deputy Attorney General, Deputy Director and Executive Director.

BE IT FURTHER RESOLVED that on the 24th day of July 2024, this Resolution shall be recorded upon the permanent record of the New Jersey Racing Commission and a copy, signed by the members of the Racing Commission, be presented to Judith A. Nason in further appreciation of her devoted service to the New Jersey Racing Commission and the State of New Jersey.

Commissioner Vetrano made a motion approve the resolution in tribute to Judith A. Nason. Commissioner DeMarzo seconded the motion and all Commissioners voted yes.

CONSIDER THE APPOINTMENT OF AN ACTING EXECUTIVE DIRECTOR

Assistant Director Salerno proposed that the Commission appoint Sara Ben-David to the position of Acting Executive Director.

Commissioner Vetrano made a motion to approve the appointment of Sara Ben-David to Acting Executive Director of the New Jersey Racing Commission. Commissioner DeMarzo seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF THE OFFICIALS, POOLS, POST-TIME, PRICES AND WAGERING FORMAT FOR FREEHOLD RACEWAY'S 2024 SUMMER/FALL MEET

Assistant Director Salerno stated that on June 19, 2024, General Manager Howard Bruno filed a request to approve the racing and wagering format for Freehold Raceway's summer/fall meet. The meet will begin on August 23rd and continue through December 28th with racing on Fridays and Saturdays and racing on the following Thursdays: September 12, 19, 26, October 3 and 10th. Post-time will be 12:30 pm. The wagering format is included in the meeting packet. The department heads and wagering format

remain the same as those the Commission approved for winter/spring meet earlier this year with the exception of the Announcer, which is to be determined.

Commissioner Vetrano made a motion to approve the officials, pools, post-time, prices and wagering format for Freehold Raceway's 2024 summer/fall meet. Commissioner DeMarzo seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF THE OFFICIALS, POOLS, POST-TIME, PRICES AND WAGERING FORMAT FOR THE 2024 THOROUGHBRED MEET AT THE MEADOWLANDS RACETRACK

Assistant Director Salerno advised that Director of Racing, John F. Heims, filed a request seeking Commission approval of the racing and wagering format for the thoroughbred meet at the Meadowlands. The meet will consist of ten days of all-turf racing on September 20, 21, 27, 28, October 4, 5, 11, 12 14, and 18 with a 7:00 pm post-time with the exception of October 14 which will have a 1:00 p.m. post-time. The wagering format is included in the meeting packet. The officials are the same as last year's Meadowlands' meet with the exception of the Racing Secretary which will be Gerry Stanislawzyk, instead of John Heims.

Commissioner Vetrano made a motion to approve the officials, pools, post-time and wagering format for the 2024 thoroughbred meet at the Meadowlands Racetrack. Commissioner DeMarzo seconded the motion and all Commissioners voted yes.

CONSIDER THE PROPOSED AMENDMENTS TO N.J.A.C. 13:70-29.52 TO ALLOW PERMIT HOLDERS TO FOLLOW A WRITTEN REQUEST PROCESS TO DISTRIBUTE THE PICK (N) CARRY-OVER

Assistant Director Salerno stated that on December 13, 2023, the Commission received a petition for rulemaking filed by John F. Heims, Esq., In-House Counsel for Monmouth Park, requesting that the Commission amend N.J.A.C. 13:70-29.52, The Pick (N), for thoroughbred racing. The petitioner asked the Commission to add a new subsection (p), which would allow the racetrack, upon 48-hour notice to the Commission, to elect to pay out an entire Pick (N) pool, including the carry-over, on a selected day in accordance with subsection (l) of the rule. The petitioner stated 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.

Assistant Director Salerno explained that on April 24, 2024, the Commission granted the petition for rulemaking and proposed amendments to N.J.A.C. 13:70-29.52 that would allow the racing association to elect to pay out an entire Pick (N) pool including the carry-over, on a selected day through a written request process consistent with the wagering rules of other state racing commissions and the Association of Racing Commissioners International (ARCI).

Assistant Director Salerno stated that specifically, N.J.A.C. 13:70-29.52(n) is proposed for amendment to require permit holders to submit a written request for permission to distribute the Pick (N) carry-over on a specific performance for a specified date no greater than one (1) year from the date the request is submitted. Further, the request must contain justification for the distribution and an explanation of the benefit to be derived.

Assistant Director Salerno advised that in addition, N.J.A.C. 13:70-29.52(o) is proposed for amendment to require that if the Pick (N) carry-over is designated for distribution on a specified date and performance in which there are no wagers selecting the first place finisher in each of the Pick (N) contests, the entire pool shall be distributed as a single price pool to those whose selection finished first in the greatest number of Pick (N) contests. The Pick (N) carry-over shall be designated for distribution on a specified date and performance only upon written approval from the Commission or upon the closing performance of the meet.

Commissioner Vetrano made a motion to approve the proposed amendments to N.J.A.C. 13:70-29.52. Commissioner DeMarzo seconded the motion and all Commissioners voted yes.

CONSIDER THE PROPOSED AMENDMENTS TO N.J.A.C. 13:71-27.56 TO ALLOW PERMIT HOLDERS TO FOLLOW A WRITTEN REQUEST PROCESS TO DISTRIBUTE THE PICK (N) CARRY-OVER

Assistant Director Salerno stated that N.J.A.C. 13:71-27.56 is the standardbred (harness) version of the rule that concerns distributing the Pick (N) carry-over. For the reasons just discussed, and to ensure consistency with thoroughbred and harness racing, the Commission proposes to amend N.J.A.C. 13:71-27.56 relating to harness racing. The proposed amendments would require permit holders to follow the same written request process described in Agenda Item A6 to distribute the Pick (N) Carry-Over for harness racing.

Commissioner Vetrano made a motion to approve the proposed amendments to N.J.A.C. 13:71-27.56. Commissioner DeMarzo seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF THE STANDARDBRED BREEDERS & OWNERS ASSOCIATION OF NEW JERSEY'S STATUTORY BUDGET FOR 2024.

Assistant Director Salerno stated that the SBOA has submitted a 2024 budget. The budgeted income for 2024 is \$2,543,000, which is a \$23,000 increase over its 2023 budget. The SBOA anticipates that \$1,849,250 will be dedicated to benevolence programs. This works out to be 72.72% of its funding, which exceeds the 70% minimum required in N.J.A.C. 13:71-1.25(g) by \$69,150.

Commissioner Vetrano made a motion to approve the Standardbred Breeders & Owners Association of New Jersey's statutory budget for 2024. Commissioner DeMarzo seconded the motion and all Commissioners voted yes.

CONSIDER THE INITIAL DECISION IN SAFFIE A. JOSEPH, JR. V. NEW JERSEY RACING COMMISSION, OAL DOCKET NO. RAC 008874-21

Assistant Director Salerno advised that on May 29, 2021, the horse "Wind of Change," trained by Petitioner Saffie A. Joseph, Jr., finished first in the 9th race at Monmouth Park. Post-race testing revealed the presence of Aminocaproic Acid ("Amicar") in the horse's sample which is a prohibited drug in New Jersey at any level. He further explained that split sample testing confirmed the positive.

Assistant Director Salerno stated that the Stewards conducted a hearing and determined that Petitioner violated N.J.A.C. 13:70-1.15, 14A.6, and 14A.9(A)(4). The Stewards fined Petitioner \$1,000, disqualified the horse, ordered loss of purse, and imposed ½ Multiple Medication Violation (MMV) Point. The trainer appealed and the matter was transmitted to the Office of Administrative Law as a contested case.

Assistant Director Salerno stated that on May 20, 2024, the Administrative Law Judge ("ALJ") issued an Initial Decision affirming the findings that Petitioner violated N.J.A.C. 13:70-14A.6 and 14A.9(A)(4), and the penalties imposed by the Stewards. However, as to the Stewards' finding that the post-race positive for Amicar also violated N.J.A.C. 13:70-1.15, the ALJ determined the regulation provides for the authority of the stewards and that the Petitioner could not violate it.

Assistant Director Salerno explained that the Commission has consistently interpreted N.J.A.C. 13:70-1.15 as authorizing the Stewards to impose penalties (fines, suspensions or ruling off) for conduct detrimental to the sport. The ALJ's interpretation presents only a minor issue here in Joseph because the Amicar positive specifically violates two other rules. The ALJ's interpretation of N.J.A.C. 13:70-1.15 in Joseph could be problematic, especially in future NJRC cases.

Assistant Director Salerno stated that allowing the ALJ's interpretation to stand could negatively impact the stewards' use of N.J.A.C. 13:70-1.15 to impose penalties for conduct considered detrimental to the sport when the conduct is not specifically prohibited by another rule.

Assistant Director Salerno explained that the Initial Decision is before the Commission to adopt, reject, or modify. Assistant Director Salerno recommended that the Commission modify the initial decision by authorizing the issuance of the draft final decision.

Commissioner Vetrano made the following motion:

"I do not agree with the ALJ's decision that Petitioner did not violate N.J.A.C. 13:70-1.15. I believe that Petitioner violated N.J.A.C. 13:70-1.15 by violating Commission rules N.J.A.C. 13:70-14A-6 and N.J.A.C. 13:70-14A.9(a)(4) and that the violation of such rules is to the detriment of racing. The Commission has consistently interpreted N.J.A.C. 13:70-1.15 as authorizing the stewards to impose penalties for conduct they view is detrimental to the sport. I move that the Commission adopt the ALJ's findings of fact, conclusion, and the imposed penalty but modify the violations found to include N.J.A.C. 13:70-1.15.

I move that the Commission approve the draft Final Decision and direct staff to issue it on the Commissions' behalf."

Commissioner DeMarzo seconded the motion and all Commissioners voted yes.

CONSIDER THE INITIAL DECISION IN PETER R. WALDER V NEW JERSEY RACING COMMISSION, OAL DOCKET NO. RAC 00330-22

Assistant Director Salerno stated that on September 4, 2021, "Briella," trained by Petitioner Peter Walder, finished second in the 7th race at Monmouth Park. Post-race testing revealed the presence of Aminocaproic Acid ("Amicar") in the horse's sample. Split sample testing confirmed the positive. The Stewards conducted a hearing and determined that Petitioner violated N.J.A.C. 13:70-1.15, 14A.6, and 14A.9(A)(4).

Assistant Director Salerno explained that the Stewards fined Petitioner \$1,000, disqualified the horse, ordered loss of purse, and imposed ½ Multiple Medication Violation (MMV) Point. The trainer appealed and the matter was transmitted to the Office of Administrative Law as a contested case.

Assistant Director Salerno advised that on May 20, 2024, the Administrative Law Judge ("ALJ") issued an Initial Decision affirming the findings that Petitioner violated N.J.A.C. 13:70-14A.6 and 14A.9(A)(4), and the penalties imposed by the Stewards. However, as to the Stewards' finding that the post-race positive for Amicar also violated N.J.A.C. 13:70-1.15, the ALJ determined the regulation provides for the authority of the Stewards and the Petitioner could not violate it.

Assistant Director Salerno stated that the Initial Decision is before the Commission to adopt, reject, or modify. For reasons just discussed in Joseph v. NJRC, Assistant Director Salerno recommended that the Commission modify the initial decision by authorizing the issuance of the draft final decision.

Commissioner Vetrano made the following motion:

"I do not agree with the ALJ's decision that Petitioner did not violate N.J.A.C. 13:70-1.15. I believe that Petitioner violated N.J.A.C. 13:70-1.15 by violating Commission rules N.J.A.C. 13:70-14A-6 and N.J.A.C. 13:70-14A.9(a)(4) and that the violation of such rules is to

the detriment of racing. The Commission has consistently interpreted N.J.A.C. 13:70-1.15 as authorizing the stewards to impose penalties for conduct they view is detrimental to the sport. I move that the Commission adopt the ALJ's findings of fact, conclusion and the imposed penalty, but modify the violations found to include N.J.A.C. 13:70-1.15.

I move that the Commission approve the draft final decision and direct staff to issue it on the Commission's behalf."

Commissioner DeMarzo seconded the motion and all Commissioners voted yes.

CONSIDER THE INITIAL DECISION IN TED SULESKI V. NEW JERSEY RACING COMMISSION,
OAL DOCKET NO. RAC 01592-20

Assistant Director Salerno stated that an investigation was commenced after Commission investigators received information that horses were being shipped from an unlicensed facility to Freehold Raceway on race day. On Wednesday, November 20, 2019, the horse "Dalton Did It," trained by Petitioner Ted Suleski, had been entered to race at Freehold on Saturday, November 23, 2019. On November 23, 2019, Commission investigators determined that the horse was shipped from Ketcham Farms (The Ridge), an unlicensed horse farm, to Freehold Raceway. The investigators informed the Board of Judges and, as a result, "Dalton Did it" was scratched.

Assistant Director Salerno explained that on December 19, 2019, the Board of Judges conducted a hearing and determined that Petitioner violated N.J.A.C. 13:71-1.19, 13:71-1.20, 13:71-2.2, 13:71-7.26(a), 13:71-7.26(d), 13:71-26.4, and N.J.A.C. 13:71-26.7. The judges imposed a 15-day suspension and a \$500 fine. Petitioner appealed and the matter was transmitted to the Office of Administrative Law as a contested case. On June 7, 2024 the Administrative Law Judge ("ALJ") issued an Initial Decision affirming the findings that Petitioner violated N.J.A.C. 13:71-7.26(a) and 13:71-7.26(d), and the penalties imposed by the judges. The ALJ accepted the testimony of all the witnesses.

Assistant Director Salerno stated that similar to the issue in Saffie A. Joseph, Jr. v. NJRC and Peter R. Walder. v. NJRC, the ALJ incorrectly dismissed the judges' finding that Petitioner violated N.J.A.C. 13:71-1.19 for conduct detrimental to the sport. N.J.A.C. 13:71-1.19 states, "The steward and the Board of Judges may fine, suspend or rule off any person who, in their opinion has acted to the detriment of racing or violated the rules." The Commission has consistently interpreted N.J.A.C. 13:71-1.19 as authorizing the judges to impose penalties for conduct detrimental to the sport. The ALJ's interpretation presents a minor issue in this case because Petitioner violated two other rules. The ALJ's interpretation of N.J.A.C. 13:71-1.19 could become an issue in future cases and negatively impact the judges' use of the rule to impose penalties for conduct detrimental to the sport when the conduct is not specifically prohibited by another rule.

Assistant Director advised that the Initial Decision is before the Commission to adopt, reject, or modify. For reasons just discussed in Joseph v. NJRC, Assistant Director Salerno recommended that the Commission modify the initial decision by authorizing the issuance of the draft final decision.

Commissioner Vetrano made the following motion:

“I do not agree with the ALJ’s decision that Petitioner did not violate N.J.A.C. 13:71-1.19. I believe that Petitioner violated N.J.A.C. 13:71-1.19 by violating Commission rules N.J.A.C. 13:71-7.26(a) and N.J.A.C. 13:71-7.26(d) and that the violation of such rules is to the detriment of racing. The Commission has consistently interpreted N.J.A.C. 13:71-1.19 as authorizing the judges to impose penalties for conduct they view is detrimental to the sport. I move that the Commission adopt the ALJ’s findings of fact, conclusions, and the imposed penalty, but modify the violations found to include N.J.A.C. 13:71-1.19.

I move that the Commission approve the draft Final Decision and direct staff to issue it on the Commission’s behalf.”

Commissioner DeMarzo seconded the motion and all Commissioners voted yes.

CONSIDER THE INITIAL DECISION IN KENNETH SANTO TISA V. NEW JERSEY RACING COMMISSION, OAL DOCKET NO. RAC 04818-22

Assistant Director Salerno stated that on February 19, 2022, the horse “Western Bayama,” trained by Petitioner Kenneth Tisa, finished first in the 12th race at Freehold Raceway. The horse’s post-race sample tested positive for the prohibited substance Gabapentin. Petitioner declined split sample testing. The Board of Judges conducted a hearing and determined that Petitioner violated N.J.A.C. 13:71-7.29(a), 23.1, 23.6, and 23.7. The judges imposed a 45 day suspension, fined Petitioner \$1,000, disqualified the horse, ordered loss of purse, and imposed 2 Multiple Medication Violation points. Petitioner appealed and the matter was transmitted to the OAL as a contested case.

Assistant Director Salerno advised that on June 25, 2024, the OAL issued an initial decision which affirmed the findings of violation and the penalties imposed by the Commission’s Board of Judges.

Assistant Director Salerno stated that the initial decision is before the Commission to adopt reject or modify. Staff recommend that the Commission adopt the initial decision.

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

ITEMS FOR DISCUSSION AND INFORMATION

The Assistant Director advised that copies were available of the breakdown of New Jersey wagering on Preakness Stakes day, May 18, 2024, Belmont Stakes day, June 8, 2024 and Meadowlands Pace, July 13, 2024.

Assistant Director Salerno acknowledged receipt of the audited financial statements of the Standardbred Breeders and Owner's Association for the year ending December 31, 2022.

Assistant Director Salerno advised that the next scheduled meeting would be September 18, 2024 also at Monmouth Park racetrack.

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

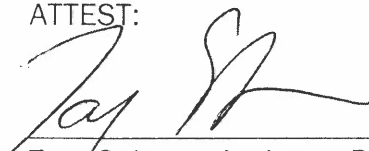
Alice Allen, a member of the public in attendance, discussed the importance of integrity in horse and harness racing. Ms. Allen indicated that she has spoken before regulatory bodies and state legislatures regarding the need to improve integrity. Ms. Allen stated that she has a thumb drive containing pertinent information pertaining to the federal indictment and the drugging of horses. Ms. Allen advised that she possesses evidence of wrongdoing within the racing industry.

In response to the statement that she has evidence of wrongdoing, Assistant Director Salerno asked Ms. Allen to forward whatever information she has to the New Jersey Racing Commission for review and investigation.

There were no additional comments or questions.

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

ATTEST:

A handwritten signature in black ink, appearing to read 'Tom Salerno', is written over a horizontal line.

Tom Salerno, Assistant Director