



Gaming Commission

354 Broadway, P.O. Box 7500, Schenectady, NY 12301-7500
www.gaming.ny.gov

NEW YORK STATE GAMING COMMISSION

IN THE MATTER OF STEVEN M. ASMUSSEN

NOTICE OF HEARING
MO 1-2024

To: STEVEN M. ASMUSSEN (“Respondent”)

PLEASE TAKE NOTICE that pursuant to Section 220(3) of the Racing, Pari-Mutuel Wagering and Breeding Law (“Racing Law”), Article 3 of the State Administrative Procedure Act, 9 NYCRR Part 4550, and 9 NYCRR § 4002.10, a hearing will be held on **September 18, 2024, at 10:00 a.m.** to determine whether Respondent’s occupational license to participate in Thoroughbred racing in New York State as an owner-trainer should be revoked on the following grounds:

- (a) Respondent’s financial responsibility, experience, character and general fitness are such that Respondent’s participation would be inconsistent with the public interest, convenience or necessity and with the best interests of racing generally in conformity with the purposes of Article II of the Racing Law;
- (b) Respondent is financially irresponsible;
- (c) Respondent has been guilty of or attempted any fraud or misrepresentation in connection with racing or otherwise or has been guilty of or engaged in similar, related or like practices;

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- (d) Respondent has violated or attempted to violate any law with respect to racing in any jurisdiction or has been guilty of or engaged in similar, related or like practices; and
- (e) Respondent has engaged in one or more improper, corrupt or fraudulent acts or practices in relation to racing or has conspired with any other person to commit or have assisted in the commission of any such act or practice; and/or that revocation of Respondent's license is necessary to protect the public health, safety or welfare,

in violation of one or more of Racing Law § 220(2) and/or 9 NYCRR §§ 4002.8, 4002.9(a), 4002.19 and 4042.1(f), in that:

1. Respondent and/or an entity operated or controlled by Respondent was found by the United States District Court for the Western District of Kentucky, in Civil Action No. 3:15-CV-562-CHB, on or about March 4, 2024, to have engaged in willful violations of the federal Fair Labor Standards Act ("FLSA") with respect to compensation of racing employees, despite having been advised by the United States Department of Labor of similar issues during the course of previous investigations concerning compensation of Respondent's employees in New York, despite having been investigated and complaints issued against Respondent alleging violations of the FLSA, despite being enjoined from violating the FLSA through Consent Judgments, and despite acknowledging responsibility to comply with the FLSA. As a result, the United States District Court for the Western District of Kentucky, in Civil Action No. 3:15-CV-562-CHB, issued a judgment against Respondent in the amount of \$486,520.26 in damages for back-wages and liquidated damages;
2. Respondent and/or an entity operated or controlled by Respondent was found by the United States District Court for the Western District of Kentucky, in Civil Action No. 3:15-CV-562-CHB, on or about March 4, 2024, to have utilized timesheets for employees that were "inaccurate and largely useless for payroll purposes" and, despite having been put on notice previously of similar

infractions, failed to make “any real efforts to comply with the FLSA, instead implementing a system of completely inaccurate and useless time records and [once] again failing to pay wages based on actual hours worked”; and

3. Respondent has engaged in a pattern and practice of financial irresponsibility and/or negligent or willful deprivation of wages and other benefits to employees to which they are otherwise entitled to by law, as evidenced by the following:

a. “Civil penalties” assessed against Respondent by the U.S. Department of Labor under Case Number 2021-FLS-00007 based on allegations that Respondent failed to pay employees overtime wages, initially assessed at \$115,500, reduced to \$46,200, as per the Consent Order of September 8, 2021 and the Decision & Order approving such Consent Order, dated September 9, 2021.

b. “Back wages” and “civil penalties” assessed against Respondent by the U.S. Department of Labor under Case Number 2022-TNE-00003 based on allegations that Respondents violated the H-2B provisions of the Immigration & Naturalization Act, with back wages assessed at \$129,776.58 and civil penalties initially assessed at \$164,505.47, reduced to \$75,223.42, as per the Consent Findings and Order of August 3, 2023, and the Order Approving Consent Findings, dated August 8, 2023.

c. Respondent’s agreement (i) to be enjoined from further violations of the FLSA, (ii) to pay employees fair wages and overtime wages, (iii) to keep accurate records, and (iv) to pay “reimbursement of wages” related to employment practices in New York for the time period of July 24, 2010 through December 20, 2012, in the amount of \$29,095.97 (\$19,397.31 in overtime wages; \$9,698.66 in liquidated damages) pursuant to the Consent Judgment entered in *Solis v. KED Equine LLC, et al*, Case 2:12-cv-06368-LDW-ARL in the U.S. District Court for the Eastern District of New York, filed on January 24, 2013.

- d. Respondent's agreement (i) to be enjoined from further violations of the FLSA, (ii) to pay employees fair wages and overtime wages, (iii) to keep accurate records, and (iv) to pay "reimbursement of wages" related to employment practices in New York for the time period of June 27, 2016 through September 8, 2020, in the amount of \$563,800 (\$281,900 in overtime wages; \$281,900 in liquidated damages) pursuant to the Consent Judgment entered in *Walsh v. KED Equine LLC, et al*, Case 2:19-cv-03389-KAM-SJB in the U.S. District Court for the Eastern District of New York, filed on September 13, 2021.

- e. Findings by the U.S. District Court for the Western District of Kentucky that Respondent's FLSA violations in Kentucky including the willful failures (i) to pay employees fair wages and overtime wages, and (ii) to keep accurate records, related to employment practices in Kentucky for the time period of June 25, 2013 to May 22, 2019, in the amount of \$486,520.26 (\$243,260.13 in back wages; \$243,260.13 in liquidated damages) pursuant to the Memorandum Opinion and Order entered in *Su v. KED Equine LLC, et al*, Case 3:15-cv-562-CHB in the U.S. District Court for the Western District of Kentucky, filed on March 4, 2024 (*Su v. KDE Equine, LLC*, 2024 U.S. Dist. LEXIS 37105 (WDKY 2024)).

PLEASE TAKE NOTICE that Respondent may be represented by counsel, cross-examine witnesses, and present evidence and arguments on Respondent's own behalf. Interpreter services will be made available to deaf persons and people who are not English language proficient at no charge but should be requested in writing at least one week before the hearing date. Respondent is responsible to deliver this Notice of Hearing to Respondent's attorney, if Respondent has or retains one. This hearing shall be a *de novo* hearing that may result in the imposition of any legally available penalty including a license suspension or revocation and a fine not to exceed \$25,000 pursuant to Racing Law § 116.

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PLEASE TAKE NOTICE the Commission typically conducts hearings by videoconference. Under this procedure, the hearing officer may preside by videoconference. Please note, Respondent must contact the Commission to arrange for Respondent, including Respondent's attorney and witnesses, to videoconference from Respondent's own location(s). To participate in Respondent's hearing by videoconferencing from Respondent's own physical location *Respondent must*, at least 10 days before the scheduled hearing date, telephone the Commission at (518) 388-3706 to establish Respondent's videoconference location(s) and to verify that Respondent will appear on Respondent's scheduled hearing date. To participate in Respondent's hearing in person, rather than by videoconference, Respondent (or Respondent's counsel, if any) must telephone the Commission at (518) 388-3706 at least ten days before the scheduled hearing date, to arrange for Respondent, Respondent's counsel, or any of Respondent's witnesses to appear in person at the Commission's headquarters located at 354 Broadway, Schenectady, New York.

PLEASE TAKE NOTICE that the Commission demands that if Respondent wishes to use, mark, or introduce demonstrative evidence (*e.g.*, documents) at the hearing, then Respondent must provide a copy of such evidence in advance of the hearing date to the Commission's assigned counsel and the hearing officer, pursuant to 9 NYCRR § 4550.4. Any demonstrative evidence not possessed by all parties and the hearing officer at the time of the hearing may be barred from use.

PLEASE TAKE NOTICE that the hearing may be adjourned at the discretion of the hearing officer for good cause shown upon the request of any party. Requests for adjournments must be submitted at least two business days before the date of the scheduled hearing. Absent a serious emergency matter, no requests for adjournments will be granted within two business days of the scheduled hearing date. To request an adjournment, Respondent must contact the hearing officer, Clark Petschek at clarkpetschek@aol.com, with concurrent notice to the Commission's assigned counsel, Jessica A. Desany, at jessica.desany@gaming.ny.gov as soon as possible. After the opposing party has had the opportunity to be heard regarding the request for adjournment, such request must be approved by the hearing officer to take effect. **If Respondent fails to appear at the hearing without an approved adjournment, Respondent will be in**

default, and the Commission may proceed in Respondent's absence with the hearing.

DATED: SCHENECTADY, NEW YORK
June 13, 2024


KRISTEN M. BUCKLEY
ACTING SECRETARY

Attachments:

1. New York State Notice of Important Document (Language Notice)
2. Summary of Hearing Procedures



Governor Kathy Hochul

New York State Notice of Important Document

English	This is an important document. If you need help to understand it, please call 518-388-3365. An interpreter will be provided free.
العربية Arabic	هذه وثيقة هامّة إذا كنت بحاجة للمساعدة في فهمها، يرجى الاتصال بالرقم 5183883365. سيتم توفير مترجم فوري بدون مقابل.
বাংলা Bengali	এটি একটি গুরুত্বপূর্ণ নথি। যদি এই নথি বুঝতে আপনার কোনো সাহায্যের প্রয়োজন হয়ে থাকে, তাহলে অনুগ্রহ করে আমাদের ফোন নম্বরে 518-388-3365 ফোন করুন। এই জন্য একজন দোভাষী বিনামূল্যে সরবরাহ করা হবে।
简体字 Simplified Chinese	这是一份重要文件。如果您需要帮助理解此文件，请打电话至 518-388-3365。您会得到免费翻译服务。
繁體字 Traditional Chinese	這是一份重要文件。如果您需要幫助理解此文件，請打電話至 518-388-3365。您會得到免費翻譯服務。
Kreyòl Ayisyen Haitian Creole	Sa a se yon dokiman enpòtan. Si ou bezwen èd pou konprann li, tanpri rele: 518-388-3365. Y ap ba ou yon entèprèt gratis.
Italiano Italian	Il presente documento è importante. Per qualsiasi chiarimento può chiamare il numero 518-388-3365. Un interprete sarà disponibile gratuitamente.
한국어 Korean	□□□□□□□□□□. □□□□□□□□□□, □□□□□□□□□□: 518-388-3365. □□□□□□□□□□.
Język Polski Polish	To jest ważny dokument. Jeżeli Pan/Pani potrzebuje pomocy w zrozumieniu go, prosimy zadzwonić pod numer 518-388-3365. Bezpłatnie zapewnimy usługi tłumaczeniowe.

Русский Russian	Это важный документ. Если Вам нужна помощь для понимания этого документа, позвоните по телефону 518-388-3365. Переводчик предоставляется бесплатно.
Español Spanish	Este es un documento importante. Si necesita ayuda en entenderlo, por favor llame al 518-388-3365. Se le proveerá un intérprete gratis.
אידיש Yiddish	דאס איז א וויכטיגע דאקומענט. אויב איר דארפט הילף עס צו פארשטיין, רופט ביטע 518-388-3365. איינער וועט עס אייך איבערטייטשן אומזיסט.



Gaming Commission

SUMMARY OF HEARING PROCEDURES

Summary of Procedures for Adjudicatory Proceedings before the Commission, as Set Forth in New York State Gaming Commission Rules, 9 NYCRR Part 4550, as required by Section 301(3) of the State Administrative Procedure Act.

1. The hearing will be held before an impartial hearing officer.
2. You must be ready, and prepared with all of your evidence, to present your case on the hearing date.
3. You may be represented by an attorney at the hearing.
4. Interpreter services shall be made available upon advance request, for persons who are not English Language proficient or who are deaf, at no charge. Such request should be made as soon as possible by contacting the Office of Counsel at the Commission.
5. You may file a written answer to the Notice of Hearing or Order to Show Cause. If you do so, it should be mailed, delivered electronically or hand delivered before the hearing date. You will have a full opportunity at the hearing, whether or not you file an answer, to dispute or explain any charges made against you in the Notice of Hearing or Order to Show Cause.
6. You may have witnesses testify at the hearing. If you believe a witness will not appear voluntarily and you do not have an attorney representing you, you may request the Hearing Officer to furnish you with a subpoena to compel the attendance of a witness. If the Hearing Officer issues a subpoena, however, the service of the subpoena upon the witness is your responsibility.
7. A hearing may be postponed upon your request if there is a good reason why the hearing should not begin on the scheduled hearing date. To request a postponement you should contact the Hearing Officer or Office of Counsel at the Commission as soon as possible, at least two days before the hearing date. You may be required to put your request in writing.
8. A hearing in progress may be adjourned at your request if you can give good reasons and support your request with written evidence, such as, for example, a letter from a doctor or sworn statement (affidavit) that a witness will be unavailable on the date of the hearing.

9. If you do not appear at the hearing on the denial of an application for a license or a suspension, your request for such hearing will be deemed withdrawn.
10. If you do not appear (whether personally or by a representative) at the hearing, the hearing may also still take place as scheduled and a decision on the charges may be made. This decision may result in a fine, the revocation or suspension of your licenses, and the denial of any pending license applications.
11. If you do not appear at a hearing and a decision is made against you, the hearing may be reopened upon your written application if you satisfy the hearing officer that there were valid reasons for your failure to appear and your failure to request an adjournment or postponement and that you have a meritorious defense. If you do appear at a hearing and a decision is made against you, the hearing may be reopened upon your written application to the hearing officer if you can show that there is newly discovered evidence or a compelling reason to reopen.
12. Once a decision is made against you, you might under certain circumstances be able, if you wish, to seek review in the courts. Such a proceeding must be instituted within applicable time limitations. Your right to review is not connected in any way with your right to reopen a hearing as described in paragraph 11, above, and an application to reopen does not extend your time to institute a proceeding in the courts.