

NYS Gaming Commission - Public Meeting Transcript

August 22, 2022 1 p.m.

633 3rd Avenue, 37th Floor Boardroom, New York, NY

Executive Director Robert Williams: New York State Racing, Pari-Mutuel Wagering and Breeding Law § 102 provides that the New York State Gaming Commission shall consist of seven members appointed by the governor by and with the advice and consent of the Senate. Four members confirmed by the New York State Senate are necessary to afford the Commission an ability to establish a quorum and undertake action. This present meeting of the Commission is now called to order.

This meeting is being conducted in conformity with Chapter 1 of the Laws of 2022. Such Chapter authorizes State and local government entities to meet and take such action authorized by law without permitting in public in-person access to meetings and authorizes such meetings to be held remotely by conference call or similar service, provided that the public can view or listen to such proceeding and that such meetings are recorded and later transcribed. Accordingly, this Commission meeting is being conducted in conformance with such allowance and we are both allowing the public to listen to our proceeding, and we are recording today's meeting for transcription, as required.

Ms. Secretary, will you please call the role?

Acting Secretary Kristen Buckley (via phone): John Crotty

Commissioner John Crotty (via phone): Here.

Kristen Buckley: Peter Moschetti. Brian O'Dwyer.

Chair Brian O'Dwyer: Here.

Kristen Buckley: Christopher Riano

Commissioner Christopher Riano: Here.

Kristen Buckley: Marissa Shorenstein

Commissioner Marissa Shorenstein: Here.

Kristen Buckley: Jerry Skurnik

Commissioner Jerry Skurnik: Here.

Robert Williams: Ms. Secretary, please have the record reflect the quorum of established members is present, thus enabling the transaction of business.

Chair O'Dwyer: Minutes of the Commission meeting conducted on June 29, 2022, have been provided to the members in advance. At this time, I'd like to ask the members if there are any edits, corrections or amendments. Hearing none, Ms. Secretary, please let the record reflect the minutes were accepted.

As provided, New York State Racing, Pari-Mutuel Wagering and Breeding Law authorizes the Commission to promulgate rules and regulations that it deems necessary to carry out its responsibilities. To that regard, the Commission will from time to time, promulgate amendments pursuant to the State Administrative Procedure Act. We have two rule proposals. Mr. Williams?

Robert Williams: For Commission consideration is a proposed rulemaking to address ineligible potential claimants in Thoroughbred claiming races, establish procedures for resolving challenges to claims, and address horse custody if the Stewards discover a claimant had been ineligible. The genesis of this proposal is internal, following practical identification of process deficiencies.

In general, a racetrack's racing office is tasked with verifying claim ineligibility – namely that a claimant is licensed and has participated in the current or prior race meeting and has adequate funds on deposit to make a claim.

Although rare, an administrative error regarding eligibility can lead to substantial complications when a horse is in the custody of an ineligible claimant as the horse may be treated or trained in a manner inconsistent with the desires of the rightful owner.

A clear process for resolution of claimed objections and Stewart orders regarding horse ownership are necessary to ensure the disputes are determined promptly. Accordingly, this proposal would make explicit the current practice that it is the responsibility off the racetrack's racing secretary to verify the eligibility of potential claimants and to conduct the disposition of the horse by lot in the event of multiple claims. The proposal would also establish deadlines for an objection to a claim award and procedures to resolve disputes.

Finally, the proposal would make an explicit that a horseperson who enters a potential claim despite being ineligible, and racetrack office personnel charged with verifying eligibility who fail to do so properly, may face Commission discipline.

Chair O'Dwyer: Commissioners, any questions on the proposal of a rule regarding ineligible potential claimants in Thoroughbred claiming graces? Hearing none may we have a motion to propose the rule?

Commissioner Shorenstein: So moved.

Chair O'Dwyer: Seconded?

Commissioner Riano: Second.

Chair O'Dwyer: Any discussion on the motion? All in favor?

Commissioners: Aye

Chair O'Dwyer: The motion carries.

Robert Williams: Commissioner Moschetti asked me to note that in his opinion, claiming disputes have been a reoccurring issue that requires regulatory address. He asked that the record reflect that had he been present, he would have voted to propose the rule.

Chair O'Dwyer: Next proposal?

Robert Williams: In regards consensus rule making for substitute Stewards, Chapter 240 of the laws of 2022 eliminated an anachronistic provision in the Racing, Pari-Mutuel Wagering and Breeding Law section 218. The law had provided that the absence or inability of the State Steward in Thoroughbred racing to act, or in the event one of the other two Stewards are not appointed, a Steward's duties were to be performed without compensation by a Commission member. Now, an absent Steward's duties shall be performed by a person designated by the Commission, which allows the Commission to retain a qualified person and compensate such official appropriately, eliminating the potential role of a Commission member as an uncompensated Steward. Commission rule 4022.5 mirrors the prior law and must be updated to reflect this new law. Staff recommends that the Commission authorize the proposal of this rule making as a consensus permanent rule.

Chair O'Dwyer: Commissioners: any questions on the proposed rule regarding substitute Stewards? Hearing none, may I have a motion to propose this rule?

Commissioner Riano: So moved.

Chair O'Dwyer: Second?

Commissioner Skurnik: Second.

Chair O'Dwyer: Any discussion on the motion? All in favor?

Commissioners: Aye

Chair O'Dwyer: Alright. The motion carries. The next item of scheduled business regards hearings and adjudications. Today, we have one adjudication. Mr. Williams?

Robert Williams: On January 21, 2022, the Bureau of Licensing issued a Notice of License Suspension to Four Brothers Deli and Grill in South Ozone Park in Queens. The notice informed Four Brothers of a six-month suspension for engaging conduct that that constitutes fraud, deceit, misrepresentation or conduct prejudicial to

public confidence in the state lottery. The notice stated that the action was taken because the licensee was found to be in possession of untaxed cigarettes and selling tobacco product without a valid Certificate of Registration, as reported by the New York State Department of Taxation and Finance.

Four Brothers requested a hearing, which was conducted on July 20, 2022. The Hearing Officer submitted a report to the Commission dated of July 27, recommending that Four Brothers' license be revoked with the period from January 21, 2022 through the date of the Commission's decision deemed a suspension.

Chair O'Dwyer: The Commission duly deliberated and considered this matter and determined, upon a 5-to-nothing vote, to sustain the Hearing Officer's Report and Recommendations. Is there any new or old business?

I did want to report to my fellow commissioners my activity since taking over very briefly. Mr. Williams accompanied me to both the racetrack at Belmont and the racetrack at Saratoga, where I was able to view the backstretch and some of the concerns I have – and continue to have – about the housing for the backstretch workers. And we will be addressing those in the near future.

I was also able to go to Monticello to see the casino and I was able to work with that. I've had various meetings with members of the Commission. I'm looking forward to sitting down individually with each of my fellow Commissioners so that I can get a little more up to speed on my duties. And obviously, any Commissioner that has any particular concerns: please, let me know. I'd like to address those in the future. I'd like to thank Mr. Williams in particular for his work in helping me un terms of getting up to speed on what obviously is a far larger job than I was told it was going to be. Thank you, Mr. Williams, for that.

Do you have any other items for consideration? Hearing none, we will set at a future date for a September meeting and Secretary Buckley will be in contact with each of you to find the appropriate dates. Do I have a motion to adjourn?

Commissioner Skurnik: So moved.

Chair O'Dwyer: The meeting is adjourned. Thank you all.

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