

## **MINUTES**

### **NEW YORK STATE RACING AND WAGERING BOARD**

#### **MEETING OF AUGUST 18, 2004**

A meeting of the New York State Racing and Wagering Board was held on Thursday, August 18, 2004 at 10:00 a.m. in the Gideon Putnam Room located on the 1<sup>st</sup> Floor in the Administration Building at the NYS Office of Parks, Recreation and Historic Preservation in the Saratoga Spa State Park, Saratoga Springs.

The meeting was called to order at 10:10 a.m.

#### **In Attendance Were:**

Michael J. Hoblock, Jr., Chairman

Cheryl Buley, Member

Edward Martin, Executive Director

Erin Dahlmeyer, Secretary to the Board

Robert Feuerstein, General Counsel

Thomas Casaregola, Director of Audits & Investigations

Joseph Lynch, Chief of Racing Operations

#### **Also in Attendance Were:**

Dianne Landor, NYSR&WB

Stacy Clifford, NYSR&WB

Tony Apollaro, Suffolk OTB

**OPEN COMMENT PERIOD: The open comment period was held after the Board meeting at 10:30 a.m. Anthony Apollaro, President of Suffolk OTB stated that he was disappointed to see that the OTB's were not part of the new budget that was passed (regarding VLT's, takeout and the new Gaming Commission). He also stated that he would be spending more time at Racing & Wagering Board meetings and at the Capital instead of using lobbyists. He has been working with Ray Casey regarding "takeout" to make a presentation. They have tried to open the lines of communication with NYRA but to no avail. He stated that offshore rebates are hurting their business. The Chairman stated that the Board is working on the issue of rebates and will be following up. Open comment ended at 10:45 a.m.**

**A.** The Board approved the minutes of the Board meeting held on July 22, 2004.

## **B. ITEMS PREVIOUSLY APPROVED OR DEFERRED BY THE CHAIRMAN.**

### **1. MONTICELLO RACEWAY REQUEST TO SIMULCAST VARIOUS LOCATIONS IN 2004**

For entry into the minutes, on July 20, 2004, approval was granted for the request by Monticello Raceway to amend its simulcast plan of operation enabling the import of simulcasts from Thistledown Race Track in Ohio during the calendar year 2004.

This simulcast is permitted whenever in accordance with the Racing Law.

\* For entry into the minutes, on July 29, 2004, approval was granted for the request by Monticello Raceway to amend its plan of operation enabling the import of the year 2004 harness simulcasts from The Red Mile in Lexington, Kentucky.

This simulcast may be utilized whenever in compliance with the Racing Law.

### **2. SARATOGA HARNESS REQUEST TO SIMULCAST VARIOUS LOCATIONS IN 2004**

For entry into the minutes, on July 20, 2004, approval was granted for the request by Saratoga Harness to amend its simulcast plan of operation enabling the import of both the current harness and the Fall thoroughbred simulcast signals from Hawthorne Race Course in Illinois.

The Board also acknowledges the receipt of a separate simulcast contract to export the Saratoga Harness simulcasts to Hawthorne Race Course during the remainder of the 2004 Saratoga Harness season.

\* For entry into the minutes, on July 29, 2004, approval was granted for the request by Saratoga Harness to amend its simulcast plan of operation enabling the import of simulcasts from the harness racetrack known as Colonial Downs in Kent, Virginia.

This approval is valid for the remainder of the year 2004 and this simulcast may be utilized whenever in compliance with the Racing Law.

\* For entry into the minutes, on August 6, 2004, approval was granted for the request by Saratoga Harness to amend its simulcast plan of operation enabling the import of simulcasts from Louisiana Downs in Bossier City.

This approval is for the remainder of the year 2004 thoroughbred-racing season.

### **3. YONKERS RACEWAY REQUEST TO SIMULCAST VARIOUS LOCATIONS IN 2004**

For entry into the minutes, on July 20, 2004, approval was granted for the request by Yonkers Raceway to amend its

simulcast plan of operation enabling the import of simulcasts from the Pompano Park harness racetrack in Florida.

The Pompano Park agreement is through June 30, 2005, however the representative horsemen's group has issued the federally required letter for this simulcast to take place through December 31, 2004 only. Therefore, a new horsemen's letter of permission must be filed with the Board to continue with Pompano Park simulcasts in 2005.

The Board also acknowledges the receipt of the agreement with Northville Downs in Michigan to receive the simulcast exports from Yonkers during the remainder of 2004. Consistent with Board policy, all contracts for every imported simulcast signal, including imports and exports from in-state and contiguous states must be forwarded to the Board for approval. A schedule of destinations for all other Yonkers Raceway simulcast signal exports are to be forwarded to the Board on a monthly basis.

\* For entry into the minutes, on August 6, 2004, approval was granted for the request by Yonkers Raceway to amend its simulcast plan of operation enabling the import of harness simulcasts from Rockingham Park in New Hampshire throughout the remainder of their 2004 live race meeting.

The Board also approved an addendum to the existing agreement with the Maywood Trotting Association to provide the interstate simulcasts of harness fair races from The Springfield and The DuQuois Illinois Fairs.

#### **4. SUFFOLK OTB REQUEST TO OFFER PROMOTIONS**

For entry into the minutes, on July 20, 2004, approval was granted for the request by Suffolk Regional OTB to conduct various promotional giveaways. Approved are the individual branch promotions scheduled on the Fridays of July 30<sup>th</sup>, August 6<sup>th</sup> and August 13<sup>th</sup> at the branches listed on the submitted application, dated July 16, 2004.

Suffolk Regional OTB is not charging any fee whatsoever to the customer and the prizes awarded will be as listed in the submitted application. All branch promotions are to be conducted under the rules as submitted to the Board.

#### **5. MONTICELLO RACEWAY REQUEST TO ADD RACING DATES**

For entry into the minutes, on July 29, 2004, approval was granted for the request by Monticello Raceway to amend its plan of operation by adding an additional racing date of Thursday, August 19<sup>th</sup> to its current schedule for the year 2004.

#### **6. NYRA REQUEST TO OFFER MYSTERY VOUCHER PROMOTION**

For entry into the minutes, on July 29, 2004, approval was granted for the request by NYRA to issue the number of mystery vouchers in the denominations as submitted and per the agreed NYS Racing & Wagering Board-NYRA guidelines for a promotion valid on Saturday, September 11<sup>th</sup> and Saturday, October 30<sup>th</sup> only.

These mystery vouchers would be redeemable only on the date as printed on the face of the voucher and only at Belmont Park on Saturday, September 11<sup>th</sup> and at Aqueduct Race Track on Saturday, October 30<sup>th</sup>. A patron with a mystery voucher may be escorted to and from designated windows to redeem that voucher without paying admission or parking fees.

As with all previous voucher distributions, the Board reserves the right to audit results of these two specific voucher promotions.

#### **7. SARATOGA HARNESS REQUEST TO AMEND PLAN OF OPERATION**

For entry into the minutes, on July 29, 2004, approval was granted for the request by Saratoga Harness to amend its plan of operation enabling 15 pari-mutuel races on each night's program whenever needed for the month of August only.

This approval is valid through August 7<sup>th</sup> only, with the understanding that all New York State Racing and Wagering Board samples can be collected. Should there be no problem in this sample collection, this approval is extended through the remainder of August.

\* For entry into the minutes, on August 9, 2004, approval was granted to Saratoga Harness to amend its plan of operation enabling 15 pari-mutuel races on each night's program during the remainder of the month of August, whenever needed.

The 15 race card nights will begin on August 17, 2004.

#### **8. MONTICELLO RACEWAY REQUEST TO AMEND RACING DATES**

For entry into the minutes, on August 4, 2004, approval was granted for the request by Monticello Raceway to amend its plan of operation by canceling the approved race date of Thursday, August 19<sup>th</sup> and adding the Friday racing dates August 13<sup>th</sup>, 20<sup>th</sup> and 27<sup>th</sup> to its current schedule for the year 2004.

#### **9. NYRA REQUEST TO OFFER PROMOTION - WEBSITE**

For entry into the minutes, on August 4, 2004, approval was granted for the request to conduct a second 2004 Saratoga Race Course Sudden Death Internet handicapping contest.

The contest is approved for the remainder of the year 2004 Saratoga Race Course race meeting beginning on August 18<sup>th</sup> through Monday, September 6<sup>th</sup> with the condition of a

ten dollar entry fee per contestant and all paid entry fees returned to the winners as outlined in the rules.

#### **10. NASSAU OTB REQUEST TO OFFER HANDICAPPING CONTEST**

For entry into the minutes, on August 4, 2004, approval was granted for the request by Nassau OTB to offer a promotion involving a ten dollar entry fee and a two dollar parlay ticket on six NYRA races.

This contest will be conducted per the submitted rules and will occur each Wednesday at The Race Palace teletheater beginning on Wednesday, August 11<sup>th</sup>. All monies collected as entry fees will be distributed as prizes. This approval is effective immediately.

#### **11. SARATOGA HARNESS REQUEST TO CONDUCT HANDICAPPING CONTEST**

For entry into the minutes, on August 6, 2004, approval was granted for the request by Saratoga Harness to conduct a handicapping contest and to award the winner of the August 18<sup>th</sup> handicapping contest a paid trip to Disney World in Florida, including roundtrip airfare and lodging for three nights.

This handicapping challenge will be conducted per all rules submitted to the Board with the Saratoga Harness promotional application, dated July 26, 2004.

### **C. ITEMS PREVIOUSLY APPROVED, DENIED OR DEFERRED BY THE BOARD**

#### **1. EMERGENCY RULEMAKING TO IMPLEMENT RECIPROCAL OCCUPATIONAL LICENSING OF VIDEO LOTTERY GAMING EMPLOYEES**

For entry into the minutes, on July 23, 2004, the Board approved the emergency adoption amending Sections 4002.1 and 4101.24 of the Title 9 NYCRR, which provides a mechanism for the Board to deem an individual to be licensed by the Board as a video lottery gaming employee upon notification from Lottery that the individual will be issued a license by Lottery as a video lottery gaming employee. The Lottery has implemented regulations with license standards that should effect at least as strict a licensing regimen as used by this Board. This reciprocity is limited to those who work exclusively in the employ of the video lottery gaming operation. There is a limited expansion approach to authorize the reciprocal arrangement for food and beverage service workers who do not work in the backstretch

or other non-public areas of the racetrack. There will be no fee required for the reciprocal license.

The amendments would become effective upon filing with the Department of State and would remain in effect for ninety (90) days.

## **2. VERNON DOWNS STOCK OWNERSHIP OF RACEWAY VENTURES LLC**

For entry into the minutes, on July 23, 2004, the Board determined that it is inconsistent with the public interest, convenience or necessity, or with the best interests of racing generally that Raceway Ventures LLC and Frank Leo and Patrick Danan continue to be stockholders or the beneficial owners of any stock interest. The Board ordered that Raceway Ventures LLC as well as Frank Leo and Patrick Danan be required to dispose of their stock and any beneficial interest in Mid-State Raceway, Inc. by August 23, 2004. A notice of hearing accompanied the order with a hearing date of August 2, 2004.

This order was issued pursuant to Racing, Pari-Mutuel Wagering and Breeding Law §303 to order the disposal (i.e. divestiture) of the stock interests held by Raceway Ventures LLC and its disclosed majority interest members, Frank Leo and Patrick Danan.

## **3. EMERGENCY RULEMAKING VOLUNTARY SELF-EXCLUSION □ PARTS 4044, 4123, 4237 & 5212**

For entry into the minutes, on July 27, 2004, the Board approved an amendment as an emergency rulemaking and a proposed rulemaking to add Parts 4044, 4123, 4237 and 5212 to the Board rules and regulations.

Previously, the Board proposed these rules to implement Chapter 434 of the Laws of 2002. The Board proposed the addition of thoroughbred, harness, quarterhorse and off-track betting rules, Parts 4044, 4123, 4237 and 5212, concerning the voluntary exclusion of persons from certain pari-mutuel wagering venues and voluntary limits on telephone wagering accounts.

These amendments will become effective as an emergency rule upon filing with the Department of State and will expire as an emergency rule 90 days after filing.

Additionally, the amendments will be filed as a proposed rulemaking, which is necessary for the rule to become permanent. There will be a 45-day comment period. At the end of that period, the proposed rule and the public comments will be presented to the Board for consideration of final adoption.

#### **4. VERNON DOWNS - SUMMARY SUSPENSION OF TRACK AND SIMULCAST LICENCES**

For entry into the minutes, on July 28, 2004, the Board approved the summary suspension of the Mid-State Raceway, Inc. (operating as Vernon Downs) 2004 track and simulcast licenses, pursuant to Racing Law Sections 307, 320, 321, 1003, 1004 and 1007 upon a finding that the public welfare imperatively requires such action. The suspension will remain in effect pending further determination of the Board following a hearing to be promptly instituted and determined.

Vernon Downs is unable to conduct live racing in accordance with its license due to severe and overwhelming fiscal distress. Further, Vernon Downs has failed to conduct racing in accordance with its license, Board Rule 4118.1 and agreement with the representative horsemen's group by failing to pay purses earned by horsemen in races of recent weeks. Vernon has indicated that it does not have the financial wherewithal to pay the outstanding purse obligations or any that would be incurred if they operate. Further indication of the dire financial condition is the notification by the municipality that water sewer service will be discontinued unless payment of bills is effected by August 2, 2004.

#### **5. RULEMAKING PROPOSAL - PROGRAMMING OF JOCKEYS □ RULE 4025.33**

For entry into the minutes, on July 30, 2004, the Board approved the amendment as a rule proposal to amend Rule 4025.33 with regard to the naming of back-up riders. NYRA requested that the Rule be amended so that back-up riders will not need to be named on an also eligible horse where a jockey in the main body is on to ride them as first call.

Unlike the original proposed text, the new proposed text retains an important portion of the second sentence of 4025.33(a)(1)(i) that mandates that no jockey may be named to ride more than one horse in a race unless it is on an also eligible requirement and deletes only the back-up rider, for the also eligible horse.

The proposal would repeal the existing text and replace it with paragraph a, which addresses naming of jockeys for the main body of a race and paragraph b, which governs other situations.

The proposal will be submitted to GORR with Notice of Intent to Propose and other required submissions. Publication in the *State Register* as a proposal would occur only after receipt of approval for publication.

## **6. EMERGENCY RULEMAKING □ ERYTHROPOIETIN, DARBEPOIETIN, RESERPINE AND FLUPHENAZINE**

For entry into the minutes, on July 30, 2004, the Board approved the emergency adoption of thoroughbred and harness rules to address the use of the substances erythropoietin and darbepoietin and the drugs reserpine and fluphenazine, in order to preserve the general welfare as well as the health and safety of the racing participants. The amendments would become effective upon filing with the Department of State and would be effective for ninety days.

## **7. EMERGENCY RULEMAKING-THOROUGHBRED TRIFECTA BETTING ENTRIES - RULE 4011.22**

For entry into the minutes, on July 30, 2004, the Board approved the proposed emergency rulemaking of Board Rule 9 NYCRR 4011.22(i) as it pertains to the authorization of trifecta wagering in certain thoroughbred races where less than six horses are competing in the field.

The rule will remain in effect for 90 days upon filing with the Department of State.

## **8. NYRA REQUEST FOR ANNEXED PROPERTIES □ SARATOGA**

For entry into the minutes, on August 2, 2004, the Board approved the request by NYRA for the annexation of a sixth and a seventh property to the NYRA grounds in compliance with Board rules addressing the administration of furosemide only on the grounds of a licensed or franchised racing association or corporation during the time period from 4 to 4 ½ hours before the race. NYRA Security must be present during the time periods encompassing the furosemide administration until the horse leaves the property to race. This sixth approval is for the Stonerside North property (Trainer □ Bill Mott) located adjacent to the NYRA property on the southeast side of Nelson Avenue in Saratoga Springs. The seventh property is at 34 Nelson Avenue where trainer Robert Reinacher has his horses stabled on the property generally known as "The Malone Barn."

Included among the previously approved annexations are the properties of Payson Racing Stable (Trainer Patrick Biancone □ 153 Fifth Avenue), Lambholm (Trainer Roy S. Lerman □ 39 Gridley Street), H. James Bond Racing Stable (Trainer H. James Bond □ 44 Gridley Street), Saratoga Equine Veterinary Service (Dr. Bill Barnes, DVM □ 63 Henning Road) and the Edward Miller Stables (Trainer Edward Miller □ 13 Bowman Street).

\* For entry into the minutes, on August 4, 2004, the Board approved the request for the annexation of the eighth property to the NYRA grounds in compliance with Board rules addressing the administration of furosemide only on the grounds of a licensed or franchised



racetrack association or corporation during the time period from 4 to 4 ½ hours before the scheduled post time of the race in which the horse is to compete. NYRA is to provide security during the time periods encompassing the furosemide administration until the horse leaves the property to race. This eighth approval is for The Marsh Farm property located adjacent to the NYRA property at the corner at 146 Adams Street and along the north side of Gridley Street in Saratoga Springs.

Included among the previously approved annexations are the properties of Payson Racing Stable (Trainer Patrick Biancone □ 153 Fifth Avenue), Lambholm (Trainer Roy S. Lerman □ 39 Gridley Street), H. James Bond Racing Stable (Trainer H. James Bond □ 44 Gridley Street), Saratoga Equine Veterinary Service (Dr. Bill Barnes, DVM □ 63 Henning Road), the Edward Miller Stables (Trainer Edward Miller □ 13 Bowman Street), the Stonerside North Farm (Trainer Bill Mott) located on Nelson Avenue and The Malone Barn (Trainer Robert Reinacher) located at 34 Nelson Avenue.

## **9. CAPITAL OTB REQUEST TO ADD E-Z BET LOCATION - SCHAGHTICOKE**

For entry into the minutes, on August 6, 2004, the Board approved the request by Capital District Regional OTB to conduct wagering and display simulcasts at Lewis □ Tavern, Schaghticoke, New York (Rensselaer County) located at 205 Main Street. At this new

E-Z Bet location, all wagering is self-service and initiated using cash, a winning ticket or voucher only. The amount limit in the issuance of any voucher to a customer at any one time is to be five hundred dollars (\$500).

In addition, it is expected that Capital OTB, using its own and audit employees, will inspect the Lewis Tavern E-Z Bet facility and certify that all rules and laws concerning the conduct of wagering in New York State, are being followed. A copy of the results of all Capital security checks involving E-Z Bet locations must be filed with the Board in a timely manner.

Additionally, the Secretary to the Board must be immediately notified in writing should a change in any operating procedure become effective at this approved E-Z Bet facility. This approval is conditioned upon the Board receiving written local approval pursuant to Section 1003 (2)(f) of the Racing, Pari-Mutuel Wagering and Breeding Law prior to the start of E-Z Bet operations at Lewis □ Tavern.

## **D. ITEMS TO BE APPROVED, DENIED OR DEFERRED BY THE BOARD**

### **1. NOTICE OF PROPOSED RULEMAKING - THOROUGHBRED AND HARNESS VETERINARY RECORD KEEPING REQUIREMENTS □ 4120.12 & 4043.10**

The Board withdrew this item from the agenda, stating that more research was necessary.

**2. RULEMAKING PROPOSAL  MEDICATION RULES FOR THOROUGHBRED AND HARNESS  4043.2 & 4120.2**

The Board approved the proposal to amend the thoroughbred and harness equine drug rules. This update of Board rules 4043.2 (thoroughbred) and 4120.2 (harness) modernizes both rules and these rules will be exactly the same as applied to medication use in thoroughbred and harness racing in the State of New York. This update reflects the use of most new medications that are now used to keep race horses "fit and healthy" during their training routines, and the elimination of obsolete drugs.

The Board approved the submitted revisions to the thoroughbred and harness medication rules. Both rules will be forwarded to GORR to be further considered within the rulemaking process.

**3. FINGER LAKES REQUEST TO WITHDRAW FROM CIF - \$28,839**

The Board approved the request by Finger Lakes Race Track to withdraw a total of \$28,839.00 from its Capital Improvement Fund for reimbursement of 2001 advertising and promotional expenditures.

**Advertising and Promotional Expenditures**

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Print Media 2001 10,514.74

TV and Radio 2001 18,324.26

**Total Approved \$28,839.00**

**4. YONKERS RACEWAY TRACK LICENSE APPLICATION FOR 2004**

The Board deferred action on the Yonkers Raceway track and simulcast license applications for 2004 pending receipt of a valid contract with the Standardbred Owners Association, Inc.

The Board assigned the racing programs for the month of September 2004 as requested. The Board will consider further action at the next Board meeting.

#### **5. YONKERS RACEWAY SIMULCAST LICENSE APPLICATION FOR 2004**

See Board Item number 4 above.

#### **E. ITEMS FOR BOARD INFORMATION/DISCUSSION**

##### **1. NYRA RETENTION OF DEWEY BALLANTINE 07/04-24-E**

**By letter dated, July 22, 2004, NYRA notified the Board, pursuant to Section 213, of its intention to retain the law firm of Dewey Ballantine to provide governmental and legal consulting services in connection with the NYRA franchise.**

##### **2. INDIAN GAMING - LICENSING STATISTICS FOR JULY 2004 08/04-04-E**

**Licensing statistics for July 1, 2004 through July 30, 2004. Also included are the certifications for Turning Stone, Akwesasne, Seneca Niagara and Seneca Allegany.**

##### **3. LICENSING CURRENT RACING LICENSING COUNT AS OF AUGUST 2004 08/04-07-E**

**The current racing licensing counts as of August 9, 2004 are as follows: total receipts 9813 and total licenses 6955.**

##### **4. FINGER LAKES ANNUAL DESK REVIEW FOR 2003 08/04-06-E**

**Staff has completed their annual desk review of the Finger Lakes 2003 financial statements.**

**Meeting was adjourned at 10:30 a.m. (Open Comment period began.)**