

New York State Gaming Commission 01-28-19

Rob Williamson: New York State Racing Pari Mutuel Wagering and Breeding Laws Section 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 Senate are necessary to afford the Commission an ability to establish a quorum and undertake action. This present meeting of the Gaming Commission is now Called to Order.

Miss Secretary will you please Call the Roll.

Secretary: John Crotty.

John Crotty: Here.

Secretary: Peter Moschetti.

Peter Moschetti: Here.

Secretary: John Poklemba.

John Poklemba: Here.

Secretary: Barry Sample.

Barry Sample: Here.

Secretary: Jerry Skurnik.

Jerry Skurnik: Here.

Secretary: Todd Snyder.

Todd Snyder: Here.

Rob Williamson: Miss Secretary please have the record reflect that a quorum of qualified members is present, thus enabling transaction of business. Chairman Sample.

Chairman Sample: Our first item is to do the meeting minutes from our last meeting. Minutes of the Commission Meeting conducted on December 10, 2018 have been provided to the members in advance. At this time, I would like to ask if members have any edits, corrections or amendments.

Participant: No.

Chairman Sample: Hearing none, may I have a Motion to approve?

Participant: So Moved.

Chairman Sample: Second?

Participant: Second.

Chairman Sample: All in favor?

Multiple: Aye.

Chairman Sample: Motion passes. The next item on the agenda is Rulemaking, New York State Racing Pari Mutuel Wagering and Breeding Law 104.19 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 Rules and Rule Amendments Pursuant to the State Administrative Procedure Act. Today we have three items for consideration or reconsideration. Rob will you please outline the first item.

Rob Williamson: Certainly. Please recall at the meeting of December 10, 2018, the Commission gave Conditional Approval to the Adoption of a Proposed Rule that would add flexibility to the Thoroughbred Claiming Price Rule on a case-by-case basis for all or a portion of a race meeting while requiring the track to meet increased requirements to ensure the competitiveness, soundness and safety of the horses that enter any such races. Such Conditional Approval Adopted on a 5 - 0 vote provided that should a substantive comment be received before the close of business period, which was then set for the close of business on December 17th, that staff would properly inform each Commissioner and suspend further administrative action. As you have each been informed, the Commission did receive a timely written comment, which necessitates supplemental consideration. Most of the comment received did not relate to the substance of the Proposed Rule and is therefore not considered germane as the commentator raised procedural concerns regarding the Process of Rule Consideration.

With respect to the substance of the Rule the commentator expressed the opinion that the Proposal should not be adopted asserting that the current Rule better protects horse safety. As discussed at the December 10th meeting, staff believes that the Proposed Rulemaking appropriately balances competitive and safety concerns and contains adequate safeguards to ensure that the General Ratio Rule will be relaxed only when appropriate assurances of equine safety are obtained. Other than this most recent comment, no other substantive comment was received. Staff continues to recommend Adoption of this Rule Proposal.

Chairman Sample: Commissioners, any questions on the Adoption of the Rule regarding Purse to Price Ratio in Thoroughbred Claiming Races? Hearing none, may I have a Motion to Adopt this Rule?

Participant: So Moved. Weren't we going to talk about this?

Chairman Sample: We will.

Participant: Okay good.

Chairman Sample: Second?

Participant: Wait, you want to Move the Rule before we talk about it?

Chairman Sample: That is the comments on the Rule that has been Moved.

Participant: So you put the Motion and then have discussion on the pending Motion?

Chairman Sample: Yes.

Participant: Second.

Chairman Sample: Okay. Any discussion on the Motion?

Participant: I believe there was.

Chairman Sample: Okay. We received public comment on the Purse to Price Ratio Rule and we are very appreciative of those comments. We also acknowledge that it is inherent in horse racing that there is risk involved in that activity. As a result, today the condition based upon the recommendations of Dr. Scott Palmer, the State Equine Medical Director, is giving Conditional Approval to the Purse to Price Ratio Rule. The Commission directs staff and Dr. Palmer to exercise discretion in the implementation of this rule on a race-to-race basis. Staff is also directed to document results and report to the Commission at our May 2019 meeting in respect to the observed results in relation to any relaxation of the Rule that staff has approved. Does anyone else have any additional comments?

Participant: No.

Chairman Sample: Any further discussion to the Motion?

Participant: No.

Chairman Sample: All in favor?

Multiple: Aye.

Chairman Sample: Any opposed? Motion passes, next item.

Rob Williamson: The Commission consideration has Proposed Rulemaking to allow necessary Regulatory changes to be effective to Prevent Operational Cessation of Cash4Life. Cash4Life is an existing Lottery Board Game offered by nine states wherein players pick five ball numbers from one to sixty in the main field plus one number from a secondary field of one to four. The operational aspects of Cash4Life are controlled by an agreement among the participating states. New York has offered Cash4Life since June 2014. The participating states have advanced Rule Proposals changing the frequency of the drawings from two per week to daily and adjusting the description of the maximum length of subscription accordingly. These changes will take effect for the July 1, 2019 drawing. New York will need to conform its rules to the group's rules in order to continue to offer the game. The Division of Lottery anticipates that offering Cash4Life daily will provide incremental revenue to education.

In addition to the frequency and subscription changes, several technical changes are proposed for clarity and consistency. Staff recommends that the Commission authorize the proposal of this rulemaking.

Chairman Sample: Commissioners, any questions on the Proposed Amendment to the Cash4Life rules? May I have a Motion to approve?

Participant: So Moved.

Chairman Sample: Second?

Participant: Second.

Chairman Sample: All in favor.

Multiple: Aye.

Chairman Sample: Motion carries. Next item.

Rob Williamson: For Commission consideration is a Proposal to Enable Sports Wagering as an Authorized Game Pursuant to Article 13 of the Racing Pari Mutuel Wagering and Breeding Law. The intention of these rules was to provide a solid regulatory structure that would enable the four facilities to get running as soon as practical with the concept that novel or unique concepts and ideas can be visited at a future date. The proposed Regulations seek to protect the integrity of wagering and underlying contests and ensure the sports wagering remains within the scope of activity the Legislature authorized. These Regulations set forth a similar regulatory framework as those in states that regulate sports wagering presently. The Proposal is also consistent with the existing Commission authority related to Licensed Commercial Casinos.

The Proposal contains definitions applicable to sports wagering and addresses such items as licensing; lounge and system requirements; wager types; pool integrity; compliance and responsible gaming elements. A pre-proposal draft of these rules was shared with various interested constituencies and their comments where staff determined relevant have been incorporated. Staff recommends that the Commission authorize the Proposal of this Rulemaking. Should the Commission Propose these Rules, all interested parties will have sixty days for public comment following the publication in the *State Register*.

Chairman Sample: Any questions on the Proposal of Rules regarding Sports Wagering? Hearing none, may I have a Motion?

Participant: So Moved.

Chairman Sample: Second?

Participant: Second.

Chairman Sample: All in favor?

Multiple: Aye.

Chairman Sample: Motion carries. Next. Our next item on the agenda is adjudications, today; we have six items for adjudication. Rob.

Rob Williamson: On February 2, 2019, the Bureau of Licensing denied the application of Jamal Stokes for a Casino Key Employee license as a count room shift manager at Resorts World

Casino, Catskills. Citing Racing Pari Mutuel Wagering and Breeding Law § 1318 1A and C which provides that the applicant must prove qualification by clear and convincing evidence and disqualification on the grounds of the conviction of the applicant of any offense in any jurisdiction which is or would be a felony or other crime involving public integrity, embezzlement, theft, fraud or perjury. Mr. Stokes requested a hearing, which was conducted on August 24th. The Hearing Officer submitted a report to the Commission Secretary recommending that the License denial be upheld. The Commission considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of the New York Public Officers Law § 108.1.

Chairman Sample: The Commission duly deliberated and considered this matter and determined upon a 6-to-0 vote to sustain the Hearing Officers report and recommendations. Next case.

Rob Williamson: On May 18, 2018, the Bureau of Licensing issued a Notice of License Suspension and ordered the immediate temporary suspension of the Lottery Sales Agent License of S&S Grocery Mart, Inc., which does business as Four Corners Convenience at 403 Merrick Road, in Oceanside. The Notice informed S&S that the Suspension was for fraud, deceit, misrepresentation or conduct prejudicial to the public confidence in the State Lottery. The Notice stated that there was evidence of tampering with instant tickets and that the suspension could become a revocation and loss. S&S requested a hearing.

A subsequent Notice of Hearing further alleged that a then co-owner of S&S had scratched unsold instant lottery tickets in a manner not noticeable to customers and then sold losing ticket to customers. S&S requested a hearing, which was conducted on November 30th. The Hearing Officer submitted a report to the Commission's Secretary dated December 10th. The Hearing Officer recommended that the license be revoked and that the period of the Date of Suspension to the Commission's decision be a Suspension of the License. The Commission considered this matter at a meeting conducted Pursuant to the judicial or quasi-judicial proceedings exemption of New York Public Officers Law § 108.1.

Chairman Sample: The Commission duly deliberated and considered this matter and determined upon a 6-to-0 vote to sustain the Hearing Officers report and recommendations. Next case please.

Rob Williamson: On June 6, 2018, the Bureau of Licensing issued three Notices of License Suspension and ordered the immediate temporary suspension of the Lottery Sales Agent License of Sanam Petroleum Corporation, which does business as Bloomingburg Mobil at 154 Main Street in Bloomingburg. BP-BAPS Enterprises, Inc., which does business as Fair Oaks General Store at 355 Bloomingburg Road in Middletown and Harguru Nanek Petroleum Corporation, which does business as Goshen Mobil at 399 Greenwich Avenue in Goshen. The respective Notices informed each licensee that the suspension was for fraud, deceit, misrepresentation, or conduct prejudicial to the public confidence in the State Lottery. Each Notice also stated that there was evidence of tampering with instant tickets. A Consolidated Notice of Hearing was subsequently issued, joining the three matters due to their common facts and ownership of each by a single individual, Manajurjit [ph] Singh.

Further, the Consolidated Notice alleged that unsold instant lottery tickets were scratched in a manner not noticeable to customers and then losing tickets were sold to customers. Additionally the Notice stated that each of the single licensees had failed to pay money due to the State Lottery. The Notice stated that the Suspension could become a revocation unless licensees requested a hearing.

Mr. Singh requested a hearing thus a hearing was conducted on September 26th. Hearing Officer submitted a report to the Commission Secretary recommending that the Agents license be revoked and that the period of suspension to the date of Commission's Decision be a Suspension of the License. The Commission considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of the New York Public Officers Law § 108.1.

Chairman Sample: For clarity and avoidance of any confusion, we are going to address each of these matters individually and there are three altogether. With respect to the matter of Sanam Petroleum Corp., the Commission duly deliberated and considered this matter and determined upon a 6-to-0 vote to sustain the Hearing Officers report and recommendations while clarifying that the Hearing Officers report and recommendations applies to the license individually.

With respect to the matter of BP-BAPS Enterprise, Incorporated, the Commission duly deliberated and considered this matter and determined upon a 6-to-0 vote to sustain the Hearing Officers Report and recommendation while clarifying that the Hearing Officer report and recommendations applies to this license individually.

With respect to the matter of Harguru Nanek Petroleum Corporation, the Commission duly deliberated and considered this matter and determined upon a 6-to-0 vote to sustain the Hearing Officers Report and recommendation that applies to this license individually.

Do you want to do the final case please?

Rob Williamson: Certainly. In September and October of 2017, the Bureau of Licensing issued four Notices of License Suspension each ordering the immediate temporary suspension of lottery sales Agent License of Third Avenue Deli and Grille Corporation, which conducts business at 7702 Third Avenue in Brooklyn. Two of the Notices dated September 15th and 29th, cited reported sales of cigarettes without the required tax stamps and related arrests. Three of the Notices dated September 22nd, 29th and October 13th advised Third Avenue Deli that it was suspended pursuant to Tax Law § 1607 and Commission Rule 5001.19 because of a failure to remit funds due to the lottery. Each of the Notices stated that the suspension would become a revocation unless Third Avenue Deli requested a hearing. After a hearing was requested, the Commission Office of Counsel Moved for Summary Judgement. The Commission considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of the New York Public Officers Law § 108.1.

Chairman Sample: The Commission duly deliberated and considered this matter and determined upon a 6-to-0 vote to grant the Motion of Summary Judgement and based upon the facts established by the Motion papers, found that the lottery sales agent's license should be revoked. The findings and Order will be forthcoming.

The next item of business is Consideration of the Application of MGM Yonkers, Inc. to conduct harness racing, simulcasting and account wagering on horse racing and video lottery gaming at Yonkers Raceway and to consider a material debt transaction should MGM Yonkers be approved.
Rob.

Rob Williamson: On May 29, 2018, MGM Resorts International announced that it intended to pursue the purchase of Yonkers Race Incorporation and its affiliated entities and assume operational control of the Empire City Casino and Yonkers Raceway. Yonkers Race Incorporation is the

licensed video lottery gaming agent of Empire City but is also the licensed operator of the Harness Track at Yonkers Raceway.

As Chairman Sample mentioned, MGM is seeking Commission approval for its applications to conduct harness racing, simulcasting and account wagering in calendar year 2019 and to conduct video lottery gaming. MGM is also seeking approval of a related material debt transaction in connection to the financing of the transaction. The Division of Racing examined all filings to ensure that the required Statutory and Regulatory elements related to the annual licensing application were satisfied. They also examined all simulcast agreements. The Division advises that no material illustrated grounds reasonably sufficient to deny licensure for any entity that applied in connection with this transaction.

With respect to the licensing process, the Bureau of Licensing reviewed applications for each of the entities and associated persons required to be licensed in connection with this transaction. For principal management employees, the license application and associated Federal and State fingerprint card returns were examined. No application illustrated grounds reasonably sufficient to deny licensure or suitability to any person or entity that has applied in connection with this transaction.

Finally, the Office of Counsel examined the sufficiency of the number of race states applied for. A Request for Waiver of Distributing Purse Checks within 72-hours of being earned, concentrated animal feeding operations documentation, stall application material, voluntary exclusion policies, the total _____ [00:19:44} security plan and compliance with the acceptance and/or cashing of electronic benefit transfer devices. All required elements were deemed approved or in substantial compliance with the Statutory or Regulatory Requirements.

The first item for consideration is MGM Yonkers request for approval of its applications to conduct harness racing in 2019. Such licenses applied for and considered annually. Staff has reviewed this application and has found the application to be substantially complete. Staff recommends the Commission approve MGM Yonkers 2019 Racetrack License application. I would also like to note that the Commission received no correspondence from the public regarding this transaction.

Chairman Sample: Commissioners, any questions on the approval of the request by MGM Yonkers to approve their licensing application to conduct harness racing in 2019 as of the date of the purchase transaction closes?

Participant: None.

Chairman Sample: No questions.

Participant: None.

Chairman Sample: May I have a Motion to approve?

Participant: So Moved.

Chairman Sample: Second?

Participant: Second.

Chairman Sample: Any discussion on the Motion? All in favor.

Multiple: Aye.

Chairman Sample: Any opposed? Motion carries.

Rob Williamson: The second item for consideration is MGM Yonkers request for approval of its applications to conduct simulcasting and account wagering on horse racing in 2019. Such licenses are applied for and considered annually. Staff has reviewed these applications and found the applications to be substantially complete. Staff recommends that the Commission approve the MGM Yonkers 2019 Simulcasting and Account Wagering license application. I would also like to note that the Commission received no correspondence from the public regarding this transaction.

Chairman Sample: Commissioners any questions on the Approval of the request by MGM Yonkers to approve their licensing application to conduct simulcast and account wagering in 2019 as of the date of the purchase transaction closing.

Participant: No sir.

Chairman Sample: No, questions. May I have a Motion?

Participant: So Moved.

Chairman Sample: Second?

Participant: Second.

Chairman Sample: All in favor.

Multiple: Aye.

Chairman Sample: Motion carries. Next item, video lottery.

Rob Williamson: As a point of background video lottery gaming is statutorily permitted at Yonkers Raceway. MGM Yonkers has applied for a video lottery gaming license and requests the issuance of an operation certificate to conduct video lottery gaming at Yonkers Raceway as an agent for the State pursuant to Commission Rules. Video lottery gaming operations are presently conducted at the premises with Yonkers Race Incorporation as the State's video lottery agent. MGM Yonkers has formally represented to the Commission that it intends to maintain the internal controls, policies, procedures and game floor layout already in operation. As such, the Gaming Division concluded that such documents and layout remain satisfactory. In connection with MGM Yonkers request for the issuance of an operation certificate the Gaming Division, Bureau of Finance and Administration and the Office of Counsel reviewed a wide variety of materials and supporting documentation including: a jobs compendium; internal control procedures regarding the operation of video lottery gaming activity; procedures and policies regarding the conduct and operation of video lottery gaming; financial controls; marketing allowance procedures; controls to assure compliance with underage gaming prohibition; alcoholic beverages; firearms and excluded persons; responsible gaming and the acceptance of public assistance requirements and surveillance and

security controls. All elements were deemed approved or in substantial compliance with Statutory or Regulatory Requirements.

Additionally review of the documentation and materials provided by MGM Yonkers to the Bureau of Finance and Administration has been found adequate to establish the financial stability of MGM Yonkers pursuant to Commission Rules. With respect to the licensing process, the Bureau of Licensing reviewed the applications and Federal and State fingerprint returns for all principals of MGM Yonkers and all parent and holding companies. A full and complete background investigation on each application was also conducted. No application illustrated grounds reasonably sufficient to deny licensure or suitability to any person or entity that is applied in connection with this transaction.

That brings us to the third item for consideration, MGM Yonkers request for a video lottery gaming license and issuance of an operation certificate. Commission staff recommends the issuance of a video gaming license and an operation certificate to MGM Yonkers dated as of the date of the purchase transaction closure. I would also like to note that the Commission received no correspondence from the public regarding this transaction.

Chairman Sample: Any questions from anyone on the Approval of the Request MGM Yonkers to approve their licensing application to conduct video lottery gaming at Yonkers Raceway and issuance of an operation certificate as of the date of the purchase transaction closing. Any questions?

Participant: No

Chairman Sample: May I have a Motion?

Participant: So Moved.

Chairman Sample: Second?

Participant: Second.

Chairman Sample: All in favor.

Multiple: Aye.

Chairman Sample: Motion passes. Next.

Rob Williamson: The fourth and last item for consideration is MGM Yonkers seeks approval of the anticipated debt transactions involved in the anticipated merger transaction and of related acquisition of real property and interest. Presently Yonkers Raceway Corporation is the borrower of a \$270M syndicated loan consisting of a first lien credit agreement, first lien collateral agreement, first lien pledge agreement, and first lien guarantee. Yonkers Raceway Corporation mortgaged the Round Lessee Interest in the Ground Leasehold Estate as collateral to the Industrial Development Agency of the City of Yonkers securing the payments in lieu of taxes and ancillary amounts owed the City of Yonkers as part of a pilot program.

In 2017, Yonkers Raceway Corporation sought and received Commission approval to refinance a \$274.3M of existing debt specifically a \$214.3M first lien term loan and a \$60M second lien term loan for a \$270M syndicated loan. The Commission approved that transaction. Upon closing, the existing \$270M credit mortgage will be assigned to a bridge lender and extinguished through the Debts Inclusion and an existing revolving line of credit issued to MGM Growth Properties Operating Partnership, LP by numerous lending institutions with Bank of America as administrative agent. The Commission has been advised that the revolving line of credit will not include real property associated with the video lottery gaming facility or the racetrack as collateral. At the conclusion of the material debt transaction, the existing parcel will be subdivided with control dependent upon mortgage document and easements allowing the use of the properties and other amenities by the video lottery gaming facility and racetrack. The Commission Counsel's Office also requested final property transfer documents for review and will provide an updated position if review alters control and use.

The staff recommends the Commission approve the MGM Yonkers material debt transaction involved in the anticipated merger transaction and the related acquisition of real property and interests.

Chairman Sample: Commissioners, any questions on the approval of the request by MGM Yonkers to approve their material debt transaction involved in the anticipated merger transaction and of the related acquisition of real property and interest. Any questions? May I have a Motion?

Participant: So Moved.

Chairman Sample: Second?

Participant: Second.

Chairman Sample: All in favor.

Multiple: Aye.

Chairman Sample: Motion carries. There was a lot of work done by staff from the various parties involved and from the Gaming agency and we would like to thank them for all their time and effort. Today is a culmination of several months' work that was put into this enterprise. We would also like to thank the Rooney Family for the many years that they have contributed to the health of the harness racing industry in the State and the work that is done at Yonkers Raceway. Also, congratulate MGM Resorts International and MGM Yonkers and welcome them to the State of New York. Thank you.

Our next item on the agenda is Old Business; does anyone have any Old Business? Do we have any New Business? As a New Business item we are in a transition from transitioning back between Rob Williamson's return to the Agency from an assignment that he had for over a year, a year and a half, we welcome him back. At the same time we would like to thank Ron Oakrum [ph] and I think I speak for all the Commissioners, for stepping up to the plate, giving us guidance, giving us direction and also steering the ship through some very awkward and difficult times. He should be commended for that service. He has agreed to stay with us for we hope a long period of time, but he hopes a short period of time, but we will get through that. I guess the next item on the...

Participant: Thank you.

Chairman Sample: Thank you. The next item on the agenda is the scheduling of the next meeting and Kristen tentatively, when is that, February the 25th?

Kristen: Yes sir.

Chairman Sample: In any event, Kristen will work with all of us to confirm the February 25th date for our next meeting. As far as I have on my notes that concludes our public meeting for today.