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OAL Docket. No. RAC 06904-19
Agency Docket No. NJRC-6-H-19-FR

JUDITH A. NASON
Executive Director

ELIZABETH CAROTENUTO,

Petitioner,

v.

FINAL DECISION

NEW JERSEY RACING COMMISSION,

Respondent.

On February 15, 2019, Petitioner, who is a licensed trainer, allowed Christopher Rand, an unlicensed person, to assist her with a horse in the paddock at the Meadowlands Racetrack. The Board of Judges conducted a hearing on March 1, 2019 and determined that Petitioner violated N.J.A.C. 13:71-7.26(d), 7.29(a)(1) and 7.29(a)(13) and imposed a 30-day suspension and \$2,500 fine. Petitioner appealed and requested a stay of the penalties. The NJRC transmitted the matter to the Office of Administrative Law (“OAL”) as a contested case and granted the stay request.

On April 7, 2021, the OAL issued an initial decision, which found that Petitioner violated N.J.A.C. 13:71-7.26(d) for employing an unlicensed person to attend to a horse in a paddock and reduced the penalty to a 10-day suspension and \$500 fine. Initial Decision at 15. On April 20, 2021, Deputy Attorney General Craig S. Keiser, who represented the New Jersey Racing Commission (“NJRC” or “Commission”) at the OAL, filed exceptions to the initial decision on behalf of the Respondent.



For the reasons set forth herein, the NJRC modifies the initial decision. The NJRC adopts the Administrative Law Judge's ("ALJ") findings of fact, except as noted herein. The NJRC also adopts the ALJ's conclusion that Petitioner violated N.J.A.C. 13:71-7.26(d). Id. at 5. However, the NJRC rejects the ALJ's conclusion that Petitioner did not violate N.J.A.C. 13:71-7.29(a)(1) and 7.29(a)(13). Ibid. The NJRC also rejects the ALJ's conclusion that the exigent circumstances mitigate the penalty and rejects the ALJ's reduction of the penalty to a 10-day suspension and \$500 fine. Ibid.

The NJRC finds that Petitioner's conduct violated N.J.A.C. 13:71-7.26(d), 7.29(a)(1) and 7.29(a)(13) and the appropriate penalty is a 30-day suspension and \$2,500 fine.

Petitioner is a licensed trainer. Id. at 1. Petitioner cohabitates with Christopher Rand and they have two children. Id. at 4. Rand was licensed by the NJRC as a stable employee in 2016. Ibid. However, as a result of Rand's assault on a trainer in the Meadowlands' paddock, the NJRC issued Ruling No. 16MDH39, which precluded Rand's access to the paddock and ship-in areas of racetracks for the remainder of 2016 and imposed a \$500 fine. Ibid.; Exhibit R-2. Rand did not pay the fine and has not reapplied for licensure. Initial Decision at 4.

Thereafter, prior to the incident at issue on February 15, 2019, John Tomasello, who was, at that time, Presiding Judge at the Meadowlands, spoke with Petitioner to instruct her that because Rand was no longer licensed, he could not be present on licensed property and working with race horses. Id. at 4-6; T.45-3 to T.46-8.¹

On February 15, 2019, Tomasello received a report that Rand was in the Meadowlands' paddock. T.63-17 to 21. Tomasello notified Paddock Judge Jim Kopacz that Rand could not be in the paddock and should be escorted out. T.64-13 to 16. In the paddock, Kopacz saw Rand adjusting the hobbles on a horse trained by Petitioner. T.10-24 to T. 11-8. Kopacz told Rand to leave and he did. T.13-23 to 25.

Rejecting Petitioner's testimony that Rand did not help her with the horse, the ALJ recognized that Rand being present in the paddock and assisting Petitioner with the horse "is in fact a serious violation and the integrity of racing is somewhat jeopardized by the presence of unlicensed persons in the paddock." Initial Decision at 14. As a result, the ALJ concluded that Petitioner violated N.J.A.C. 13:71-7.26(d). Ibid.

¹The symbol "T.45-3" references the Transcript of the OAL hearing on February 4, 2020 at page 45, line 3.

The NJRC adopts this conclusion. N.J.A.C. 13:71-7.26(d) states that “[i]t shall be the responsibility of the trainer to ensure that only individuals licensed by the Commission are employed in any capacity of caretaker, groom or other attendant....” Petitioner violated this rule when she allowed Rand, an unlicensed person, to act in the capacity of caretaker by adjusting the horse’s hobbles in the Meadowlands’ paddock.

The NJRC rejects the ALJ’s conclusion that Petitioner did not violate N.J.A.C. 13:71-7.29(a)(1), which states that a trainer may be suspended or fined for “[f]ailure to obey the instructions of a racing official.” As indicated above, prior to the incident in the Meadowlands’ paddock, Tomasello, who was then Presiding Judge at the Meadowlands, verbally instructed Petitioner that Rand was unlicensed and could not be on property subject to the NJRC’s jurisdiction working with the horses she trained.

Finding that Tomasello’s instruction to Petitioner “does not rise to the quality of an Order”, the ALJ dismissed the violation of N.J.A.C. 13:71-7.29(a)(1). Id. at 14. In doing so, the ALJ misinterpreted the NJRC’s rule. The rule is violated when a trainer fails “to obey the instructions of a racing official.” The rule does not require that the racing official’s instruction be in the form of an Order. Tomasello was a racing official and Petitioner did not follow his instructions. As a result, Petitioner’s failure to do so constitutes a violation of N.J.A.C. 13:71-7.29(a)(1).

The NJRC also rejects the ALJ’s conclusion that petitioner did not violate N.J.A.C. 13:71-7.29(a)(13), which states that a trainer may be suspended or fined for “conduct detrimental to the sport.” Id. at 15. Disregarding Tomasello’s explicit instructions, Petitioner allowed an unlicensed person to attend to one of the horses she trained in the paddock at the Meadowlands.

Finally, the NJRC rejects the ALJ’s conclusion that the appropriate penalty is a 10-day suspension and \$500 fine. Ibid. The ALJ based this conclusion upon his finding that Petitioner violated only one NJRC rule, which was N.J.A.C. 13:71-7.26(d). Ibid. The ALJ also found that “[t]he exigent circumstances of [Petitioner’s] illness on the night in question and her inability to find any help other than that which was being offered by Rand . . . does mitigate the penalty.” Ibid.

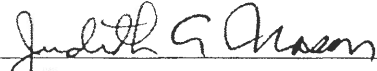
The NJRC disagrees. As indicated above, the NJRC finds that Petitioner violated N.J.A.C. 13:71-7.26(d), 7.29(a)(1) and 7.29(a)(13). The NJRC does not agree that Petitioner’s illness and inability to find a licensed person to assist her with the horses mitigates the nature of the violations or should reduce the penalty. Prior to this incident, a NJRC official contacted Petitioner to clearly state that she could not allow Rand to care for or work with the horses she

trained. Nevertheless, she allowed Rand assist her with the horse in the paddock. If Petitioner was ill and could not care for the horses, the appropriate course of action would be for her to scratch the horses rather than allow an unlicensed person to have contact with the horses she trained.

In considering these violations, the NJRC's Board of Judges imposed a 30-day suspension and \$2,500 fine. *Id.* at 3; Ruling No. 19MDH9. The NJRC finds this to be the appropriate penalty.

For the reasons set forth above, the Commission hereby orders that Petitioner's license shall be suspended for 30 days and a \$2,500 fine shall be imposed for her violations of N.J.A.C. 13:71-7.26(d), 7.29(a)(1) and 7.29(a)(13). NJRC staff will issue a ruling setting forth the dates of the suspension and the due date for the payment of the fine.

NEW JERSEY RACING COMMISSION

By: 
Judith A. Nason, Executive Director

Date: August 13, 2021