

MINUTES

NEW YORK STATE RACING AND WAGERING BOARD

MEETING OF AUGUST 25, 2005

A meeting of the New York State Racing and Wagering Board was held on Thursday, August 25, 2005 at 11:00 a.m. at the Racing & Wagering Board's Albany Office located at 1 Watervliet Avenue Extension, Albany, New York.

The meeting was called to order at 11:03 a.m.

In Attendance Were:

Michael J. Hoblock, Jr., Chairman
Cheryl Buley, Member
John Cansdale, Executive Director
Gail Pronti, Secretary to the Board
Robert Feuerstein, General Counsel
Joseph Lynch, Chief of Racing Operations
James Kellogg, Audits and Investigations

Also in Attendance Were:

Daniel Toomey, NYSR&WB
Vivian Davis, NYSR&WB
Kristen Buckley, NYSR&WB

Paul D' Onofrio, Monticello Raceway

Kevin B. Molloy, Suffolk OTB

Mike DeMasi, Daily Gazette

OPEN COMMENT PERIOD: No Comments were made.

A. The Board approved the minutes of the Board meeting held on July 22, 2005.

B. ITEMS PREVIOUSLY APPROVED OR DEFERRED BY THE CHAIRMAN.

**1. BUFFALO RACEWAY REQUEST TO AMEND PLAN OF OPERATIONS –
HARNES HANDICAPPING CONTEST**

For entry into the minutes, on July 15, 2005, the New York State Racing and Wagering Board approved the request to amend its plan of operation by offering a promotional fee-based handicapping contest on Friday evening, July 29, 2005, entitled “ The Buffalo Raceway Harness Handicapping Contest.” This contest is to be administered with prizes awarded to the top four finishers in accordance with the rules as submitted to the Racing and Wagering Board.

**2. CAPITAL DISTRICT REGIONAL OTB – APPLICATION TO CONDUCT
PROMOTION – TELEPHONE ACCOUNT WAGERING SYSTEM**

For entry into the minutes, on July 12, 2005, the Board approved an application by the Capital District Regional Off-Track Betting Corporation to conduct a promotion in relation to its telephone account wagering system. By this promotion, account holders that wager a total of \$2,500.00 or more over a time period of the date of this approval through August 24th would have their name deposited in a collection of qualifying account holder names from which fifty-six (56) random drawings would be made. The account holders who have their names randomly drawn would receive prizes ranging from the first prize of a five percent (5.0%) ownership in a West Point Thoroughbred to one \$1,000.00 wager and four \$250.00 wagers on the 2005 Travers Stakes from Saratoga Race Course; to deposits into Capital District Regional OTB betting accounts of \$100.00 for ten customers and \$50.00 for 40 customers.

Capital District Regional Off-Track Betting must inform the potential winning contestant beforehand that:

- * There may be additional liability involved with this ownership.
- * There may be additional cost incurred as a result of this ownership.
- * That five percent ownership may not result in five percent earnings.

This approval is effective immediately.

**3. CAPITAL DISTRICT REGIONAL OTB – REQUEST TO CLOSE E-Z BET
LOCATION**

For entry into the minutes, on August 9, 2005, the New York State Racing and Wagering Board approved a change in the plan of operation for the Capital District Regional Off Track Betting Corporation with the closing of the Greene County off-track betting and E-Z Bet facility located in West Coxsackie, Fox Run Parc. This approval is effective immediately.

4. **CATSKILL REGIONAL OTB – REQUEST TO SIMULCAST VARIOUS LOCATIONS IN 2005**

For entry into the minutes, on August 1, 2005, the New York State Racing and Wagering Board approved a change in the Catskill Regional Off-Track Betting Corporation simulcast plan of operation enabling the import of simulcasts from the harness racetrack known as the Syracuse Mile during its Summer year 2005 annual race meeting.

Also approved is the agreement providing for the import of simulcasts for wagering purposes from The Red Mile located in Lexington, Kentucky. The Red Mile approval further extends to the Capital District and Western Regional Off-Track Betting Corporations.

The 2005 Red Mile simulcast may be utilized whenever in accordance with the Racing Law.

5. **FINGER LAKES – REQUEST TO SIMULCAST VARIOUS LOCATIONS IN 2005**

For entry into the minutes, on July 28, 2005, the New York State Racing and Wagering Board approved the amendment to the Finger Lakes simulcast plan of operation enabling the import of the simulcasts for the year 2005 from the Del Mar Thoroughbred Club in California.

6. **MONTICELLO RACEWAY – REQUEST TO SIMULCAST VARIOUS LOCATIONS IN 2005**

For entry into the minutes, on July 25, 2005, the New York State Racing and Wagering Board approved the amendment to the Monticello Raceway simulcast plan of operation enabling the import of the six days of simulcasts for the year 2005 Syracuse Mile racing season.

7. **MONTICELLO RACEWAY – REQUEST TO SIMULCAST VARIOUS LOCATIONS IN 2005**

For entry into the minutes, on July 25, 2005, the New York State Racing and Wagering Board approved the requested change in Monticello Raceway's plan of operation enabling the import of the year 2005 harness simulcasts from The Red Mile in Lexington, Kentucky.

8. **MONTICELLO RACEWAY – REQUEST TO SIMULCAST VARIOUS LOCATIONS IN 2005**

For entry into the minutes, on July 25, 2005, the New York State Racing and Wagering Board approved the amendment to the Monticello Raceway simulcast plan of operation enabling the import of the year 2005 Batavia Downs simulcasts for the 2005 racing season at Batavia Downs that commences on Wednesday, August 3.

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

9. **MONTICELLO RACEWAY – REQUEST TO AMEND SEPTEMBER RACE SCHEDULE**

For entry into the minutes, on July 25, 2005, the New York State Racing and Wagering Board approved an amendment to the Monticello Raceway plan of operation enabling a first race post time of 5:00 p.m. on the Labor Day holiday date of Monday, September 5, 2005.

10. **MONTICELLO RACEWAY – REQUEST TO AMEND SEPTEMBER RACE SCHEDULE**

For entry into the minutes, on August 9, 2005, the New York State Racing and Wagering Board approved an amendment to the Monticello Raceway plan of operation enabling a first race post time of 5:00 p.m. on Sunday September 4th and a return to 1:10 p.m. first race post time on the Labor Day holiday date of Monday September 5th, 2005.

11. **NASSAU OTB – REQUEST TO SIMULCAST VARIOUS LOCATIONS IN 2005**

For entry into the minutes, on July 26, 2005, the New York State Racing and Wagering Board approved the requested change in Nassau OTB' s simulcast plan of operation enabling the import of the year 2005 harness simulcasts from The Red Mile in Lexington, Kentucky.

12. **NEW YORK CITY OTB – AMENDMENT TO PLAN OF OPERATIONS – BRANCH CLOSING – 54-16 MYRTLE AVENUE, QUEENS**

For entry into the minutes, on July 15, 2005, the New York State Racing and Wagering Board approved the amendment to the plan of operation of NYCOTB for the closure of a branch (Branch #3059) located within the borough of Queens at 54-16 Myrtle Avenue, Queens, New York. It is understood that the last day of operation of this branch will be July 24, 2005.

Also approved is the ability to add this branch to the previously approved telephone betting account promotion in conjunction with the closure of Yonkers Raceway and the Bronx branches of NYCOTB.

13. **NEW YORK CITY OTB – REQUEST TO AMEND PLAN OF OPERATIONS – MINI-BRANCH CLOSURE**

For entry into the minutes, on August 9, 2005, the New York State Racing and Wagering Board approved an amendment to the New York City Off-Track Betting Corporation' s plan of operation for the closure of a mini-branch #5177 at 335 Sand Lane in Staten Island within the former La Sabia Restaurant effective at the close of business on July 31, 2005.

14. **NEW YORK CITY OTB – AMENDMENT TO PLAN OF OPERATIONS – CONCESSIONAIRE – DENNIS ZOITOS**

For entry into the minutes, on July 15, 2005, the New York State Racing and Wagering Board approved a plan of operation amendment to reflect the appointment of Dimosthenis (Dennis) Zoitos as the concessionaire for the Yankee Clipper teletheater

brand of the New York City Off-Track Betting Corporation. This approval is effective immediately.

15. **NYRA REQUEST TO RESUME “ QUICK PICK” WAGERING**

For entry into the minutes, on July 15, 2005, the NYS Racing and Wagering Board approved the amendment to the New York Racing Association plan of wagering operation enabling “ quick-pick” wagering on all NYRA tote machines effective immediately.

16. **NYRA REQUEST FOR ADDITION OF RACING OFFICIAL – CASSIDY**

For entry into the minutes, on July 28, 2005, the New York State Racing and Wagering Board approved the NYRA request for Marshall Cassidy to become a Category I racing official and to perform duties as a Placing and/or Patrol Judge at the New York Racing Association’ s tracks during the remainder of the year 2005 racing season.

17. **NYRA – BELMONT PARK - REQUEST TO CONDUCT 2005 BELMONT PARK SPRING SHOWDOWN INTERNET HANDICAPPING CONTEST**

For entry into the minutes, on August 4, 2005, the New York State Racing and Wagering Board approved the request to conduct the 2005 Belmont Park Spring SHOWdown Internet Handicapping contest throughout the year 2005 Fall Belmont Park race meeting, Friday, September 9th through Sunday, October 30th, with a ten dollar entry fee per contestant and all paid entry fees returned to the winners as outlined in the rules.

18. **SARATOGA HARNESS - REQUEST TO SIMULCAST VARIOUS LOCATIONS IN 2005**

For entry into the minutes, on August 1, 2005, the New York State Racing and Wagering Board approved an amendment to the Saratoga Gaming and Raceway simulcast plan of operation enabling the import of the simulcast signals from the thoroughbred racetracks under the auspices of the New York Racing Association (Aqueduct Race Track, Belmont Park and Saratoga Race Course) during the remainder of 2005. Also approved is the Saratoga Gaming and Raceway agreements with the in-state harness track, Batavia Downs and with the California thoroughbred racetrack, Del Mar, and Colonial Downs a dual thoroughbred-harness racetrack in New Kent, Virginia.

These approvals are immediately in effect. All simulcasts may be utilized whenever in accordance with the Racing Law.

19. **WESTERN REGIONAL OTB AMENDMENT TO PLAN OF OPERATIONS/PROMOTION – BRANCH HANDICAPPING CONTESTS**

For entry into the minutes, on July 12, 2005, the New York State Racing and Wagering Board approved the amendment to the Western Regional Off-Track Betting Corporation’ s plan of operation/promotion allowing for handicapping contests to be conducted at various Western OTB branches during 2005.

20. **WESTERN REGIONAL OTB AMENDMENT TO PLAN OF OPERATIONS/PROMOTION – VARIOUS BATAVIA DOWNS PROMOTIONS**

For entry into the minutes, on August 4, 2005, the New York State Racing and Wagering Board approved the amendment to the Western Regional Off-Track Betting Corporation's plan of operation/promotions allowing for the conduct of all ten promotions listed in the submitted request dated July 15, 2005.

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

1. NYRA REQUEST FOR EXTENSION OF YEAR 2004 SIMULCAST CONTRACTS

As a simulcast licensee regulated by the New York State Racing and Wagering Board, the New York Racing Association (NYRA) is entitled to import and export simulcast signals in-state and across state lines in accordance with federal law, when approved by the Board.

For entry into the minutes, the Board approved the extension of year 2004 NYRA simulcast agreements with all contracted entities through the end of the Saratoga Race Course meeting (ending September 5, 2005).

2. MONTICELLO RACEWAY – RACING DATES FOR THE MONTH OF AUGUST 2005

For entry into the minutes, on August 1, 2005, the New York State Racing and Wagering Board approved the Monticello Raceway request to conduct live pari-mutuel harness racing cards on a Sunday through Thursday basis during the month of August, 2005. The assigned race dates total 23 separate racing programs.

3. SUFFOLK REGIONAL OTB - AMENDMENT TO PLAN OF OPERATIONS – REQUEST TO ADD QWIK-BET BRANCH

For entry into the minutes, on August 4, 2005, the New York State Racing and Wagering Board approved the Suffolk Regional OTB request dated March 3, 2005 to conduct wagering and display simulcasts at Napper Tandy's Irish Pub located at 229 Laurel Avenue in Northport, New York (Suffolk County). It is understood that at this new Qwik-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 will be five hundred dollars (\$500).

In addition, it is expected that Suffolk OTB, using its own personnel, will occasionally inspect the Napper Tandy's Irish Pub Qwik-Bet facility and certify that all rules and laws concerning the conduct of wagering in New York State are being followed.

Furthermore, the Secretary to the Board is to be notified in writing in a timely manner should a change in ownership or procedure be implemented that affects the operation of this approved Qwik-Bet facility.

4. IN THE MATTER OF SEAN CAMPBELL – SUMMARY SUSPENSION

For entry into the minutes, the occupational license of pari-mutuel harness racing

trainer/driver Sean Campbell, was summarily suspended by the Board for cruelly beating the horse "JOEY" in the backstretch (Barn 4) at Saratoga Raceway on June 22, 2005, and subsequently threatening witnesses.

5. **IN THE MATTER OF CAROLYN CAMPBELL – SUMMARY SUSPENSION**

For entry into the minutes, the occupational license of pari-mutuel harness racing general services licensee Carolyn Campbell, was summarily suspended by the Board for cruelly beating the horse "JOEY" in the backstretch (Barn 4) at Saratoga on June 22, 2005, and subsequently threatening witnesses.

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

1. **IN THE MATTER OF SANFORD GOLDFARB I**

On August 25, 2005, the Board approved Hearing Officer Russell H. Baller, Jr.' s recommendation that the Board uphold the charges except the one alleging that Mr. Goldfarb signed a bill of sale that falsely states the date of sale of " Cap" to Lawrence Roman, and that the fine be sustained. The matter involved both an appeal by thoroughbred owner Sanford Goldfarb from the imposition of a \$1,000 fine by the State Steward at Belmont Park on September 24, 2004 and an Order to Show Cause issued on October 15, 2004. Both the appeal and the charges set forth in the Order to Show Cause related to the claim of the horse " Cap" from the first race at Belmont Park on May 16, 2004 and the subsequent transfer of ownership and participation of " Cap" in New York racing.

2. **CAPITAL OTB – REQUEST TO ADD E-Z BET LOCATION – MARATHON**

On August 25, 2005, the NYS Racing and Wagering Board approved the Capital District Regional OTB request, originally received May 18, 2005, to conduct wagering and display simulcasts at Mijo' s Tavern, located at 9 West Main Street in Marathon, New York (Cortland County). It is understood that 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 will be five hundred dollars (\$500).

In addition, it is expected that Capital OTB, using its own security and audit employees will inspect the Mijo' s 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.

Further, 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.

3. MONTICELLO RACEWAY TRACK LICENSE APPLICATION FOR 2005

On August 25, 2005, the New York State Racing and Wagering Board deferred action on the Monticello Raceway track and simulcast license applications for 2005. The Board assigned the racing programs requested for the remainder of the year.

Monticello Raceway may remain operational on the continuing rights of the 2004 track and simulcast license. However, continuing rights are conditioned upon the following:

- * Compliance with all applicable provisions of the Racing, Pari-Mutuel Wagering and Breeding Law, Board rules and orders and directives of the New York State Racing and Wagering Board. These include but are not limited to the following:
 - a. All contracts for sites to receive New York simulcasts must provide that such receiving sites not rebate *in cash* on New York races.
 - b. Retransmission of your simulcast signal by authorized recipients to secondary recipients is not allowable without disclosure within the contract of the names and locations of all secondary recipients.
 - c. The Board has the authority to audit the out-of-state receiving site's books and records (including all secondary sites that receive your simulcast) and must be noted in any simulcast agreement entered into for your simulcast signal. Included within the agreement must be reference that the guest shall permit inspection of the totalizator facilities at the site where guest's wagers are subject to commingling and all related totalizator books and records by a representative of the host or of the host's Board.
 - d. Names and contact telephone numbers and/or addresses of managers at all pari-mutuel "hubs" used in the course of your simulcast transactions, if not included within individual contracts, must be supplied to the Board.
Any agreement which you are party to is subject to the requirements of the host and guest states with any provision mandated by either Commission or Board with such provisions specifically incorporated into contract by reference. Both parties, including any Secondary Recipients, shall comply with the provisions of all-applicable Federal, State and local laws and regulations.
- * An SAS- 70 Type II audit is to be performed for the current licensing period on the totalizator operations utilized and located at your facility. The report is to be filed with the Board no later than October 31, 2005.
- * The name, address, social security number and date of birth must be obtained from each individual who opens a wagering account (i.e. temporary wagering account, day account, telephone wagering account, etc.) and the account number they have been assigned. Information is to be maintained for three years and made available to Board staff upon request.

4. MONTICELLO RACEWAY SIMULCAST LICENSE APPLICATION FOR 2005

See Board Item number three above.

5. NASSAU OTB SIMULCAST LICENSE APPLICATION FOR 2005

On August 25, 2005, the New York State Racing and Wagering Board approved the 2005 simulcast license application of the Nassau Regional OTB. This license includes thirteen (13) simulcast branches, one (1) restaurant facility and one (1) teletheater facility.

The 2005 track and simulcast licenses are conditioned upon the following:

* Compliance with all applicable provisions of the Racing, Pari-Mutuel Wagering and Breeding Law, Board rules and orders and directives of the New York State Racing and Wagering Board. These include but are not limited to the following:

- * An SAS-70 Type II audit is to be performed for the current licensing period on the totalizator operations utilized and located at your facility. The report is to be filed with the Board no later than October 31, 2005.

The Board will consider the identification related day accounts issue independent of the current licensing process following staff evaluation of the matter.

6. SARATOGA GAMING & RACEWAY/SYRACUSE MILE – CERTIFICATION OF YEAR 2005 ASSIGNED RACING DATES FOR THE NYS DEPARTMENT OF TAX & FINANCE

On August 25, 2005, the New York State Racing and Wagering Board certified, pursuant to Section 318(5) of the Racing, Pari-Mutuel Wagering and Breeding Law, that Saratoga Harness Racing, Inc. and The Syracuse Mile have been assigned at least 90% of program races raced in 1985 or 1986 (whichever year had the fewer) for 2005.

This certification is made for the purpose of confirming the pari-mutuel tax rate to be established in 2005 for each racetrack.

7. SUFFOLK OTB SIMULCAST REQUEST TO ADD NEW QWIK-BET LOCATION - HUNTINGTON

On August 25, 2005, the NYS Racing and Wagering Board approved the Suffolk Regional OTB request dated January 24, 2005, to conduct wagering and display simulcasts at Finley's of Green Street located at 43 Green Street in Huntington, New York (Suffolk County). It is understood that at this new Quik-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 will be five hundred dollars (\$500).

In addition, it is expected that Suffolk OTB, using its own personnel, will occasionally inspect the Finley's of Green Street Quik-Bet facility and certify that all rules and laws concerning the conduct of wagering in New York State are being followed.

Furthermore, the Secretary to the Board is to be notified in writing in a timely manner should a change in ownership or procedure be implemented that affects the operation of this approved Quik-Bet facility.

8. PROPOSED RULEMAKING – REQUIREMENT OF HORSEMEN' S CONTRACT

On August 25, 2005, The NYS Racing and Wagering Board approved the proposal of new thoroughbred and harness racing rules (4003.13 and 4101.8) to provide that the Board may require the existence of a written agreement between a track and its representative horsemen's organization when determining whether or not to grant a pari-mutuel track license and/or assign racing dates. The proposals will be submitted to the Governor's Office of Regulatory Reform for review.

E. ITEMS FOR BOARD INFORMATION/DISCUSSION

1. STATE REGISTER – ADOPTION OF AMENDMENT PICK-SIX RULE – 08/04-13-E - 4011.23

For Board information, attached is a copy of the July 27, 2005 *NYS Register* publication of the Notice of Adoption of amendments to Board Rule 4011.23. These changes to the Pick Six rule became effective on July 27, 2005.

2. STIPULATION AGREEMENT IN THE MATTER OF AUBURN VFW - 08/05-10-E - (M.O. #04-54)

For Board Information, attached is a copy of the Stipulation Agreement in the matter of Auburn Veterans of Foreign Wars Post 1975.

3. NYRA – NOTICE OF INTENT TO CONDUCT WINTER THOROUGHBRED RACING AT AQUEDUCT RACE TRACK – 08/05-09-E

For Board information, by letter dated August 5, 2005, it is NYRA' s intention to conduct pari-mutuel racing at Aqueduct Race Track during the months of December 2005, and January, February, March and April in 2006, thus enabling the New York Racing Association to be subject to the tax rate provision in Section 229 (1)(e) of the Racing, Pari-mutuel Wagering and Breeding Law.

4. FIVE-YEAR REVIEW OF RULES – 08/05-14-E

Section 207 of SAPA requires that an agency must review any rule adopted on or after January 1, 1997. The review is required in the fifth year after adoption and thereafter, at five-year intervals. Attached is a copy of the Board' s determination to continue those rules adopted during calendar year 2000, as published in the *NYS Register* issue dated August 3, 2005.

5. INDIAN GAMING - LICENSING STATISTICS – 08/05-07-E

Licensing statistics for July 1, 2005 through July 31, 2005. Also included are the certifications for Mohawk, Seneca Allegany, Seneca Niagara and Oneida.

6. GAMES OF CHANCE/BINGO REGISTRATION NUMBERS – 08/05-15-E

List of Games of Chance and Bingo Registration Numbers authorized/denied by the Charitable Gaming Unit between July 8 – August 10, 2005.

7. GAMES OF CHANCE/BINGO MANUFACTURERS/SUPPLIERS – 08/05-16-E

List of companies that were issued Board Games of Chance/Bingo Supplier Licenses for 2005 during the period of May 6 – August 10, 2005.

8. GAMES OF CHANCE – BELL JAR TICKETS – 08/05-17-E

List of bell jar tickets authorized/denied by the Charitable Gaming Unit between July 8 – August 10, 2005.

9. LICENSING – CURRENT RACING LICENSING COUNT AS OF JULY 2005 –

08/05-18-E

The current racing licensing counts as of July 31, 2005 are as follows: total receipts 9933 and total licenses 6959 for the year 2005.

10. NYRA PROCUREMENT OF TOTALISATOR SERVICES – 08/05-27-E

Examination into the procurement of totalisator services (United Tote) by the New York Racing Association brought about by a complaint from Scientific Games alleging improprieties in NYRA' s procurement process. This item was prematurely placed on the agenda and has been removed from the agenda.

F. FOLLOW-UP ON ITEMS PREVIOUSLY APPROVED

CONDITIONS MET _____

Date:

Conditioned date: 6/16/05

1. NYRA/FINGER LAKES – PAYMENTS ON OUT OF STATE THOROUGHBRED RACES

1017.1(b)(5)(D) & 1017.1 (b)(6)(D)

Payment in the amount of \$2,849,668, representing the aggregate net payment, be made by FLRA to NYRA immediately on or before July 17, 2005 unless FLRA and NYRA achieve a resolution affecting payment by settlement, compromise or otherwise prior to that date.

This is now a lawsuit pending in the Supreme Court, Albany County.

CONDITIONS MET _____

Date:

Conditioned date: 4/13/05

2. NYRA REQUEST TO AMEND RACING OFFICIALS – SIMONCINI

Conditioned upon a satisfactory federal fingerprint based criminal history check

CONDITIONS MET X

Date:

Conditioned date: May 6, 2005

3. FINGER LAKES REQUEST FOR ADDITION OF RACING OFFICIAL - COMBS

This approval is conditioned upon the background check of Donald E. Combs.

The meeting was adjourned at 11:45 a.m.