

MAINE STATE HARNESS RACING COMMISSION

IN RE: WEST OXFORD)
AGRICULTURAL SOCIETY)
)
) ORDER AND DECISION ON
) REOPENING RACE DATES
)

INTRODUCTION

On December 20, 2022, the Maine Harness Racing Commission (“Commission”) considered West Oxford Agricultural Society’s (“Fryeburg” or “Fair”) request to reopen the November 15, 2022 race date assignment proceedings pursuant to 8 M.R.S. § 271(1)-(2), 5 M.R.S. §§ 9051 - 9064, and Chapter 19, Section 4.10 of the Maine State Harness Racing Commission Rules. Its request to reopen the race date proceedings was for the purpose of seeking six racing days instead of five as previously granted, and if only five days of racing were granted, to change one of the days it was permitted to race. A quorum of the Commission was present during all stages of the proceedings. Chair Harry Center II, Barry Norris, Don Marean, Patricia Varnum, and Diane Dunn participated and voted as Commission members. The Notice of Hearing was posted on the Commission’s website and provided to interested parties via email on December 8, 2022. The Notice of Hearing was admitted without objection as Exhibit 1. Upon her request, licensed Owner Katharine Nason, was granted intervenor status before the hearing.

FACTUAL FINDINGS

David Hastings, President, and Kim Pike, Racing Director, of Fryeburg Fair testified regarding its request to reopen the proceedings. Fryeburg Fair requested that the Commission grant it six days of racing for 2023, instead of five, as was awarded at the November 15, 2022

annual race date proceedings. It also requested that in the event the Commission did not grant it six days of racing, that it be permitted to race Thursday, October 5, 2023 instead of Sunday, October 8, 2023. Fryeburg Fair's written request to reopen its race date proceedings, which followed its verbal request, was admitted as Exhibit 2. After hearing preliminary testimony from Mr. Hastings, the Commission voted unanimously to reopen the race dates proceedings to consider both requests regarding the 2023 race date calendar.

Mr. Hastings testified that he understood legal notice was posted regarding the annual race date proceeding, but he and other senior members of the Fair only learned of the November 15, 2022 race date proceeding on the day it occurred. Mr. Hastings did not have new evidence to present, or evidence that was unavailable during the annual race date proceeding. Mr. Hastings testified that the fair has always raced six days for the last twenty or thirty years, and would rather race six days this year as well. If it does not race six days, customers will be disappointed. Mr. Hastings stated that if it is not permitted to race one of those days, it will fill that time with other events, which may become entrenched in the calendar, making it difficult to set that day aside for racing in the future. Mr. Hastings also stated that once the 2023 Fair schedule was published, it would be difficult to change.

Mr. Pike testified that he still does not agree that racebacks are harmful to horses. Mr. Pike stated that Trainers should be permitted to evaluate their horses and decide whether it is fit to race. He reiterated his prior testimony that older generations of his family would race horses three times in one day, or every other day, and that was permissible. Mr. Pike testified that Executive Director Bacon called him prior to the annual race date hearing to explain that he would be recommending to the Commission that each fair take a day off from racing in order to

address the problem of race backs. Mr. Pike disputes how the conversation went, or whether he agreed to which day the Fair would take off from racing if the Commission agreed with the Executive Director's recommendation.

Debbie Patterson, Executive Director of the Maine Harness Horseman's Association testified that Fryeburg Fair is important because it is Maine's Blue Ribbon Fair and is exciting for the patrons that attend. She testified that Fryeburg Fair is also important because of the large crowd it attracts, which increases the amount of money it generates for the fair and horseman. She suggested that if the horse supply remains low, which contributes to racebacks, that the Commission could address it at the annual horse supply hearing in August. Ms. Patterson also testified that if an official notices a horse racing a lot, they can ask the Department's veterinarian, Dr. Zach Matzkin, to examine the horse.

Kathy Nason, a licensed Owner, testified in support of Fryeburg Fair being awarded six days of racing. She stated she had a petition with 100 signatures requesting that the Commission reconsider its decision to only award six days of racing. Ms. Nason testified generally that she believes the Owners and Trainers should make the decision about how often a horse should race, whether or not that meant the horse would have a lot of racebacks.

Dr. Zach Matzkin is a licensed veterinarian who has been employed by the Department for about eleven years as a veterinarian. He testified that it is his responsibility to look out for the welfare of the horses. Dr. Matzkin testified that in at least once instance, a presiding judge asked him to examine a horse because the judge thought it was lame, but Dr. Matzkin stated the horse was fit enough to race. Dr. Matzkin testified that it was extremely rare for him to ask for a horse to be removed from a race due to its condition. He explained it is generally accepted in his realm

that racing three times a week is not good for the horses. However, racebacks will often occur at the tracks because there are not enough horses, so horses that have already raced recently will be placed on a race card to race again. He also testified that he has heard licensees complaining about the quality of the race cards.

Shane Bacon, Executive Director of the Commission, finally testified. The Commission took administrative notice of Mr. Bacon's prior testimony from the November 15, 2022 hearing to the extent it related to Fryeburg Fair or racebacks generally. Mr. Bacon testified that the horse supply has not increased since the November hearing and it still remains low. He explained that in the last twenty to thirty years, the horse supply has decreased significantly. Mr. Bacon explained that reducing dashes would not eliminate racebacks and that he was unsure whether it would decrease five-horse fields. Mr. Bacon testified that none of the testimony during the hearing has changed his opinion that the horse supply remains low, that racebacks are harmful to horses, and that Fryeburg Fair should be allowed to only race five days to address racebacks. He would support Fryeburg's request to change its date from racing on Sunday, October 8, to racing on Thursday, October 5. He explained that he had no financial interest in whether a horse was placed in a race, whereas all other parties who testified today generally do, or represent those that do. He explained his opinion that horses are being put in to race when they otherwise wouldn't be, and would be given a day of rest, in order to fill race cards. Finally, Mr. Bacon testified that in advance of the November hearing, he reached out to each of the Fair intervenors to inform them that he would be recommending that the Commission grant no more than five race days in a row for the duration of 2023 season.

CONCLUSIONS AND ORDER

Based on the testimonial and documentary evidence in the record, the Commission concluded it was appropriate to reopen the race date proceedings testimony. The Commission considered the evidence presented and deliberated as follows. Although no scientific studies were presented regarding racebacks being harmful to horses, almost all the other fairs had agreed to take a day off from racing in order to race no more than five days in a row to reduce racebacks. The Commission acknowledged that racetracks are an important part of the industry, and that reducing racing days has a financial impact on owners, trainers, and the fairs. The Commission noted that it had a responsibility to the wagering public as well, and that five horse fields are not as competitive for wagers as eight horse fields are. In this instance, due to the low horse supply, the Commission determined it was necessary to not race more than five days in a row, in part to protect the horses' welfare.

Based upon the evidence and testimony presented and upon deliberation, the Commission voted 1-4 to grant Fryeburg Fair six days of racing for calendar year 2023, with Commissioner Varnum in favor and all others opposed. The Commission voted unanimously to permit Fryeburg Fair to race on Thursday, October 5, 2023 instead of Sunday, October 8, 2023, as reflected in Exhibit 3, incorporated into this Decision and Order.

APPEAL RIGHTS

Any party to this proceeding may seek review of this Decision, to the extent this review is permitted by law, by filing a petition for review in Superior Court pursuant to 5 M.R.S. §§ 11001, *et seq.*, within thirty (30) days after receiving this notice of this Decision. Any other person aggrieved by this Decision may seek judicial review in like manner by filing a petition for

review in Superior Court within forty (40) days after the date of this Decision.

Dated: 11/19/2023



Harry Center II, Chair
Maine State Harness Racing Commission

cc: Members of the Maine State Harness Racing Commission
David Hastings, West Oxford Agricultural Society
Shane Bacon, Executive Director
Miles Greenleaf, Program Coordinator
Nicole Sawyer, Assistant Attorney General
Ralph Canney, State Steward
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