

**BEFORE THE PENNSYLVANIA
STATE HORSE RACING COMMISSION**


In Re: :
Ejection/Denial of Admission : **Administrative Docket No. 2018-3**
Hearing Procedures :
(as amended) :

AMENDED ORDER

On April 27, 2017, this Commission, in accordance with its general authority and jurisdiction over pari-mutuel racing activities and specifically, under the authority set forth in 3 Pa. C.S. §9311(h) of the Racing Act (Docket No. 2017-8), issued an Order adopting as temporary regulations certain procedures governing the expedited scheduling and conduct of ejection and/or refusal of admission matters from racetracks. The order and related procedures were published on June 3, 2017, in the Pennsylvania Bulletin at 47 Pa.B. 3168.

Since the publication and implementation of those procedures, the Commission subsequently received specific comments and suggested changes to the ejection procedures from representatives of PARX. The Commission has now reviewed and considered all the suggested changes and has agreed to modify its ejection procedures with some of the proposed changes as more fully set forth in the attached Annex A. This Order and temporary regulation shall be published in the Pennsylvania Bulletin and posted in the Commission's website. These amended procedures shall take effect upon publication.

**BY THE PENNSYLVANIA
STATE HORSE RACING COMMISSION:**



Russell C. Redding, Chairman

ANNEX A

REFUSAL OF ADMISSIONS/EJECTION EXPEDITED HEARING PROCEDURES

Section 1. General purpose.

The sections set forth below are intended to govern the expedited practice and procedures before the Commission solely regarding the ejection from and/or the refusal of admission to a licensed racetrack. Ejections and/or refusal of admission are governed by §9326 (a) of the act (3 Pa. C.S. §9326 (a)). The following sections are intended to supplement 2 Pa. C.S. (relating to administrative law and procedure) and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

Section 2. Definitions.

The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

Adjudication – the written order, decree, decision, determination or ruling by the Commission affecting the personal or property rights, privileges, immunities, duties, liabilities or obligations of the parties to the proceeding in which the adjudication is made.

Commissioner or Presiding Officer – a member of the Commission, or other person designated by the Commission to conduct the proceeding.

Decision – the determination from the bench by the Commission affirming or reversing the ejection/refusal of admission action immediately upon the closing of the evidentiary record of the proceeding.

Ejection or Refusal of Admission – the action taken by a licensed racing entity to refuse admission to the grounds of the racetrack enclosure or the physical removal of a licensee from the grounds of the racetrack enclosure as provided by 3 Pa. C.S. §9326 of the act.

Ejection Notice – written notification by a licensed racing entity to an individual licensed by the commission of the ejection and/or refusal of admission of that individual from the racetrack enclosure and the enumerated reasons for such action.

Ejectee – an individual ejected from and/or refused admission to the racetrack enclosure pursuant to 3 Pa. C.S. §9326 of the act.

Licensed Racing Entity – any person that has obtained a license to conduct live thoroughbred or harness horse race meetings respectively with pari-mutuel wagering from the commission.

Party – a person who is named in or admitted to the proceeding and who has a direct interest in the subject matter of the proceeding.

Section 3. Written ejection notices.

(a) A licensed racing entity may refuse admission to and/or eject from the racetrack enclosure operated by the licensed racing entity, any person licensed by the Commission and

employed at an occupation at the racetrack, if the person's presence is deemed detrimental to the best interests of horse racing and after citing the reasons for the determination in writing.

(b) The written notice shall also advise the ejectee of that person's right to request a hearing before the Commission no later than 48 hours following receipt of the written ejection notice. THE WRITTEN EJECTION NOTICE SHALL INCLUDE THE ADDRESS OF THE COMMISSION AND THE ADDRESS OF THE LICENSED RACING ENTITY.

(c) Failure by the licensed racing entity to provide formal written notice of the refusal of admission or ejection to the licensed individual shall be grounds for a show cause order to be issued by the Commission.

Section 4. Request for a hearing.

(a) The person ejected or refused admission to the racetrack enclosure may request a hearing before the commission, if such request:

(1) is in writing;

(2) is received by the breed-specific Bureau Director in the Executive Office of the Commission (Office of the Clerk) within 48 hours of receipt of the written notice of ejection/refusal of admission, and

(3) sets forth a concise statement of all grounds upon which a hearing is requested.

(b) Each Bureau Director shall review the timeliness and appropriateness of such a request for a hearing. Any appeal deemed untimely shall be dismissed.

(c) *Stay of Enforcement.* A request for a stay, if any, shall be granted by the respective bureau Director, UNLESS THE DIRECTOR FINDS, THAT THE STAY IS NOT IN THE BEST INTEREST OF RACING OR PRESENTS A THREAT TO PUBLIC SAFETY. ANY STAY GRANTED shall continue until such time as the Commission renders a final WRITTEN decision in the matter. THE FOLLOWING SHALL APPLY TO A REQUEST FOR OR GRANTING OF A STAY:

(1) AN EJECTEE WHO REQUESTS A STAY MUST PROVIDE NOTICE OF THE REQUEST TO THE LICENSED RACING ENTITY THAT ISSUED THE NOTICE OF EJECTION/REFUSAL OF ADMISSION AND PROVIDE PROOF OF SERVICE OF THE NOTICE TO THE RESPECTIVE BUREAU DIRECTOR. NO STAY REQUEST MAY BE GRANTED UNTIL 24 HOURS AFTER THE DIRECTOR'S RECEIPT OF PROOF OF SERVICE UNDER THIS PARAGRAPH.

(2) THE LICENSED RACING ENTITY MAY SUBMIT A WRITTEN ANSWER AND SUPPORTING DOCUMENTATION TO THE REQUEST FOR A STAY TO THE BUREAU DIRECTOR.

(3) ALL SUCH WRITTEN NOTICES, PROOF OF SERVICE OR ANSWERS TO STAY REFERENCED ABOVE MAY BE ELECTRONICALLY FILED WITH THE DIRECTOR.

(d) No appeal shall be granted or heard regarding the purported denial of horse entries by a licensed racing entity.

Section 5. Notice and location of hearing.

(a) All ejection/ refusal of admission hearings, if granted, shall be scheduled for and conducted at the next duly scheduled public meeting of the Commission SUBJECT TO THE NOTICE PROVISION UNDER SUBSECTION (B). THE HEARING SHALL TAKE PLACE AT THE LOCATION OF THE COMMISSION'S PUBLIC MEETING. IF SCHEDULING THE HEARING FOR THE NEXT DULY SCHEDULED PUBLIC MEETING OF THE COMMISSION DOES NOT AFFORD THE APPROPRIATE NOTICE, THE HEARING SHALL BE SCHEDULED FOR THE FOLLOWING DULY SCHEDULED PUBLIC MEETING.

(b) The parties to the proceedings shall be provided AT LEAST FIVE DAYS written notice of the specific location, date and time of the Commission meeting at which the EJECTION hearing will take place.

(c) Hearings will not be continued except for compelling reasons, as determined by the Commission, in its sole discretion. Any request for a continuance must BE submitted in writing setting forth the compelling reasons to the Commission.

Section 6. Conduct of hearing

(a) The commissioners shall preside over the course and conduct of the matter directly. The Commission may, however, in its discretion, designate a member of the Commission or other qualified person to serve as the presiding officer in the particular matter.

(b) Hearings may provide for:

- (1). Receipt of sworn testimony.
- (2). Receipt of all relevant oral or documentary evidence.
- (3). Opportunity for parties to be heard.
- (4). A complete evidentiary record.

(c) The commissioners and/or the presiding officer shall have the power and authority to do the following:

- (1). Regulate the course of the hearing, including recessing, reconvening or adjournment thereof.
- (2). Administer oaths and affirmations.
- (3). Issue subpoenas.
- (4). Rule upon offers of proof and receive evidence.
- (5). Dispose of motions made during the hearing to dismiss the proceedings or other motions which involve the final determination of the proceedings.

(6). Take any other action necessary and appropriate to the discharge of their duties as may be designated by the Commission.

(d) All ejection/refusal of admission hearings shall be stenographically recorded.

(e) Given the expedited nature of the proceeding and limited duration of a stay, if applicable, the parties shall not be afforded the opportunity to submit written briefs, except upon extraordinary circumstances presented and in the commissioners' sole discretion.

(f) A decision and order by the Commission shall be made and entered immediately upon the closing of the evidentiary record as introduced at the hearing.

(g) Within 15 days from the issuance of the commission's decision, a written adjudication supporting its decision and order shall be issued to the parties.

(h) This section supersedes 1 Pa. Code §§ 35.185 – 35.190 (relating to presiding officers) and 1 Pa. Code Chapter 35, Subchapter B (relating to hearings and conferences).

Section 7. Appeals to Commonwealth Court.

(a) A party may appeal the final order and adjudication of the Commission to the Commonwealth Court of Pennsylvania within 30 days of the receipt of the written determination.

(b) The filing of an appeal will not stay enforcement of the decision or final order of the Commission unless a stay is obtained from the court upon application in accordance with the Rule of Appellate Procedure.