

IN THE MATTER OF NICHOLAS G. FERRIERO,

FORMER PRESIDING JUDGE FOR THE NEW
YORK STATE GAMING COMMISSION.

SUBSTANTIAL BASIS INVESTIGATION REPORT
AND SETTLEMENT AGREEMENT
CASE NO. 18-191

WHEREAS, the Joint Commission on Public Ethics ("Commission") is authorized by Executive Law § 94 to conduct an investigation to determine whether a substantial basis exists to conclude that any violations of the Public Officers Law have occurred, to issue a report of its findings of fact and conclusions of law, and to impose penalties for any violation;

WHEREAS, Nicholas G. Ferriero ("Respondent"), was employed by the New York State Gaming Commission (NYSGC), and its predecessor agencies from March 2006 until his termination on December 31, 2017;

WHEREAS, on September 6, 2018, the NYSGC sent this matter to the Commission for its consideration, among other things, relating to Respondent's failure to recuse himself as a presiding judge over races where his brother in law was the driver. The NYSGC determined there was no evidence that the races were decided unfairly or in the favor of the brother in law. As a result, Respondent was terminated;

WHEREAS, on October 4, 2018, a letter was sent to Respondent alleging violations of Public Officers Law §§ 74 (3) (c), (d), (f), and (h), which afforded Respondent fifteen (15) days in which to respond;

WHEREAS, on October 30, 2018, the Commission voted to commence an investigation into this matter;

WHEREAS, Respondent and the Commission, the parties to this Settlement Agreement ("Agreement"), have agreed to resolve this matter in a manner that avoids additional administrative and/or adjudicatory proceedings;

NOW THEREFORE, in consideration of the mutual covenants made herein, as the final settlement of this matter, the parties stipulate and agree that:

1. Respondent admits that from approximately January 2012 to approximately December 2017, he served as the Presiding Judge for horse races in which his brother-in-law was the driver. Respondent admits that he failed to notify the NYSGC of his relationship with his brother in law and recuse himself from officiating such races.
2. Respondent admits that his conduct described in Paragraph 1 violated Public Officers Law § 74 (3) (f) which provides that an employee of a state agency should not by his conduct give reasonable basis for the impression that any person can improperly influence him or

unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.

3. The Commission has agreed to the terms of this Agreement based on, among other things, the representations made by the Respondent. To the extent that such representations made by the Respondent are later found by the Commission to be materially incomplete or inaccurate, the Respondent shall be in breach of this Agreement.
4. If the Respondent fails to timely perform any conditions set forth in the Agreement, Respondent shall be in breach of this Agreement.
5. Respondent agrees not to take any action or to make, permit to be made, authorize, or agree to any public statement denying, directly or indirectly, any finding in this Agreement or creating the impression that this Agreement is without factual basis. Nothing in this paragraph affects Respondent's: (a) testimonial obligations; or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the Commission is not a party. A violation of this Paragraph constitutes a breach of this Agreement by Respondent.
6. Upon a breach of this Agreement, the Commission shall have sole discretion to deem the Agreement null and void in its entirety, issue a new Notice of Substantial Investigation and Hearing, which may include additional charges against Respondent and proceed with an enforcement action, and then issue a new Substantial Investigation Report; or to deem the Respondent in breach of this Agreement and pursue, in court, any other remedy to which the Commission is entitled at law or in equity, including but not limited to, specific performance or injunction. As to any new Notice of Substantial Investigation and Hearing or enforcement action by the Commission pursuant to this paragraph: (1) Respondent waives any claim that such action is time-barred by a statute of limitations or any other time-related defenses; and (2) Respondent expressly acknowledges and agrees that the Commission may use any statements herein, or any other statements, documents or materials produced or provided by Respondent prior to or after the date of this Agreement.
7. Respondent shall upon request by the Commission provide all documentation and information reasonably necessary for the Commission to verify compliance with this Agreement.
8. Respondent understands and acknowledges that the Commission may investigate any other conduct not covered by this Agreement by Respondent and take any appropriate action.
9. Respondent waives the right to assert any defenses or any challenges to this Agreement, as well as any right to appeal or challenge the determination or conduct of the Commission relating to this matter in any forum.
10. This Agreement and any dispute related thereto shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

11. Respondent consents to the jurisdiction of the Commission in any proceeding to enforce this Agreement.
12. It is understood that this Agreement is not confidential and will be made public within 45 days of its execution in accordance with Executive Law §§ 94(14) & (19).
13. This Agreement constitutes the entire agreement between the parties and supersedes any prior communication, understanding, or agreement, whether oral or written, concerning the subject matter of this Agreement. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Agreement has been relied upon by any party to this Agreement.
14. Any amendment or modification to this Agreement shall be in writing and signed by both parties.
15. This Agreement shall become effective upon execution by the Commission or its designee.
16. In the event that one or more provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement.
17. By signing below, Respondent acknowledges reading this Agreement in its entirety, understanding all terms and conditions of this Agreement, and having done so, knowingly, voluntarily, and freely enters into this Agreement. Electronic signatures shall be deemed original for this Agreement. This Agreement may be executed in two or more counterparts, each of which shall be deemed original, but all of which together shall constitute one and the same instrument.

Dated: February 26, 2019



Seth H. Agata
Executive Director
New York State Joint Commission on Public Ethics

ACCEPTED AND AGREED TO

THIS 26 DAY OF FEBRUARY, 2019

Respondent

By:



Nicholas G. Ferriero

Approved:

Michael K. Rozen
Chair

Robert Cohen
James E. Dering
Colleen C. DiPirro
William P. Fisher
Julie A. Garcia
Daniel J. Horwitz
Marvin E. Jacob
Gary J. Lavine
George H. Weissman
James Yates
Members

David J. McNamara
Absent