

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2805-07T3

IN THE MATTER OF:
CONSIDER ALLOCATION OF RACING
DATES FOR THOROUGHBRED AND
STANDARD BRED PERMITHOLDERS
FOR 2008.

Argued May 5, 2009 - Decided June 2, 2009

Before Judges Colleser, Graves and Grall.

On appeal from the New Jersey Racing
Commission.

Peter V. Koenig argued the cause for
appellant New Jersey Thoroughbred Horsemen's
Association (Lomurro, Davison, Eastman &
Munoz, attorneys; Michael D. Schottland, of
counsel; Mr. Koenig, on the brief).

Gordon J. Golum argued the cause for
respondent New Jersey Sports & Exposition
Authority (Wilentz, Goldman & Spitzer,
attorneys; Mr. Golum, of counsel and on
the brief; Jeffrey J. Brookner and Gina A.
Lee, on the brief).

John M. Pellicchia argued the cause for
respondents Pennwood Racing, Inc., F.R. Park
Racing and Greenwood ACRA, Inc. (Riker
Danzig Scherer Hyland & Perretti, attorneys;
Mr. Pellicchia, of counsel and on the
brief).

Judith A. Nason, Deputy Attorney General, argued the cause for respondent New Jersey Racing Commission (Anne Milgram, Attorney General, attorney; Melissa H. Raksa, Deputy Attorney General, of counsel; Ms. Nason, on the brief).

PER CURIAM

The New Jersey Thoroughbred Horsemen's Association (THA) appeals from an order of the New Jersey Racing Commission (Commission). That order approves an application filed by the Atlantic City Race Course (ACRC) to hold a six-day meet on April 23, 24, 25, 30 and May 1 and 2, 2008.

THA contends that the order is invalid, alleging the following: ACRC's application was amended after the deadline for filing and included a request for fewer racing dates than ACRC agreed to request when its 2007 application was approved; the motion to approve the application was not seconded and was adopted without deliberation; the Commission did not have procedural rules required by N.J.S.A. 52:14B-3; the order references but does not include the conditions imposed by the Commission; the order approves steeplechase races as well as "true thoroughbred races"; and the Commission did not allocate the number of racing dates required by N.J.S.A. 5:5-44b. On those grounds, THA seeks reversal of the order and a remand for the scheduling of additional racing dates in 2008.

Since this appeal was filed the circumstances have changed. The year 2008 has ended, and a 2009 judgment cannot change the 2008 racing calendar. Racing dates for 2009 have been allocated. Furthermore, the Commission has adopted rules of practice and procedure and a substantive rule addressing its annual allocation of racing dates. N.J.A.C. 13:71-1.27 to -1.34. An appeal challenging those rules has been filed, In re Adoption of N.J.A.C. 13:70-1.32 through 1.41 and N.J.A.C. 13:71-1.27 through 1.66, Docket No. A-1913-08.

In the interest of judicial economy and restraint, we generally do not decide a case when the matter is moot because the "judgment cannot grant effective relief." Caput Mortuum, L.L.C. v. S & S Crown Servs., Ltd., 366 N.J. Super. 323, 330 (App. Div. 2004); see Cinque v. N.J. Dep't of Corr., 261 N.J. Super. 242, 243-44 (App. Div. 1993). Courts have deviated from that practice when the "underlying issue is one of substantial importance, likely to reoccur but capable of evading review," Zirger v. Gen. Accident Ins. Co., 144 N.J. 327, 330 (1996). But, because the Commission has adopted relevant regulations, the issues in this case are not of that sort. THA's objections based on the absence of regulations will not arise again, and practices and standards in place in 2008 that have been

incorporated in the regulations can be challenged in the pending appeal.

The appeal is dismissed as moot. R. 2:8-2.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION