

CONFIDENTIAL

OGIG Case #17-0177

Vernon Downs Officials

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Relevant Statutes and Commission Policies and Procedures

Public Officers Law §74 – Code of Ethics

In general, Public Officers Law §74(3)(c), (d), (f), and (h) prohibit any officer or employee of the State from engaging in any business or transaction which is in substantial conflict with the proper discharge of ones' duties. This prohibition includes not only actual conflicts, but also perceived conflicts as well. Specifically, Subsections 3 (f) and (h) states that the conduct "should not give reasonable basis for the impression that any person can improperly influence" the employee and that the employee should engage in "a course of conduct which will not raise suspicion among the public" that the employee is likely to have acted in a manner which violates his or her trust.

Codes, Rules and Regulations §4105.7(g) – Special Duties of Presiding Judge

In addition to being responsible for the performance of the judges' duties by himself or herself and other officials under his or her supervision, the presiding judge shall supervise "[t]he admittance of persons to judges' stand³ subject to the direction of the [C]ommission."

[REDACTED]

[REDACTED]

³ Staff interchangeably used the terms judges' stand, judges' booth, and crow's nest to refer to the stand at Vernon Downs. For consistency, this Report will use judges' stand as referenced in the Commission's rules.

[REDACTED]

[REDACTED]

Commission Code HR-002 – Code of Ethics for Gaming Commission Employees

Commission Code HR-002 establishes a code of ethics which govern the conduct and responsibilities of employees. The guiding principle of this policy is that Commission employees are held to the highest standards of conduct and integrity and are expected to perform their duties promptly, courteously, thoughtfully and free from improper influence or bias. Additionally, employees are expected to exhibit ethical behavior both in and out of the workplace and are expected to perform their duties in an impartial manner and avoid any appearance of acting otherwise.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Vernon Downs

Vernon Downs is one of seven harness tracks in New York, opening on July 1, 1953. Racing takes place from April through November, generally on Friday and Saturday evenings. In 2018, Vernon Downs had 68 race days with 54,933 in total attendance. Its live handle was \$1,726,851 and simulcast handle was \$5,388,886, totaling \$7,115,737, which was more than any other harness track except for Yonkers Raceway. Interestingly, its handle was less than 10% of Yonkers Raceway's though it had two and half times as many patrons.

The Commission has approximately 20 per diem employees assigned to Vernon Downs, including a Presiding Judge, two Associate Judges, an Assistant to the Presiding Judge, Recording Judge, Paddock Judge, Supervising Inspector, Inspectors, Veterinarian, Starter, and track Investigator. All employees are expected to arrive at least one hour prior to post time, usually 6:10 P.M., to prepare for races. Commission racing officials are also at the track on dark days to perform administrative tasks, as well as for qualifiers.

According to staff, the judges' stand is not solely occupied by the Presiding Judge and Associate Judges. Rather, an employee of Vernon Downs, [REDACTED], [REDACTED] also sits in the booth. [REDACTED], [REDACTED] Vernon Downs' [REDACTED], sits in the room adjacent to the booth, which is connected by an open window/pass-through.

Jeffrey Tallarino – Personnel and Background Information

Tallarino was previously a harness owner, trainer, and driver and had been licensed by the the Commission's predecessor, the New York State Racing and Wagering Board ("RWB"). In November 2007, he began his State employment with the RWB as an Associate Judge at Saratoga Harness Track and also served as a Starter. On January 3, 2014, he was promoted to Presiding Judge at Vernon Downs. During the summers, and on an as needed basis, Tallarino also served as a Starter, Associate Judge and/or Presiding Judge at other harness tracks. The most recent performance evaluation in Tallarino's PHF covered the period from July 24, 2012, through December 7, 2012, prior to the formation of the Commission. [REDACTED].

Tallarino's PHF contained multiple acknowledgements that he received and read or participated in the following: Joint Commission on Public Ethics' ("JCOPE") Comprehensive Ethics Training Course dated July 8, 2013; [REDACTED]; [REDACTED]; GOER's Integrity Outreach course dated July 25, 2011; Plain Language Version of New York State Ethics Law dated June 3, 2010 and February 3, 2010; [REDACTED]; [REDACTED] GOER's Ethics and NYS Employment course dated February 11, 2008; RWB's Employee Handbook dated November 29, 2007; and State Employee Statement in Lieu of

Oath dated November 18, 2007.²¹ Tallarino also attended this Office's Corruption Awareness training on June 23, 2016.²²

On January 5, 2018, [REDACTED], Tallarino was appointed to Monticello Raceway as an Associate Judge. He was to be reassigned to Yonkers Raceway as Presiding Judge for the next meet.²³ However, on May 5, 2018, Tallarino tendered a letter of resignation from his Commission appointment retroactively effective to March 29, 2018.²⁴

[REDACTED] – Personnel and Background Information

[REDACTED] was previously an owner, trainer, and driver and was licensed by the RWB. In June 2003, [REDACTED] began her State employment with the RWB as a [REDACTED] at Vernon Downs. Following receipt of her licensure, she served as an [REDACTED]. During the summers, and on an as needed basis, she would fill-in at other tracks. [REDACTED] is also employed as a [REDACTED] though there was no paperwork indicating same in her PHF.

The most recent performance evaluation in [REDACTED] PHF covered the period from April 27, 2012, through November 3, 2012, when [REDACTED] was still the [REDACTED] at Vernon Downs and prior to the formation of the Commission. [REDACTED]

[REDACTED] PHF contained multiple acknowledgements that she received and read or participated in the following: State Employee Statements in Lieu of Oath and Public Officers §78 dated June 19, 2018 and May 19, 2017; JCOPE's Comprehensive Ethics Training Course dated July 8, 2013; [REDACTED] GOER's Integrity Outreach course dated July 26, 2011; Plain Language Version of New York State Ethics Law dated June 3, 2010; June 19, 2008 email regarding previous year's completion of ethics and sexual harassment training; RWB's Employee Handbook dated August 28, 2007; and Oath of Office and acknowledgment of receipt of Public Officers Law section 73

²¹ See Tallarino certificates, verifications, and acknowledgement, annexed hereto as Exhibit "3A." Exhibits related to Tallarino's employment with the Commission are collectively referred to as Exhibit "3," with each type of record assigned an individual letter. As trainings are now conducted mostly online, compliance is tracked in the Statewide Learning Management System, which can be accessed by HR staff, and proof of completion of such trainings is no longer included in employee PHF files. If staff are delinquent, a notification is sent to the employee and his/her supervisor. However, as of May 2019, JCOPE no longer sends copies of delinquency notifications regarding training to the Commission's Ethics Officer.

²² See Jun. 23, 2016 sign-in sheet, annexed hereto as Exhibit "4."

²³ See Jan. 5, 2018 appointment letter and Commission Request for Budget Director's Approval List for Yonkers Raceway for the period of Apr. 26, 2018 to Sep. 6, 2018, annexed hereto as Exhibit "3B."

²⁴ See May 5, 2018 resignation letter; undated email from [REDACTED] to [REDACTED]; and NYS Dept. of Civil Service report, annexed hereto as Exhibit "3C." Since Tallarino worked on that day, his resignation was made effective March 30, 2018.

²⁵ See Oct. 15, 2009 email from [REDACTED], to [REDACTED] and copied to [REDACTED]; [REDACTED] at Vernon Downs; and [REDACTED], then [REDACTED] annexed hereto as Exhibit "5A." Exhibits related to [REDACTED] employment with the Commission are collectively referred to as Exhibit "5," with each type of record assigned an individual letter.

through 78 dated June 20, 2003.²⁶ [REDACTED] also attended this Office's Corruption Awareness Training on June 23, 2016.²⁷

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

As noted above, Tallarino had already been reassigned to Monticello Raceway as an Associate Judge and tendered his resignation prior to his appointment to Yonkers Raceway as

²⁶ See [REDACTED] certificates, verifications, and acknowledgment, annexed hereto as Exhibit "5B."

²⁷ See Exhibit "4."

²⁸ See Mar. 1, 2018 [REDACTED] memorandum to [REDACTED] annexed hereto as Exhibit "6A." Exhibits related to the Commission's review of the [REDACTED] are collectively referred to as Exhibit "6," with each record assigned its own letter.

²⁹ *Ibid.*

³⁰ See Mar. 1, 2018 [REDACTED] memorandum to File, annexed hereto as Exhibit "6B." It should be noted that the title of the electronic document included the word "DRAFT."

Presiding Judge.³¹ [REDACTED], [REDACTED], was aware of [REDACTED], but nevertheless told Tallarino that he was “one of the best employees the Gaming Commission ever had. Presiding Judge, Starter, you did both very well. On a personal note, I will miss your great positive outlook on life and your humor.”³² Additionally, staff reported that there was no request to initiate disciplinary action against Tallarino, and neither a letter of reprimand nor a counseling memorandum were located in Tallarino’s PHF.

In contrast, although [REDACTED] memorandum made no mention of additional action against [REDACTED] other than counseling, the Commission gave [REDACTED] a delayed start of one month for the 2018 Vernon Downs meet. [REDACTED] was instructed to counsel [REDACTED] as to the behavior identified in the [REDACTED] and to inform [REDACTED] why she was given the late start date. However, no counseling memorandum was found in [REDACTED] PHF, and this Office could not locate any documentation that a counseling session took place between [REDACTED] and [REDACTED] prior to the 2018 Vernon Downs meet.

[REDACTED] conferred with then-[REDACTED], whether disciplinary action should be taken against the other [REDACTED]. Although the [REDACTED] made no specific findings related to [REDACTED] the [REDACTED] noted that other Commission staff was present during the [REDACTED]. Contrary to the State’s Handbook and Commission policy, [REDACTED] stated his belief that there

[REDACTED] Based on his review of the [REDACTED] commented that [REDACTED] and [REDACTED]

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It should be noted that [REDACTED] was present during the [REDACTED] interview of Tallarino and advised this Office of Tallarino’s admissions as cited earlier. Tallarino also believed that he had a good relationship with [REDACTED] until an incident regarding the driver board, at which point their relationship deteriorated and prompted her complaint. [REDACTED] further advised this Office that [REDACTED]

³¹ This Office was advised that Tallarino relocated to Florida. An internet search reveals that Tallarino has been working as a licensed insurance agent in Florida since June 2018.

³² See May 5, 2018 email from [REDACTED] to Tallarino, annexed hereto as Exhibit “7.”

³³ See Apr. 24, 2018 email from [REDACTED] to [REDACTED] annexed hereto as Exhibit “8.”

[REDACTED] .³⁴
[REDACTED], the following year, in 2019, [REDACTED] was again given a late start at Vernon Downs. Specifically, she started a week after [REDACTED], the current [REDACTED], and [REDACTED] even though her appointment letter had the same start date of April 5, 2019.³⁵ [REDACTED] speculated that it was due to her 2017 complaint. Contributing to the confusion, on October 30, 2018, and August 20, 2019, [REDACTED] much-belatedly attempted to have [REDACTED].

Key Interviews

[REDACTED]
[REDACTED] attended [REDACTED] for horse training and was licensed as a driver, trainer, and owner for about [REDACTED] years prior to working for the RWB. She explained that [REDACTED] called her about a position at the RWB. Following that call, [REDACTED] went to school to be a [REDACTED] and in June 2003 commenced working at Saratoga Harness. In 2012, she was appointed to be an [REDACTED] [REDACTED]³⁶ assigned to Vernon Downs, working for Presiding Judges [REDACTED], and Tallarino.

[REDACTED] said that she has known Tallarino dating back to when they were both racing. She noted that she can no longer associate with horseman because of her position and shared that [REDACTED] complained that she would not accept his Facebook friend request. [REDACTED] opined that Tallarino did not share the same perspective and commented that Tallarino has mentioned that he is “buddies” with [REDACTED], [REDACTED] of Vernon Downs.

When asked who works in the judges’ stand, [REDACTED] replied that in addition to the Presiding Judge and Associate Judges, [REDACTED] who works for Vernon Downs, [REDACTED] described [REDACTED] as “so smart” with numbers [REDACTED].

[REDACTED] described the banter in the judges’ stand as “locker room talk.” She said it was the “three blind mice” in the stand, referring to Tallarino, [REDACTED] and [REDACTED] and it had escalated over the two years prior to Tallarino bringing in the phallic-shaped cake. She recounted that they often looked at the crowd through their binoculars and made comments, such as there was a “fat chick” for [REDACTED]. She said that there was also talk of sex and Viagra, among other things.

³⁴ See Jul. 25, 2018 Mandated Training Sign-In Sheets, annexed hereto as Exhibit “9.”

³⁵ See Apr. 15, 2019 appointment letters for [REDACTED] and [REDACTED] annexed hereto as Exhibit “5C.” It was noted that the appointment letter is dated after the start date. However, staff reported that it was common for appointment letters to be delayed, and typically staff are verbally informed of their start date prior to receiving the letter.

³⁶ [REDACTED] expressed her belief that she was [REDACTED] because [REDACTED] complained that it was a “high risk” for [REDACTED]. However, she acknowledged that becoming an [REDACTED] was a promotion and allowed her to work almost every day.

█████ stated that █████ who █████, walks in and out of the stand making comments about races. She added that █████ is friendly with certain trainers and drivers whose fines did not seem to get recorded, but if it was a horseman with whom █████ was not friendly, he would urge the Commission to “get/fine them.” █████ also alleged that Tallarino was more lenient towards prominent horsemen, but asserted his authority over lesser ones.

█████ complained that Tallarino did not manage the judges’ stand and Commission office properly.³⁷ █████ never arrived 30 minutes prior to post time to open the stand and would leave right after the last race, even if drivers wanted to discuss race issues because he had plans after work. █████ also complained that Tallarino did not communicate with staff if he was on vacation. She wondered whether Tallarino had become “corrupt” and/or had stopped caring about the job when he began covering as a Starter as well. She also alleged that when Tallarino turned on his computer he advised her it was for his fantasy football league.

█████ reported that after making her complaint she was reappointed to start on May 1 for the 2018 Vernon Downs meet, one month after racing had started, and without explanation. Then in October 2018, she was asked by █████ to attend a meeting with him, █████ and █████ to discuss the █████. When that meeting ended, █████ said that █████ dismissed █████ after handing him an envelope, but asked her to stay behind. She asserted that she asked █████ to stay. █████ then handed █████ a document and instructed her to read and sign it. She said that she asked █████ why she was receiving the document, and he responded that they had discussed it previously, which she disputed. █████ stated that she refused to sign the document because she disagreed with what was stated, and █████ angrily took back the document, and left in a huff.

█████ reported that she was given a late start date for the 2019 Vernon Downs meet, again without explanation.³⁸ Further, on August 20, 2019, after this Office had interviewed █████ he again attempted to have her sign a counseling memorandum. She provided photos of the memoranda he presented to her, one which had a handwritten notation of the date.³⁹

█████, Vernon Downs employee

The █████ did not interview █████ who was the recipient of the phallic-shaped cake brought to the judges’ stand by Tallarino. As such, this Office spoke with █████ to ascertain the general conduct of Commission staff in the judges’ stand, especially since other track staff, who are licensed by the Commission, are also present. The State’s Handbook focuses on

³⁷ █████ also complained that her extra shifts to cover at Saratoga Harness were reduced and that Tallarino withheld her paycheck when she confronted him about her concerns. She cited one instance where she was unable to access her paycheck because it was placed in the Office safe instead of her desk drawer. This investigation did not yield any evidence that Tallarino improperly withheld her paycheck.

³⁸ When asked about staffing for the 2019 qualifiers, █████ stated that there had to be at least two judges, but the full staff is usually present. Nonetheless, since █████ and █████ were already appointed to work the Saratoga meet, they were able to start the preparation for the Vernon Downs meet on April 5, and there was no need for █████ or any other staff. He noted, however, that █████ instructed the █████ from Saratoga to go to Vernon Downs for qualifiers, but not █████.

³⁹ See photos of counseling memoranda, annexed hereto as Exhibit “10.”

with the RWB as an inspector in 1984 and subsequently served as the [REDACTED] [REDACTED] for 15 years. He has also worked as a [REDACTED]. In 2016, [REDACTED] became an [REDACTED]. However, his primary employment is as [REDACTED].

[REDACTED] stated that the personnel in the judges' stand consists of the Presiding Judge, the two Associate Judges, and [REDACTED]. [REDACTED] is seated next door to the judges' stand, and at the end of the hall is another track employee, [REDACTED]. In addition, the track photographer and cameraman are seated to the left of the stand. He admitted that he, Tallarino, [REDACTED] and [REDACTED] socialized after work, though they invited everyone in the judges' stand to join them.

[REDACTED] described [REDACTED] as "dominating" and said that the Commission staff have a close working relationship with track staff because of the tight quarters. He described [REDACTED] [REDACTED] even though [REDACTED]. [REDACTED] added that [REDACTED] remembers birthdays, numbers, and football, [REDACTED]. He also described [REDACTED] as a wealth of information and sees things during races that judges may not because he has a better viewing position.⁴¹

[REDACTED] was asked if anything inappropriate took place in the stand, and he responded that that he needed to think about it because he did not want to "say anything wrong" adding that he liked Tallarino and [REDACTED] and did not want to get anyone in trouble. He then stated, "you read the reports" and commented that he did not think Tallarino did anything inappropriate when he brought in the cake since it was just a joke/prank, but someone must have said something. He denied having knowledge of any other instances of misconduct, but conceded that they would occasionally tease [REDACTED] including referring to heavy-set female spectators as [REDACTED] [REDACTED].

[REDACTED] opined that [REDACTED] complaint created an uncomfortable working environment adding that it was "too bad it had to be this way" and maybe [REDACTED] needed to be a "little thicker-skinned."

Although the State does not endeavor to regulate every aspect of an employee's personal life, a public servant is required to avoid conflicts of interests, including the appearance that one may exist. The relationships between Commission staff and licensees must not undermine the integrity or impartiality of the Commission. However, the open fraternization amongst the track employees and Vernon Downs officials may very well cause the public to reasonably conclude that Tallarino and/or [REDACTED] may be influenced by their relationship with others.

[REDACTED]

As a result of the [REDACTED] [REDACTED] recalled that in the spring of 2018 Tallarino was offered the opportunity to be appointed to another track, and [REDACTED] was given a late start. He also believed that [REDACTED] counseled [REDACTED] and informed her why she was being given a late start date. [REDACTED] stated that he requested that [REDACTED] provide him with a copy of [REDACTED] counseling memorandum several times, but had not received one. Reportedly, [REDACTED] claimed that he could

⁴¹ [REDACTED] mentioned that [REDACTED] complained to Tallarino that there are "three judges in this office, not four," referring to [REDACTED] input on races, and he said it was the first time [REDACTED] acknowledged him [REDACTED] as a [REDACTED]

not memorialize the session because he had not seen the [REDACTED] and did not know all the details. Though, this would beg the question of how he could conduct counseling without such information.

[REDACTED] explained that [REDACTED] did not like confrontations and added that he should have been more explicit with his directions to [REDACTED] regarding [REDACTED] counseling session. He acknowledged that [REDACTED] attempt to counsel [REDACTED] in 2019, nearly two years after [REDACTED] made her complaint, [REDACTED] was problematic and may even appear to be retaliatory. [REDACTED] also noted that [REDACTED] expressed his desire to assign [REDACTED] to Buffalo that year, purportedly because of personnel needs, but they decided against doing so.

[REDACTED] stated that when [REDACTED]. Upon his return, [REDACTED] briefed him on the incident and subsequent report, although [REDACTED] later said he could not recall whether they spoke about the [REDACTED]. [REDACTED] claimed he “[got] little” from [REDACTED] and nothing in writing, including [REDACTED].⁴² It should be noted that [REDACTED] was [REDACTED]

[REDACTED] reported that [REDACTED] presented him with a few options, and they decided on transferring Tallarino to Yonkers Raceway, even though it was 300 miles away. He opined that Tallarino resigned from his position rather than transfer to a distant track. [REDACTED] was to take “time off” and not start with the rest of the staff. As far as he knew, [REDACTED] was not involved [REDACTED], adding that [REDACTED]. He seemed to acknowledge that [REDACTED] was aware of what was going on, but excused [REDACTED], commenting that one “can’t expect someone to rat out his boss.”

[REDACTED] said that he spoke with Tallarino about his transfer, but could not recall if he spoke with [REDACTED] regarding her late start date. He admitted that he met with [REDACTED] in October 2018 to provide her with a counseling memorandum and session at Vernon Downs related to [REDACTED]. [REDACTED] claimed that he held a proper counseling session with [REDACTED] in that, he asked [REDACTED], to stay as a witness, explained what the counseling session was about ([REDACTED]), and gave [REDACTED] the opportunity to respond. He stated that she [REDACTED]. As such, he claimed that he did not ask [REDACTED] to sign the memorandum even though he had prepared one.

In contrast to [REDACTED] and [REDACTED] recollections, [REDACTED] informed this Office that neither asked him to stay, but he remained in what he described as a “natural extension” of an earlier discussion regarding proper board procedure. However, [REDACTED] supported [REDACTED] account that

⁴² Contrary to [REDACTED] claim, this Office conducted an email review which revealed that [REDACTED] received [REDACTED] from [REDACTED] on May 1, 2018. See May 1, 2018 email [REDACTED] to [REDACTED] annexed hereto as Exhibit “11.”

asked her to sign the memorandum, and when she refused to sign [REDACTED] took the memorandum back.

Interestingly, when asked why [REDACTED] was counseled in October well-after the delayed May start date, [REDACTED] claimed not to recall any conversation about counseling [REDACTED] just that she would be given a late start. Yet, at the same time, [REDACTED] acknowledged that [REDACTED] wanted him to issue a counseling memorandum, which he had not done because [REDACTED]. [REDACTED] insisted that he could not [REDACTED] when he did not have them, though he could not assert that he had requested them. Nevertheless, this Office's review of Commission records revealed that he began drafting a counseling memorandum as early as April 2018.⁴³ [REDACTED] professed that additional corrective action was to be taken, including transferring [REDACTED] to another track the following year. He maintained that he and [REDACTED] wanted to transfer both [REDACTED] and Tallarino, but that it would have been difficult to remove [REDACTED] from the same location at the same time.

Jeffrey Tallarino, former Presiding Judge at Vernon Downs

Before this Office could arrange to speak with Tallarino, he resigned from the Commission and relocated to Florida.⁴⁴

Findings

This investigation determined the following:

- 1) [REDACTED]
- 2) [REDACTED] confirmed that he, Tallarino, [REDACTED] and [REDACTED] socialized with one another outside of Vernon Downs after work. If Commission judges and track employees are observed regularly socializing, others could reasonably believe that such track employees have the ability to improperly influence those judges.
- 3) This Office did not substantiate that Tallarino had a close relationship with [REDACTED] of Vernon Downs or that Tallarino was improperly influenced by him.

⁴³ See Apr. 9, 2018 email and counseling memorandum template from [REDACTED] to [REDACTED] and cc'ed to [REDACTED] annexed hereto as Exhibit "12." An electronic copy of the Supervisor's Guide to Counseling may be provided upon request.

⁴⁴ This Office did not attempt speak with Tallarino prior to [REDACTED]

- 4) On March 1, 2018, [REDACTED] submitted a memorandum to [REDACTED] indicating that he [REDACTED]
[REDACTED]
- 5) [REDACTED]
[REDACTED]
- 6) [REDACTED]
[REDACTED] The Commission, however, proposed appointing Tallarino as Presiding Judge for Yonkers Raceway for the period of April 26, 2018, through September 6, 2018.
- 7) On May 1, 2018, [REDACTED] started at Vernon Downs, one month after the start of the Vernon Downs meet.
- 8) On May 5, 2018, Tallarino submitted a retroactive letter of resignation effective March 29, 2018. However, his resignation was made effective on March 30, 2018, as he worked on March 29, 2018.
- 9) [REDACTED]
[REDACTED]
- 10) On October 30, 2018, [REDACTED] presented [REDACTED] with a counseling memorandum to sign, which she refused to do.
- 11) Prior to the 2019 meet, [REDACTED] expressed his desire to transfer [REDACTED] from Vernon Downs, but [REDACTED] did not approve the request. Although the request was not approved, [REDACTED] continued efforts to impose what could reasonably be perceived as punitive action against [REDACTED] is evidence of his inability to effectively manage sensitive personnel issues and perhaps a bias against [REDACTED]
[REDACTED]
- 12) In April 2019, [REDACTED] started at Vernon Downs one week after [REDACTED] despite having the same official appointment date. However, there is no evidence that this was for punitive reasons since [REDACTED] had been appointed to Saratoga Harness Track for the previous meet and an active per diem employee.

- 13) On August 20, 2019, [REDACTED] again presented [REDACTED] with a counseling memorandum to sign, which she refused to do.
- 14) [REDACTED], a Vernon Downs employee, [REDACTED]. Despite [REDACTED] denials that there were [REDACTED], he conceded that he was teased by Commission and track staff, though he believed due to [REDACTED]. [REDACTED] and Tallarino also admitted to teasing Klein.
- 15) This Office found [REDACTED] to be evasive, at best, during his interview. His account was inconsistent with that of other Commission staff, not just [REDACTED] as well as documentary evidence. Accordingly, it is reasonable to infer that [REDACTED] failed to comply with [REDACTED] directive and did not attempt to counsel [REDACTED] prior the late start date in May 2018.

Relatedly, it is reasonable to infer that [REDACTED] had failed to conduct a proper counseling session with [REDACTED] prior to asking her to sign a counseling memo in October 2018 and in August 2019. To date, [REDACTED] has not documented his purported conversations with [REDACTED].

Conclusions & Recommendations

As a result of the above findings, it is recommended that this case be closed as PARTIALLY SUBSTANTIATED. [REDACTED]

Nonetheless, this Office determined that there was more egregious conduct involving an individual [REDACTED]. [REDACTED] a Vernon Downs employee [REDACTED], was teased by Commission and track staff and made uncomfortable by Tallarino presenting him with a phallic-shaped cake. Until [REDACTED] November 2017 complaint, no one reported this behavior potentially exposing the Commission to liability.

Further, although [REDACTED] agreed that the administrative actions recommended by [REDACTED] based upon [REDACTED] should be effectuated, they were not promptly nor properly implemented. [REDACTED] as the [REDACTED], was directed to carry out the actions but either did not do so or did so ineffectively, again potentially exposing the Commission to liability. [REDACTED] very belated and unsuccessful attempts to have [REDACTED] sign a counseling memorandum without conducting a counseling session, in conjunction with her 2019 late start, could be perceived as continued punitive action against [REDACTED] and retaliatory although it may not have been the intent.

Lastly, Tallarino and [REDACTED] regularly socialized with [REDACTED] and [REDACTED] after work, which could create a reasonable impression among others that Commission officials may be unduly influenced by certain track employees because of their relationship.

Accordingly, the following are recommended:

- 1) [REDACTED] failure to act as directed raises serious questions about his judgment and ability to manage staff, specifically regarding the handling of employee counseling and/or discipline. Accordingly, the findings as it pertains to his conduct is referred to the Executive Director for review and any other action deemed appropriate;
- 2) [REDACTED]
- 3) [REDACTED]
- 4) Staff should be reminded that they should not engage in professional or personal conduct that could reasonably give the impression that certain persons could improperly influence them.