

**CONFIDENTIAL**

OGIG Case #15-0073, #15-0078, #16-0095, and #17-0023

**Nicholas Ferriero**

February 26, 2018

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**Origin of Case:**

This Office received several complaints from June 2015 through March 2017 which alleged that Nicholas Ferriero, the Presiding Judge at Yonkers Raceway ("Yonkers"), was engaged in misconduct, including [REDACTED] and associating with Commission licensees. The sources of these complaints comprised of anonymous callers and [REDACTED]

**Nature of Allegation:**

Specifically, the allegations received by this Office were as follows:

- 1) Ferriero [REDACTED]  
In addition, [REDACTED] was named as one of the individuals [REDACTED]
- 2) Ferriero was presiding over races in which family members participated and/or wagered on;
- 3) Ferriero was [REDACTED] Further, that Ferriero [REDACTED] requesting that [REDACTED]
- 4) Ferriero [REDACTED]
- 5) Ferriero associated with trainers and owners of questionable integrity;
- 6) Ferriero had [REDACTED]
- 7) Ferriero [REDACTED] assigned to Yonkers; and
- 8) Ferriero [REDACTED]

It should be noted that when this Office first received complaints about Ferriero in 2015, the thrust of the allegations pertained [REDACTED] The complaints were made anonymously to both the Commission and this Office. The anonymous caller [REDACTED] contacted this Office on more than one occasion and during the last telephone call, the complainant reported that [REDACTED] had ceased. Nonetheless, this Office undertook a review of the claiming process.

**Investigative Action:**

As part of this investigation, Commission records were reviewed, cellular telephone records were obtained and analyzed, and interviews of both former and current Commission staff, including, but not limited to, [REDACTED]

[REDACTED]

**Relevant Statutes and Commission Policies and Procedures:**

**NYS Racing, Pari-Mutuel Wagering and Breeding Law §107 – Conflicts Prohibited**

Racing, Pari-Mutuel Wagering and Breeding Law §107(3) prohibits any member, officer, official, or employee of the Commission from wagering on any gaming or horse racing activity conducted within the State. (See, NYS Racing, Pari-Mutuel Wagering and Breeding Law §107 annexed hereto as Exhibit "1A.")

**NYS 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. (See, Public Officers Law §74 annexed hereto as Exhibit "1B.")

**NYS Gaming Commission Policy Code HR-002 Code of Ethics for Gaming Commission Employees**

Commission Policy 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 on and off the job and are expected to perform their duties in an impartial manner and avoid any appearance of acting otherwise. (See, Policy Code HR-002 annexed hereto as Exhibit "1C.")

**Yonkers Raceway**

Yonkers Raceway is one of seven harness tracks in New York. It is the largest harness track in the state with year-round racing taking place on 230 plus days annually. Racing takes place on at least five days a week with Wednesday serving as its dark day (a day on which no live racing takes place). The racing handle at Yonkers is also the largest of the seven harness tracks generating more than \$80 million annually even though attendance at the track typically hovers around the 26,000 mark and is lower than the other tracks.

The Commission has approximately two dozen per diem employees assigned to Yonkers, including a Presiding Judge, Associate Judges, Assistant to the Presiding Judge, Recording Judge, Paddock Judge, Supervising Inspector, Inspectors, Veterinarian and track Investigator. All employees are expected to arrive at least one hour prior to post time to prepare for races. Post times are 1:00 p.m. and 7:10 p.m. during the weekday, 11:15 a.m. on Sundays, and Qualifiers are held at 6:00 p.m. on Fridays. Commission racing officials are also at the track on dark days to perform administrative tasks.

### Claiming Races

Title 9 NYCRR §4109.3 sets forth in detail the claiming procedure for harness racing. In sum, the claimant must establish credit in an amount equal the claiming price, fees, and taxes. Once the claimant obtains certification from a track official that the financial criteria has been met, a claim form must be completed, placed in a sealed envelope and deposited in the claim box at least 30 minutes before the race. No one, including officials, may open the claim or claim box unless it is to verify the eligibility of the claimant or to withdraw the claim at least ten minutes to post time. After the race, the claim box is opened and an official reviews the claim for accuracy and completion before announcing the claimant. If there are multiple claims on the same horse, then the judge determines who is successful by conducting a draw. (See, 9 NYCRR §4109.3 annexed hereto as Exhibit "2.")

According to the Yonkers website, claims are made to the track's Race Office and credit must be established by 6:45 p.m. when there is a 7:10 p.m. post time. The Race Office will accept a claim upon showing of a valid Commission license accompanied by a completed claim form and a certified or bank check for the claim.

Interviews of Commission staff revealed that the claiming process as set forth in the regulations is substantially complied with except that the claim is not secured in the claim box until after the race. Instead, the claim is removed just prior to the race and provided to the judges who then verify eligibility. The claim is not returned to the claim box for the duration of the race, but the time between verification and the conclusion of the race is only a few minutes. Further, Commission staff, including Ferriero, explained that when multiple claims are submitted for a horse, the claims are shuffled, placed face down, and randomly selected by someone other than Ferriero to determine the winning claimant. The selection takes place in the judges' booth outside of public view, but are reportedly witnessed by the officials in the booth and track employees who work in the same area (e.g. announcer).

The only claiming race records maintained by the track and the Commission relate to the winning claim. Any paperwork pertaining to a non-winning claim is returned to the claimant. There is also no log maintained to document how many claims were submitted for a particular race or horse, thus there is no way of determining if there were multiple competing claims submitted, if a claim was voided and why, or the identity of those claimants.

Nonetheless, this Office reviewed the available Yonkers Claim Reports for 2014 through 2017 in an effort to ascertain if there was any unusual activity. The reports provide the date, race, horse, owner/agent claimed from, claimant, and the amount of the claim for every claiming race. A review of [REDACTED]

[REDACTED] for each calendar year ranged from 5% to 11% of all claims made. The winning claims noted were made both as a sole claimant as well as jointly with others. It is difficult, however, to determine if the number of successful claims made by these two individuals were unusual given that the universe of claimants is unknown.

In sum, although it was alleged that [REDACTED] this Office's review of the claiming process utilized at Yonkers is inconclusive. Absent testimony from a witness stating otherwise, incomplete claiming records prohibited this office from determining if a claim was legitimately awarded because it was the only claim submitted for the horse, [REDACTED]

#### **Nicholas Ferrero – Personnel and Background Information**

Ferrero has been employed with the Commission and its predecessor, the Racing and Wagering Board ("RWB"), since 2006. He started as an Associate Judge trainee assigned to Monticello Raceway. Thereafter, he served as an Associate Judge at various tracks including Buffalo Raceway, Batavia Downs, and Yonkers. During the summers, and on an as needed basis, he served as the Presiding Judge at Monticello Raceway and Tioga Downs. Ferrero assumed the position of Presiding Judge at Yonkers in 2012 [REDACTED]

In his employment application, Ferrero disclosed that he was previously licensed by the RWB and that his license had been suspended [REDACTED]. The 2006 employment application did not ask if Ferrero had any relatives that were licensed by the RWB or any other similar conflict of interest questions. Ferrero's personnel file also indicates [REDACTED]

An Accurant database search of Ferrero confirmed that he resides on [REDACTED] [REDACTED] with his wife [REDACTED]. Accurant also disclosed that Ferrero's previous residential addresses were associated with [REDACTED] a Commission licensed harness driver and owner and that [REDACTED] was possibly related to his wife.

A search of the internet also yielded a press release issued by the USTA on May 15, 2015 in memory of its former member [REDACTED]. The release also identified [REDACTED] as the decedent's daughter, Ferrero as her husband, and [REDACTED] as his son. In short, the article

identified [REDACTED] as Ferrero's brother-in-law. This information was also found in the [REDACTED] obituary published in the Times Herald Record. (See, Articles annexed hereto as Exhibit "4.")

### Nicolas Ferriero - Cellular Telephone Records

The Commission did not issue a cellular phone to Ferriero, but he had access to land-line telephones in the Commission office and the judges' booth at Yonkers. Ferriero, however, personally subscribes to cellular service and provided the telephone number [REDACTED] to the Commission as a contact number. As it would be unlikely that Ferriero would engage in any prohibited conduct using the Commission landlines, records for his personal cellular phone were obtained and analyzed.

The cellular phone records obtained and reviewed included calls made and received for the time period of January 1, 2015 through December 31, 2016, and text messages sent and received for the time period of October 19, 2015 through December 31, 2016. An analysis of the cellular phone records for October 19, 2015 through December 31, 2016 as well as Ferriero's time records was performed. This time span encompassed a total of 277 racing days of which Ferriero took annual leave on 25 of those days. Thus, the analysis focused on activity that occurred on the remaining 252 days Ferriero worked.

A review of the records revealed that Ferriero communicated with both Commission employees and third parties often throughout the work day. The most calls made and received to a Commission employee was to Dr. [REDACTED] the veterinarian. More than 1865 minutes were logged between Dr. [REDACTED] and Ferriero. In addition, 5039 texts were exchanged between Ferriero and Dr. [REDACTED] during this period. The volume of calls and texts, however, does not raise concerns given that the presiding judge is in frequent contact with the veterinarian to discuss a wide variety of issues ranging from scratches to drug testing concerns.

More important, however, is the volume of calls and texts exchanged with third parties, or those who are not employed with the Commission and/or have a legitimate business reason to be in communication with Ferriero during the races. For the same time period, it was observed that Ferriero exchanged 2309 text messages and engaged in 24 telephone calls with [REDACTED].<sup>1</sup> Ferriero also exchanged 3622 text messages and engaged in 162 telephone calls with [REDACTED].<sup>2</sup> Further, all communication took place during Ferriero's work hours at Yonkers. In sum,

<sup>1</sup> From 1990 through 2009, [REDACTED] was licensed as a Trainer, Owner, Driver, and/or Groom by the Commission. While licensed, [REDACTED] was fined and/or suspended on 13 occasions for positive drug tests and other violations such as interference during a race and changing drivers after program times. In 2015, [REDACTED] attempted to reapply for a Trainer license, but was denied by the Commission as he failed to pay fines assessed against him for his horse having tested positive for prohibited drugs. Further, a February 28, 2007 article "Monticello Raceway cracks down on drug cheats" published in the Times Herald Record quoted [REDACTED] security consultant at Vernon and Tioga Downs, stating that he has a list of banned horsemen who have tested positive for drugs and specifically named [REDACTED] as one.

<sup>2</sup> From 2004 through 2017, [REDACTED] was licensed as an Owner by the Commission. [REDACTED] is also the first cousin of Ferriero.

this data indicates that Ferriero was sending/receiving on average 23 text messages with a third party daily and receiving or making on average 3 calls every four days while working at Yonkers.

### Key Interviews

In general, Commission staff at Yonkers denied having knowledge of any misconduct. One individual, however, reported that Ferriero's temperament was unpredictable and that he would "run hot and cold." This same individual also reported that Ferriero mistakenly sent a text to [REDACTED] and [REDACTED]. Further, [REDACTED] used to be close friends with Ferriero, that is until Ferriero believed that [REDACTED] had disclosed the nature of the text to others.

It should also be noted that track investigator, Don Haggerty (who stated that he was unaware of any misconduct), stated that as a courtesy, he would inform the presiding judge of any investigation being conducted at the track and that he kept investigations "in-house." This practice raises concerns about the integrity and confidentiality of any investigation undertaken by Haggerty and the possibility that investigations conducted by other investigators in the Division of Horse Racing have been compromised. Such investigations should be conducted confidentially with the knowledge of the Director of Racing Investigations and findings directly reported to the Director of Racing Investigations and/or Director of Horse Racing and Pari-mutuel Wagering who should determine what information, if any, is shared with officials at the track.

### Interview of [REDACTED]

[REDACTED] was a trainer for approximately 13 years prior to his employment with the Commission. He stated that he learned of the opening at the Commission through his friend [REDACTED] the [REDACTED] [REDACTED] explained that he submitted his resume and shortly thereafter was interviewed by [REDACTED]. In January 2013, he was hired as an Inspector and assigned to Yonkers. In May 2013, he was reassigned to Tioga Downs [REDACTED] but subsequently returned to Yonkers in September 2013 as [REDACTED] which is his current assignment.

[REDACTED] denied having any knowledge of [REDACTED] [REDACTED] however, noted that others complained about the frequent presence of Ferriero's cousin, [REDACTED] at Yonkers (sometimes as much as four times per week). He also denied ever seeing any racing official speak on the phone while in the judges' booth, but admitted that on occasions the judges texted when there was down time between the races. [REDACTED] stated that he did not believe any of the judges gambled, although at times they would talk amongst themselves and handicap races for fun when in the booth.

[REDACTED] was specifically asked if he had ever received a text from Ferriero [REDACTED] and he responded that he too had heard about this "rumor." He, however, adamantly denied that he received such a text and speculated that the rumor was started by a disgruntled former employee who was demoted and subsequently terminated.

Interview of Dr. [REDACTED]

Dr. [REDACTED] has been employed with the Commission since March 2013. As of late 2014, Dr. [REDACTED] has been primarily assigned to Yonkers although she covers many of the other tracks. Dr. [REDACTED] stated that Yonkers is a "full house of rogue individuals" and described the eccentricities of some Commission staff. She further stated that staff made mistakes (e.g. allowing a horse to leave the test barn and tattoo and labeling errors), but did not know of anyone doing anything "sneaky" or [REDACTED]. In earlier conversations, Dr. [REDACTED] denied being aware of any inappropriate remarks or comments being made by Commission staff [REDACTED]

As it relates to drug testing of horses, [REDACTED]

Dr. [REDACTED] relayed "scuttlebut" about Ferriero she had heard which included allegations that [REDACTED]. She commented that the draws were conducted publicly, but could not opine on the claims as she did not know enough details (e.g., how many were submitted, if there was a problem with the envelopes, etc.). [REDACTED] stated that he did not have a stellar reputation when he was a horseman and hoped that if he [REDACTED] that it was on other sports as the staff in the judges' booth loved watching sports. Dr. [REDACTED] flatly denied that Ferriero [REDACTED]

Dr. [REDACTED] stated that she is aware that Ferriero's family is in racing, including his cousin and brother-in-law, [REDACTED] who often races at Monticello Raceway. Dr. [REDACTED] was not aware of any favoritism or conflict of interests because of those relationships and opined that in general, Ferriero was a good presiding judge.

Interview of [REDACTED]

This Office attempted to interview [REDACTED] about his relationship and communications with Ferriero. [REDACTED] initially agreed to meet with this Office, but subsequently declined to do so on advice of counsel.

Interview of [REDACTED]

[REDACTED] stated that his family had been involved in horse racing since the 1960s. He had previously owned horses both solely and in various partnerships, including with [REDACTED]



██████████ as well as with his cousin Nicholas Ferriero.<sup>4</sup> In the past, he had also hired Trainer ██████████ on the recommendation of ██████████ ██████████ explained that he mostly raced his horses at Yonkers and at a track in Chester, New York.<sup>5</sup> Currently, ██████████ does not own any horses and has ██████████ ██████████ working near his home.<sup>6</sup> He also added that ██████████ he rarely visits Yonkers anymore.

██████████ stated that he does not know any Commission employees other than Nicholas Ferriero. He explained that he used to go to Yonkers every Thursday and Saturday, usually with friends, and would occasionally see his Ferriero there. At times, he visited the 4<sup>th</sup> floor (the level below the judges' booth) to say hello to Ferriero. ██████████ denied ever speaking to Ferriero about the horses and noted that such actions could affect his cousin's position as a presiding judge. He stated that he communicated with Ferriero throughout the week mostly via texting and denied that the texting took place during race time or revolved around the races.<sup>7</sup> He further denied ever receiving or hearing Ferriero ██████████ ██████████ admitted that he wagered on the horses, but indicated that they were small bets. He denied having any knowledge that Ferriero ██████████ commented that his cousin was too frugal to do so.

### Interview of Nicholas Ferriero

#### *Background*

Ferriero stated he was hired by the RWB in 2010 as a trainee to be an Associate Judge and assigned to Monticello Raceway. He completed stints as an Associate Judge at Buffalo Raceway and Batavia Raceway prior to being assigned to Yonkers. He also spent three summers at Tioga Downs as a Presiding Judge. Approximately 5 years ago, he became the Presiding Judge at Yonkers ██████████

Prior to his tenure with the Commission, Ferriero stated that he was a Trainer/Driver for 20 years. However, ██████████ he decided that it was a good time to make a career change and applied for a position with the RWB. Unsolicited, Ferriero stated that he submitted his resume to RWB as he knew that Tioga Downs was a new track about to open and Vernon Downs was reopening.

Ferriero stated that his family was always involved in racing, including his father, uncle, and cousins. He explained that he followed in everyone's footsteps and started working for his father upon graduation from high school. In the mid-1980's, as his father became older, Ferriero went out on his own and established himself in the business at Pocono Downs. He claimed not to have worked with any relatives including a cousin who had his own stable and instead, leased

<sup>4</sup> ██████████ explained that he co-owned horses with Ferriero in 2002-2003 and that Ferriero was responsible for training the horses.

<sup>5</sup> Goshen Historic Track is located 4.6 miles and a nine-minute drive from the town of Chester.

<sup>6</sup> ██████████ Commission license lapsed in October of 2017.

<sup>7</sup> ██████████ statements clearly contradict what the telephone records reveal.

stables at Pocono Downs.<sup>8</sup> Ferriero stated that he had three or four horses which he handled by himself as he could not afford help. He further stated that he also drove for his cousin, [REDACTED] but has not seen him in a couple of years and does not know if he is still in the business.

Ferriero explained that [REDACTED] he moved from Pennsylvania to New Jersey and rented a stall at [REDACTED] which was owned by [REDACTED]. Primarily, he still ran his business alone, but owned horses with [REDACTED] and drove on occasions for [REDACTED]. Ferriero stated that he was stabled at [REDACTED] for five or six years. Ferriero denied ever working for or with [REDACTED] individuals with which he was alleged to have had business relationships. He explained that [REDACTED] also rented stables at [REDACTED] when he was there and knows of [REDACTED] from the track. In 2006, Ferriero moved from New Jersey to Monticello.

As a Presiding Judge, Ferriero stated that he worked from 3 p.m. to approximately 11:15 p.m. (completion of the last race) and on dark days, he worked from 8:30 a.m. to 12 noon to perform administrative tasks.

#### *Conflicts of Interests - Relatives Involved in Racing*

Since being employed by the Commission, Ferriero denied having any relatives, including cousins, who raced. However, when asked if he had any relatives that were licensed by the Commission during his tenure, he responded that his cousin [REDACTED] was licensed as an Owner and owned a horse with [REDACTED] also an Owner/Trainer. The horse was stabled in southern New Jersey, but raced at Yonkers Raceway. Ferriero explained that [REDACTED] never owned more than half a horse, or one horse at a time, and he usually partnered with [REDACTED]. Ferriero denied knowing [REDACTED] prior to working at Yonkers or knowing how [REDACTED] came to be in business with him. More importantly though, Ferriero admitted that the horse owned by [REDACTED] raced at Yonkers while he served as Presiding Judge. He also admitted that [REDACTED] had raced and claimed four to five horses at Yonkers while he served as Presiding Judge.

Ferriero emphasized that he had disclosed to [REDACTED] [REDACTED], as well as in his personnel papers, that his cousin [REDACTED] owned and raced horses in the state. Ferriero, however, conceded that he did not advise [REDACTED] or the Commission that [REDACTED] raced or claimed horses at the track when he presided over those races.

Ferriero was also specifically asked about [REDACTED] and he admitted that [REDACTED] was his brother-in-law and licensed by the Commission as a Driver. He also admitted that [REDACTED] raced at Monticello during the summers he served as Presiding Judge. Ferriero claimed that he did not inform the Commission of his relationship with [REDACTED] or that [REDACTED] drove in races he officiated because he did not have much interaction with [REDACTED] and saw him infrequently.

<sup>8</sup> Later in the interview, Ferriero stated that he may have owned half a horse "here and there" with his cousin [REDACTED] approximately 15-16 years ago. When asked how many horses he co-owned with [REDACTED] he estimated 5 or 6 horses and stated that he also trained and drove these horses at Pocono Downs, Yonkers Raceway, and Saratoga Raceway. Ferriero stated that he did not disclose this information to the Commission.

*Claiming Race Procedures*

Ferriero's explanation of the claiming process was consistent with what other officials assigned to Yonkers reported. A claimant establishes their credit and completes a claim form which is submitted to the track's Race Office. The claim forms are time stamped, and the accompanying funds are retained in the Race Office. The forms are then submitted to the Commission's office and make their way to him just before the races start. Ferriero stated that he would verify the eligibility of the claimant (i.e., licensed by the Commission) just prior to the claiming race. If a claimant is found to be ineligible, he would void the claim. If there was more than one claim for a horse, he would place each form back in its envelope, put the envelope face down, and ask a track employee (e.g., announcer, photographer) to select one. Ferriero stated that he has conducted claiming races in this fashion since he has been presiding judge.

Ferriero denied [REDACTED]. He also denied [REDACTED]. Ferriero noted that [REDACTED] has "had it out for him" for years as [REDACTED] believed that it was his (Ferriero) fault that he was not reappointed to his position. Hence, implying that the allegations were made up and motivated by a former disgruntled employee.

[REDACTED]

Ferriero denied [REDACTED]. He explicitly denied [REDACTED]. Ferriero's statement was corroborated by Dr. [REDACTED] whom he [REDACTED].

*Wagering*

Earlier in his interview, Ferriero reported that a Commission employee should not engage in any form of communication, such as telephone calls or texts, while working in the judges' booth. He denied ever engaging in such activity himself except when his wife, son or superior called and then he would take the call outside of the judges' booth on the catwalk.

Ferriero stated that typically calls regarding race activities from trainers and owners are made to the office. They would speak with an Associate Judge, but on occasion, a trainer/owner may call Ferriero directly on his cell phone if they could not get through to anyone at the office. He denied providing anyone with his personal cell phone number, but surmised that people freely shared his number. Ferriero confirmed that he did not have a Commission issued cell phone and that he used his personal cell phone for at least the last three years. He cited his cell phone number as [REDACTED].<sup>9</sup> Ferriero was specifically asked how often he spoke with his cousin, [REDACTED] and he indicated that he last spoke with him in August 2017 [REDACTED]. He explained that in 2016, and even in 2015, he spoke regularly with [REDACTED] and saw him occasionally [REDACTED]. However,

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<sup>9</sup> This Office confirmed that the number provided was the same number listed on his employment application dated January 15, 2006.

the frequency of his communication with ██████████ decreased over time in 2017. Ferriero averred that he did not discuss track business with his cousin, but noted that ██████████ came to the track once or twice a week with his friends. He added that he was aware that every time ██████████ came to the track rumors inevitably would surface because he was seen talking to him. Ferriero lamented why he could not speak to a family member when they visited the track without allegations of corruption being made. He noted that his cousin was there for him when ██████████ and that they had a good relationship although he declined to describe it as close. Ferriero asserted that he did his job well and perhaps some do not like him because of it and commented that he has been a “target for many years.”

Relatedly, Ferriero denied communicating with anyone regularly who was, or is, licensed by the Commission. When asked about ██████████, he responded that he knew ██████████ for 20 years, but had “no dealings with him for a long time” although he subsequently stated that he last spoke to him over the July 4, 2017 weekend. Ferriero explained that both he and ██████████ were stabled at ██████████ many years ago and that he drove for ██████████ occasionally at Pocono Downs.<sup>10</sup> Ferriero denied having any other business association with ██████████ since beginning his employment with the Commission. He further denied having any regular communication with ██████████ and claimed that the last time they saw each other was in August of 2017 when he “bumped into him at Goshen.” Ferriero denied socializing with ██████████ adding that ██████████ was no longer licensed by the Commission. When asked about the nature of their relationship in 2015 and 2016, Ferriero similarly claimed that he did not have any communication or interaction with ██████████

Ferriero was advised that this Office had reason to believe that he was in regular and frequent communication with ██████████ regarding racing matters and that information not otherwise available to the public was being shared to provide an advantage or to facilitate wagering activities. Ferriero repeated his denials and asserted that he did not “deal with the guy” as he was not a licensee. Ferriero was asked if ██████████ had contacted him and he adamantly stated no, repeating that ██████████ was not licensed. He stated that there was no reason for ██████████ to reach out to him either by phone or text since he ██████████ was no longer licensed by the Commission. He also denied having any recollection of him receiving any telephone calls or texts from ██████████ in the past two or three years.

Ferriero described his relationship with ██████████ as “business friends” and that ██████████ would reach out to him “occasionally” to see how he was doing. The communication ceased “a couple of years ago” because he did not need the burden of hearing other peoples’ problems as he had enough of his own. Ferriero claimed that ██████████ called him to share personal problems even though they were “close,” but not “personal” friends.

Ferriero was informed that this Office knew that he did in fact have regular and on-going communications with ██████████ during work hours and asked what was the reason and nature of these communications. He responded that he would “just talk to him” and that he “didn’t give him no information or nothing.” Contrary to his initial assertions, Ferriero then conceded that he had spoken with ██████████ over the last couple of years and that they both called each other and exchanged

<sup>10</sup> It should be noted that Ferriero was asked about previous business associates and although he named ██████████ and ██████████, he failed to mention ██████████. (See, Page 9, infra.)

texts. When asked what the nature of the conversations were, Ferriero was evasive and responded that it was “just jibber jabber.” He denied recalling when the calls took place and then claimed that it was before the races and “maybe” on the way home, but never during the races. At no time, however, did he attempt to address why he had initially denied having contact with [REDACTED]

Ferriero was advised that this Office reviewed telephone records and determined that for the period from October 2015 to December 2016, he and [REDACTED] had exchanged over 2000 text messages and that at least 24 phone calls were placed. Ferriero averred that he did not divulge information to [REDACTED] and although he downplayed the frequency, the nature of the calls was purely innocuous and unrelated to the races. Ferriero was pressed about why there were so many calls placed during work hours and he insisted that it was simply to talk and had nothing to do with wagering. When asked why he was minimizing the nature and extent of his communications with [REDACTED] and his lack of candor, Ferriero exercised his right to counsel.

During his second interview, Ferriero appeared with counsel and was asked to clarify his relationship with [REDACTED]. He responded that he had known him for the last 20-25 years when he was in the horse business. They both leased stables at [REDACTED]. Ferriero stated that the only business he had with [REDACTED] was when he drove for [REDACTED] at Pocono Downs approximately 14-15 years ago. He claimed that he did not drive for [REDACTED] at any other track nor did he have any other business dealings with him, including owning any horses or providing training services. Between the time of his employment with the Commission and driving for [REDACTED] Ferriero stated that he remained in contact with [REDACTED] and that the nature of their communication was simply to ascertain how he and his family was doing. He claimed that he did not see [REDACTED] much but they spoke “a couple of times a week.” Thereafter, following his employment with the Commission, Ferriero stated that he continued to speak with [REDACTED] during the week “once or twice” to inquire about how things were going. Ferriero then later stated that he spoke with [REDACTED] perhaps two or three times a week.

Ferriero acknowledged that [REDACTED] raced at tracks in New York before losing his license, but maintained that he could not recall if he had ever presided over any races that [REDACTED] had participated. Ferriero claimed that “off the top of head” he did not recall [REDACTED] ever speaking to him about racing, horses, claims, or wagers. He denied socializing with [REDACTED] before or after races. Ferriero, however, admitted to speaking to [REDACTED] during work hours but it was only to talk about a race that had already occurred. Ferriero conceded though that he never told [REDACTED] that it was inappropriate for him to speak with him while working and presiding over races.

Ferriero denied that [REDACTED] had ever sought information about horses from him and claimed that he did not know what a horse’s condition was before it came onto the track anyway. He further denied that [REDACTED] had ever asked about the performance of a horse or for his opinion about a trainer or driver. He also denied speaking to [REDACTED] regarding the status of his license, including suspension, fines, and revocation. Lastly, although they spoke regularly to see how the other was faring, Ferriero claimed not to know if [REDACTED] was racing or licensed in any other jurisdiction.

Ferriero denied ever asking [REDACTED] [REDACTED] or discussing anything related to racing, the track, or the performance of his official duties. Ferriero concluded with the

statement that he has not spoken to [REDACTED] for the last two or three months because of "everything that was going on," alluding to this Office's investigation of him.

Clearly, Ferriero's initial statements regarding the text messages and telephone calls were inconsistent, evasive, vague and simply not believable. It is also of interest that during his second interview with counsel present, Ferriero failed to recall things. As such, this Office found Ferriero's lack of candor and conduct to be disconcerting.

Lastly, it should be noted that on December 1, 2017, this Office issued a preliminary finding to the Commission. (See. Preliminary Findings annexed hereto as Exhibit "5.") At the time, the Yonkers racing season was nearing its conclusion and appointments were being contemplated for the next, as such this Office believed it prudent to advise the Commission of two preliminary findings. Specifically, that Ferriero had failed to disclose his familial relationships and that he had presided over races in which his relatives had an interest in whether as a driver or as a claimant. Consequently, the Commission elected not to reappoint Ferriero to any position.

**Findings:**

This investigation determined the following:

- 1) There is sufficient evidence to establish that Ferriero presided over races in which family members participated. Ferriero admitted that he had presided over races that his brother-in-law, [REDACTED] drove in, as well as races in which his cousin, [REDACTED] submitted claims. Accordingly, Ferriero's actions may be construed to be in violation of NYS Public Officers Law §74 Code of Ethics and NYS Gaming Commission Policy Code HR-002 - Code of Ethics for Gaming Commission Employees in that, at a minimum, his officiating of races in which his family members participated gave the appearance of impropriety.
- 2) There is insufficient evidence to establish that Ferriero [REDACTED] It should also be noted that [REDACTED] denied ever having received a text from Ferriero regarding [REDACTED]. However, it is irrefutable that Ferriero associated with [REDACTED] an individual whose license had been revoked by the Commission. Ferriero also conceded to having a "good" relationship with his cousin, [REDACTED] who up until recently was a licensed Owner and self-admitted gambler. More importantly, given Ferriero's lack of candor, and the frequency and timing of his communication with [REDACTED] and [REDACTED] the reason for these communications is extremely suspect. It is highly unlikely that the 5921 texts and 186 phone calls between October 2015 and December 2016, and all which took place when Ferriero was working and officiating races, were just "jibber jabber" or to ask how the family was doing. At a minimum, Ferriero's failure to be truthful raises serious questions about his integrity and whether he is suitable to serve as a racing official.

- 3) As it relates to the allegation that Nicholas Ferriero [REDACTED] the findings are inconclusive because only select documentation related to the claiming process are maintained at Yonkers. In the absence of a complete set of records or log of every claim submitted and/or witness testimony to the contrary, especially in instances where there are multiple claims, this office is cannot conclusively determine if a claim was legitimately awarded as one cannot ascertain if the claimant was successful because he/she was the only claimant, [REDACTED]
- 4) There is insufficient evidence to establish that Ferriero [REDACTED] the [REDACTED] veterinarian [REDACTED] Yonkers, indicated that she was fully aware of Ferriero's background and reputation in racing and denied that he had engaged in any conduct that would conflict with his duties as a racing official.
- 5) There is insufficient evidence to establish that Ferriero [REDACTED] Dr. [REDACTED] specifically denied that Ferriero had ever asked to [REDACTED]
- 6) There is insufficient evidence to establish that Ferriero [REDACTED] Although a former employee alleged that Ferriero [REDACTED] this employee was also demoted and subsequently terminated from his position. Moreover, interviews of other Commission staff, including those working in the office, as well as those in the backstretch, did not yield any corroborating statements to support the allegation.
- 7) Lastly, this Office was informed by Don Haggerty, the track investigator assigned to Yonkers, that as a courtesy, he would inform the presiding judge of investigations being conducted at the track. This practice raises concerns about the integrity and confidentiality of any investigation undertaken by Haggerty and the possibility that investigations conducted by other investigators in the Division of Horse Racing have been compromised. Such investigations should be conducted confidentially and findings reported to the Director of Racing Investigations and/or Director of Horse Racing and Pari-mutuel Wagering who should determine what information, if any, is shared with officials at the track.

### **Conclusions & Recommendations:**

As a result of the above findings, it is recommended that this case be closed as PARTIALLY SUBSTANTIATED. This investigation yielded sufficient evidence, including an admission from Ferriero, that he presided over races in which his relatives, whether as a driver, owner or claimant, participated. As such, Ferriero's actions may be construed to be in violation of NYS Public Officers Law §74 Code of Ethics and NYS Gaming Commission Policy Code HR-

002 - Code of Ethics for Gaming Commission Employees in that, at a minimum, his officiating of races in which his family members participated gave the appearance of impropriety.

Although there was insufficient evidence to support the allegation that Ferriero [REDACTED] [REDACTED] Ferriero's frequent texts and calls to [REDACTED] and [REDACTED] are highly suspect and arguably inappropriate conduct to be engaged in while officiating races. It is extremely unlikely that the 5921 texts and 186 phone calls between October 2015 and December 2016, all of which took place when Ferriero was working and officiating races, were just chats about the weather or some other inane subject. Most importantly, the fact that Ferriero lied about those communications raises serious questions, not only about the nature of those communications, but also about his integrity and suitability to serve as a racing official. It is important to note that this concern has been alleviated as the Commission has elected not to reappoint Ferriero to any position this racing season.

Accordingly, this case is closed as partially substantiated with the following recommendations:

- 1) The findings as it pertains to Ferriero's conduct and potential violation of the Public Officers Law will be referred by this Office to the NYS Joint Commission on Public Ethics;
- 2) Nicholas Ferriero's conduct raises serious questions about his integrity, judgment, and suitability to serve as a racing official for the Commission. Accordingly, Ferriero should not be considered for reappointment to Presiding Judge or any other capacity;
- 3) This matter should be properly documented in Nicholas Ferriero's personnel file in the event he seeks future employment with the Commission;
- 4) The Commission should consider, at a minimum, maintaining a log of all claims submitted and which clearly denote the action taken on the claim (e.g., successful, voided, returned, etc.). This documentation will be helpful in the event a review of the claiming process is undertaken in the future.
- 5) The Commission should consider whether a policy curtailing the use of a personal cellular phone and/or any form of personal electronic communication is warranted.
- 6) The Director of Horse Racing and Pari-mutuel Wagering and the Director of Racing Investigations should be advised that the track investigator at Yonkers engages in a practice which may compromise investigations undertaken by the unit so that he may take whatever action they deem appropriate.