

**CONFIDENTIAL**

**OGIG # 18-0084**

March 18, 2019

Lisa Lee  
Acting Gaming Inspector General

Richard T. Vignogna  
Supervising Investigator

Marc P. Mousso  
Investigator

### **Origin of Case**

In May 2018, [REDACTED], advised this Office that he had been informed that Todd Reese, Starter assigned to the Standardbred track at Batavia Downs Gaming and Hotel (“Batavia”), requested financial compensation from [REDACTED] of the Western Regional Off-Track Betting Corporation (“WROTB”), to train a new starting gate driver.<sup>1</sup>

### **Nature of Allegation**

Specifically, it was alleged that when [REDACTED] spoke with Reese about training WROTB’s new driver, Reese claimed that six to seven training sessions were necessary in order to properly train the driver. Reese requested these sessions take place on non-race days and that he be financially compensated by WROTB at the same rate as his New York State Gaming Commission (“Commission”) per diem salary of approximately \$316 for each session. Reese then implied that if those conditions were not met he may not be able to endorse the driver for their upcoming racing season at Batavia which started on July 23, 2018.

### **Investigative Action**

In furtherance of this investigation, Commission records were reviewed and interviews were conducted, including but not limited to, Todd Reese, Starter; [REDACTED]; [REDACTED] at Batavia; [REDACTED] of WROTB; and [REDACTED] of WROTB.

### **Relevant Statutes and Commission Policies**

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

“Employees of the Commission are expected to maintain the highest standards of conduct and integrity in performing their duties and responsibilities and comply with the Public Officers Law. Each new Commission employee is given a Public Officers Law handbook contained Public Officers Law Sections 73 through 78 and must sign an oath stating that he or she will confirm to the provisions thereof. Employee conduct must always reflect the confidence and trust placed in civil servants by the people of the State of New York. The public served by the Commission is entitled to prompt, courteous, and thoughtful treatment, free from improper influence or favoritism.”

#### *NYS Gaming Commission Code 6.204 – Conflicts of Interest/Outside Employment or Volunteer Activities*

Commission policy states that “[t]he operations of the New York State Gaming Commission are extremely sensitive to public opinion.” As such, “all employees are responsible

---

<sup>1</sup> WROTB owns and operates Batavia which consists of a standardbred racetrack, gaming facility, and hotel.

for insuring that their conduct will not raise suspicion or give the appearance that they are in violation of this trust.” Additionally, Commission employees must obtain approval from the Commission prior to engaging in any outside employment.

### *Public Officers Law §74 – Code of Ethics*

Generally, “[n]o officer or employee of a state agency . . . should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his or her duties in the public interest.”<sup>2</sup> This prohibition includes not only actual conflicts, but also perceived conflicts as well. Specifically, one’s conduct should not “give reasonable basis for the impression that any person can improperly influence him or her or unduly enjoy his or her favor in the performance of his or her official duties, or that he or she is affected by the kinship, rank, position or influence of any party or person”<sup>3</sup> nor “raise suspicion among the public that he or she is likely to be engaged in acts that are in violation of his or her trust.”<sup>4</sup>

Further, no officer or employee should “use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others,”<sup>5</sup> “engage in any transaction as representative or agent of the state with any business entity in which he has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his official duties,”<sup>6</sup> or “mak[e] personal investments in enterprises which he has reason to believe may be directly involved in decisions to be made by him or which will otherwise create substantial conflict between his duty in the public interest and his private interest.”<sup>7</sup>

### **Background**

Batavia is a Standardbred racetrack and video lottery gaming facility located in Batavia, NY. It opened on September 20, 1940 and is currently owned and operated by WROTB. The 2018 racing season at Batavia commenced on July 23, 2018, and concluded on December 15, 2018. In total, 69 race days were scheduled.

In general, the roles and responsibilities of the Commission starter are to control the starting gate in harness horse races from the post parade until the start of the race and to ensure that the horses are in proper position and proper dress.

### **Review of Records**

#### *Reese Personnel File*

According to personnel records, Reese began his employment with New York State in 1991 as a Starter and was assigned to various tracks including Vernon Downs, Buffalo Raceway, and

---

<sup>2</sup> See POL §74(2).

<sup>3</sup> See POL §74(3)(f).

<sup>4</sup> See POL §74(3)(h).

<sup>5</sup> See POL §74(3)(d).

<sup>6</sup> See POL §74(3)(e).

<sup>7</sup> See POL §74(g).

Batavia. He has also filled in as an Associate Judge at Monticello Raceway. Presently, Reese is a Starter assigned to Buffalo Raceway, Batavia and Monticello Raceway.

The most recent performance evaluation for Reese is dated December 7, 2012 and [REDACTED].

### *Reese's Time Records*

Reese's Commission timecards for the 2018 racing season were reviewed. The records indicated that Reese was paid an additional day of compensation on July 23, 2018.

### **Summary of Interviews**

In early May 2018, [REDACTED] at WROTB, approached Reese to inquire about the possibility of him training a new driver for the racing season set to begin on July 23, 2018 at Batavia.

During their conversation, Reese requested financial compensation equal to his per diem salary (approximately \$316 per day) to train the new driver. In addition, Reese advised that the training would have to take place on a dark day and that it would take approximately six to seven sessions to complete. According to [REDACTED] Reese explained that the actual training portion would last only about an hour, but he had to also factor in his commute time of two hours each way into the pay he was requesting. However, when [REDACTED] informed Reese that he could not afford to pay Reese almost \$2000 to train someone, Reese retorted that he may not be able to approve the new driver.<sup>8</sup> Further, Reese represented to [REDACTED] that [REDACTED], [REDACTED] of WROTB, had paid him for similar trainings in the past.

Following their conversation [REDACTED] contacted [REDACTED], [REDACTED], and informed him of Reese's demands. Both felt that Reese's demands amounted to extortion, or at the very least, the appearance of such. As such, [REDACTED] contacted [REDACTED], [REDACTED], to inform him of what had occurred. As for prior paid training arrangements, [REDACTED] stated that he knew [REDACTED] and would be very surprised if [REDACTED] had agreed to compensate Reese for training a new driver or starter. [REDACTED] however, indicated that he would authorize an additional day of pay for Reese to train someone, if the training could not take place on a regular scheduled work/racing day.

When this Office spoke with [REDACTED] he stated that he had hired multiple drivers/starters during his long tenure at WROTB. He denied though, ever asking or paying Reese to train new

---

<sup>8</sup> [REDACTED] advised that Reese would have to sign-off and concur that the new driver has been properly trained. Pursuant to 9 NYCRR §4115.5(a), "[s]uch starting gate shall be operated under the control and direction of the starter licensed and designated by the commission. The licensed race track may employ additional persons to assist the starter in the performance of the starter's duties and such personnel shall be licensees of the commission." Thus, arguably, Reese may object to a driver as the starting gate is "operated under [his] control and direction."

staff. [REDACTED] also believed, based upon his experience, that it should only take two or three sessions to adequately train a new driver and not the six or seven sessions Reese sought.

This Office interviewed Reese to clarify the issues raised by [REDACTED]. Reese explained that he is currently a Starter at Batavia, Buffalo Raceway, and Monticello Raceway. As a part of his duties, he is responsible for the starting gate from the post parade until the start of the race and also to ensure that the horses were in proper position and dress. Reese stated that he had trained to be a starter since the age of 14 and obtained his starter's license at the age of 18. He denied having received any training from the Commission for his position, but stated that he had trained two starters and three drivers during his tenure with the Commission.

Reese admitted that [REDACTED] had asked him to train a new starting gate driver and emphasized that the request did not come from the Commission. He recalled that during his initial conversation with [REDACTED] regarding training and that [REDACTED] offered to compensate him with restaurant "gift certificates." Reese stated he initially declined [REDACTED] offer of gift certificates, they were not worth the two hour commute from his home to the track. A few weeks later though, [REDACTED] called Reese again and asked if he would reconsider training the new driver and offered to also pay for dinner as compensation. Reese similarly declined the offer and informed [REDACTED] that he needed "pay for the day" or \$316 to train someone. He added that by receiving an additional day's pay, he would earn an extra day's credit towards his retirement. In the end, [REDACTED] told Reese that he could not pay him the salary requested.

Thereafter, Reese called [REDACTED] and informed him that he could not train the new driver at Batavia for anything less than a day's pay. According to Reese, [REDACTED] approved one additional day of pay for training the new driver which Reese did. The training took place on a Thursday night, which was a dark day and there were no scheduled races.

Reese explained that one training session is insufficient for a new driver, so he provided the driver with additional training on his own time. He stated that he arrived two hours earlier than scheduled in order to train the driver on race days. Reese explained that the training sessions included guidance on track positioning and how to handle a "recall." Reese claims that he trained the new driver in eight sessions over a two-week span. He stated that he preferred to train new drivers over the course of two to three weeks, with sessions ranging from one to two hours per day and believed that a minimum of four training sessions is required before a driver is ready.

Reese denied informing [REDACTED] that it would take six or seven sessions to train the new driver. Instead, he claimed to have told [REDACTED] that four or five trainings would be sufficient, but admitted that he demanded the sessions occur on dark days as he could not commute between Buffalo and Batavia on the same day due to the distance between the two racetracks. Reese stated that [REDACTED] had never asked him to train any other drivers prior to this incident and conceded that [REDACTED] never paid him to train a new driver. Nonetheless, Reese stated that he ultimately received only a days' pay from the Commission even though he had trained the driver several hours more than he was paid.

## **Findings**

This investigation determined the following:

1. ██████ requested that Reese train a new starting gate driver in anticipation of the upcoming 2018 racing season;
2. Reese informed ██████ that multiple training sessions would be needed and requested that these sessions take place on non-race days;
3. Reese also requested that he be paid his Commission per diem rate (\$316 daily) per session for training, to which ██████ objected. Nonetheless, Reese sought to enter into a financial agreement with a licensee. His conduct may be construed to be in violation of Public Officers Law §74 and Commission Policies HR-002 (Code of Conduct) and 6.204 (Outside Activities); and
4. After ██████ declined to pay Reese, he then sought and obtained permission from ██████ ██████ to work on a dark day in order to train the driver. Reese was compensated for the extra day's work.

## **Conclusions & Recommendations**

As a result of the above findings, it is recommended that this case be closed as **substantiated**. This Office's review determined that Todd Reese initially sought to enter into a financial arrangement with a licensee potentially violating Public Officers Law §74 and Commission policies pertaining to Code of Conduct and Outside Activities. More importantly, his actions undermines the integrity of the Commission and casts doubts on his ability to perform duties impartially.

Accordingly, the following is recommended:

1. This matter should be properly documented in Reese's personal history folder.
2. Reese should receive additional ethics training prior to re-appointment by the Commission.
3. This matter should be referred to Human Resources for whatever actions deemed appropriate.
4. The Commission should consider drafting policies and procedures to address circumstances wherein it may be necessary for a Commission employee to train a track employee/licensee.