

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SCHENECTADY

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In the matter of the application of

LINDA RICE,

Plaintiff-Petitioner,

Index No.

for a judgment pursuant to Article 78 of the New York Civil Practice Law and Rules and declaratory judgment

**VERIFIED PETITION
& COMPLAINT**

- against -

NEW YORK STATE GAMING COMMISSION,

Defendant-Respondent.

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Plaintiff-Petitioner Linda Rice (“Ms. Rice”), by and through her attorneys, Meyer, Suozzi, English & Klein, P.C., as and for her Verified Petition & Complaint in the above-captioned action/special proceeding, hereby respectfully alleges as follows:

1. Ms. Rice seeks the annulment and vacatur of the June 7, 2021 Findings & Order (the “Order”) of Defendant-Respondent New York State Gaming Commission (the “Commission”), which adopted in virtually all respects the April 13, 2021 Hearing Officer Report and Recommendation (the “Hearing Report”) and, *inter alia*, revoked Ms. Rice’s license to train race horses for a period of three years. (True and correct copies of the Hearing Report and the Commission’s Order are annexed hereto as Exhibits 72 and 73, respectively.)

2. As discussed below, and in Ms. Rice’s memorandum of law in support, the Commission’s Order must be annulled and vacated because it is (1) unsupported by substantial evidence; (2) premised on an unconstitutionally vague regulation, which must be invalidated; and (3) wildly inconsistent with precedent, rendering it arbitrary and capricious.

3. Alternatively, Ms. Rice respectfully requests the annulment and vacatur of the three-year revocation of her license, which is so unduly harsh and so disproportionate to Ms. Rice's purported misconduct that it shocks one's sense of fairness and constitutes an abuse of discretion on the part of the Commission.

MS. RICE'S BACKGROUND

4. The sport of horse racing is dominated by men.

5. The Commissioners of the Gaming Commission, for example, are all men.

6. Although other women train race horses as well, there are very few of them, and none are Ms. Rice's peers in terms of success.

7. In spite of this, Ms. Rice has made herself into one of the finest and most decorated female thoroughbred race horse trainers in the history of the sport.

8. In fact, at the hearing in this case, which is discussed in greater detail below, witnesses for both the Commission and Ms. Rice expressed virtually universal acclaim for Ms. Rice's extraordinary work ethic and unparalleled attention to her horses. (*See, e.g.*, Exhibit 3, pp. 23-26 [Campo]; Exhibit 3, pp. 208-09 [Byrnes]; Exhibit 6, pp. 53-55 [Weil]; Exhibit 6, pp. 123-24 [Englehart]; Exhibit 7, pp. 19-20 [Beattie]; Exhibit 7, pp. 87-89 [Keiser]).

9. Born into a horse racing family, she has worked with horses continuously from the time she was six years old.

10. In 1987, after running her father's stable at Penn National while he was building a farm training center in Florida for several years, Ms. Rice set out on her own, primarily training and racing in New Jersey during her early years.

11. In the fall of 1991, Ms. Rice moved her stable, which then consisted of only six horses, to Belmont Racetrack, where she has since stayed and raced year-round on the NYRA circuit.

12. In 1992, Ms. Rice won her first NYRA stakes race with an “inexpensive claiming filly.”

13. By the late 1990s her stable had grown to over two dozen horses and was the largest of any NYRA female trainer.

14. Beginning in the late 1990s, Ms. Rice had a string of several very successful horses in her stable, including “Soldier Field,” who won several NYRA stakes races on the grass in 1998 as well as the Hollywood Turf Express, a Grade 3 Stakes Race in California.

15. In 1998, Ms. Rice’s stable also included “Things Change,” a filly that won a Grade 1 and Grade 2 Stakes Race at Saratoga that year.

16. In that same year, Ms. Rice’s stable also included another three-year-old filly named “Tenski,” who won several stakes races on the NYRA circuit and a Grade 1 Stakes Race at Keeneland Race Course.

17. That made Ms. Rice the first female trainer to win a Grade 1 stakes race at that vaunted racing venue.

18. Ms. Rice’s stable continued to grow and, by 2000, had reached approximately thirty-five horses, which was by far the largest among all female trainers in New York.

19. That same year, “City Zip,” a two year-old trained by Ms. Rice, won all three graded Stakes at Saratoga in a single season.

20. In 2009, Ms. Rice became the first female trainer to win the Saratoga Trainer Title.

21. Ms. Rice is still the only female trainer ever to have done so.

22. Several years later, Ms. Rice shared the 2011 Belmont Spring Trainer Title with Todd Pletcher, a prominent trainer in his own right.

23. Even more recently, Ms. Rice won several other training titles outright, including the 2019 and 2020 Aqueduct Winter Meet Trainer Titles.

24. Ms. Rice is also the only female trainer to win any, much less several, trainer titles in the history of New York racing.

25. In 2020, Ms. Rice secured her 2,000th win.

26. Also in 2020, Ms. Rice secured her 200th first place finish in a stakes race.

27. Ms. Rice has also been named the New York Bred “Trainer of the Year” eight times over the past decade.

28. In addition to her impressive accomplishments as a trainer, Ms. Rice is also active in numerous philanthropic organizations and causes relating to the horse racing.

29. For the better part of the past two decades, Ms. Rice has been intimately involved with the New York Thoroughbred Horsemen’s Association (“NYTHA”), which offers various programs that provide both economic and social support to backstretch workers and their families.

30. She has been a member of the NYTHA Board of Directors since 2002.

31. She has served as its First Vice President since 2017.

32. Over the last eighteen years, Ms. Rice has also chaired a scholarship fund for the children of backstretch workers.

33. Over the past decade, she has been personally responsible for donating over one hundred horses to “New Vocations,” an organization dedicated to retired thoroughbreds for second careers.

34. Ms. Rice’s stable currently cares for and trains about seventy-five horses.

35. It is the largest female-owned stable in New York today.
36. The horses are owned by twenty-five different owners.
37. Ms. Rice personally owns all or part of fifteen of the horses.
38. The stable currently employs fifty-five individuals, many of whom are supporting families.
39. Training is Ms. Rice's only source of income.
40. Training has been Ms. Rice's only source of income for decades.
41. Training has been, and continues to be, Ms. Rice's entire professional life.
42. Ms. Rice has been a licensed thoroughbred race horse owner and trainer in Pennsylvania since 1987.
43. Ms. Rice has been a licensed thoroughbred race horse trainer in New York since 1992.
44. Ms. Rice is also currently licensed to train thoroughbred race horses in New Jersey, Maryland, Florida, and Kentucky.
45. Ms. Rice's disciplinary record in New York over the course of her thirty-four-year career is completely unremarkable.
46. It includes just three minor infractions resulting in any suspension at all.
47. In 2018, Ms. Rice received a five-day suspension for declining to run a horse, necessitating a withdrawal.
48. In 2015, Ms. Rice received a fifteen-day suspension for Clenbuterol.
49. In 2005, Ms. Rice received a twenty-day suspension for Butorphanol.
50. Neither Clenbuterol nor Butorphanol is a banned substance.

51. Rather, both Clenbuterol and Butorphanol are “restricted-use” drugs with recognized therapeutic value under the Commission’s regulations.

THE INVESTIGATION AND CHARGING OF MS. RICE

52. Over five years ago, in May 2016, Ms. Rice voluntarily attended an interview by the Queens County District Attorney’s Office in connection with the purported misconduct at issue in this case.

53. The Queens County District Attorney’s Office declined to prosecute Ms. Rice.

54. Over three years ago, on February 1, 2018, Ms. Rice agreed, without hesitation, to be interviewed by the Commission in connection with its allegations of misconduct.

55. Nearly *two years* later, the Commission, which has known about, and never prosecuted, similar behavior that is widespread in horse racing, charged Ms. Rice (Exhibit 10).

56. Although the regulation upon which it is based, 9 N.Y.C.R.R. § 4042.1(f), is extremely broad, subjective, and indefinite, the Commission’s first charge against Ms. Rice accuses her of “improper” receipt of certain “confidential” race information. It reads as follows:

[F]rom on or about the 2011-12 Aqueduct Racetrack race meeting through March 2015 . . . [Ms. Rice] received regular, continual and improper access to the confidential names and other information concerning the other horses entered in races at The New York Racing Association, Inc. (“NYRA”), before the entries closed and [Ms. Rice] decided to enter the horses [Ms. Rice] was training in such races or not, in violation of . . . [9 N.Y.C.R.R. § 4042.1(f)].

57. The Commission’s second charge against Ms. Rice accuses her of having paid bribes to receive certain race information. It reads as follows:

[F]rom on or about the 2011-12 Aqueduct Racetrack race meeting through March 2015 . . . [Ms. Rice] paid substantial sums of money to NYRA racing officials, inducing them and for the purpose of inducing them to provide [Ms. Rice] with the foregoing improper access, in violation of . . . [9 N.Y.C.R.R. §§ 4042.1(a), (c), and (f)].

58. Although it is exceedingly broad, extraordinarily subjective, and incredibly indefinite, 9 N.Y.C.R.R. § 4042.1(f) prohibits, in relevant part, any “improper . . . act or practice in relation to racing”

59. 9 N.Y.C.R.R. §§ 4042.1(a) and (c) prohibit, in relevant part, the paying of “any bribe in any form to any person having official duties in relation to any race” and the failure to report same.

60. The Commission did not summarily suspend Ms. Rice pending the outcome of its charges against her.

61. Instead, the Commission permitted Ms. Rice to continue to train, which she has been doing now for several years without any noteworthy action having been taken against her by the Commission, and without any similar allegations of wrongdoing having been made against her by the Commission.

62. In sum, Ms. Rice is currently training horses in good standing, and she has been doing so for the entire six-year period following the end of her purported misconduct in March 2015.

MS. RICE’S HEARING

63. A hearing on the Commission’s charges against Ms. Rice was conducted on August 13, 2020; November 3, 2020; November 4, 2020; November 12, 2020; November 17, 2020; November 18, 2020, November 19, 2020; and December 9, 2020. (True and correct copies of the hearing transcripts are annexed hereto as Exhibits 1 through 8. True and correct copies of the Commission’s hearing exhibits [1 through 21, including 19, which was marked for identification but not admitted] are annexed hereto as Exhibits 9 through 43. True and correct copies of Ms.

Rice's hearing exhibits [A through Y, with the exception of M] are annexed hereto as Exhibits 44 through 69.)

64. The hearing officer was Mr. Clark Petschek, Esq. (the "Hearing Officer").

65. Martin Panza (NYRA Senior Vice President of Racing Operations and NYRA Racing Secretary as of November 2013); Jose Morales (former NYRA entry clerk); Matt Salvato (former NYRA entry clerk, NYRA Assistant Racing Secretary, and NYRA Racing Secretary for Aqueduct Racetrack); Paul "P.J." Campo (NYRA Racing Secretary from 2009 to 2013); John Clyne (Senior Director of Security for NYRA); Daniel Haughney (Director of Investigations for the Commission); Andrew Byrnes (NYRA Stakes Coordinator); Chris Camac (NYRA Assistant Racing Secretary); and Braulio Baeza (current Commission Racing Steward and former NYRA Racing Steward) testified on behalf of the Commission.

66. Ms. Rice, Lee Weil (Field Office Manager of the Jockey Club and former thoroughbred trainer); Mary Keiser (exercise rider and former employee of the Jockey Club); and Jeremiah Englehart, James Ferraro, and Todd Beattie (all thoroughbred trainers) testified on behalf of Ms. Rice.

67. Although Ms. Rice is accused of having wrongfully received "confidential" information from racing officials concerning upcoming races, the overwhelming and undisputed hearing evidence demonstrated, to the contrary, that the information Ms. Rice was given was not in fact "confidential," and that, as a result, there was absolutely nothing "improper" or otherwise wrong about Ms. Rice having received that information.

68. It is undisputed that, throughout the relevant time period, neither the Commission, which licenses trainers, nor NYRA, which employs racing officials, including entry clerks, had promulgated any rule or regulation identifying what specific information about upcoming races

could, and could not, be shared by racing officials, including entry clerks, or what specific information could, and could not, be requested or received by trainers.

69. Several witnesses confirmed that there was no rule or regulation promulgated by either the Commission or NYRA that addressed the kind of race information that could be shared by racing officials or requested and received by trainers. (Exhibit 4, pp. 201-02 [Panza]; Exhibit 3, pp. 29-30 [Campo]; Exhibit 5, pp. 140-49 [Baeza]; Exhibit 4, pp. 41-42 [Camac]; Exhibit 3, pp. 80-81 [Clyne]).

70. Consistent with the wholesale absence of any rule or regulation governing the disclosure of race information, it is indisputable that, throughout the relevant time period, NYRA provided no formal training, written instructions, or guidance whatsoever to its entry clerks and other employees concerning the purportedly “confidential” nature of this information, which resided on the InCompass Database system that was accessible to NYRA racing officials, including entry clerks. (Exhibit 4, pp. 137-51 [Panza]; Exhibit 3, pp. 26-27 [Campo]; Exhibit 2, pp. 263-64, 285-87 [Salvato]; Exhibit 2, pp. 205-06 [Morales]).

71. NYRA’s 2008 Code of Ethics (Exhibit 15), which was effective from 2008 through 2018 (covering the entire relevant period in this case) and distributed annually to all NYRA employees -- including its racing officials -- makes no reference at all to the InCompass Database (either specifically or generically) or to the claimed “confidential” character of its contents (or of that relevant racing information in general).

72. It was not until 2019, years after the relevant events of this case had already taken place, that NYRA revised its Code of Ethics and specifically advised, for the first time, that the InCompass Database is a “proprietary software program” and that its information is to be “kept

confidential and [] only disclosed to those with express permission to use such information.”

(Exhibit 45).

73. NYRA made this revision in spite of the fact that the Commission now claims the “confidential” nature of the information in the InCompass Database was already known throughout the industry.

74. Also consistent with the wholesale absence of any rule or regulation governing the disclosure of race information, the hearing testimony revealed that the individual Supervising Racing Officials themselves held sharply contradictory views about what race information their entry clerks could, and could not, permissibly share with trainers.

75. Commission witness P.J. Campo, who served as NYRA Racing Secretary from 2009-2013, stated that, during his tenure, there was “no direct policy” about what racing information was proper to share with trainers during that very relevant time period (Exhibit 3, pp. 8-9).

76. Secretary Campo testified that entry clerks were permitted to provide trainers they were trying to entice to enter into overnight races with: (i) the names of trainers of entries; (ii) past performance information about horses already entered into the race; (iii) the names of jockeys with mounts on horses already entered in the race; and (iv) information on how the trainer’s horse might “fit” in an overnight race (Exhibit 3, pp. 7-12).

77. Although Secretary Campo testified that, “[t]raditionally we wouldn’t tell the horses name,” Secretary Campo candidly added that “I think sometimes they can figure it out, obviously if they are giving the trainer’s name” (Exhibit 3, p. 9).

78. Secretary Campo also confirmed that his entry clerks received “no specific training” about what kind of information a clerk may properly share with a trainer (Exhibit 3, p.

27), and he added that, when an entry clerk was hired, the new hire would merely “sit with somebody (e.g., another entry clerk in the Racing Office) for a couple of days” before taking entries himself (Exhibit 3, p. 27).

79. Finally, Secretary Campo also testified that no one monitors an entry clerk’s conversations with the trainers they are trying to entice to enter into a race (11/4/20, pp. 28-29).

80. Commission witness Martin Panza, the NYRA Racing Secretary who replaced Secretary Campo in November 2013 (Exhibit 2, p. 31), disagreed with former Secretary Campo’s opinion about providing trainers with entered horses’ past performance information, claiming it is not proper and asserting that providing such “past performance” information (as was the conceded practice during Secretary Campo’s 2009-2013 tenure as NYRA Racing Secretary) is the “equivalent” of providing a horse’s name to trainers (Exhibit 4, p. 161).

81. Secretary Panza gave the following testimony:

MR. TURRO: On direct testimony you told Mr. Goodell that new entry clerks that were hired at the racing office were told they should not give trainers names of the horses being entered into the races, they could expose the race if they gave the horses’ names; is that correct?

MR. PANZA: You don’t give the horses’ names in the race.

MR. TURRO: Is that because in your words, it would “expose the race”?

MR. PANZA: You could expose the race when you go to draw, so that should be the first time all the horses are all exposed to the public.

MR. TURRO: *You also testified -- I think you mentioned today that there's no meaningful difference between the entry clerk giving trainers names of the horses [and] giving trainers past performances -- PPs -- is that correct?*

MR. PANZA: *It's equivalent. If you are giving the PPs, you are giving the names of the horses in the race, there's no way to give PPs and not, like, not give the names of the horses in the race, that's what the PPs are.*

(Exhibit 4, p. 161 [emphasis added]).

82. Secretary Panza's Assistant Racing Secretary, Chris Camac (who also testified for the Commission), likewise contradicted Secretary Campo when he opined that the disclosure of the trainer's names of horses already entered in overnight races should not be provided to a trainer considering entering his or her own horse in a race (Exhibit 4, p. 28).

83. Secretary Panza also claimed that he meets with his entry clerks when they are hired and reviews with them the kind of information that can, and cannot, be shared with trainers prior to the draw.

84. However, he claimed total ignorance of the practices of the Racing Office prior to his hiring in late 2013 (Exhibit 4, pp. 135, 168) and specifically limited his testimony concerning the training of entry clerks only to his "new hires" (Exhibit 4, pp. 131-32).

85. While Secretary Panza suggested that the entry clerks are "in earshot" of one another, and that they "police" the propriety of each other's conduct (Exhibit 2, p. 72), this testimony was flatly contradicted by Chris Camac, Panza's own Assistant Racing Secretary, who disputed this claim and agreed with Secretary Campo's assessment that "nobody" monitors this conduct of the NYRA entry clerks (Exhibit 4, p. 66).

86. Another Commission witness, Steward Braulio Baeza, who had served over twenty years as a NYRA Steward before becoming the Commission Steward in 2019, described his "primary job" duties as "uphold[ing] the rules set forth by the Gaming Commission [and] govern[ing] pretty much the backside and all employees who work for NYRA . . . includ[ing] the Racing Office" (Exhibit 5, p. 3).

87. Steward Baeza confirmed the utter lack of any rule, regulation, or other guidance in the area of what race information may be disclosed, requested, or received:

MR. TURRO: Now, you also testified that . . . you are familiar with proper practices and what proper practices are?

MR. BAEZA: Yes.

MR. TURRO: In racing, where are those proper practices found?

MR. BAEZA: *I don't think it's found anywhere.*

(Exhibit 5, p. 30 [emphasis added]).

MR. TURRO: Do you think it's a good idea to have explicit rules?

MR. BAEZA: Sometimes.

MR. TURRO: When would it not be a good idea to have explicit rules?

MR. BAEZA: I don't -- not that I don't agree. I agree with the rules of racing giving stewards some judgment calls, okay. You can't have a rule for everything, you have to have some -- you have to use some common sense.

MR. TURRO: Let me ask you, isn't it important to have rules for important things?

MR. BAEZA: Some, yes and some, no. As acting steward the Gaming Commission rules of running races are very broad, regardless as to what some people may think, it's not the same, there are no two races that are exactly alike.

MR. TURRO: Are you saying if the rules are explicit, there's no discretion with respect as to how it is enforced?

MR. BAEZA: *It puts limitations on it.*

MR. TURRO: Couldn't that be a good thing? Doesn't that limit the abuse of discretion?

MR. GOODELL: Objection.

What question is being asked?

HEARING OFFICER PETSCHKEK:

Let him answer each question as it comes.

MR. TURRO: *Again, wouldn't it be a good thing to have explicit rules?*

- MR. BAEZA: *I don't believe so.*
- MR. TURRO: Would having explicit rules limit a steward or somebody who has to enforce them, limit their discretion?
- MR. BAEZA: I don't think it's a good thing. And as -- if you're referring to the stewards here, there are three stewards.
- MR. TURRO: I am not referring to the stewards, I'm referring to people's licenses getting revoked.
- MR. BAEZA: Okay.
- MR. TURRO: Should there be a clear rule on that?
- MR. BAEZA: Somewhat, there still has to be discretion.
- MR. TURRO: That is not my question. Are there clear rules about it?
- MR. BAEZA: Discretion is not unclarity [sic]. I mean, if it's explicit, you have to follow A, B, C, before you have your license revoked. If you only do A, B, so that means you don't get your license revoked? So if you have discretion, the person has done A and B for the third time, that to me is discretion.
- MR. TURRO: *Don't you want to know the rules of a game before you play a game?*
- MR. BAEZA: *Sure.*

(Exhibit 5, pp. 54-56 [emphasis added]).

88. Steward Baeza vehemently disagreed with Secretary Campo's view that entry clerks may divulge the names of trainers of horses already entered into an overnight race (Exhibit 5, p. 32).

89. Steward Baeza also emphasized that the particular information that may, or may not, be shared is not static but, rather, is subject to change depending on the particular whim of a sitting Racing Secretary.

90. For example, Steward Baeza testified, without equivocation, that while it had been permissible for an entry clerk to share with a trainer that a “closer” is entered into an overnight race during Mr. Campo’s time as the Racing Secretary, this is no longer a proper practice (Exhibit 5, pp. 35-36).

91. In explaining this abrupt change in what previously had been considered “a permissible practice,” Steward Baeza facetiously responded: “Now, from what I understand, Mr. Panza told the guys don’t give any information [about “closers”] out, that’s what I am being told” (Exhibit 5, p. 36).

92. In addition to the fact that, throughout the relevant time period, neither the Commission nor NYRA promulgated any rule or regulation identifying what specific information about upcoming races could, and could not, be shared by racing officials, the overwhelming and undisputed hearing evidence established that, as matter of well-known practice, the same information Ms. Rice is accused of having improperly received -- and which the Commission now claims is “confidential” -- has been provided to trainers by racing officials, including entry clerks, many years on a regular and routine basis in efforts to “hustle” trainers to fill race cards.

93. Steward Baeza’s testimony about his years on the backstretch corroborated that the sharing of this race information has been long-standing NYRA practice.

94. During the hearing, Baeza acknowledged that he has long heard “rumors” that, prior to the draw, trainers are being provided the names of other trainers who have horses entered in an overnight race (Exhibit 5, pp. 32-33) as well as the names of the horses entered (Exhibit 5, p. 33) and their past performance details (Exhibit 5, p. 34).

95. While Steward Baeza’s testimony looks back several decades, the evolving nature of the “hustle” during the very years at issue in this case reveals that the Racing Office’s efforts to

recruit trainers to enter horses in overnight races became significantly more intense, and that the disclosure of this purportedly “confidential” information became increasingly more prevalent.

96. On this point, the undisputed hearing evidence established that, when the U.S. economy collapsed in 2008-2009, the state of racing was dramatically impacted.

97. This proof established that the adverse effects of this financial crisis on the Thoroughbred industry were severe. (Exhibit 67, p. 2).

98. Between 2007 and 2011, the foal crop declined by over 27% and created a horse shortage, which by 2011 had become acute because “people had no interest in owning horses.” (Exhibit 67, p. 2; *see also* Exhibit 8, p. 70.)

99. In New York, the negative effects of the horse shortage on racing in general were exacerbated by the fact that, during the relevant time period, NYRA was still legislatively mandated to race five days a week (Exhibit 3, p. 18; Exhibit 6, pp. 82-84).

100. As a result, the Racing Office struggled to fill its race cards and its hustling of horses became increasingly more aggressive (Exhibit 7, pp. 54-56).

101. As the hearing evidence also confirmed, during the relevant time period, Racing Office personnel shared with trainers more racing information than it had before to entice them to enter horses into races.

102. Ms. Rice and other trainers were being hustled by all of the entry clerks as well as the Assistant Racing Secretary and, at times, the Racing Secretary himself.

103. While most of the hustling in the beginning of this period was verbal, it was during this time that Mr. Morales and another entry clerk, Mike Muzio, slid racing sheets (containing entries names and past performance details) across the counter in the Racing Office to Ms. Rice and other trainers to review prior to the draw (Exhibit 6, pp. 82-85).

104. The verbal hustling likewise became “nonstop” and the entry clerks shared “a lot more information” (Exhibit 6, pp. 81-83).

105. On this subject, Ms. Rice testified that the information she was then receiving verbally from Mr. Morales and other entry clerks was “more specific than before” and “equivalent” to the information printed on the pre-draw past performance sheets she later received (Exhibit 6, pp. 88-89).

106. Ms. Rice explained as follows: “They gave out the trainers’ names, past performances of every horse[] in the race and, you know, the same general information they gave jockeys, the count, stuff like that” (Exhibit 7, pp. 57-58).

107. Ms. Rice testified that, in 2012, Mr. Morales first faxed her office a pre-entry past performance sheet for a race he was verbally hustling (which she did not request) along with a stakes nomination sheet that she had requested (Exhibit 7, pp. 67-68).

108. While she had never before received this information from Mr. Morales as a fax and thought it was “odd,” Ms. Rice further recounted that she “didn’t think that much of it because [she] had already had him slide me races across the desk, him [*i.e.*, Morales] and other clerks” (Exhibit 7, p. 69).

109. Ms. Rice further explained that the pre draw past-performance sheets faxed to her were the exact same documents as those that previously had been slid across the counter to her and other trainers at the Racing Office (Exhibit 7, p. 70).

110. The testimony of P.J. Campo, who served as the NYRA Racing Secretary during the lion’s share of the horse shortage years, made clear that past performance details and trainer names were not considered confidential and could be shared freely with trainers during that period (Exhibit 3, pp. 7-12, 25-28).

111. Moreover, each trainer who testified during the proceedings confirmed having received, on multiple occasions during the relevant period, the same type of racing information (including the names of entered horses) that Ms. Rice received and which the Commission now characterizes as “confidential” information.

112. Commission-licensed trainers Jeremiah Englehart and James Ferraro each testified that they, too, received this same racing information from the Racing Office.

113. Mr. Englehart, who has been a licensed trainer since 2003, has a racing stable of approximately sixty horses and was named the Top New York Bred Trainer in 2018 (Exhibit 6, pp. 110-12).

114. Mr. Englehart testified that he was an active, full-time trainer on the NYRA circuit during the relevant time period (2012-2015), and he further explained that, during those years, due to the horse shortage and New York’s racing requirements, the Racing Office faced a “tough[] task to fill races,” especially in the winter months (Exhibit 6, p. 122).

115. When asked about the specific information that he would receive from the Racing Office, Mr. Englehart confirmed that the Racing Office would freely share with him trainer names, jockey names, past performance details as well as the names of the horses that were already entered in the race.

116. Mr. Englehart testified as follows:

MR. TURRO: [W]hat type of information, in your experience as a trainer, have you received in connection to being hustled for races by the NYRA racing office?

MR. ENGLEHART: They would read me what they saw on the PPs [*i.e.*, “Past Performances”], whether the horse, you know, this horse was fourth last time or hasn’t, you know, been one, two, three, in the last four or five starts.

Um, a lot -- most of the time they'll mention trainers' names, also jockeys, you know, what jockeys are in the race, and on occasion they have given me the names as well.

MR. TURRO: *Name of horses?*

MR. ENGLEHART: *Yes.*

MR. TURRO: And this was, in fact, this type of information occurred while you were a trainer in 2012 to 2014, '15?

MR. ENGLEHART: *Yes.*

(exhibit 6, p. 121 [emphasis added]).

117. Mr. Englehart also confirmed that he was not aware of any Commission rule that addresses what information a racing official can share with a trainer about an overnight race prior to the draw (Exhibit 6, pp. 130-31).

118. James Ferraro, a veteran New York-licensed trainer of over forty years, recounted his similar experiences with the Racing Office during the years of the horse shortage.

119. Mr. Ferraro currently has a racing stable of approximately twenty horses, and, like Mr. Englehart and Ms. Rice, he was an active trainer during the relevant time period of 2011 through 2015 (Exhibit 6, p. 144).

120. When questioned about what information racing officials would share with him during those years to entice him to enter a race, Ferraro responded that these officials would routinely provide the names of trainers of entered horses, past performance information and "might mention a particular trainer's horse" (Exhibit 6, pp. 147-48).

121. Mr. Ferraro, too, testified that he was not aware of any rule or regulation of the Commission that outlines what information a racing official can, and cannot, share with a trainer (Exhibit 6, p. 153).

122. The hearing testimony of the Commission's own Director of Investigations, Daniel Haughney, and documents generated in connection with his investigation in this case, revealed similar proof corroborating that the very type of racing information characterized by the Commission as "confidential" was shared freely by racing officials with other trainers prior to the draw.

123. Investigator Haughney and his colleague, Investigator Fitch, conducted a series of "confidential" interviews, by phone and in-person, "to get some background information" about the issues in this case (Exhibit 3, p. 88).

124. According to Investigator Haughney, one of these confidential witnesses was an unnamed NYRA Assistant Racing Secretary during the relevant period who refused to come forward at the hearing (*see* Exhibit 4, p. 3; *see also* exhibit 3, pp. 124-26).

125. This anonymous NYRA Assistant Racing Secretary admitted to providing trainers with names of horses "to get an entry" (Exhibit 3, pp. 128-29; *see also* Exhibit 55).

126. Additionally, Investigator Haughney also testified that this anonymous NYRA Assistant Racing Secretary would advise a trainer whether a specific horse was already entered (such as the previous winner for an identical type of race) in the overnight race that such trainer was interested in entering (Exhibit 3, p. 129).

127. Investigator Haughney also acknowledged that his investigation revealed that yet another New York thoroughbred trainer, David Donk, received similar pre-draw racing information from the Racing Office, including the names of the horses entered in a race.

128. This evidence confirmed that, on multiple occasions, Trainer Donk was permitted to view the computer screen at the Racing Office containing the same racing information that the Commission now claims was "confidential."

129. In his sworn statement of February 13, 2018, Trainer Donk recounted the following:

I was asked about the activities in the Racing Office in the years 2010-2014. I never received the past performances of horses previous to the drawing of races. If I walked around the office and asked about a race that they needed help filling, they might show me the computer screen to *show me the names of the horses entered*, but not the past performances. *Whenever they hustle a race to try and get it to fill, they will often tell you about the horses in a race to try and help make it fill.* Over the years I might have been shown the screen a few times, to show me *the names of the horses in a race*, and also the jockeys that were named, so I could decide who I was going to choose to ride. *It is no different than today, when they are hustling a race, they will tell you who is in the race to help you make a decision.*

(Exhibit 56 [emphasis added]).

130. As noted above, Racing Secretary Panza opined that past performance information and horses' names are "equivalent" (Exhibit 4, p. 161).

131. Assistant Racing Secretary Camac also confirmed that the information on the screen of an entry clerk in the Racing Office (such as the one shared with Trainer Donk over the years) contains the same information contained in the pre draw past performance sheets, including the horse's name, the trainer's name, and past-performance information (Exhibit 4, pp. 42-43).

132. The testimony of Todd Beattie, a Pennsylvania trainer who periodically ships to New York, offered further sworn evidence flatly refuting the claim that the racing information provided to Ms. Rice is "confidential" in nature, and it further corroborates Trainer Donk's sworn statement that this information continues to be provided to trainers to this day to hustle races.

133. Beattie has a racing stable of thirty-five to forty horses and has primarily raced at Penn National since the 1980s (Exhibit 7, p. 3).

134. He is an accomplished trainer who has over 1,800 wins to his credit and has been periodically shipping horses to NYRA racetracks to race since the 1980s.

135. Over the years, Beattie has been hustled at a number of racetracks in various racing jurisdictions, including by the NYRA Racing Office (Exhibit 7, pp. 6-7).

136. Beattie testified that, in December 2019, he contacted the NYRA Racing Office to express interest in entering one of his horses, “Song of the Night,” in an overnight maiden special race that he had learned of by reviewing the condition book (Exhibit 7, pp. 11-13).

137. Mr. Beattie recounted that the NYRA entry clerk he spoke to about this race initially advised him that “it was going to be a really short field,” and then proceeded to provide him with (i) the names of each of the horses entered in the race; (ii) the names of each of their trainers; and (iii) the past performance information of each entry, “including the kind of races they were coming out of” (Exhibit 7, pp. 14-15 [emphasis added]).

138. Mr. Beattie added that he was further informed by that entry clerk that the “one legitimate horse in the race [was] Chad Brown’s” (Exhibit 7, pp. 14-15).

139. Mr. Beattie was presented with the Equibase Race Chart for Race 1 at Aqueduct on December 15, 2019 (Exhibit 68), and he confirmed that this was the chart of that race and, further, that he received the relevant racing information from the Racing Office for each of the racing entries (Exhibit 7, p. 16).

140. The hearing evidence established that racing officials regularly share with trainers pre-draw racing information, including past performance histories, trainer names, and names of the horses themselves, throughout the industry.

141. Mr. Beattie testified that, over the course of his career, he has raced in many racing venues other than NYRA, including in Philadelphia and Maryland, and that when he is “hustled” entry clerks “often” provide the names of the trainers, the past performances of the horses already entered and “often tell you their names in certain instances” (Exhibit 7, pp. 7-8).

142. Lee Weil, a former thoroughbred trainer, relayed that she was familiar with “hustling” that occurred at Boston’s Suffolk Downs and New Hampshire’s Rockingham Park.

143. Weil specifically recounted that she would receive the names of horses “most of the times” and trainer’s names “on occasion” when she was being hustled at those venues (Exhibit 6, p. 51).

144. Additional testimony and documentary proof was also received in evidence that further demonstrated that the relevant racing information was treated by NYRA entry clerks themselves as anything but confidential.

145. Jose Morales, an entry clerk who testified for the Commission, acknowledged that, during this time period, he would typically hustle trainers by giving them (i) the names of the entered horses; (ii) their past performance information; and (iii) the names of the trainers entered in the race. Morales further testified that he understood this to be the practice of all entry clerks in the Racing Office at the time (Exhibit 2, pp. 215-17).

146. Mr. Morales testified that he did not receive any training concerning what information could, and could not, be shared with trainers, and that he received no training, guidance, or instructions with respect to the use of the InCompass Database system or his use of information from that database (exhibit 2, pp. 205-06).

147. Matt Salvato, another entry clerk who testified for the Commission, was also the Racing Secretary for Aqueduct in 2017 (Exhibit 2, p. 246).

148. He admitted in his sworn statement of January 25, 2018 (Exhibit 50) that he would provide “cuts of races” (which includes names of horses, their trainers, and past performance information) to other trainers because “he did not realize [he] was doing anything wrong.”

149. While he later tried to minimize this prior sworn statement, it nonetheless emphasizes that, at the time, Mr. Salvato did not know this conduct was purportedly “improper” and clearly did not regard it as such (Exhibit 2, p. 285).

150. Mr. Salvato also testified that, when he hustled races during the relevant time period, he freely provided trainers with the past performance information of horses entered in the race, the names of the horses’ trainer, and the names of the jockeys for entered horses (Exhibit 2, pp. 249, 268, 270).

151. This so-called “confidential” racing information is also exchanged routinely on the backstretch between trainers and jockey agents.

152. For example, former Secretary Campo -- who is currently a jockey agent -- acknowledged “trainers do talk to one another” about their targeted entries and that agents for the top jockeys typically book their mounts early and learn the identify of horses that are targeted for a specific race well before the draw (Exhibit 3, pp. 13-14).

153. Trainer Ferraro corroborated these practical realities as well.

154. Ferraro acknowledged that he also learns of entries targeted for races merely by talking with other trainers and calling jockey agents before entering his horses in a race.

155. Ferraro testified that by calling “the top jockeys [and] their agents” he has been provided not only with the names of trainers in a particular race, but also with names of entered horses “on occasion” (Exhibit 6, pp. 151-52).

156. Although the release of the race information Ms. Rice is accused of having wrongfully received was commonplace, and known to occur by the Commission, for many years, the Commission never prosecuted a trainer or any other licensee for requesting or receiving such information.

157. Ms. Rice's is the first and only such case.

THE HEARING REPORT AND THE COMMISSION'S ORDER

158. The Commission and Ms. Rice submitted final post-hearing briefs, dated February 1, 2021, on March 31, 2021. (True and correct copies the Commission's and Ms. Rice's final post-hearing briefs are annexed hereto as Exhibits 70 and 71, respectively.)

159. On or about April 13, 2021, the Hearing Officer issued his Hearing Report to the Commission, finding, in favor of the Commission, that Ms. Rice violated 9 N.Y.C.R.R. § 4042.1(f) by way of "improper" receipt of "confidential" race information.

160. The Hearing Officer recommended a \$50,000 fine and that Ms. Rice's license be revoked for a period of three years.

161. Although it modified the Hearing Officer's recommendation to clarify that the fine of \$50,000 was appropriate for multiple violations on the part of Ms. Rice, the Commission issued its Order otherwise fully adopting the Hearing Officer's findings and recommended punishment.

162. The Commission concurred with the Hearing Officer and penalized Ms. Rice in spite of the overwhelming and undisputed hearing evidence that the information Ms. Rice was given was not in fact "confidential," and that, as a result, there was absolutely nothing "improper" about Ms. Rice having received that information.

163. The Commission concurred with the Hearing Officer and penalized Ms. Rice in spite of the fact that the issuance and receipt of the information Ms. Rice was given was prevalent for decades, known to the Commission, and never prosecuted until now, a substantial (and unexplained) departure from the Commission's well-established precedent.

164. The Commission concurred with the Hearing Officer and penalized Ms. Rice in spite of the fact that the applicable regulation, 9 N.Y.C.R.R. § 4042.1(f), which prohibits, in relevant part, “improper” conduct, is inappropriately broad, subjective, and indefinite.

THE CONSEQUENCES OF THE COMMISSION’S DETERMINATION

165. If the Commission is permitted to enforce its Order and Ms. Rice’s license is revoked for three years, none of the seventy-five horses Ms. Rice owns or trains will be eligible to race.

166. Six of those horses are scheduled or targeted to race in the near future.

167. All of them would have to be withdrawn.

168. None of them, or any of the other horses Ms. Rice owns or trains, can be entered into any future races.

169. If the horses Ms. Rice trains become ineligible to race, Ms. Rice’s clients, *i.e.*, the owners of the horses, will be forced to leave Ms. Rice and find other trainers so their horses can continue to race.

170. Likewise, the horses Ms. Rice fully or partially owns will have to be sold so they, too, can continue to race.

171. If Ms. Rice loses all of her clients and she is forced to sell her horses, then ultimately her stable will have to be closed.

172. That would result in the loss of Ms. Rice’s only source of income, the destruction of Ms. Rice’s business and reputation, and the laying-off of the fifty-five individuals who depend on Ms. Rice and her stable for employment, many of whom are supporting families.

173. Racing in other jurisdictions pending the outcome of this case is not a possibility.

174. The revocation of Ms. Rice's license will result in universal disqualification under reciprocity rules in effect in essentially all racing jurisdictions, including those other jurisdictions in which Ms. Rice is licensed, *i.e.*, Pennsylvania, Maryland, New Jersey, Florida, and Kentucky.

175. Nor would it be possible for Ms. Rice to simply reopen her business at the end of the three-year revocation period.

176. Ms. Rice would have to re-apply for a license, and, assuming, she is re-licensed, Ms. Rice's thirty-four-year career simply cannot be rebuilt in short order three years from now.

177. The consequences of the Commission's determination to revoke Ms. Rice's license for three years would be, in other words, severe and irreversible.

178. In light of Ms. Rice's unremarkable disciplinary history and otherwise stellar reputation, which even the Commission recognizes, the destruction of Ms. Rice's career is substantially inconsistent with, and disproportionate to, Ms. Rice's purported offense.

179. That is particularly true given that the receipt of race information from NYRA racing officials was a wide-spread practice not prohibited by any specific regulation and known to, and not prosecuted by, the Commission for decades.

AS AND FOR A FIRST CLAIM/CAUSE OF ACTION
(Article 78)

180. Ms. Rice repeats and re-alleges each and every allegation in each and every preceding and subsequent paragraph of this Verified Petition & Complaint as if fully set forth at length herein.

181. As discussed above, and in Ms. Rice's memorandum of law in support, the overwhelming and undisputed hearing evidence demonstrated that the information Ms. Rice was given was not in fact "confidential," and that, as a result, there was absolutely nothing "improper" about Ms. Rice having received that information.

182. It is undisputed that, throughout the relevant time period, neither the Commission nor NYRA had promulgated any rule or regulation identifying what specific information about upcoming races could, and could not, be shared by racing officials, including entry clerks, or what specific information could, and could not, be requested or received by trainers.

183. The overwhelming and undisputed hearing evidence established that, as matter of practice well-known to the Commission for many years, the same information Ms. Rice is accused of having improperly received -- and which the Commission now claims is "confidential" -- has been provided -- unpunished -- to trainers by racing officials, including entry clerks, on a regular and routine basis in efforts to "hustle" trainers to fill race cards.

184. The Commission's Order, which finds that Ms. Rice received "confidential" race information, and that it was "improper" for Ms. Rice to have that information, is therefore unsupported by substantial evidence, and it must be annulled and vacated as a consequence.

AS AND FOR A SECOND CLAIM/CAUSE OF ACTION
(Declaratory Judgment)

185. Ms. Rice repeats and re-alleges each and every allegation in each and every preceding and subsequent paragraph of this Verified Petition & Complaint as if fully set forth at length herein.

186. As discussed above, and in Ms. Rice's memorandum of law in support, the portion of 9 N.Y.C.R.R. § 4042.1(f) that Ms. Rice was found to have violated -- which prohibits, in relevant part, any "improper" act or practice in relation to racing -- is exceedingly broad, extraordinarily subjective, and impermissibly indefinite.

187. The provision lends itself to the unrestrained discretion of the Commission, to arbitrary and discriminatory enforcement on the part of the Commission, and it has been susceptible to varying, inconsistent interpretations by those who enforce it.

188. The provision is therefore unconstitutionally vague, a clear denial of Ms. Rice's, and other licensees', due process rights, and it must be declared invalid as a consequence.

189. In light of, *inter alia*, the Commission's Order, which, *inter alia*, revokes Ms. Rice's license for three years for purportedly engaging in "improper" conduct under 9 N.Y.C.R.R. § 4042.1(f), regardless of its palpable vagueness, there is an actual, genuine, and justiciable controversy regarding the provision's constitutionality, which Ms. Rice respectfully requests that the Court resolve by declaration.

AS AND FOR A THIRD CLAIM/CAUSE OF ACTION
(Article 78)

190. Ms. Rice repeats and re-alleges each and every allegation in each and every preceding and subsequent paragraph of this Verified Petition & Complaint as if fully set forth at length herein.

191. As discussed above, and in Ms. Rice's memorandum of law in support, the release of the race information Ms. Rice is accused of having wrongfully received was commonplace, and known to occur by the Commission, for decades.

192. The Commission never prosecuted a trainer or any other licensee for requesting or receiving such information.

193. Without explanation, the Commission charged Ms. Rice in what is now the first and only such case, and, by having done so, the Commission is not giving similar treatment to similarly-situated individuals.

194. The Commission's Order, which finds that Ms. Rice received "confidential" race information, and that it was "improper" for Ms. Rice to have that information, is therefore a substantial departure from the Commission's own well-established precedent.

195. The Commission's Order is therefore arbitrary and capricious, and it must be annulled and vacated as a consequence.

AS AND FOR A FOURTH CLAIM/CAUSE OF ACTION
(Article 78)

196. Ms. Rice repeats and re-alleges each and every allegation in each and every preceding and subsequent paragraph of this Verified Petition & Complaint as if fully set forth at length herein.

197. As discussed above, and in Ms. Rice's memorandum of law in support, Ms. Rice has an unremarkable disciplinary history, and she has an otherwise stellar reputation, as recognized by the Commission's own witnesses.

198. Furthermore, the Commission's Order, if not annulled and vacated, would result in the destruction of Ms. Rice's business, career, and reputation.

199. The receipt of race information from NYRA racing officials was also a wide-spread practice not prohibited by any specific regulation and known to, and not prosecuted by, the Commission for decades.

200. The Commission's three-year revocation of Ms. Rice's license is therefore so disproportionate to Ms. Rice's offense that it shocks one's sense of fairness and must be annulled and vacated as a clear abuse of discretion on the part of the Commission.

