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U.S. DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
★ DEC 11 2003 ★  
ENTERED 12/11/03 CEM  
LONG ISLAND OFFICE

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- against -

THE NEW YORK RACING ASSOCIATION, INC.,

Defendant.

AGREEMENT

Cr. No. 03-1275 (A02)

DEFERRED PROSECUTION AGREEMENT

The Defendant THE NEW YORK RACING ASSOCIATION, INC. ("NYRA"), by its undersigned attorneys, pursuant to authority granted by its Board of Trustees, and the United States Attorney's Office for the Eastern District of New York (the "USAO") enter into this Deferred Prosecution Agreement ("Agreement") for a period of eighteen months from the date of this Agreement.

1. NYRA acknowledges that it has been indicted on charges of conspiracy to defraud the United States, in violation of Title 18, United States Code, Section 371, and aiding and abetting the filing of false tax returns, in violation of Title 26, United States Code, Section 7206(2), as set forth in indictment number Cr. [ 03-1275 ] (A\*) filed by a grand jury sitting in the Eastern District of New York (the "Indictment"), attached to this Agreement as Exhibit A.

2. NYRA accepts and acknowledges responsibility for its conduct as set forth in the Stipulation of Facts attached to this Agreement as Exhibit B and incorporated into it by reference by entering into this Agreement, and by, among other things, the remedial actions that

it has taken to date, its continuing commitment of full cooperation with the USAO and other governmental agencies, and its agreement to restructure its management organization and the other undertakings it has made as set forth in this Agreement.

3. NYRA expressly agrees that it shall not, through its present or future attorneys, Board of Trustees, agents, officers or employees, make any public statement, in litigation or otherwise, contradicting the Stipulation of Facts. Any such contradictory statement by NYRA, its present or future attorneys, Board of Trustees, agents, officers or employees shall constitute a breach of this Agreement and NYRA thereafter shall be subject to prosecution as set forth in paragraphs 15 and 16. The decision as to whether any such contradictory statement will be imputed to NYRA for the purpose of determining whether NYRA has breached this Agreement shall be at the sole discretion of the USAO. Upon the USAO's notifying NYRA of any such contradictory statement, NYRA may avoid a breach of this Agreement by publicly repudiating such statement within 48 hours after notification by the USAO. This paragraph is not intended to apply to any statement made by any NYRA employee or former employee who has been charged with a crime as set forth in the Indictment. NYRA agrees that in the event that future criminal proceedings are brought in accordance with this Agreement, NYRA will not contest the admissibility of the Stipulation of Facts in any such proceedings.

4. During the term of this Agreement, NYRA agrees to continue to cooperate fully with the USAO, and with any other government agency designated by the USAO ("Designated Agencies") regarding any matter about which NYRA has knowledge, which

cooperation shall include providing privileged information to the extent described in paragraph 5(c) below.

5. NYRA agrees that its cooperation, as agreed to in Paragraph 4 above, shall include, but is not limited to, the following:

(a) Completely and truthfully disclosing all information with respect to the activities of NYRA and present and former members of the Board of Trustees, agents, officers, and employees, concerning all matters about which the USAO or any of the Designated Agencies may inquire;

(b) Assembling, organizing and providing all documents, records, or other tangible evidence in NYRA's possession, custody, or control as may be requested by the USAO or any Designated Agency, including, but not limited to, documents relating to the New York State Thoroughbred Racing Capital Improvement Fund ("CIF"), the 1999 Special Audit and account shortages in the Pari-Mutuel Department;

(c) Waiving claims of the attorney-client privilege or work-product doctrine as to any documents, records, information, or testimony requested by the USAO related to factual internal investigations or contemporaneous advice given to NYRA concerning the conduct at issue in the Indictment and the Stipulation of Facts (the "Confidential Materials"). Production of the Confidential Materials shall be governed by the Confidentially Agreement dated October 11, 2003 previously executed by the parties and attached as Exhibit C;

(d) Using its best efforts to make available its present and former employees to provide information and/or testimony as requested by the USAO or any of the Designated

Agencies, including sworn testimony or in court proceedings, as well as interviews with law enforcement authorities. Cooperation under this paragraph will include identification of witnesses who, to NYRA's knowledge, may have material information regarding the allegations contained in the Indictment or the Stipulation of Facts;

(e) Providing testimony and other information deemed necessary by the USAO or a court to identify or establish the original location, authenticity, or other evidentiary foundation necessary to admit into evidence documents in any criminal or other proceeding as requested by the USAO or any of the Designated Agencies; and

(f) With respect to any information, testimony, document, record or other tangible evidence provided by NYRA to the USAO, the Internal Revenue Service ("IRS") or a grand jury, other than the Confidential Materials, NYRA consents to any and all disclosures of such materials to such Designated Agencies as the USAO, in its sole discretion, deems appropriate. With respect to any such materials that constitute "matters occurring before the grand jury" within the meaning of Rule 6(e) of the Federal Rules of Criminal Procedure, NYRA further consents to a) any order sought by the USAO permitting such disclosures; and b) the USAO's ex parte or in camera application for such orders

(g) NYRA represents that its Board of Trustees and current Senior Management have taken numerous remedial steps to address the concerns raised by the USAO and other law enforcement and regulatory bodies. Those steps have included:

- the formation of a Special Oversight Committee of the NYRA Board to ensure that NYRA properly addresses all issues raised by any law

enforcement offices or regulators and to enhance NYRA's overall regulatory compliance;

- the retention of SafirRosetti, which reports to the Special Oversight Committee and which has been given a broad mandate (1) to conduct a thorough review of NYRA's operations, (2) to recommend revisions and improvements to NYRA's operations, and (3) to maintain a fulltime presence at NYRA to ensure proper implementation and follow-through on such recommended revisions and improvements;
- the creation of an Office of the Chairman, which includes two new Co-Chief Operating Officers whose responsibilities include supervision of all business areas and departments of NYRA;
- the implementation of new policies and procedures for employees in the Pari-Mutuel Department, including a daily count-out procedure;
- the implementation of a new work rule requiring that any Mutuel Employee who had a history of excessive shortages prior to the new shortage policy that was put in effect in 2000 not be allowed to perform any job in the money room, at any fifty-dollar minimum window, at any IRS window, or at any check cashing or cash advance window; and
- the creation of a NYRA employee hotline available 24 hours a day, 7 days a week, for NYRA employees to anonymously report any suspected misconduct, corruption and criminal behavior.

6. NYRA agrees to complete the restructuring of its senior management, and its Pari-Mutuel, Legal, Security, Internal Audit, Accounting and Human Resources Departments, such that by the end of the first quarter of 2004, (i) NYRA will have replaced the Chief Operating Officer, Chief Financial Officer and Controller who had been in place during the conduct alleged in the Indictment; and (ii) NYRA will have replaced the Managers, Directors and Vice-Presidents who had been in charge of the restructured departments during the conduct alleged in the Indictment. NYRA further agrees that, with the exception of the former head of Security, who has been reassigned to the Facilities Department, and the former Controller, who will be hired as an independent consultant to NYRA's Accounting Department, it will not continue to employ and it will not rehire any of the individuals who are replaced pursuant to the restructuring referenced above. NYRA further agrees to eliminate the Trustee Emeritus positions from its Board of Trustees.

7. NYRA agrees to seek, within 60 days of the date of this Agreement, an advisory opinion from the IRS ("IRS Advisory Opinion") regarding the proper accounting and tax treatment of funds that NYRA receives from and pays to the CIF, including accrued interest. NYRA further agrees to consider, in good faith, the IRS Advisory Opinion, but reserves the right to contest the IRS Advisory Opinion through appropriate channels.

8. NYRA agrees to provide its audited financial statements to the New York State Racing and Wagering Board and the New York State Comptroller's Office and not to oppose the release of its audited financial statements pursuant to the terms of the New York State Freedom of Information Law.

9. NYRA agrees and understands that an independent monitor (the "Monitor") will be appointed by the Court within 60 days of the date of this Agreement, upon the recommendation of the USAO. The Monitor will carry out its duties and responsibilities pursuant to the terms of an Order of Appointment to be issued by the Court at the request of the USAO following consultation with NYRA. The Monitor will, among other things, monitor NYRA's compliance with the terms of this Agreement, report directly to and be directed by, an agency or agencies to be designated by the USAO. NYRA agrees that the monitor may have access to any and all materials relating to NYRA's operations subject to the limitation of paragraph 5(c) above.

10. NYRA is in the process of establishing video lottery terminals at Aqueduct Racetrack (the "VLT Project"). If, for any reason, the VLT Project is not completed or substantially completed under the current proposed plan in 2004, NYRA agrees to make all commercially reasonable and legally permissible efforts to enter into contractual arrangements with other entities to enable the operation of VLTs at Aqueduct Racetrack. If, by the seventeenth month after the date of this Agreement, VLTs are not operational at Aqueduct Racetrack, the USAO shall evaluate whether NYRA has made all commercially reasonable and legally permissible efforts in accordance with this provision.

11. NYRA agrees to pay a total of \$3,000,000 to the United States, according to the following schedule, with payments to be made pursuant to the direction of the USAO:

\$500,000 - 6 months from the date of the execution of the Agreement;

\$500,000 - 12 months from the date of the execution of the Agreement;

- \$500,000 - 17 months from the date of the execution of the Agreement;
- \$500,000 - 24 months from the date of the execution of the Agreement;
- \$500,000 - 30 months from the date of the execution of the Agreement;
- \$500,000 - 36 months from the date of the execution of the Agreement.

NYRA agrees to post a bond or execute one or more Confessions of Judgment in favor of the United States in an amount equal to the portion of the \$3,000,000 that has not yet been paid as of 17 months from the date of the execution of the Agreement. The USAO will determine, in its sole discretion, whether a bond shall be posted or Confessions of Judgment shall be executed, or both. The bond shall be posted and the Confessions of Judgment shall be executed no later than 17 months from the date of the execution of the Agreement. The Confessions of Judgment shall be filed in counties to be designated by the USAO, at NYRA's expense. The USAO may request that NYRA execute as many Confessions of Judgment as the USAO, in its sole interest in the unpaid portion of the \$3,000,000.

12. NYRA agrees to comply with all federal, state and local laws, including tax laws. NYRA also agrees to materially comply with all generally accepted accounting principles in maintaining its books and records where applicable.

13. In consideration of NYRA's remedial actions to date and its willingness to (i) accept and acknowledge responsibility for its conduct as set forth in the Stipulation of Facts; (ii) continue its cooperation with the USAO and the Designated Agencies; (iii) consent to payment as set forth in paragraph 11 above; (iv) demonstrate its future good conduct and full compliance with federal, state and local laws, including tax laws, and generally accepted accounting

principles where applicable; and (v) otherwise comply with all of the terms of this Agreement, the USAO shall recommend to the Court that prosecution of NYRA on the Indictment be deferred for a period of 18 months. NYRA shall expressly waive all rights to a speedy trial pursuant to the Sixth Amendment of the United States Constitution, Title 18, United States Code, Section 3161, Federal Rule of Criminal Procedure 48(b), and any applicable Local Rules of the United States District Court for the Eastern District of New York for the 18-month period during which this Agreement is in effect.

14. The USAO agrees that if NYRA is in full compliance with all of its obligations under this Agreement, the USAO, within 30 days of the expiration of 18 months from the date of this Agreement, will seek dismissal with prejudice as to NYRA of Counts One and Fourteen through Sixteen of the Indictment, and this Agreement shall expire. Except in the event of a breach of this Agreement, it is the intention of the parties to this Agreement that all investigations relating to the matters set forth in the Indictment and the Stipulation of Facts that have been, or could have been, conducted by the USAO prior to the date of this Agreement shall not be pursued further as to NYRA. NYRA and the USAO understand that the Agreement to defer prosecution of NYRA must be approved by the Court, in accordance with 18 U.S.C. § 3161(h)(2). Should the Court decline to approve the Agreement to defer prosecution for any reason, both the USAO and NYRA are released from any obligation imposed upon them by this Agreement and this Agreement shall be null and void.

15. It is further understood that should the USAO, in its sole discretion, determine that NYRA, through its Senior Management as defined in the Stipulation of Facts, has

deliberately given false, incomplete, or misleading information under this Agreement, has committed any federal or state crimes commenced subsequent to the date of this agreement, or has otherwise knowingly violated any provision of this Agreement, NYRA thereafter shall be subject to prosecution for any federal criminal violation of which the USAO has knowledge. Any such prosecutions may be premised on any information provided by or on behalf of NYRA to the USAO or the Designated Agencies at any time. Moreover, NYRA agrees that any prosecutions relating to the allegations in the Indictment or the Stipulation of Facts that are not time-barred by the applicable statute of limitations as of the date of this Agreement may be commenced against NYRA in accordance with this Agreement, notwithstanding the expiration of any applicable statute of limitations between the signing of this Agreement and the expiration of this Agreement. By this Agreement, NYRA expressly intends to and does waive any rights in this respect. Such waiver is knowing, voluntary and in express reliance on the advice of NYRA's counsel.

16. It is further agreed that in the event that the USAO, in its sole discretion, determines that NYRA has knowingly violated any provision of this Agreement, a) all statements made by or on behalf of NYRA to the USAO or any of the Designated Agencies, or any testimony given by NYRA before a grand jury, or elsewhere, whether before or after the date of this Agreement, and any leads derived from such statements or testimony, shall be admissible in evidence in any and all criminal proceedings brought by the USAO against NYRA; and b) NYRA shall not assert any claim under the United States Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that statements made by or on behalf of NYRA before or after the date of this Agreement, or any leads derived therefrom, should be suppressed.

17. The decision whether conduct and/or statements of any individual will be imputed to NYRA for the purpose of determining whether NYRA has violated any provision of this Agreement shall be in the sole discretion of the USAO. Should the USAO determine that NYRA has committed a knowing breach of any provision of this Agreement, the USAO shall provide written notice to NYRA of the alleged breach and provide NYRA with a two-week period in which to make a presentation to the USAO, or its designee, to demonstrate that no breach has occurred, or, to the extent applicable, that the breach was not knowing or has been cured. The parties to this Agreement expressly understand and agree that should NYRA fail to make a presentation to the USAO, or its designee, within a two-week period, it shall be conclusively presumed that NYRA is in knowing breach of this Agreement. The parties further understand and agree that the exercise of discretion by the USAO or its designee under this paragraph is not subject to review in any court or tribunal outside the Department of Justice.

18. It is understood that this Agreement is binding on NYRA and the Department of Justice, but specifically does not bind any other federal agencies, any state or local law enforcement agencies, any licensing authorities, or any regulatory authorities, although the USAO will bring the cooperation of NYRA and its compliance with its obligations under this Agreement to the attention of any such agencies or authorities, if requested by NYRA or its attorneys.

19. NYRA and the USAO agree that this Agreement, including its attachments, shall be publicly filed in the United States District Court for the Eastern District of New York.

20. This Agreement sets forth all the terms of the Deferred Prosecution Agreement between NYRA and the USAO. No modifications or additions to this Agreement

shall be valid unless they are in writing and signed by the USAO, NYRA's attorneys, and a duly authorized representative of NYRA.

Dated: Brooklyn, New York  
December 10, 2003

**ANDREW C. HRUSKA**  
Acting United States Attorney  
Eastern District of New York

By: Suzanne Jaffe Bloom  
Suzanne Jaffe Bloom  
Deputy Chief, Long Island Criminal Division

Approved:

D. R. Alonso  
Daniel R. Alonso  
Chief, Criminal Division

Agreed and consented to by:

Barry Schwartz  
Barry Schwartz  
Chief Executive Officer,  
THE NEW YORK RACING  
ASSOCIATION, INC.  
Defendant

Denis J. Molnerney, Esq.  
Denis J. Molnerney, Esq.  
Counsel to Defendant

Approved:

Patrick Mancini  
Patrick Mancini  
Chief PreTrial Services Officer  
United States Pretrial Services Agency  
Eastern District of New York

RESOLUTION

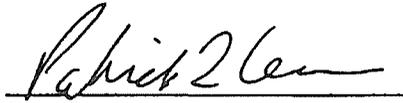
Upon motion duly made by Earle Mack, seconded by Peter Karches, and unanimously carried by the affirmative vote of the 22 Board Trustees present, the following resolutions were adopted:

RESOLVED, that NYRA, which has been engaged in discussions with the United States Attorney's Office in connection with the allegations set forth in the Indictment # C.R. 03-1215 filed in the Eastern District of New York, consents to a resolution of such discussions and will, in the Eastern District of New York, enter into a deferred prosecution agreement; and RESOLVED FURTHER, that the Chief Executive Officer of NYRA, Barry K. Schwartz, be, and hereby is, authorized to execute the Deferred Prosecution Agreement on behalf of NYRA substantially in such form as reviewed by the Board of Trustees at this meeting.

CERTIFICATION

I, Patrick L. Kehoe, hereby certify that I am the duly elected Secretary of NYRA; that the foregoing is a full, true and correct copy of the resolution duly adopted by the Board of Trustees of NYRA at a meeting thereof duly held on December 10, 2003, at the office of Fleet Bank, 345 Park Avenue, New York, New York, in the United States of America, and has not been rescinded or revoked; and that the foregoing resolution is not contrary to any provisions in the Articles of Incorporation or By-Laws of NYRA.

IN WITNESS WHEREOF, I have hereunto signed my name as Secretary and affixed the Seal of NYRA this 10<sup>th</sup> day of December 2003.

  
\_\_\_\_\_  
Secretary

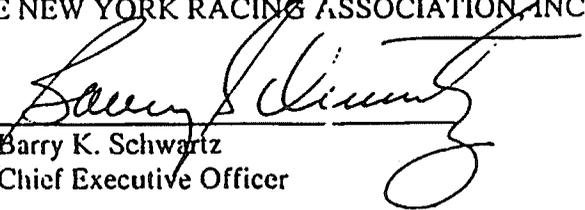
CHIEF EXECUTIVE OFFICER'S CERTIFICATE

I have read this Agreement and carefully reviewed every part of it with counsel for The New York Racing Association, Inc. ("NYRA"). I understand the terms of this Agreement and voluntarily agree, on behalf of NYRA, to each of the terms. Before signing this Agreement, I consulted with the attorney for NYRA. The attorney fully advised me of NYRA's rights, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into this Agreement. No promises or inducements have been made other than those contained in this Agreement. Furthermore, no one has threatened or forced me, or to my knowledge any person authorizing this Agreement on behalf of NYRA, in any way to enter into this Agreement. I am also satisfied with the attorney's representation in this matter. I certify that I am the Chief Executive Officer of NYRA, and that I have been duly authorized by NYRA to execute this Agreement on behalf of NYRA.

December 10, 2003

THE NEW YORK RACING ASSOCIATION, INC.

By:

  
Barry K. Schwartz  
Chief Executive Officer

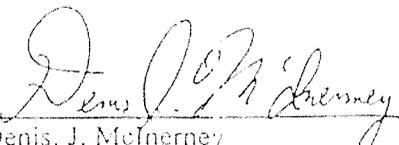
CERTIFICATE OF COUNSEL

I am counsel for The New York Racing Association, Inc. ("NYRA"). In connection with such representation, I have examined relevant NYRA documents, and have discussed this Agreement with the authorized representative of NYRA. Based on my review of the foregoing materials and discussions, I am of the opinion that:

1. Barry K. Schwartz is duly authorized to enter into this Agreement on behalf of NYRA.
2. This Agreement has been duly and validly authorized, executed and delivered on behalf of NYRA, and is a valid and binding obligation of NYRA.

Further, I have carefully reviewed every part of this Agreement with the members of NYRA's Board of Trustees. I have fully advised the members of NYRA's Board of Trustees of NYRA's rights, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into this Agreement. To my knowledge, NYRA's decision to enter into this Agreement is an informed and voluntary one.

December 10, 2003

  
Denis J. McInerney  
Attorney for Defendant NYRA

dlf

RTF:RMR  
F.#2002R00413

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA

A G R E E M E N T

-against-

THE NEW YORK RACING ASSOCIATION, INC.

Defendant.★

JUN 29 2005

Cr. No. 03-1295 (ADS)

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.

-----X

LONG ISLAND OFFICE

AMENDMENT TO DEFERRED PROSECUTION AGREEMENT

The defendant, THE NEW YORK RACING ASSOCIATION, INC. ("NYRA"), by its undersigned attorney, pursuant to authority granted by the Executive Committee of its Board of Trustees, and the United States Attorney's Office for the Eastern District of New York (the "USAO") enter into this amendment to the Deferred Prosecution Agreement, dated December 10, 2003 (the "Agreement").

1. NYRA agrees that the Monitor appointed by the Court in the above-captioned matter shall continue to carry out its duties and responsibilities through and including July 24, 2005.

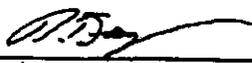
2. NYRA agrees that the Agreement shall remain in effect through and including August 23, 2005.

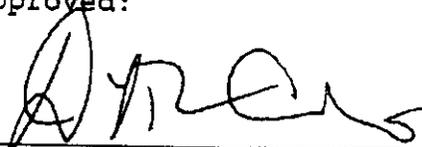
3. The USAO agrees that if NYRA is in full compliance with all of its obligations under the Agreement, the USAO, on or before August 23, 2005, will seek dismissal with prejudice as to NYRA

of Counts One and Fourteen through Sixteen of the Indictment, and the Agreement shall expire.

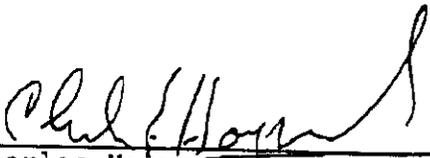
Dated: Brooklyn, New York  
June 29, 2005

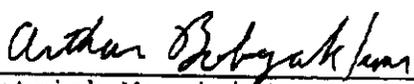
ERIC O. CORNGOLD  
Acting United States Attorney  
Eastern District of New York

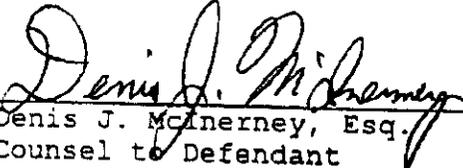
By:   
Richard T. Faughnan  
Chief, Public Integrity

Approved:  
  
Daniel R. Alonso  
Chief, Criminal Division

Agreed and consented to by:

  
Charles Hayward  
Chief Executive Officer  
THE NEW YORK RACING  
ASSOCIATION, INC.  
Defendant

Approved:  
  
~~Patrick Mancini~~ Arthur Gobyak  
Supervising Pretrial Services Officer  
U.S. Pretrial Services Agency  
Eastern District of New York

  
Denis J. McInerney, Esq.  
Counsel to Defendant