

August 18, 2020

Dear Horsemen,

This letter is written to respond to a post written by Mr. Bob Hutton, President of the AZHBPA that appeared on Facebook on August 15. This letter is written to clarify some of the statements and impressions in Mr. Hutton's letter. In other words, to set the record straight.

Mr. Simms has owned Turf for 20 years; 19 of those 20 years race meets were successfully conducted, from beginning to end. It's only this year, specifically when Governor Ducey declared a state of emergency on March 11 because of the Coronavirus that a race meet has been cut short. The Coronavirus is the only reason Turf cut short its race meet on March 14 and the only reason Turf withdrew its request before the Arizona Racing Commission on August 13 to run a race meet from Nov. 1 to May 1, 2021. Turf does not want the liability of running a race meet while the Coronavirus is active.

Settlement Agreement (Attachment 1)

The Settlement Agreement was written by Mr. Casillas, Director of the Arizona Division of Racing, who also served as the mediator for Mr. Simms and Mr. Hutton as the two men compromised, negotiated and eventually signed the agreement in good faith on March 22. Either side could have argued specific points of the agreement or declined to sign the agreement. But both sides agreed to sign. Read Attachment 1 for the complete terms of the agreement.

In his posting Mr. Hutton gives the impression that the Settlement Agreement, which by definition is to settle differences between parties, was somehow arrived at without the consent of both parties. On the contrary, both Mr. Simms and Mr. Hutton signed the 14 point agreement. For example, the parties agreed to split the costs < 50-50 > of maintaining the backside and training on the man track for 45 days. The AZHBPA was invoiced weekly and the invoices were promptly paid. When the 45 days expired the AZHBPA asked for an additional 10 days, at their own expense, and the request was granted.

It appears that Mr. Hutton's personal feelings toward Mr. Simms and Turf are clouding his judgement. The HBPA is to be neutral, treating all tracks equally, but Turf is treated differently. When Arizona Downs abbreviated their race meet they continued to simulcast without racing live. When that track announced that it would not be able to conduct a meet because of Yavapai County and the City of Prescott Valley's concerns about the Coronavirus, Arizona Downs, without objection from the AZHBPA, maintained their simulcasting and OTB system. Why not the same for Turf?

Arizona Downs Letter (Attachment 2)

On May 22 Turf became aware of a letter from Mr. Dave Auther of Arizona Downs to Mr. Casillas. Specifically what caught our attention in the letter was the following that revealed how

Arizona Downs was going to fund its purses: **“This will include a contribution from the HBPA toward purses. HBPA has a plan to secure purse money from the Turf Paradise purse fund.”** You cannot use the purse money of one race track to subsidize the purses of another track.

Mr. Hutton stated that without live racing there would be no simulcasting. Turf’s contract with the AZHBPA goes until May 2021. Turf expects the AZHBPA to honor that contract.

At a meeting in early August with Mr. Hutton and two members of the Arizona Thoroughbred Breeders’ Association in my office at Turf, Mr. Hutton asked me if I believed a contract existed between Turf and the AZHBPA. I replied in the affirmative that I believed a contract existed between us. Mr. Hutton then asked Mr. Simms (who was participating by phone) the same question. Mr. Simms answered that he not only believed a contract existed but that it was in effect until May 2021. Mr. Hutton responded that he did not believe a contract existed because we cancelled the race meet due to the Coronavirus, thus rendering the contract void. Mr. Simms then asked Mr. Hutton that if he really believed that, then why are we having a discussion about contractual matters. Mr. Simms then said, “Let’s continue to talk.” Mr. Hutton then stood up abruptly and said “We’re done,” and left my office.

The abrupt ending of the meeting notwithstanding, Turf has never declined a phone call, an email/ text or a request to meet with the AZHPBA. That door is still open.

Sincerely,

Vincent Francia
General Manager

Attachment 1

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT ("Agreement") is entered into by and between the Arizona Horseman's Benevolent & Protective Association ("AZHBPA") by and through its President, Robert Hutton or his designee, and TP Racing, LLLP ("Turf Paradise"), by and through Jerry Simms, Majority Owner of Turf Paradise, and shall be effective upon the last date of execution by the parties.

RECITALS

- A. Turf Paradise ended its race season early on March 14, 2020, due to the Coronavirus Pandemic. Turf Paradise management made the difficult decision to terminate their race meet in order to assist Arizona in its efforts to slow down the spread of the illness. Management, heeding the advice of state and federal officials discouraging gatherings of large crowds, felt compelled to end the meet early.
- B. Turf Paradise maintains well over 1,400 horses and equal numbers of horse owners and staff on the backside of the track.
- C. In order to accommodate the horse owners and staff as they transition to other racetracks or to their places of residence in a safe and responsible manner, Turf Paradise and the AZHBPA have therefore agreed to the following terms and conditions to facilitate the transition.

TERMS AND CONDITIONS

- 1. Turf Paradise has agreed to allow horse owners, trainers, and staff members the use of the Turf Paradise facilities (which include main track, stable area, pool, south parking lot) until April 30, 2020.
- 2. Expenses for facility usage, track maintenance, and stable area maintenance incurred from March 14, 2020 through April 30, 2020, shall be split at 50% by the parties.
- 3. The agreed upon shared maintenance expenses identified by the parties are as follows:
 - a. 24-hour security for South Gate and Security Rover in stable area.
 - b. Track crew.
 - c. Para-medics.
 - d. Outriders.
 - e. Siren Person.
 - f. Manure removal from barn area and loading into trucks and transfer to track manure dump (In the event of emergency business shutdowns due to the Coronavirus, where horse manure cannot be removed from track manure dump by service provider, AZHBPA and Turf Paradise shall work together to locate a service for removal of manure from the premises)

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- g. Trash bin removal.
 - h. Cleaning of restrooms in stable area.
 - i. Mechanical repair of vehicles utilized to maintain track and stable area.
 - j. Fuel costs for equipment to maintain track and stable area.
 - k. Swimming pool staff for two (2) days per week (Tuesdays and Thursdays), including diver for cleaning, chemicals, and equipment maintenance.
 - l. AZHBPA will purchase \$5.00 swimming pool tickets from Turf Paradise and resell tickets to horsemen for horse workouts. Turf Paradise agrees to reimburse AZHBPA for any unsold swimming pool tickets after April 30, 2020.
 - m. Accounting costs incurred by Turf Paradise to process weekly billing.
 - n. Insurance costs for jockeys, stable area, track, and swimming pool.
 - o. In the event of a horse fatality, transportation to Midwestern University for necropsy.
 - p. City of Phoenix – Water and Waste Services.
 - q. Arizona Public Service – Electric Services.
4. Turf Paradise will invoice the AZHBPA electronically once per week. Each expense shall be itemized, without backup or auditing.
 5. Upon execution of this Agreement, AZHBPA agrees to electronically deposit TWENTY THOUSAND DOLLARS (\$20,000.00) into the Turf Paradise Horsemen's Transition Account and shall maintain a TWENTY THOUSAND DOLLAR (\$20,000.00) balance in said account until April 30, 2020 and shall make weekly deposits to said account to maintain balance.
 6. Turf Paradise agrees to electronically deposit or transfer all unused funds from the Turf Paradise Horsemen's Transition Account back to AZHBPA account on or before May 8, 2020.
 7. Trainers may train their horses on the main Turf Paradise track five days per week, Monday through Friday from 6 a.m. to 10:00 a.m. If training is cancelled due to rain, training will be provided on Saturday.
 8. After April 30, 2020, all trainers, horses, owners, exercise riders, jockeys and all their personal belongings, including personal hot walkers, shall be removed from the Turf Paradise stable area.
 9. The AZHBPA agrees to provide the necessary Interstate Horseracing Act consent for export of Turf Paradise signal to the simulcast list set forth in paragraph 9, below, submitted by Turf Paradise, through December 31, 2020.
 10. The AZHBPA further agrees that it will not withdraw the Interstate Horseracing Act consent for the simulcast list, below, submitted by Turf Paradise before December 31, 2020:
 - Downs at Albuquerque — 3.00% July 17, 2020 through October 24, 2020
 - Aqueduct — 6.25% April 2, 2020 through April 19, 2020, November 6, 2020 through December 31, 2020

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- Arapahoe Park — 3.00% May 3, 2020 through August 16, 2020
- Arlington Park — 4.00% (5.00% Arlington Million) May 1, 2020 through September 26, 2020
- Assiniboia Downs — 3.00% May 10, 2020 through September 7, 2020
- Belmont Park - 6.25% (8.00% Belmont Stakes) April 24, 2020 through July 12, 2020, September 12, 2020 through November 1, 2020
- Belterra Park — 3.00% April 24, 2020 through September 25, 2020
- Canterbury Park — 3.00% May 15, 2020 through September 12, 2020
- Century Downs — 3.00% September 4, 2020 through October 25, 2020
- Century Mile — 3.00% April 25, 2020 through August 30, 2020
- Churchill Downs — 4.75% + 1.25% Increased Takeout Fee (Kentucky Oaks and Kentucky Derby) April 25, 2020 through June 27, 2020, September 16, 2020 through October 1, 2020, October 25, 2020 through November 29, 2020
- Columbus — 3.00% May 29, 2020 through June 28, 2020
- Del Mar — 4.75% (.9% Purse Fee & .5% Workmen's Comp Fee) July 18, 2020 through September 7, 2020, October 31, 2020 through November 29, 2020
- Delaware Park — 3.00% May 27, 2020 through October 31, 2020
- Delta Downs — 3.00% April 17, 2020 through July 4, 2020
- Dubai World Cup — 4.00% March 28, 2020
- Ellis Park - 3.00% June 28, 2020 through September 6, 2020
- Emerald Downs — 3.00% April 18, 2020 through September 20, 2020
- Evangeline Downs — 3.00% April 8, 2020 through August 29, 2020
- Fair Meadows — 3.00% June 4, 2020 through July 25, 2020
- Finger Lakes — 3.00% April 25, 2020 through November 25, 2020
- Fort Erie - 3.00% May 26, 2020 through October 13, 2020

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- Grants Pass — 3.00% May 10, 2020 through July 12, 2020, September 20, 2020 through November 9, 2020
- Gulfstream Park - 4.75% April 2, 2020 through September 27, 2020
- Golden Gate — AZHBPA approval of any race meets provided by Golden Gate through December 31, 2020, race meets extending beyond December 31, 2020 shall be negotiated by AZHBPA and Turf Paradise in good faith.
- Hastings Park — 3.00% April 26, 2020 through October 18, 2020
- Hawthorne — 3.00% October 1, 2020 through December 26, 2020
- Horsemen's Park — 3.00% May 8, 2020 through May 24, 2020
- Indiana Grand — 3.00% April 14, 2020 through November 18, 2020
- Keeneland — 3.00% April 2, 2020 through April 24, 2020, October 2, 2020 through October 24, 2020, November 6, 2020 & November 7, 2020
- Kentucky Downs — 3.50% + (.6% Increased Takeout) September 2, 2020 through September 13, 2020
- Laurel Park - 3.50% April 2, 2020 through May 3, 2020, May 29, 2020 through August 23, 2020, September 11, 2020 through December 31, 2020
- Lone Star Park - 3.00% April 16, 2020 through July 19, 2020
- Louisiana Downs — 3.00% May 2, 2020 through September 23, 2020
- Mahoning Valley — 3.00% October 24, 2020 through December 30, 2020
- Meadowlands — 3.50% October 2, 2020 through November 21, 2020
- Monmouth Park — 4.00% May 2, 2020 through September 27, 2020
- Mountaineer Park — 3.00% April 26, 2020 through December 2, 2020
- Pimlico — 3.50% (9.7% Black Eyed Susan & Preakness Stakes) May 7, 2020 through May 25, 2020
- Prairie Meadows - 3.00% May 1, 2020 through September 26, 2020
- Presque Isle Downs 3.00% May 11, 2020 through October 22, 2020

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- Retama Park — 3.00% July 3, 2020 through September 12, 2020
 - Ruidoso Downs — 3.00% (4.00% All-American Futurity) May 22, 2020 through September 7, 2020
 - Sam Houston — 3.00% May 25, 2020 through May 30, 2020
 - Santa Anita — AZHBPA approval of any race meets provided by Santa Anita through December 31, 2020, race meets extending beyond December 31, 2020 shall be negotiated by AZHBPA and Turf Paradise in good faith.
 - CARF - 3.25% + (.9⁰/0 Increased Purse Fee & .5⁰/0 Workmen's comp Fee) June 17, 2020 through October 20, 2020
 - Saratoga - 6.25% July 16, 2020 through September 7, 2020
 - Sunray Park — 3.00% April 24, 2020 through June 7, 2020
 - Tampa Bay Downs — 4.00% July 1, 2020 through December 31, 2020
 - Thistledown — 3.00% April 27, 2020 through October 17, 2020
 - Timonium - 2.50% August 28, 2020 through September 7, 2020
 - Turfway Park - 3.00% December 2, 2020 through December 31, 2020
 - Will Rogers Downs — 3.00% September 12, 2020 through November 14, 2020
 - Woodbine - 3.25% April 18, 2020 through December 13, 2020
11. After April 30, 2020, upon a thirty-day (30) written notice, the AZHBPA will remove all their belongings from the AZHBPA office in the stable area and remove the trailer formerly known as the Medical Trailer from Turf Paradise property.
12. If the Parties are unable to resolve any dispute of non-compliance of this Agreement, either Party may submit the dispute to binding arbitration under the arbitration process.

BINDING ARBITRATION

All disputes of non-compliance with this Agreement shall be resolved by the Parties' submission of the dispute to binding arbitration. The Parties shall utilize a panel of three (3) arbitrators, one (1) to be selected by each Party and the third to be selected by the other two (2) arbitrators. If either Party refuses or neglects to appoint an arbitrator within five (5) business days after the

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receipt of written notice from the other requesting Party that did so, the requesting Party may appoint two (2) arbitrators. If the two (2) arbitrators fail to agree in the selection of a third arbitrator within fourteen (14) days of their appointment, each of them shall name two (2), of whom the other Party shall decline one (1). The final decision shall be made by drawing lots.

Each Party shall submit its case in writing to the arbitration panel within 21 days of the appointment of the third arbitrator. Within 21 days after the Parties' submission of the dispute, the arbitration panel shall conduct an evidentiary hearing. The decision of a majority of the members of the panel shall be in writing and shall be binding upon the Parties. The panel's decision may be confirmed by and enforceable in any court of competent jurisdiction, and subject to the Uniform Arbitration Act. Upon the ruling of the arbitration panel as set out herein, and prior to the need to confirm the decision by action of a court of competent jurisdiction, the prevailing Party shall have the right to implement whatever decision the arbitration panel has reached as it may involve a failure to comply with the terms and conditions set forth in this Agreement.

13. This Agreement represents the entire agreement of the parties with respect to the subject hereof, and no representations, warranties, inducements, or oral agreements have been made by any of the parties as previously set forth herein.
14. This Agreement is to be construed and interpreted in accordance with the laws of the State of Arizona.

IN WITNESS WHEREOF, the below listed parties have executed this Agreement.

Arizona Horseman's Benevolent
& Protective Association ("AZHBPA")

By: 
Robert Hutton, President AZHBPA

Date: 3-22-2020

T P Racing, L.L.P.

By: 
Jerry Simms, Majority Owner

Date: 3/22/2020

Attachment 2



Dave Auther
Tel: (602) 393-0058
daveauther@jacoraz.com

May 22, 2020

VIA EMAIL

Rudy J. Casillas
Racing Division Director
Arizona Department of Gaming
1110 W. Washington Street, Suite 450
Phoenix, AZ 85007

Dear Director Casillas:

We are extremely disappointed that, for the very first time this morning, your department has linked our financial ability to run a live meet in September as a necessary requirement for your opinion on whether Arizona Downs may re-open its OTBs tomorrow. We have been in discussions with you for weeks and you have never indicated that running a live meet was a prerequisite. We have continually pointed out to you and Greg Stiles that we could not make any definitive plans to run a meet while the COVID 19 pandemic raged in Arizona and the Governor has banned large gatherings. Furthermore the horsemen have travelled to other states and there are very few horses left in this state to conduct a meet.

Nevertheless we are in discussions with the HBPA to run a 10 day meet in September after the horses return to Arizona and before the opening of Turf Paradise. Attached to this letter is our analysis of how we can operate our OTBs through September 2020 and accumulate sufficient purse funds to run. This will include a contribution from the HBPA toward purses. HBPA has a plan to secure purse money from the Turf Paradise purse fund. Furthermore the horsemen owe us more than \$1million in overpayment which can be used to enhance purses and reduce the overpayment. If the horsemen's purse contribution is small, then we will all have to run for smaller purses. You have indicated that this is the plan for Turf Paradise, also. I trust the financial information provided herein will satisfy all of your alleged concerns and will lead to an announcement, today, that we may open our OTBs tomorrow.

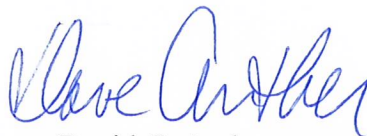
Rudy J. Casillas
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Although we believe we have complied with your last-minute request for financial information, it should not go unsaid that we disagree with your legal analysis of your right to shut us down. You have cited A.R.S. Section 5-112 as support for your decision to shut down our OTBs unless we plan a live meet during the COVID 19 pandemic. This statute actually says the opposite for racetracks in counties of less than 500,000 population. There is no requirement to run live except that “authorized racing has been conducted whether or not posted races have been offered for the day the simulcast is received.” As you know, we have demonstrated our ability to run a meet and authorized racing has been conducted at Arizona Downs. If there is some other basis to drop this shut down order on us at the last minute, you were obligated to provide that to us in sufficient time to allow us to respond.

We have communicated with you on this subject at least 6 times since May 8 and on a daily basis with Greg Stiles, and neither of you have ever advised us, until this morning, that running a live meet in September would be required. You never advised us that you would require any more financial information from us in order to decide whether or not to shut us down. In fact you led us to believe that we had complied completely with your requests for an OTB operating plan and a COVID 19 safety plan. Based upon those assurances we have re-hired our mutual clerks--some of whom have come off unemployment. We have travelled the state to re-stock our OTB safes and ATMs. We have installed COVID 19 safety equipment and have met with our restaurant partners to discuss appropriate health protocols. We have advertised our re-opening. It is demonstrably unjust and totally lacking in transparency and professionalism to pull the rug out from under us less than 24 hours before we re-open.

For the good of racing, please let us know this afternoon that you have reviewed today's submissions and your opinion has changed regarding the re-opening of our OTBs.

Very truly yours,



David C. Auther