

In New Jersey, Political Contributions Lead to Questions about an Improper Racetrack Lease

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Recently, a New Jersey state agency cited various pay-to-play law issues in denying a racetrack-related contract to a prospective state contractor. The state of New Jersey had sought private entities to operate two state racetracks—the Monmouth Park Racetrack and the Meadowlands Racetrack.

By way of background, New Jersey has a complex pay-to-play regime that places limits on and requires disclosure of certain state and local political contributions. The restrictions tackle contracting with the executive branch, the legislative branch, counties, municipalities, the state investment council and state redevelopment entities. New Jersey is by no means the only state with pay-to-play rules; at least 16 other states and many municipalities also have some form of pay-to-play restrictions.

On February 29, 2012, the New Jersey Sports & Exposition Authority (NJSEA) signed an agreement with the New Jersey Thoroughbred Horseman's Association (the Association) regarding the Monmouth Park Racetrack. When the NJSEA awarded this contract in February, the only other potential contracting party was the Brunetti Organization, which is apparently controlled by Mr. John Brunetti. After the award to the Association, Hialeh, Inc., which also is apparently affiliated with Brunetti, filed a notice of protest.

On April 19, 2012, following a formal hearing, a NJSEA hearing officer (who also serves as NJSEA's chief operating officer and legal counsel) issued a report in this matter. The report rejected the protest and explained that, among other things, Brunetti's bid was not

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the most advantageous to the NJSEA, that the Association did not have an unfair or improper competitive advantage, and that the lease did not improperly deviate from the RFP.

Moreover, the report also discussed political contributions made by The Brunetti Organization, John Brunetti personally and other entities controlled by John Brunetti. Specifically, the report notes that John Brunetti, individually and through entities he controlled, made contributions of \$7,900 in 2010-2011 to Democratic and Republican party organizations in Middlesex County and Camden County. The report notes that if an entity makes contributions of more than \$300, the entity will be prevented from negotiating for some state contracts and leases. Thus, Brunetti, The Brunetti Organization and Hialeh were barred from entering into this agreement.

In response to this allegation, however, Brunetti asserted that the Association was similarly prohibited from entering into the contract because the Association also made political contributions in New Jersey. The NJSEA hearing officer reviewed the statutory language, a gubernatorial executive order and a state court decision involving the statute and determined that New Jersey's pay-to-play law does not apply to nonprofit entities. Therefore, the New Jersey law did not prohibit the Association from receiving the contract.

Ultimately, after the release of this report, Brunetti announced that he would discontinue his efforts to protest the award of the lease to the Association.