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# **TRANSPARENCY, TVG AND NYRA**

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## Transparency, TVG and NYRA

The recent revelation of the agreement between the Television Games Network [TVG] and the New York Racing Association [NYRA] is certainly excellent political news for NYRA, but the question remains whether this was a good deal for New York racing. We simply do not know because there was a complete absence of transparency to this transaction.

As described by TVG,<sup>1</sup> NYRA,<sup>2</sup> and other media sources,<sup>3</sup> under the arrangement approved by the New York State Racing and Wagering Board, TVG continues<sup>4</sup> to be the exclusive provider of in-home broadcast rights for the NYRA simulcast signal outside New York State, and TVG has a non-exclusive right to provide in-home simulcasts of NYRA racing within New York State. Based on this arrangement, \$13.5 million was credited by NYRA to the benefit of the purse account of NYRA's horsemen. NYRA had previously appropriated much of the horsemen's purse funds for its own corporate use. The arrangement with TVG allowed NYRA to fully fund the purse account, and it removed the damaging political albatross hovering over NYRA that it had improperly utilized the funds of its horsemen. NYRA's potential rival, Magna Entertainment, in its efforts to secure a position in New York State thoroughbred racing, had promised that if allowed into the NYRA franchise, it would immediately return the money to the horse owners.<sup>5</sup> The TVG-NYRA deal not only made the horsemen whole but took away part of Magna's sales pitch to New York State.

The problem with the TVG-NYRA deal is that there is no basis for judging whether this is a good deal for New York racing. It might be the best deal since sliced bread, or it could simply be another interlocking deal within racing's good old boy's network to keep Magna Entertainment out of New York State ( NYRA's trustees to NTRA to TVG). We don't know because despite the many public encomiums to transparency at NYRA, this deal had none. We don't know what's in the arrangement,<sup>6</sup> and there was no pre-approval public forum for discussing the arrangement which might have aided policy makers in determining whether the arrangement was in the best interest of racing.

So without this transparency, who can say whether this was a good deal for New York racing? We know so little. Was the compensation that NYRA received from TVG

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<sup>1</sup> Business Wire, "TVG Network and NYRA Renew Exclusive Relationship," September 7, 2004.

<sup>2</sup> Glen Mathes, "NYRA Fully Funds Horsemen Accounts," September 3, 2004, at <http://www.nyra.com/saratoga/news.asp?track=S&id=1420>

<sup>3</sup> James M. Odato, "NYRA's Cable TV Pact Aids Fund," Albany Times Union, September 4, 2004 Pg. B3; "NYRA Says it has Replenished Fund for Horse Owners' Purses" Associated Press, September 4, 2004; Ed Fountaine, "NYRA Replenishes 'Borrowed' Funds," New York Post, September 4, 2004, Pg. 50.

<sup>4</sup> NYRA and TVG had first reached a contract for exclusivity outside New York State in 1999. See Matt Hegarty, "NYRA Solves One Problem, But Still Must Find a New Leader," Daily Racing Form, September 7, 2004. At one point TVG and NYRA made a bid to take over New York City OTB. See "TVG, NYRA Bidding Together for New York City Off-Track Betting," Thoroughbred Times, September 1, 2000.

<sup>5</sup> James M. Odato, "Lawyer Widens NYRA Probe," Albany Times Union, June 8, 2004, Pg. A1.

<sup>6</sup> See Note 2, supra.

appropriate? Could NYRA have received more money by signing an exclusive arrangement with Magna Entertainment's HorseRacing TV [HRTV] – which is the main competitor of TVG? Would NYRA's interests have been better served by signing non-exclusive deals with both TVG and HRTV? How much revenue will NYRA receive for each bet made through TVG on NYRA racing? How would the new rates at NYRA compare with the existing rates paid by TVG to NYRA? How do the new rates at NYRA compare with other rates that TVG pays other tracks? Does the money paid by TVG to fund the purse account come from TVG's source market fees<sup>7</sup> – under which NYRA would be compensated for wagers placed by TVG customers in the New York area?<sup>8</sup> If the wagers were from New Yorkers, shouldn't the State's thoroughbred breeding fund also be entitled to some compensation? Will TVG be taking bets from New Yorkers? Will TVG's licensees, such as Youbet.com,<sup>9</sup> be taking bets from New Yorkers? Will TVG be taking over the management of NYRA's telephone wagering operation? If NYRA's telephone wagering operation is expanded, and if companies like Youbet take wagers from New Yorkers, what effect might there be on telephone handle at the OTB's?

Transparency is so minimal in this transaction that we do not even know how much was actually owed to the horsemen by NYRA. The Albany Times Union reported that \$13.5 million was paid the horsemen to fully fund the purse account at \$16.9 million.<sup>10</sup> Over the past year, we have seen a variety of figures given to express the liability that NYRA has had to the horsemen. The numbers have ranged from \$13 million owed of which \$4 million had been repaid,<sup>11</sup> to \$14 million of which \$4 million had been repaid,<sup>12</sup> to \$14 million,<sup>13</sup> to \$14 to \$20 million,<sup>14</sup> to \$20 million,<sup>15</sup> and from \$20 to \$25 million.<sup>16</sup> Somewhere along the line there needs to be a public accounting of the amounts that were actually due to the horsemen and how NYRA came to appropriate the horsemen's funds.

NYRA's federal monitor Neil Getnick has continually stressed the importance of transparency in his mission. In his first report, he wrote, "Transparency in all aspects of its daily operations and access to information by those who are entitled to it ... will go a

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<sup>7</sup> See for example <http://contracts.onecle.com/youbet/ods.lic.2001.05.18.shtml>. Also see <http://www.tvgnetwork.com/help/faq.asp>.

<sup>8</sup> Arguably, TVG – since it is neither an OTB nor a racetrack licensed in New York State - would not be authorized by New York's Racing, Pari-Mutuel Wagering, and Breeding Law to take bets from New Yorkers. On the other hand, this restriction on wagering might be a violation of the Dormant Commerce Clause in the United States Constitution. See <http://www2.als.edu/glc/wagering/accountwagering.pdf>.

<sup>9</sup> See <http://www.youbet.com/>.

<sup>10</sup> See Note 3 *supra*.

<sup>11</sup> Matt Graves, "NYRA Tries to Drive Off Dark Cloud," *Albany Times Union*, June 29, 2004, Pg. C1.

<sup>12</sup> James M. Odatto, "NYRA Reveals \$20M Deficit," *Albany Times Union*, July 17, 2004, Pg. A1.

<sup>13</sup> James M. Odatto, "Horse Owners Pressure NYRA," *Albany Times Union*, September 20, 2003, Pg. A1.

<sup>14</sup> James M. Odatto, "Horsemen Not Pleased with Reported Deal," *Albany Times Union*, December 9, 2003, Pg. B3.

<sup>15</sup> Matt Hegarty, "Separate Accounts at NYRA," *Daily Racing Form*, November 12, 2003.

<sup>16</sup> James M. Odatto, "Debt Looms as Pace Slows for NYRA," *Albany Times Union*, November 12, 2003, Pg. B3.

long way toward restoring the public's confidence in NYRA.”<sup>17</sup> Unfortunately, in the TVG-NYRA transaction, transparency was an early scratch. Public scrutiny and public access to information about the transaction were tossed out the window. It may be an excellent contract in the best interest of New York racing, but without transparency, we will never know.

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<sup>17</sup> Monitor's Report, March 1, 2004 Through April 30, 2004, Part I Public Report, June 4, 2004, Pg. 22. See also James M. Odatto, "NYRA Watchdog Focusing on Ethics," Albany Times Union, August 4, 2004 Pg. B4.