

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of)
)
)

Jeffrey Poole,)

Docket No. 9417

Appellant.)
_____)

ORDER

On September 8, 2023, Appellant Jeffrey Poole (“Appellant” or “Poole”), pursuant to 15 U.S.C. § 3051 *et seq.*, 5 U.S.C. § 556 *et seq.*, and 16 C.F.R. § 1.145 *et seq.*, filed a Notice of Appeal and Application for Review of an August 8, 2023 decision of an arbitrator (the “Arbitrator”) appointed by the Horseracing Integrity Welfare Unit (“HIWU”) of the Horseracing Integrity and Safety Authority (“HISA”) (the “Decision”). The Decision determined that Poole violated Rule 3214(a) of HISA’s Anti-Doping Medication Control Program (“ADMC”) by possessing Levothyroxine, a banned substance, and imposed civil sanctions of a 22-month suspension, a \$10,000 fine, and a contribution to the arbitration costs of HIWU in the amount of \$8,000. Appellant requests *de novo* review of the Decision pursuant to 16 C.F.R. § 1.146(b) and further requests an evidentiary hearing to contest facts found by the Arbitrator and to supplement the Decision record with further testimony of Poole.

HISA filed a response to the Notice of Appeal on September 18, 2023, requesting, *inter alia*, that Appellant’s request for an evidentiary hearing be denied and that the appeal be limited to briefing and/or oral argument. HISA asserts that Appellant has not identified any contested facts that are material to the Decision made below or identified any material evidence required to supplement the record below. Therefore, HISA argues, an evidentiary hearing is unnecessary. *See* Rule 1.146 (a)(1) (providing that HISA may file a response to notice of appeal stating the reasons that “an evidentiary hearing conducted by the Administrative Law Judge is either unnecessary, or necessary to supplement or to contest facts in the record found by the Authority”). 16 C.F.R. § 1.146(a)(1).

Rule 1.146(c)(2) of the Procedures for Review of Final Civil Sanctions Imposed under the Horseracing Integrity and Safety Act (“Rules”) provides with regard to the factual record for appeal that “the Administrative Law Judge may rely *in full or in part* on the factual record developed before the Authority” and that “[t]he record may be supplemented by an evidentiary hearing conducted by the Administrative Law Judge to ensure each party receives a fair and impartial hearing.” 16 C.F.R. § 1.146(c) (emphasis added). Rule 1.146(c)(2) further requires the Administrative Law Judge to assess, based on the notice of appeal and the response thereto,

whether there are contested facts and whether supplementation of the record below is necessary.
16 C.F.R. § 1.146 (c)(2)(i)-(iii), (v).

Based on the filings of the parties, and in order to facilitate the assessment required under Rule 1.146(c)(2), it is hereby ORDERED that, no later than September 25, 2023, Appellant shall submit (1) a statement of the facts found by the Arbitrator that Poole seeks to contest in the requested evidentiary hearing, together with a demonstration as to how such facts are material to the decision being appealed; and (2) a summary of the proposed testimony of Poole that Appellant seeks to submit at the requested evidentiary hearing, together with a demonstration as to how such testimony is supplemental to testimony already contained in the evidentiary record below.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: September 19, 2023