

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
FTC DOCKET NO. 9417**

ADMINISTRATIVE LAW JUDGE: D. Michael Chappell

IN THE MATTER OF:

JEFFREY POOLE

Appellant

AGENCY’S PROPOSED CONCLUSIONS OF LAW AND ORDER

Comes now the Horseracing Integrity and Safety Authority (“HISA”) pursuant to the briefing schedule of the Administrative Law Judge dated September 28, 2023, and submits the following Proposed Conclusions of Law and Proposed Order.

HORSERACING INTEGRITY & SAFETY AUTHORITY

/s/Bryan H. Beauman

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OF DRUG FREE SPORT LLC**

CERTIFICATE OF SERVICE

Pursuant to 16 CFR 1.146(a) and 16 CFR 4.4(b), a copy of this Proposed Conclusions of Law and Proposed Order is being served on October 10, 2023, via Administrative E-File System and by emailing a copy to:

Hon. D. Michael Chapell
Chief Administrative Law Judge
Office of Administrative Law Judges
Federal Trade Commission
600 Pennsylvania Ave. NW
Washington DC 20580
via e-mail to Oalj@ftc.gov and

April Tabor
Office of the Secretary
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PROPOSED CONCLUSIONS OF LAW

- 1 The August 8, 2023 decision of arbitrator Jeffery Benz (the “**Final Decision**”) appointed by the Horseracing Integrity & Welfare Unit (“**HIWU**”) for the Horseracing Integrity and Safety Authority, Inc. (“**HISA**”) considered and applied HISA’s Anti-Doping and Medication Control Program (“**ADMC Program**”) and imposed civil sanctions of a 22-month period of Ineligibility, a \$10,000 fine, and a contribution to the arbitration costs of HIWU in the amount of \$8,000 in accordance with ADMC Program Rule 3225(a) and 3223(b) (the “**Consequences**”).
- 2 The Arbitrator clearly considered, applied, and followed the rules of the ADMC Program.
- 3 The Consequences are not arbitrary or capricious. They are supported by the evidence and are rationally connected to the evidence.
- 4 The evidence establishes that Mr. Poole bore a significant degree of Fault. Factors relating to an intention to cheat and the economic impact of the civil sanction on Mr. Poole are not relevant to his degree of Fault. However, the Arbitrator appropriately considered these factors in exercising his discretion to establish the amount of the mandatory fine and to determine the amount Mr. Poole should contribute toward the arbitration costs.
- 5 The Appellant’s assertion that the civil sanctions are improper because Mr. Poole’s knowledge of and training in the ADMC Program was limited is without merit.
- 6 First, as a Responsible Person and Covered Person, Mr. Poole has an independent obligation under the ADMC Program to: (i) be knowledgeable of and comply with the ADMC Program; and (ii) ensure that employees, personnel, and agents involved in any way with the care,

treatment, training, or racing of the horses he works with are familiar with the ADMC Program. ADMC Program Rule 3040 specifically sets-out certain obligations of the Appellant as a Covered Person and as a Responsible Person, including “to be knowledgeable of and to comply with the Protocol and related rules at all times... [and] to familiarize themselves with the most up-to-date version of the Protocol and related rules and all revisions thereto.”

- 7 Second, and in any event, this evidence was specifically considered and relied on as a mitigating factor in Mr. Poole’s favor to reduce his period of Ineligibility from 24 months to 22 months.
- 8 Mr. Poole’s appeal contesting the civil sanctions imposed in the Final Decision is dismissed and the sanctions in the Final Decision of a 22-month period of Ineligibility, a \$10,000 fine, and a contribution to the arbitration costs of HIWU in the amount of \$8,000 are affirmed.

PROPOSED ORDER

The undersigned Chief Administrative Law Judge (“ALJ”), having reviewed the parties’ submitted proposed findings of fact and conclusions of law, supporting legal brief and reply to conclusions of law and briefs, hereby makes the following findings of fact and conclusions of law.

Introduction

On September 8, 2023, Appellant Jeffrey Poole (“Appellant” or “Mr. 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 “Final Decision”) appointed by HIWU for the Horseracing Integrity and Safety Authority, Inc. (“HISA”). The Final Decision determined that Mr. Poole violated Rule 3214(a) of HISA’s ADMC Program by Possessing Levothyroxine (“Thryo-L”), a Banned Substance, and imposed civil sanctions of a 22-month period of Ineligibility, a \$10,000 fine, and a contribution to the arbitration costs of HIWU in the amount of \$8,000.

In his Notice of Appeal, Mr. Poole requested an evidentiary hearing to contest the facts found by the arbitrator and to supplement the record with further testimony. Appellant further asserted that the civil sanctions imposed upon him were arbitrary, capricious, an abuse of discretion, prejudicial, or otherwise not in accordance with law and thereby reviewable by this tribunal pursuant to 15 U.S.C. § 3058(b)(2)(A) and 16 C.F.R. § 1.146(b)(3). HISA filed a response to the Notice of Appeal on September 18, 2023, asserting, *inter alia*, that Appellant failed to identify any material facts in dispute and that an evidentiary hearing was unnecessary.

Rule 1.146(c)(2) of the Procedures for Review of Final Civil Sanctions Imposed under the Horseracing Integrity and Safety Act (“**Rules**”) requires the Administrative Law Judge of the Federal Trade Commission 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). On September 19, 2023, in order to facilitate the assessment required under Rule 1.146, Appellant was directed to submit a statement specifically identifying the material facts in dispute and summarizing the proposed supplemental testimony (September 19 Order). On September 25, 2023, Appellant submitted his response to the September 19 Order in which he withdrew his request for an evidentiary hearing to contest facts and to supplement the record and reasserted his appeal of the civil sanctions imposed upon him as arbitrary, capricious, an abuse of discretion, prejudicial, or otherwise not in accordance with law.

Pursuant to Rule 1.146(c)(2), based on the Notice of Appeal, HISA’s response thereto, and the September 25, 2023 submittal of Appellant, neither party sought to supplement or contest the facts found by HISA, the factual record is sufficient to adjudicate the merits of the review proceeding, and an evidentiary hearing is unnecessary. 16 C.F.R. § 1.146(c)(2). Therefore, in accordance with Rule 1.146(c)(3), this administrative appeal was limited to briefing by the parties to the issue of the civil sanctions. 16 C.F.R. § 1.146(c)(3).

The Authority’s Rule on Sanctions and Consequences

Rule 3070(b) of the ADMC Program sets-out the applicable law for the purpose of interpreting and applying the ADMC Program. That Rule provides that the ADMC Program “shall be interpreted as an independent and autonomous text and not by reference to existing law or statutes.” Rule 3070(d) further provides that the World-Anti Doping Code (“**WADC**”) and

jurisprudence interpreting its provisions may be considered when interpreting and applying the ADMC Protocol (which is the Rule 3000 series of the ADMC Program, and which sets out the substantive equine anti-doping rules).

The Final Decision below concerned an Anti-Doping Rule Violation (“**ADRV**”) for Possession of a Banned Substance in breach of Rule 3214(a).

Under Rule 3223, the required sanction for a violation of Rule 3214(a)¹ is a period of Ineligibility of 2 years, a fine of up to \$25,000, and payment of some or all of the adjudication costs and the Agency’s legal costs.

A Covered Person *may* be entitled to mitigation of the above noted sanctions, only where he or she establishes on a balance of probabilities that he or she acted with either No Fault or Negligence (Rule 3224), or No Significant Fault or Negligence (Rule 3225). The ADMC Program provides that assessment of Fault is a specific exercise that is concerned only with the Covered Person’s actions leading up to the ADRV. Corollary considerations such as the economic impact of the imposed sanctions after the fact, are not considered as relevant factors in reducing potential ineligibility based on degree of Fault.

The Final Decision

The Arbitrator found that “there can be no reasonable dispute that Mr. Poole was at all relevant times in Possession of the Thyro-L that was found.” The Arbitrator’s determination was grounded in substantial evidence, including that:

¹ The Appellant does not dispute on appeal that he committed a Possession ADRV under Rule 3214(a).

- a) The Thyro-L product was found on a shelf in the tack room of Barn 5 (the barn assigned to Mr. Poole) at Gulfstream Park on June 2, 2023, after implementation of the ADMC Program on May 22, 2023;
- b) The Thyro-L product was purchased by Mr. Poole, pursuant to a lawful veterinarian prescription, at a time when it was not a Banned Substance and before the implementation of the ADMC Program, for use by another horse that was no longer in Mr. Poole's custody or care at Gulfstream Park;
- c) The Thyro-L product had been moved from the track in Ohio where Mr. Poole had lawfully used it some months before it was found at Gulfstream Park; the Thyro-L product was moved from Ohio to another track in Tampa, and then to Barn 5 at Gulfstream Park, where it was found; and
- d) Mr. Poole had exclusive use and control of the barn he was assigned at Gulfstream Park, save for limited permitted inspections by Gulfstream Park-related personnel for certain reasons, and there was no evidence that the Thyro-L came to rest on the shelf on which it was found through any intrusion by anyone other than someone in the employ of Mr. Poole.

The Arbitrator then assessed whether the two-year period of Ineligibility should be reduced. The Arbitrator first noted that “Mr. Poole did not seek a finding of No Fault or Negligence, but even if he had... there simply is no way that the exceptional circumstance of a finding of No Fault could possibly be made here; Mr. Poole's conduct in many ways epitomized fault.” The Arbitrator then considered whether the applicable sanctions should be reduced based on Mr. Poole establishing No Significant Fault or Negligence. In this respect, the Arbitrator referred to the CAS decision in *Cilic v. International Tennis Federation*,² where the CAS Panel determined that broad Fault ranges can be broken down into categories of month ranges based on the degree of Fault of the individual Covered Person. Drawing on *Cilic*, the Arbitrator applied an analysis that first determined the objective level of Fault and then assessed subjective factors of Fault. The Arbitrator determined that objective ranges of Fault should be organized in three categories, as follows:

² [CAS 2013/A/3327](#) *Marin Cilic v. International Tennis Federation (ITF)*, Award of 11 April 2014, at paras 69-73.

- Insignificant fault: Three (3) to ten (10) months;
- Moderate fault: Ten (10) to seventeen (17) months
- Significant fault: Seventeen (17) months to twenty-four (24) months.

The Arbitrator concluded that Mr. Poole’s conduct fell into the upper most range of significant Fault. The detailed factual assessment undertaken by the Arbitrator included finding that Mr. Poole “took no steps to mitigate his objective level of fault.” The Arbitrator then considered subjective factors which he concluded justified a slight reduction in Mr. Poole’s degree of Fault reducing the period of Ineligibility from 24 months to 22 months.

On his assessment of the applicable fine, both sides agreed with the principle that the fine should follow the Fault. Despite the degree of Fault established, the Arbitrator considered other evidentiary factors that in his view militated against the fine following the Fault in this case, including the absence of any intention of wrongdoing on the part of Mr. Poole. The fine was set to \$10,000.

Finally, on the issue of costs, the Arbitrator applied the same analysis as that to followed to set the quantum of the fine and determined that Mr. Poole should contribute \$8,000 to the costs of the arbitration.

The Standard of Review on Appeal

Pursuant to 15 U.S.C. § 3058(b)(1), a HISA civil sanction is subject to *de novo* review by an Administrative Law Judge of the FTC. As set-out above, the review at hand is limited to a determination of whether “the final civil sanction of the Authority was arbitrary, capricious,

an abuse of discretion, or otherwise not in accordance with law.”³ Generally, a decision or sanction will not be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law where (i) the decision abides by the applicable rules,⁴ and (ii) the sanction is rationally connected to the facts.⁵

Conclusions of Law

1. The August 8, 2023 decision of arbitrator Jeffery Benz (the “**Final Decision**”) appointed by the Horseracing Integrity & Welfare Unit (“**HIWU**”) for the Horseracing Integrity and Safety Authority, Inc. (“**HISA**”) considered and applied HISA’s Anti-Doping and Medication Control Program (“**ADMC Program**”) and imposed civil sanctions of a 22-month period of Ineligibility, a \$10,000 fine, and a contribution to the arbitration costs of HIWU in the amount of \$8,000 in accordance with ADMC Program Rule 3225(a) and 3223(b) (the “**Consequences**”).
2. The Arbitrator clearly considered, applied, and followed the rules of the ADMC Program.
3. The Consequences are not arbitrary or capricious. They are supported by the evidence and are rationally connected to the evidence.
4. The evidence establishes that Mr. Poole bore a significant degree of Fault. Factors relating to an intention to cheat and the economic impact of the civil sanction on Mr. Poole are not relevant to his degree of Fault. However, the Arbitrator appropriately considered these factors in

³ 15 U.S.C. § 3058(b)(2)(A)(iii).

⁴ *Guier v. Teton County Hosp. Dist.*, 2011 WY 31, 248 P.3d 623 (Wyo. 2011)

⁵ *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.* (1983); *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971)

exercising his discretion to establish the amount of the mandatory fine and to determine the amount Mr. Poole should contribute toward the arbitration costs.

5. The Appellant's assertion that the civil sanctions are improper because Mr. Poole's knowledge of and training in the ADMC Program was limited is without merit.
6. First, as a Responsible Person and Covered Person, Mr. Poole has an independent obligation under the ADMC Program to: (i) be knowledgeable of and comply with the ADMC Program; and (ii) ensure that employees, personnel, and agents involved in any way with the care, treatment, training, or racing of the horses he works with are familiar with the ADMC Program. ADMC Program Rule 3040 specifically sets-out certain obligations of the Appellant as a Covered Person and as a Responsible Person, including "to be knowledgeable of and to comply with the Protocol and related rules at all times... [and] to familiarize themselves with the most up-to-date version of the Protocol and related rules and all revisions thereto."
7. Second, and in any event, this evidence was specifically considered and relied on as a mitigating factor in Mr. Poole's favor to reduce his period of Ineligibility from 24 months to 22 months.
8. Mr. Poole's appeal contesting the civil sanctions imposed in the Final Decision is dismissed and the sanctions in the Final Decision of a 22-month period of Ineligibility, a \$10,000 fine, and a contribution to the arbitration costs of HIWU in the amount of \$8,000 are affirmed.

Based on the foregoing findings of fact and conclusions of law, it is hereby

ORDERED AND ADJUDGED as follows:

The Commission hereby **AFFIRMS** the Final Decision and **UPHOLDS** the civil sanctions in the Final Decision dated August 8, 2023.

Entered this _____ day of _____, 2023

D. Michael Chappell
Chief Administrative Law Judge