

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

In the Matter of)	
)	
Natalia Lynch,)	Docket No. 9423
Appellant.)	

**ORDER (1) DIRECTING PRODUCTION OF DOCUMENT SUBMITTED FOR
IN CAMERA REVIEW (2) GRANTING JOINT MOTION TO CONTINUE
EVIDENTIARY HEARING AND (3) RESCHEDULING EVIDENTIARY HEARING**

I. Production of Document Submitted for *In Camera* Review

In a June 3, 2024 status update letter to me, the Horseracing Integrity and Welfare Unit (together with the Horseracing Integrity and Safety Authority, the “Authority”) wrote, in pertinent part, as follows:

Finally, there is an additional issue that we would like to address. . . . There is . . . one document related to Mr. Tessore [the “Tessore Memo”] that, out of an abundance of caution, we would like to present to the court for guidance with respect to responsiveness and confidentiality. We will be filing a motion for an *in camera* review of this document to determine whether it should be produced and, if so, the scope of applicable redactions to the document. (bracketed matter added).

I did not press this matter at the time, as subsequent proceedings focused on setting a date for the evidentiary hearing.

However, in the Parties’ Joint Status Update, dated June 20, 2024, the Authority revisited its June 3 proposed motion:

In the June 3, 2024 Status Update, the Authority wrote that we would be filing a motion for an *in camera* review of a document that relates to HIWU’s investigation of Bruno Tessore. The Authority is of the position that this document, which is contained in a file relating to the pending case against Mr. Tessore and not in Ms. Lynch’s file, is not relevant or responsive to the Subpoena. Out of an abundance of caution, and because of the additional document requests made by Appellant’s counsel that related to Mr. Tessore during the meet and confer held on May 22, 2024, the Authority intended to file a motion seeking Your Honor’s direction as to whether or not this document should be produced, and if so, what redactions were appropriate.

. . . . [T]he Authority respectfully requests direction as to whether or not it should file its motion. The Authority is prepared to produce the document for Your Honor's *in camera* review at any point.

In a June 21, 2024 email to the parties, I responded:

The additional document relating to HIWU's investigation of Bruno Tessore should be submitted forthwith for *in camera* review. [I] will then determine what additional steps, if any, need to be taken. Those parts of the document that HIWU contends should be redacted should be highlighted.

The Authority submitted the Tessore Memo for *in camera* review by email on June 24, 2024.

On June 25, I advised the Authority and counsel for Ms. Lynch regarding the Tessore Memo:

I have reviewed . . . the document, with proposed redactions highlighted, that HISA/HIWU submitted by email on Monday for *in camera* review.

. . . .

The document should be produced. However, I have this follow-up question;

Do HISA/HIWU object to producing the document in unredacted form under the same provisions as the May 23, 2024 Protective Order Governing Unredacted Document, and if so, what is the objection asserted?

If HISA/HIWU's answer is that there is such an objection, I am scheduling a conference call for Wednesday June 26, at 9 a.m. EDT, to hear further explanation of the objection. Counsel for Appellant should also attend the call.

. . . .

An appropriate Order will be issued after receiving HISA/HIWU's answer to the preceding question or, if a call tomorrow is required, after that call.

Whereas, initially, the Authority stated that it sought "guidance with respect to responsiveness and confidentiality" of the Tessore-related document, in responding to my June 25 email, its position was different. The Authority's June 25 email states:

HIWU objects to providing the document in unredacted form to Appellant. Under ADMC Program Rule 5620(b), HIWU has an obligation to "securely and confidentially" handle intelligence it obtains in a non-public fashion and to disclose such information only to further a "legitimate legal, law enforcement, regulatory, anti-doping, medication control, integrity, disciplinary, horse welfare, or safety purpose[s]." No such purpose is found

here because the proposed redacted information solely concerns third parties and is irrelevant to both Appellant and her pending matter. ADMC Program Rule 7260(a) permits parties to advance only evidence that is “relevant and material to the dispute.” Because the proposed redactions cover information that has no bearing on her dispute, Appellant Lynch cannot, and has no reason to, advance the proposed redacted information as evidence in this appeal. HIWU should therefore not be required to disclose this irrelevant and immaterial non-public intelligence to her.

Accordingly, the scheduled conference call went forward on June 26, during which I gave the Authority an opportunity to argue further its objection to producing the Tessore Memo in unredacted form, and I now issue the following Order:

1. While mindful of the Authority’s obligations, arising from HISA Rule 5620(b), as well as other parts of the Rules generally, the Authority is **ORDERED** to produce the Tessore Memo, subject to the following terms and conditions.
2. The Tessore Memo and the contents thereof may be used for purposes of this FTC proceeding only, must be kept strictly confidential, and shall not be disclosed to anyone other than the individuals listed in paragraph 4 below, except by prior written agreement of the parties, by Order of this court, or by other court order.
3. To “disclose” means to disseminate, distribute, discuss, photograph, describe, share, communicate, publish, or otherwise make use of or transmit in any way, including by all electronic means.
4. The Tessore Memo and the contents thereof may be disclosed only to the individuals below:
 - a. The Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding;
 - b. Judges and other court personnel of any court having jurisdiction over any appellate or review proceedings involving this matter;
 - c. Appellant’s Counsel, H. Christopher Boehning and Grant S. May, other attorneys and law clerks at Paul, Weiss, Rifkind, Wharton & Garrison LLP (“Counsel’s Firm”) working on Appellant’s case, and any non-attorney legal staff members of Counsel’s Firm who are required to access the information;
 - d. Outside expert witnesses retained by Appellant’s Counsel, provided that the obligation of confidentiality is accepted by such expert witnesses in writing; and
 - e. The official court reporter for any proceeding in the case.

5. For clarity, the Tessore Memo may not be disclosed to Appellant.
6. Within sixty (60) days of the conclusion of these proceedings and any proceedings to confirm, vacate, or modify any Order granted therein, the individuals listed in paragraphs 4(c) through 4(e) above shall, to the extent legally and technically practicable, destroy or erase all copies of the Tessore Memo in their possession, power, or control.
7. Information contained in the Tessore Memo that becomes available to Appellant from a different source, or is information in the public domain, shall not be subject to the confidentiality obligations set out herein.
8. Admissibility of all or any part of the Tessore Memo, and all other matters relating to its use, at the evidentiary hearing are reserved.

II. Rescheduling the Hearing

By Order issued on June 6, 2024, the evidentiary hearing was set for June 20, 2024. The parties filed a joint motion on June 10, 2024 to adjourn the hearing and the accompanying deadlines (“Joint Motion”). The parties suggested August 12, 2024 as a hearing date, nearly two months later than initially scheduled, which is not acceptable.

Having subsequently conferred with the parties via telephone conference regarding their schedules and having received related written communications from them, I hereby **ORDER** the following:

1. The Joint Motion to adjourn the June 20, 2024 hearing date is **GRANTED**.
2. The evidentiary hearing will take place on July 16, 2024, commencing at 9:00 a.m. Eastern Time, by videoconference.
3. By July 9, 2024, the parties must exchange and provide a courtesy copy to OALJ@FTC.GOV:
 - a. A list of the witnesses they anticipate calling;
 - b. A list of exhibits they wish to introduce; and
 - c. A list of attorneys or other individuals who are expected to participate in the hearing.
4. Any stipulations of fact shall be filed by July 12, 2024 with a courtesy copy sent simultaneously to OALJ@FTC.GOV.
5. Paragraphs numbered 3 through 5 and 7 in my March 25, 2024 Order Setting Evidentiary Hearing, and all provisions of my May 9, 2024 Supplemental Order

Regarding Exhibits and Evidence (as modified by the date deadlines above), and paragraph 3 of my June 6, 2024 Order continue to apply.

6. As directed in connection with the May 20, 2024 hearing:
 - a. Three attorneys may be located within the same physical room. If that is counsel's intention, please notify the ALJ office by email at OALJ@FTC.GOV.
 - b. Any slides that either side may seek to use during their opening statement should be provided to opposing counsel and the ALJ by July 12, 2024. They will become part of the evidentiary record.

ORDERED:

Jay L. Himes
Jay L. Himes
Administrative Law Judge

Date: June 26, 2024