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

In the Matter of)	
)	
Jim Iree Lewis,)	Docket No. 9434
)	
Appellant.)	
)	

**ORDER ON APPLICATION FOR REVIEW
AND APPLICATION FOR STAY**

On July 8, 2024, Jim Iree Lewis (“Appellant”) filed a Notice of Appeal and Application for Review (“Application for Review”) before the Federal Trade Commission (“FTC”). *See* 15 U.S.C. § 3501 *et seq.*; 16 C.F.R. § 1.146. The Application for Review arises in connection with a June 11, 2024 final arbitration decision (“Decision”) that concluded Appellant violated the Horseracing Integrity and Safety Authority’s (“Authority”) Anti-Doping and Medication Control (“ADMC”) Program Rule 3212 based on the presence of a banned substance – Clenbuterol – in a post-race blood sample from the horse Hughie’s Holiday, for whom Appellant was the trainer. The Arbitrator further found that Appellant failed to demonstrate his lack of fault or significant fault for the presence of Clenbuterol in Hughie’s Holiday, and recommended applicable sanctions. Based on the Decision, the Authority imposed sanctions against Appellant including, among others, a fine of \$15,000 and payment of \$5,000 in adjudication costs.¹

As stated in his Application for Review, Appellant now seeks only to reduce the fine, asserting lack of significant fault or negligence for the presence of Clenbuterol in Hughie’s Holiday. Appellant also requests a stay of the fine and payment of the adjudication costs during the pendency of review. *See* 16 C.F.R. § 1.148.

On July 15, 2024, the Authority filed its Response to Appellant’s Application for Stay and on July 18, 2024, filed its Response to Appellant’s Application for Review.

¹ The civil sanctions imposed were: (1) a two-year period of ineligibility for Appellant from September 22, 2023 through September 21, 2025; (2) a fourteen-month period of ineligibility for Hughie’s Holiday from July 8, 2023 through September 7, 2024; (3) disqualification of Hughie’s Holiday’s race results obtained on July 8, 2023, with resulting consequences of disqualification of results, including forfeiture of all purses and other compensation, prizes, trophies, points, and rankings and repayment or surrender to the race organizer; (4) a fine of \$15,000; (5) payment of \$5,000 in adjudication costs; and (6) public disclosure of the violation.

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I. Application for Review

Pursuant to the FTC's Procedures for Review of Final Civil Sanctions Imposed under the Horseracing Integrity and Safety Act ("HISA") ("FTC Rules"):

In reviewing the final civil sanction and decision of the Authority, the Administrative Law Judge may rely in full or in part on the factual record developed before the Authority through the disciplinary process under 15 U.S.C. 3057(c) and disciplinary hearings under Authority Rule Series 8300. The record may be supplemented by an evidentiary hearing conducted by the Administrative Law Judge to ensure each party receives a fair and impartial hearing. Within 20 days of the filing of an application for review, based on the application submitted by the aggrieved party or by the Commission and on any response by the Authority, the Administrative Law Judge will assess whether:

- (i) The parties do not request to supplement or contest the facts found by the Authority;
- (ii) The parties do not seek to contest any facts found by the Authority, but at least one party requests to supplement the factual record;
- (iii) At least one party seeks to contest any facts found by the Authority; . . . or
- (v) In the Administrative Law Judge's view, the factual record is insufficient to adjudicate the merits of the review proceeding.

Id. § 1.146(c)(2).

On review, Appellant requests an evidentiary hearing to reduce the fine imposed based on asserted lack of significant fault or negligence. Specifically, Appellant seeks to present (1) "prior cases" where, to support a claim that Clenbuterol was administered prior to a horse coming under a trainer's control, analysis of hair samples proved that Clenbuterol was metabolized more slowly than the period testified to by the Authority's expert at the arbitration; and (2) evidence of "recent developments in synthetic forms of compound Clenbuterol," which Appellant states metabolize more slowly than natural Clenbuterol. Application for Review, p. 2.

The Authority opposes Appellant's request for an evidentiary hearing, arguing that he has failed to justify his request and that such a hearing is unnecessary. With regard to Appellant's proposal to submit cases involving testing for Clenbuterol in hair samples, the Authority notes that no hair sample was taken from Hughie's Holiday and Appellant's request below to take a hair sample from Hughie's Holiday was untimely and properly denied by the Arbitrator. Regarding Appellant's request to offer evidence of metabolization rates for synthetic Clenbuterol, the Authority states that such evidence is irrelevant because Appellant has not proffered any evidence that synthetic Clenbuterol was administered to Hughie's Holiday.

First, Appellant's request to present other cases regarding metabolization of hair samples and any related legal arguments is most appropriately accomplished in writing and does not require an evidentiary hearing. Second, Appellant's attempt to now present evidence regarding

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metabolization rates of synthetic Clenbuterol is impermissible. FTC Rule 1.146 requires, in pertinent part, that on review:

Each issue must be plainly and concisely stated. Further, the applicant must provide support for each issue raised, citing to the Authority's record when assignments of error are based on the record, and citing to the principal legal authorities the applicant relies upon, whether statutes, regulations, cases, or other authorities. Except for good cause shown, no assignment of error by the aggrieved party may rely on any question of fact or law not presented to the Authority.

16 C.F.R § 1.146(a)(1) (emphasis added).

Appellant's Application for Review and the appended materials, including the Decision, fail to demonstrate that there was any evidence or argument presented to the Arbitrator concerning the potential presence of synthetic Clenbuterol. Nor does Appellant assert any good cause for his failure to do so.

Having considered the Application for Review and the Authority's Response to Appellant's Application for Review, Appellant's request for a hearing is **DENIED**. Accordingly, the factual record will be deemed closed and no evidentiary hearing will be held; proceedings will be limited to briefing by the parties. *Id.* § 1.146(c)(3).

The parties are directed to concurrently file with the FTC's Office of the Secretary, by **August 7, 2024**, proposed findings of fact, conclusions of law, a proposed order, and a supporting legal brief providing the party's reasoning. Such filings are limited to 7,500 words, must be served on the other party, and must contain references to the record and authorities on which they rely. Reply findings of fact, conclusions of law and briefs, limited to 2,500 words, may be filed by each party within ten days of service of the initial filings. *Id.*

Please provide to the Office of Administrative Law Judges courtesy hardcopies of all filings.

II. Application for Stay

Under the FTC Rules, an application for a stay of a final civil sanction imposed by the Authority "must provide the reasons a stay is or is not warranted by addressing the [following] factors . . . and the facts relied upon":

- (1) The likelihood of the applicant's success on review;
- (2) Whether the applicant will suffer irreparable harm if a stay is not granted;
- (3) The degree of injury to other parties or third parties if a stay is granted; and
- (4) Whether the stay is in the public interest.

Id. § 1.148(c)-(d).

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Appellant requests a stay of the \$15,000 fine and \$5,000 adjudication costs during the pendency of this review.² Appellant does not address the four factors set forth above and provides no justification to support his request.

The Authority opposes Appellant's request for a stay, arguing that the first and second factors weigh against staying the sanctions. First, the Authority argues that the likelihood of Appellant's success on review is low because the ADMC Program rules were appropriately followed. Second, the Authority asserts that Appellant will not suffer irreparable harm absent a stay because he is not required to pay the financial penalties in full until the end of his period of ineligibility, well after this review concludes. The Authority further asserts that, given Appellant's limited request for a stay, the third and fourth prongs of the relevant standard are not implicated.

Based on Appellant's failure to offer any argument or evidence to support his request, on this record, I conclude that a stay of the sanctions is not justified. Accordingly, Appellant's request for a stay is **DENIED**.³

ORDERED:

Dania L. Ayoubi
Dania L. Ayoubi
Administrative Law Judge

Date: July 19, 2024

² Appellant does not request a stay of the remaining sanctions.

³ Notwithstanding the denial of Appellant's request for a stay as to the \$15,000 fine and \$5,000 adjudication costs, as the Authority represents in its Response to Appellant's Application for Stay, Appellant is not required to pay these amounts in full until the end of his period of ineligibility (September 21, 2025).