

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES  
FTC DOCKET NO. 9435**

**ADMINISTRATIVE LAW JUDGE:**

**HON. JAY L. HIMES**

**IN THE MATTER OF:**

**DR. SCOTT SHELL, DVM**

**APPELLANT**

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**AUTHORITY'S RESPONSE TO APPLICATION FOR STAY OF FINAL CIVIL  
SANCTIONS**

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## CERTIFICATE OF SERVICE

Pursuant to 16 CFR §1.146(a) and 16 CFR §4.4(b), a copy of this Authority's Response to Appellant's Application for a Stay is being served on July 22, 2024, via Administrative E-File System and by emailing a copy to:

Hon. Jay L. Himes  
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](mailto:Oalj@ftc.gov)

April Tabor  
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*/s/ Bryan Beauman*  
Enforcement Counsel

The Horseracing Integrity and Safety Authority, Inc. (the “**Authority**”) files this Response to Appellant Dr. Shell’s Application to stay sanctions issued pursuant to the June 11, 2024 Final Decision of Arbitrator Hon. Hugh Fraser (the “**Arbitrator**”), as corrected, under the Authority’s Anti-Doping and Medication Control (“**ADMC**”) Program (the “**Final Decision**”). The Commission should deny Appellant’s request, as he has failed to satisfy the requirements for a stay articulated in 16 CFR §1.148(d).

First, the likelihood of Appellant’s success on review is low. As an initial matter, the requirements of the ADMC Program Rules (the “**Rules**”) were appropriately followed by both the Horseracing Integrity & Welfare Unit (“**HIWU**”) and the Arbitrator below.

There is no basis to challenge or contest the Arbitrator’s finding that Hemo 15 is a Banned Substance under the standard set forth in Rule 4111:

- Rule 4111 provides the legal standard to determine whether substances not otherwise addressed by Rules 4112 through 4117 are Banned Substances under the ADMC Program. A substance meets the requirements of Rule 4111 where: (i) it lacks approval by any governmental regulatory health authority for veterinary or human use; (ii) it is not recognized by veterinary regulatory authorities as a valid veterinary use; and (iii) the substance is not otherwise compliant with the Animal Medicinal Drug Use Clarification Act and the FDA Guidance for Industry #256. Appellant’s claims that the application of Rule 4111 involved “drug claims”<sup>1</sup> or required HIWU to test the substance and detect a

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<sup>1</sup> Appellant’s arguments about “drug claims” are a red herring. Neither the arguments of HIWU as to why Hemo 15 meets the standard of a Banned Substance under Rule 4111, nor the Arbitrator’s finding that Hemo 15 is a Banned Substance, involved any supposed “drug claims” on the label of the substance.

Banned Substance specifically named on the Prohibited List are both legally and factually inaccurate.

- The Arbitrator’s finding that Hemo 15 is a Banned Substance under Rule 4111 was based upon the evidence adduced at the hearing below and was not “arbitrary, capricious, an abuse of discretion, prejudicial, or otherwise not in accordance with law.” The Arbitrator merely agreed with the opinions of the experts put forth by HIWU, instead of the expert put forth by Appellant. Losing a battle of the experts does not meet the legal standard for overturning the Arbitrator’s decision.
- Appellant claims that the Arbitrator erred by not finding Rule 4111 “arbitrary and capricious.” However, the Arbitrator does not have the authority to ignore or overrule the Rules. Rule 3113 expressly provides that the Prohibited List is “valid” and the decisions relating to its content are “final and shall not be subject to any challenge by any Covered Person or other Person on any basis.”
- The review of the Final Decision by an Administrative Law Judge of the Commission is not the proper forum to make challenges to the constitutionality of the Rules. These Rules were submitted by the Authority to the Commission for approval and were approved by the Commission after the requisite public comment period. The recent Fifth Circuit decision referenced by Appellant, which is not even final, is also not relevant in this forum.
- Appellant has also provided no basis for the claim that he “should have been found completely faultless under Rules 3224 or 3225.”

Second, Appellant has not and will not suffer irreparable harm. The public disclosure that he mentions has already occurred. In fact, under Rule 3620, HIWU is required to publicly disclose a final decision made by the Arbitral Body within twenty (20) days of the issuance of that decision.

In addition, Appellant is currently under a Provisional Suspension for additional charges relating to the Possession of Banned Substances under Rule 3214(a), and these Charges have already been publicly disclosed, as required by Rule 3610. While Appellant had a Provisional Suspension Hearing in his effort to have this suspension lifted, his request to have his Provisional Suspension lifted was denied by a separate arbitrator.

Third, contrary to Appellant’s submission, other parties will be harmed if the stay is granted. Appellant’s reliance on arguments related to the claimed unconstitutionality of the Horseracing Integrity and Safety Act (the “Act”) or the Rules are not an appropriate consideration here. The ADMC Program protects the integrity of horseracing and the confidence of its stakeholders, including the betting public.<sup>2</sup> Granting the stay will undermine the Authority’s efforts to protect the integrity of horseracing and will harm other Responsible Persons and the betting public by permitting Appellant’s participation therein.

Fourth, while public interest is served by the compliance of administrative agencies with the *Administrative Procedure Act*, so too is it served by individual compliance with the rules and regulations validly promulgated by federal agencies. In addition, the stated purpose of the Act is “to improve the integrity and **safety of horseracing** by requiring a uniform anti-doping and medication control program. . . .” (Emphasis added). A stay in this case would be antithetical to that purpose.

The Authority requests the Commission deny Appellant’s request for a stay.

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<sup>2</sup> ADMC Program Rules 3010(a), 3010(d)(7).

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 22nd day of July, 2024.

*/s/Bryan H. Beauman*

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