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**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
Office of Administrative Law Judges**

DOCKET NO. 09434

In the matter of

JIM IREE LEWIS,

Appellant

v.

HORSERACING INTEGRITY WELFARE UNIT

Appellee.

EAD 2023-32

[PROPOSED]

**ADMINISTRATIVE LAW JUDGE DECISION ON APPEAL OF CIVIL SANCTION
IMPOSED BY THE HORSE RACING INTEGRITY AND SAFETY AUTHORITY'S
ANTI-DOPING AND MEDICATION CONTROL PROGRAM ARBITRATION PANEL**

I. INTRODUCTION

a. Summary of the Case

This is an appeal by Jim Iree Lewis (“Appellant”) of the decision by the Horseracing Integrity and Safety Authority’s (HISA) Anti-Doping and Medication Control Program Arbitration Panel (“Arbitrator”). The Arbitrator ruled that a Covered Horse trained by Appellant tested positive for the presence of a banned substance under Anti-Doping and Medication Control (“ADMC”) Rule 4114(b), disqualified the race results, suspended the Covered Horse for 14 months, suspended Appellant for two years, imposed a \$15,000 fine, and required Appellant to pay \$5,000 of the adjudication costs. Appellant appeals only the \$15,000 fine and \$5,000

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adjudication costs. For the reasons explained below, the Arbitrator's decision as to the \$15,000 fine and \$5,000 adjudication costs is reversed.

b. Summary of Applicable Rules

The Horseracing Integrity and Safety Act of 2020, 15 U.S.C. §§ 3051-3060, charges HISA with developing proposed rules on a variety of subjects. *See id.* § 3053(a). At issue in this case are HISA ADMC rules 3213, 3221, effective March 27, 2023. *See* 88 Fed. Reg. 5070, 5070-5201 (FTC Notice of Horseracing Integrity and Safety Authority (HISA) proposed rule; request for public comment).

HISA ADMC Rule 3213 (Use or Attempted Use of a Banned Substance or a Banned Method) provides that it is the personal and non-delegable duty of the Responsible Person to ensure that no Banned Substance is used in in of their Covered Horses.

HISA ADMC Rule 3221 (Disqualification of the Covered Horse's Results) provides an ADMC rule violation that arises from a Post-Race Sample results in the automatic disqualification of the Covered Horse's Results.

HISA ADMC Rule 3222 (Ineligibility for Covered Horses) provides that a violation of ADMC Rule 3213 will result in the ineligibility of the Covered Horse for the period designated in the Prohibited List for the Banned Substance in issue. Appendix 1 to Rule Series 4000 (Technical Document—Prohibited Substances) lists clenbuterol as an S7 Controlled Substance with penalty subclassification B. ADMC Rule 4310 (Violations Involving Prohibited Substances) provides that S7 substances do not carry a period of ineligibility for the Covered Horse, as long as certain conditions not relevant here are met. However, ADMC Rule 4114 (S3 Beta-2 Agonists) clarifies that clenbuterol is a banned S3 substance unless prescribed by a veterinarian for a period of 30 days or less in a 6-month period and provided that the horse must provide a clean blood and urine

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sample prior to participating in a Covered Horserace. ADMC Rule 4310 provides that S3 banned substances carry a period of ineligibility of 14 months for the Covered Horse.

HISA ADMC Rule 3223 (Ineligibility and Financial Penalties for Covered Persons) provides that the period of ineligibility and financial penalties for a Covered Person's first doping offense are 2 years and a fine of up to \$25,000 or 25% of the total purse (whichever is greater); and payment of some or all of the adjudication costs and the Agency's legal costs.

HISA ADMC Rule 3224 (Elimination of the Period of Ineligibility where there is No Fault or Negligence) provides that, if a Covered Person establishes how the banned substance entered the covered horse's system, then all of the consequences required by ADMC Rule 3223, but not those required by ADMC Rule 3221 or 3222, shall be eliminated if the Covered Person establishes that they bear No Fault or Negligence for the charged violation. This rule applies only in exceptional circumstances, and particularly does not apply for situations where the Banned Substance came from a mislabeled or contaminated supplement or was administered by support personnel without the knowledge of the Responsible Person.

HISA ADMC Rule 3225 (Reduction of the Period of Ineligibility where there is No Significant Fault or Negligence) provides that the period of ineligibility may be reduced to between 3 months and 2 years if the covered person establishes that they bear No Significant Fault or Negligence for the ADMC Rule violation.

HISA ADMC Rule 3231 (Automatic Public Disclosure) requires sanctions to include automatic Public Disclosure of the rule violation.

c. Procedural History

The Stewards at Ruidoso Downs Racetrack, after initial analysis of the urine sample taken from the Covered Horse, determined no rule violations had occurred and released the purse to

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Appellant. Subsequent analysis of the blood sample collected from the Covered Horse showed the presence of clenbuterol and the Horseracing Integrity & Welfare Unit (HIWU) sent Appellant an EAD Charge of Anti-Doping Rule Violation on September 22, 2023.

Appellant requested a hearing before the Anti-Doping and Medication Control Program Arbitration Panel (“Arbitrator”). After a hearing, the Arbitrator determined that a violation of HISA ADMC Rule 3213 had occurred, and that Appellant had not established that he did not bear Significant Fault or Negligence such that the period of ineligibility and other sanctions under HISA ADMC Rule 3223 should be reduced. The Arbitrator awarded the penalties required by HISA ADMC Rules 3221, 3222, and 3223, setting the civil penalty at \$15,000 and Appellant’s share of the Arbitration costs at \$5,000.

Appellant appealed requesting a stay of the penalties and an evidentiary hearing. Pursuant to 15 U.S.C. § 3058(b)(2)(B) and 16 C.F.R. § 1.146 Appellants requests for a stay and evidentiary hearing were both denied.

d. Standard of Review

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. The ALJ “shall determine whether – (i) a person has engaged in such acts or practices, or has omitted such acts or practices, as the Authority has found the person to have engaged in or omitted; (ii) such acts, practices, or omissions are in violation of this Act [15 USCS §§ 3051 et seq.] or the anti-doping and medication control or racetrack safety rules approved by the Commission; or (iii) the final civil sanction of the Authority was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 15 U.S.C. § 3058(b)(2).

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e. Summary of Arguments of the Parties

Appellant argues that the Arbitrator's decision that he failed to establish that he bore No Significant Fault or Negligence and reduce his penalties accordingly was based entirely on the testimony of HISA's expert witness Dr. Kynch, whose opinion was based on outdated research. Appellant further argues that he was denied an opportunity to establish this at the hearing because the hearing was conducted on Zoom and his attorney, unaware of recent developments in synthetic clenbuterol, did not question Dr. Kynch on the topic and did not notice the text sent by Appellant asking them to do so. Appellant argues that he has established that he bore No Significant Fault or Negligence in the HISA ADMC Rule 3213 rule violation and that, particularly in light of his indigent status, the financial penalties awarded by the Arbitrator should be significantly reduced if not eliminated.

HISA argues that Appellant had his chance to cross examine Dr. Kynch and having not done so, he has failed to establish a record wherein it can be found that he bore No Significant Fault or Negligence in the HISA ADMC Rule 3213 Rule violation. Accordingly, HISA argues that the Arbitrator's awards should stand.

II. FINDINGS OF FACT

Appellant became the Responsible Person for the Covered Horse after its purchaser had purchased it from an individual known to have previously violated HISA Anti-Doping Rules. Appellant inquired as to the Covered Horse's medical history, and whether it had been given any banned substances. He was particularly concerned about clenbuterol, as he knew its use was common and that the substance had only recently become a banned substance. He attended a meeting with HISA officials where he was told that clenbuterol would be metabolized in a

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horse's system within 25 days, and that the ADMC Rules required a waiting period of at least 30-days after clenbuterol was administered prior to being permitted to run the horse.

Appellant, rather than undergo the considerable expense of having the horse tested on his own, decided to wait for 48 days before entering the horse in any race, believing that any clenbuterol in the horse's system when it came under his care would be gone. That proved to not be the case, and after winning a race, the horse tested positive for clenbuterol.

Appellant, incredulous at the results, asked for the B sample to be tested, asked for the DNA of the sample to be checked, and asked for a hair sample to be taken. While the B sample was tested, confirming the presence of clenbuterol in the horse's system, Appellant's request for DNA confirmation and a hair sample were denied.

Appellant then asked around the community, talking with other trainers, veterinarians, and HISA investigators and learned that new forms of synthetic clenbuterol, which became prevalent in during supply shortages in the COVID-19 pandemic lasted much longer in a horse's blood than previous versions of clenbuterol had. After asking around, this seemed to be common knowledge, particularly among the HISA investigators.

Appellant asked for a hearing, where he presented evidence that he was not the source of the clenbuterol in the horse's system. Such evidence included testimony regarding the horse's background and origins, his own suspicions when the horse came under his care, Appellant's veterinarian's testimony that he had not administered any clenbuterol to the horse, as well as evidence that there could have been contamination from a bucket at the test barn.

HISA offered an expert witness who testified, based on research conducted prior to 2015, that it was very unlikely that the clenbuterol in the horse's system got there from prior to Appellant's assuming responsibility for the horse. Appellant was surprised by the testimony, as a

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HISA investigator had told him that they had found clenbuterol after much longer periods.

Appellant texted his attorney asking them to cross examine the expert regarding newer forms of clenbuterol, but that text was not heeded.

The Arbitrator relied on the expert's testimony and found that Appellant had not met his burden of establishing that he bore No Significant Fault or Negligence in the rule violation.

III. CONCLUSIONS OF LAW AND ANALYSIS

Appellant has established that he bore No Significant Fault or Negligence in the HISA ADMC Rule 3213 rule violation. Furthermore, the Arbitrator's decision did not provide any reasoning as to why the amount of the fine imposed was chosen. It is therefore arbitrary and is therefore reversed. Appellant shall pay a civil penalty of \$999, an amount which balances penalizing his failure to have the Covered Horse tested at his own expense prior to entering it in a Covered Horserace with his indigent status.

Appellant has established that he is indigent. HISA acknowledged this and provided him with a pro bono attorney. Requiring an indigent person to bear such a large cost to have their case heard violates that person's due process rights. The Arbitrator does not explain how he came to the figure of \$5,000 as Appellant's share of the arbitration costs. As such, it appears to be arbitrary. HISA ADMC Rule requires that the Responsible Person pay at least "some" of the arbitration costs but does not provide a means to establish what share they should bear. Given his indigent status, Appellant's share of the Arbitration Costs will be \$1.

IV. ORDER

For the reasons stated above and pursuant to 15 U.S.C. § 3058(b)(3)(A)(ii), the Arbitrator's decision is REVERSED as to the financial penalties awarded to Appellant and AFFIRMED in all other aspects. Upon the conclusion of his period of ineligibility, Appellant

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shall pay \$1000. Said amount may be paid in instalments under HISA ADMC Rule 3232 provided that the total is paid within two years of the period of his ineligibility.

ORDERED:

Dania L. Ayoubi
Administrative Law Judge

Date:

CERTIFICATE OF SERVICE

Pursuant to 16 CFR 1.146(a) and 16 CFR 4.4(b), a copy of the forgoing is being served this 5th day of August, 2024 via Administrative E-File System and by electronic mail upon the following:

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