UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
DOCKET NO. D-9434

ADMINISTRATIVE LAW JUDGE: **DANIA L. AYOUBI**

IN THE MATTER OF:

JIM IREE LEWIS **APPELLANT**

AUTHORITY'S REPLY TO APPELLANT'S BRIEF IN SUPPORT OF HIS PROPOSED FINDINGS OF FACTS AND CONCLUSIONS OF LAW

NOW COMES the Horseracing Integrity and Safety Authority, Inc. (the "**Authority**"), pursuant to 16 CFR 1.146 and the Order entered on July 19, 2024, and submits this Reply to Appellant's brief in support of his Proposed Findings of Facts and Conclusions of Law. Appellant's appeal must be dismissed because (1) HIWU successfully met its burden to establish a Rule 3212 Anti-Doping Rule Violation ("**ADRV**") against Appellant, and (2) Appellant has provided no legal or factual basis for reduction of his financial penalties under the ADMC Program Rules. Appellant's Proposed Findings of Fact and Conclusions of Law should therefore be rejected. The Authority will address Appellant's main arguments in turn.

First, under ADMC Rule 3010(a), "[t]he Horseracing Integrity and Safety Act of 2020 ("Act") mandates and empowers the Horseracing Integrity and Safety Authority ("Authority") to establish a **uniform anti-doping and controlled medication program** to improve the integrity and safety of horseracing in the United States ("Program")." (Emphasis added). In addition, under ADMC Program Rule 3040(a)(1), Appellant, as a Covered Person, has "the personal responsibility [] to be knowledgeable of and to comply with the Protocol and related rules at all times."[1]

[1] Also, under Rule 3040(a)(1), "it is the responsibility of all Covered Persons to familiarize themselves with the

It is HIWU's obligation, as well as the obligation of the members of the Arbitral Body, to **uniformly** apply the ADMC Program Rules. It is Appellant's obligation to comply with the ADMC Program Rules. Therefore, once an ADRV has been established, a sanction cannot be eliminated or reduced unless that elimination or reduction complies with the requirements and restrictions of those Rules. The Arbitrator below did, in fact, take Appellant's circumstances into account when determining the financial penalties imposed in the Final Decision. There is no right to be a Trainer for Covered Horses that are governed by the ADMC Program. If Appellant cannot comply with a Covered Person's obligations under the ADMC Program, he does not need to be a Trainer for Covered Horses. He can instead train non-Covered Horses of other breeds. It should be noted that the Authority will not seek to collect the financial penalties imposed in the Final Decision unless and until Appellant seeks to once again become a Trainer/Responsible Person for Covered Horses.

Second, Appellant has failed to provide any legitimate argument to provide a basis for determining that the Arbitrator failed to consider any relevant or material evidence[2] relating to the Banned Substance Clenbuterol:

- Appellant submitted no evidence or expert to rebut the testimony of HIWU's expert, Dr. Heather Kynch;
- During his testimony, Appellant did not mention the statements that were allegedly made by "HISA investigators" about Clenbuterol, and any uncorroborated statements made by individuals with absolutely no scientific expertise or training about such issues should not be considered legitimate evidence with respect to the issue;[3]

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most up-to-date version of the Protocol and related rules and all revisions thereto."

[2] See Rule 7260(a).

[3] The Authority has no reason to believe that any such statements were made by staff of either the Authority or HIWU. Even if corroborated, such general statements, given the lack of knowledge and expertise of the "HISA investigators" should be given no weight at all.

- Appellant's counsel's failure to raise an issue in the hearing below for which they had no factual or legal basis can certainly not be considered an issue that would provide a basis for challenging any portion of the Final Decision; and
- Negative test results from Appellant's other Covered Horses are completely irrelevant to whether he violated Rule 3212 with respect to the Covered Horse Hughie's Holiday on July 8, 2023.

Third, Appellant's reference to HIWU's denial of his request for DNA testing for his horse should not be considered, as this issue was not even raised during the hearing below. In addition, HIWU properly denied this request, as the ADMC Program Rules do not include any provision that explicitly permits a Covered Person who has received an EAD Notice to request DNA testing of a Covered Horse in connection with an Adverse Analytical Finding, which is consistent with the WADA Code on which the ADMC Program was based. See *Gorgodze v IPC*, CAS 2015/A/3915, par. 155 ("DNA testing is not a usual procedure in anti-doping matters, and it is not provided for by the applicable regulations").

However, the Rules do not preclude a Covered Person from requesting HIWU to conduct such testing. Under the WADA Code and the decisions issued pursuant to the Code, such testing should only be ordered in very limited circumstances, where there is genuine doubt as to the identity of the Sample. See *Ruffoni v UCI,* CAS 2018/A/5518, par. 118; see also *Mullings v Jamaican Anti-Doping Commission*, CAS 2012/A/2696, Par. 7.4 (DNA testing "cannot be ordered whenever an athlete requests it. Rather, the athlete should first be required to present some reasonable basis for questioning the lab results to justify any DNA testing*"*); *Athletics Ireland v Colvert,* ISADDP decision, dated Nov. 12, 2014, par. 15 (requiring "some reasonable basis for challenging" the laboratory analysis in order to justify DNA testing). Appellant did not provide any information that would meet the standard set forth in the prior decisions when making his request for DNA testing to HIWU.

Finally, Appellant's reference to the recent Fifth Circuit decision addressing the Act, which is not

even final at this time, is not relevant to this appeal, as these constitutional issues are not properly addressed in this forum.

In conclusion, all of the Consequences were properly imposed by the Arbitrator in accordance with the ADMC Program Rules. Therefore, the civil sanctions imposed on Appellant are not "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law" and should be upheld.

The Authority requests that the Court accept its findings of fact and conclusions of law which were filed on August 7, 2024.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 15th day of August, 2024.

/s/*Bryan H. Beauman*

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CERTIFICATE OF SERVICE

Pursuant to 16 CFR 1.146(a) and 16 CFR 4.4(b), a copy of this Reply to Appellant's Brief in Support of his Proposed Findings of Fact and Conclusions of Law is being served on August 15, 2024, via first-class mail and/or Administrative E-File System and by emailing a copy to:

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