

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
DOCKET No. D-9439**

IN THE MATTER OF:

DR. SCOTT SHELL, DVM

APPELLANT

and

HORSERACING INTEGRITY & WELFARE UNIT

APPELLANT

**AUTHORITY'S RESPONSE IN SUPPORT OF
HIWU'S APPLICATION FOR REVIEW OF FINAL CIVIL SANCTIONS**

Pursuant to 16 C.F.R. § 1.156(a)(1), the Horseracing Integrity and Safety Authority, Inc. (the "Authority") submits the following response in support of the Application for Review of Final Civil Sanctions filed by the Horseracing Integrity & Welfare Unit ("HIWU") ("HIWU's Application").

HIWU's Application seeks review of the decision of Arbitrator Barbara Reeves in JAMS Case No. 1501000653, which ordered a final civil sanction on Dr. Scott Shell inclusive of a 21-month period of Ineligibility and payment of a \$20,000 fine (the "Decision"). Specifically, HIWU requests *de novo* review of the Decision on the basis that the Arbitrator erroneously (i) ordered the period of Ineligibility imposed on Dr. Shell to run concurrently with a sanction that he is serving for Administration of the Banned Substance Hemo 15 ("Administration Case"); and (ii) treated four Anti-

PUBLIC

Doping Rule Violations as one act of Possession, subject to a single Fault analysis and sanction.

The Horseracing Integrity and Safety Act (the “Act”) charges the Authority with establishing a “horseracing anti-doping and medication control program” and developing “[r]ules, standards, procedures and protocols” that are “uniform and uniformly administered nationally.” 15 U.S.C. § 3055(a)(1), (b)(3). The Authority files this response in support of HIWU’s Application and joins in HIWU’s request for a *de novo* review of the issues identified above and in HIWU’s Application.

As set out in HIWU’s Application, the Arbitrator erred in her application of Rule 3223(c)(2), which mandates consecutive, not concurrent, periods of Ineligibility where, as is the case here, the Covered Person is already serving a period of Ineligibility in connection with a different matter. This decision, if not modified by the Administrative Law Judge, not only prejudices other Covered Persons serving multiple periods of Ineligibility, but also undermines the predictability and reliability of future outcomes under the ADMC Program.

Moreover, the Arbitrator erred by treating Possession of four different Banned Substances as a single anti-doping rule violation under the ADMC Program. As described in HIWU’s Application, the Arbitrator’s analysis on this subject is contrary to the ADMC Program rules.

Consistent and accurate application of the rules comprising the Authority’s Anti-Doping and Medication Control Program (the “ADMC Program”) is critical to the success of, and public confidence in the ADMC Program. Accordingly, the

PUBLIC

Authority hereby requests that the Administrative Law Judge conduct a *de novo* review of the issues identified in HIWU's Application.

Respectfully submitted,

STURGILL, TURNER, BARKER & MOLONEY,
PLLC

/s/ Bryan Beauman

BRYAN BEAUMAN

REBECCA PRICE

333 W. Vine Street, Suite 1500

Lexington, Kentucky 40507

Telephone: (859) 255-8581

bbeauman@sturgillturner.com

rprice@sturgillturner.com

HISA ENFORCEMENT COUNSEL

PUBLIC

CERTIFICATE OF SERVICE

Pursuant to 16 CFR 1.146(a) and 16 CFR 4.4(b), a copy of this Response is being served on October 28, 2024, via Administrative E-File System and by emailing a copy to:

Office of Administrative Law Judges
Federal Trade Commission
600 Pennsylvania Ave. NW
Washington DC 20580
Via e-mail to Oalj@ftc.gov

April Tabor
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Ave. NW
Washington, DC 20580
Via email: electronicfilings@ftc.gov

Andrew J. Mollica
1205 Franklin Ave., Suite 16LL
Garden City, NY 11530
Via e-mail to jdmol@aol.com
Counsel for Dr. Scott Shell

Michelle C. Pujals
Allison J. Farrell
Horseracing Integrity & Welfare Unit
4801 Main Street, Suite 350
Kansas City, MO 64112
Via e-mail to mpujals@hiwu.org
Via e-mail to afarrell@hiwu.org
Counsel for HIWU

Sam Reinhardt
Samuel.reinhardt@hisaus.org
Assistant General Counsel
Horseracing Integrity and Safety Authority
401 W. Main Street
Suite 222
Lexington, KY 40507

/s/ Bryan Beauman
Enforcement Counsel