

**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**

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**AUTHORITY'S RESPONSE TO OCTOBER 29, 2024  
ORDER (1) DIRECTING BRIEFING ON QUESTIONS OF JURISDICITON  
AND (2) STAYING PROCEEDINGS**

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The Horseracing Integrity and Safety Authority, Inc. (the "Authority"), submits the following in response to the October 29, 2024 Order (1) Directing Briefing on Question of Jurisdiction and (2) Staying Proceedings.

**1. The Authority Did Not File an Application for Review in Connection with this Matter.**

On October 18, 2024, the Horseracing Integrity & Welfare Unit ("HIWU"), pursuant to 15 U.S.C. §3051 et seq., 5 U.S.C. §556 et seq., and 16 C.F.R. §1.145 et seq., submitted an Application for Review of Final Civil Sanction as a "person aggrieved" by 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") ("HIWU's Application"). Pursuant to 16 C.F.R. §1.146(a)(1), the Authority, on October 28, 2024,

filed a timely Response in Support of HIWU's Application for Review of Final Civil Sanctions (the "Response in Support").

Thereafter, the Appellant, Dr. Scott Shell, DVM (the "Appellant"), filed a Motion to Strike the Authority's Response in Support, arguing that the Response in Support constitutes "an unauthorized, time barred Supplemental Filing" and "is a defective attempt to end-run around the 30-day statute of limitations, which requires that an 'application must: be filed within 30 days of the submission of the notice of civil sanctions under § 1.145.'" See Respondent's Motion to Strike the Appeal Filed by HIWU and the Time Barred Attempt by the Authority to Appeal.

The Appellant misconstrues the nature of the Response in Support. Contrary to Appellant's assertion, the Response in Support is not a new or distinct Application for Review subject to the 30-day period established in 16 C.F.R. § 1.146(a). Instead, the Response in Support was filed in response to an "Application by aggrieved person", filed by HIWU, as expressly permitted under 16 C.F.R. §1.146(a)(1) (emphasis added):

**Within 10 days of being served with the application** [filed by an aggrieved person], **the Authority may file a response** limited to no more than 1,000 words stating the reasons the sanction should be upheld and whether an evidentiary hearing conducted by the Administrative Law Judge is either unnecessary, or necessary to supplement or to contest facts in the record found by the Authority.

In accordance with 16 C.F.R. §1.146(a)(1), the Authority filed a response "within 10 days of being served with [HIWU's] application" supporting HIWU's request for a *de novo* review of the Decision for the reasons set forth in HIWU's Application and the Response in Support. Appellant's contention that the Authority

has filed an untimely Application for Review is flatly wrong. Therefore, the Appellant's Motion to Strike must be denied.

**2. The Horseracing Integrity & Welfare Unit is a Separate, Independent Entity That Implements and Administers the Authority's Anti-Doping and Medication Control Program.**

The Authority is a “private, independent, self-regulatory, nonprofit corporation” recognized by the Horseracing Integrity and Safety Act of 2020 (the “Act”) “for purposes of developing and implementing a horseracing anti-doping and medication control program and a racetrack safety program for covered horses, covered persons, and covered horseraces.” 15 U.S.C. § 3052(a). With respect to the Authority's Anti-Doping and Medication Control (“ADMC”) Program, the Act requires the Authority to enter into an agreement with an anti-doping and medication control enforcement agency to “serve as the *independent* anti-doping and medication control enforcement organization for covered horses, covered persons, and covered horseraces, implementing the anti-doping and medication control program on *behalf of the Authority.*” 15 U.S.C. § 3054(e)(1)(E)(i) (emphasis added).

The Act further instructs the Authority to “seek to enter into an agreement with the United States Anti-Doping Agency” to implement and enforce the Authority's ADMC Program. 15 U.S.C. § 3054(e)(1)(A). However, if the Authority is unable to enter into an agreement with the United States Anti-Doping Agency, the Act requires the Authority to “enter into an agreement” with another qualified entity “to act as the anti-doping and medication control enforcement agency under this

chapter for services consistent with the horseracing anti-doping and medication control program.” 15 U.S.C. § 3054(e)(1)(B).

In 2022, after the Authority was unable to reach an agreement with the United States Anti-Doping Agency, the Authority entered into an agreement with Drug Free Sport International (“DFSI”), to “serve as the *independent* anti-doping and medication control enforcement organization” for the Authority’s Anti-Doping and Medication Control (“ADMC”) Program. 15 U.S.C. § 3054(e)(1)(E)(i) (emphasis added); see “HISA Announces Partnership With Drug Free International In Anti-Doping Control”, Paulick Report, available at <https://paulickreport.com/news/the-biz/hisa-announces-partnership-with-drug-free-international-in-anti-doping-control>.

DFSI is a worldwide leader in the sport drug testing industry and maintains enforcement partnerships with leading sports organizations, including the National Football League, NCAA, National Basketball Association, Ladies Professional Golf Association, PGA Tour, NASCAR and Major League Baseball. See <https://www.hiwu.org/about>. In 2022, DFSI established HIWU, led by a five-member Advisory Council, to serve as the Anti-Doping and Medication Control (“ADMC”) enforcement agency for the Authority. *Id.*

As the independent enforcement agency, HIWU is responsible for, among other things, (1) conducting and overseeing ADMC Results Management, including independent investigations, charging and adjudication of potential ADMC rule violations, and the enforcement of any civil sanctions for such violations; (2) performing and managing test distribution planning, the sample collection process,

and in-competition and out-of-competition testing; and (3) accrediting, monitoring, testing, and auditing testing laboratories. 15 U.S.C. § 3055(c)(4)(B)-(D). The rules comprising the Authority's ADMC Program make clear that HIWU is responsible for carrying out these functions of the ADMC Program. *See* Rule 3010(e) ("The Protocol will be implemented and enforced *on behalf of the Authority* by an anti-doping and controlled medication enforcement agency known as the Horseracing Integrity and Welfare Unit ("Agency")) (emphasis added); *see* Rule 3241 (the Agency conducts Results Management); Rule 6316 (test results are reported only to the Agency); Rule 3132 ("Only the Agency . . . may initiate and direct Testing on Covered Horses."); Rule 5720 ("The Agency shall conduct, direct, and manage all investigations under the [ADMC Program]").

The Agency has the sole discretion to determine when there is sufficient evidence to determine whether a potential violation of the ADMC Program has occurred: "At such time as the Agency is satisfied that it has sufficient evidence to establish that an Anti-Doping Rule Violation occurred, it shall promptly send an EAD Notice to the relevant Covered Person and each Interested Party." *See* Rule 3244. The Authority is first notified of the potential violation when it receives a copy of the Notice Letter as an "Interested Party" to the proceeding. *Id.*

The Covered Person is then permitted an opportunity to provide an explanation for the alleged violation within a deadline set by the Agency. Rule 3245(a)(5). If, after receipt of the Covered Person's explanation, "the Agency remains satisfied that the Covered Person has committed an Anti-Doping Rule Violation(s),

the Agency shall promptly charge the Covered Person with the asserted Anti-Doping Rule Violation(s).” Rule 3248.<sup>1</sup> The Authority is provided a copy of the Charge Letter as an “Interested Party.” *Id.*

When HIWU charges the Covered Person with an Anti-Doping Rule Violation, HIWU initiates proceedings with the Arbitral Body. *See* Rule 7060. The Authority is neither made a party to the proceedings nor is it permitted to participate in the proceedings. Instead, at such time as the proceedings are initiated, the “Owner and the Authority shall be invited to join in the proceedings as observers and, if accepted as such, receive copies of the filings in the case.” Rule 7060(a). The Authority is notified of the final decision at the same time as the Covered Person and the Agency. *See* Rule 7370 (“Interested Parties shall also be notified of the final decision.”).

As required under the Act, the Authority has designated HIWU to serve as the independent enforcement agency responsible for implementing and administering the ADMC Program. As set forth above, HIWU functions independently of the Authority in executing its duties and responsibilities as the enforcement organization for the ADMC Program.

### **3. The Authority is Legally Bound to Impose Civil Sanctions Determined Thorough Arbitration.**

Consistent with the Act, Anti-Doping Rule violations under the ADMC Program are adjudicated by an independent arbitral body (the “Arbitral Body”). *See* 15 U.S.C. § 3057(c)(3) (the rules established as part of the Authority’s ADMC Program

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<sup>1</sup> In the Charge Letter, HIWU is required to set out the violation(s) that the Covered Person is charged with having committed, a summary of the relevant facts upon which the charge is based, the applicable consequences, and more. *See* Rule 3248.

“shall provide for adequate due process, including impartial hearing officers or tribunals commensurate with the seriousness of the alleged safety, performance, or anti-doping and medication control rule violation and the possible civil sanctions for such violation.”); *see also*, Rule 7030. Anti-Doping Rule Violations, such as those at issue in this matter, “shall be adjudicated” by the Arbitral Body, which is administered by JAMS, an independent arbitration provider. Rule 7020(a). JAMS is solely responsible for assigning a member of the Arbitral Body to preside over a case concerning an Anti-Doping Rule Violation. *Id.*

A member of the Arbitral Body “may grant any remedy or relief authorized by the Act or the Rules issued pursuant to the Act.” Rule 7350. A final decision concerning an Anti-Doping Rule violation must be in writing and signed by a member of the Arbitral Body. Rule 7340. The Authority, as an “Interested Party”, is notified of the final decision at the same time as the Covered Person and the Agency. *See* Rule 7370(a). Within 7 days of the issuance of the final decision, the parties to the proceeding “may request the Arbitral Body . . . to correct any clerical, typographical or computational errors in the final decision.” Rule 7380. Outside of Rule 7380, there are no rules permitting the Covered Person, Agency, or Interested Parties to request that the final decision be altered, amended, or vacated. The decision “is final and binding” and the Authority is required to promptly submit notice of the decision to the Federal Trade Commission. *See* Rule 3263; 15 U.S.C. § 3058(a); 16 C.F.R. § 1.145(a). The decision is “subject to review in accordance with section 3058 of the Act.” *See* Rule 3264, Rule 7020(c), and Rule 7400; *see also*, 15 U.S.C. § 3058(b).

The Authority is legally bound to impose civil sanctions determined through arbitration. There is nothing in the Act or the rules comprising the ADMC Program that gives the Authority the discretion to modify a member of the Arbitral Body's final decision. Instead, the decision is "final and binding" and any further review of the sanctions must be made in accordance with 15 U.S.C. § 3058(a) and the associated procedural rules established in 16 C.F.R. §1.145 et seq.

Respectfully submitted,

STURGILL, TURNER, BARKER & MOLONEY,  
PLLC

*/s/ Bryan 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 Response is being served on November 12, 2024, via Administrative E-File System and by emailing a copy to:

Office of Administrative Law Judges  
Federal Trade Commission  
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Washington DC 20580  
Via e-mail to [Oalj@ftc.gov](mailto:Oalj@ftc.gov)

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