UNITED STATES OF AMERICA BEFORE THE FEDERAL TRADE COMMISSION OFFICE OF ADMINISTRATIVE LAW JUDGES FTC DOCKET NO. 9438

ADMINISTRATIVE LAW JUDGE: IN THE MATTER OF:	HON. JAY L. HIMES

THE AUTHORITY'S SUPPORTING LEGAL BRIEF

Comes now the Horseracing Integrity and Safety Authority, Inc. pursuant to the briefing schedule of the Administrative Law Judge, dated November 1, 2024, and submits the following Supporting Legal Brief.

CERTIFICATE OF SERVICE

Pursuant to Federal Trade Commission Rules of Practice 4.2(c) and 4.4(b), a copy of this Authority's Supporting Legal Brief is being served on November 18, 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: Oalj@ftc.gov

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

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Attorney for Appellant

/s/ Bryan Beauman

Enforcement Counsel

INTRODUCTION

This proceeding concerns a review initiated by Trainer Michael Hewitt ("Appellant"), challenging the finding that he violated provisions of the Horseracing Integrity and Safety Authority, Inc.'s (the "Authority") Anti-Doping and Medication Control ("ADMC") Program.

On October 2, 2024, Internal Adjudication Panel Member Edward J. Weiss (the "IAP"), appointed by the Horseracing Integrity & Welfare Unit ("HIWU" or the "Agency"), issued an Amended Decision (the "Amended Final Decision")¹ under the ADMC Program Rules (the "Rules"). The Amended Final Decision concluded that Appellant violated Rule 3312², under which Appellant is "strictly liable for any Controlled Medication Substance or its Metabolites or Markers found to be present in a Post-Race Sample collected from his or her Covered Horse(s)." The IAP found that Capsaicin, a Class B Controlled Medication Substance, was present in Shacks Way's Post-Race blood Sample, designated as Sample #B100642313, collected following Race 9 at Oaklawn Park in Hot Springs, Arkansas on April 7, 2024, and thus, that Appellant had committed a Controlled Medication Rule Violation ("CMRV").³

The IAP imposed a civil sanction inclusive of a fifteen-day period of Ineligibility, a \$1,000 fine, assignment of 2 penalty points, Public Disclosure, and Disqualification of Shacks Way's results obtained in Race 9 at Oaklawn Park in Hot Springs, Arkansas on April 7, 2024 (the "Consequences"). Appellant presented no evidence to the IAP which would warrant the mitigation of the civil sanctions imposed.

On October 10, 2024, Appellant filed an Application for Review requesting an evidentiary hearing. Appellant also filed a Motion to Stay Enforcement of the Consequences imposed under the Amended Final Decision. On November 1, 2024, Appellant's Application

¹ Proposed Finding of Fact ("PFF") 18, Appeal Book 2 ("AB2") 143-149 (Amended Final Decision).

² References to ADMC Program Rules in this brief refer to the Horseracing Integrity and Safety Act of 2020, as Amended (the "Act"), and codified at 88 Fed. Reg. Vol. No. 17, 5084, et. seq.

³ PFF 19; AB2 pp. 143-149 (Amended Final Decision).

⁴ PFF 21; AB2 p. 149 § 8 (Amended Final Decision).

for a Stay and request for an evidentiary hearing were denied.⁵ Thus, this review proceeds based upon the existing factual record and only concerns whether Appellant can establish that he was improperly found to have violated Rule 3312 or that the Consequences imposed on him are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

Based upon the existing factual record, it is evident that Appellant violated Rule 3312. Appellant has not submitted any evidence to reduce his degree of Fault, let alone any evidence establishing that the Amended Final Decision of the IAP was arbitrary, capricious, an abuse of discretion, prejudicial, or otherwise not in accordance with the law.⁶ Further, the Consequences were imposed in accordance with Rules 3321-3323 and 3328 and are rationally connected to the relevant evidence. Therefore, the sanctions should be affirmed.

I. Procedural and Factual History

On April 7, 2024, Shacks Way participated in Race 9 at Oaklawn Park in Hot Springs, Arkansas, and placed first. Following Race 9, HIWU Sample Collection Personnel collected a blood Sample designated #B100642313 from Shacks Way. Shacks Way's A Sample was sent to Industrial Laboratories ("Industrial") in Denver, Colorado for analysis. Industrial analyzed the Post-Race blood A Sample in accordance with the Equine Standards for Laboratories and Accreditation and detected Capsaicin. Capsaicin is a Category S7, Class B Controlled Medication on the Prohibited List and its Technical Document. On April 24, 2024, Appellant was issued an Equine Controlled Medication ("ECM") Notice of Alleged Rule

⁵ November 1, 2024, Order on Application for Review and on Application for Stay of Enforcement ("**November 1 Order**").

⁶ 15 U.S.C. § 3058(b)(2)(A)(iii).

⁷ PFF 2; Appeal Book 1 ("AB1") p. 49 (Equibase Chart); AB2 p. 145 § 3A (Amended Final Decision).

⁸ PFF 3; AB1 p. 51 (Sample Collection Form); AB2 p. 145 § 3A (Amended Final Decision).

⁹ PFF 4; AB2 p. 145 § 3A (Amended Final Decision); AB2 p. 154 Lines 6-8 (Transcript, Heath); AB2 p. 155 Line 18 (Transcript, Heath); AB2p. 207 Line 5 (Transcript, Heath).

¹⁰ PFF 4; AB1 p. 53 (Industrial Certificate of Analysis); AB2 p. 145 § 3A (Amended Final Decision).

¹¹ PFF 4; AB1 p. 6 (Notice Letter); AB1 p. 15 (Charge Letter); AB1 pp. 32, 40 (HIWU's Written Submission).

Violation (the "**Notice Letter**"), which informed him that he had potentially violated Rule 3312 because Capsaicin was detected in Shacks Way's Post-Race blood Sample. 12

Appellant requested the analysis of Shacks Way's B Sample. Shacks Way's B Sample was shipped to the Pennsylvania Equine Toxicology & Research Laboratory ("PETRL") in West Chester, Pennsylvania, solely to confirm the presence of Capsaicin, as required under Rule 6312(g). In accordance with the Equine Standards for Laboratories and Accreditation, as well as its Standard Operating Procedure, PETRL confirmed the presence of Capsaicin in Shacks Way's B Sample.¹³

On June 10, 2024, Appellant was issued an ECM Charge of Controlled Medication Rule Violation (the "Charge Letter") for the presence of Capsaicin in Shacks Way's Post-Race blood Sample #B100642313.¹⁴ In the Charge Letter, Appellant was given an option to admit the ECM Rule Violation or to request a hearing before the IAP.¹⁵ The deadline for either selection was June 17, 2024.¹⁶ On June 21, 2024, following the expiration of the deadline imposed by the Charge Letter, Appellant requested a hearing.¹⁷

Following Appellant's request for a hearing, HIWU initiated proceedings with the IAP pursuant to Rule 7020(b). Edward J. Weiss was appointed as the IAP member to preside over the hearing. A pre-hearing Scheduling Conference was held during which a written submissions schedule was set, and a hearing date was selected. Appellant's written submission was due on August 16, 2024, HIWU's written submission was due on September 6, 2024, and an evidentiary hearing was set for September 17, 2024. Appellant did not provide a written submission by the deadline of August 16, 2024. HIWU provided its written

¹² PFF 5; AB1 pp. 4-13 (Notice Letter).

¹³ PFF 7; AB1 p. 66 (PETRL Certificate of Analysis).

¹⁴ PFF 8; AB1 pp. 15-24 (Charge Letter).

¹⁵ PFF 8; AB1 p. 16-17 (Charge Letter).

¹⁶ PFF 8; AB1 pp. 17-18 (Charge Letter).

¹⁷ PFF 9, AB1, p. 34 (HIWU's Written Submission).

¹⁸ PFF 9-10; AB2 p. 145 § 3A (Amended Final Decision).

¹⁹ PFF 10; AB2 p. 145 § 3A (Amended Final Decision).

²⁰ PF 11; AB2 p. 145 § 3A (Amended Final Decision).

submission on September 6, 2024.²¹ HIWU then filed a Motion for Default.²² Appellant responded to HIWU's Motion for Default on September 13, 2024.²³ The evidentiary hearing was held on September 17, 2024, as scheduled.²⁴ Present at the evidentiary hearing were: (1) Christy Heath, Litigation Counsel for HIWU; (2) John Mac Hayes, counsel for Appellant; (3) Appellant; and (4) Mr. Weiss, the IAP Member. Appellant testified at the evidentiary hearing, which was concluded in one day. No other witnesses testified.

The IAP issued a Decision on October 1, 2024.²⁵ In an email to all parties, HIWU requested modifications to the Decision pursuant to Rule 7380.²⁶ An Amended Final Decision incorporating HIWU's requested modifications was issued on October 2, 2024.²⁷ On October 4, 2024, HIWU issued a Notice of Final Sanctions Under the ADMC Program to Appellant.²⁸ Also, on October 4, 2024, the Authority issued a Civil Sanctions Notice to Appellant, which was also filed with the Secretary of the Commission.²⁹

On October 10, 2024, Appellant filed an Application for Review of Final Civil Sanctions and a Motion for Stay borne out of the Amended Final Decision.³⁰ The Authority filed its response to Appellant's Application for Stay on October 16, 2024,³¹ and its Response to Appellant's Application for Review on October 17, 2024.³²

On November 1, 2024, Judge Jay L. Himes issued an Order on Appellant's Application for Review and Application for Stay of Enforcement (the "Order"). The Order, in part, limits this review to briefing by the parties.

²¹ PFF 12; AB1 pp. 31-46 (HIWU'S Written Submission).

²² PFF 13; AB1 pp. 110-114 (Motion for Default Judgement).

²³ PFF 14; AB1 pp. 116-120 (Response to Motion for Default).

²⁴ PFF 16; AB2 p. 144 § 1 (Amended Final Decision).

²⁵ PFF 19; Authority's Response to Appellant's Application for Stay Exhibit 2a.

²⁶ PFF 20; Authority's Response to Appellant's Application for Stay Exhibit 2c.

²⁷ PFF 20; AB2 pp. 143-149 (Amended Final Decision).

²⁸ PFF 29; Authority's Response to Appellant's Application for Stay Exhibit 4.

²⁹ PFF 29; Authority's Response to Appellant's Application for Stay Exhibit 5.

³⁰ PFF 30; Application for Review of Civil Sanction and Motion to Stay.

³¹ PFF 31; Authority's Response to Appellant's Application for Stay.

³² PFF 31; Authority's Response to Appellant's Application for Review.

II. Applicable ADMC Program Rules and Jurisprudence

The Authority was created pursuant to the federal Horseracing Integrity and Safety Act of 2020, as amended (the "Act"), ³³ to implement a national, uniform set of integrity and safety rules that are applied consistently to every Thoroughbred racing participant and racetrack facility in the United States. ³⁴ Appellant trains horses defined as Covered Horses that participate in Covered Horseraces. As such, he is both a Responsible Person and a Covered Person who is bound by and subject to the Rules. It is not disputed that Shacks Way is a Covered Horse. Appellant was required to register, and did register, with HISA as a Covered Person, in accordance with ADMC Program Rule 9000. Under that rule, Appellant "agree[d] to be subject to and comply with the rules, standards, and procedures of the Authority developed and approved under 15 U.S.C. 3054(c)."

Under Rule 3070(b), the ADMC Program "shall be interpreted as an independent and autonomous text and not by reference to existing law or statutes." However, under Rule 3070(d), the World Anti-Doping Code (the "WADA Code"), the comments annotating provisions of the WADA Code, and any case law interpreting the WADA Code may be considered. The WADA Code contains very similar provisions to the ADMC Program with respect to No Fault and No Significant Fault. Jurisprudence interpreting those provisions is therefore useful. As noted in the Preamble to the ADMC Program, international doping standards "provide a robust anti-doping framework that has been tested before arbitration tribunals for many years" and which "has generated a well-developed body of precedent and guidance for interpreting the provisions."

The Amended Final Decision below concerned a Controlled Medication Substance Violation for the Presence of a Controlled Medication Substance in violation of Rule 3312.³⁶

³³ 15 U.S.C. 3051–3060.

³⁴ ADMC Program Rule 3010(a).

³⁵ 88 Fed. Reg. Vol. No. 17, 5073.

³⁶ PFF 20-21; AB2 pp. 143-149 (Amended Final Decision).

Rule 3312 imposes strict liability on the Responsible Person for which HIWU does not need to prove "intent, Fault, negligence, or knowing Use on the part of the Responsible Person." Appellant's Application for Review is based upon his argument that the Rules require written notice for the opening of a B Sample, which he did not receive.³⁷

The <u>required</u> sanctions for the presence of Capsaicin, a Category S7, Class B Controlled Medication Substance are: (1) a period of Ineligibility of 15 days for the Responsible Person; (2) a fine of \$1,000.00; (3) assignment of 2 penalty points; (4) Disqualification of Shacks Way's results obtained in Race 9 at Oaklawn Park in Hot Springs, Arkansas on April 7, 2024, and forfeiture of all purses, prizes, trophies, points, rankings, and repayment or surrender (as applicable) to the Race Organizer; and (5) Automatic Public Disclosure.

When a CMRV is established, a Covered Person *may* be entitled to the potential reduction of the Consequences where he is able to establish by a balance of the probabilities that he acted with either No Fault or Negligence (Rule 3324) or No Significant Fault or Negligence (Rule 3325). In order to establish either No Fault or Negligence or No Significant Fault or Negligence, the Covered Person must establish the source of the Controlled Medication Substance.³⁸ The ADMC Program provides that assessment of Fault is a specific and focused exercise which is concerned only with the Covered Person's actions leading up to the CMRV.³⁹

A Covered Person has the evidentiary burden to "adduce specific and competent evidence that is sufficient to persuade the Tribunal that the explanation advanced is more likely than not to be correct."⁴⁰ A determination of No Fault is rare and exceptional.⁴¹

³⁹ This is established in the definition of Fault provided in Rule 1020.

³⁷ PFF 30; Application for Review of Civil Sanction.

³⁸ Rules 3324 and 3325.

⁴⁰ <u>FEI v Aleksandr Kovshov</u>, FEI Tribunal Decision, dated 27 November 2012 at para. 18; *see also* <u>Khaled Abdullaziz Al Eid & Abdullah Waleed Sharbatly v. FEI, CAS 2012/A/2807 & 2808, at para. 10.8.</u>

⁴¹ FIS v Therese Johaug v NIF, CAS 2017/A/5015 ¶18: "CAS jurisprudence is very clear that a finding of No Fault applies only in truly exceptional cases."

III. The Amended Decision

The IAP Member found that Appellant had committed a Presence violation under Rule 3312.⁴² Appellant argued that because he did not receive written notice of the B Sample opening, that the Charge should be dismissed.⁴³ Appellant testified that he did not receive any notice of the B Sample opening and that if he had he would have attended.⁴⁴ Appellant testified that he would have attended based upon the lack of B Sample confirmation in two of his other cases.⁴⁵ HIWU cross-examined Appellant regarding the timeline surrounding his multiple B Sample openings, establishing that Shacks Way's B Sample opening occurred *prior to* the B Sample opening in his other matters.⁴⁶ The IAP Member rejected Appellant's argument and held that both the "argument and assertion were not credible given that Shacks Way's B Sample analysis predated the negative findings in the other two cases which [Appellant] claims prompted his desire to attend in person the analysis of Shacks Way's B Sample."⁴⁷

The IAP Member also found that Appellant failed to present "any evidence to challenge the findings of Capsaicin in the A and B Samples" and that Appellant did not meet "his burden to show by a balance of the probability that he did not commit the charged violation." As a result, Appellant was not entitled to *any* mitigation of potential Consequences.

The IAP Member summarized the testimony and evidence presented in detail, noting his considerations in rendering his decision.⁵⁰ The Amended Final Decision of the IAP was grounded in the following evidence (which has not been challenged on appeal):⁵¹

⁴² PFF 21; AB2 pp. 143-149 (Amended Final Decision).

⁴³ PFF 15; AB2 p. 145 § 3 (Amended Final Decision); AB2 p. 198 Lines 8-10 (Transcript, Hewitt).

⁴⁴ PFF 15, 25; AB2 pp. 143-149 (Amended Final Decision).

⁴⁵ PFF 15, 25-26; AB2 pp. 143-149 (Amended Final Decision).

⁴⁶ PFF 26; AB1 pp. 131-136.

⁴⁷ PFF 25-26; AB2 pp. 143-149 (Amended Final Decision).

⁴⁸ PFF 21; AB2 pp. 143-149 (Amended Final Decision).

⁴⁹ PFF 21; AB2 pp. 143-149 (Amended Final Decision).

⁵⁰ PFF 21-28; AB2 pp. 143-149 (Amended Final Decision).

⁵¹ PFF 3-4 & 24-27; AB2 pp. 143-149 (Amended Final Decision).

- 1) Capsaicin is a Class B Controlled Medication Substance;
- Capsaicin was present in Shacks Way's Post-Race Sample collected following Race
 at Oaklawn Park in Hot Springs, Arkansas on April 7, 2024;
- 3) Appellant established that he was not given written notice of the B Sample opening;
- 4) Appellant could not recall whether he received verbal notice of the B Sample opening;
- 5) Appellant's testimony that, had he received written notice, he would have availed himself of the opportunity to witness Shacks Way's B Sample opening was "not credible;"
- 6) The B Sample analysis for Shacks Way predated the B Sample analyses of Appellant's other two cases;
- 7) Appellant did not attend the B Sample opening for his two other cases;
- 8) Appellant did not show that it was more likely than not that he would have attended the B Sample Opening for Shacks Way if he had received written notice; and
- 9) Appellant failed to show how his presence at the B Sample opening "would have changed the result of the analysis of the B Sample."

The IAP found Appellant in violation of ADMC Program Rule 3312 based upon the evidence provided and testimony presented. The IAP held that, consistent with Rule 3122(d), failure to provide written notice of the B Sample opening could not "be a basis, by itself, to invalidate the violation" and that Appellant did not show that "the results would have been different" had he attended the B Sample opening.⁵² Thus, Appellant did not rebut the presumption that the Laboratories conducted analysis of Shacks Way's Sample in accordance with Laboratory Standards. Appellant did not establish that *any* departure from Laboratory Standards occurred that could have reasonably caused the Adverse Analytical Finding.

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⁵² PFF 27; AB2 pp. 143-149 (Amended Final Decision).

In rendering the Amended Final Decision, the IAP Member found that HIWU "established to a comfortable satisfaction [of the hearing Panel] that [failure to provide written notice of the B Sample opening] was not intentional [and that] there were numerous communications between counsel for HIWU and the Covered Person."⁵³ The IAP Member further opined that lack of written notice was "probably harmless as it was not likely the Covered Person would have traveled to Pennsylvania even if he had received written notice."⁵⁴

IV. The Standard of Review

Pursuant to 15 U.S.C. § 3058(b)(1), whether Appellant violated Rule 3312 is a determination made *de novo* by an Administrative Law Judge ("ALJ") of the Commission. Where no facts are sought to be supplemented or contested, such determination is made on the basis of the existing factual record. A civil sanction imposed by the Authority is also subject to *de novo* review by an ALJ. However, the review is limited to a determination of whether "the final civil sanction of the Authority was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." Despite the fact that the ALJ conducts an independent review of the record, ⁵⁶ a decision or sanction will not be considered arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law where (i) the decision abides by the applicable rules, ⁵⁷ and (ii) the sanction is rationally connected to the facts. ⁵⁸ Similarly, to find an abuse of discretion, the record must reveal a clear error of judgment. ⁵⁹ This standard of review has been confirmed in recent Commission appeals from civil sanctions imposed by the Authority, *In Re Jeffrey Poole*⁶⁰ and *In Re Luis Jorge Perez*. ⁶¹

⁵³ PFF 25; AB2 pp. 143-149 (Amended Final Decision).

⁵⁴ PFF 26; AB2 pp. 143-149 (Amended Final Decision).

⁵⁵ 15 U.S.C. § 3058(b)(2)(A)(iii).

⁵⁶ Agyeman v. INS, 296 F.3d 871, 876 (9th Cir. 2002).

⁵⁷ Guier v. Teton County Hosp. Dist., 2011 WY 31, 248 P.3d 623 (Wyo. 2011).

⁵⁸ Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29 (1983); Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402 (1971).

⁵⁹ Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv., 422 F.3d 782, 798 (9th Cir. 2005).

⁶⁰ Docket No. 9417, November 13, 2023.

⁶¹ <u>Docket No. 9420</u>, February 7, 2024.

V. None of Appellant's Alleged Errors Could Have "Reasonably Caused" an AAF

Under Rule 3122(c), the two Laboratories that conducted analysis of Shacks Way's A Sample and B Sample are presumed to have conducted the Sample analysis and custodial procedures in accordance with the Laboratory Standards. Appellant, in alleging a violation, may rebut this presumption only by establishing that a departure from *the Laboratory Standards* occurred that could have reasonably caused the presence of Capsaicin in the Sample. Appellant claimed that he was entitled to a dismissal because he did not receive written notice of the B Sample opening. As the IAP correctly found, Appellant "did not meet his burden to show that he was deprived an opportunity of which he probably would have availed himself and that probably would have changed the result of the analysis of the B Sample." Appellant did not submit any evidence to show that his failure to attend the B Sample opening "could reasonably have caused the Adverse Analytical Finding or other factual basis for any other violation asserted."

"Departures from any other Standards or provisions of the Protocol shall not invalidate analytical results or other evidence of a violation, and shall not constitute a defense to a charge of such violation." The Rules do <u>not</u> specify that a Responsible Person be given *written* notice of the B Sample opening. He Rules are silent as to the method of such notification, stating only that the Responsible Person and Owner *will be notified* of the date, time, and place where the B Sample will be analyzed. Appellant was notified orally of the B Sample opening in one of many telephone conversations he had with HIWU Litigation Counsel, and the Rules

⁶² Rule 3122.

⁶³ PFF 24; AB2 pp. 143-149 (Amended Final Decision).

⁶⁴ Rule 3122.

⁶⁵ Rule 3122.

⁶⁶ Rules 3346 and 3345(a)(4)(iii); see the November 1 Order at pg. 8.

⁶⁷ Rules 3346 and 3345(a)(4)(iii).

⁶⁸ PFF 25; AB1 pp. 122-124; AB2 pp. 46-47, lines 23-4 (Transcript, Hewitt).

permit actual or constructive notice.⁶⁹ Further, the IAP found Appellant's testimony "not credible," ⁷⁰ and therefore his testimony that he did not receive notice of the B Sample opening and that he would have attended if he had should be disregarded. Appellant cannot show that a departure from *any* Standard or provision of the Protocol occurred.

VI. Appellant is Not Entitled to Any Reduction in Sanctions and the Consequences are Rationally Connected to the Evidence

Appellant has failed to establish that the Consequences imposed against him are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. In order to receive reduced sanctions, Appellant must show that he bears No Fault or Negligence or No Significant Fault or Negligence under Rules 3324 and 3325, respectively.

For a finding of No Fault or Negligence to be applied, Appellant must establish how the Controlled Medication Substance entered the Covered Horse's system. This is a *precondition* for application of this Rule. Appellant presented *no* testimony or evidence regarding how Capsaicin entered Shacks Way's system. Because Appellant could not establish how Capsaicin entered Shacks Way's system, it is "simply unfeasible to discuss a reduction." The WADA Code contains a commentary that underlines the <u>exceptional standard</u> that must be met to accord with this threshold (emphasis added):

[A reduction of sanctions due to No Fault or Negligence] will only apply in exceptional circumstances, for example, where an Athlete could prove that, despite all due care, he or she was sabotaged by a competitor.⁷⁴

Appellant also provided no evidence with respect to the standard for a finding of No Significant Fault or Negligence.⁷⁵ Under Rule 1020, "Fault" is "any breach of duty or any lack

⁶⁹ Rule 3350(b).

⁷⁰ PFF 26; AB2 pp. 143-149 (Amended Final Decision).

⁷¹ Rule 3324(a).

⁷² Rule 3324(a).

⁷³ WADA v. Elsalam, CAS 2016/A/4563 at para. 63; see also <u>International Wheelchair Basketball Federation v UK Anti-Doping & Simon Gibbs</u>, CAS 2010/A/2230 at paras. 12.19-12.20.

⁷⁴ WADA Code, note 65.

⁷⁵ Rule 3325(c).

of care appropriate to a particular situation." The Rule further provides that a Covered Person's degree of Fault involves an assessment of the individual's experience, the "degree of risk that should have been perceived" by individual, and "the level of care and investigation exercised by" the individual with respect to that risk. Other factors also include, with respect to a Covered Person's employees, whether the Covered Person conducted due diligence in hiring them and properly "educated, supervised, and monitored" them in order to ensure compliance with the ADMC Program. ⁷⁶ In addition, "the circumstances considered must be specific and relevant to explain the Covered Person's departure from the expected standard of behavior." Appellant has submitted *no* evidence addressing the considerations relevant to Fault.

Thus, the IAP reasonably concluded that Appellant failed to establish that he bears No Fault or Negligence or No Significant Fault or Negligence. Because Appellant failed to establish that he was entitled to a reduction in Consequences, it was incumbent upon the IAP to impose the default civil sanctions. The Consequences imposed are therefore rationally connected to the evidence and in accordance with ADMC Program Rule 3323(b).

CONCLUSION

The Amended Final Decision properly considered and applied the Rules in finding that Appellant had violated Rule 3312 for the Presence of a Class B Controlled Medication Substance in his Covered Horse's Sample and imposing civil sanctions in accordance with Rule 3323(b). The IAP's findings and Consequences imposed are consistent with the statutory framework, rationally connected to the evidence, and were made with adequate consideration of the circumstances. The imposed civil sanctions should be affirmed, and the appeal should be dismissed.

⁷⁶ Rule 1020, Definition of "Fault."

⁷⁷ Rule 1020, Definition of "Fault."

PUBLIC

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 18th DAY OF NOVEMBER, 2024

/s/Bryan H. Beauman

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