

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Lina M. Khan, Chair
Rebecca Kelly Slaughter
Alvaro M. Bedoya
Melissa Holyoak
Andrew N. Ferguson

In the Matter of)
)
Jonathan Wong,) Docket No. 9426
)
Petitioner.)

DECISION OF THE COMMISSION ON APPLICATION FOR REVIEW UNDER
15 U.S.C. § 3058

Pursuant to the Horseracing Integrity and Safety Act, 15 U.S.C. § 3051 *et seq.* (“the Act”), trainer Jonathan Wong (“Mr. Wong”) has petitioned the Federal Trade Commission (“the Commission” or “the FTC”) to review the decision issued on April 22, 2024, by FTC Chief Administrative Law Judge D. Michael Chappell (“the ALJ”), affirming the finding of liability and final civil sanctions imposed on Mr. Wong by the Horseracing Integrity and Safety Authority (“the Authority”) for violations of the Authority’s Anti-Doping and Medication Control (“ADMC”) Rules. For the reasons explained below, the petition is DENIED.

Factual Background and Arbitrator’s Decision

This matter arises from the presence of the banned substance Metformin in blood and urine samples taken from the racehorse Heaven and Earth following a race at Horseshoe Indianapolis on June 1, 2023. Mr. Wong was the trainer of Heaven and Earth. After the results of those samples were confirmed by separate laboratories, the Horseracing Integrity and Welfare Unit (“HIWU”) referred the matter to arbitration pursuant to the Authority’s Rules. Following a hearing in January 2024, the arbitrator issued a decision finding that Mr. Wong had violated ADMC Rule 3212(a) because the banned substance Metformin was present in Heaven and Earth’s blood and urine samples. The arbitrator rejected Mr. Wong’s challenges to the integrity

and reliability of the testing procedures at two of the three laboratories that analyzed Heaven and Earth's blood and urine samples. The arbitrator determined that the appropriate sanctions for the violation should be (1) a two-year period of ineligibility beginning on July 1, 2023, "with credit for time served"; (2) forfeiture of purses and other prizes stemming from Heaven and Earth's first-place finish on June 1, 2023, at Horseshoe Indianapolis; (3) a \$25,000 fine; and (4) payment of \$8000 of HIWU's share of the costs of the arbitration proceeding (as well as a share of certain other adjudication costs). *See* ADMC Rule 3223.

The ALJ's Decision

On February 14, 2024, Mr. Wong appealed the arbitrator's decision to the FTC's ALJ and requested a stay of the civil sanctions imposed. *See* 15 U.S.C. § 3058(b); FTC Rules 1.146(a), 1.148(b). On March 1, the ALJ entered an order denying Mr. Wong's request for a stay, concluding that Mr. Wong had failed to demonstrate a likelihood of success on his appeal or that any other factors weighed in favor of granting a stay. *See* FTC Rule 1.148(d). The order denying the stay also set a briefing schedule and directed the parties to submit proposed conclusions of law and supporting briefs.

In his brief, Mr. Wong argued that the required documentation accompanying the blood and urine samples failed to indicate that the samples were in cold storage in a manner consistent with the ADMC Rules. *See* ADMC Rule 5510. He also argued that the manner in which one of the urine samples was handled was not consistent with the Rules' requirements. *See* ADMC Rule 6305. Although the ALJ accepted as true Mr. Wong's claims regarding the storage and handling of the samples, the ALJ nevertheless rejected his challenge. As the ALJ noted, ADMC Rule 3122 places the burden on the covered person to demonstrate that any procedural irregularity "could reasonably have caused" an adverse analytical finding ("AAF"). Mr. Wong, who was represented by counsel, offered no evidence in this regard. As the ALJ observed, Mr. Wong "could have, but did not, proffer expert opinion as to whether the failure to refrigerate the blood sample, or to refrigerate or freeze the urine sample, could reasonably have led to an incorrect [AAF]." Neither did Mr. Wong offer expert testimony on how the handling of the urine sample could have resulted in an incorrect AAF.¹ The ALJ therefore rejected Mr. Wong's claims regarding storage and handling of the samples.

Mr. Wong also argued that the Authority had failed to comply with its Rule 6315, which requires that two scientists conduct "an independent review of all [AAFs] before a result is reported." According to Mr. Wong, one of the scientists who reviewed the findings also took part in the initial testing procedure. The ALJ rejected the argument that that scientist's participation in both the initial testing and the review procedure cast the AAF into doubt.

Further, Mr. Wong challenged the results of a further analysis of the samples ordered by the arbitrator, arguing that the further analysis was not contemplated under ADMC Rules. The

¹ By contrast, the Authority presented the arbitrator with expert testimony that the manner in which the urine sample was handled likely would not have affected the test results.

ALJ rejected that argument as not having been properly presented before the arbitrator. Even assuming that the argument had been raised, the ALJ rejected any claim of procedural irregularity because, again, Mr. Wong offered no evidence that it affected the outcome.

Finally, the ALJ noted that Mr. Wong did “not challenge the validity of the sanctions independently of his challenge to the analytical findings upon which the finding of liability was based,” and that thus there was “no basis presented by [Mr. Wong] to support a conclusion that the resulting sanctions were ‘arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.’” Mr. Wong now petitions the Commission for review of the ALJ’s decision.²

Mr. Wong’s Application for Review and the Authority’s Response

The Act gives the Commission discretion to grant or deny an aggrieved person’s petition for review of an adverse ALJ decision. 15 U.S.C. § 3058(c)(2)(C)(i). The Act provides:

In determining whether to grant such an application for review, the Commission shall consider whether the application makes a reasonable showing that—

- (I) a prejudicial error was committed in the conduct of the proceeding; or
- (II) the decision involved—
 - (aa) an erroneous application of the anti-doping and medication control or racetrack safety rules approved by the Commission; or
 - (bb) an exercise of discretion or a decision of law or policy that warrants review by the Commission.

15 U.S.C. § 3058(c)(2)(C)(ii); *see* FTC Rule 1.147(b)(4). Mr. Wong’s petition for review does not directly address these factors. Instead, the petition takes issue with several of the ALJ’s conclusions. First, Mr. Wong argues that, in light of the storage and handling irregularities mentioned above, the test results were inadmissible under the Authority’s Rules and therefore should not have been relied upon by the arbitrator or the ALJ. Second, he asserts (without meaningful elaboration) that the ALJ failed to “consider whether admitting the test results as evidence comported with due process [of] law.” Third, he argues that the ALJ improperly rejected on the basis of waiver his argument regarding whether the Authority’s Rules allowed the arbitrator to order the further analysis. Finally, he challenges the ALJ’s rejection of his claim that the “independent review” mandated in the Authority’s rules means that neither of the two scientists conducting the review may have participated in the initial test.

In its response, the Authority takes issue with each of Mr. Wong’s arguments. To summarize, the Authority argues that “[n]one of the alleged errors raised by [Mr. Wong] warrant review, and none go to the heart of the legal bases establishing [Mr. Wong’s] liability, as found in

² In his petition, Mr. Wong challenges only the finding of liability, not the specific sanctions imposed.

the Arbitrator’s Decision and affirmed by the ALJ’s decision.”

Commission Decision

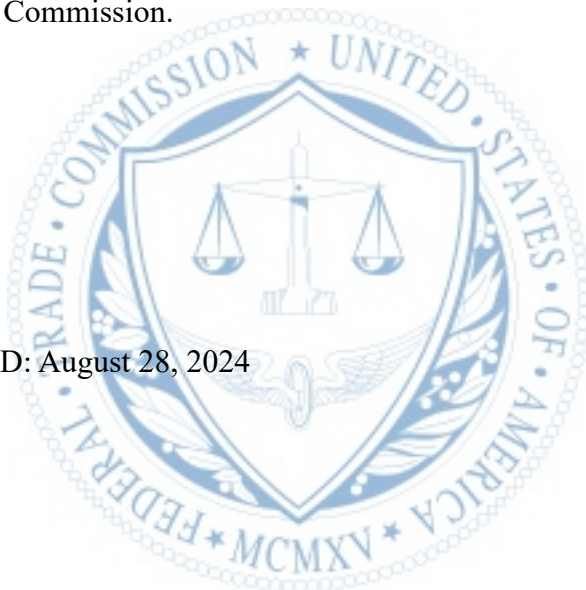
Having reviewed the entire record in this proceeding, and having considered the applicable standard of review, we conclude that Mr. Wong has failed to demonstrate that Commission review of the ALJ’s decision is warranted. Mr. Wong has not made a reasonable showing that a prejudicial error occurred in the conduct of the proceeding before the ALJ. Nor has he made a reasonable showing that the ALJ erred in his application of the Authority’s Rules.

We take particular note of Mr. Wong’s assertions regarding Rule 6315(b)’s requirement that at least two scientists conduct an “independent review” of all AAFs before a test result is reported. According to Mr. Wong, Rule 6315(b) required University of Illinois at Chicago lab Director Heffron to take no part in the review of the B sample because Heffron had already been involved in the initial testing of that sample. But even if we assume that Mr. Wong’s reading of Rule 6315(b) is correct, we see no reason to disturb the ALJ’s conclusions on this issue. Most important, Mr. Wong has not shown that his preferred version of adherence to the “independent review” requirement – which would have required that Heffron take no part in the review of the B sample because he was involved in the initial test – would have led to any different outcome in the testing and review process, particularly given that multiple tests by unrelated labs all yielded AAFs. *See* ADMC Rule 3122(c)-(d).

In sum, Mr. Wong has failed to show that the ALJ’s decision was an exercise of discretion or a decision of law or policy warranting Commission review. Moreover, even if we were to assume that it was error for Heffron to be involved in both the initial testing and the review of the B sample, the absence of any claimed – much less demonstrable – effect of such an error on the unambiguous test results in this case would make the matter an unsuitable subject for Commission review. Accordingly, the Commission DENIES Mr. Wong’s petition for review.

By the Commission.

SEAL:
ISSUED: August 28, 2024



April J. Tabor
Secretary