UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of	)	
Natalia Lynch,	)	Docket No. 9423
Appellant.	)	

ORDER SETTING EVIDENTIARY HEARING

A. Procedural Background

Appellant Natalia Lynch has filed a Notice of Appeal and Application for Review ("Application for Review") of the final civil sanctions imposed by the Horseracing Integrity and Safety Authority (the "Authority") under its Anti-Doping and Medication Control ("ADMC") Program. The final civil sanctions, further detailed below, were imposed by the Authority after an adjudication and decision by an arbitrator ("Arbitrator") appointed by the Authority's Horseracing Integrity Welfare Unit ("HIWU") (the "Decision").

The Decision found that Appellant violated: (1) Rule 3212 of the ADMC based upon the presence of Altrenogest in a sample collected from her horse, Motion to Strike, on June 24, 2023 (the "Presence" violation); and (2) Rule 3214(a) for possession of a prohibited substance Levothyroxine ("Thyro-L") on July 20, 2023 (the "Possession" violation). In furtherance of the Decision, HISA imposed civil sanctions consisting of:

(a) A suspension of 24 months for each violation, imposed consecutively, not concurrently;

(b) $25,000 for each violation;

(c) $2,500 in arbitration costs for each violation; and

(d) disqualification of Motion to Strike from the June 24, 2023 race at Monmouth Park, NJ, and forfeiture of all purses and other compensation obtained from the June 24, 2023 horse race.

Appellant requests *de novo* review of the civil sanctions, in accordance with 15 U.S.C. § 3058(b)(1)-(3) and 16 C.F.R. § 1.146(b). Appellant also requests an evidentiary hearing before an Administrative Law Judge of the FTC to contest the facts found by the Arbitrator and to

supplement the arbitration record with additional evidence. *See* 16 C.F.R. § 1.146(a)(1). The Authority filed a response to the Application for Review, requesting that the FTC uphold the Decision and deny Appellant's request for an evidentiary hearing as unnecessary ("Authority Response").

On December 28, 2023, in accordance with 16 C.F.R. § 1.146(c)(2), an Order was issued, determining that Appellant seeks to supplement the factual record and to contest facts found by the Arbitrator, and that an evidentiary hearing in this matter is warranted. Because Appellant's Application for Review was vague as to the nature of the contested facts and the requested supplemental evidence, the December 28 Order directed Appellant to detail any witness testimony or exhibits sought to be introduced—specifically, explaining "how such [testimony and exhibits] are supplemental to [that] already in the evidentiary record below, the basis for admissibility, and how such [testimony and exhibits] are relevant to the reasons for challenging the sanctions." The December 28 Order further directed Appellant to "submit a statement of the facts found by the Arbitrator that Appellant seeks to contest in the requested evidentiary hearing, together with a demonstration as to how such facts are material to the Decision."

In response, Appellant filed a Statement of Contested Facts and Specification of Evidence ("Statement") that suggests an appeal proceeding well beyond that contemplated by either the HISA rules or the December 28 Order. Consistent with that objective, however, Appellant, by footnote, requests an extended hearing or, alternatively, an enlargement of hearing time. *See* 16 C.F.R. § 1.146(c)(4) & (5). The Authority responded to Appellant's Statement, asserting that the appeal should proceed on written briefs only.

B. Applicable Rules

FTC Rule 1.146(c)(5) provides, in pertinent part:

> In an application for review, an aggrieved person may request an extended hearing before the Administrative Law Judge to supplant facts found by the Authority. The extended hearing may last up to 40 hours. To receive an extended hearing, the aggrieved person must make a proffer of weighty, probative, and substantial evidence and compelling argument in support of its contention that the disciplinary process before the Authority failed to comply with the requirements of 15 U.S.C. 3057(c) or of the Authority's Rule Series 8300, or that prejudicial errors, procedural irregularities, or conflicts of interest were present in, or committed during, the Authority's proceeding and resulted in a failure to provide the "adequate due process" required under section 3057(c)(3). Extended hearings are disfavored and granted only in these circumstances.

16 C.F.R. § 1.146(c)(5). Section 3057(c)(3) of Title 15, referenced in Rule 1.146(c)(5), states, in relevant part, that the ADMC rules and disciplinary process for violations must "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."

C. Arguments of the Parties

In her Application for Review, Appellant argues that the proceeding below denied her adequate due process, as required by 15 U.S.C. § 3057(c)(3), because the Arbitrator improperly excluded evidence and relied on improperly obtained evidence. To support her request for an extended hearing, Appellant asserts in her Statement that the Authority failed to provide her with laboratory documentation packages in conjunction with both the Presence and Possession charging letters issued by HIWU, which Appellant contends are required by ADMC Rule 3248(b).

Appellant further contends that the Authority withheld exculpatory information probative of the source for Altrenogest in Motion to Strike, and that the Arbitrator erroneously foreclosed Appellant from introducing evidence on this issue at the arbitration hearing. Specifically, Appellant asserts that on June 24, 2023, Appellant shipped Motion to Strike to trainer Bruno Tessore at Monmouth Park, and Tessore saddled the horse for a race there that day. According to Appellant, HISA charged Tessore with a presence violation based on a finding that another horse, kept by Tessore in the same Monmouth Park barn as Motion to Strike, tested positive for Altrenogest. *See* Statement at 16-18.

The Authority responds that Appellant was fully afforded her due process rights to call witnesses and offer evidence in the arbitration, and that the Authority was under no obligation to disclose information regarding the presence of Altrenogest in another horse at Tessore's barn at Monmouth Park. The Authority also argues that the laboratory documentation requirements of ADMC Rule 3248(b) only apply to the Presence charge, and not to the Possession charge. Lastly, the Authority argues that: (1) matters that Appellant now seeks to supplement were adequately presented during the arbitration; and (2) where Appellant's arguments were not raised in the arbitration, Rule 1.146(a)(1) precludes them from being raised now.

D. Analysis

To support her extended hearing request, Appellant argues, in substance, that "prejudicial errors and procedural irregularities" occurred in the arbitration, allegedly resulting in a failure to provide adequate due process under 15 U.S.C. § 3057(c)(3). However, Appellant has failed to proffer "weighty, probative, and substantial evidence and compelling argument in support of [this] contention[,]" as required by Rule 1.146(c)(5).

a. Laboratory Documentation Packages

Appellant has not alleged or demonstrated that during the arbitration, she raised the claim that the Authority failed to provide her with required laboratory documentation packages. Moreover, Appellant is precluded from raising this claim on appeal by Rule 1.146(a)(1), which provides that, "[e]xcept for good cause shown, no assignment of error by the aggrieved party may rely on any question of fact or law not presented to the Authority." 16 C.F.R. § 1.146(a)(1). Appellant has failed to assert or establish good cause for failing to raise these alleged deficiencies below.

Equally important, the alleged laboratory documentation argument now raised by Appellant lacks merit for additional reasons.

The Possession charge: First, Appellant has never disputed that Thyro-L was found in the trunk of the car she drove to Belmont Park on July 20, 2023. To the contrary, she admitted determining, months earlier, that she had the substance and that it needed to be discarded. *See, e.g.,* HISA Appeal Book ("HAB") 2790-91, 2818-19, 2902-03. *See also id*. 195-96 (Uncontested Stipulation of Fact ¶¶ 8 & 11).[1]

Second, ADMC Rule 3248(b), upon which Appellant relies, does not apply to the Possession charge. The ADMC Rule 1020 includes the following definitions:

- **Laboratory Documentation Package** - "the physical or electronic material produced by a Laboratory upon reporting of an **Adverse Analytical Finding**...."

- **Adverse Analytical Finding** - "a report from a Laboratory that, consistent with the Laboratory Standards, establishes in a **Sample** the Presence of a Prohibited Substance or its Metabolites or Markers or evidence of the Use of a Prohibited Method."

- **Sample** - "any **biological material** collected for the purposes of Doping Control or Medication Control, **including urine, blood, and hair**."

(Emphasis added). The factual basis for the Possession charge was the testing of a **non**-biological substance, Thyro-L. Correspondingly, there was no associated Adverse Analytical Finding ("AAF"), a condition required to create a "Laboratory Documentation Package." Appellant's argument therefore fails.

The Presence charge: Two independent laboratories confirmed the presence of Altrenogest in Motion to Strike, and such presence is undisputed. *See, e.g,* HAB 358 & 448 (Laboratory test results), 195 & 196 (Uncontested Stipulation of Fact ¶¶ 5, 9, 14). ADMC Rule 3122(d) provides, in summary, that laboratory testing "[d]epartures" do not "invalidate analytical results" or "constitute a defense" unless Appellant "establishes that a departure . . . **could reasonably have caused** the Adverse Analytical Finding ["AAF"] or other factual basis for the violation charged . . . ." *Id.* (emphasis added). Appellant has failed to identify any alleged laboratory deficiency, much less one that "could reasonably have caused" the AAF underlying the Presence charge. Speculation is neither a defense nor a basis for supplementation.

[1] On March 25, 2024, Appellant sent an unsigned, emailed letter to the Administrative Law Judge raising additional matters involving the laboratory that reported a finding of Thyro-L. Although litigation by letter is improper and is discouraged, Appellant's further speculation about laboratory deficiencies does not detract from the undisputed evidence from Appellant herself that she knew she had the banned substance Thyro-L, claimed to have sought to dispose of it, and was, indeed, "negligent" in not doing so. HAB 2710.

b. Potential Cross-Contamination at Monmouth Park

Appellant also argues that the Arbitrator and the Authority erroneously foreclosed her from raising evidence demonstrating that trainer Tessore's barn at Monmouth Park was a potential source for cross-contamination. Appellant has not supported this argument with evidence sufficient to establish "prejudicial errors and procedural irregularities" that amount to a due process violation. However, the Authority has not denied that it charged Tessore with a violation involving Altrenogest, which allegedly was present in another horse stalled in the same barn as Motion to Strike. Accordingly, Appellant has presented sufficient grounds to warrant supplementing the record at an evidentiary hearing, as detailed below.

In reaching this determination, I decline to resolve: (1) whether the Authority had an obligation to provide exculpatory evidence to Appellant; or (2) whether, even if there were such an obligation, the asserted facts involving Tessore would require disclosure. It suffices to say that, here, a confluence of alleged facts, probative of Appellant's cross-contamination argument, justifies a more searching inquiry than was afforded in the arbitration.

E. Date and Scope of Hearing

In summary, Appellant has failed to provide weighty, probative, or substantial evidence to support a due process violation. As "[e]xtended hearings are disfavored and granted only in these circumstances," 16 C.F.R. § 1.146(c)(5), Appellant's request for an extended hearing is DENIED.

It is hereby ORDERED that:

1. The evidentiary hearing will take place on April 10, 2024, commencing at 9:00 a.m., Eastern Time.

2. The evidentiary hearing will be limited to presenting evidence and argument probative of the likelihood that the presence of Altrenogest in Motion to Strike on June 24, 2023 arose from "cross-" (or "environmental") contamination from trainer Tessore's Monmouth Park barn or any horse stalled in that barn during the period June 19-24, 2024.

3. Any expert proof, regardless of the form in which offered, must be limited by the supplemental evidence described in paragraph 2, and may not relate to such matters as conditions for which use of Altrenogest is indicated, its actual or potential effect on the disposition or performance of horses generally, the drug's safety, or its detectability through laboratory techniques. Evidence in the initial record adequately addresses these matters.

4. Pursuant to Rule 1.146(a)(1), absent a demonstration of good cause, Appellant is precluded in this appeal from raising factual or legal issues that either: (a) were not raised in the arbitration; or (b) were admitted or undisputed in the arbitration.

5. The following procedures will apply to the evidentiary hearing:

   a. The evidentiary hearing, including opening statements, will be limited to 8 hours, with 4 hours allocated for Appellant's presentation and 4 hours for the Authority's presentation.

   b. Each party may make an opening statement, limited to 15 minutes each.

   c. Appellant will go first on opening statement and evidence presentation.

6. By April 8, 2024, the parties must exchange and provide a courtesy copy to OALJ@FTC.GOV:

   a. A list of the witnesses they anticipate calling;

   b. A list of exhibits they wish to introduce; and

   c. A list of attorneys or other individuals who are expected to participate in the hearing.

7. The hearing will be conducted remotely via videoconferencing and will be transcribed by a court reporter. An audio line will be provided for public access.

I have considered all the matters raised in Appellant's Statement, and insofar as Appellant argues they form a basis for relief beyond that set forth above, I find them unpersuasive.

ORDERED:

Jay L. Himes
Jay L. Himes Administrative Law Judge

Date: March 25, 2024