PUBLIC

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

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

ORDER GRANTING MOTION FOR LEAVE TO APPEAR *PRO HAC VICE*

The Horseracing Integrity and Safety Authority (the "Authority") has filed a motion for leave to enter an appearance *pro hac vice* for James Bunting, Esq., at the upcoming evidentiary hearing scheduled for May 20, 2024, pursuant to Federal Trade Commission Practice Rule 4.1(a)(1)(iii), 16 C.F.R. § 4.1(a)(1)(iii) ("Motion"). Appellant does not oppose the Motion.

Briefly, the Authority contends that Mr. Bunting's experience with relevant anti-doping legal principles invoked in this case and his appearance at the arbitration below, now subject to de novo review, provide the necessary basis for a *pro hac vice* appearance. I find that the Authority's motion papers make the required showing under Rules 4.1(a)(1)(iii) and 4.1(d), discussed further below.

Accordingly, I am satisfied of Mr. Bunting's acceptability to appear before me. The Motion is GRANTED.

Two other matters are worthy of mention:

First, I assume, without deciding, that there is discretionary authority to permit Mr. Bunting, a non-U.S. attorney, to appear *pro hac vice*. even though he is not otherwise covered by subpart (i) or (ii) of Rule 4.1(a)(1). This authority may be grounded in the Commission or the Administrative Law Judge's ("ALJ") inherent authority and the express "acceptability" standard in Rule 4.1(a)(1)(iii).

Subparts (i) and (ii) of Rule 4.1(a)(1) declare two attorney-groups "*eligible*" to appear to practice before the Commission:

> "(i) U.S.-admitted. Members of the bar of a Federal court or of the highest court of any State or Territory of the United States are eligible to practice before the Commission.
>
> (ii) European Community (EC)-qualified. Persons who are qualified to practice law in a Member State of the European Community and authorized to practice before The

> Commission of the European Communities in accordance with Regulation No. 99/63/EEC are eligible to practice before the Commission."

Rule 4.1(d) then provides, in pertinent part, that "[a]ny attorney desiring to appear . . . shall file with the Secretary of the Commission a written notice of appearance, stating [among other things] the basis for *eligibility* under this section . . . . No other application shall be required for admission to practice . . . ."[1] (emphasis added).

Rule 4.1(a)(1)(ii) itself demonstrates that appearance by a foreign attorney is not categorically prohibited. It therefore seems unlikely that there is any intent to prohibit appearance by foreign attorneys licensed outside of Europe. Although non-European foreign attorneys are not expressly "eligible" to appear by filing a notice of appearance under Rule 4.1(d), Rule 4.1(a)(iii) affords a procedure for *pro hac vice* admission nonetheless:

> "*Any attorney* desiring to appear before the Commission or an Administrative Law Judge may be required to show to the satisfaction of the Commission or the Administrative Law Judge his or her *acceptability* to act in that capacity." (emphases added).

Subpart (iii) thus authorizes "[a]ny attorney" who is unable to appear by notice "to show . . . his or her acceptability" to practice before the Commission. A motion for leave to appear *pro hac vice* is an appropriate means to make the required showing, thereby authorizing the Commission or the ALJ to exercise discretion to permit appearance to practice.[2]

Accordingly, a sensible construction of the overall Rule is that the ALJ has discretion to admit a non-U.S. attorney who is not EC-qualified, although I do not foreclose this issue being revisited in another case.

Second, I am issuing this ruling in a case arising under the Horseracing Integrity and Safety Act ("HISA"). The HISA regime developed, in part, against the backdrop of anti-doping

---

[1] In full, Rule 4.1(d) provides:

> "Notice of appearance. Any attorney desiring to appear before the Commission or an Administrative Law Judge on behalf of a person or party shall file with the Secretary of the Commission a written notice of appearance, stating the basis for eligibility under this section and including the attorney's jurisdiction of admission/qualification, attorney identification number, if applicable, and a statement by the appearing attorney attesting to his/her good standing within the legal profession. No other application shall be required for admission to practice, and no register of attorneys will be maintained."

[2] *Cf.* U.S. Supreme Court Rule 6.2 ("An attorney qualified to practice in the courts of a foreign state may be permitted to argue pro hac vice."); *Rudich v. Metro Goldwyn Mayer Studio*, *Inc.*, 2008 WL 4693409, at *1 (W.D. Wis. Aug. 27, 2008) (explaining that "the court certainly has the authority to admit [a foreign-licensed attorney]," as within "their inherent power" (cleaned up) (quoting *In re Snyder*, 472 U.S. 634, 645 n. 6 (1985)); *DataTreasury Corp. v. Wells Fargo & Co*., No. 2:06–CV–72 DF-CE, ECF No. 807 (E.D. Tex. Oct. 24, 2007) (admitting Canadian attorneys *pro hac vice* in patent infringement case).

programs and dispute resolution systems in the equestrian and sports realms not only in this country, but also globally.[3] In consequence, non-U.S. attorneys may have particular experience in either the case at hand or generally, which informs discretion whether to permit a *pro hac vice* appearance, as determined on a case-by-case basis.[4]

ORDERED:

Jay L. Himes

Jay L. Himes
Administrative Law Judge

Date: May 8, 2024

[3] *See, e.g.*, 15 U.S.C. § 3055(b)(4) (providing that in developing HISA's anti-doping and medication control program, "[t]o the extent consistent with this chapter, consideration should be given to international anti-doping and medication control standards of the International Federation of Horseracing Authorities and the Principles of Veterinary Medical Ethics of the American Veterinary Medical Association"); 87 Fed. Reg. 65292, 65293 (Oct. 28, 2022) (stating that the Horseracing Integrity and Safety Authority "has sought to combine the best practice elements from various sources, including rules and practices developed by the global anti-doping community, horseracing authorities (national and international), and other equine sport organizations."); *id*. at 65295 (noting that, besides considering the programs developed in the U.S., "[t]he Authority also considered and relied heavily on international anti-doping standards, including the World Anti-Doping Code (applicable to human athletes) and the International Equestrian Federation (''FEI'') Equine Anti-Doping and Controlled Medication Regulations (applicable at the international level to various equestrian disciplines). "Those regulations provide a robust anti-doping framework that has been tested before arbitration tribunals for many years, and that has generated a well-developed body of precedent and guidance for interpreting the provisions in those frameworks." *id.* at 65295, 65301(stating that HISA developed laboratory standards and accreditation "using the WADA International Standard for Laboratories as a baseline").

[4] *See Agjunction, LLC v. Agrain, Inc*., No. 14-2069-JAR, 2014 WL 1745498, at *1 (D. Kan. May 1, 2014) (stating that "whether to grant *pro hac vice* admission to attorneys admitted in foreign jurisdictions rest[s] within the sound discretion of the district court," and permitting "an informed decision on a case-by-case basis, considering [among other things] . . . the nuances of the particular case for which the attorney seeks to be admitted"); *In re Livent, Inc*., No. 98 Civ. 5686(VM)(DFE), 2004 WL 385048 (S.D.N.Y. Mar. 2, 2004) (admitting *pro hac vice* an Ontario-licensed attorney who had represented parties in related Canadian litigation); *United States v. Black*, No. 05-CR-00727, ECF Nos. 61 (motion) & 68 (minute order) (N.D. Ill. Dec. 1, 2005) (admitting *pro hac vice* in a criminal case a Canadian attorney who had represented defendant in litigation and regulatory matters).