

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

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

**ORDER ON APPLICATION FOR REVIEW
AND DIRECTING BRIEFING**

A. Procedural Background

On December 13, 2023, Appellant Natalia Lynch (“Appellant or Lynch”) filed a Notice of Appeal and Application for Review (“Application for Review”). Appellant appeals the November 9, 2023 decision of an arbitrator (“Arbitrator”) appointed by the Horseracing Integrity Welfare Unit (“HIWU”) of the Horseracing Integrity and Safety Authority (“HISA”) (“Decision”), and the civil sanctions imposed by HISA under HISA’s Anti-Doping and Medication Control Program (“ADMC”). The Decision found that Lynch (1) violated 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, and (2) violated Rule 3214(a) for possession of a prohibited substance (Levothyroxine or “Thyro-L”) on July 20, 2023. The civil sanctions imposed were the maximum period of ineligibility and the maximum financial penalty for each violation, resulting in a total ban of 48 months, \$50,000 in fines, and \$5,000 in arbitration costs. The horse, Motion to Strike, was also disqualified from the June 24, 2023 race, and the \$1,100 winnings were ordered forfeited.

Appellant challenges the Decision and the civil sanctions and requests *de novo* review under 15 U.S.C. § 3058(b)(1)-(3) and 16 C.F.R. § 1.146(b). Pursuant to 16 C.F.R. § 1.146(a)(1), Appellant requests an evidentiary hearing before an Administrative Law Judge of the Federal Trade Commission (“Commission”) to contest the facts found by the Arbitrator and to supplement the arbitration record with additional evidence and testimony.

HISA filed a response to the Application for Review on December 22, 2023, requesting that the Commission uphold the Decision and deny Appellant’s request for an evidentiary hearing as unnecessary. HISA asserts that, pursuant to 16 C.F.R. § 1.146(c)(3), the appeal should be limited to briefing or oral argument by the parties.

B. Parties' Positions and Applicable Rules

Appellant asserts that the Arbitrator wrongfully precluded Appellant from submitting evidence, providing witness testimony, and cross-examining HIWU's expert witness. Appellant further asserts that the Arbitrator improperly made adverse credibility determinations and that the final civil sanctions imposed are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. In addition, Appellant asserts that the Arbitrator's findings were based in part on illegally obtained evidence or evidence that was improperly admitted.

HISA asserts that Appellant did not seek to present testimony at the hearing from any fact witnesses besides herself, nor was any testimony improperly excluded by the Arbitrator. HISA further asserts that Appellant was permitted to examine all witnesses tendered by HIWU, including its investigator, and that Appellant had the ability to seek an order from the Arbitrator to subpoena other witnesses, but did not do so. Thus, according to HISA, there is no need for an evidentiary hearing to supplement the record or contest the facts found by the Arbitrator.

16 C.F.R. § 1.146(c)(2) sets forth:

In reviewing the final civil sanction and decision of the Authority, the Administrative Law Judge may rely in full or in part on the factual record developed before the Authority through the disciplinary process under 15 U.S.C. 3057(c) and disciplinary hearings under Authority Rule Series 8300. The record may be supplemented by an evidentiary hearing conducted by the Administrative Law Judge to ensure each party receives a fair and impartial hearing. Within 20 days of the filing of an application for review, based on the application submitted by the aggrieved party or by the Commission and on any response by the Authority, the Administrative Law Judge will assess whether:

- (i) The parties do not request to supplement or contest the facts found by the Authority;
- (ii) The parties do not seek to contest any facts found by the Authority, but at least one party requests to supplement the factual record;
- (iii) At least one party seeks to contest any facts found by the Authority;
- (iv) The Commission, if it filed the application for review, seeks supplementation of the record; or
- (v) In the Administrative Law Judge's view, the factual record is insufficient to adjudicate the merits of the review proceeding.

16 C.F.R. § 1.146(c)(2).

C. Determinations, Order for Briefing, and Notice of Hearing

Based on the Application for Review, Appellant seeks to supplement the factual record and to contest facts found by the Arbitrator. Accordingly, an evidentiary hearing is warranted. However, the Application for Review is vague as to whom Appellant was precluded from calling, what evidence Appellant sought to tender that was excluded, or why such evidence was relevant. Furthermore, the Application for Review does not clearly identify the facts Appellant seeks to contest. Therefore, briefing is hereby ordered on these matters, as described below.

The factual record developed before the Arbitrator has been submitted by HISA to the Commission as an Appeal Book. *See* 16 C.F.R. § 1.146(c)(2). If Appellant seeks to supplement the record with witness testimony, Appellant shall specifically identify such witnesses and provide a summary of the expected testimony of each witness, together with a demonstration as to how such testimony is supplemental to testimony already contained in the evidentiary record below, the basis for admissibility of the witness testimony, and how such testimony is relevant to the reasons for challenging the sanctions. 16 C.F.R. §§ 1.146(b)(1), (b)(6)(ii). If Appellant seeks to supplement the record with exhibits, Appellant shall specifically identify such exhibits and provide a summary of such exhibits, together with a demonstration as to how such exhibits are supplemental to exhibits already in the evidentiary record below, the basis for admissibility, and how such exhibits are relevant to the reasons for challenging the sanctions. *Id.* Appellant shall also 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.

Appellant is directed to file this brief by January 12, 2024.

HISA is directed to file a response to Appellant's brief within 14 days of service of Appellant's brief.

The date of the evidentiary hearing will be set after the briefs have been evaluated. The hearing will be conducted by videoconferencing and will be transcribed by a court reporter. Additional hearing procedures will be provided in a subsequent order.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: December 28, 2023