

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES  
FTC DOCKET NO. D09417

ADMINISTRATIVE LAW JUDGE: \_\_\_\_\_

IN THE MATTER OF:

JEFFREY POOLE

APPELLANT

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RESPONSE TO NOTICE OF APPEAL  
AND APPLICATION FOR REVIEW

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The Horseracing Integrity and Safety Authority (the “**Authority**”) files this Response to Appellant Jeffrey Poole’s Notice of Appeal and Application for Review. The Authority moves the Commission to uphold the Final Decision of the Arbitral Body under the Authority’s Anti-Doping and Medical Control (“**ADMC**”) Program (the “**Final Decision**”) and deny Appellant’s request for an evidentiary hearing, as it is unnecessary to supplement or contest facts in the record. Pursuant to 16 CFR 1.146(c)(3) of this Commission’s Procedures for Review of Final Civil Sanctions Imposed under the Horseracing Integrity and Safety Act, the appeal should be limited to briefing by the parties or oral argument. If the Commission determines that an evidentiary hearing should be held to supplement the record with additional testimony from Appellant (as requested by Appellant under 16 CFR 1.146(b)), the Authority requests that the witnesses presented on behalf of the Authority at the hearing be permitted to testify.

In addition, Appellant’s request to stay the imposition of sanctions pursuant to the Final Decision during the pendency of the Administrative Law Judge’s (“**ALJ**”) review should be denied. Appellant has made no effort to meet the four-prong test set forth in 16 CFR 1.148(d),

and, as set forth below, the Arbitral Body correctly applied the facts of this matter to the applicable law.

Appellant's filing includes inaccuracies of both law and fact that make it clear that his arguments are meritless, and, therefore, the Final Decision should be upheld.<sup>1</sup> First, the Appellant inaccurately claims that the Arbitral Body treated Possession of a Banned Substance as a "strict liability" violation. The Arbitral Body applied and interpreted the specific language of the ADMC Program when determining if a violation of Rule 3214(a) occurred. The Rule prohibits "Possession of a Banned Substance or a Banned Method, unless there is compelling justification for such Possession." The definition of Possession in Rule 1020 includes "actual, physical possession, or constructive possession."<sup>2</sup> The evidence produced at the hearing clearly showed that Appellant knew at the relevant time that Thyro-L was a Banned Substance under the ADMC Program and did not discard it, even though he had been advised to do so. Appellant also made no effort to provide a "compelling justification" for his Possession of the Banned Substance, as required by Rule 3214(a).

Second, Appellant claims the sanctions imposed were "arbitrary, capricious, an abuse of discretion, prejudicial, or otherwise not in accordance with law." The Arbitral Body once again followed the requirements of the ADMC Program, which only permits a reduction of sanctions where there is a finding of "No Fault or Negligence" or "No Significant Fault or Negligence." Under Rule 3223, the required Consequences for a violation of Rule 3214(a) are a period of Ineligibility of 2 years and a fine of up to \$25,000.

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<sup>1</sup> The Authority notes that the Arbitral Body did not order the Appellant to, as he claims, pay "50 percent of the arbitration costs." The Final Decision imposed the payment of \$8,000 of HIWU's share of the arbitration costs only; there was no imposition of 50 percent of any costs, even though Rule 7420(b) calls for a split of the costs of the proceeding "equally amongst the parties."

<sup>2</sup> Final Decision, pp. 14-15; 21-24.

Under Rule 3224, the “No Fault or Negligence” standard should only be used in “exceptional circumstances” and the Arbitral Body applied the definition in Rule 1020.<sup>3</sup> While Appellant did not argue that he had met this standard, the Final Decision includes an analysis that makes clear that this legal standard was not close to being met.<sup>4</sup>

As to “No Significant Fault or Negligence,” the period of Ineligibility can be reduced under Rule 3225(a) to “between 3 months and 2 years, depending on the Covered Person’s degree of Fault.” The Arbitral Body also properly applied this standard, as defined in Rule 1020, to reduce both the period of Ineligibility and fine amount for Appellant.<sup>5</sup>

It should be noted that the Arbitral Body consulted precedent from cases under the World Anti-Doping Code to facilitate its analysis in the Final Decision. This use of such precedent was not just appropriate but is explicitly permitted under the ADMC Program under Rule 3070(d).

Lastly, Appellant claims that the sanctions imposed were improper because the Arbitral Body found that (i) that Appellant’s knowledge of, and training in, the ADMC Program were “limited” and (ii) that there was an “absence of any impermissible use of the substance in question or any violation other than the Possession itself.” Both of these factual findings are irrelevant to whether Appellant violated Rule 3214(a) or whether the sanctions imposed against him were appropriate.

As to the first point, under Rule 3040(a), all Covered Persons, including Appellant, are required “to be knowledgeable of and to comply with the Protocol and related rules at all times,” and “[i]t is the responsibility of all Covered Persons to familiarize themselves with the most up-to-date version of the Protocol and related rules and all revisions thereto.” Appellant’s claim of

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<sup>3</sup> Final Decision, pp. 17-18; 24.

<sup>4</sup> Final Decision, p. 24.

<sup>5</sup> Final Decision, pp. 18; 25-27

ignorance and lack of training with respect to the ADMC Program plays no part in the analysis of whether he committed an Anti-Doping Rule Violation. As to the second point, Rule 3214(a) is quite clear that Possession itself is the Anti-Doping Rule Violation; there is no requirement to establish any intent to use or administer the Banned Substance at issue.

Appellant has not identified any new supplemental evidence the Arbitral Body did not already consider during the hearing. The Arbitral Body applied the appropriate legal standards. The Authority therefore moves the Commission to uphold the Decision, and to limit the ALJ's review to briefing or oral argument by the parties, pursuant to 16 CFR 1.146(a)(c)(3).

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 18<sup>th</sup> day of September, 2023.

**STURGILL, TURNER, BARKER, &  
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### CERTIFICATE OF SERVICE

Pursuant to 16 CFR 1.146(a) and 16 CFR 4.4(b), a copy of this Response is being served on September 18, 2023, via Administrative E-File System and by emailing a copy to:

Hon. D. Michael Chapel  
Chief Administrative Law Judge  
Office of Administrative Law Judges  
Federal Trade Commission  
600 Pennsylvania Ave. NW  
Washington DC 20580  
via e-mail to [Oalj@ftc.gov](mailto:Oalj@ftc.gov) and [electronicfilings@ftc.gov](mailto:electronicfilings@ftc.gov)

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