

PUBLIC

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

In the Matter of Jeffrey Poole, Appellant, Docket No. D09417

**APPELLANT'S MOTION TO ACCEPT LATE FILED PROPOSED CONCLUSIONS OF
LAW**

Appellant Jeffrey Poole, moves this Tribunal for entry of an order accepting the proposed conclusions of law filed today, October 11, 2023, and in support thereof, states:

1. On September 28, 2023 this Tribunal entered its order requiring the parties to file proposed conclusions of law with the Federal Trade Commission's Office of the Secretary by October 10, 2023.
2. The undersigned inadvertently failed to calendar the due date for filing the proposed conclusions of law as required by this Tribunal's order.
3. Contemporaneously with the filing of this motion, Appellant is filing his proposed conclusions of law as required this Tribunal's order.
4. Appellee will not be prejudiced by this Tribunal allowing the late filed proposed conclusions of law to be deemed filed of record.
5. The failure to allow the late filing will prejudice the Appellant through no fault of his own.

WHEREFORE, Appellant Poole requests entry of an order allowing the late filing of his proposed conclusions of law which deems the proposed conclusions filed of record.

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/s/ Bradford J. Beilly
Bradford J. Beilly
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brad@beillylaw.com

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 11, 2023, pursuant to Federal Trade Commission Rules of Practice 4.2(c) and 4.4(b), I caused the foregoing motion of Bradford J. Beilly to be filed and served as follows:

Honorable D. Michael Chappell
Chief Administrative Law Judge
Office of Administrative Law Judges
Federal Trade Commission
600 Pennsylvania Ave. NW
Washington, DC 20580
Sent via e-mail to OALJ@ftc.gov

April Tabor
Office of the Secretary
Federal Trade Commission
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/s/ Bradford J. Beilly
Counsel for Jeffrey Poole

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APPELLANT’S PROPOSED CONCLUSIONS OF LAW

UNDISPUTED FACTS

1. Thyro-L is a “banned substance” as defined in the Horseracing Integrity and Safety Authority’s (“HISA”) Rules. Possession of a banned substance is a violation of HISA Rule 3214(a).

2. HIWU was created pursuant to the *Horseracing Integrity and Safety Act of 2020*, 15 U.S.C. secs. 3051-3060 (“Act”), and is charged with administering the rules and enforcement mechanisms of the Horseracing Integrity and Safety Authority’s (“HISA”) Anti-Doping and Medication Control Program (“ADMC Program”). The ADMC Program was created pursuant to the Act, approved by the Federal Trade Commission on March 27, 2023, and implemented on May 22, 2023. See 88 Fed. Reg. 5084-5201 (January 26, 2023). FD ¶4.1 at 12¹.

3. Thyro-L is a medication that can be prescribed by a licensed veterinarian for treatment of a racehorse. Prior to May 22, 2023, the use and/or possession of a tub of Thyro-L prescribed by a licensed veterinarian for the treatment of a particular

¹ All references to the final decision of the Arbitrator shall be cited as “FD followed by the paragraph number and page number.

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thoroughbred racehorse would not have breached any Florida state statute or administrative regulation provided the Thyro-L was only used in connection with that racehorse. FD ¶4 at 6.

4. Pursuant to ADMC Program Rule 3223, the ineligibility, and financial penalties for a first anti-doping rule Violation of Rule 3214(a) (Possession) is:

a. Two (2) years of Ineligibility, and

b. A “Fine up to \$25,000 ...and payment of some or all of the adjudication costs and [HIWU]’s legal costs” FD ¶5.8 at 16.

5. There is no dispute of the following facts:

“a. The Thyro-L product was a Banned Substance under the ADMC Program;

b. The Thyro-L product was found on a shelf in the tack room of Barn 5 (the barn assigned to Mr. Poole) at Gulfstream Park on June 2, 2023, after implantation of the ADMC Program on May 22, 2023;

c. The Thyro-L product was purchased by Mr. Poole, pursuant to a lawful veterinarian prescription, at a time when it was not a Banned Substance, before the implementation of the ADMC Program, for use by another horse that was no longer in Mr. Poole’s possession at Gulfstream Park;

d. The Thyro-L product had been moved from the track in Ohio where Mr. Poole had lawfully used the Thyro-L product some months before it was found at Gulfstream Park, to another track in Tampa, and then to Barn 5 at Gulfstream Park;

f. Mr. Poole knew that Thyro-L would become a Banned Substance upon implementation of the ADMC Program on May 22, 2023;

h. There was no evidence that the Thyro-L product was used by Mr. Poole on any horse after the implementation of the ADMC Program or on any horse other than King Andres for whom it was prescribed.” FD ¶74 at 22-23.

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6. Although Appellant Poole argued that he was not conscious that the Thyro-L was in his possession at Barn 5 of Gulfstream Park, “Whether he was aware of the Thyro-L being in his tack room in Barn 5 at Gulfstream Park is of no legal moment under the definition of Possession.” FD ¶7.8 at 23.

7. Mr. Poole’s coming into possession of Thyro-L was lawful at the time, and up until implementation of the ADMC Program, and there was no evidence that he ever used the Thyro-L with a horse other than King Andres (for whom it was prescribed) or after implementation of the ADMC Program. In other words, ***there is no evidence that Mr. Poole either 1) was a cheater, or 2) kept the Thyro-L in his Possession after the implementation of the ADMC Program, for any improper purpose.*** FD. P7.20 at 27

8. Based upon the foregoing facts the Arbitrator assessed the following penalties:

A 22 month suspension, a \$10,000 fine, and a payment of \$8,000 of HIWI’s share of the arbitration costs. FD ¶29-30.

Conclusions of Law

9. Appellant still asserts that the civil sanctions imposed upon him were arbitrary, capricious, an abuse of discretion, prejudicial, or otherwise not in accordance with law.

10. Based upon the facts in the record set forth above, this tribunal agrees that the civil sanctions imposed upon Appellant were arbitrary, capricious, and an abuse of discretion.

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11. The Punishment imposed upon Appellant does not align with his degree of fault.

12. Based upon this record, this tribunal finds that while Appellant Poole's conduct was found by the Arbitrator to "objectively fall into the significant fault range" (FD ¶7.18 at 25-26), in assessing the civil sanctions to be imposed, the Arbitrator failed to consider the mitigating factors of Mr. Poole's lack of specific intent to possess the Thyro-L for any improper purpose.

13. Although possession of a banned substance is a strict liability offense under HISA, the sanctions imposed must take into account the particular facts and circumstances of the covered party's possession. In this case, the arbitrator expressly found that "***there is no evidence that Mr. Poole either 1) was a cheater, or 2) kept the Thyro-L in his Possession after the implementation of the ADMC Program, for any improper purpose.***" FD ¶7.20 at 27.

ORDER

Based upon the foregoing analysis, this tribunal assesses the following civil sanctions:

- A. A period of ineligibility of 3 months commencing as of June 13, 2023.
- B. A fine of \$1,000.00

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

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