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

))
)) Docket No. 9420
)

ORDER

On November 9, 2023, Appellant Luis Jorge Perez ("Appellant") filed a Notice of Appeal and Application for Review ("Application for Review"), appealing the final decision of an arbitrator ("Final Decision") and civil sanctions imposed by the Horseracing Integrity and Safety Authority ("HISA" or "Authority") under HISA's Anti-Doping and Medication Control ("ADMC") Program. The Final Decision, issued October 9, 2023, determined that Appellant violated Rule 3214(a) of the ADMC Program by possessing Levothyroxine, a banned substance, and determined that civil sanctions of a 14-month suspension and a \$5,000 fine were appropriate. On October 10, 2023, HISA issued a Notice of Civil Sanctions, imposing the sanctions determined by the Arbitrator. Appellant requests *de novo* review of the Final Decision and Notice of Civil Sanctions pursuant to 16 C.F.R. § 1.146(b) and further requests an evidentiary hearing to contest the sanctions, and the facts and interpretation of law that formed the basis for the sanctions.

HISA filed a response to the Application for Review on November 17, 2023, requesting, *inter alia*, that Appellant's request for an evidentiary hearing be denied and that the appeal be limited to briefing or oral argument. HISA asserts that Appellant raises legal arguments and has not identified any facts that he seeks to contest. Therefore, HISA argues, an evidentiary hearing is not warranted. *See* Rule 1.146(a)(1) (providing that HISA may file a response to notice of appeal stating the reasons that "an evidentiary hearing conducted by the Administrative Law Judge is either unnecessary, or necessary to supplement or to contest facts in the record found by the Authority"). 16 C.F.R. § 1.146(a)(1).

Rule 1.146(c)(2) of the Procedures for Review of Final Civil Sanctions Imposed under the Horseracing Integrity and Safety Act ("Rules") provides with regard to the factual record for appeal that "the Administrative Law Judge may rely *in full or in part* on the factual record developed before the Authority" and that "[t]he record may be supplemented by an evidentiary hearing conducted by the Administrative Law Judge to ensure each party receives a fair and impartial hearing." 16 C.F.R. § 1.146(c)(2) (emphasis added). Rule 1.146(c)(2) further requires the Administrative Law Judge to assess, based on the notice of appeal and the response thereto,

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whether there are contested facts and whether supplementation of the record below is necessary. 16 C.F.R. \S 1.146(c)(2)(i)-(iii), (v).

Based on the filings of the parties, and in order to facilitate the assessment required under Rule 1.146(c)(2), it is hereby ORDERED that, no later than 10:00 a.m. on December 4, 2023, Appellant shall 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 being appealed.

ORDERED:

D. Michael Chappell

Chief Administrative Law Judge

DM Chappell

Date: November 30, 2023