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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; . . . 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).

In his Application for Review, Appellant requests an evidentiary hearing both to supplement the factual record and to contest facts found by the Authority. Exhibit B to Appellant’s Application for Review, entitled “Requested Supplement to Contest Facts Found by [the Authority],” lists the supplemental evidence Appellant seeks to introduce into the evidentiary record. Having considered the Application for Review and the Authority’s Response, I determine that an evidentiary hearing is appropriate in this case. Accordingly, the Appellant’s request for a hearing is GRANTED.<sup>1</sup> *Id.* § 1.146(c)(2), (4).

Neither the Application for Review nor Exhibit B clearly identifies the facts found by the Authority that Appellant seeks to contest, however. Therefore, Appellant is directed to submit a statement of the facts found by the Authority that Appellant seeks to contest with a demonstration as to how such facts are material to the Decision. *Id.* § 1.146(a)(1). Appellant is directed to file this statement by June 4, 2024. The Authority may file a response to Appellant’s statement within ten days of service of Appellant’s statement.

## II. Application for Stay

Under the FTC Rules, an application for a stay of a final civil sanction imposed by the Authority “must provide the reasons a stay is or is not warranted by addressing the [following] factors . . . and the facts relied upon”:

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<sup>1</sup> To the extent that Appellant requests a jury trial in this matter, that request is denied. The mechanism of review afforded under the FTC Rules allows for a hearing before an Administrative Law Judge. 16 C.F.R. § 1.146.

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- (1) The likelihood of the applicant's success on review;
- (2) Whether the applicant will suffer irreparable harm if a stay is not granted;
- (3) The degree of injury to other parties or third parties if a stay is granted; and
- (4) Whether the stay is in the public interest.

16 C.F.R. § 1.148(c)-(d).

Appellant argues that the Sanctions should be stayed because: (1) he has a high likelihood of success on review because serious problems infected the laboratory testing, (2) disclosure of the violation constitutes a stigma and irreparably harms his reputation, (3) a stay prevents injuries to third parties by avoiding unnecessary redistribution of purse earnings in the event Appellant prevails on review, and (4) it is in the public interest to stay a sanction that was predicated upon improper test results that did not follow the applicable HISA rules.

The Authority opposes Appellant's Application for Stay, arguing that each of the following factors weighs against staying the Sanctions: (1) the likelihood of Appellant's success on review is low because the ADMC Program rules were appropriately followed, (2) Appellant will not suffer irreparable harm absent a stay because the Sanctions and Decision have already been made public as required, (3) other parties will be unaffected by a stay because the Authority will instruct race organizers regarding redistribution of the purse only after Appellant has exhausted all appeals before the FTC, and (4) a stay based on a misapplied legal argument is not in the public interest.

First, as Appellant's Request for Review is grounded principally on his dispute of the facts found by the IAP, the likelihood of Appellant's success on review is not apparent at this time. Second, while Appellant may have incurred reputational harm through the publication of the Sanctions imposed and Decision against him, a stay of the remaining sanctions, including the assignment of penalty points and payment of the fine, may mitigate against further irreparable harm. Third, the Authority acknowledges that a stay injures no other parties, as purse earnings are distributed only after an appeal has been exhausted. Fourth and finally, a stay is in the public interest insofar as it allows Appellant's Application for Review to be fully considered before enforcement of the remaining sanctions. Furthermore, no arguments were made or evidence presented to suggest that a stay of the Sanctions would compromise the public safety.

Considering the factors set forth and for the reasons stated above, I conclude that a stay of the Sanctions is warranted. Accordingly, Appellant's Application for Stay is GRANTED.

### **III. Evidentiary Hearing**

The date of the evidentiary hearing will be set after Appellant's requested statement and the Authority's response, if any, have been evaluated. The hearing will be remotely conducted by videoconference and will be transcribed by a court reporter. Additional hearing procedures will

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be provided in a subsequent order. The parties are requested to provide courtesy hardcopies of any filings that exceed thirty pages.

ORDERED:

*Dania L. Ayoubi*  
Dania L. Ayoubi  
Administrative Law Judge

Date: May 21, 2024