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

In the Matter of	)	
Dr. Scott Shell, DVM	)	Docket No. 9439
Appellant.	)	

ORDER ON APPLICATION FOR REVIEW AND SETTING BRIEFING SCHEDULE

On October 18, 2024, Dr. Scott Shell filed an Application for Review of the civil sanctions imposed against Dr. Shell by the Horseracing Integrity and Safety Authority (the "Authority"). The sanctions were imposed by the Authority pursuant to a decision by an arbitrator ("the Decision") that found Dr. Shell violated Horseracing Integrity and Safety Act ("HISA") Rule 3214(a) of the Authority's Anti-Doping and Medication Control ("ADMC") Program by possessing a banned substance. On October 28, 2024, the Horseracing Integrity and Welfare Unit ("HIWU") filed a response to Dr. Shell's Application for Review.[1]

In his Application for Review, Dr. Shell argues that the Decision is erroneous and that the imposed sanctions are arbitrary and capricious because: (1) Dr. Shell had a compelling justification for possessing a banned substance and thus a HISA Rule 3214(a) violation did not occur; (2) the arbitrator misapplied the burdens of proof to find a violation; (3) the arbitrator concluded the doctrine of estoppel did not apply; and (4) the HISA rules violate his due process rights and are unconstitutional. Dr. Shell does not request an evidentiary hearing. The Authority responds that none of Dr. Shell's arguments provide a basis to reverse the Decision.

FTC Rule 1.146 of the Procedures for Review of Final Civil Sanctions Imposed under the Horseracing Integrity and Safety Act provides in pertinent part:

> 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

[1] On October 18, 2024, HIWU also filed an Application for Review of the sanctions imposed on Dr. Shell. By Order issued on October 29, 2024, proceedings on both Dr. Shell's and HIWU's Applications for Review were stayed pending determination of the jurisdictional question of HIWU's legal standing to seek review before an Administrative Law Judge. On December 6, 2024, HIWU's Application for Review was dismissed for lack of standing and the stay was lifted.

> 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:
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> (i) The parties do not request to supplement or contest the facts found by the Authority;
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> (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;
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> (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).

Pursuant to FTC Rule 1.146(c)(2), based on Dr. Shell's Application for Review and the Authority's response, the parties do not seek to alter the factual record before the Authority. Instead, Dr. Shell seeks only to contest the weight given to the evidence in the record. The factual record is sufficient to adjudicate the merits of the review proceedings on a *de novo* basis, and an evidentiary hearing is unnecessary. Accordingly, this review will be limited to briefing by the parties. *Id.* § 1.146(c)(3).

The parties are directed to concurrently file with the FTC's Office of the Secretary, by **December 26, 2024**, proposed findings of fact, conclusions of law, a proposed order, and a supporting legal brief providing the party's reasoning. Such filings are limited to 7,500 words, must be served on the other party, and must contain references to the record and authorities on which they rely. Reply findings of fact, conclusions of law and briefs, limited to 2,500 words, may be filed by each party within ten days of service of the initial filings. *Id.*

The parties are also directed to file, no later than **December 20, 2024**, a joint Appeal Book containing the record presented below, including without limitation written transcripts of all hearings before the arbitrator. If transcripts of hearings have not yet been prepared, the Authority shall have transcripts prepared. The transcript may be prepared from a contemporaneous audio or video recording, or from such other method as the parties may agree to and must include a certification or party stipulation of accuracy.

ORDERED:

D M Chappell

D. Michael Chappell
Chief Administrative Law Judge

Date: December 9, 2024