

PUBLIC

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
FTC DOCKET NO. D-_____**

ADMINISTRATIVE LAW JUDGE:

IN THE MATTER OF:

EUSABIO JUAREZ-RUFFINO

APPELLANT

THE AUTHORITY'S RESPONSE TO APPELLANT'S APPLICATION FOR REVIEW

PUBLIC

CERTIFICATE OF SERVICE

Pursuant to 16 CFR §1.146(a) and 16 CFR §4.4(b), a copy of this Authority's Response to Appellant's Application for Review is being served on October 30, 2025, via Administrative E-File System and by emailing a copy to:

Office of Administrative Law Judges
Federal Trade Commission
600 Pennsylvania Ave. NW
Washington DC 20580
via e-mail to Oalj@ftc.gov
and electronicfilings@ftc.gov

John Mac Hayes
1601 South Victor Avenue
Tulsa, OK 74104
Telephone (918) 228-0630
Via email to JohnMacHayesLaw@aol.com

Counsel for the Appellant

/s/ Bryan Beauman

Enforcement Counsel

PUBLIC

The Horseracing Integrity and Safety Authority (“Authority”) files this Response to Appellant’s Application for Review of the Final Decision of Arbitrator David M. Benck (“Arbitrator”) under the Authority’s Anti-Doping and Medication Control (“ADMC”) Program (the “Final Decision”). The Final Decision should be affirmed and Appellant’s request to vacate it and remand the case, or, alternatively, reopen the record and conduct an evidentiary hearing should be denied.

First, the Arbitrator correctly excluded Appellant’s evidence, pursuant to the mandate of Rule 7170(e), based upon his repeated and unexplained failures to comply with the applicable Procedural Order, as well as the ADMC Program Rules (the “Rules”). The Arbitrator outlined Appellant’s failure to: (i) provide any written submission by the required deadline; (ii) request an extension or offer any explanation for failing to file the submission; (iii) identify any witnesses who would testify at the hearing; (iv) proffer any evidence; (v) agree upon any stipulation of facts; (vi) invoke any legal authorities; and (vii) file a written response to the Horseracing Integrity & Welfare Unit’s (“HIWU”) Motion for Default Judgment.¹

Though Appellant “acknowledged that he failed to comply with Procedural Order #1, including the requirement to provide a pre-hearing submission or evidence.”² He nonetheless argued that evidence he submitted *months earlier* for a matter *in a different jurisdiction* (to which HIWU was *not a party*) should have put HIWU on notice of Appellant’s evidence and witnesses.³ After considering this explanation, the Arbitrator held that due process afforded Appellant an opportunity to cross-examine witnesses and make an argument in his defense at a hearing,⁴ but

¹ Final Decision at 3.4-3.20.

² Final Decision at 3.9.

³ Final Decision at 3.9.

⁴ Final Decision at 3.10.

PUBLIC

noted that he had previously informed the parties that “failures of either party to comply with Procedural Order #1 submission deadlines could impact admissibility of new evidence or witnesses.”⁵

Less than 48 hours prior to the hearing, Appellant submitted a Pre-Hearing Brief, proposed witnesses (without witness statements), and eight exhibits.⁶ The Arbitrator excluded the evidence as untimely after a motion by HIWU,⁷ explaining this determination in the Final Decision and delineating the requirements of Rule 7170, which governs submissions, exhibits, and witnesses.⁸ The Arbitrator specifically highlighted Rule 7170(e), which prohibits admission of evidence not properly filed “absent a showing of good cause.”⁹

In his Petition for Appellate Review, Appellant alleges the exclusion “violated ADMC, HIWU Rules, and Basic Fundamental Due Process” and cites to *nonexistent* rules and propositions in support of his position.¹⁰ Yet, the Final Decision highlights his contemplation of relevant facts and his application of *actual* Rules to those facts. Appellant cannot flout the Rules and then cry foul when the Rules are nonetheless applied. “One who fails to take advantage of procedural safeguards available to him cannot later claim that he was denied due process.”¹¹

⁵ Final Decision at 3.11.

⁶ Final Decision at 3.15, 3.20.

⁷ Final Decision, at 3.20, 3.17.

⁸ Final Decision at 3.18-3.20.

⁹ Final Decision at 3.19.

¹⁰ Appellant cites a number of alleged Rules which do not exist or have been misinterpreted. Rule 3220(a) and Rule 3219(e) do not support the proposition Appellant alleges (App. Pet., Section III(A)); HIWU Arbitration Procedure § 10(d) (App. Pet., Section III(B)(1)) and HIWU Procedure § 8(b) (App. Pet., Section III(B)(2)) *do not exist*; and HISA Rule 3220(b) (App. Pet., Section III(B)(3)) and HISA Rule 3220(d) (App. Pet., Section III(C)) *either do not exist or are inapplicable*.

¹¹ *Browning v. Odessa*, 990 F.2d 842, 844 n.7 (5th Cir. 1993).

PUBLIC

Second, the Arbitrator focused the crux of his determination on Appellant's failure to meet the obligations of a Responsible Person under the Rules.¹² As it relates to the issue of Possession, the Arbitrator found "Respondent repeatedly admitted that it was an 'absolute rule violation to possess the [Banned Substance] . . . and that he had no compelling justification to do so. Respondent repeatedly acknowledged that he had a duty to conduct an inventory of his vehicle prior to bringing it onto the property, and that he had failed to do so.'"¹³ As it relates to his analysis regarding a reduction of Consequences, the Arbitrator held: "Respondent took no steps to mitigate his objective level of fault," and "Respondent took no steps to mitigate his subjective level of fault."¹⁴ Thus, the Arbitrator found his fault to be considerable, "putting him in the uppermost range."¹⁵

The Arbitrator did permit Appellant to provide substantial hearsay testimony regarding Witness A's alleged intended use of the Banned Substance found in Appellant's possession.¹⁶ Nevertheless, the Arbitrator found the testimony irrelevant to the ultimate issues in the case.¹⁷

Thus, even a finding that the Arbitrator abused his discretion to exclude testimony from Witness A, the exclusion would have been harmless because it would not have changed the Arbitrator's determination that the Appellant's failure to mitigate his fault put him in the uppermost range of fault. The Arbitrator's analysis was rationally connected to the facts and based on consideration of relevant factors.¹⁸ Appellant cannot point to *any* plain error or unjustified exercise

¹² Final Decision 7.18(c) (Appellant "testified that it was his obligation to conduct a search and inventory of his vehicle prior to entering [the racetrack], and that he failed to do so.").

¹³ Final Decision at 7.1.

¹⁴ Final Decision at 7.19-7.20.

¹⁵ Final Decision at 7.19-7.20.

¹⁶ Final Decision at 2.23-2.26.

¹⁷ Final Decision at 7.8-7.9 ("Whether [Respondent] was aware of the Diisopropylamine being in his vehicle is of no legal moment under the definition of Possession.").

¹⁸ *In the Matter of Dr. Scott Shell DVM*, Docket No. 9439 ("*Shell FTC*"), at p. 13 (Mar. 6, 2025) (citations omitted).

PUBLIC

of discretion by the Arbitrator such that the Final Decision is “clearly against the logic and effect of the facts as [were] found.”¹⁹

Pursuant to 16 CFR §1.146(c)(3), the appeal should be limited to briefing, unless the ALJ elects to hear oral argument. If, however, an evidentiary hearing is held, the Authority requests that the witnesses presented on behalf of HIWU below be permitted to testify.

RESPECTFULLY SUBMITTED THIS 30th day of October, 2025,

/s/Bryan H. Beauman

BRYAN BEAUMAN
REBECCA PRICE
333 W. Vine Street, Suite 1500
Lexington, Kentucky 40507
Telephone: (859) 255-8581
bbeauman@sturgillturner.com
rprice@sturgillturner.com
HISA ENFORCEMENT COUNSEL

MICHELLE C. PUJALS
ALLISON J. FARRELL
4801 Main Street, Suite 350
Kansas City, MO 64112
Telephone: (816) 291-1864
mpujals@hiwu.org
afarrell@hiwu.org
**HORSERACING INTEGRITY &
WELFARE UNIT, A DIVISION OF
DRUG FREE SPORT LLC**

¹⁹ *Shell*, at p. 13-14 (citations omitted).