

PUBLIC

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

	)	
In the Matter of	)	
	)	
Dr. Michael J. Galvin,	)	Docket No. 9445
	)	
Appellant.	)	
	)	

**ORDER ON: (1) JURISDICTIONAL ISSUE; AND  
(2) APPLICATION FOR REVIEW**

**I. Application for Review**

In 2020, Congress enacted the Horseracing Integrity and Safety Act (“HISA”).<sup>1</sup> Among other things, HISA created the Horseracing Integrity and Safety Authority (the “Authority”), a private, independent, self-regulatory, nonprofit corporation, to “develop[] and implement[] . . . a racetrack safety program” throughout the United States.<sup>2</sup> The Authority promulgated, and the Federal Trade Commission approved, regulatory rules, which include the statutorily-required Racetrack Safety Program.<sup>3</sup> The Authority enforces the Program’s Rules through Enforcement Counsel.<sup>4</sup>

---

<sup>1</sup> 15 U.S.C. §§ 3051 *et seq.*

<sup>2</sup> *Id.* § 3052(a).

<sup>3</sup> FTC Order Approving the Racetrack Safety Rule Proposed by the Horseracing Integrity and Safety Authority (Mar. 3, 2022) (available at [https://www.ftc.gov/system/files/ftc\\_gov/pdf/order\\_re\\_racetrack\\_safety\\_2022-3-3\\_for\\_publication.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/order_re_racetrack_safety_2022-3-3_for_publication.pdf)).

<sup>4</sup> Rule 8320(b).

PUBLIC

The Racetrack Safety Program Rules, among other things, regulate veterinarians whose practice includes thoroughbred racehorses covered by HISA (“Covered Horses”).<sup>5</sup> These Rules impose on veterinarians recordkeeping requirements, which require, in pertinent part that: “every Veterinarian who examines or treats a Covered Horse shall, within 24 hours after such examination or treatment, submit to the Authority the following information in an electronic format designated by the Authority . . . .”<sup>6</sup>

This case arises from sanctions imposed against Dr. Michael J. Galvin, a veterinarian, who has been found to have violated Rule 2251(b) for failing to timely submit over 3,000 veterinary treatment records.<sup>7</sup> Dr. Galvin seeks review under HISA § 3058(b).

## II. Summary of the Case and the Arbitrator’s Decision

In August 2024, the Authority charged Dr. Galvin with violation of Rule 2251(b). Specifically, the Authority assert that records obtained by the Authority and HIWU “indicate that you failed to report to HISA approximately 3,951 treatments administered to 497 Covered Horses between January 1, 2023 and March 7, 2024.”<sup>8</sup> An Internal Adjudication Panel (“IAP”), consisting of a single IAP member, was formed and, after prehearing proceedings, an evidentiary hearing was held. On advice of his counsel, Dr. Galvin did not appear at the hearing, although

---

<sup>5</sup> Rules 2220-51.

<sup>6</sup> Rule 2251(b).

<sup>7</sup> Appeal Book (“AB”) 8 (Notice of Violation), 1303 (Amended Final Decision), 1429 (Decision on Appeal).

<sup>8</sup> AB 9 (Notice of Violation).

PUBLIC

HIWU sought to call him as a witness.<sup>9</sup> After hearing the testimony and Enforcement Counsel’s proffer in Dr. Galvin’s absence, and after receiving extensive documentary material, the IAP Member upheld the Authority’s charge.<sup>10</sup>

The IAP Member awarded the following sanctions:

Dr. Michael J. Galvin’s registration with HISA shall be suspended for two years.

A fine shall be imposed upon Dr. Michael J. Galvin in the amount of \$25,000.

The resolution of the violation shall be publicly disclosed by HISA pursuant to Rule 8380.<sup>11</sup>

On appeal to a Board of the Authority, the decision was affirmed.<sup>12</sup>

### III. The Issues Framed for Review

Dr. Galvin seeks review of the decisions below on eight grounds, each of which the Authority contests. The parties’ positions follow:

#### 1, 2 & 3. Due Process

1. Dr. Galvin contends that the Authority’s Notice of Violation “failed to state a cognizable claim” because it (a) charged “*approximately* 3,951 treatments administered to 497 Covered Horses” collectively, instead of in “separate count[s]”; and (b) failed to “[s]pecify with reasonable particularity the factual basis” for the

---

<sup>9</sup> AB 347-48, 351, 936-41

<sup>10</sup> AB 1301 (Amended Final Decision).

<sup>11</sup> AB 1314, § 8.

<sup>12</sup> AB 1429 (Board Decision).

PUBLIC

alleged violation.<sup>13</sup> On this basis, Dr. Galvin argues he was denied “Due Process notice and meaningful opportunity to respond.”<sup>14</sup>

2. Dr. Galvin further argues that, in charging “in excess of 3,000 distinct violations” in “a single count,” the Authority’s Notice of Violation was “impermissibly duplicitous.”<sup>15</sup> This, too, is said to violate the Fifth Amendment’s due process provision.

3. Dr. Galvin also maintains that the Authority engaged in “impermissible pre-accusation delay” in commencing the case, another asserted Fifth Amendment due process violation.<sup>16</sup>

The Authority responds that its Notice of Violation “clearly stated” the Rule 2251(b) violation, and that it provided Dr. Galvin with a “spreadsheet listing all unreported treatment records . . . .”<sup>17</sup> The Notice’s “specific allegations” assured it was not “duplicitous.”<sup>18</sup> Finally, the Rules do not “specify a time limit” to charge the violation; thus, the Authority’s Notice of Violation was timely.<sup>19</sup>

---

<sup>13</sup> Review App. at 2-3 (emphasis in original).

<sup>14</sup> *Id.* at 3.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> App. Resp. at 4.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

PUBLIC

#### 4. Arbitrary and Capricious Enforcement

Dr. Galvin maintains that this is the Authority’s “first ever” Rule 2251(b) case and, as such, is “a dramatic departure from HISA [i.e., the Authority] practice and precedent. . . .”<sup>20</sup> The Authority’s action allegedly is, therefore, “arbitrary and capricious.”<sup>21</sup>

The Authority responds that it enforced Rule 2251(b) against Dr. Galvin based on his failure to provide “over 3,000 veterinary treatment records to HISA”—a failure that the Authority asserts, Dr. Galvin “has never disputed.”<sup>22</sup> Accordingly, the Authority has not “selectively or vindictively prosecute[d]” him, nor is the case based on discriminatory animus.<sup>23</sup>

#### 5. Excessive Sanctions

The two-year period of Ineligibility imposed is said to be “unprecedented, unexplained [and] disproportionate to the alleged offense.”<sup>24</sup> Dr. Galvin thus contends this is “an abuse of discretion.”<sup>25</sup>

Rule 8200, the Authority notes, permits a range of sanctions, which includes “a lifetime ban from participation in Covered Horseracing activities.”<sup>26</sup> The

---

<sup>20</sup> Review App. at 4.

<sup>21</sup> *Id.*

<sup>22</sup> App. Resp. at 5.

<sup>23</sup> *Id.*

<sup>24</sup> Review App. at 4.

<sup>25</sup> *Id.*

<sup>26</sup> App. Resp. at 6.

PUBLIC

two-year Ineligibility imposed was, therefore, both permissible and reasonable.

### **6, 7 & 8. Substantive and Procedural Deficiencies**

The IAP Member's decision, affirmed by the Authority, allegedly lacks substantial evidentiary support. According to Dr. Galvin, HIWU "failed to supply a competent evidentiary foundation for *any* of the exhibits" introduced to prove the violation.<sup>27</sup>

In addition, IAP Member prehearing rulings allegedly "lacked vital protections" required under Safety Program Rule 8340. These included denial of status conferences and failure to direct discovery, to resolve issues of exhibit admissibility, to schedule dispositive motions, and to establish on-line evidentiary hearing procedures.<sup>28</sup>

Finally, the IAP Member's decision lacked "adequate findings of fact."<sup>29</sup> The deficiency is the IAP Members failure "to make particularized findings" as to the more than 3,000 recordkeeping omissions the Authority charged.<sup>30</sup>

In response, the Authority asserts that the IAP Member's findings of fact and conclusions of law are based on the testimony and other evidence introduced at the hearing, including HIWU's proffer offered after Dr. Galvin himself failed to appear.<sup>31</sup> The IAP Member further considered issues Dr. Galvin

---

<sup>27</sup> Review App. at 4 (emphasis in original).

<sup>28</sup> *Id.* at 5.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> App. Resp. at 4

PUBLIC

raised pre- and posthearing. Thus, at bottom, “[s]ubstantial evidence” demonstrates that Dr. Galvin systematically disregarded his Rule 2251(b) reporting obligations.<sup>32</sup>

Before I address Dr. Galvin’s Application for Review, there is a preliminary matter to consider: the IAP member’s jurisdiction.

#### IV. Ruling on Jurisdiction

While finding Dr. Galvin to have violated Rule 2251(b), the IAP member did not discuss the basis for her exercising jurisdiction to hear and resolve the case.<sup>33</sup> The record itself also is unilluminating. Enforcement Counsel’s Notice of Violation advised Dr. Galvin that the violation charged would be heard “under the procedures set forth in Rule 8320 . . . before a member of the Internal Adjudication Panel.”<sup>34</sup> Enforcement Counsel’s prehearing statement cites “Rule 8320(b)” as the source of the referral.<sup>35</sup> That provision is as follows:

(b) With regard to any matter involving an alleged violation of a rule in the Rule 2200 Series other than those set forth in paragraph (a) above, the Racetrack Safety Committee may, at its discretion and taking into account the seriousness of the alleged violation and the facts of the case:

(1) Refer the matter to one or more members of the National Stewards Panel for adjudication in conformity with the procedures established in the Rule 7000 Series;

(2) Refer the matter to an independent Arbitral Body for adjudication in conformity with the procedures established in the Rule 7000 Series;

---

<sup>32</sup> *Id.*

<sup>33</sup> AB 1301 (Amended Final Decision).

<sup>34</sup> AB 9 (Notice of Violation).

<sup>35</sup> AB 61 (Prehearing Statement).

PUBLIC

(3) Refer the matter to the stewards for adjudication in accordance with the hearing procedures of the applicable state jurisdiction . . . ; or

(4) Conduct a hearing upon the matter itself, under the procedures set forth in Rule 8340.

There are no more specifics in the record, however, except for a statement in briefing to the IAP member that quoted the Notice of Violation and added: “Rule 8320(2) requires that the IAP adjudicate this matter in conformity with Rule 7000 series procedures. . . .”<sup>36</sup> “Rule 8320(2)” does not exist, however. Rule 8320(b)(2)—the only subsection (2) in the Rule—is quoted above.

I therefore directed the parties to brief the matter.<sup>37</sup>

Dr. Galvin’s brief sidesteps the issue entirely. Instead, he simply imports as “jurisdictional” defects his Application for Review arguments that the Notice of Violation allegedly fails to charge a cognizable offense and was impermissibly duplicitous.<sup>38</sup>

Enforcement Counsel, on the other hand, states that “the Internal Adjudication Panel had jurisdiction to adjudicate this matter pursuant to HISA Rule 8320(b)(1),” also quoted above.<sup>39</sup> Enforcement Counsel further explains that,

---

<sup>36</sup> AB 43 (Dec. 16, 2024 Authority Position Statement on Depositions).

<sup>37</sup> *Matter of Galvin*, No. 9445, 2025 FTC LEXIS 128 (ALJ Dec. 16, 2025).

<sup>38</sup> Dr. Galvin’s Statement on Jurisdiction [sic] of the Internal Adjudication Panel (Jan. 2, 2026) (available at [https://www.ftc.gov/system/files/ftc\\_gov/pdf/614594.2026.01.02\\_dr\\_galvin\\_s\\_statement\\_on\\_jurisdiction\\_of\\_the\\_internal\\_adjudication\\_panel\\_-\\_public.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/614594.2026.01.02_dr_galvin_s_statement_on_jurisdiction_of_the_internal_adjudication_panel_-_public.pdf)).

<sup>39</sup> Authority’s Statement on Jurisdiction of the Internal Adjudication Panel (“AuS”) (Dec. 23, 2025) (available at [https://www.ftc.gov/system/files/ftc\\_gov/pdf/614515.2025.12.23\\_hisa\\_jurisdiction\\_briefing.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/614515.2025.12.23_hisa_jurisdiction_briefing.pdf)) at ¶ 1. *See also id.* ¶ 11.

PUBLIC

through various Rule modifications, the National Stewards Panel—the adjudicatory body found in Rule 8320(b)(1)—has come to be “referred to as the Internal Adjudication Panel,” or as it is known in the Rules, the “IAP.”<sup>40</sup> But that definitional change does not speak to the heart of the matter.

The IAP as an adjudicatory body is created in Rule 7040(a):

The Internal Adjudication Panel shall consist of impartial members appointed by mutual agreement of the Authority and the Agency to hear *ECM and Other Violations* (“IAP members”). The Internal Adjudication Panel shall have a pool of IAP members. The Authority and the Agency may appoint as many IAP members as they consider necessary to the pool of IAP members in accordance with the Arbitration Procedures.<sup>41</sup>

“ECM or Other Violations,” themselves a defined term, mean “Controlled Medication Rule Violations arising out of the Rule 3000 Series, violations of Rule 3329, or violations of Rule 3510.”<sup>42</sup> The Rule 3000 Series comprises the Equine Anti-Doping and Controlled Medication Protocol, often referred to as the ADMC Program. It includes Rules 3329 and 3510. The “Protocol” is another term for “the Rule 3000 Series (Equine Anti-Doping and Controlled Medication Protocol), as amended from time to time.”<sup>43</sup>

Rule 8320(b)(1), on which the Authority relies, requires adjudication in conformity with the procedures established in the Rule 7000 Series, and that Series

---

<sup>40</sup> *Id.* at ¶ 3. *See generally id.* ¶¶ 3-10.

<sup>41</sup> Rule 7040(a) (emphasis added). *See also* Rule 1020 (definition) (“Internal Adjudication Panel has the meaning given to it in the Rule 7000 Series.”).

<sup>42</sup> Rule 1020 (definition).

<sup>43</sup> *Id.*

PUBLIC

includes another reference to adjudication by the Internal Adjudication Panel. Rule 7020(b) provides that, with exceptions not pertinent here:

Controlled Medication Rule Violations arising out of the Rule 3000 Series, violations of Rule 3329, and violations of Rule 3510 (ECM or Other Violations) shall be adjudicated by an adjudication panel (the Internal Adjudication Panel) in accordance with the Rule 3000 Series and these Arbitration Procedures.

Rule 7020(b) continues:

The Internal Adjudication Panel may also adjudicate any other matter referred to it *under the Protocol*, and any other matter that might arise from time to time *under the Protocol* that the Agency considers should be determined by the Internal Adjudication Panel . . . . The Internal Adjudication Panel will ordinarily assign a single Internal Adjudication Panel member to adjudicate a case involving an ECM or Other Violation . . . .<sup>44</sup>

The “Protocol,” to reiterate, is the ADMC Program.

All these Rules point to the IAP adjudicating charges arising under the Rules promulgated to enforce the ADMC Program. Dr. Galvin, however, is charged with violation of Rule 2251(b), part of the Racetrack Safety Program. No provision in the Rule 7000 Series purports to expand the IAP and the IAP member’s authority to include the Racetrack Safety Program Rules. Rule 7020(b) expressly limits referral of other matters to the IAP to those “under” the ADMC Program. Although other parts of the Rule 7000 Series refer either to the IAP or to one or more IAP members, those parts are procedural in nature, covering, for example, IAP or member

---

<sup>44</sup> Emphasis added.

PUBLIC

selection, qualifications, conflicts of interest, appointment and term of appointment, training, disclosures and arbitration procedures.<sup>45</sup>

I therefore do not share the Authority's confidence that Rule 8320(b)(1) resolves the matter of IAP jurisdiction to hear a charged Rule 2251(b) violation. I am, however, spared the need to decide this issue here. Rule 7090(a) empowers an IAP member to "rule on his or her own jurisdiction . . . ." Rule 7090(b) further requires a party to object to the IAP member's jurisdiction "no later than the filing of the answering statement to the charge that gives rise to the objection."

Case law recognizes that many types of irregularities in arbitration, including those claimed to be jurisdictional, must be objected to, or else forfeited and not subject to review. For example, in *Howard University v. Metropolitan Campus Police Officer's Union*,<sup>46</sup> the arbitrator decided a grievance against Howard University in favor of the union. The University sought to vacate the award on the ground that the arbitrator lacked "substantive jurisdiction" under the collective bargaining agreement.<sup>47</sup> The District Court rejected the University's motion, and the Court of Appeals, exercising de novo review, affirmed, holding the University's objection forfeited:

We agree with the Union, as does every other circuit to have considered the issue: Absent excusable ignorance of a predicate fact, a party that does not object to the arbitrator's jurisdiction during the arbitration may not later do so in court. . . . In this case Howard slept through its opportunity to object to

---

<sup>45</sup> See generally Rules 7040 (a)-(f), 7050-7190. The Rule 7000 Series does not mention the National Stewards Panel at all.

<sup>46</sup> 512 F.3d 716 (D.C. Cir. 2008).

<sup>47</sup> *Id.* at 719.

PUBLIC

the arbitrator's jurisdiction and may not avoid the consequence now that it has awakened.<sup>48</sup>

Similarly, in *Brook v. Peak International, Limited*,<sup>49</sup> the employment agreement between Brook, and his employer, Peak, called for an AAA arbitration and set forth the procedure for selecting the arbitrator. The AAA failed to follow the selection procedure in the employment agreement, offering its own arbitrator instead. The parties arbitrated the dispute on the merits, and the AAA-selected arbitrator decided in Peak's favor. Brook moved to vacate, arguing in part that the AAA failed to follow its own selection rules in appointing the arbitrator. Although Brook did not raise the AAA's failure to follow the employment agreement, the Magistrate Judge did, and Brook adopted that objection. The Magistrate Judge recommended vacating the award, and the District Court agreed.

The Court of Appeals did not, however:

Brook never objected to the AAA's failure to follow the selection process in the Employment Agreement (until prompted by the federal magistrate judge long after the arbitration had run its course). It is true that Brook filed a written objection to the AAA's failure to follow its own selection rules, but he also condoned the AAA's ignoring the Employment Agreement . . . . The failure to file a clear written objection to a defect in the selection process constitutes waiver.<sup>50</sup>

---

<sup>48</sup> *Id.* at 720-21 (citing authorities).

<sup>49</sup> 294 F.3d 668 (5th Cir. 2002).

<sup>50</sup> *Id.* at 673-74 (citation and footnotes omitted). *See also Marino v. Writers Guild of America, East, Inc.*, 992 F.2d 1480, 1484 (9th Cir. 1993) (“[I]t is well settled that a party may not sit idle through an arbitration procedure and then collaterally attack that procedure on grounds not raised before the arbitrators when the result turns out to be adverse. . . . This rule even extends to questions, such as arbitrator bias, that go to the very heart of arbitral fairness.”) (citing authorities); *AG La Mesa LLC v. Lexington Ins. Co.*, 10-Civ-1873-AJB (BGS), 2012 WL 2961264, at \*2 (S.D. Calif. July 19, 2012) (failure to object to arbitration panel's subject matter jurisdiction “during the arbitration process” precluded raising the issue in opposition to motion to confirm the award).

PUBLIC

Here, Dr. Galvin was required to respond to Enforcement Counsel’s Notice of Violation no later than August 30, 2024.<sup>51</sup> Dr. Galvin submitted a response within the allotted time, but he did not include any objection to the jurisdiction of the IAP, except that relating to the manner of service of the Notice of Violation, which Dr. Galvin claimed not to have received.<sup>52</sup> That, however, does not raise an objection based on the extent of the IAP member’s jurisdiction under Rules 7020(b) or 8320(b).

Subsequently, Dr. Galvin objected again, including an argument that Enforcement Counsel’s Notice of Violation failed to identify the IAP member. But that objection related only to Dr. Galvin’s contention that he could not meaningfully submit a response in the nature of “Wells submission”—a part of SEC practice, or of that used by “State and Federal prosecutors, . . . to convince the authorities *not* to issue charges.”<sup>53</sup> Thereafter, Dr. Galvin served a request for document production, to which Enforcement Counsel responded with both production and its own objections.<sup>54</sup>

Dr. Galvin’s counsel participated in two case conferences with the Arbitrator, the latter of which resulted in various prehearing deadlines.<sup>55</sup> Dr. Galvin followed

---

<sup>51</sup> AB 10 (Notice of Violation).

<sup>52</sup> AB 14 (Aug. 29, 2024 Galvin letter to Authority re Notice of Violation), at ¶ 1.

<sup>53</sup> AB 119 (Sept. 2, 2024 Galvin letter to Authority re Notice of Violation) (emphasis in original).

<sup>54</sup> AB 122 (Jan. 16, 2025 Galvin Request for Production), 127 (Feb. 14, 2025 Authority Objections and Responses to Galvin Request for Production).

<sup>55</sup> AB 28 (Oct. 30, 2024 prehearing conference video) & 29 (Nov. 19, 2024 status conference video), 31 (Dec. 3, 2024 Arbitrator email to parties).

PUBLIC

up with additional objections, and sought leave to take depositions, which the Arbitrator denied.<sup>56</sup> Dr. Galvin's counsel requested an additional prehearing conference to discuss raising disposition motions, but as the Arbitrator wrote, never suggested conference dates.<sup>57</sup>

Dr. Galvin also filed a motion to dismiss, asserting that:

- (1) the Authority's Notice of Violation failed to state a cognizable offense;
  - (2) the sole count in the proceeding was impermissibly duplicitous;
  - (3) the Authority's impermissible pre-accusation delay violated his due process rights;
  - (4) the case reflected selective and/or vindictive prosecution of Dr. Galvin;
- and
- (5) the Authority's refusal to produce relevant (and exculpatory) evidence violated due process.<sup>58</sup>

Through counsel, Dr. Galvin actively participated in the arbitration hearing, both objecting and examining witnesses.<sup>59</sup> Afterwards, Dr. Galvin submitted a posthearing brief, asserting multiple objections not pertinent here.<sup>60</sup> After the IAP

---

<sup>56</sup> AB 32 (Dec. 16, 2024 Galvin letter to Arbitrator), 55 (Jan. 3, 2025 Arbitrator ruling on depositions).

<sup>57</sup> AB 57 (Feb. 19, 2025 Galvin request for status conference), 70 (Feb. 24, 2025 Galvin request for status conference), 72 (Mar. 6, 2025 Arbitrator email to parties), 74 (Mar. 7, 2025 Galvin letter re disqualification of enforcement counsel), 1305 (Amended Final Decision).

<sup>58</sup> AB 79-135 (Mar. 7, 2025 Galvin Motion to Dismiss and exhibits).

<sup>59</sup> *See, e.g.*, AB 139 & 885 (Mar. 10, 2025 hearing transcript, appearance), 144 (Mar. 10, 2025 hearing transcript, reserving opening), 255-317, 329-42, 903-95, 994-1006, 1009-038, 1040-042 (March 10-11, 2025 hearing transcript, examination by Galvin counsel).

<sup>60</sup> AB 1268-84 (Apr. 1, 2025 Galvin Posthearing Brief).

**PUBLIC**

member's adverse decision, Dr. Galvin appealed, again raising points not pertinent here, and sought a stay pending appeal.<sup>61</sup>

All this took place without Dr. Galvin ever objecting to the Arbitrator's jurisdiction under either Rule 7020(b) or Rule 8320(b). Having failed to object to the IAP member's jurisdiction by the time of his "answering statement," as Rule 7090(b) requires, and having actively participated in both the arbitration and the appeal to the Authority's Board, Dr. Galvin forfeited any objection to jurisdiction.

Accordingly, it is hereby **ORDERED** that the stay directed in my December 16, 2025 Order is **VACATED**.

**V. Ruling on Dr. Galvin's Application for Review**

FTC Rule 1.146(c)(2) provides that:

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;

---

<sup>61</sup> AB 1316 (July 21, 2025 Galvin Notice of Appeal), 1347 (July 21, 2025 Galvin Memorandum of Law in Support of Motion for Stay of Enforcement).

PUBLIC

(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.

FTC Rule 1.146(a)(1) further states, in relevant part, that:

[I]f a hearing is requested, . . . the applicant must provide support for each issue raised, citing to the Authority's record when assignments of error are based on the record, and citing to the principal legal authorities the applicant relies upon, whether statutes, regulations, cases, or other authorities. Except for good cause shown, no assignment of error by the aggrieved party may rely on any question of fact or law not presented to the Authority.

Dr. Galvin's Application for Review seems to seek an evidentiary hearing, on his third ground for review. There, he contends that the Authority's delay in charging a violation was "impermissible" and thus "violated Dr. Galvin's Fifth Amendment Due Process rights."<sup>62</sup> This claim defect, he argues, requires "overturn[ing]" the IAP Member's and Authority's decisions. Or, "[a]lternatively, and at a minimum, a hearing should be held to determine whether HISA's unexplained delay in commencing this proceeding was justified."<sup>63</sup>

Dr. Galvin does not, however, include any of the information required by Rule 1.146(a)(1), nor any other specifics forming the basis for his hearing request. He does not set forth any additional evidence—beyond that already part of the record—

---

<sup>62</sup> Review App. at 3.

<sup>63</sup> *Id.*

## PUBLIC

that he would proffer at an evidentiary hearing. The only authority cited—*United States v. Hoo*<sup>64</sup>—has no application.

In *Hoo*, the government charged the defendant in a RICO indictment filed two weeks after the defendant’s twenty-first birthday, asserting crimes that occurred while he was a teenager. If the defendant had been indicted before he turned 21, the federal Juvenile Delinquency Act provided for various procedural protections.<sup>65</sup> The defendant argued that the delay in filing violated his due process rights. The district court directed a hearing “to determine the reasons for [the] government’s delay in filing the indictment,” after which the Court held “the government engaged in entirely appropriate investigatory conduct.”<sup>66</sup>

The Court of Appeals affirmed. The Court relied in part on *United States v. Marion*,<sup>67</sup> where the Supreme Court held that “the due process clause requires the dismissal of an indictment because of preindictment delay only when the delay causes substantial prejudice to the defense and the delay is an intentional device to gain tactical advantage over the accused.”<sup>68</sup> The district court had held, however, that “the delay in filing the indictment was due entirely to legitimate

---

<sup>64</sup> 825 F.2d 667 (2d Cir. 1987).

<sup>65</sup> *Id.* at 669.

<sup>66</sup> *Id.* at 668-69 (cleaned up).

<sup>67</sup> 404 U.S. 307 (1971).

<sup>68</sup> 825 F.2d at 671 (cleaned up).

PUBLIC

considerations,” and the defendant, “made no showing of an improper prosecutorial motive . . . .”<sup>69</sup>

*Hoo* does not establish a per se rule requiring an evidentiary hearing whenever an individual asserts arguable prejudice resulting from delay in being charged. Rather, the decision arose under a specific statute dealing with prosecution of juveniles. Dr. Galvin asserts no comparable Racetrack Safety Program or other Rule prescribing a period within which the Authority must charge a violation. He further does not argue that he was denied an opportunity in the arbitration proceedings to adduce facts from which to infer that any charging delay here due to an “improper prosecutorial motive” or otherwise impermissible. Indeed, even though Dr. Galvin himself never appeared at the arbitration, Enforcement Counsel produced witnesses on short notice at Dr. Galvin’s counsel’s request.<sup>70</sup>

Rule 1.146(a)(1) authorizes an ALJ, after receiving the Authority’s response to an application for review, to determine “whether an evidentiary hearing . . . is either unnecessary or necessary to supplement or to contest facts in the record . . . .”<sup>71</sup> Accordingly, insofar as Dr. Galvin seeks an evidentiary hearing, I deny the request. I will decide this proceeding on the arbitration record, including the appeal proceeding, and the parties’ briefs on this review.

---

<sup>69</sup> *Id.* at 671. See generally *United States v. McCormick*, No. 18-0359 (JDB), 2019 WL 6311898 (D.D.C. Nov. 25, 2019) (denying dismissal for pre-indictment delay).

<sup>70</sup> AB 351-352 (Mar. 10, 2025 hearing transcript), 984-988 (Mar. 11, 2025 hearing transcript).

<sup>71</sup> See also FTC Rule 1.146(c)(1) & (2), 87 Fed. Reg. 60079-80 (conferring administrative hearings and factual review authority on the ALJ).

PUBLIC

## VI. Required Filings

1. The parties are **DIRECTED** to concurrently file with the FTC's Office of the Secretary:

a. By February 2, 2026, "proposed findings of fact, conclusions of law, and a proposed order, together with a supporting legal brief providing the party's reasoning. Such filings, limited to 7,500 words, must be [contemporaneously] served on the other party and contain references to the record and authorities on which they rely." *See* FTC Practice Rule 1.146(c)(1)(E).

b. "Reply findings of fact, conclusions of law, and briefs, limited to 2,500 words, may be filed by each party within 10 days of service of the initial filings." Assuming initial filings are made on the February 2 date, replies would be due on February 12, 2026.<sup>72</sup>

In this case, these word limits apply to all of the opening filings in the aggregate, and to all of the reply filings in the aggregate. They do not apply individually to each filing listed.

The parties are reminded that any individual filing should bear a consecutive page number. A subsequent Order will detail further the requirements for these filings.

2. In addition to service with the Office of the Secretary, the parties must transmit their filings: (a) to the Office of Administrative Law Judges ("OALJ")

---

<sup>72</sup> FTC Rule 1.146(c)(3), 87 Fed. Reg. 60080 (bracketed matter added for avoidance of doubt).

**PUBLIC**

electronically by email (OALJ@ftc.gov): and (b) deliver by hand or overnight mail  
one hard copy addressed as follows:

Jay L. Himes  
Administrative Law Judge  
Federal Trade Commission: Northeast Regional Office  
1 Bowling Green  
Room 318  
New York, NY 10004

**ORDERED:**

*Jay L. Himes*  
\_\_\_\_\_  
Jay L. Himes  
Administrative Law Judge

Date: January 7, 2026