UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
FTC DOCKET NO. D-9450

ADMINISTRATIVE LAW JUDGE: HON. DANIA L. AYOUBI

IN THE MATTER OF:
JENA ANTONUCCI, APPELLANT

APPELLANT'S REPLY BRIEF

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Jena Antonucci ("**Appellant**") replies to the Horseracing Integrity and Safety Authority's ("**HISA**") June 10, 2026 Brief ("**HISA Br.**").

I. INTRODUCTION

HISA focuses on easily distinguishable case law and myriad restatements of the so-called "Trainer Insurer Rule" to distract from the facts of this case, which are relatively straightforward, while wholly ignoring its own written concession that Appellant had provided evidence of the likely source of 3-Hydroxylidocaine. HISA ignores its minister of justice role, and seeks a finding that Appellant failed to establish the source of the Controlled Substance in Bee A Queen's June 14, 2025 post-race sample, despite well-established WADA precedent as to the burden of proof with respect to proof of source. HISA's attempts to diminish or ignore the evidence adduced in this matter, as well as the clear deficiencies in the IAP Member's Decision and the IAP process as a whole, are unconvincing and should be dismissed.

II. THE SOURCE OF THE CONTROLLED SUBSTANCE

Notably absent from HISA's Proposed Findings of Fact, Conclusions of Law, or supporting Brief is any mention of its previous concession that Appellant had provided evidence of the likely source of 3-Hydroxylidocaine. **AB, p. 33**. It could not have been a surprise that Appellant would make this argument, given that counsel for Appellant discussed this point in his opening statement at the hearing in this matter. **AB, p. 370:23-371:14; AB 457.** HISA's failure to even make note of this fact speaks volumes.

In support of its position that Appellant failed to establish the source of the Controlled Substance, HISA relies almost exclusively on case law in which the Covered Person expressly admitted that they had not met the burden of proof with respect to source or those in which the Covered Person made a generalized environmental contamination argument. Those cases are

distinguishable from this matter in several obvious respects, and HISA's attempts to argue otherwise are both disingenuous and inconsistent with the evidence presented in this matter.

First, HISA seems to cite *Khaled Abdullaziz Al Eid & Abdullah Waleed Sharbatly v. FEI*[1] for the proposition that Appellant must "establish the route of administration, i.e., the causal link between the alleged contamination and the AAF" as a separate requirement in addition to establishing that the source of the Controlled Substance was more likely than not inadvertent transfer from the Racing Support Staff Member ("**RSSM**") (HISA Br. 19). The CAS Panel in that case made it clear, however, that this finding only supported the ultimate conclusion – that Al Eid had failed to establish that ingestion by contamination was more likely than not the source of the positive test. Here, Appellant presented evidence of the RSSM's use of the Lidocaine cream as well as expert testimony on the mechanism of transdermal transfer of lidocaine, specifically through sweat. **PFF 20, 21, 25(a).**

The remaining two cases cited by HISA are similarly distinguishable. Both *In the Matter of Philip Serpe*[2] and *HIWU v. Cano*,[3] like *Al Eid*, involved situations where the persons responsible argued that unspecified, unproven contamination was the only possible explanation for the respective positive tests. Like *Al Eid*, and for the same reasons, the facts of these cases are miles away from the present matter.

HISA also makes much of the RSSM's allegedly contradictory accounts with respect to his use of the Lidocaine product (HISA Br., p. 15). The initial Affirmation was provided at a time when Appellant was unrepresented by counsel, whereas the Second Affirmation was provided (i)

[1] *Khaled Abdullaziz Al Eid & Abdullah Waleed Sharbatly v. FEI* (CAS 2012/A/2807 & 2808) ["Al Eid"].
[2] *In the Matter of Philip Serpe*, Docket No. 9331 (Sept. 12, 2025).
[3] *HIWU v. Cano*, JAMS No. 1501001058. (Sept. 30, 2025).

with the benefit of counsel to inquire as to potentially relevant additional details, and (ii) following receipt of Dr. Scollay's expert report. The two statements are not inconsistent as HISA claims, as the Second Affirmation provides additional detail, largely in response to Dr. Scollay's Expert Report, submitted months after HIWU conceded in initial briefing that Appellant had established the likely source of the Controlled Medication substance.

HISA also highlights that Professor Kintz agreed that an earlier intentional administration of lidocaine could not be ruled out, while ignoring that he also testified that such tail end excretion can never be ruled out with the analysis of a single sample. **AB, p. 409:2-410:5 (Kintz)**. HISA points to Professor Kintz's "concession" that "he had no information on how the Lidocaine would have been introduced" into the Covered Horse's body, while neglecting to mention Professor Kintz's extensive testimony on (i) the mechanism of transdermal transfer of lidocaine; (ii) anti-doping cases in which drug transfer between a user and non-user of a substance has been proven; and (iii) that studies indicate that lidocaine is well excreted in sweat and can be stored on the skin if not washed. **PFF 20, 21, 25(a).**

Even if HIWU's concession regarding the source of the 3-Hydroxylidocaine did not render further evidence on this point unnecessary, Appellant has nonetheless established that the source of the Controlled Substance was more likely than not inadvertent transfer from the RSSM, who was being treated with lidocaine at the time of the positive test[4] based on (i) the fact that HIWU had already conceded the source of the 3-Hydroxylidocaine In Bee A Queen's Sample; (ii) the fact that no expert was called to testify in response to Prof. Kintz's testimony at the hearing in this matter; (iii) the fact that the RSSM admits to using lidocaine cream on the date of the positive test; (iv) the fact that the RSSM in question raced on a different horse trained by a different trainer who

[4] PCL 9.

also tested positive for Lidocaine just over one month later; (v) Prof. Kintz's testimony with respect to the mechanism of contamination; and (vi) Prof. Kintz's assertion that the concentration of lidocaine in the sample was inconsistent with intentional administration. **PCL 8-9**.

In sum, the IAP erred in finding that the source of the Controlled Medication in Bee A Queen's June 14, 2025 Sample had not been established. **PCL 8-9**.

III. FAULT ANALYSIS

Contrary to HISA's argument (HISA Br. 19), here, Appellant exercised utmost caution given that she took extensive precautions to ensure that her horses did not come into contact with prohibited substances and could not have reasonably known, even in the exercise of utmost caution, that the RSSM she selected for this race, who was not her employee, had been using Lidocaine at the time. HISA's utter refusal to even acknowledge the clear differences between a contract worker and a full-time employee ignore the plain reality of employment. Finally, even if Appellant had known that the RSSM was using Lidocaine, she could not reasonably be expected to know that the controlled substance could enter the horse's system through contact with the RSSM. ***HIWU v. VanMeter*** **(JAMS 1501000594), AAB, p. 90-93, ¶¶ 7.11-7.24;** ***HIWU v. Moquett*** **(IAP Case No. 2023-220), AAB, p. 99.** HISA's arguments fail to address this established case law at all.

Accordingly, Appellant has established that she bears No Fault or Negligence with respect to the June 14, 2025 positive test and, as a consequence, the Sanction[5] should be eliminated pursuant to Rule 3324. **PCL 14**.

Alternatively, under Rule 3225, the Sanction is arbitrary and capricious and contrary to law, as the Arbitrator unreasonably and illogically considered only one fact with respect to "No

[5] Excluding disqualification of the Covered Horse and return of purse.

Significant Fault or Negligence" analysis; and failed to rationally connect the judgment to the proper facts. **Decision, AB, p. 360.** Under *Cilic v. International Tennis Federation*, CAS 2013/A/3327, objectively and subjectively a reasonable trainer in Appellant's position would not have done more than Appellant did here. ***Cilic v. International Tennis Federation* (CAS 2013/A/3327), AAB, Tab 6, ¶¶ 69-77; *Gabriel da Silva Santos v. FINA* (CAS 2019/A/6482), AAB, Tab 7, ¶¶ 69-72.** In the "totality of circumstances," Fault was "insignificant," and the Sanction should have been reduced to the minimum. **Rule 3225**.

IV. IAP PROCESS

Finally, as presently provided for, the Internal Adjudication Panel ("IAP") process provides no fair opportunity to defend against Controlled Medication charges brought under ADMC Program Rules. HIWU unilaterally selects unqualified IAP Members, often with no legal education, to preside over IAP hearings. This unilateral selection constitutes a fundamental denial of due process, particularly as it relates to HIWU's imposition of penalties or punishment, including suspensions, fines, forfeitures of purses, the allocation of points to the purported wrongdoer. The IAP Member is a non-lawyer who is unfairly tasked with making legal interpretations and significant evidentiary determinations. Here, the IAP Member attempted to adjourn the hearing without hearing closing arguments (AB, p. 450: 5-10), suggesting that she had made up her mind as to her decision before a hearing was held in this matter. Further, the form of the "Final Ruling of Internal Adjudication Panel" template given to IAP Members (AB, p. 340-345) provides little to no opportunity for IAP Members to provide reasoning for their ultimate findings, despite the fact that the statutory framework entitles Appellant to a reasoned decision, that is rationally connected to the evidence and made with adequate consideration of the circumstances.

V. CONCLUSION

The Decision should be reversed, Sanction vacated and charges dismissed, with prejudice.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 16 CFR 1.146(a) and 16 CFR 4.4(b), a copy of the forgoing Appellant's Reply Brief is being served this 22nd day of June 2026 via Administrative E-File System and as indicated below:

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Executed on June 22, 2026, at Brea, California.

/s/ Katlin N. Freeman
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