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

ADMINISTRATIVE LAW JUDGE: **Hon. Jay L. Himes**

IN THE MATTER OF: **JASON SCOTT, DVM,** **Appellant.**	**Docket No. 9449**

THE AUTHORITY'S RESPONSE TO DR. SCOTT'S OBJECTION AND MOTION TO STRIKE THE AUTHORITY'S DISPOSITIVE BRIEF AND REPLY BRIEF

Comes now the Horseracing Integrity and Safety Authority, Inc. ("**HISA**" or the "**Authority**") pursuant to the Administrative Law Judge's Order dated June 23, 2026, and submits the following Response to Dr. Scott's Objection and Motion to Strike the Authority's Dispositive Brief and Reply Brief.

CERTIFICATE OF SERVICE

Pursuant to Federal Trade Commission Rules of Practice 4.2(c) and 4.4(b), a copy of the Authority's Response to Dr. Scott's Objection and Motion to Strike the Authority's Dispositive Brief and Reply Brief is being served on June 30, 2026, via Administrative E-File System and by emailing a copy to the below listed. I further certify that no portion of the filing was drafted by generative artificial intelligence ("AI") and any language in the filing that was drafted by generative AI was checked for accuracy by human attorneys or paralegals using printed legal reporters or online legal databases.

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INTRODUCTION

Under the Horseracing Integrity and Safety Act, as amended (the "Act"), any person aggrieved by an arbitrator's decision is entitled to have an Administrative Law Judge at the Federal Trade Commission review their civil sanction. When conducting this review, the ALJ must conduct a *de novo* review of the sanction. Yet Dr. Scott seeks to circumvent this mandate. He argues that the ALJ should limit review to his affirmative defense and constitutional challenges, leaving the sanction itself unexamined. But the law does not allow the ALJ to ignore this review. Because *de novo* review of the civil sanction is required, the Authority has every right to identify legal errors in the sanction imposed by the arbitrator. For that reason, Dr. Scott's Objection and Motion to Strike should be denied.

LEGAL STANDARD

The Act and accompanying regulations establish a comprehensive regulatory scheme for resolving equine anti-doping issues in the Thoroughbred industry. When the Horseracing Integrity & Welfare Unit ("HIWU"), charges an equine Anti-Doping Rule Violation ("ADRV"), a Covered Person can request a hearing from an independent arbitrator to determine whether the Covered Person committed an ADRV and, if so, the appropriate sanction.[1] Following the arbitrator's decision, either the Covered Person or the Federal Trade Commission can request a review of the final civil sanction to an ALJ.[2]

Once requested, that civil sanction "shall be subject to de novo review by an administrative law judge."[3] The parameters of that *de novo* review are based on the Act and set forth in the regulation:

[1] *See* ADMC Program Rule 3261.
[2] *See* 16 C.F.R. § 1.146(a).
[3] 15 U.S.C. § 3058(b)(1).

> (b) ***Nature of review by the Administrative Law Judge.*** Under 15 U.S.C. 3058(b)(2)(A), the Administrative Law Judge must determine when reviewing matters under this subpart:
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> (1) Whether the person has engaged in such acts or practices, or has omitted such acts or practices, as the Authority has found the person to have engaged in or omitted. In making this determination, the Administrative Law Judge may rely on the factual record developed before the Authority and may supplement that record by evidence presented in an administrative hearing under paragraph (c) of this section;
>
> (2) Whether such acts, practices, or omissions are in violation of the Horseracing Integrity and Safety Act, 15 U.S.C. 3051 through 3060, or the rules of the Authority as approved by the Commission. The Administrative Law Judge will make this determination de novo; and
>
> (3) Whether the final civil sanction of the Authority was arbitrary, capricious, an abuse of discretion, prejudicial, the result of a conflict of interest, or otherwise not in accordance with law. The Administrative Law Judge will make this determination de novo.[4]

Based on that mandatory review, the ALJ has authority to "affirm, reverse, modify, set aside, or remand for further proceedings, in whole or in part, the final civil sanction of the Authority" and to "make any findings or conclusions that . . . is proper and based on the record."[5]

ARGUMENT

I. When an Aggrieved Person requests Review of a Final Civil Sanction, the ALJ Must Review the Sanction *De Novo.*

Dr. Scott argues that any efforts to modify the sanction imposed here falls outside the jurisdiction of the ALJ because "this Court has no jurisdiction to rule on issues that were not properly presented upon application by either the Covered Person or the Commission."[6] Dr. Scott misreads the scope of review here. The ALJ is mandated to review the sanction for error, and the Authority is thus within its rights to identify legal errors in the sanction imposed.

[4] 16 C.F.R. § 1.146(b); *see also* 15 U.S.C. § 3058(b)(2)(A).
[5] 16 C.F.R. § 1.146(d)(3); 15 U.S.C. § 3058(b)(3)(A).
[6] Scott Mem. in Support of Objection and Motion to Strike at 1.

A. The ALJ Must Review the Sanctions When a Review is Requested

To start, the only basis for review under the Act is to request review of the *sanction*.[7] Dr. Scott's assertion that he "did not appeal the penalty; he appealed liability"[8] thus has no basis in the Act or accompanying regulations but rather is contradicted by the statutory text. In fact, the Act—in a section entitled "Rule Violations and Civil Sanctions"—distinguishes liability for rule violations (15 U.S.C. § 3057(a)) from the resulting civil sanctions if a violation is found (15 U.S.C. § 3057(d)).[9] To be sure, review of the civil sanction can include review of whether the Authority proved an ADRV. But Dr. Scott's attempt to arbitrarily limit this review to issues of liability alone finds no basis in the Act.

Additionally, when a review is requested, the ALJ must review the final civil sanction to determine whether it was "arbitrary, capricious, an abuse of discretion, prejudicial, the result of a conflict of interest, or otherwise not in accordance with the law."[10] The Act says that the ALJ "shall determine" the issue, while the regulation says the ALJ "must determine" the issue. Both phrases indicate mandatory, not discretionary, language.[11] An ALJ is thus duty bound to review the civil sanction upon receiving a request for review and to make a determination *de novo*.[12]

By requesting a review, Dr. Scott must take the bitter with the sweet. When he invoked the ALJ's review of his civil sanction, he placed his civil sanction fully before the ALJ for a *de novo* review. He cannot selectively accept the benefits of *de novo* review while insulating his sanction from scrutiny. By requesting this review, he risks a worse sanction than he received from

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[7] *See* 15 U.S.C. § 3058(b)(1) (providing for a review "with respect to the *final civil sanction imposed*" and noting that "the *civil sanction* shall be subject to de novo review by an administrative law judge") (emphasis added).
[8] Scott Mem. in Support of Objection and Motion to Strike at 4.
[9] *Compare* 15 U.S.C. § 3057(a) *with* 15 U.S.C. § 3057(d).
[10] 15 U.S.C. § 3058(b)(2)(A)(iii); 16 C.F.R. § 1.146(b)(3).
[11] *See Anglers Conservation Network v. Pritzker*, 809 F.3d 664, 671 (D.C. Cir. 2016) ("Ordinarily, legislation using 'shall' indicates a mandatory duty while legislation using 'may' grants discretion.").
[12] 16 C.F.R. § 1.146(b)(3).

the arbitrator. That risk is not hypothetical: several Covered Persons have asked for an ALJ review and ended up with an increased sanction after review.[13] In *Juarez-Rufino*, for example, the ALJ more than tripled the fine on review.[14] And in *Overly*, the ALJ more than doubled the period of Ineligibility.[15]

Dr. Scott unilaterally asserts that he is limiting the scope of review here, but he has no power to do so under the Act and accompanying regulations.

B. The Authority Can Identify Legal Issues with the Sanction Imposed by the Arbitrator in its Briefing

Given the scope of review, the Authority is within its rights to brief legal issues relevant to Dr. Scott's sanction. The regulations permit the Authority to file proposed findings of fact, conclusions of law, and an accompanying legal brief.[16] In doing so, the Authority cannot ignore clear legal issues with the sanction. It would be an absurd result for the ALJ to be mandated to review the sanction *de novo* while the Authority is simultaneously prohibited from identifying the legal errors that the review is designed to catch.

Moreover, this case is not one where the Authority or HIWU is seeking review as a person aggrieved, as was the case in *Shell*.[17] In *Shell*, HIWU filed its own application for review. The ALJ found that HIWU had no standing, and that neither the Authority nor HIWU were permitted

[13] This situation is not unique to HISA. For example, the congressionally authorized U.S. Center for SafeSport, which governs certain types of misconduct within Olympic and Paralympic sports, allows appeals of its decisions to an independent arbitrator. The reviews are *de novo* and, for that reason, can result in an arbitrator imposing an increased sanction on appeal. *See* Nyman v. U.S. Ctr. for SafeSport, 2021 WL 857084, No. 3:20-cv-2256, at *5-9 (N.D. Oh. March 8, 2021) (holding arbitrator did not exceed his power by increasing sanction against gymnastics coach when the relevant rules permitted the arbitrator to independently determine the appropriate sanction).
[14] *See* In the Matter of Eusebio Juarez-Rufino, FTC Docket No. 9444 (April 28, 2026) at 51-52.
[15] *See* In the Matter of Larry Overly, FTC Docket No. 9443 (Jan. 27, 2026) at 92.
[16] *See* 16 C.F.R. § 1.146(c)(3).
[17] *See* Dismissal Order, *In the Matter of Dr. Scott Shell*, FTC Docket No. 9439.

to file cross-appeals.[18] Neither HIWU nor the Authority have filed an application for review as a person aggrieved here.

Nor is it necessary for the Authority to cross-appeal to properly raise an issue with Dr. Scott's sanction. In fact, *Overly* involved an almost identical issue. There, the Authority identified in its briefing an arbitrator's error in applying the principle of proportionality to two ADRVs—even though the veterinarian had not appealed the application of the principle of proportionality.[19] On review, the ALJ agreed that the arbitrator had erroneously applied the principle of proportionality and imposed consecutive sanctions for the two ADRVs.[20] Like in *Overly*, the Authority here raised issues with Dr. Scott's sanction as part of the ALJ's *de novo* review. That approach is entirely consistent with the nature of review.

II. The Party-Presentation Principle is not Applicable Here.

Finally, Dr. Scott argues that the ALJ's review of the sanction here would violate the party-presentation principle. It does not. As already explained, the ALJ must review the sanction every time a review is requested. The issue is thus expressly before the ALJ on review.

In any event, Dr. Scott's party-presentation argument fails here because the Authority raised the issue in its briefing to the ALJ. Dr. Scott is trying to create a party-presentation issue by moving to strike sections of the Authority's submissions rather than respond on the merits. His attempt to do so fails. Dr. Scott is fully aware of the issues, and he has had the opportunity to be heard on them in a *de novo* proceeding. Thus, "any prejudice to [Dr. Scott] is mitigated by his full opportunity to be heard on this issue on [review] and the [ALJ's] *de novo* review[.]"[21]

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[18] *Id*. at 4-5.
[19] *See* Overly at 18.
[20] *Id*. at 92.
[21] *Torcivia v. Suffolk Cty.*, 17 F.4th 342, 356 fn. 24 (2d Cir. 2021).

In addition, none of the cases cited by Dr. Scott—all of which involve appeals of federal criminal convictions—apply here. *United States v. Sineneng-Smith*, for example, involved the Ninth Circuit *sua sponte* inviting amici curiae to brief a First Amendment overbreadth issue that had not been raised by the parties, in an appeal of a conviction for immigration crimes.[22] This case could not be more different. The Authority expressly raised the issue with Dr. Scott's sanction in its briefing, and the sanction is an issue that falls squarely within the scope of review. *Sineneng-Smith* has no application here.

Likewise, *Greenlaw v. United States* involved the Eighth Circuit *sua sponte* ordering the District Court to add 15 years to a defendant's sentence, despite a federal statute allowing the government to appeal a sentence only if the Attorney General, the Solicitor General, or a deputy solicitor general personally approved.[23] That situation simply is not present here. And *United States v. Cheverez-Morales* involved the First Circuit setting aside the party-presentation principle when the government and the sentencing court did not do as instructed at a sentencing hearing on remand.[24] Again, that situation is not present here.

The party-presentation principle is not implicated in this case. It should come as no surprise to Dr. Scott that when he requested a *de novo* review of his civil sanction, he would get a *de novo* review of his sanction—for better or for worse.

CONCLUSION

Dr. Scott requested this review. In doing so, he subjected himself to the review mandated by FTC Rule 1.146(b). The Authority is entitled to identify legal errors in the sanction imposed by the arbitrator, and the ALJ is entitled—indeed mandated—to review the sanction to determine

[22] *United States v. Sineneng-Smith*, 590 U.S. 371, 378-379 (2020).
[23] *See Greenlaw v. United States*, 554 U.S. 237, 245-47 (2008).
[24] *See United States v. Cheveres-Morales*, 83 F.4th 34, 43-44 (1st Cir. 2023).

whether it was arbitrary, capricious, an abuse of discretion, or otherwise contrary to law. Dr. Scott's efforts to strike the Authority's arguments is an attempt to avoid the very review he set in motion. The Appellant's motion should be denied in its entirety, and the Authority's Proposed Findings of Fact, Conclusions of Law, and Supporting Legal Brief should stand as filed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 30th day of June, 2026.

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