PUBLIC

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

In the Matter of	)	
Jeffrey Poole,	)	Docket No. 9417
Appellant.	)	

ADMINISTRATIVE LAW JUDGE DECISION ON APPLICATION FOR REVIEW

Pursuant to 15 U.S.C. § 3058(b) and 16 C.F.R. § 1.146(a), Jeffrey Poole ("Poole" or "Appellant") appeals the final civil sanctions imposed against him by the Horseracing Integrity and Safety Authority, Inc. ("HISA") for violating section 3214(a) of the Anti-Doping and Medication Control Program ("ADMC" or the "ADMC Program"). As set forth below, the final civil sanctions are AFFIRMED.

I. BACKGROUND

A. The ADMC Program

The Horseracing Integrity and Safety Act, 15 U.S.C. §§ 3051-3060, empowered HISA to develop and enforce rules and sanctions on a variety of subjects, including anti-doping and medication for horses, subject to oversight by the Federal Trade Commission ("FTC"). 15 U.S.C. §§ 3053, 3055, 3057. Implementing regulations, effective May 22, 2023, established the specific rules of the ADMC Program, including persons and animals covered by the ADMC Program, banned substances, and sanctions for violations. *See generally* 88 Fed. Reg. 5070-5201 (Jan. 26, 2023) (FTC Notice of HISA Proposed Rule and Request for Comment); Order Approving the ADMC Rule Proposed by HISA (Mar. 27, 2023) (available at https://www.ftc.gov/system/files/ftc_gov/pdf/P222100CommissionOrderAntiDopingMedication.pdf); 88 Fed. Reg. 27894 (Mar. 27, 2023) (FTC Notice of Final Rule, effective May 22, 2023) (available at https://hisaus.org/regulations?modal-shown=true#equine-anti-doping-and-controlled-medication-

protocol-rules) (hereafter, "AMDC Rules"). Rules for FTC oversight of HISA, including HISA's imposition of civil sanctions, are set forth in 16 C.F.R. § 1.145 *et. seq.*; *see* 87 Fed. Reg. 60077 (Oct. 4, 2022) (Final Rule) (hereafter, "FTC Rules").

ADMC Rule 3010(e)(1) established the Horseracing Integrity and Welfare Unit ("HIWU") to enforce the ADMC Program for HISA. HIWU charges under the ADMC Program are adjudicated by an arbitrator. ADMC Rule 7020. HISA civil sanctions, including those imposed for violations of the ADMC Program, are reviewable by an FTC Administrative Law Judge. 15 U.S.C. § 3058(b); FTC Rule 1.146.

B. Procedural History

On June 23, 2023, HIWU charged Appellant, a horse trainer, with violating the ADMC Program by possessing levothyroxine, a banned substance known as "Thyro-L." On August 8, 2023, after an evidentiary hearing, the arbitrator appointed to adjudicate the charge against Appellant (the "Arbitrator") issued a final decision finding that Poole violated ADMC Rule 3214(a) by possessing Thyro-L (the "Decision"). The Decision held that the appropriate sanctions for the violation should be a 22-month period of ineligibility,[1] a $10,000 fine, and an $8,000 contribution toward HIWU's arbitration costs. On August 11, 2023, HIWU sent Poole a Notice of Final Civil Sanctions under the ADMC Program, incorporating the sanctions determination of the Arbitrator, and on August 12, 2023, pursuant to FTC Rule 1.145, HISA filed a HISA Civil Sanction Notice with the FTC (hereafter, the "Sanctions").

On September 8, 2023, Appellant filed a notice of appeal and application for review ("Application for Review") requesting an evidentiary hearing to contest the facts found by the Arbitrator and to supplement the record with further testimony. Appellant further asserted that the Sanctions imposed upon him were arbitrary, capricious, an abuse of discretion, prejudicial, or otherwise not in accordance with law.[2] On September 18, 2023, HISA filed its response to the

[1] Ineligibility means the "Covered Person is barred for a specified period of time from participating in specified activities," "involving Covered Horses, or in any other activity . . . taking place at a Racetrack or Training Facility . . . ." ADMC Rules 1020, 3229(a)(2).

[2] Appellant's Application for Review included a request to stay the Sanctions pending the disposition of this appeal, pursuant to 16 C.F.R. § 1.148, which HISA opposed. FTC Rule 1.148(c) requires that an application for a stay address the factors outlined in FTC Rule 1.148(d), which consist of: (1) The

Application for Review, asserting, among other things, that Appellant failed to identify any contested material facts or to identify any material testimony required to supplement the record below. On September 19, 2023, an order was issued directing Appellant, *inter alia*, to submit a statement identifying the facts in dispute and the proposed supplemental testimony. On September 25, 2023, Appellant filed a response to the September 19, 2023 order, in which he withdrew his request for an evidentiary hearing to contest facts and to supplement the record.[3]

An order setting a briefing schedule was issued on September 28, 2023. The order included the determinations, pursuant to FTC Rule 1.146(c)(2), that neither party seeks to supplement or contest the facts found by HISA, the factual record is sufficient to adjudicate the merits of the review proceeding, and an evidentiary hearing is unnecessary. 16 C.F.R. § 1.146 (c)(2)(i)-(iii), (v). Accordingly, the September 28, 2023 order directed that briefing be limited to the issue of civil sanctions and directed each party to file proposed conclusions of law, a proposed order, and a supporting legal brief providing the party's reasoning. 16 C.F.R. § 1.146(c)(3).

On October 10, 2023, HISA filed its proposed conclusions of law and proposed order, together with a supporting legal brief. On October 11, 2023, the day after the deadline set in the briefing schedule, Appellant filed his proposed conclusions of law and proposed order, but did not file a supporting legal brief. Also on October 11, 2023, Appellant filed a motion to accept the late filing of the proposed conclusions of law and proposed order. HISA did not file an opposition to the motion.[4] On October 20, 2023, the parties filed responses to each other's filings.

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likelihood of the applicant's success on review; (2) Whether the applicant will suffer irreparable harm if a stay is not granted; (3) The degree of injury to other parties or third parties if a stay is granted; and (4) Whether the stay is in the public interest. 16 C.F.R. § 1.148(d). By order dated September 19, 2023, Appellant's stay request was denied for failure to demonstrate the existence of any of the foregoing factors.

[3] On September 25, 2023, Appellant filed a motion to declare the Sanctions unenforceable, asserting that HISA failed to serve the Notice of Final Civil Sanctions in accordance with the applicable rules. HISA filed an opposition to the motion on September 26, 2023. On September 28, 2023, Appellant's motion was denied.

[4] In his motion, Appellant asserts that the late filing was due to Appellant's counsel's inadvertent failure to calendar the due date. To avoid Appellant being unfairly prejudiced for his attorney's mistake and considering that HISA did not submit an opposition to accepting Appellant's late filing, Appellant's motion to accept his late-filed proposed conclusions of law and proposed order is GRANTED.

C. Summary of Applicable Law

It is undisputed that Appellant violated ADMC Rule 3214(a) by possessing Thyro-L. As sanctions for a first 3214(a) possession offense, ADMC Rule 3223(b) provides for a two-year period of ineligibility, a fine of "up to" $25,000, and payment of "some or all of the adjudication costs and [HIWU's] legal costs."[5] *See also* ADMC Rule 7440(b) (providing that arbitral body shall "split the costs of proceeding before an arbitrator . . . equally amongst the parties"). ADMC Rule 3225 authorizes consideration of factors that mitigate the degree of fault, providing: "Where the covered person establishes that he or she bears no significant fault or negligence for the anti-doping rule violation in question, then . . . the period of ineligibility shall be fixed between 3 months and 2 years, depending on the covered person's degree of fault."[6]

This appeal requires a determination of whether the Sanctions imposed by HISA are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 15 U.S.C. § 3058(b)(2)(A)(iii); 16 C.F.R. § 1.146(b)(3). The Administrative Law Judge makes this determination *de novo*. 5 U.S.C. § 3058(b)(1); 16 C.F.R. § 1.146(b)(3). Thus, the Administrative Law Judge must review the Sanctions "anew," as though the issue had not been heard before, and no decision had previously been rendered. *See Freeman v. DirecTV, Inc.*, 457 F.3d 1001, 1004 (9th Cir. 2006) (describing *de novo* review by appellate court of district court dismissal of complaint under Federal Rule of Civil Procedure 12(b)(6)). *De novo* review requires an independent examination of the record. *See Agyeman v. INS*, 296 F.3d 871, 876 (9th Cir. 2002) (describing scope of *de novo* review of agency's interpretations of statute). With *de novo* review, there is no deference owed to the determinations made below. *See Barrientos v. Wells Fargo Bank, N.A.*, 633 F.3d 1186, 1188 (9th Cir. 2011) (holding that, on *de novo* review by an appellate court, there is no deference to district court).

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[5] It is undisputed that, as a horse trainer, Appellant is a "covered person" and that Thyro-L is a "banned substance" under the ADMC Program. ADMC Rule 1020; ADMC Rule 3020(a)(3); ADMC Rule 4310 (Prohibited Substances List).

[6] *See also* ADMC Rule 3224, which allows for the elimination of any sanction where the violator establishes that "he or she bears no fault or negligence for the anti-doping rule violation(s) charged . . . ." Appellant does not argue that he bears no fault, or that the Sanctions should be eliminated entirely.

"[T]o pass muster under the arbitrary and capricious standard," a court must only find a "rational connection between facts and judgment." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 43, 56 (1983). "To make this finding, the court must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971). Judicial review under the arbitrary and capricious standard looks to ensure that "the agency has acted within a zone of reasonableness and, in particular, has reasonably considered the relevant issues and reasonably explained the decision." *FCC v. Prometheus Radio Project*, 141 S. Ct. 1150, 1158 (2021). Similarly, to find an abuse of discretion, the record must reveal a clear error of judgment. *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.,* 422 F.3d 782, 798 (9th Cir. 2005). An abuse of discretion is defined as "a plain error, discretion exercised to an end not justified by the evidence, a judgment that is clearly against the logic and effect of the facts as are found." *Id.* Finally, whether the Sanctions are in accordance with the law is determined with reference to the substantive law of the HISA statute and the implementing regulations, summarized above.

After conducting the required review, the Administrative Law Judge "(ii) may affirm, reverse, modify, set aside, or remand for further proceedings, in whole or in part, the final civil sanction of the Authority; and (iii) may make any finding or conclusion that, in the judgment of the administrative law judge, is proper and based on the record." 15 U.S.C. § 3058(b)(3)(A)(ii), (iii).

II. PROCEEDINGS BELOW

A. Summary of Material Facts

Based on the arbitration record and the briefs of the parties, the material facts are summarized as follows. On June 2, 2023, after the May 22, 2023 implementation of the ADMC Program, Thyro-L was found on a shelf in Appellant's tack room in Barn 5 at Gulfstream Park in Hallandale Beach, Florida. Appellant's Proposed Conclusions of Law ("ACOL") ¶ 5(b); HISA's Proposed Conclusions of Law and Order ("HCOL") at 6; Decision ¶¶ 2.28(1), 7.4(b). The Thyro-L product had been purchased by Appellant in the summer of 2022, while he was training horses at Thistledown Racino in Ohio. Decision ¶¶ 2.28(2)-(3). Appellant obtained the Thyro-L product

through a then-lawful veterinarian prescription, prior to the product being banned pursuant to the ADMC Program, for use on a horse that was no longer being trained by Appellant when the Thyro-L product was found at Gulfstream Park. ACOL ¶ 5(c); HCOL at 6; Decision ¶¶ 2.28(1)-(4), 7.4(c).

The Thyro-L product was transported twice, together with Appellant's other tack room belongings, when Appellant relocated the horses he was training – first in October 2022, from Thistledown Racino in Ohio to the Tampa Bay Downs track in Florida, and subsequently in May 2023, from Tampa Bay Downs to Gulfstream Park. ACOL ¶ 5(d); HCOL at 6; Decision ¶¶ 2.28(6), (11), 7.4(d).

Appellant knew that Thyro-L would become a banned substance upon implementation of the ADMC Program on May 22, 2023. ACOL ¶ 5(f); HISA Supporting Legal Brief ("HISA Brief") at 8; Decision ¶¶ 2.28(13), 7.4(f). On March 15, 2023, Appellant attended a presentation by HIWU's Chief of Science at Tampa Bay Downs that addressed the upcoming implementation of the ADMC Program and recommended to attendees that they undertake a "spring cleaning" of their barns and tack rooms to ensure there were no banned substances present, including Thyro-L. Decision ¶¶ 2.28(10), 7.4(e), 7.5.

There was no evidence that the Thyro-L product was used by Appellant on any horse after the implementation of the ADMC Program or on any horse other than the one for whom it was lawfully prescribed. ACOL ¶ 5(h); HISA Brief at 9; Decision ¶ 7.4(h).

B. Arbitrator's Decision

Having found that Appellant violated ADMC Rule 3214(a) by possessing Thyro-L, the Arbitrator proceeded to consider whether the standard 24-month period of ineligibility provided under ADMC Rule 3223(b) should be reduced due to Appellant's assertion of "No Significant Fault or Negligence" pursuant to ADMC Rule 3225. Decision ¶ 7.12. *See* ADMC Rule 3225 ("Where the covered person establishes that he or she bears no significant fault or negligence for the anti-doping rule violation in question, then . . . the period of ineligibility shall be fixed between 3 months and 2 years, depending on the covered person's degree of fault."). A finding of no significant fault or negligence requires the violator to establish that his or her fault or

negligence was not significant in relation to the violation, when viewed in the totality of the circumstances, including whether the violator "did not know or suspect," *inter alia*¸ that he or she had committed an Anti-Doping Rule Violation. AMDC Rule 1020 (definitions).

The Arbitrator broke down the potential 21-month range of ineligibility provided under ADMC Rule 3225 into three 7-month periods, to correspond with varying degrees of fault – slight, moderate, and significant.[7] The Arbitrator determined that Appellant fell into the "significant fault" range because: (1) Appellant was aware that the ADMC Program was new and regulated the use and possession of certain substances that may have previously been permitted; (2) Appellant admitted attending a presentation before implementation of the ADMC Program that discussed that Thyro-L would become a banned substance under the new rules and recommended that all trainers verify that such medications and substances were not in their possession; (3) Appellant admitted that he delegated his responsibility for packing his barns to his employees, which resulted in the Thyro-L being transported from Ohio to Tampa, and thereafter to Gulfstream Park, and Appellant did not undertake any review or oversight of the packing or unpacking; and (4) Appellant's asserted poor eyesight meant that he had an obligation to take steps to ameliorate that issue so that he could meet his obligations under the ADMC Program. Decision ¶ 7.18. "In short," the Arbitrator stated, Appellant "took no steps to mitigate his objective level of fault." Decision ¶ 7.19. As a result, the Arbitrator found that Appellant's fault was "considerable, and significant, putting him in the uppermost range of objective fault." Decision ¶ 7.19.

To determine the specific number of months of ineligibility, within the uppermost range of objective fault, the Arbitrator found that certain factors mitigated Appellant's degree of subjective fault; specifically, that: (1) no one, including Appellant, had experience with the new ADMC Program, and Appellant had been operating under the old system, with different rules, for decades; and (2) Appellant had first acquired Thyro-L through lawful means, did not use the substance on any horse other than the horse for which it was prescribed, and did not use the substance after it was banned. Decision ¶ 7.20. "In other words," the Arbitrator stated, "there was no evidence that [Appellant] either . . . ***was a cheater, or . . . kept the Thyro-L in his Possession***

[7] The Arbitrator adopted this process from the arbitration panel in CAS 2013/A/3327 *Cilic v. International Tennis Federation.* Decision ¶¶ 7.16-7.17.

after the implementation of the ADMC Program, for any improper purpose." Decision ¶ 7.20 (emphasis in original). Based on the foregoing, the Arbitrator determined that Appellant "should receive the benefit of a very modest 2 months reduction" from the maximum 24-month period of ineligibility to 22 months. Decision ¶¶ 7.21-7.22.

Addressing the appropriate fine under ADMC Rule 3223(b), the Arbitrator explained that a fine of 22/24ths of $25,000, or $22,917, would "follow the fault" he had found, and correspond proportionally to his calculated period of ineligibility. However, the Arbitrator declined to impose that fine for several reasons, including that: (1) "there was no indication of any intention or wrongdoing" by Appellant, other than the possession itself, which was lawful when the substance was first acquired but became unlawful after the implementation of the ADMC Program; (2) there was no benefit gained by Appellant or any of his horses resulting from his possession of Thyro-L after implementation of the ADMC Program; (3) the ADMC Program had only recently been implemented and "only one training session on its requirements" had been provided; and (4) imposing a significant fine consistent with Appellant's high degree of fault, on top of his 22-month period of ineligibility, would make it unduly difficult for Appellant to return to his business after his ineligibility period and "would not enhance Mr. Poole's knowledge of his mistakes or otherwise deter others from making a similar mistake." Decision ¶ 7.26. Accordingly, "considering the inexperience of Mr. Poole with the ADMC Program, the limited training he received, and the absence of any impermissible use of the substance in question or any violation other than the Possession itself," the Arbitrator determined that the fine should be set at $10,000. Decision ¶ 7.27.

Lastly, the Arbitrator determined that, pursuant to ADMC Rule 3223(b), Appellant should make "a modest contribution to the arbitration costs of HIWU of $8,000." Decision ¶7.29. Noting that this was not a "scientific calculation" and that under Rule 3223(b), Appellant would be responsible to pay half of the arbitration costs, the Arbitrator concluded that an $8,000 contribution was appropriate, "given the circumstances and the ease with which [Appellant] could have avoided his predicament or the expense of arbitration fees . . . balanced against his conduct and the circumstances." Decision ¶ 7.29.

III. ANALYSIS

A. Contentions on Appeal

Appellant seeks a determination that sanctions of a 22-month period of ineligibility, a $10,000 fine, and an $8,000 contribution toward HIWU's arbitration costs are "arbitrary, capricious, and an abuse of discretion," and proposes alternative sanctions of a period of ineligibility of 3 months, commencing as of June 13, 2023, a fine of $1,000, and no contribution to arbitration costs. ACOL ¶ 10; Appellant's Proposed Order.

Appellant argues that the Sanctions are not rationally related to his degree of fault because they fail to account for mitigating factors showing his lack of specific intent to possess the Thyro-L for any improper purpose; specifically, as determined by the Arbitrator, there was "no evidence that [Appellant] either 1) was a cheater, or 2) kept the Thyro-L in his Possession after the implementation of the ADMC Program, for any improper purpose." ACOL ¶¶ 11-13; Appellant's Response to HISA's Proposed Conclusions of Law, Order and Supporting Legal Brief ("Appellant's Response") ¶¶ 4, 6. Appellant further contends that the award of $8,000 toward arbitration costs was not rationally related to the facts because the total costs of the arbitration were unknown at the time of the Decision. Appellant's Response ¶ 6.

HISA responds that the Sanctions are rationally connected to the facts. HISA asserts that the Arbitrator relied on numerous factors to conclude that Appellant bore a significant degree of fault. HISA further argues that the Arbitrator considered various mitigating factors to reduce Appellant's period of ineligibility and fine from the allowable maximums, including the factors raised by Appellant – that there was no evidence that Appellant was a cheater, or that he kept the Thyro-L for any improper purpose after the implementation of the ADMC Program, *i.e.*, that there was no evidence that Appellant specifically intended to engage in wrongdoing. HISA Brief at 11-14; HISA's Reply to Appellant's Proposed of Conclusions of Law ("HISA Reply") at 3, 6. With respect to the $8,000 contribution to arbitration costs, HISA asserts that the Arbitrator reduced Appellant's share below the even split that could otherwise have been awarded in consideration of the same mitigating factors he relied upon to reduce Appellant's period of ineligibility and fine. HISA Brief at 14; HISA Response to Notice of Appeal and Application for Review at 2 n.1.

B. Discussion

As shown above, Appellant's contention on appeal is a narrow one – that the Sanctions are improper because the Arbitrator failed to take into account his lack of specific intent to possess the Thyro-L for any improper purpose. ACOL ¶¶ 10-13. Both a *de novo* examination of the record and a review of the Decision support the conclusion that the Sanctions are rationally related to Appellant's degree of fault. Accordingly, Appellant's contention is rejected.

In determining the sanctions for Appellant's unlawful possession of Thyro-L, the Arbitrator applied the provisions of ADMC Rules 3223 and 3225 and specifically considered the mitigating factors presented by Appellant, including that Appellant did not possess wrongful intent in possessing the Thyro-L. Referencing the degree of fault under ADMC Rule 3225, as further defined in ADMC Rule 1020, the Arbitrator found that Appellant had a significant level of objective fault, but in determining sanctions, the Arbitrator applied a lower level of subjective fault. The Arbitrator reduced the maximum allowable 24-month period of ineligibility under ADMC Rule 3223 to 22 months "as a result of" there being "no evidence that Mr. Poole either 1) was a cheater, or 2) kept the Thyro-L in his Possession after the implementation of the ADMC Program, for any improper purpose." Decision ¶¶ 7.21-7.22. In addition, the Arbitrator reduced the allowable fine under ADMC Rule 3223 from $25,000 to $10,000, expressly relying on the fact that "there was no indication of any intention or wrongdoing" by Appellant, other than the possession itself, which was lawful when the substance was first acquired but became unlawful after the implementation of the ADMC Program." Decision ¶ 7.26. Furthermore, the Arbitrator reduced Appellant's potential 50% share of the arbitration costs to a lump sum of $8,000, which he determined to be appropriate "given the circumstances" in the case, which included the mitigating factors the Arbitrator relied on to reduce the ineligibility period and the fine. *See* Decision ¶ 7.29. The $8,000 contribution amounts to approximately one-quarter of the total arbitration costs.[8] In summary, Appellant has failed to demonstrate that the Arbitrator's

[8] Appellant argues that the $8,000 figure assessed by the Arbitrator was not rationally related to the facts, because the total costs of the arbitration were unknown at the time of the Decision. This argument is rejected. In assessing the $8,000 contribution, the Arbitrator was doubtless aware of the hours he had already accumulated in completing the evidentiary hearing and drafting the Decision. It is therefore reasonable to infer that the Arbitrator was able to estimate the total costs of arbitration with reasonable accuracy. In its Supplemental Brief Regarding Arbitration Costs, HISA states that the total costs of arbitration was $30,333.10.

sanctions determination was arbitrary, capricious, an abuse of discretion, or not in accordance with applicable law. Rather, the Arbitrator appropriately applied the ADMC rules; the Decision does not reveal any "plain error," *Nat'l Marine Fisheries Serv.*, 422 F.3d at 798; and the Arbitrator "acted within a zone of reasonableness . . . , reasonably considered the relevant issues and reasonably explained the decision." *Prometheus Radio Project*, 141 S. Ct. at 1158.

Furthermore, an independent, *de novo* review of the record supports the Sanctions imposed by HISA as in accordance with ADMC Rules, reasonable, and rationally related to Appellant's degree of fault. Appellant's degree of objective fault in possessing the Thyro-L after implementation of the ADMC Program was significant. In particular, despite having received training and recommendations concerning his responsibilities under the ADMC Program, Appellant did not oversee the transportation of the soon-to-be banned Thyro-L, which he delegated to his employees, and did not take any steps to ensure that the Thyro-L was disposed of after the ban went into effect. Notwithstanding the foregoing, the lack of wrongful intent on Appellant's part supports a reduction in the maximum allowable period of ineligibility, fine, and share of arbitration costs, as demonstrated by the facts that Appellant initially acquired the Thyro-L when it was lawful to do so; the ADMC Program imposed new rules as to which there was limited training; and Appellant did not use the Thyro-L on any horse other than the horse for which it was lawfully prescribed, or otherwise benefit from the possession. The reduced sanctions imposed by HISA fairly and reasonably reflect the application of the mitigating facts in the record.

IV. CONCLUSION

Having conducted the review required under 15 U.S.C. § 3058(b)(2)(A)(iii), for the reasons stated above, the Sanctions are AFFIRMED.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date: November 13, 2023