

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES  
FTC DOCKET NO. 9417**

ADMINISTRATIVE LAW JUDGE: D. Michael Chappell

IN THE MATTER OF:

JEFFREY POOLE

Appellant

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**AGENCY’S SUPPORTING LEGAL BRIEF FOR PROPOSED  
CONCLUSIONS OF LAW AND ORDER**

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Comes now the Horseracing Integrity and Safety Authority (“HISA”) pursuant to the briefing schedule of the Administrative Law Judge dated September 28, 2023, and submits the following Supporting Legal Brief.

## CERTIFICATE OF SERVICE

Pursuant to 16 CFR 1.146(a) and 16 CFR 4.4(b), a copy of this Proposed Conclusions of Law and Proposed Order is being served on October 10, 2023, via Administrative E-File

System and by emailing a copy to:

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Chief Administrative Law Judge  
Office of Administrative Law Judges  
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via e-mail to [Oalj@ftc.gov](mailto:Oalj@ftc.gov)

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## Introduction

On August 8, 2023, Arbitrator Jeffrey Benz (the “**Arbitrator**”), an arbitrator appointed by the Horseracing Integrity & Welfare Unit (“**HIWU**” or the “**Agency**”) for the Horseracing Integrity and Safety Authority, Inc. (“**HISA**”), issued a decision (the “**Final Decision**”) finding that Jeffrey Poole (“**Trainer Poole**” or “**Appellant**”) violated Rule 3214(a) of HISA’s Anti-Doping and Medication Control Program (“**ADMC Program**”) by possessing Levothyroxine (“**Thyro-L**”), a Banned Substance. The Final Decision imposed civil sanctions of a 22-month suspension, a \$10,000 fine, and a contribution to the arbitration costs of HIWU in the amount of \$8,000 (the “**Consequences**”).<sup>1</sup>

Trainer Poole issued a Notice of Appeal 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 civil sanctions imposed upon him were arbitrary, capricious, an abuse of discretion, prejudicial or otherwise not in accordance with law and thereby reviewable by this tribunal. Trainer Poole subsequently withdrew his request for an evidentiary hearing to contest facts and to supplement the record and reasserted his appeal of the civil sanctions imposed upon him as arbitrary, capricious, an abuse of discretion, prejudicial or otherwise not in accordance with law. This appeal, accordingly, concerns only whether Appellant can establish that the Consequences imposed on him are arbitrary, capricious, an abuse of discretion, prejudicial or otherwise not in accordance with law.

The Consequences were imposed in accordance with ADMC Program Rule 3223 and Rule 3214(a) and the Consequences are rationally connected to the evidence.

The Appeal should be dismissed.

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<sup>1</sup> Final Decision, August 8, 2023, Appeal Book of HISA (“HAB”), Tab 2.

## I. Procedural History

On August 11, 2023, HIWU issued a Notice of Final Civil Sanctions under the ADMC Program (“**HIWU Sanctions Notice**”) to Trainer Poole. On August 12, 2023, HISA filed a HISA Civil Sanction Notice with the Secretary of the Federal Trade Commission (“**FTC**”).

On September 8, 2023, Trainer Poole filed a Notice of Appeal and Application for Review on a *de novo* basis to the FTC appealing the Final Decision. Trainer Poole’s Notice of Appeal challenged the Final Decision on two grounds, (1) that the arbitrator wrongfully concluded that possession of the Banned Substance Thyro-L was a strict liability offense, and (2) that the penalty assessed was arbitrary, capricious, an abuse of discretion, prejudicial, or otherwise not in accordance with law. The Notice of Appeal similarly requested a stay of the Final Award pending the final disposition of the Appeal.

On September 18, 2023, HISA filed a response to the Notice of Appeal, asserting, *inter alia*, that Trainer Poole failed to identify any material facts in dispute and that an evidentiary hearing was unnecessary.

On September 19, 2023, the FTC issued an Order denying Trainer Poole’s request for a stay pending the appeal.

On September 25, 2023, Trainer Poole submitted his response to the September 19 Order in which he withdrew his request for an evidentiary hearing to contest facts and to supplement the record and reasserted his appeal of the civil sanctions imposed upon him as arbitrary, capricious, an abuse of discretion, prejudicial, or otherwise not in accordance with law.

On September 28, 2023, Justice D. Michael Chappell of the FTC issued an Order setting the briefing schedule in this matter. In his Order, Justice Chappell declared that as a result of submissions by the parties, the factual record as it stands is sufficient to adjudicate the merits of the review proceeding, and an evidentiary hearing is unnecessary. Therefore, the appeal will be limited to briefing by the parties only on the issue of civil sanctions.

## II. Applicable ADMC Program Rules

The Authority was created pursuant to the federal *Horseracing Integrity and Safety Act of 2020*, as amended (the “Act”)<sup>2</sup> to implement a national, uniform set of integrity and safety rules that are applied consistently to every Thoroughbred racing participant and racetrack facility in the United States.<sup>3</sup> The Agency was established in 2022 as a specialized agency to administer the rules and enforcement mechanisms of the ADMC Program, which was created pursuant to the Act, approved by the Federal Trade Commission on March 27, 2023, and went into effect on May 22, 2023.<sup>4</sup>

Trainer Poole is an individual and Person engaged in the training of Covered Horses. Trainer Poole is therefore a Trainer as defined by the ADMC Program<sup>5</sup> and as a result a Covered Person under ADMC Program Rule 3020(a)(3) and a Responsible Person under ADMC Program Rule 3030(a).<sup>6</sup>

Rule 3070(b) of the ADMC Program sets-out the applicable law for the purpose of interpreting and applying the ADMC Program. That Rule provides that the ADMC Program “shall be interpreted as an independent and autonomous text and not by reference to existing law or statutes.” Rule 3070(d) further provides that the World-Anti Doping Code (“WADC”)

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<sup>2</sup> 15 U.S.C. 3051–3060

<sup>3</sup> ADMC Program Rule 3010(a)

<sup>4</sup> ADMC Program Rules 3010(b) and 3010 (e)(1)

<sup>5</sup> The ADMC Program defines Trainers as “an individual engaged in the training of Covered Horses” and “a Person engaged in the training of Covered Horses.”

<sup>6</sup> ADMC Program Rules 3020(a)(3) and 3030(a).

and jurisprudence interpreting its provisions may be considered when interpreting and applying the ADMC Protocol (which is the Rule 3000 series of the ADMC Program, and which sets out the substantive equine anti-doping rules).

The Final Decision below concerned an Anti-Doping Rule Violation (“**ADRV**”) for Possession of a Banned Substance in breach of Rule 3214(a).

The finding that Trainer Poole breached the ADMC Program and committed an ADRV for Possession is not contested or in dispute on this Appeal, which is solely concerned with whether the Consequences were arbitrary, capricious, an abuse of discretion prejudicial, or otherwise not in accordance with law.<sup>7</sup>

Under Rule 3223, the required sanction for a violation of Rule 3214(a) is a period of Ineligibility of 2 years, a fine of up to \$25,000, and payment of some or all of the adjudication costs and the Agency’s legal costs. The Agency did not, however, seek any of its legal costs in this case.

Where an ADRV is established, a Covered Person *may* be entitled to mitigation of the above noted sanctions, only where he or she establishes on a balance of probabilities that he or she acted with either No Fault or Negligence (Rule 3224), or No Significant Fault or Negligence (Rule 3225). The ADMC Program provides that assessment of Fault is a specific and focused exercise which is concerned only with the Covered Person’s actions leading up to the ADRV. Corollary considerations such as the economic impact of the imposed sanctions

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<sup>7</sup> Having withdrawn his position for an evidentiary hearing, the ALJ established that only the second ground of Trainer Poole’s appeal would proceed (i.e. “that the penalty assessed was arbitrary, capricious, an abuse of direction, prejudicial, or otherwise not in accordance with law”).

after the fact, are not considered as relevant factors in reducing potential ineligibility based on degree of Fault.<sup>8</sup>

By way of illustration, the substantively identical definition of Fault in the WADC has been interpreted in accordance with its words to exclude such corollary considerations. In [CAS 2017/A/5015](#) *International Ski Federation (FIS) v. Therese Johaug & The Norwegian Olympic and Paralympic Committee and Confederation of Sports (NIF)*, the athlete argued that further punishment was not necessary due to, among other factors, the fact that the athlete had already missed an entire season, been denied the right to train with teammates, and lost their main sponsor, causing significant loss of income. The CAS Panel considered these arguments and held that: “none of these reasons are relevant considerations with respect to Ms. Johaug’s sanction. The sanction must be commensurate with Ms. Johaug’s degree of fault and the factors Ms. Johaug has pled do not warrant a reduction beyond the prescribed minimum. In defining fault, the WADA Code at Appendix 1 states: “[...] the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Athlete only has a short time left in his or her career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.5.1 or 10.5.2”.<sup>9</sup>

### III. The Final Decision

The Arbitrator found that Trainer Poole was in Possession of Thyro-L pursuant to the definition of Possession under the ADMC Program. Although this determination is not

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<sup>8</sup> This is established in the definition of Fault in the AMDC Program: In assessing the Covered Person’s degree of Fault, the circumstances considered must be specific and relevant to explain the Covered Person’s departure from the expected standard of behavior. Thus, for example, the fact that the Covered Person would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Covered Person or Covered Horse only has a short time left in a career, or the timing of the horseracing calendar, would not be relevant factors to be considered in reducing the period of Ineligibility based on degree of Fault.

<sup>9</sup> [CAS 2017/A/5015](#) *International Ski Federation (FIS) v. Therese Johaug & The Norwegian Olympic and Paralympic Committee and Confederation of Sports (NIF)*, at paras 222, 224.

in issue on Appeal, it is noted that the Arbitrator relied on jurisprudence from the Court of Arbitration for Sport (“CAS”) interpreting the substantively identical provisions of the WADC to inform his interpretation and application of the ADMC Program Rules in this case. The finding of Possession was appropriately reasoned and well within the legal framework of the ADMC Program.

The Arbitrator found unequivocally that “there can be no reasonable dispute that Mr. Poole was at all relevant times in Possession of the Thyro-L that was found.”<sup>10</sup> The Arbitrator’s determination was grounded in the following evidence (none of which is or can be challenged on Appeal):

- a) Thyro-L is a Banned Substance under the ADMC Program;
- b) The Thyro-L product was found on a shelf in the tack room of Barn 5 (the barn assigned to Mr. Poole) at Gulfstream Park on June 2, 2023, after implementation of the ADMC Program on May 22, 2023;
- c) The Thyro-L product was purchased by Mr. Poole, pursuant to a lawful veterinarian prescription, at a time when it was not a Banned Substance and before the implementation of the ADMC Program, for use by a horse that was no longer in Mr. Poole’s custody or care at Gulfstream Park;
- d) The Thyro-L product had been moved from the track in Ohio where Mr. Poole had lawfully used it some months before it was found at Gulfstream Park; the Thyro-L product was moved from Ohio to another track in Tampa, and then to Barn 5 at Gulfstream Park, where it was found;
- e) On March 15, 2023, Mr. Poole attended a presentation by Dr. Mary Scollay, HIWU’s Chief of Science, at Tampa Bay Downs, where Dr. Scollay discussed the pending implementation of the ADMC Program;
- f) Mr. Poole knew that Thyro-L would become a Banned Substance upon implementation of the ADMC Program on May 22, 2023;
- g) Mr. Poole had exclusive use and control of the barn he was assigned at Gulfstream Park, save for limited permitted inspections by Gulfstream Park-related personnel for certain reasons, and there was no evidence that the Thyro-L came to rest on the shelf on which it was found through any intrusion by anyone other than someone in the employ of Mr. Poole; and

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<sup>10</sup> Final Decision, at para 7.6, HAB, Tab 2, p. 31.



- h) There was no evidence that the Thyro-L product was used by Mr. Poole on any horse after the implementation of the ADMC Program or on any horse other than King Andres for whom it was prescribed.<sup>11</sup>

On the evidence provided, the Arbitrator found that Trainer Poole was in Possession of Thyro-L.<sup>12</sup>

On the issue of applicable Consequences, the Arbitrator held that having determined that Trainer Poole was in Possession of a Banned Substance, he next had to assess whether the two-year period of Ineligibility should be reduced.<sup>13</sup>

The Arbitrator first noted that “Mr. Poole did not seek a finding of No Fault or Negligence, but even if he had... there simply is no way that the exceptional circumstance of a finding of No Fault could possibly be made here; Mr. Poole’s conduct in many ways epitomized fault.”<sup>14</sup> In arriving at his conclusion, the Arbitrator relied on the definitions of No Fault and No Significant Fault provided in the ADMC Program, correctly concluding that: “In short, with respect to Possession, No Fault or Negligence is established where the accused “*did not know or suspect, and could not have reasonably known or suspected, even with the exercise of utmost caution*”.”<sup>15</sup>

The Arbitrator then considered whether the applicable sanctions should be reduced based on Trainer Poole establishing No Significant Fault or Negligence. In this respect, the Arbitrator referred to precedent from the CAS interpreting and applying substantively identical provision under the WADC. The Arbitrator specifically noted that there was a broad

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<sup>11</sup> Final Decision, at para 7.4, HAB, Tab 2, p. 30.

<sup>12</sup> Final Decision, at paras 7.09 – 7.11, HAB, Tab 2, p. 32.

<sup>13</sup> Final Decision, at para 7.12, HAB, Tab 2, p. 32.

<sup>14</sup> Final Decision, at para 7.12, HAB, Tab 2, p. 32.

<sup>15</sup> Final Decision, at para 7.14, HAB, Tab 2, p. 33.

range for the period of ineligibility under No Significant Fault (from three months to twenty-four months) and that it was useful to divide that range into three groups.<sup>16</sup>

The Arbitrator referred to the CAS decision in *Cilic v. International Tennis Federation*,<sup>17</sup> where the CAS Panel determined that broad Fault ranges can be broken down into categories of month ranges based on the degree of Fault of the individual Covered Person. Drawing on *Cilic*, the Arbitrator applied an analysis that first determined the objective level of fault and then assessed subjective factors of fault.<sup>18</sup>

The Arbitrator first determined that: “on the three (3) to twenty-four (24) months overall range, the 21 months of possible periods of Ineligibility could be broken down into roughly three (3) seven (7) month ranges of objective fault. The period of three (3) to ten (10) months could be described as slight or insignificant fault. The period of ten (10) to seventeen (17) months could be described as moderate fault. The period of seventeen (17) months to twenty-four (24) months could be described as significant fault.”<sup>19</sup>

Considering these objective ranges of Fault, the Arbitrator concluded that Trainer Poole’s conduct demonstrates that he fell into the upper most range of significant Fault.<sup>20</sup> The detailed factual assessment undertaken by the Arbitrator included finding that Trainer Poole “took no steps to mitigate his objective level of fault”.<sup>21</sup>

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<sup>16</sup> Final Decision, at para 7.15, HAB, Tab 2, p. 33.

<sup>17</sup> [CAS 2013/A/3327](#) *Marin Cilic v. International Tennis Federation (ITF)*, Award of 11 April 2014, at paras 69-73.

<sup>18</sup> Final Decision, at para 7.16, HAB, Tab 2, p. 33.

<sup>19</sup> Final Decision, at para 7.17, HAB, Tab 2, p. 33.

<sup>20</sup> Final Decision, at para 7.18, HAB, Tab 2, pp. 33-34.

<sup>21</sup> Final Decision, at paras 7.18 to 7.19, HAB, Tab 2, pp. 33-35.

The Arbitrator then considered subjective factors which he concluded justified a slight reduction in Trainer Poole's degree of Fault reducing the period of Ineligibility from 24 months to 22 months.<sup>22</sup>

On his assessment of the applicable fine, both sides agreed with the principle that the fine should follow the Fault. With the Fault following the fine, Arbitrator J. Benz found that 22/24ths of \$25,000 would be \$22,917. Despite the degree of Fault established, the Arbitrator considered other evidentiary factors that in his view militated against the fine following the Fault in this case, including the absence of any intention of wrongdoing on the part of Mr. Poole. The fine was set to \$10,000.<sup>23</sup>

Finally, on the issue of costs, the Arbitrator applied the same analysis as that followed to set the quantum of the fine and determined that Trainer Poole should contribute \$8,000 to the costs of the arbitration.<sup>24</sup>

#### **IV. The Standard of Review**

Pursuant to 15 U.S.C. § 3058(b)(1), a HISA civil sanction is subject to *de novo* review by an Administrative Law Judge of the FTC. As set-out in the Procedural History above, the review at hand is limited to a determination by the ALJ of whether “the final civil sanction of the Authority was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”<sup>25</sup> Generally, a decision or sanction will not be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law where (i) the decision abides by the applicable rules,<sup>26</sup> and (ii) the sanction is rationally connected to the facts.<sup>27</sup>

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<sup>22</sup> Final Decision, at para 7.21, HAB, Tab 2, p. 35.

<sup>23</sup> Final Decision, at paras 7.24 to 7.27, HAB, Tab 2, p. 36.

<sup>24</sup> Final Decision, at para 7.29, HAB, Tab 2, p. 37.

<sup>25</sup> 15 U.S.C. § 3058(b)(2)(A)(iii).

<sup>26</sup> *Guier v. Teton County Hosp. Dist.*, 2011 WY 31, 248 P.3d 623 (Wyo. 2011).

<sup>27</sup> *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983); *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402 (1971).

## V. The Consequences Were Imposed in Accordance With the ADMC Program

The Arbitrator applied and interpreted the specific language of the ADMC Program. Under Rule 3223 the stipulated sanction for a Possession ADRV under Rule 3214(a) is a period of Ineligibility of 2 years and a fine of up to \$25,000. The Arbitrator specifically followed the requirements of the ADMC Program which only permit a reduction in sanction where the Covered Person Establishes No Fault or Negligence or No Significant Fault or Negligence.

Under Rule 3224, the “No Fault or Negligence” standard should only be used in “exceptional circumstances” and the Arbitrator applied the definition in Rule 1020. While Appellant did not argue that he had met this standard, the Final Decision includes an analysis that makes clear that this legal standard was not close to being met.<sup>28</sup>

As to “No Significant Fault or Negligence,” the period of Ineligibility can be reduced under Rule 3225(a) to “between 3 months and 2 years, depending on the Covered Person’s degree of Fault.” The Arbitrator also properly applied this standard, as defined in Rule 1020, to reduce both the period of ineligibility and fine amount for Appellant.<sup>29</sup>

There is simply no reasonable basis on which to suggest that the Arbitrator did not consider, apply, and follow the ADMC Program Rules.

## VI. The Consequences Are Rationally Connected to the Evidence

The CAS has interpreted the definition of No Significant Fault under the substantively identical provisions of the WADC and held that No Significant Fault arises in cases where there is justification for a deviation from the expected standard of exercising “utmost caution”. By way of illustration, in *Maria Sharapova v ITF*, the CAS panel held that:

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<sup>28</sup> Final Decision, at para 7.12 – 7.14, HAB, Tab 2, at pp. 32-33.

<sup>29</sup> ADMC Program Rule 1020 and Final Decision, at para 7.18, HAB, Tab 2, at pp. 33-35.

“A period of ineligibility can be reduced based on NSF only in cases where the circumstances justifying a deviation from the duty of exercising the “utmost caution” are **truly exceptional, and not in the vast majority of cases.** However... the “bar” should not be set too high for a finding of NSF. In other words, a claim of NSF is (by definition) consistent with the existence of some degree of fault and cannot be excluded simply because the athlete left some “stones unturned.”<sup>30</sup>

The Consequences are rationally connected to the evidence. In this regard, the Arbitrator considered and relied on a host of factors in support of his finding that Trainer Poole bore a significant degree of Fault. The evidence supporting a significant departure from the applicable standard of care, includes:

- a) Trainer Poole knew that the ADMC Program was new and that it would regulate the use and possession of certain substances that may have previously been permitted;
- b) Trainer Poole admitted that he had been told at a seminar conducted by Dr. Mary Scollay before the implementation of the ADMC Program that Thyro-L specifically would be banned under the new rules, and that a “spring cleaning” was encouraged;
- c) Trainer Poole admitted that despite having heard the presentation and knowing that Thyro-L was Banned, he knew that the Thyro-L originated with a prior horse and was at least transported to his barn in Tampa, though he was not aware it had been transported to Gulfstream Park;
- d) Trainer Poole did not undertake any review or oversight of the unpacking of the substances in his tack room at Gulfstream Park;
- e) Trainer Poole took the position that his poor eyesight contributed to his inability to be aware that the Thyro-L was in his tack room, but this was actually harmful to his case as it obligated him to take steps to ameliorate that issue so that he could meet his obligations under the ADMC Program; and
- f) Trainer Poole did not take any steps to meet his obligations under the ADMC Program and the evidence established there were a number of things he could have done (but did not do), including making physical adjustments to his eyes using his fingers or directing his grooms.<sup>31</sup>

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<sup>30</sup> *Maria Sharapova v ITF*, [CAS 2016/A/4643](#), at para 84.

<sup>31</sup> Final Decision, at para 7.18, [HAB](#), Tab 2, pp. 34 – 35.

The Arbitrator found on the evidence that Trainer Poole “took no steps to mitigate his objective level of fault”.<sup>32</sup> This rationally, and correctly, placed Trainer Poole within the significant range of objective Fault established by the Arbitrator relying on *Cilic v. International Tennis Federation*.<sup>33</sup>

The evidence, however, also includes subjective factors that the Arbitrator rationally relied on to reduce Trainer Poole’s degree of Fault and his period of Ineligibility to 22 months. In this respect, the Arbitrator found that:<sup>34</sup>

- a) Trainer Poole had been operating in his profession under different rules, long before the implementation of the ADMC Program and that Trainer Poole did not have experience under it; and
- b) Trainer Poole came into Possession of the Thyro-L when it was lawful to do so, and there was no evidence that Trainer Poole was either a cheater, or kept the Thyro-L in his Possession for any improper purpose after the implementation of the ADMC Program.

Similarly, in assessing the quantum of fine and contribution toward arbitration costs, the Arbitrator considered factors other than Trainer Poole’s degree of Fault in possessing Thyro-L, but which the Arbitrator considered relevant in the exercise of his discretion to set the quantum of the fine and contribution to arbitration costs. Specifically, the Arbitrator reduced the quantum that would otherwise have been applicable if the fine followed the degree of Fault, noting, among other things, that the evidence did not establish any intention on the part of Trainer Poole to engage in wrongdoing.<sup>35</sup> This was a reasonable and rational conclusion on the evidence.

In response to the Appellant’s claim that the sanctions imposed were improper because the Arbitrator found that there was an “absence of any impermissible use of the

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<sup>32</sup> Final Decision, at para 7.19, HAB, Tab 2, p. 35.

<sup>33</sup> [CAS 2013/A/3327](#) *Marin Cilic v. International Tennis Federation (ITF)*, Award of 11 April 2014, at paras 69-73; Also see: Final Decision, at para 7.16, HAB, Tab 2, p. 33.

<sup>34</sup> Final Decision, at para 7.20, HAB, Tab 2, p. 35.

<sup>35</sup> Final Decision, at para 7.26, HAB, Tab 2, p. 36.

substance in question or any violation other than the Possession itself,” the Arbitrator expressly considered and relied on this factor in determining the applicable Consequences, as noted above. This evidence did not reduce Trainer Poole’s degree of Fault for being in possession of Thyro-L but was relied on to reduce the applicable mandatory monetary fine and contribution toward arbitration costs.

In response to the Appellant’s claim that the sanctions imposed were improper because the Arbitrator found that that Appellant’s knowledge of, and training in, the ADMC Program were “limited,” the Authority notes first that the Arbitrator specifically considered this evidence as a relevant factor mitigating in Trainer Poole’s favor to reduce his period of Ineligibility from 24 months to 22 months.<sup>36</sup>

The fact that Trainer Poole was inexperienced with the ADMC Program must of course also be assessed (as it was by the Arbitrator) in the totality of the evidence including that Trainer Poole attended a seminar about the new ADMC Program where participants were told expressly and unequivocally to undertake a “‘spring cleaning’ of their barns and tack rooms to ensure that there were no Banned Substances present, and Thyro-L was specifically identified.”<sup>37</sup> Trainer Poole effectively ignored this direction. As such, the Arbitrator acted entirely reasonably in finding that Trainer Poole’s lack of training and experience with the ADMC Program, while a mitigating factor in his favour, only slightly reduced his degree of Fault.

Leaving aside the presentation of Dr. Scollay and her clear advice and direction to undertake a spring cleaning – which advice Trainer Poole ignored – Trainer Poole as a Responsible Person and a Covered Person, has an independent obligation under the ADMC

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<sup>36</sup> Final Decision, at para 7.20, HAB, Tab 2, p. 35.

<sup>37</sup> Final Decision, at para 7.5, HAB, Tab 2, p. 31.

Program to: (i) be knowledgeable of and comply with the ADMC Program; and (ii) ensure that employees, personnel, and agents involved in any way with the care, treatment, training, or racing of the horses he works with are familiar with the ADMC Program. ADMC Program Rule 3040 specifically sets-out certain obligations of the Appellant as a Covered Person, including “to be knowledgeable of and to comply with the Protocol and related rules at all times... [and] to familiarize themselves with the most up-to-date version of the Protocol and related rules and all revisions thereto.”<sup>38</sup> As a licensed Trainer of Covered Horses, Trainer Poole is a Responsible Person with additional duties and obligations that extend beyond those of Covered Persons, creating a higher level of responsibility. These obligations include, among others, to adequately supervise other Covered Persons and to create and maintain systems that ensure that all other Covered Persons comply with the ADMC Program.<sup>39</sup>

In summary, the Consequences imposed by the Arbitrator are clearly and demonstrably reasonable and certainly rationally connected to the facts. At the time the ADMC Program came into effect, Trainer Poole was in Possession of a Banned Substance that was prescribed for a horse that he had not worked with for at least eight months. The Banned Substance was not disposed of when Trainer Poole stopped working with the horse for whom it was prescribed, and it was not disposed of after Trainer Poole was told in March 2023 that Thyro-L would be banned when the ADMC Program came into effect. Instead, Trainer Poole kept the Banned Substance and took it with him when he moved barns in the spring of 2023. In doing so, Trainer Poole acted in a manner that was well beyond a minor deviation from his duty of care, and demonstrably exhibited significant Fault that he ought to have known would put him at risk of committing a violation of the ADMC Program. As stated by the Arbitrator, Trainer Poole’s violation could have been avoided with substantial ease.

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<sup>38</sup> ADMC Program Rule 3040(a)(1).

<sup>39</sup> ADMC Program Rules 3040(b)(5) and ADMC Program Rule 3040(b)(5)(iii).



### **Conclusion**

The Final Decision considered and applied the ADMC Program and imposed civil sanctions of a 22-month suspension, a \$10,000 fine, and a contribution to the arbitration costs of HIWU in the amount of \$8,000 in accordance with ADMC Program Rule 3225(a) and 3223(b). The Consequences are rationally connected to the evidence and are not arbitrary or capricious having been made on reasonable grounds and with adequate consideration of the circumstances. The Appeal should be dismissed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 10<sup>th</sup> DAY OF OCTOBER 2023

*/s/Bryan H. Beauman*

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