CERTIFICATE OF SERVICE

Pursuant to 16 CFR 1.146(a) and 16 CFR 4.4(b), a copy of this Supporting Legal Brief is being served on August 7, 2024, via Administrative E-File System and by emailing a copy to:

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Introduction

On June 11, 2024, Arbitrator Hugh E. Hackney **Arbitrator** a decision (the **Final Decision** finding that Jim Iree Lewis **Appellant** the Anti-Doping and Medication Control **ADMC** Program. The Final Decision imposed civil sanctions, including, a two-year period of Ineligibility, a $15,000 fine, and payment of $5,000 in adjudication costs.

On July 8, 2024, Appellant filed an Application for Review of the Final Decision. In that Application, Appellant only challenges the financial penalties imposed by the Arbitrator and asks that they be reduced. This proceeding, accordingly, concerns only whether Appellant can establish that the financial penalties imposed on him are arbitrary, capricious, an abuse of discretion, prejudicial, or otherwise not in accordance with law. This review proceeds based on the existing factual record. Based on the record, it is evident that Appellant has presented no evidence to reduce his degree of Fault, let alone any evidence establishing arbitrary, capricious, an abuse of discretion, prejudicial, or otherwise not in accordance with the law.

The $15,000 fine was properly imposed in accordance with ADMC Program Rules (the **Rules** , specifically Rule 3323. Under Rule 7420(b), the Arbitral Body split the costs of the proceeding before an arbitrator . . . equally amongst the parties However, in practice, the Authority has been paying all of the costs of the proceedings before the Arbitral Body, with each Arbitrator apportioning costs to the Responsible Person in his or her decision based primarily upon Fault. The $5,000 amount imposed upon Appellant here is a small fraction of the full costs of the proceeding below. These financial penalties are rationally connected to the evidence presented, and, therefore, the financial penalties should be affirmed.

I. Introduction

On June 11, 2024, after a hearing on the merits before the Arbitral Body, the Final Decision

was issued by the Arbitrator.[1] On July 8, 2024, Appellant filed his Application for Review challenging the financial penalties imposed in the Final Decision. As an initial matter, Appellant is challenging the Final Decision on grounds of procedural deficiencies, claiming he was unable to submit certain evidence in the proceeding below.

Appellant is also challenging g that he did not meet his burden of showing No Significant Fault or Negligence (Rule 3225) in two ways. First, that he was denied the opportunity to obtain evidence when HIWU denied requests to collect and analyze a hair Sample , which was allegedly granted in another case involving Clenbuterol. Second, that he was denied the opportunity to obtain testimony contrary to

discretion, prejudicial, or otherwise not in accordance with law.

Rule 3223(b) establishes that the fine for Rule 3212 ADRV is an amount up to $25,000, or 25% of the purse, whichever is greater.[4] Determination of the fine amount is at the discretion of the Arbitrato for their ADRV. As a may be considered separate from Fault that could affect the fine imposed. Under ADMC Program Rule 7420(b), Appellant could be responsible for half of the costs of the proceeding below, but the Arbitrator here only ordered the payment of $5,000 in adjudication costs.

III. The Final Decision

Sufficient proof of a Rule 3212 ADRV is established by the Presence of a Banned Substance in a Post-Race A Sample and when, as here, a B Sample is analyzed and confirms the Presence of the Banned Substance in the Sample. Appellant did not at any time contest the laboratory findings that Clenbuterol was present in both the A and B Sample. Accordingly, the Arbitrator found that HIWU had met its burden and found that Appellant had committed an ADRV under Rule 3212.

The Arbitrator evaluated the evidence provided in the filings and the testimony and determined that Appellant failed to meet his burden and establish the source of the Clenbuterol in -Race Sample. The Arbitrator found that the evidence did not support any of Appellant as to how the Prohibited Substance was introduced [5] Speculation as to the source of a Prohibited Substance is not evidence.[6] The Arbitrator gave significant weight to Clenbuterol studies conducted regarding how long Clenbuterol is detected in blood and expert witness, Dr. Heather Knych.[7]

The Arbitrator found that Appellant failed to meet his burden of establishing the source of

[4] The applicable purse was $13,640.
[5] Final Decision, at para. 8.21, HAB Tab 22, p. 958.
[6] *WADA v. Damar Robinson & JADCO*, CAS 2014/A/3820 at para. 80.
[7] Final Decision, at para. 8.21, HAB Tab 22, p. 958

presented, the Arbitrator could easily have imposed a higher fine.

As to the adjudication costs, given the fact that Appellant could have been responsible for half of the costs of the proceeding below under Rule 7420(b)

payment of $5,000 is clearly supported by the evidence and was a significant reduction in the amount that Appellant could have been required to pay.

It should also be noted that, pursuant to Rule 3232(b), Appellant could have requested an installment plan for payment of the amounts from HIWU[16] or the Arbitrator, payment schedule may extend beyond any period of Ineligibility imposed upon the Covered Person.

VI.

Appellant contends that the financial penalties imposed should be reduced because he bears No Significant Fault or Negligence for his ADRV pursuant to Rule 3225. Rule 3225 is not directly applicable to this appeal, as defined in the ADMC Program.[17] Rule 3225 states that a Covered Person who establishes that they bear No Significant Fault or Negligence may be entitled to a reduction in the **period of Ineliged Tdp3 e4 r4 [od50 of 6582 rge4 (nrrgTd[hey70 be4 a4 r1 JETQ0.58(hTd[be4 hTd[Td(**

determination of a fine for this violation should be the maximum fine under the Rule.

degree of Fault may be reduced which may result in a lower fine being imposed by demonstrating factors such as his experience and special considerations such as impairment, the degree of risk that should have been perceived by [him], and the level of care and investigation exercised by [him]

Therefore, request must first be evaluated with regard to whether he presented any evidence that would lessen his degree of Fault.

Appellant raised several defenses at hearing, most of which do not actually speak to

B. **Analysis**

Appellant also

him. However, there was no Clenbuterol detected in the blood Sample in the Englehart Case.[29] Such a finding would have indicated that Clenbuterol was administered within eight days which, assuming the Trainer was the Responsible Person for the Covered Horse for more than about a week, would make attempting to ascertain a three- to five-month window of administration completely unnecessary.

Hair Sample tests only provide a general idea of when Clenbuterol was administered to a horse.[30] Horses grow hair at a rate of approximately 1 inch every 3 to 5 weeks.[31] Hair Sample are analyzed analysis where a four-inch Sample is taken from the Covered Horse. An AAF would indicate that the substance was administered to the Covered Horse sm6842.04g510.43 Tdni68-ga9(indi)-3 (c)]TJETQ0 0 595.5[illegible]

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of hair to be tested by segmental analysis in order to get to the date before the ADMC Program started.[44] Had HIWU authorized the hair collection which Appellant claims would have provided evidence warranting a lower sanction, the 9th segment tested would have represented an administration range between ***27 and 45 weeks***.[45]

to it. He never even raised the topic. Other than his unsupported position raised in the Application for Review, Appellant provided no evidence addressing recent developments of synthetic Clenbuterol. In addition, this issue would only be relevant if Appellant had established that his Covered Horse actually received one of these products. Therefore, the scope of testimony cannot provide a basis to challenge the Final Decision in any way.

The Arbitrator properly considered the evidence available to him in all regards. His finding ly based on the evidence below. Appellant did not present anything substantial for the Arbitrator to consider that would in any way lessen his degree of Fault.

VII. Other Considerations

The Arbitrator found that evidence and testimony failed to support any of his speculations

The Arbitrator imposed the reduced financial penalties [51]

Therefore, these penalties are not, arbitrary, capricious, an abuse of discretion, or otherwise not in conformance with the law. In addition, the record does not indicate any error in judgment on behalf of the Arbitrator in applying his discretion.

CONCLUSION

The Final Decision appropriately considered and applied the to ultimately impose $20,000 in financial penalties. No evidence presented speaks to a lessening of . Instead, the Arbitrator exercised his discretion in by finding that the facts and circumstances warranted reduced financial penalties, which are in keeping with the statutory framework, are rationally connected to the evidence, and were made with adequate consideration of the circumstances. These financial penalties should be maintained.