

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

In the Matter of)
)
)

Jeffrey Poole,)

Appellant.)
_____)

Docket No. 9417

**ORDER DENYING MOTION TO DECLARE
CIVIL SANCTIONS UNENFORCEABLE**

I.

On August 8, 2023, an arbitrator appointed by the Horseracing Integrity Welfare Unit (“HIWU”) of the Horseracing Integrity and Safety Authority (“HISA”) issued a decision finding that Jeffrey Poole (“Poole” or “Appellant”) violated Rule 3214(a) of HISA’s Anti-Doping Medication Control Program (“ADMC”) by possessing Levothyroxine, a banned substance, 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 (“Decision”).

On August 11, 2023, HIWU issued a Notice of Final Civil Sanctions Under the ADMC Program (“HIWU Notice”). The HIWU Notice enclosed the Decision of the arbitrator and indicates that it was sent via email to the email address Poole provided to HISA, with a “cc:” to Brad J. Beilly, counsel for Poole.

On August 12, 2023, HISA filed a HISA Civil Sanction Notice with the Secretary of the Federal Trade Commission (“FTC”), through electronicfilings@ftc.gov (“HISA Civil Sanction Notice”). The HISA Civil Sanction Notice indicates that it was sent as a “cc:” to Jeffrey Poole.

On September 8, 2023, Appellant filed a Notice of Appeal and Application for Review with the FTC.

On September 25, 2023, Appellant filed a motion to declare the civil sanction unenforceable (“Motion”), based on an alleged failure to properly serve the HISA Civil Sanction Notice in accordance with the applicable rules. HISA filed a response opposing the Motion on September 26, 2023, which HISA amended by a filing submitted on September 27, 2023 (“Opposition”).

As set forth below, the Motion is DENIED.

II.

Appellant argues in his Motion that for the civil sanctions to be enforceable, the HISA Civil Sanction Notice must have been served upon him on the same day that the HISA Civil Sanction Notice was filed with the FTC. Although the HISA Civil Sanction Notice indicates that a “cc:” was sent to Poole, Poole avers in an affidavit (“Poole Affidavit”) that he did not in fact receive it. Appellant thus argues that HISA failed to comply with the requirements of 16 C.F.R. § 1.145. In addition, Appellant argues that HISA failed to comply with the requirements of 16 C.F.R. § 4.4(b) because service was not also made on the counsel who had appeared on behalf of Poole and because proof of service in the form of a statement of the date and manner of service, certified by the person who made service, was not affixed to the HISA Civil Sanction Notice.

In its Opposition, which HISA supports with an affidavit by HISA counsel, John Forgy, HISA asserts that the HISA Civil Sanction Notice was sent via email on August 12, 2023 to the email address provided by Poole to HISA, which is the same email address that was used to send the August 11, 2023 HIWU Notice and other notices sent by HIWU to Poole. HISA further asserts that Forgy did not receive any notification of the email to Poole being returned back to him or being in any way undeliverable. In addition, HISA asserts that it was not required to serve the HISA Civil Sanction Notice on counsel who had appeared on behalf of Poole. HISA acknowledges that a certificate of service was not included with the HISA Civil Sanction Notice, but argues that such failure did not prejudice Appellant in any way.

III.

Rule 1.145(a) of the Procedures for Review of Final Civil Sanctions Imposed under the Horseracing Integrity and Safety Act requires that if HISA imposes a final civil sanction, the Authority must submit notice of the sanction to the FTC no later than two days after the sanction has been issued for the sanction to be enforceable. 16 C.F.R. § 1.145(a). Rule 1.145(b)(7) requires that the notice of civil sanctions must “[b]e served the same day upon the person aggrieved by the sanction in accordance with 16 CFR 4.4(b) as made applicable to review proceedings under this part.” 16 C.F.R. § 1.147(b)(7). The record demonstrates that HISA sent the HISA Civil Sanctions Notice to Poole on August 12, 2023. On its face, the HISA Civil Sanction Notice states that it was sent as a “cc:” to Jeffrey Poole on the same day that it was filed with the FTC. According to the Forgy Affidavit, HISA sent the HISA Civil Sanction Notice via email to the email address provided by Poole to HISA. Attached to the Forgy Affidavit is a copy of the email sent to the email address provided by Poole to HISA, attaching the HISA Civil Sanction Notice. The Forgy Affidavit also attests that the email sent to Poole did not “bounce back” to Forgy, *i.e.*, was not returned to Forgy as undeliverable. Poole’s mere assertion in his affidavit that he did not receive a copy of the HISA Civil Sanction Notice does not outweigh the foregoing evidence that the Notice was in fact sent to Poole at a valid email address. Based on the foregoing, Appellant has failed to demonstrate that he was not properly served under Rule 1.145(b)(7). Moreover, Poole acknowledges in his affidavit that he received the August 11, 2023 HIWU notice, which was sent to the same email address as that used for the HISA Civil Sanctions Notice. Furthermore, it is apparent that Poole had actual notice of the HISA Civil

Sanction Notice, as evidenced by his filing of a Notice of Appeal with the FTC on September 8, 2023.

Rule 4.4(b) of the FTC's Rules of Practice, referenced in Rule 1.145(b)(7) above, states that "[i]f the party is an individual or partnership, delivery shall be to such individual or a member of the partnership." 16 C.F.R. § 4.4(b)(ii). The provision in Rule 4.4(c) – stating that when counsel has appeared in a proceeding on behalf of a party, service upon such counsel shall be deemed service upon the party – does not require HISA to serve Poole's counsel in addition to serving Poole. Thus, any failure to serve Poole's counsel with the HISA Civil Sanctions Notice would not render the civil sanctions unenforceable.

Finally, Rule 1.145(b)(7) requires that the notice of civil sanctions be served "in accordance with 16 CFR 4.4(b) . . ." The provision that "documents presented for filing shall contain proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service" is set forth in 16 C.F.R. § 4.4(d), not § 4.4(b). Thus, while HISA failed to comply with this requirement, such failure does not render the civil sanctions unenforceable.

For the above stated reasons, Appellant's Motion is DENIED.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: September 28, 2023