

**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 SUPPLEMENTAL BRIEF**

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Comes now the Horseracing Integrity and Safety Authority (“**HISA**”) pursuant to the Order for Supplemental Response dated October 23, 2023 and submits the following Supplemental Brief responding to Appellant’s argument with respect to the arbitration award, including without limitation, information as to the actual total cost of the arbitration dated October 27, 2023.

## CERTIFICATE OF SERVICE

Pursuant to 16 CFR 1.146(a) and 16 CFR 4.4(b), a copy of this Supplemental Brief is being served on October 27, 2023, via Administrative E-File System and by emailing a copy to:

Hon. D. Michael Chappell  
Chief Administrative Law Judge  
Office of Administrative Law Judges  
Federal Trade Commission  
600 Pennsylvania Ave. NW  
Washington DC 20580  
via e-mail to [Oalj@ftc.gov](mailto:Oalj@ftc.gov)

April Tabor  
Office of the Secretary  
Federal Trade Commission  
600 Pennsylvania Ave. NW  
Washington, DC 20580  
Via email to [electronicfilings@ftc.gov](mailto:electronicfilings@ftc.gov)

BEILLY & STROHSAHL, P.A.  
Bradford J. Beilly  
1144 S.E. 3rd Avenue  
Ft. Lauderdale, FL 33316  
[brad@beillylaw.com](mailto:brad@beillylaw.com)

Attorney for Appellant

*/s/ Bryan Beauman*  
Enforcement Counsel

The Horseracing Integrity and Safety Authority, Inc. (“**HISA**”) submits this Supplemental Brief in response to the October 23, 2023 Order of Justice D. Michael Chappell of the Federal Trade Commission.

In his Final Decision, Arbitrator Jeffrey Benz (the “**Arbitrator**”) included in the Consequences imposed on Trainer Poole a “modest contribution to the arbitration costs of HIWU of \$8,000”<sup>1</sup> under Rule 3223(b) of HISA’s Anti-Doping and Medication Control Program (“**ADMC Program**”).<sup>2</sup> As noted by the Arbitrator, an award of some portion of the adjudicative costs against a Respondent found to have committed a violation of Rule 3214(a) is mandatory under Rule 3223(b), although the quantum is discretionary.<sup>3</sup> The total cost of arbitration was \$30,333.10,<sup>4</sup> paid for entirely by HISA. The \$8,000 contribution ordered by the Arbitrator was just under one-fourth of the overall fee for adjudication.

Mr. Benz has over a decade of experience as an arbitrator, and has arbitrated hundreds of doping cases.<sup>5</sup> It stands to reason that Mr. Benz is well-aware of his own hourly rate, travel expenses, JAMS’ standard fees, and the typical cost of arbitration in comparable disputes. By the time that the Arbitrator was drafting the Final Decision, the entirety of the base and vast majority

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<sup>1</sup> Final Decision, at para. 7.29, Appeal Book of HISA (“**HAB**”), Tab 2, p. 37.

<sup>2</sup> Further, Rule 3223(b) includes as a potential sanction “[p]ayment of some or all of...[HIWU’s] legal costs.” HIWU did not seek any payment for its legal costs before the Arbitrator. See Final Decision, at para. 7.23, **HAB**, Tab 2, pp. 35-36.

<sup>3</sup> Final Decision, at para. 7.25, **HAB**, Tab 2, p. 36.

<sup>4</sup> JAMS Arbitration Final Statements, Supplemental Appeal Book of HISA (“**SHAB**”), Tabs 1 and 2, pp. 4-6 and 8-9. This includes a final billing statement to HISA for \$26,058.10, and a final billing statement to the Appellant’s counsel Bradford J. Beilly for \$4,275.00, respectively. Despite the Arbitrator’s statement at para. 7.29 of the Final Decision that “Mr. Poole is responsible to pay half of the arbitration costs already,” HISA pays all arbitration costs up front, and thus refunded the Appellant’s initial share of the arbitration cost. See July 10, 2023 refund check in the sum of \$4,275.00 from HISA to Mr. Beilly, **SHAB**, Tab 3, p. 11. Responsible Persons are only required to pay adjudication costs if they are awarded against a Responsible Person as a Sanction by the Arbitral Body.

<sup>5</sup> See Jeffrey G. Benz, Esq., FCI Arb, FColl Arb, CEDS JAMS Profile, available at [Jeffrey G. Benz, Esq., FCI Arb, FColl Arb, CEDS, JAMS Mediator and Arbitrator \(jamsadr.com\)](https://www.jamsadr.com/jeffrey-g-benz-esq-fciarb-fcollarb-ceds-jams-mediator-and-arbitrator).

of the hourly costs of adjudication had already accrued, as had the Arbitrator's travel expenses. It is reasonable to assume that Mr. Benz was therefore able to estimate the total cost of arbitration with reasonable accuracy when determining the \$8,000 figure ordered to be paid by the Appellant.

As set out in HISA's October 20, 2023 Reply Brief, this appeal is limited to whether "the final civil sanction of the Authority [HISA] was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."<sup>6</sup> The sanction imposed on Trainer Poole by the Arbitrator of contributing \$8,000 towards the cost of adjudication, or less than one-quarter of the total, was rational and based exclusively and entirely on relevant factors as set forth in paras. 7.25–29 of the Final Decision.<sup>7</sup> As agreed to by HIWU and the Appellant, the Arbitrator's analysis was guided by the general principle that "the fine should follow the fault."<sup>8</sup> The Arbitrator then modified the financial penalty for the benefit of Appellant, to account for specific mitigating factors he perceived in this case.<sup>9</sup> Specifically, the contribution to arbitration costs awarded by the Arbitrator was determined "to be appropriate given the circumstances and the ease with which Mr. Poole could have avoided his predicament or the expense of arbitration fees by HIWU balanced against his conduct and the circumstances."<sup>10</sup>

The \$8,000 contribution sum was chosen by the Arbitrator after he had heard all of the evidence in this case, assessed Trainer Poole's degree of fault, and the adjudication costs in this case had already been largely incurred, so as to provide Mr. Benz with a reasonable basis upon which he could estimate the total cost of adjudication.

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<sup>6</sup> 15 U.S.C. § 3058(b)(2)(A)(iii).

<sup>7</sup> *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971); *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

<sup>8</sup> Final Decision, at para. 7.24.

<sup>9</sup> Final Decision, at paras. 7.26-27.

<sup>10</sup> Final Decision, at para. 7.29.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 27<sup>th</sup> day of October, 2023.

/s/Bryan H. Beauman

BRYAN BEAUMAN  
REBECCA PRICE  
333 W. Vine Street, Suite 1500  
Lexington, Kentucky 40507  
Telephone: (859) 255-8581  
[bbeauman@sturgillturner.com](mailto:bbeauman@sturgillturner.com)  
[rprice@sturgillturner.com](mailto:rprice@sturgillturner.com)  
**HISA ENFORCEMENT COUNSEL**

MICHELLE C. PUJALS  
ALLISON J. FARRELL  
4801 Main Street, Suite 350  
Kansas City, MO 64112  
Telephone: (816) 291-1864  
[mpujals@hiwu.org](mailto:mpujals@hiwu.org)  
[afarrell@hiwu.org](mailto:afarrell@hiwu.org)  
**HORSERACING INTEGRITY &  
WELFARE UNIT, A DIVISION OF  
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