

BEFORE THE INTERNAL ADJUDICATION PANEL

HIWU

Case Number: ECM2023-248  
IAP Member Erika Riedl

v.

Bernard Dunham

[Insert Name of Covered Person]

FINAL RULING OF INTERNAL ADJUDICATION PANEL

Section One – Parties

Date of Hearing: 3/19/24 (hearing waived, check here)

Date of Decision: 3/23/24 Date of Corrected Decision: 3/29/24 ER

HIWU Counsel: Geneva N. Gnam

Covered Person: Bernard Dunham

Counsel/Representative of Covered Person: None

Any Third Parties: None

Section Two - Charges

The Covered Person is charged with violating the following Series 3000 Equine Anti-Doping and Medication Control (ADMC) Program Rules (“Protocol”):

Rule 3313 - Use or Attempted Use of a Controlled Medication Substance or a Controlled Medication Method during the Race Period.

Rule 4221 - M4 Alkalinization or Use/Administration of an Alkalinizing Agent.

### Section Three – Burdens of Proof and Evidence

A. Pursuant to ADMC Program Rule 3121 (Protocol), HIWU has established the following evidence, set forth in detail below, to the comfortable satisfaction of the hearing panel:

On 8 December 2023, Shanghai Superfly ran in Race 6 at the Penn National Race Course in Grantville, Pennsylvania and placed fourth. On the day of the Race, HIWU Sample Collection Personnel collected a TCO<sub>2</sub> sample #T200153443 from Shanghai Superfly, and that Sample was submitted to PETRL for analysis. Analysis results show that the TCO<sub>2</sub> level exceed the Threshold of 37mmol.

Pursuant to ADMC Program Rule 4221, TCO<sub>2</sub> in excess of 37mmol is prima facie evidence of alkalization or Use/Administration of an alkalizing agent, a prohibited M4 Controlled Medication Method.

HIWU relies solely on ADMC Program Rule 4221 for a violation of Rule 3313; no other evidence has been submitted.

Since no evidence has been submitted, the IAP rejects the Covered Person's claims that TCO<sub>2</sub> levels seem to be generally higher at Penn National. As a consequence, the IAP also rejects the Covered Person's request for a stay in the proceedings.

B. Pursuant to ADMC Program Rule 3121 (Protocol), the Covered Person has established the following evidence, set forth in detail below, by a balance of probability:

The IAP finds that the documents submitted, corroborated by witness statements, show that Shanghai Superfly was treated with 5cc of Lasix on Race day. Race-day administration of Lasix is permitted up to four (4) hours prior to Post-Time. The Covered Person submits that the source of the TCO<sub>2</sub> excess is a combination of (i) Lasix administration; (ii) feed; and (iii) temperature on race day. The Covered Person corroborates his position with several scientific articles. While the scientific articles are not conclusive per se, several studies, however, confirm that (i), (ii) and (iii) have the potential to increase a horse's baseline TCO<sub>2</sub> above the Threshold level. The baseline TCO<sub>2</sub> of Shanghai Superfly remains unknown. The Covered Person has not established a link between (i), (ii) and (iii) and the TCO<sub>2</sub> excess.

According to the definitions of No Fault or Negligence and No Significant Fault or Negligence only where a Covered Person has been charged with a violation of Rule 3212 or Rule 3312, the Covered Person must also establish the source of the Prohibited Substance in order to establish the degree of fault. However, in the case at hand the Covered Person is charged with a violation of Rule 3313. This means the IAP can decide on the Covered Person's degree of fault without the establishment of the source.

#### Section Four – Violations Determined

Based on the applicable ADMC Program Rules (Protocol) listed above in Section Two, and based upon the established evidence as set forth in Section Three above, the hearing panel has determined that the Covered Person has violated the following ADMC Program Rules (Protocol):

Rule 3313 - Use or Attempted Use of a Controlled Medication Substance or a Controlled Medication Method during the Race Period.

Rule 4221 - M4 Alkalinization or Use/Administration of an Alkalinizing Agent.

#### Section Five – Finding of No Fault/Negligence or No Significant Fault/Negligence

Pursuant to ADMC Program Rules 3324 and 3325 (Protocol), a Covered Person is entitled to elimination or reduction of any period of Ineligibility if the hearing panel determines that the Covered Person has established that he or she bears No Fault or Negligence, or No Significant Fault or Negligence for the Violation(s). Based on the foregoing evidence, the IAP Member finds that the Covered Person  has  has not (check one) established that he or she bears **No Fault or Negligence**; or the Covered Person  has  has not (check one) established that he or she bears **No Significant Fault or Negligence** for the Violation(s). Where the Covered Person has established that he or she bears No Fault or Negligence or No Significant Fault or Negligence for the Violation(s), the following evidence supports this conclusion:

The IAP finds, that No Fault or Negligence does not apply in the case at hand, as the Covered Person could have known or suspected that (i), (ii), (iii) above, or a combination thereof, might result in the Horse testing at a TCO<sub>2</sub> in excess of the Threshold level of 37mmol.

The IAP, however, finds that the Covered Person established that his fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relation to the Controlled Medication Rule Violation in question.

The IAP comes to this conclusion for reasons as follows: (i) No evidence was provided that the Covered Person intentionally used or administered any prohibited Alkalinizing Agent; rather the Horse was administered with Lasix, which use is permitted under certain circumstances, which the Covered Person respected; (ii) the fact, that the permitted use of Lasix was the likely cause or at least might have contributed to the TCO<sub>2</sub> excess; and (iii) some precautions (while there is room for improvement) put in place to avoid that his horses are administered Prohibited Substances, or are found to have Prohibited Substances in their systems.

### **Section Six – Elimination, reduction, or suspension of period of Ineligibility and/or other Consequences for reasons unrelated to degree of Fault**

Pursuant to ADMC Program Rule 3326(b) – (d) (Protocol), the Covered Person is entitled to elimination, reduction, or suspension of a period of Ineligibility and/or other Consequences if he or she has satisfied any of the following (*check all that apply*):

- Rule 3326(b): Voluntary Admission of a Controlled Medication Rule Violation in the absence of other evidence.
- Rule 3326(c): Application of multiple grounds for reduction of a sanction; where the Covered Person has established entitlement to a reduction or suspension of period of Ineligibility under two or more of Rules 3324, 3325, or 3326.
- Rule 3326(d): Reductions for certain Controlled Medication Rule Violations based on early admission and acceptance of sanction; where the Covered Person admits Violation(s) and accepts Consequence(s) within seven (7) days of receiving Charge Letter.

Based on the application of these Rules, the Covered Person is entitled to the following elimination, reduction, or suspension of a period of Ineligibility and/or other Consequences:

- (1) A period of Ineligibility of thirty (30) days pursuant to ADMC Program Rule 3323; and
- (2) A fine of 2,500 USD, or 2.5% of the purse (whichever is greater) pursuant to the ADMC Program Rule 3323; and
- (3) Disqualification of Shanghai Superfly's Race Results from Race 6 at Penn National Race Course in Grantville, Pennsylvania on December 8, 2023, and forfeiture of all purses and other compensation, prizes, trophies, points and rankings; and
- (4) Assignment of 3 penalty points pursuant to ADMC Program Rule 3328; and
- (5) Public Disclosure pursuant to ADMC Program Rule 3620.

**Section Seven – Aggravating Circumstances**

HIWU has established the following aggravating circumstances to the comfortable satisfaction of the hearing panel (*write N/A if none*):

N/A

Based upon the Aggravating Circumstances, the Covered Person’s period of Ineligibility is increased by \_\_\_\_ months (up to 6 months), and an additional fine in the amount of \$ \_\_\_\_\_ is imposed (up to \$5,000.00 USD or 5% of the purse, whichever is greater).

**Section Eight - Consequences**

The following Consequences are imposed upon the Covered Person for each violation that has been established in this case:

- (1) A period of Ineligibility of thirty (30) days pursuant to ADMC Program Rule 3323; and
- (2) A fine of 2,500 USD, or 2.5% of the purse (whichever is greater) pursuant to the ADMC Program Rule 3323; and
- (3) Disqualification of Shanghai Superfly's Race Results from Race 6 at Penn National Race Course in Grantville, Pennsylvania on December 8, 2023, and forfeiture of all purses and other compensation, prizes, trophies, points and rankings; and
- (4) Assignment of 3 penalty points pursuant to ADMC Program Rule 3328; and
- (5) Public Disclosure pursuant to ADMC Program Rule 3620.

**Section Nine – Penalty Points**

The total penalty points issued against Covered Person as a result of this final decision are: 3.

The Covered Person has 2 prior penalty points, bringing his or her current total penalty points to 5.

Subject to ADMC Program Rule 3364 (Protocol), this decision is final and binding pursuant to ADMC Program Rule 3363 (Protocol).



Signature of IAP Member