

BEFORE THE HORSERACING INTEGRITY AND SAFETY AUTHORITY'S
ANTIDOPING AND MEDICATION CONTROL PROGRAM ARBITRATION
PANEL

ADMINISTERED BY JAMS, CASE NO. 1501000628

In the Matter of the Arbitration Between:

HORSE RACING INTEGRITY WELFARE UNIT (“HIWU” or “Claimant”),
Claimant

v.

MR. DONALD H. BUCKNER (“Mr. Buckner” or “Respondent”),
Respondent.

FINAL DECISION

I, THE UNDERSIGNED ARBITRATOR, having been designated, and having been duly sworn, and having duly heard the allegations, arguments, submissions, proofs, and evidence submitted by the Parties, after a full evidentiary hearing by audio-visual teleconferencing system, Zoom, on February 21, 2024, pursuant to the Horseracing Integrity and Safety Act of 2020 and its implementing regulations, do hereby FIND and DECIDE as follows:

I. INTRODUCTION

1.1. Claimant is the Horseracing Integrity & Welfare Unit (the “Agency”), which is responsible for sample collection and results management in the anti-doping testing of thoroughbred racehorses in the United States, pursuant to the Horseracing Integrity Act of 2020, 15 U.S.C. §§ 3051-3060. During this Arbitration, the Agency has been represented by attorneys Zachary P. Ceriani, Esq. of the Agency, and Brent E. Rychener, Esq., Bryan Cave Leighton Paisner LLP.

1.2. Respondent is Mr. Donald Buckner. Mr. Buckner is a high-level trainer of thoroughbred racehorses and resides in Redmond, Oregon. Mr. Buckner is the Owner and Trainer of a horse named “In the Midst.” It is undisputed that Mr. Buckner is a “Responsible Person,” and that In The Midst is a “Covered Horse” under the law and rules applicable to this Arbitration. During this Arbitration, Mr. Buckner represented himself.

1.3. The issue in this Arbitration involves Mr. Buckner being charged an Anti-Doping Rule Violations (“ADRV”) of the Anti-Doping Medication Control Program namely the Presence of a Banned Substance and/or its Metabolites or Markers (ADMC Program Rule 3212) – Clenbuterol.

1.4. Throughout this Final Decision, HIWU and Mr. Buckner shall be referred to individually as “Party” and collectively as “Parties.”

II. THE FACTS

2.1. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions, pleadings, and evidence adduced at the hearing. Additional facts and allegations found in the Parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Arbitrator has considered all of the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, the Arbitrator refers in this Final Decision only to the submissions and evidence the Arbitrator considers necessary to explain his reasoning. Except as noted, the facts are generally not in dispute, though the legal effect of those facts might be.

The Facts According to HIWU

2.2. On June 15, 2023, Trainer Buckner’s horse, In the Midst, competed at Thistledown.

2.3. Following the race, In the Midst was subject to doping control, and a urine Sample was collected bearing code U100298231. Analytical testing on the urine Sample was conducted by the Ohio Department of Agriculture Analytical Toxicology Laboratory (“Ohio Lab”) and resulted in a reported Adverse Analytical Finding (“AAF”) for Clenbuterol.

2.4. Trainer Buckner was notified on July 21, 2023, that In the Midst’s A Sample had returned an AAF for Clenbuterol. Pursuant to Rule 3247(a)(1), a Provisional Suspension was imposed on Trainer Buckner effective July 21, 2023.

2.5. On August 1, 2023, Trainer Buckner opted to have the B Sample tested.

2.6. The B Sample was analyzed by the University of Kentucky Equine Analytical Chemistry Laboratory (“UK Lab”), and the UK Lab’s analysis confirmed the presence of Clenbuterol in the B Sample.

2.7. On September 11, 2023, Trainer Buckner was charged with an ADRV.

2.8. Trainer Buckner subsequently requested that a hair sample from In the Midst also be tested to confirm the presence of Clenbuterol. In its discretion, HIWU agreed to the hair sample test.

2.9. In October 2023, a hair sample from In the Midst was analyzed by the Kenneth L. Maddy Equine Analytical Chemistry Laboratory in Davis, California (“Davis Lab”) and was found to contain Clenbuterol.

The Facts According to Mr. Buckner

2.10. Mr. Buckner failed to submit his version of the facts as required by the Scheduling Orders and did not submit any documentation in response to or challenging HIWU’s version of the facts.

The Stipulated Facts

2.11. Mr. Buckner failed to comply with the Scheduling Orders to agree to uncontested stipulated facts.

III. PROCEDURAL HISTORY

3.1. This proceeding is based on the Presence ADRV charge.

3.2. On July 21, 2023, HIWU issued an Equine Anti-Doping (“EAD”) Notice letter pursuant to Anti-Doping Medication Control (“ADMC”) Program Rule 3245 of the Protocol notice to Mr. Buckner informing Mr. Buckner that a Sample collected from the Covered Horse “In the Midst” as part of a Sample Collection Session conducted under the authority of the Horseracing Integrity & Welfare Unit (“HIWU”) resulted in an Adverse Analytical Finding (“AAF”) that may result in Anti-Doping Rule Violation(s)

3.3. The Agency further advised Mr. Buckner that, among other things, it was imposing an immediate provisional suspension.

3.4. On September 20, 2023, HIWU initiated this binding arbitration proceeding.

3.5. On November 13, 2023, a Preliminary Arbitration Management Conference Call was held. Mr. Buckner failed to appear for the Conference.

3.6. On November 13, 2023, the Arbitrator issued Scheduling Order No. 1., providing in pertinent part as follows:

Pursuant to the HIWU Anti-Doping Medication Control Program Rule 7200 (Arbitration Procedures) a preliminary case management hearing was held by Zoom on November 13, 2023, before sole arbitrator, John T. Wendt (“Arbitrator”).

Appearing at the hearing on behalf of HIWU was Zachary Ceriani, Esq., Drug Free Sport, LLC, and Brent E. Rychener, Esq., Bryan Cave Leighton Paisner LLP. Mr. Buckner failed to appear. (Individually, HIWU and Mr Ceriani, Mr. Rychener and Mr. Buckner shall be referred to herein as “Party” and collectively as “Parties”). Mr. Buckner (also referred to as the “Covered Person”) previously noted to the JAMS Administrator and to HIWU that he was not represented by counsel and would be representing himself.

The Arbitrator specifically noted the following to the Covered Person in this matter.

The following shall apply:

As the Arbitrator, my ultimate responsibility is to make a decision that will settle all claims between you. You have granted me the authority to act in this capacity by agreeing to arbitrate under the rules of JAMS. It is my desire to hear all the evidence that may be relevant, reliable, necessary and of value in resolving the issues between you. In order for me to make a just decision, I will do my best to provide both parties an impartial hearing. To the extent ethically permissible, I will provide you with whatever guidance and direction I deem necessary to ensure that both parties receive a fair hearing. I will not and cannot be an advocate for either party, nor can I offer legal advice or recommend a specific course of action. The JAMS Rules say that I can grant any remedy or relief that I deem just and equitable within the scope of your arbitration agreement. I can only decide the issues that you have brought before me. I cannot decide any other issues. My decision will be in the form of a written award. The terms of the award will be clear and definite, leaving no doubt as to the rights and responsibilities of each party. Also, once my decision has been issued, my authority ceases. I play no role in the enforcement of the award and I am not to be involved in any post-award activity unless directed to do so by either JAMS or the courts. Also, as noted above, to the extent you communicate with me, you must copy all other parties to this case as well as JAMS so there are no impermissible ex parte contacts.

After discussion and agreement as to the dates set forth herein, the following Scheduling Order is issued with respect to this matter:

1. Pre-Hearing Submissions.
 - a. The Parties agreed that they shall serve and file electronically a prehearing Brief on all significant disputed issues, limited to 30 single sided double-spaced pages, setting forth briefly the party's positions and the supporting arguments and authorities, on the dates specified below:
 - i. The Covered Person's Pre-Hearing Brief: November 30, 2023, and
 - ii. Claimant's Pre-Hearing Brief: December 14, 2023.
 - b. Pursuant to Rule 7170 (c) and (d), the Parties shall file together with their Pre-Hearing brief all exhibits, schedules, witness statements, expert reports and other evidence that the party intends to rely upon at the Hearing.
2. Witnesses.

Pursuant to Rule 7170 (c) and (d):

 - a. Each party shall serve and file a disclosure of all witnesses they reasonably expect to call as witnesses **on or before the due date of its initial pre-hearing brief.**
 - b. The disclosure of fact witnesses shall include the full name of each witness (or the name of the organization in the case of an organization representative), a short summary of anticipated testimony sufficient to give notice to the other side of the general areas in which testimony shall be given, along with signed statements for those witnesses. The Arbitrator encourages the Parties to submit sworn witness statements which would constitute their direct testimony, requiring only cross-examination after a witness confirms their witness statement.
 - c. The disclosure of expert witnesses shall include a C.V. and expert report, identifying all opinions to which the expert will testify, and the facts and scientific methods upon which those opinions are based. The submission shall also identify all scientific treatises, studies, or articles on which the expert relies in rendering his or her opinions.
 - d. If certain required information is not available, the disclosures shall so state. Each party shall be responsible for updating its disclosures as such information becomes available. The duty to update the information continues up to and including the date that hearing(s) in this matter terminate.
 - e. The parties shall coordinate and make arrangements to schedule the attendance of witnesses at the Hearing (defined below) so that the case can proceed with all due expedition and without any unnecessary delay.
3. Exhibits.

The parties shall submit their exhibits to be used at the hearing, electronically to the Arbitrator and the other party **on the dates their respective initial pre-hearing briefs are due.** The parties also shall include with their

respective submissions an index to the exhibits. **All briefs, and any witness statements, shall be transmitted electronically in MS Word versions to the Arbitrator.**

a. Claimant shall use letters and Respondent shall use numbers to mark their exhibits. To the extent that one party has submitted an exhibit that another party also intends to use (such as the World Anti-Doping Code or the USADA Protocol), the other should not include a second copy of that document in its own exhibits but should otherwise refer to the exhibit submitted by the other side. The Parties shall endeavor to agree on a joint set of exhibits to minimize duplication. If possible, to make the hearing proceed more smoothly electronically, the Parties shall file their exhibits as an indexed .pdf file such that the Arbitrator and any Party could click on the index and be taken directly to the exhibit within the .pdf file of all exhibits.

4. Stipulations of Uncontested Facts.

The Parties shall submit a Stipulation of Uncontested Facts on or before December 14, 2023.

5. Hearing and Hearing Procedure.

- a. The Hearing in this matter will commence before the Arbitrator via Zoom on December 20, 2023, starting at **9:00am** Central Time Zone.
- b. The Parties agreed to meet and confer and submit to the Arbitrator by December 18, 2023, an agreed schedule and procedure for the Hearing, setting forth their proposed schedule for the opening statements, witnesses, and closing statements, including timings. If the Parties are unable to so agree, they shall submit their respective positions by said deadline.
- c. Please Note: If the Parties wish to have the Hearing recorded, the Parties must agree to do so in writing. Please notify the JAMS Administration asking for the VADR Team to record the Hearing.

6. Electronic Submission of Documents

All documents due to be submitted hereunder shall be submitted electronically by email to the Arbitrator at jtwendt@stthomas.edu and shall be submitted using the JAMS Access system. The Parties shall not communicate with the Arbitrator directly and alone; all communications with the Arbitrator are to be copied to the other side, and the JAMS case manager, at the same time as the communications are made to the Arbitrator and in the same form.

7. Disputes

To the extent any dispute arises between the Parties before the Hearing, any Party wishing to bring that dispute to the attention of the Arbitrator shall do so **promptly** after such dispute arises by sending a brief email to the Arbitrator, copied to the other side and JAMS (and filing on the JAMS Access system), outlining in basic, brief, general terms the nature of the dispute, their position thereon, and the relief being requested with relation thereto. The other side

shall file a response, distributed to the same email list (and file with JAMS Access) and in line with the original email shortly thereafter (and no later than the next day) briefly outlining in basic, general terms the nature of the dispute and their position thereon. There shall be no response to that email. The Arbitrator will, based on these two emails, determine the next steps with respect to resolving the dispute.

8. Miscellaneous Provisions

- a. All deadlines and requirements stated herein will be strictly enforced. Any deviation requires the permission of the Arbitrator based on a showing of good cause by the Party seeking an extension of time.
- b. This order shall continue in effect unless and until amended by subsequent order of the Arbitrator.
- c. Unless specified otherwise herein, for all deadlines for any Party to take any action under this Order, the time by which such action shall be due for each such designated action shall be **midnight Pacific Time** on the date given.
- d. The Parties' attention is drawn to Rule 7140 which limits the liability of the Arbitrator in these proceedings. The Arbitrator agrees to participate in these proceedings on the basis that, and in reliance on the fact that Rule 7140 applies and the Parties agree to be bound by them. If any Party disagrees that Rule 7140 applies here, they must notify the Arbitrator **within seven (7) days of the date of this order** in writing.

3.7. Mr. Buckner failed to submit a Pre-Hearing Brief, exhibits, schedules, witness statements, expert reports, and other evidence that the Party intended to rely upon at the Hearing by November 30, 2023, according to Scheduling Order No. 1.

3.8. On December 14, 2023, HIWU submitted a Pre-Hearing Brief, exhibits, schedules, witness statements, expert reports, and other evidence that the Party intended to rely upon at the Hearing.

3.9. On December 19, 2023, the Parties were reminded via electronic mail that the Hearing would commence at 9:00 a.m. Central Time on December 20, 2023. No objections were previously made by the Parties.

3.10. On December 19, 2023, Mr. Buckner notified the JAMS office that there was a death in the family and asked for a postponement.

3.11. On December 19, 2023, due to the extenuating circumstances, the Arbitrator, with the agreement of the Parties, rescheduled the Hearing to Tuesday, January 23, 2024, at 9:00 a.m. Central Time.

3.12. On December 19, 2023, the Arbitrator issued Scheduling Order No. 2. rescheduling the Hearing until January 23, 2024. The Arbitrator also reminded the Parties that they were still required to comply with Scheduling Order No. 1.

3.13. Mr. Buckner failed to comply with both Scheduling Order No. 1 and Scheduling Order No. 2.

3.14. On December 22, 2023, Mr. Buckner asked for another extension this time until sometime in February 2024.

3.15. On January 4, 2024, the Parties were asked via email for their thoughts on Mr. Buckner's request for an extension. Mr. Buckner was also reminded that he had failed to provide his submissions as required by Scheduling Orders No. 1 and No. 2. Mr. Buckner was again reminded to comply with those Orders.

3.16. On January 4, 2024, HIWU agreed to Mr. Buckner's request for another extension with a scheduled date for the Hearing of February 21, 2024.

3.17. On January 5, 2024, JAMS sent a courtesy note to Mr. Buckner requesting his response to the February 21, 2024, date by 4:00 P.M. (Eastern Time) January 8, 2024.

3.18. On January 8, 2024, JAMS sent another courtesy note to Mr. Buckner requesting his response to the February 21, 2024, date by 4:00 P.M. January 8, 2024 (Eastern Time).

3.19. On January 8, 2024, Mr. Buckner responded that "due to health and family issues" he could not commit to any definite date in the future, in effect requesting an indefinite extension.

3.20. On January 16, 2024, a Status Conference call was held with the Parties. Mr. Buckner stated that he had numerous health and family issues. Mr. Buckner also indicated that he had not responded to Scheduling Orders No. 1 and No. 2 because he was searching for a pro-bono attorney. Mr. Rychener reminded Mr. Buckner that HISA does have a program to provide Pro Bono Legal Assistance for eligible Covered Persons.

3.21. On January 16, 2024, the Arbitrator issued Scheduling Order No. 3 stating that the Parties agreed that the Evidentiary Hearing shall be scheduled for February 21, 2024. If Mr. Buckner is unable to attend the Evidentiary Hearing because of a medical condition he shall submit such medical documentation by February 14, 2024.

3.22. Mr. Buckner did not submit any medical documentation by February 14, 2024.

3.23. On February 15, 2024, the Parties were sent an email reminding them that the Evidentiary Hearing would be held on February 21, 2024. The Arbitrator noted that Mr.

Buckner had still not complied with the Scheduling Orders and directed Mr. Buckner to submit a prehearing brief with his version of the facts and arguments by no later than 2 p.m. Central Time on February 19, 2024.

3.24. Mr. Buckner failed to submit anything by the February 19, 2024, deadline.

3.25. On February 20, 2024, the Parties were sent another email reminder with the details of the February 21, 2024 Evidentiary Hearing.

3.26. The Evidentiary Hearing commenced via Zoom commencing at 9:00 a.m. Central Time on February 21, 2024. Appearing at the hearing on behalf of HIWU was Zachary Ceriani, Esq., Drug Free Sport, LLC, and Brent E. Rychener, Esq., Bryan Cave Leighton Paisner LLP. Mr. Buckner failed to appear.

3.27. Under HISA Rules and Regulations Rule Series 7200 “The arbitrator(s) or IAP member(s) may proceed without the participation of any party or representative who, after due notice, fails to be present or make a submission.” This is similar to the Court of Arbitration for Sport Rule 44.5 which states, “If the Respondent fails to submit its response in accordance with Article R44.1 of the Code, the Panel may nevertheless proceed with the arbitration and deliver an award.” Mr. Buckner failed to be present or make a submission. The Evidentiary Hearing proceeded without Mr. Buckner.

3.28. At the conclusion of the Evidentiary Hearing, parties confirmed that they had been given a full, fair, and equal opportunity to present their case.

3.29. Upon the adjournment of the Evidentiary Hearing, and the closing of the evidence, the Arbitrator commenced writing this Final Decision, which was issued within the time required by the applicable rules.

IV. JURISDICTION

4.1. *The Horseracing Integrity and Safety Act of 2020*, 15 U.S.C. §§ 3051-3060 (the “Act”) recognizes the Horseracing Integrity and Safety Authority (“HISA”), a private non-profit organization for “purposes of developing and implementing a horseracing anti-doping medication and control program and a racetrack safety program for covered horses, covered persons, and covered horseraces.” 15 U.S.C § 3052(a). The program contemplated by the Act is commonly referred to as the “ADMC Program.”

4.2. The Horseracing Integrity & Welfare Unit (“HIWU” or the “Agency”) was created pursuant to the Horseracing Integrity and Safety Act of 2020 and is charged with administering the rules and enforcement mechanisms HISA’s ADMC Program. The ADMC Program was created pursuant to the Act, approved by the Federal Trade Commission on March 27, 2023, and implemented on May 22, 2023. *See* 88 Fed. Reg. 5084-5201 (January

26, 2023). The ADMC Program sets out the applicable rules that govern this proceeding and ground the jurisdiction of the Panel over all participants.

4.3. The ADMC Program sets out the applicable rules (“Rules”) that govern this Arbitration and the jurisdictional grounds of the Panel over all participants. For example, Rule Series 1000 contains general provisions, including Rules relating to interpretation and definitions. Rule Series 3000 establishes the Equine Anti-Doping and Controlled Medication Protocol (“Protocol”). And Rule Series 7000 – Arbitration Procedures – establishes a disciplinary process for hearing and adjudicating violations of the rules and related offenses.

4.4. Rule 3010 provides in part the power of the Agency “to perform and manage test distribution planning and Testing of Covered Horses both in and out of competition.”

4.5. Rule 1020 defines “Covered Horses” as follows:

“any Thoroughbred horse, or any other horse made subject to the Act by election of the applicable State Racing Commission or the breed governing organization for such horse under section 3054(l), during the period: (A) beginning on the date of the horse’s first Timed and Reported Workout at a Racetrack that participates in Covered Horseraces or at a training facility; and (B) ending on the date on which the horse is deemed retired pursuant to Rule 3050(b).”

4.6. Rule 1020 also defines “Covered Persons” as follows:

“Covered Person means all Trainers, Owners, Breeders, Jockeys, Racetracks, Veterinarians, Persons licensed by a State Racing Commission, and the agents, assigns, and employees of such Persons; any other Persons required to be registered with the Authority; and any other horse support personnel who are engaged in the care, treatment, training, or racing of Covered Horses.”

4.7. Rule 1020 also defines “EAD Violations means Anti-Doping Rule Violations arising out of the Rule 3000 Series and violations of Rule 3229.”

4.8. Rule 3020 provides, in pertinent part, that the anti-doping rules set out in the ADMC Program apply to and are binding on violations by Covered Persons.

4.9. Rule 3030 provides, in pertinent part, that:

“Responsible Person” means the Trainer of the Covered Horse. If the Covered Horse does not have a Trainer, the Responsible Person shall be the Owner of the Covered Horse. The Responsible Person shall be personally liable for his or her Covered Horse(s) as set out under the Protocol.”

4.10. Rule 3040 covers the “Core Responsibilities of Covered Persons” and notes, in pertinent part that:

“It is the personal responsibility of each Covered Person: (1) to be knowledgeable of and to comply with the Protocol and related rules at all times. All Covered Persons shall be bound by the Protocol and related rules, and any revisions thereto, from the date they go into effect, without further formality. It is the responsibility of all Covered Persons to familiarize themselves with the most up-to-date version of the Protocol and related rules and all revisions thereto...”

4.11. In this matter, there is no dispute that “In the Midst” is a “Covered Horse.” There is also no dispute that Mr. Buckner is an Owner and Trainer who is required to be - and is - registered with the HISA. As such, Mr. Buckner is both a “Responsible Person” and a “Covered Person” and is bound by and subject to the ADMC Program.

4.12. The Rule 7000 Series of the ADMC Program sets out the arbitration procedures governing a charged violation of the ADMC Program, providing as follows:

“Rule 7010. Applicability. The Arbitration Procedures set forth in this Rule 7000 Series shall apply to all adjudications arising out of the Rule 3000 Series.”

4.13. Rule 7020 provides:

“Delegation of Duties (a) Subject to Rule 3249, Anti-Doping Rule Violations arising out of the Rule 3000 Series and violations of Rule 3229 (together, “EAD Violations”) shall be adjudicated by an independent arbitral body (the “Arbitral Body”) in accordance with the Rule 3000 Series and these Arbitration Procedures. The Arbitral Body may also adjudicate any other matter referred to it under the Protocol, and any other matter that might arise from time to time under the Protocol that the Agency considers should be determined by the Arbitral Body.”

4.14. Where HIWU issues a Charge Letter effecting charges on a Covered Person, arbitral proceedings are initiated pursuant to Rule 7060:

“Rule 7060. Initiation by the Agency

(a) EAD Violations. Unless Rule 3249 applies, if the Agency charges a Covered Person with an EAD Violation, the Agency shall initiate proceedings with the Arbitral Body. If a Covered Person is charged with both an EAD Violation and an ECM or Other Violation, the procedures for EAD Violations apply. The parties to the proceeding shall be the Agency and the Covered Person(s) charged. The Owner and the Authority shall be invited to join in the proceedings as observers and, if accepted as such, receive copies of the filings in the case. In the context of EAD

Violation cases, the Owner may be permitted to intervene and make written or oral submissions.”

4.15. In this case, arbitration proceedings were commenced before JAMS, the designated arbitration provider. Owner/Trainer Buckner had notice of the charge against him. The requests of Mr. Buckner were specifically taken into account. Mr. Buckner did not raise any objection to the Arbitrator’s jurisdiction or the arbitrability of any issues raised in this arbitration, including all issues related to the Presence ADRV. HIWU fully participated in this Arbitration without any objection to the Arbitrator’s jurisdiction or the arbitrability of any issues raised in this arbitration, including all issues related to the Presence ADRV.

4.16. No Party disputed jurisdiction here and all Parties fully participated in the proceedings without objection as to jurisdiction. As consent is the benchmark of arbitral jurisdiction, there is ample evidence of consent and no evidence of objection to arbitral jurisdiction here.

4.17. Accordingly, the Arbitrator finds that jurisdiction is proper here.

V. RELEVANT LEGAL STANDARDS

5.1. Rule 3212 of the ADMC Program recognizes “Presence” of a Prohibited Substance as an offense, providing in pertinent part as follows:

“Rule 3212. Presence of a Banned Substance

(a) It is the personal and non-delegable duty of the Responsible Person to ensure that no Banned Substance is present in the body of his or her Covered Horse(s). The Responsible Person is therefore strictly liable for any Banned Substance or its Metabolites or Markers found to be present in a Sample collected from his or her Covered Horse(s). Accordingly, it is not necessary to demonstrate intent, Fault, negligence, or knowing Use on the part of the Responsible Person in order to establish that the Responsible Person has committed a Rule 3212 Anti-Doping Rule Violation.

(b) Sufficient proof of a Rule 3212 Anti-Doping Rule Violation is established by any of the following:

(1) the presence of a Banned Substance or its Metabolites or Markers in the Covered Horse’s A Sample where the Responsible Person waives analysis of the B Sample and the B Sample is not analyzed;

(2) the Covered Horse's B Sample is analyzed and the analysis of the B Sample confirms the presence of the Banned Substance or its Metabolites or Markers found in the A Sample; or

(3) where, in exceptional circumstances, the Laboratory (on instruction from the Agency) further splits the A or B Sample into two parts in accordance with the Laboratory Standards, the analysis of the second part of the resulting split Sample confirms the presence of the same Banned Substance or its Metabolites or Markers as were found in the first part of the split Sample, or the Responsible Person waives analysis of the second part of the split Sample.

(c) The general rule is that the presence of any amount of a Banned Substance or its Metabolites or Markers in a Sample collected from a Covered Horse constitutes an Anti-Doping Rule Violation by the Responsible Person of that Covered Horse.

(d) As an exception to the general rule of Rule 3212(c), the Prohibited List, Standards, or Technical Documents may establish special criteria for the reporting or the evaluation of certain Banned Substances, including a Minimum Reporting Level, Screening Limit, Threshold, or Decision Limit."

5.2. Mr. Buckner is a Covered Person and a Responsible Person under the ADMC Program. Mr. Buckner has never disputed that status. As a Responsible Person, Rule 3030(a) makes clear that, *"The Responsible Person shall be personally liable for his or her Covered Horse(s) as set out under the Protocol."* Also, as a Covered Person, Rule 3040(a) also makes clear, in pertinent part, that among the Core Responsibilities of Covered Persons:

"It is the personal responsibility of each Covered Person:

(1) to be knowledgeable of and to comply with the Protocol and related rules at all times. All Covered Persons shall be bound by the Protocol and related rules, and any revisions thereto, from the date they go into effect, without further formality. It is the responsibility of all Covered Persons to familiarize themselves with the most up-to-date version of the Protocol and related rules and all revisions thereto; . . ."

5.3. Rule 3040(b) also makes clear, in pertinent part, there are additional responsibilities of Responsible Persons including:

(4) to inform all Covered Persons (including Veterinarians), employees, personnel, agents, and other Persons involved in any way with the care, treatment, training, or racing of his or her Covered Horses of their respective obligations under the Protocol (including, in particular, those specified in Rule 3040(a));

- (5) to adequately supervise all Covered Persons (including Veterinarians), employees, personnel, agents, and other Persons involved in any way with the care, treatment, training, or racing of his or her Covered Horses, including by (without limitation): (i) conducting appropriate due diligence in the hiring process before engaging their services;*
- (i) conducting appropriate due diligence in the hiring process before engaging their services;*
- (ii) clearly communicating to such Persons that compliance with the Protocol is a condition of employment or continuing engagement in the care, treatment, training, or racing of his or her Covered Horses;*
- (iii) creating and maintaining systems to ensure that those Persons comply with the Protocol; and*
- (iv) adequately monitoring and overseeing the services provided by those Persons in relation to the care, treatment, training, or racing of his or her Covered Horses;*
- (6) to bear strict liability for any violations of the Protocol by such Covered Persons (including Veterinarians), employees, personnel, agents, and other Persons involved in identifying what Covered Horses he or she is the Responsible Person for...*

5.4. Under Rule 3040(a)(2) a Covered Person has a personal responsibility to “(2) to cooperate promptly and completely with the Authority and the Agency in the exercise of their respective powers under the Act and the Protocol and related rules...”

5.5. Pursuant to Rule 3121, the burden of proof is on HIWU to establish that a violation of the ADMC Program has occurred to the comfortable satisfaction of the Panel. *“This standard of proof is higher than a balance of probabilities but lower than clear and convincing evidence or proof beyond a reasonable doubt.”*

5.6. The World Anti-Doping Code (“WADC”) provides the framework for a harmonious international anti-doping system and is widely used in international sports, and expressly acknowledged as the basis for the ADMC Program. Rule 3070 of the ADMC provides in pertinent part that:

“(b) Subject to Rule 3070(d), the Protocol shall be interpreted as an independent and autonomous text and not by reference to existing law or statutes. . . .

(d) The World Anti-Doping Code and related International Standards, procedures, documents, and practices (WADA Code Program), the comments annotating provisions of the WADA Code Program, and any case law interpreting or applying any provisions, comments, or other aspects of the WADA Code Program, may be considered when adjudicating cases relating to the Protocol, where appropriate.”

5.7. The definition of the offense of Presence in the ADMC Program is substantively identical to the definition of possession in the WADC (*see* Article 2.1).

5.8. Pursuant to ADMC Program Rule 3223, the ineligibility, and financial penalties for a first anti-doping rule Violation of Rule 3212 Presence of a Banned Substance is: a. Two (2) years of Ineligibility, and b. A “Fine up to \$25,000 . . . and Payment of some or all of the adjudication costs and [HIWU]’s legal costs.”

VI. THE PARTIES’ CONTENTIONS AND CLAIMS FOR RELIEF

6.1. HIWU asserted arguments in their pre-hearing brief and at the Evidentiary Hearing. Mr. Buckner failed to assert any arguments in his pre-hearing brief. On five (5) different occasions Mr. Buckner was ordered or asked to submit his positions and arguments. He failed to do so. Below is an effort to summarize HIWU’s fundamental positions. To the extent necessary, the Arbitrator will address the various arguments that were made in the Analysis section below.

HIWU’s Contentions and Claims for Relief

6.2. Trainer Buckner has committed a Presence-Based ADRV.

6.3. The horse In the Midst raced at Thistledown in Ohio on June 15, 2023. HIWU collected a post-race urine sample. The Ohio Lab analyzed the urine sample and reported a positive test for the banned substance, Clenbuterol. Clenbuterol is an S3 Banned Substance unless it is prescribed to the Covered Horse in the context of a valid veterinarian-client-patient relationship and other specified conditions are met. There is no allegation that In the Midst had been prescribed Clenbuterol by a veterinarian at any time relevant to the ADRV charged in this case.

6.4. The B Sample was analyzed by the University of Kentucky Equine Analytical Chemistry Laboratory, and the Lab’s analysis confirmed the presence of Clenbuterol in the B Sample. In October 2023, a hair sample from In the Midst was analyzed by the Kenneth L. Maddy Equine Analytical Chemistry Laboratory in Davis, California, and the Lab’s analysis confirmed the presence of Clenbuterol in the hair sample.

6.5. It is not disputed that Trainer Buckner is a Responsible Person or that In the Midst is a Covered Horse under the ADMC Program.

6.6. Trainer Buckner breached ADMC Program Rule 3212(a), under which the presence of a Prohibited Substance in a Covered Horse is a strict liability offense for which the “intent, Fault, negligence, or knowing Use on the part of the Responsible Person” is not required to establish a violation.

6.7. HIWU has the burden of establishing a Presence Based violation to the “comfortable satisfaction” of the Arbitrator.

6.8. Trainer Buckner has not submitted any defense to the ADRV, has not identified any potential witnesses and has not submitted any exhibits.

6.9. HIWU requested the following relief in its pre-hearing Brief:

- a. Disqualification of the results of In the Midst obtained on June 15, 2023, and subsequent to the date of Sample collection, including forfeiture of all purses and other compensation, prizes, trophies, points, and rankings and repayment or surrender (as applicable) to the Race Organizer (ADMC Program Rule 3221);
- b. A period of Ineligibility of 14 months for In the Midst, beginning on June 15, 2023 (ADMC Program Rule 3222);
- c. A period of Ineligibility of two (2) years for Trainer Buckner as a Covered Person, beginning on July 21, 2023, the date of the Provisional Suspension (ADMC Program Rule 3223);
- d. A fine of USD \$25,000 and payment of some or all of the adjudication costs (ADMC Program Rule 3223);
- e. Public disclosure in accordance with Rule 3620 (ADMC Program Rule 3231); and
- f. Any other remedies which the Arbitrator considers just and appropriate in the circumstances.

Mr. Buckner’s Contentions and Claims for Relief

6.10. Despite being ordered and asked on five (5) separate occasions, Mr. Buckner failed to submit his positions at any time. Mr. Buckner also failed to appear or make a submission at the Evidentiary Hearing.

VII. ANALYSIS

7.1. The issue in this Arbitration involves Mr. Buckner being charged an Anti-Doping Rule Violations (“ADRV”) of the Anti-Doping Medication Control Program namely the Presence of a Banned Substance and/or its Metabolites or Markers (ADMC Program Rule 3212) – Clenbuterol.

Presence

7.2. The Respondent is alleged to have breached ADMC Program Rule 3212(a), under which the presence of a Prohibited Substance in a Covered Horse is a strict liability offense

for which the “intent, Fault, negligence, or knowing Use on the part of the Responsible Person” is not required to establish a violation:

*“(a) It is the personal and non-delegable duty of the Responsible Person to ensure that no Banned Substance is present in the body of his or her Covered Horse(s). The Responsible Person is therefore **strictly liable for any Banned Substance or its Metabolites or Markers found to be present in a Sample** collected from his or her Covered Horse(s). Accordingly, **it is not necessary to demonstrate intent, Fault, negligence, or knowing Use on the part of the Responsible Person** in order to establish that the Responsible Person has committed a Rule 3212 Anti-Doping Rule Violation.” (emphasis added).*

7.3. HIWU has the burden of establishing a Presence Based violation to the “comfortable satisfaction” of the Arbitrator. Under Rule 3212(b), sufficient proof of a Rule 3212 violation is established when “the Covered Horse’s B Sample is analyzed and the analysis of the B Sample confirms the presence of the Banned Substance or its Metabolites or Markers found in the A Sample.” As set out above, the B Sample Analysis confirmed the A Sample Analysis and Mr. Buckner’s violation is established under Rule 3212(b)(2).

7.4. At the Evidentiary Hearing HIWU presented their case along with three exhibits:

1. Exhibit A—Notice of Alleged Anti-Doping Rule Violation dated July 21, 2023, with attachments.
2. Exhibit B—Charging Letter dated September 11, 2023, with attachments.
3. Exhibit C—Hair Sample Analysis Report dated October 31, 2023

7.5. A post-race urine sample was collected from In the Midst on June 15, 2023, at Thistledown. The Ohio Lab analyzed the sample and reported it positive for the banned substance Clenbuterol.

7.6. Trainer Buckner elected to have the B Sample tested. The B Sample was analyzed by the University of Kentucky Equine Analytical Chemistry Laboratory (“UK Lab”), and the UK Lab’s analysis confirmed the presence of Clenbuterol in the B Sample.

7.7. Trainer Buckner asked HIWU to test a hair sample from the horse. In October 2023, a hair sample from In the Midst was analyzed by the Kenneth L. Maddy Equine Analytical Chemistry Laboratory in Davis, California (“Davis Lab”) and was found to contain Clenbuterol.

7.8. Clenbuterol is an S3 Banned Substance unless it is prescribed to the Covered Horse in the context of a valid veterinarian-client-patient relationship and other specified conditions are met.

7.9. There is no allegation that In the Midst had been prescribed Clenbuterol by a veterinarian at any time relevant to the ADRV charged in this case.

7.10. Accordingly, for these reasons, under Rule 3212(b)(2) the ADRV against Mr. Buckner is affirmed.

7.11. Clenbuterol is an S3 Banned Substance and pursuant to ADMC Program Rule 3223, the presumptive ineligibility for a first ADRV under ADMC Program Rule 3212 (Presence) is two (2) years of Ineligibility.

Mitigation of Mr. Buckner's Sanction Based on Fault

7.12. Where a Violation of the ADMC Program is established, the Respondent may be entitled to a mitigation of the applicable Consequences, only where they establish on a balance of probabilities that they acted with either No Fault or Negligence, or No Significant Fault or Negligence. A threshold issue before considering the degree of fault in a particular case, the Covered Person must "establish how the Prohibited Substance entered the Covered Horse's system", which is also known as the requirement to prove the source of the AAF.

7.13. Mr. Buckner has never raised and hence waived any argument based on considerations of fault or the lack thereof. As a result, the Arbitrator will not consider these legal doctrines.

7.14. Accordingly, the Arbitrator finds that there is no mitigation that might possibly be considered for Mr. Buckner's case, and his sanction should be two years of Ineligibility.

Punishment-Fine, Payment Toward Legal Fees and Arbitration Costs

7.15. Under the ADMC Program, (Rule 3223(b)) the punishment includes, in addition to a period of Ineligibility, a, "Fine up to \$25,000 . . . and Payment of some or all of the adjudication costs and [HIWU]'s legal costs". These consequences appear to be mandatory in their application; in other words, upon finding a violation, the Arbitrator must also make a finding on the applicable fine and the payment of the adjudication costs and HIWU's legal costs. Here, HIWU has not sought recovery for their legal costs, so the Arbitrator need not take up that issue.

7.16. From reading Rule 3223(b), it is clear that the use of "and" after the statement of the period of Ineligibility is conjunctive and requires the Arbitrator to issue a fine of some amount "up to \$25,000". The amount of this fine, however, appears to be entirely discretionary with the Arbitrator. This Arbitrator is of the view that the notion that the fine should follow the fault is a useful convention for assessing a fine in any particular case arising under the ADMC Program generally, particularly in cases involving Use or Presence,

violations requiring intent, or violations that resulted in some performance enhancing effect on the results of a particular race.

7.17. Here, Mr. Buckner has given no explanations for the presence of Clenbuterol in the horse, In the Midst. In fact, the Arbitrator on more than five (5) occasions asked Mr. Buckner to submit a brief, exhibits, witness statements, expert reports or any evidence that he intended to rely on at the Hearing. He failed to do so on every occasion and even failed to appear at the Evidentiary Hearing.

7.18. Accordingly, the Arbitrator finds that the fine should be set at \$25,000 to be paid by the end of his period of ineligibility. This is an imprecise calculation but one that the Arbitrator determines to be appropriate, based on all of the facts and circumstances.

7.19. With respect to issues of costs to be assessed, the Arbitrator notes that HIWU has stated it does not seek reimbursement of or contribution to its legal fees in this case. HIWU does seek contribution to the costs of the arbitration proceeding, including the compensation of the Arbitrator and the arbitral bodies fees. While the assessment of some portion of costs appears to be mandatory given the conjunctive language used in Rule 3223(b), the amount of the contribution toward the arbitration costs appears, like the fine, to be purely discretionary with the Arbitrator.

7.20. Using the same factual and equitable considerations for assessing the fine above, the Arbitrator determines that Mr. Buckner should make a modest contribution to the arbitration costs of HIWU of \$10,000 (Mr. Buckner is responsible to pay half of the arbitration costs already), to be paid by the end of his period of Ineligibility. This too is not a scientific calculation, but one determined by the Arbitrator to be appropriate given the circumstances and the ease with which Mr. Buckner could have avoided his predicament.

Publication

7.21. As part of its claims for relief, HIWU seeks an order for publication of the Final Decision under Rule 3231. The Arbitrator has reviewed Rule 3231, and Rule 3630 to which Rule 3231 refers. Those rules appear to be mandatory and provide conditions under which publication is required, and certain limited conditions under which publication may not be permitted or required. In any event, there is no action the Arbitrator can take to 1) cause publication to occur (i.e., the Arbitrator does not control the HIWU website or any other website on which publication might occur, 2) the publication would occur after the Arbitrator is functus officio, and 3) the rules cited appear to govern the conditions and processes under which publication occurs or does not occur and the Arbitrator has no power to address those matters.

7.22. Accordingly, the Arbitrator denies this request for relief (for publication) as being ultra vires to the power of the Arbitrator to grant. HIWU must simply follow the relevant rules set forth in the ADMC Program in addressing publication.

VIII. AWARD

8.1. On the basis of the foregoing facts, legal analysis, and conclusions of fact, the Arbitrator renders the following decision:

- A. Mr. Buckner is found to have committed his first presence based anti-doping violation.
- B. Disqualification of the results of In the Midst obtained on June 15, 2023, and subsequent to the date of Sample collection, including forfeiture of all purses and other compensation, prizes, trophies, points, and rankings and repayment or surrender (as applicable) to the Race Organizer (ADMC Program Rule 3221);
- C. A period of Ineligibility of 14 months for In the Midst, beginning on June 15, 2023 (ADMC Program Rule 3222);
- D. A period of Ineligibility of two years for Trainer Buckner as a Covered Person, beginning on July 21, 2023, the date of the Provisional Suspension (ADMC Program Rule 3223);
- E. A fine of USD \$25,000 to be paid by Mr. Buckner to HIWU by the end of the period of Ineligibility; and
- F. Mr. Buckner shall be required to pay a contribution of USD \$10,000 toward HIWU's share of the arbitration costs of this proceeding by the end of his period of Ineligibility.

This Decision shall be in full and final resolution of all claims and counterclaims submitted to this arbitration. All claims not expressly granted herein are hereby denied.

IT IS SO ORDERED AND AWARDED.

Dated: March 5, 2024



John T. Wendt, Arbitrator