

Agenda Item #1

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into between the Indiana Horse Racing Commission (“IHRC”), by Deena Pitman (“Director Pitman”), Executive Director of the Indiana Horse Racing Commission Staff (“Commission Staff”) and Brad H. Cox (“Mr. Cox”), a licensee subject to regulation by the IHRC. Collectively, the Commission Staff and Mr. Cox shall be referred to herein as “the Parties.” This Agreement is subject to the review and approval of the IHRC.

RECITALS

- R1. The IHRC is the administrative agency in the State of Indiana that regulates horse racing pursuant to provisions of the Indiana Code, Title 4, Article 31.
- R2. At all times relevant to this Agreement, Mr. Cox was licensed as a trainer with the IHRC.
- R3. As a licensee of the IHRC, Mr. Cox is subject to IHRC rules and regulations.
- R4. As a licensee, Mr. Cox is required to be knowledgeable of all IHRC rules and regulations.
- R5. On or about August 18, 2023, Director Pitman issued Administrative Complaint No. 223002 (“Complaint”) to Mr. Cox.
- R6. On or about September 7, 2023, Mr. Cox timely requested a hearing on the Complaint.
- R7. On or about September 12, 2023, the Office of Administrative Law Proceedings assigned Administrative Law Judge Tracey Yeager (“ALJ Yeager”) to the matter.
- R8. On October 11, 2023, ALJ Yeager conducted a telephonic pre-hearing conference in the matter. At the pre-hearing conference, ALJ Yeager scheduled an evidentiary hearing for Thursday, March 14, 2024.
- R9. On January 23, 2024, Commission Staff filed a Motion for Summary Judgment.
- R10. On February 22, 2024, Mr. Cox filed a Response in Opposition to Commission Staff’s Motion for Summary Judgment.
- R11. On February 29, 2024, Commission Staff filed a reply brief to Mr. Cox’s response, and on March 5, 2023, Mr. Cox filed a sur-reply brief.
- R12. On March 7, 2024, ALJ Yeager issued her Order Denying Commission Staff’s Motion for Summary Judgment.
- R13. On March 12, 2024, Parties filed a Joint Motion to Vacate Administrative Hearing.

R14. Now, in full and complete resolution of any and all further administrative proceedings involving Mr. Cox relative to the Complaint, the Parties agree to the terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, and the promises and covenants to be performed as set forth herein, the Parties agree as follows:

A1. This Agreement does not cover any violations that may be discovered that are not referenced in Administrative Complaint No. 223002, dated on or about August 18, 2023.

A2. Mr. Cox agrees to dismiss with prejudice, withdraw and/or waive all related pending legal and administrative proceedings including any related appeals, and release all claims and potential claims against the IHRC, the Commission Staff and/or its current or former representatives, agents and/or employees relating to IHRC actions that are the subject of this Settlement Agreement. Mr. Cox specifically agrees to release and forever discharge any claims and/or complaints against the IHRC, the Commission Staff and/or its current or former representatives, agents and/or employees and/or the Stewards arising from, relating to, or in any way connected with the issues associated with the Commission Staff's initiation and/or pursuit of the underlying disciplinary action against Mr. Cox.

A3. As a result of the disciplinary matter that was the subject of the underlying proceeding, Mr. Cox agrees (1) to pay a \$500 fine and (2) that the horse *Interstatedaydream* shall be ordered unplaced from the 11th Race on July 9, 2022, at Horseshoe Indianapolis, and all purse monies earned be forfeited, returned, and redistributed pursuant to the provisions of 71 IAC 8.5-1-2(b).

A4. The Parties specifically agree that this Agreement shall be governed by applicable Indiana regulations and any failure to comply with those rules is subject to enforcement by the Stewards and/or the IHRC.

A5. Mr. Cox and Commission Staff acknowledge that this Agreement is subject to the approval of the IHRC.

A6. Mr. Cox acknowledges that this Agreement is not a guarantee of future licensure in the State of Indiana.

A7. The IHRC will enter a ruling consistent with the Agreement, in substantially the form attached to this Agreement as **Exhibit A**, that will make clear that the penalties/sanctions set forth in rhetorical paragraph A3 of the Agreement are the only and total penalties/sanctions for the alleged violation referenced in this Agreement. It is the intent of the Parties that this Agreement shall not be interpreted as imposing any other sanction or penalty other than that set forth in rhetorical paragraph A3 herein. The IHRC shall not in any future proceeding seek to impose any additional sanction or penalty for the actions alleged in Administrative Complaint

No. 223002.

A8. Any waiver of any provision of this Agreement must be in writing and must be approved by the IHRC or the Commission Staff. No waiver of any provision of this Agreement shall constitute either a waiver of any provision hereof (whether or not similar) or a continuing waiver.

A9. If and to the extent any provision of this Agreement is held invalid or unenforceable at law, such provision will be deemed stricken from the Agreement and the remainder of the Agreement will continue in effect and be valid and enforceable to the fullest extent permitted by law.

A10. This Agreement shall be deemed executed in the State of Indiana, and shall be governed and construed in accordance with the laws of Indiana, without regard to its choice of law provisions, and all claims relating to or arising out of this Agreement, or the breach thereof, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of Indiana, without regard to its choice of law provisions. Exclusive jurisdiction and venue over any and all disputes arising out of or in connection with this Agreement shall be brought only in a state court of competent jurisdiction located in Marion County, Indiana.


A11. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, fully enforceable counterpart of all purposes, but all of which constitute one and the same instrument.

A12. Mr. Cox represents that he has carefully read and reviewed the foregoing Agreement, acknowledges its contents, has the right to consult with counsel, and agrees to be bound by its terms. Mr. Cox acknowledges that he has voluntarily entered into this Agreement as of the date and year herein set forth.


IN WITNESS HEREOF, the Parties have executed this Agreement on the date(s) listed below.

I swear, under penalties for perjury, that the foregoing representations that have been made by me are true and correct.

3/25/24
Date


Brad H. Cox


Witnessed and Approved:


Darren Craig, Counsel for Brad H. Cox

ON BEHALF OF THE INDIANA HORSE RACING COMMISSION:

3-22-24

Date



Deena Pitman, Executive Director

Approved as to form:

/s/ David Rothenberg

David Rothenberg, General Counsel



INDIANA HORSE RACING COMMISSION

Ruling # Pending (ORIG)

License # 2018-00211

Location Indiana Grand

Infraction Date: 7/9/2022 Date of Ruling: 3/14/2024
 Date of Hearing: Race Number: 11
 Horse Name: Interstatedaydream
 License Type: Trainer (TB)

BRAD H. COX



Penalty	
Fine:	\$500
Total number of Suspended days:	
Suspended:	
Begins:	Ends:

MMV (Multiple Medication Violation)	
Drug(s) / Substance(s)	Points
Sotalol	<i>A total of 3 or more points may result in additional penalties being assessed</i>
	Points assessed as a result of this ruling: 4.0
	Overall total points currently assessed: 4.0

Rule Violation(s): 71 IAC 8.5-1-1.5 ;71 IAC 8.5-1-2 ;71 IAC 5.5-3-2

Violation Declaration:

(ORIGINAL - not issued)

PROPOSED RULING

Thoroughbred trainer Brad H. Cox ("Cox"), having reached a settlement agreement with the Indiana Horse Racing Commission ("IHRC"), and in full and complete resolution of any and all further administrative proceeding involving Administrative Complaint No. 223002 ("Complaint") has agreed with IHRC to the following for a violation of 71 IAC 8.5-1-2(a) occurring when the urine sample taken from a horse he trained on July 09, 2022, at Horseshoe Indianapolis tested positive for the prohibited substance Sotalol.

- Cox is fined in the amount of \$500.00;
- and the horse *Interstatedaydream* is disqualified from the 11th race at Horseshoe Indianapolis, and all purse monies, trophies, and awards earned are forfeited, returned, and redistributed pursuant to the provisions of 71 IAC 8.5-1-2(b).

The penalties/sanctions set forth above are the only and total penalties/sanctions for the violation referenced in the Complaint.



INDIANA HORSE RACING COMMISSION

Ruling # Pending (ORIG)

License # 2018-00211

Location Indiana Grand

Senior State Steward

Date

Associate Steward

Date

Associate Steward

Date

Appeal Process: Pursuant to 71 IAC 10-2-9, anyone who is aggrieved or adversely affected by this ruling may appeal to the Commission. Such appeal must be filed with the Commission within fifteen (15) days of this ruling. **Fine Statement:** Any Person failing to pay a fine within seven (7) days may be summarily suspended pending the payment of the fine, however when a fine and suspension is imposed, the fine shall be due and payable at the time the suspension expires, unless otherwise ordered. All fines shall be paid to the Commission **Suspended Persons:** Unless the ruling specifically states otherwise, any person suspended or determined to be ineligible for licensing shall be excluded and denied access to all facilities under the jurisdiction of the Commission, including satellite facilities, during the period of suspension or ineligibility.

Agenda Item #2

Ruling HP-2017-1006 (AM1) with the original Date of Ruling of March 23, 2017, and issued on September 7, 2018.

Standardbred owner/trainer/driver licensee Bobby Brower, having reached a settlement agreement with the Indiana Horse Racing Commission (“IHRC”), and in full and complete resolution of any and all further administrative proceedings involving the Administrative Complaint 216005, dated November 4, 2016, has agreed with IHRC to the following:

1. Brower is suspended for a period of four (4) years, effective retroactively from March 7, 2017, through and including March 7, 2021.

The sanctions referenced in this amendment are the total sanctions for the violations referenced.”

The April 12, 2022, ruling is part of this record having been designated as Exhibit 5 in support of Mr. Brower’s Cross Motion for Summary Judgment.

Petitioner objects and takes exception to Findings of Fact No. 9 for the reason it does not include Mr. Brower’s argument that his application was denied and derogation of 71-IAC-5-1-14 and I.C. 4-31-6-6. Further, this Finding of Fact fails to include Petitioner’s argument that rhetorical paragraph 15 of the original agreement sets forth the remedies for breach. Nor does this Finding of Fact include Mr. Brower’s argument that a voluntary agreement, which is not a penalty, was/is not supported by a consideration or by a bargain for inducement and is, therefore, not enforceable. Finally, this Finding of Fact does not consider Mr. Brower’s position relative to the subsequent Standardbred Judges’ order of April 12, 2022.

Petitioner objects and takes exception to Conclusion of Law No. 8. He does so because the Indiana Rules of Evidence apply to the Indiana Rules of Trial Procedure and, in this case, Indiana Trial Rule 56. This Conclusion of Law incorrectly states that hearsay evidence may be considered. That is incorrect. Specifically, Indiana Trial Rule 56(E) governs the form of affidavits- further testimony- evidence offered in support dispositive motions. Indiana Trial of Procedure 56(E) states:

(E) Form of affidavits-Further testimony-Defense required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies not previously self-authenticated of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if

appropriate, shall be entered against him. Denial of summary judgment may be challenged by a motion to correct errors after a final judgment or order is entered.

Further, this Conclusion of Law incorrectly states that Petitioner relies on hearsay evidence. That is not the case. The affidavits of Howard Taylor, the Petitioner, and the sworn application of Mr. Brower all comply with Indiana Rules of Trial Procedure 56(E).

Petitioner objects and takes exception to Conclusion of Law No. 9. He does so because this conclusion incorrectly states that he did not establish that he had applied for licensing in foreign jurisdictions including Kentucky, Pennsylvania, and Ohio. In fact, Mr. Brower did provide evidence, in proper evidentiary form, in compliance with Indiana Trial Rule 56(E), supporting his position that he had applied for licensing in foreign jurisdictions by way of his own affidavit and the affidavit of Howard Taylor. Conclusion of Law No.9 suggests that the outcome might have been different if Mr. Brower would have applied to all states that offer standardbred licensing. There was no evidence or indicator that the result would have been different in other jurisdictions and nothing to that effect was offered or argued by the Respondent, making the Administrative Law Judge's comment in this regard objectionable.

Further, Conclusion of Law No.9 fails to consider the Indiana Horse Racing Commission's Judge's subsequent ruling of April 12, 2022, that was entered, in part, to clarify and assist Mr. Brower in securing licensing in a foreign jurisdiction. The Administrative Law Judge concludes that the terms of a contract are deemed to be within the four corners of the document, but fails to consider the subsequent ruling/order of April 12, 2022, that superseded and/or rescinded (or both), the very contract that is the basis of this Conclusion of Law.

Petitioner objects and takes exception to Conclusion of Law No. 10. This Conclusion of Law fails to consider rhetorical paragraph 15 of the Settlement Agreement and fails to consider the Indiana Horse Racing Commission Standardbred Judges' ruling of April 12, 2022.

Petitioner further objects to this Conclusion of Law for the reason that the case law cited and relied upon is distinguishable from the facts and circumstances surrounding Mr. Brower. The 1991 decision of the Indiana Court of Appeals in *National Advertising Company v. Wilson Auto Parts, Inc.*, 569 N.E.2d 997 (Ind.Ct.App.1991) relates to a dispute that arose out of a contract for the lease of a billboard advertising space. Lessee sued for breach of contract and sought punitive damages as consequences of the lessor removing the billboard on which the advertising appeared. Wilson Auto Parts executed a written agreement with National Advertising Company for advertising space on one of its outdoor billboards. Eighteen months before the lease expired, National removed the billboard on which Wilson's advertisement appeared, replacing it with a larger billboard. Wilson was not notified in advance that their advertisement would be removed, or the billboard be replaced. National advised Wilson, before contracting with another customer, that the larger billboard was available, but at unit price higher than Wilson originally contracted. National offered Wilson another location for placement, but Wilson rejected the offer insisting location of its advertising was unique. National offered to place Wilson's advertisement on the larger billboard at the original contract amount of \$375, but only after the new client's contract expired.

The Court in National Advertising Inc., supra, held, that Wilson, unlike Mr. Brower, made no effort to mitigate its damages. Unlike Wilson, Mr. Brower has repeatedly attempted to mitigate his damages by applying for licensure in foreign jurisdictions including Ohio, Pennsylvania, and Kentucky. Mr. Brower served his time of suspension, placed the Indiana Horse Racing Commission Staff on notice of his difficulty securing licensing elsewhere, which resulted in subsequent agreement of April 12, 2022, revoking prior agreement. Mr. Brower did not breach the agreement to gain advantage. He did so to mitigate his damages and to “get back to work” as a trainer of standardbred horses. Further, Indiana has longed recognize the doctrine of futility. The same relieves one, such as Mr. Brower, from pursuing or taking actions that are futile. To have required Mr. Brower to seek licensure in thirty some other jurisdictions, after having the experience he had in Kentucky, Ohio, and Pennsylvania, is unreasonable and is contrary to the doctrine of futility.

The second case cited and relied upon in support of this Conclusion of Law is the case of *Fisher v. Heymann* decided by the Supreme Court of Indiana in 2014 (*Fisher v. Heymann*, 12 N.E.3d 867 (2014)). This case involved a dispute over a breach of contract for the sale of real estate. The court in deciding this case focused on the issue of mitigation of damages. The Supreme Court of Indiana held that Fisher, unlike Mr. Brower, failed to mitigate her damages. As stated, supra, Mr. Brower attempted, multiple times, to mitigate his damages by attempting to secure licensing in multiple foreign jurisdictions to “get back to work” after serving the full period of suspension without any further violation or incident. The Indiana Court of Appeals’ decisions in *National Advertising Company v. Wilson Auto Parts, Inc.*, and the Supreme Court of Indiana’s decision in *Fisher v. Heymann* are both distinguishable involving the matter involving Mr. Brower and, together with Indiana’s recognized doctrine of futility, make this Conclusion of Law both inaccurate and objectionable.

Petitioner objects to Conclusion of Law No. 11. This Conclusion of Law fails to consider, at all, the Standardbred Judges’ ruling of April 12, 2022. Further, this Conclusion of Law fails to acknowledge, consider, or include that the Indiana Horse Racing Commission/Indiana Horse Racing Commission Staff had knowledge that the voluntary (not a penalty) statement to not apply for a license precluded Mr. Brower for being licensed in other states and that Respondent’s continued enforcement of the provision, even though expressly designated not to be a sanction in both the original Settlement Agreement and the subsequent ruling of April 12, 2022. This Conclusion of Law further fails to consider or include that the Indiana Horse Racing Commission/Indiana Horse Racing Commission Staff’s actions, in fact, amounted to a sanction of eleven (11) years, which exceeds the penalty of four (4) years as agreed to and approved by the Indiana Horse Racing Commission.

Petitioner objects and takes exception to Conclusion of Law No. 12 for the reason that it fails to include any consideration of the Standardbred Judges’ subsequent ruling of April 12, 2022, and for the additional reason that it fails to consider all of the terms of the original Settlement Agreement. Mr. Brower further objects for the reason that the Respondent has a duty to fairly and uniformly enforce the statutory rules regarding licensing of those before the horse racing commission including, but not limited to, 71-IAC-5-3-1 and 71-IAC-5-1-14. Said statutory rules are not considered in this Conclusion of Law.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon the following counsel of record via email this 1st day of May 2024:

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/s/ Peter J. Sacopulos
Peter J. Sacopulos

BEFORE THE INDIANA HORSE RACING COMMISSION
2024 TERM

BOBBY BROWER,

Petitioner,

v.

INDIANA HORSE RACING
COMMISSION STAFF,

Respondent.

In Re: Appeal of Judges' Ruling:
HP-2023-3000

**BRIEF IN SUPPORT OF COMMISSION AFFIRMATION OF PROPOSED
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND NONFINAL ORDER OF
ADMINISTRATIVE LAW JUDGE**

The Indiana Horse Racing Commission Staff (“Commission Staff”) respectfully submits this brief in support of its request that the Indiana Horse Racing Commission (“Commission” or “IHRC”) affirm the Proposed Findings of Fact, Conclusions of Law, Nonfinal Order on Parties’ Cross Motions for Summary Judgement of Administrative Law Judge Tracey Yeager (“Judge Yeager”) dated April 17, 2024 (“Nonfinal Order”)¹, attached as Exhibit A, which is submitted pursuant to the IHRC Chairman’s May 9, 2024, Notice of Opportunity to Present Briefs and Oral Argument in the above-referenced matter.

I. INTRODUCTION

1. On April 29 and 30, 2018, Bobby Brower (“Petitioner”) entered into Settlement Agreement (“Agreement”) that resolved all pending litigation between the Commission Staff and the Petitioner (collectively, the “Parties”) which in part stated:

¹ Judge Yeager’s Nonfinal Order was issued with respect to Administrative Cause Number: HRC-2307-001855.

- a. The Administrative Complaint (Exhibit B, attached) upon which the Agreement is based on alleges in Paragraph 4 that the Petitioner violated 71 IAC 5-1-14(b)(9), IC 4-31-6-6(b)(9), 71 IAC 5-1-14(b)(10), IC 4-31-6-6(b)(10), 71 IAC 5-1-14(b)(16), IC 4-31-6-6(b)(15), 71 IAC 5-3-3(a)(5), 71 IAC 5-3-3(a)(27), and 71 IAC 5-3-3(a)(18).
 - b. Petitioner concedes that the Commission Staff has sufficient evidence to prove by a preponderance of the evidence that Petitioner has committed one or more of said violations (Paragraph 10);
 - c. Petitioner agrees to a suspension of four (4) years beginning March 7, 2017, and ending March 8, 2021 (Paragraph 11); and
 - d. Petitioner agrees to not seek licensure from the IHRC until seven (7) years after the end of his suspension (March 7, 2028) (Paragraph 12).

(Exhibit C, attached).
2. Contrary to the terms of the Agreement, the Petitioner applied for an owner/trainer license through the IHRC on February 15, 2023.
 3. On March 14, 2023, Petitioner's application was refused by the IHRC and returned to him.
 4. On May 10, 2023, a hearing was held before the Judges at Harrah's Hoosier Park as per 71 IAC 5-1-12 where the refusal was upheld (Ruling HP-2023-3000).
 5. On July 3, 2023, Petitioner filed an appeal with the Office of Administrative Law Proceedings, the case of which was assigned to Judge Yeager.
 6. Filings of a Motion for Summary Judgment by the Commission Staff (filed January 30, 2024, Exhibit D, attached), a Cross Motion for Summary Judgment by

Petitioner (filed February 2, 2024, Exhibit E, attached), a Response to the Cross Motion for Summary Judgment by the Commission Staff (filed February 29, 2024, Exhibit F, attached), and a Reply to Commission Staff's Motion for Summary Judgment (filed February 29, 2024, Exhibit G, attached) were all filed.

7. Having considered all filings, Judge Yeager issued a Nonfinal Order on Parties' Cross Motions for Summary Judgment on April 17, 2024, with a ruling stating that Petitioner must abide by the Agreement and could not apply for licensure to the IHRC before March 7, 2028.

II. RELEVANT LAW

The Indiana Horse Racing enabling statute is at Title 4, Article 31 of the Indiana Code (Pari-mutuel Wagering on Horse Races). Pursuant to the authority established in Title 4, Article 31, the IHRC has promulgated rules to regulate horse racing in Indiana. Those rules are codified at Title 71 of the Indiana Administrative Code. As an administrative agency, the IHRC also derives authority from and is restricted by the Administrative Orders and Procedures Act ("AOPA") (Indiana Code Title 4, Article 21.5).

In 1989, the Indiana state legislature charged the IHRC with ensuring that pari-mutuel wagering on horse races in Indiana will be conducted with the highest of standards and the greatest level of integrity. (*See* Ind. Code 4-31-1-2).

III. ANALYSIS

As a licensee in 2016, Petitioner knowingly subjected himself to the jurisdiction of the Commission and explicitly agreed to know, and abide by, the rules of pari-mutuel horse racing in Indiana. The Petitioner is obligated to know and follow the Commission rules on the care and control of racehorses, including the rules and statutes involving the treatment

of horses, specifically those listed in Paragraph 1(a) above. By executing the Agreement, Petitioner admitted that the Commission Staff could prove by at least a preponderance of the evidence that he violated at least one of those statutes or rules listed in the Administrative Complaint regarding the treatment of a horse or horses. Rather than presenting his case before a hearing judge, Petitioner elected to enter into the Agreement to settle all matters and abide by the terms of the Agreement.

Although the original Administrative Complaint called for a penalty of a fifteen (15) year suspension and a forty-thousand dollar fine (\$40,000), the Parties agreed to assess a penalty of four years' suspension and waive the fine. In addition, Petitioner voluntarily agreed to refrain from applying for an IHRC license until March 7, 2028, in which the Agreement states is NOT a penalty (further reiterated by a later clarification ruling by the Commission).

Judge Yeager's Nonfinal Order states that the Parties concur on the material facts but differ on the legal import of those facts. Petitioner has claimed that when he entered into the Agreement, he anticipated that he would be able to apply for licenses in other states after the initial four-year suspension ended in Indiana. Additionally, he claims that he has attempted to do so and has been denied by other states. The Nonfinal Order correctly states that any anticipated actions the Petitioner had or has regarding licensing in a foreign jurisdiction outside of the Agreement are immaterial. Furthermore, Petitioner has stated that by applying for an IHRC license, Petitioner has breached the Agreement and the only remedy the Commission Staff has is to pursue the original disciplinary action(s) listed in the Administrative Complaint. Paragraph 10 in the Nonfinal Order correctly states that a party cannot breach a contractual obligation in order to benefit themselves. Finally, the

Nonfinal Order concludes that the IHRC’s decision to refuse the Petitioner’s application was not arbitrary or capricious, as it was based upon the clear terms of the Agreement.

IV. ARGUMENTS

A. The IHRC Judges’ subsequent ruling of April 12, 2022, was issued as a clarification to the original ruling dated March 23, 2017.

In Petitioner’s Exceptions, filed with the Commission on May 1, 2024 (“Exceptions”), Petitioner takes exception to the fact Judge Yeager’s Nonfinal Order does not include reference to the IHRC Judges’ amended ruling dated April 12, 2022 (“Amended Ruling”). Although this Amended Ruling states that it supersedes or rescinds, or both, the original ruling of March 23, 2017, the Amended Ruling adds no additional penalties and makes no material changes to the original ruling. It does add the wording “for clarification” although there is no evidence as to why this Amended Ruling was needed. Petitioner states that the Amended Ruling was “entered, in part, to clarify **and assist Mr. Brower in securing a license in a foreign jurisdiction**” (emphasis added). There was no evidence provided as to why the Amended Ruling was entered, especially regarding assisting the Petitioner in obtaining a license in another jurisdiction.

Regardless of the purpose behind or the result of the Amended Ruling, it does not invalidate the Agreement or the terms of the Agreement, in which the Petitioner agreed not to apply for an IHRC license prior to March 8, 2028.

B. The recommended finding that Petitioner should not be allowed to breach his contract to his benefit is valid and should be accepted.

In Petitioner’s Exceptions, he cites the cases used by Judge Yeager to illustrate the conclusion that an individual should not be allowed to breach a contract to their benefit, differentiating them from the Petitioner’s present situation.

In the *National Advertising Company v. Wilson Auto Part, Inc.*, 569 N.E.2d 997 Ind. Ct. App. 1991 case, the Petitioner points out the fact that the party made no effort to mitigate its damages, while the Petitioner in this case has. In order for this to be relevant, the Petitioner would have to have suffered damages through his agreement. He states, through hearsay, that he has in that other jurisdictions will not license him. As Judge Yeager points out, this is unproven. Even so, if this were true, the decision as to whether or not to license an applicant in any given jurisdiction is at the discretion of the jurisdiction itself. There is nothing in the Agreement to prevent another jurisdiction from licensing the Petitioner. Any so-called “damages” are not due to the Agreement, if they exist at all; they are the result of the foreign jurisdiction’s discretionary licensing power.

The *Fisher v. Heymann*, 12 N.E.3d 867 (2014) case, as cited in Petitioner’s Exceptions, also refers to the mitigation of damages by Fisher. Once again, any perceived damages are not the result of the Agreement.

Finally, Petitioner argues that because of his self-breaching the Agreement, the Commission Staff is now required to relitigate one or more of the alleged violations listed in the initial Administrative Complaint. As stated above, in executing the Agreement, the Petitioner admitted that the Commission Staff could prove by at least a preponderance of the evidence that the Petitioner had committed one or more of the violations listed in the Administrative Complaint. The Petitioner’s attempt to self-breach the Agreement does not invalidate the fact that he has admitted one or more violations, and he should be held accountable for those violations.

C. The Petitioner’s conclusion that the Indiana Horse Racing Commission/ Indiana Horse Racing Commission Staff’s actions amount to a sanction of eleven (11) years is unfounded.

Petitioner argues that the IHRC and Commission Staff had knowledge that the voluntary statement not to apply for an IHRC license precluded him from being licensed in other states and the continued enforcement of the statement amount to a sanction of eleven (11) years. Although there is no evidence provided as to the veracity of this statement, it ignores the fact that the Agreement was also signed by Petitioner's counsel, who happens to be the counsel on this appeal case as well. Although Counsel is not a party to the Agreement, his signature represents the fact that it was reviewed by Counsel, and he advised the Petitioner on any ramifications the execution could have as to licensing in other jurisdictions. The Commission Staff does not consult with other jurisdictions before executing any agreement and does not consider the effects of said agreements upon other jurisdictions as it pertains to voluntary clauses under which a party agrees not to apply for a license in Indiana.

CONCLUSION

Petitioner's objections to the administrative law judge's well-reasoned and fully supported Nonfinal Order are without merit. Accordingly, Commission Staff respectfully requests that the Commission enter a Final Order affirming in all respects Judge Yeager's Nonfinal Order of April 17, 2024, and that it imposes the penalties recommended therein.

Respectfully submitted,

/s/ David Rothenberg
David Rothenberg, No. 28041-49
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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of June 2024, service of a copy of the foregoing **BRIEF IN SUPPORT OF COMMISSION AFFIRMATION OF PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND NONFINAL ORDER OF ADMINISTRATIVE LAW JUDGE** was made via email to the following parties of record:

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ISSUED:
April 17,
2024

STATE OF INDIANA
OFFICE OF ADMINISTRATIVE LAW PROCEEDINGS

Bobby Brower,
Petitioner,

v.

Indiana Horse Racing Commission,
Respondent.

Administrative Cause Number:
HRC-2307-001855

Underlying Agency Action:
HP-2023-3000

Ultimate Authority: Indiana Horse Racing Commission

NON-FINAL ORDER ON PARTIES' CROSS MOTIONS FOR SUMMARY JUDGMENT

Jurisdiction

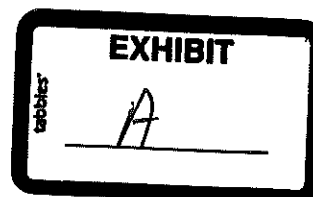
The ALJ assigned to this matter by the Director of the Office of Administrative Law Proceedings (OALP), *see* Ind. Code § 4-15-10.5-13, has jurisdiction over this case pursuant to Indiana Code § 4-15-10.5-12, which gives OALP jurisdiction over agency administrative actions subject to the Indiana Administrative Orders and Procedures Act at Indiana Code Art. 4-21.5 (AOPA) or “any other statute that requires or allows the office to take action.”

Procedural History

The following is a recitation of the procedural history pertinent to this decision.

1. On July 3, 2023 Petitioner filed his Indiana Horse Racing Commission Appeal request which was forwarded to the Indiana Office of Administrative Law Proceedings (OALP) for assignment to an administrative law judge (ALJ).
2. On July 17, 2023 OALP issued an Order Setting Initial Prehearing Conference setting the matter for an initial prehearing conference on August 2, 2023.
3. On August 2, 2023 a telephonic initial prehearing conference was convened in this matter, during which the parties agreed upon the setting of the evidentiary hearing in this matter, allowing sufficient time to conduct discovery and file pretrial motions, should they choose to do so. The evidentiary hearing was scheduled for October 11, 2023, which has since been

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continued and then vacated by stipulated motion of the parties, pending ruling on pretrial motions as noted below.

4. On January 30, 2024 the Indiana Horse Racing Commission (HRC), Respondent herein, filed its Motion for Summary Judgment.
5. On February 2, 2024, Petitioner, by counsel of record, filed Petitioner's Cross Motion for Summary Judgment.
6. On February 29, 2024, Petitioner, filed Petitioner's Reply to IHRC Motion for Summary Judgment (filed January 30, 2024).
7. On February 29, 2024, HRC filed its Response to Petitioner's Cross Motion for Summary Judgment (filed February 2, 2024.)
8. Neither party requested a hearing on their respective motions or responses thereto. On March 25, 2024 the undersigned ALJ affirmed, through email, the parties' intention not to request oral argument and/or hearing, the submission of all filings they intended to propose had been completed, and their intention that the ALJ examine the record and rule therefrom.

Findings of Fact

The following material facts are not in dispute.

1. In 2016 Petitioner was a Standardbred horse owner/trainer/driver, licensed by HRC. (See HRC Exhibit B – Settlement Agreement.)¹
2. On November 14, 2016 HRC filed an action against Petitioner alleging certain violations of its racing rules and suspending Petitioner's license as an owner/trainer/driver. As a part of the agency's action, Petitioner's license was recommended for suspension for a period of fifteen (15) years and a fine of Forty Thousand Dollars (\$40,000.00). (See HRC Exhibit C – Judge's Ruling HP-2017-1006.)
3. Petitioner made a timely response to this agency action, and thereafter the parties engaged in litigation regarding the issues. (See Petitioner's Exhibit 8 – Applicant's Contest of Notice of Refusal.)
4. On April 30, 2018, Petitioner, his counsel Peter Sacopulos, and HRC entered into a Settlement Agreement that resolved all pending litigation amongst the parties. That

¹ References to the record are non-exhaustive, and where both IHRC and Petitioner have offered exhibits that are duplicious of each other, reference is made only to IHRC's exhibit, for brevity and to avoid confusion.

Settlement Agreement was reduced to writing and signed by all parties and counsels of record in April 2018. (See HRC Exhibit B – Settlement Agreement.)

5. In pertinent part that Settlement Agreement states “Brower further agrees that he will not seek licensure from the Indiana horse Racing commission for a period of seven (7) years after the end of his suspension referenced in Pragraph 11. The Agreement in this paragraph is NOT a penalty, suspension or revocation imposed by the Indiana Horse Racing Commission. It is a voluntary undertaking by Brower.” (See paragraph 12 of HRC Exhibit B – Settlement Agreement.)
6. Neither party disputes that the Settlement Agreement is a valid contract between the parties.
7. On March 8, 2021, Petitioner completed the four-year period of license suspension imposed in paragraph 11 of the Settlement Agreement. Thus, the seven years referenced in Paragraph 12 of the Settlement Agreement began on March 8, 2021 and lasts through March 7, 2028. (See HRC Exhibit B – Settlement Agreement.)
8. On February 15, 2023, Petitioner applied for a trainer’s license with IHRC. Petitioner submitted his application prior to the expiration of the seven years stated in Paragraph 12, of the Settlement Agreement. (See HRC Exhibit M – Trainer License Application.)
9. Petitioner asserts that he submitted his application prior to the expiration of the seven years stated because, contrary to his expectation when he entered into the Settlement Agreement, he was not able to secure a license in a different state, because in doing so he has breached the Settlement Agreement leaving IHRC with only the option of pursuing the 2016 disciplinary action and not refusal of his license application, and because refusing his application would effect a period of suspension in excess of that which he would have served under the original 2016 disciplinary action.
10. On March 14, 2023, Petitioner’s application was refused by IHRC and returned to Petitioner. (See IHRC Exhibit N.) IHRC’s decision to refuse Petitioner’s application was upheld at a later hearing before the IHRC Judges, as reflected by Judge’s Ruling HP-2023-3000. (See Exhibit N.)
11. IHRC refused Petitioner’s February 15, 2023 application for a trainer’s license in reliance on the terms of the Settlement Agreement. (See Exhibit F and G.)

Conclusions of Law

1. IHRC is the administrative agency that regulates horse racing and licenses an owner/trainer/driver. IC 4-31-6. If a decision is made to deny a person's application for a license as owner/trainer/driver, that person may appeal the decision to the IHRC. IC 4-31-6-9. Appeals are governed by the Indiana Administrative Orders and Procedures Act at Indiana Code Art. 4-21.5 (AOPA).
2. The ALJ assigned to this matter by the Director of the Office of Administrative Law Proceedings (OALP), *see* Ind. Code § 4-15-10.5-13, has jurisdiction over this case pursuant to Indiana Code § 4-15-10.5-12, which gives OALP jurisdiction over agency administrative actions subject AOPA.
3. At any time after the ALJ is assigned to the case, a party may move for summary judgment in that party's favor. Ind. Code § 4-21.5-23. The ALJ shall consider the summary judgment as a court would consider summary judgment under Rule 56 of the Indiana Rules of Trial Procedure (ITR 56). *Id.*
4. Under ITR 56, summary judgment may be granted when there are no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law.
5. "A fact is 'material' if its resolution would affect the outcome of the case, and an issue is 'genuine' if a trier of fact is required to resolve the parties' differing accounts of the truth . . . or if the undisputed material facts support conflicting reasonable inferences." *Williams v. Tharp*, 914 N.E.2d 756, 761 (Ind. 2009) (internal citations omitted). "Summary judgment is not an appropriate vehicle for the resolution of questions of credibility or weight of the evidence, or conflicting inferences which may be drawn from undisputed facts." *Bell v. Northside Fin. Corp.*, 452 N.E.2d 951, 953 (Ind. 1983).
6. The moving party has the initial burden of making prima facie showing that there are no genuine issues of material fact and that the movant is entitled to judgment as a matter of law. *Choung v. Iemma*, 708 N.E.2d 7, 11 (Ind. Ct. App. 1999). If the moving party meets its initial burden, the burden shifts to the responding party to identify facts that create a genuine issue of material fact. *Id.* Cross-motions for summary judgment do not alter the standard of review. *Nasser v. St. Vincent Hosp. & Health Servs.*, 926 N.E.2d 43, 47 (Ind. Ct. App. 2010). Each motion is to be considered separately to determine whether the moving party is entitled to judgment as a matter of law. *Id.*
7. In this instance the parties concur on the material facts, as set forth above, but differ on the legal import or effect of those facts upon the legality of IHRC's refusal of Petitioner's February 15, 2023 application for a trainers' license.
8. Petitioner argues that Indiana Trial Rule 56, the standard applicable to the parties' cross motions for summary judgment, "...expressly incorporates the Rules of Evidence in

supporting and opposing a Motion for Summary Judgment” and, as a result, the parties are precluded from the use of hearsay, as would be permitted by the evidentiary standard set forth in AOPA. Petitioner does not cite law to support its position that the Rules of Evidence are expressly incorporated in a Motion for Summary Judgment. Petitioner’s argument is a misstatement of ITR 56. ITR 56 does not impose the application of the Indiana Rules of Evidence to the parties’ submissions. (See Indiana Trial Rules 56.) Further, and the most confounding of Petitioner’s positions on this subject is Petitioner’s own reliance on hearsay evidence to support his arguments after arguing hearsay is not permitted. A non-exhaustive list of Petitioner’s reliance on hearsay evidence in contravention of his own argument, would be portions of Petitioner’s Exhibit 2 – Application, Petitioner’s Exhibit 3 – Affidavit of Howard Taylor, and Petitioner’s Exhibit 4 – Affidavit of Bobby Brower.

9. Petitioner argues that when he entered into the Settlement Agreement it was anticipated that, after serving the imposed 4-year suspension, he would be able to secure a license in a jurisdiction other than Indiana, and having discovered that other jurisdictions would not issue him a license, good cause exists for him not to be bound by his agreement not to seek a license in Indiana before March 8, 2028. Disregarding that Petitioner has failed to conclusively establish that he has filed an application in the states he cites, Kentucky, Pennsylvania, and Ohio, and disregarding that three states presumably do not constitute an exhaustive list of states where licensing is possible, Petitioner’s perceptions and recollections as to what he anticipated his relicensing prospects to be are immaterial. It is undisputed that Petitioner’s anticipation that he could successfully license in another state prior to the seven years expiring is not set out in the Settlement Agreement as a condition precedent to his agreement to not reapply for licensure in the state of Indiana before March 8, 2028. The terms of a contract are deemed within the four corners of the document, or they are not to be enforced. In this instance, there is no genuine issue as to the material fact that Petitioner entered into the Settlement without qualification as to paragraph 12, after and with the benefit of counsel, and regardless now of his lack of satisfaction with the terms of that agreement, he is now bound to its terms.
10. Petitioner argues that because he breached the Settlement Agreement by applying for licensure with HRC, the Settlement Agreement is void; thus, HRC is left solely with the remedy of pursuing the original disciplinary action(s) against Petitioner; and HRC may not refuse his February 2023 license application. It is well settled law that a breaching party may not take advantage of their breach to relieve themselves of their contractual duties. In this instance, breach or not, Petitioner has a contractual duty under the Settlement Agreement not to apply for licensure before March 7, 2028.² Petitioner may not take advantage of his

² Petitioner argues that the wording of Paragraph 12 of the Settlement Agreement wherein it indicates that It is a voluntary undertaking by Petitioner should be construed as meaning he must only refrain from applying for licensure if he wishes. All terms of a contract are voluntary, by their very nature, and this ALJ will not read

breach of that duty to require HRC to perform beyond the Settlement Agreement, in this instance to accept his application for licensure. (See *Fischer v. Heymann*, 12 E.E.3d 867 (2014) and *Nat'l Advertising Co. v. Wilson Auto Parts, Inc.*, 569 N.E.2d 997 (Ind.Ct.App.1991).)

11. Petitioner further argues that HRC's enforcement of the seven (7) year sit-down provision of the Settlement Agreement would effect a period of suspension in excess of that which he would have served under the original 2016 disciplinary action. This argument is not supported by the facts. Judges' Ruling HP-2017-1006 dated March 23, 2017 notes a recommended fine of Forty Thousand Dollars (\$40,000.00) and a fifteen (15) year license suspension. Arguably this is the penalty Petitioner was at risk of prior to entering into the Settlement Agreement. However, more to the point, Petitioner's argument as to what might have been is immaterial to this matter, for the reasons set forth above.
12. Indiana law vests IHRC with the responsibility and power to regulate horse racing in Indiana in a manner that ensures that par-mutuel wagering on horse races in Indiana will be conducted with the highest of standards and the greatest level of integrity. (See IC 4-31-1-2 and IC 4-31-3-9.) To that end, in April of 2018, IHRC entered into a Settlement Agreement with Petitioner that reflected the understandings and agreements of the parties as to all outstanding issues pertaining to HRC's disciplinary action against Petitioner. In refusing Petitioner's February 2023 application for licensure, HRC abided by the terms of that Settlement Agreement and complied with its statutory mandate to ensure the integrity of horse racing.
13. IHRC's refusal of Petitioner's application was not arbitrary or capricious, as it was based upon the clear terms of the Settlement Agreement. HRC's refusal did not exceed its statutory jurisdiction and authority in that its refusal of Petitioner's application is no more than it was required to do, abide by the terms of the Settlement Agreement. Refusing any license application made by Petitioner prior to the expiration of the seven (7) year sit-down period supports the integrity of the horse-racing industry's disciplinary process, reinforces the stability and predictability of IHRC enforcement processes, and safeguards the public's confidence in the sport being free from unfair advantage. The Settlement Agreement itself, and IHRC's credibility to enter into such agreements short of full disciplinary process, would be *de minimus* should any one party be permitted to bypass agreed upon terms for more favorable treatment, such as Petitioner argues is his right in this instance. IHRC's refusal of Petitioner's license application was in compliance with the terms of the Settlement Agreement and in compliance with their statutory mandate to safeguard the integrity of horse

Paragraph 12's language as separate or distinct from the other recitations contained in the Settlement Agreement that the parties entered into said terms "voluntarily."


rating. To do otherwise would have deteriorated the credibility, predictability and unbiased uniformity of IHRC's disciplinary process.

14. Thus, there are no material facts in dispute and IHRC is entitled to judgement as a matter of law and dismissal of this action against Petitioner.

Decision and Recommendation

The ALJ recommends entering summary judgment in favor of IHRC, as a matter of law, and against Petitioner.

Recommended: 17 April 2024



Tracey Yeager, Administrative Law Judge
Indiana Office of Administrative Law Proceedings

Appeal Rights

This recommendation is not the final agency action on this matter. In accordance with IC 4-15-10.5-12(b), the OALP's order disposing of this matter is not final. This non-final order is subject to review by and has been submitted to the Indiana Horse Racing Commission – Ultimate Authority.

If you wish to raise and preserve an objection to this order, you must file an objection, in writing, within fifteen (15) days after service of this order. If served only by mail, however, three (3) days will be added to this period to object. See Ind. Code § 4-21.5-3-2 for how to compute the period to object.

An objection must identify the basis of the objection with reasonable particularity and be served on all parties and filed with the ultimate authority at drothenberg@hrc.in.gov. Any communication – inquiries, motions, or otherwise – on this matter should now be directed to the Indiana Horse Racing Commission, Ultimate Authority at drothenberg@hrc.in.gov.

If a timely objection is filed or a notice of intent to review the order is served by the ultimate authority in accordance with Ind. Code § 4-21.5-3-29, the ultimate authority will review the matter and either (1) issue a final order or (2) remand this matter back to the Office of Administrative Law Proceedings for additional proceedings. In the absence of an objection or notice of intent to review, the ultimate authority shall affirm the order in accordance with Ind. Code § 4-21.5-3-29(c).

DISTRIBUTION:

Peter J. Sacopulus, Counsel for Petitioner, at pete_sacopulos@sacopulos.com

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Matthew Eggiman, Counsel for HRC at meggiman1@hrc.in.gov

Agenda Item #3



INDIANA HORSE RACING COMMISSION

Ruling Log

Rulings Issued From 1/1/2024 to 6/15/2024

Ruling Number	Ruling Date	Name	Breed	Violation Date	Violation	Fine	Suspended From	Suspended To	Days Suspended
IG-2024-3227	1/25/24	JESSICA A. VAZQUEZ	QH	11/1/23	Medication/Drug Violation (Equine)	\$500	4/16/24	4/30/24	15
HP-2024-3230	3/13/24	SIXTO RIVAS	SB	12/8/23	Medication/Drug Violation (Equine)	\$0	3/14/24	3/13/25	365
HP-2024-3231	3/13/24	SIXTO RIVAS	SB	12/8/23	Medication/Drug Violation (Equine)	\$0	3/14/24	3/13/25	365
HP-2024-3232	3/12/24	SIXTO RIVAS	SB	12/8/23	Medication/Drug Violation (Equine)	\$5,000	3/14/24	3/13/25	365
HP-2024-3234	3/29/24	SCOTT T. GEORGE	SB	3/23/24	Receiving Barn/Paddock Violation	\$200			
HP-2024-3235	4/2/24	TRENT P. STOHLER	SB	3/30/24	Receiving Barn/Paddock Violation	\$200			
HP-2024-3236	4/2/24	ADAM C. RUCKER	SB	3/30/24	Receiving Barn/Paddock Violation	\$200			
HP-2024-3237	4/4/24	JOE D. YODER	SB	4/3/24	Receiving Barn/Paddock Violation	\$200			
HP-2024-3238	4/6/24	RICHARD L. MACOMBER JR	SB	4/5/24	Riding/Driving Infraction Violation	\$200			
IG-2024-3241	4/5/24	BRAYAN E. LAGOS GARCES		4/4/24	Conduct/Behavior	\$500			



INDIANA HORSE RACING COMMISSION

Ruling Log

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Ruling Number	Ruling Date	Name	Breed	Violation Date	Violation	Fine	Suspended From	Suspended To	Days Suspended
IG-2024-3242	3/1/24	ROGELIO LABRA		3/1/24	Miscellaneous Ruling	\$0			
IG-2024-3243	3/14/24	MASON J. WEINTRAUT		3/14/24	Miscellaneous Ruling	\$0			
IG-2024-3244	4/10/24	FRANSICO E. GONZALES JR		4/10/24	Miscellaneous Ruling	\$0			
HP-2024-3245	4/10/24	BRETT H. WILFONG	SB	4/10/24	Receiving Barn/Paddock Violation	\$200			
IG-2024-3246	4/18/24	ALBERTO CERON-ZAMUDIO	QH	4/17/24	Whip Violation	\$250			
HP-2024-3247	4/20/24	LEWAYNE L. MILLER	SB	4/19/24	Riding/Driving Infraction Violation	\$200			
HP-2024-3248	4/24/24	SAMUEL EICHER	SB	4/24/24	Trainer Responsibility	\$200			
IG-2024-3249	4/24/24	DAGOBERTO CASTELLANOS-HERNANDEZ		4/24/24	License Violation	\$0			
HP-2024-3250	4/27/24	JOSEPH D. PUTNAM	SB	4/25/24	Riding/Driving Infraction Violation	\$200			
HP-2024-3251	4/27/24	JOSEPH G. SEEKMAN	SB	4/26/24	Receiving Barn/Paddock Violation	\$200			
HP-2024-3252	4/30/24	BRANDON L. BATES	SB	4/27/24	Riding/Driving Infraction Violation	\$100			
HP-2024-3253	5/3/24	DEVON J. THARPS	SB	5/1/24	Riding/Driving Infraction Violation	\$200			
HP-2024-3254	5/4/24	MICHAEL G. PETERSON	SB	5/2/24	Whip Violation	\$200			
IG-2024-3255	5/6/24	MARCELINO PEDROZA	TB	5/1/24	Riding/Driving Infraction Violation	\$0	5/13/24	5/15/24	3
IG-2024-3256	5/7/24	GAVIN ASHTON	TB	5/4/24	Riding/Driving Infraction Violation	\$0	5/13/24	5/13/24	1
IG-2024-3257	5/9/24	ARON H. HUNT	QH	5/6/24	Whip Violation	\$250			
HP-2024-3258	5/10/24	MARVIN A. LUNA	SB	5/8/24	Whip Violation	\$300			
HP-2024-3259	5/11/24	ERVIN M. MILLER	SB	5/10/24	Trainer Responsibility	\$200			



INDIANA HORSE RACING COMMISSION

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Ruling Number	Ruling Date	Name	Breed	Violation Date	Violation	Fine	Suspended From	Suspended To	Days Suspended
HP-2024-3260	5/11/24	JAMES D. YODER	SB	5/10/24	Riding/Driving Infraction Violation	\$100			
HP-2024-3261	5/11/24	RANDY D. CRISLER	SB	4/5/24	Medication/Drug Violation (Equine)	\$0			
HP-2024-3262	5/11/24	RANDY D. CRISLER	SB	4/6/24	Medication/Drug Violation (Equine)	\$0			
HP-2024-3263	5/14/24	JASON J. BREWER	SB	5/11/24	Trainer Responsibility	\$100			
HP-2024-3264	5/14/24	DOUGLAS J. RIDEOUT	SB	4/3/24	Trainer Responsibility	\$0			
HP-2024-3265	5/16/24	SCOTT T. GEORGE	SB	8/2/23	Trainer Responsibility	\$1,000			
HP-2024-3266	5/16/24	JACOB A. ROEDL	SB	5/16/24	Receiving Barn/Paddock Violation	\$200			
HP-2024-3267	5/18/24	MARVIN A. LUNA	SB	5/17/24	Riding/Driving Infraction Violation	\$200			
HP-2024-3268	5/18/24	DANIEL J. O'MARA	SB	5/18/24	Receiving Barn/Paddock Violation	\$200			
IG-2024-3269	5/17/24	ARON H. HUNT	QH	5/16/24	Whip Violation	\$500			
IG-2024-3270	5/21/24	ANDERSON J. GONZALEZ		5/20/24	Medication/Drug/Alcohol Violation (Human)	\$100			
HP-2024-3271	5/21/24	MELISSA S. ESSIG	SB	8/8/23	Trainer Responsibility	\$2,000			
HP-2024-3272	5/21/24	JORDAN M. ROSS	SB	5/17/24	Whip Violation	\$200			
HP-2024-3273	5/22/24	ATLEE E. BENDER	SB	5/18/24	Whip Violation	\$200			
IG-2024-3274	5/23/24	JOSE M. RUIZ	QH	5/22/24	Whip Violation	\$250			
IG-2024-3275	5/22/24	RODNEY A. PRESCOTT	TB	5/21/24	Riding/Driving Infraction Violation	\$0	5/29/24	6/3/24	3*
HP-2024-3276	5/24/24	ATLEE E. BENDER	SB	5/22/24	Riding/Driving Infraction Violation	\$100			
HP-2024-3277	5/24/24	ATLEE E. BENDER	SB	5/23/24	Riding/Driving Infraction Violation	\$100			



INDIANA HORSE RACING COMMISSION

Ruling Log

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Ruling Number	Ruling Date	Name	Breed	Violation Date	Violation	Fine	Suspended From	Suspended To	Days Suspended
HP-2024-3278	5/24/24	MICHAEL J. OOSTING	SB	5/23/24	Whip Violation	\$200			
HP-2024-3279	5/24/24	CARSON M. CONRAD	SB	5/23/24	Riding/Driving Infraction Violation	\$200			
IG-2024-3280	5/27/24	EDGAR R. MORALES	TB	5/22/24	Riding/Driving Infraction Violation	\$0	6/4/24	6/10/24	2*
HP-2024-3281	5/30/24	PETER M. WRENN	SB	5/27/24	Riding/Driving Infraction Violation	\$100			
HP-2024-3282	5/30/24	BRANDON L. BATES	SB	5/29/24	Riding/Driving Infraction Violation	\$200			
IG-2024-3283	5/30/24	JAIME A. TORRES	TB	5/28/24	Riding/Driving Infraction Violation	\$0	6/10/24	6/11/24	2
IG-2024-3284	5/28/24	JOSEPH M. ROMERO-ALBORNOZ		5/28/24	Miscellaneous Ruling	\$0			
HP-2024-3285	5/31/24	DONALD J. EASH	SB	5/29/24	Riding/Driving Infraction Violation	\$200			
HP-2024-3286	5/31/24	JORDAN M. ROSS	SB	5/29/24	Whip Violation	\$300			
HP-2024-3287	6/1/24	KYLE A. HUSTED	SB	5/30/24	Riding/Driving Infraction Violation	\$100			
HP-2024-3288	6/1/24	HENRY GRABER JR	SB	6/1/24	Trainer Responsibility	\$200			
IG-2024-3289	6/3/24	ERIK N. ESQUEDA	QH	6/1/24	Whip Violation	\$250			
IG-2024-3290	6/4/24	ARON H. HUNT	QH	6/1/24	Whip Violation	\$0	6/17/24	6/19/24	3
IG-2024-3291	5/31/24	MARK W. SAVASTANO		5/31/24	License Violation	\$0			
HP-2024-3292	6/5/24	MARVIN A. LUNA	SB	5/31/24	Whip Violation	\$400			
IG-2024-3293	6/6/24	SHANE M. JOLIVETTE		5/31/24	Miscellaneous Ruling	\$0			
IG-2024-3294	6/6/24	EDUARDO E. PEREZ	TB	6/5/24	Riding/Driving Infraction Violation	\$0	6/13/24	6/18/24	3*
IG-2024-3295	6/6/24	ALBERTO BURGOS	TB	6/5/24	Riding/Driving Infraction Violation	\$0	6/17/24	6/17/24	1



INDIANA HORSE RACING COMMISSION

Ruling Log

Rulings Issued From 1/1/2024 to 6/15/2024

Ruling Number	Ruling Date	Name	Breed	Violation Date	Violation	Fine	Suspended From	Suspended To	Days Suspended
HP-2024-3296	6/6/24	DEVON J. THARPS	SB	5/31/24	Whip Violation	\$200			
HP-2024-3297	6/6/24	ATLEE E. BENDER	SB	6/5/24	Riding/Driving Infraction Violation	\$200			
HP-2024-3298	6/8/24	JARED T. SEEKMAN	SB	6/5/24	Riding/Driving Infraction Violation	\$100			
HP-2024-3299	6/8/24	KYLE J. WILFONG	SB	6/6/24	Riding/Driving Infraction Violation	\$200			
HP-2024-3300	6/8/24	KIMBERLY P. ROTH	SB	6/6/24	Riding/Driving Infraction Violation	\$100			
HP-2024-3301	6/8/24	MICHAEL G. PETERSON	SB	6/7/24	Whip Violation	\$300			
IG-2024-3302	6/14/24	JOSEPH C. BEALMEAR	TB	6/11/24	Riding/Driving Infraction Violation	\$0	6/24/24	6/24/24	1
HP-2024-3303	6/14/24	KYLE J. WILFONG	SB	6/8/24	Whip Violation	\$200			
HP-2024-3304	6/14/24	JOHN J. DELONG	SB	6/12/24	Riding/Driving Infraction Violation	\$200			
HP-2024-3305	6/14/24	MICHAEL J. OOSTING	SB	6/12/24	Whip Violation	\$300			
HP-2024-3306	6/14/24	DEVON J. THARPS	SB	6/13/24	Riding/Driving Infraction Violation	\$200			
HP-2024-3307	6/15/24	CARSON M. CONRAD	SB	6/12/24	Riding/Driving Infraction Violation	\$100			
HP-2024-3308	6/15/24	BRADLEY K. FERGUSON	SB	6/12/24	Riding/Driving Infraction Violation	\$100			

Agenda Item #4

Q Horseshoe Indianapolis



	Violation Date ↓	Case Number	Person Involved	Track / Location	Horse	Classification
VIEW	2024-06-06	2024-00565	Gregory Romero	Horseshoe Indianapolis	Anointed of God	Crop
VIEW	2024-05-28	2024-00507	Gregory Romero	Horseshoe Indianapolis	Silly Rules	Crop
VIEW	2024-05-23	2024-00492	Santo Sanjur	Horseshoe Indianapolis	Pickle Feet	Crop
VIEW	2024-05-22	2024-00483	Anthony Braddock	Horseshoe Indianapolis	Commandandcontrol	Crop
VIEW	2024-05-22	2024-00485	Abel Lezcano	Horseshoe Indianapolis	Commandandcontrol	Crop
VIEW	2024-05-21	2024-00474	Fernando Cesar De la cruz Julian	Horseshoe Indianapolis	Keen Ice Sight	Crop
VIEW	2024-05-01	2024-00405	Magdaleno Salazar	Horseshoe Indianapolis	Night Kiss	Crop
VIEW	2024-05-01	2024-00414	German Terraza	Horseshoe Indianapolis	Rodeo Zone	Crop
VIEW	2024-05-01	2024-00404	Alberto Burgos	Horseshoe Indianapolis	Monumentaljustice	Crop
VIEW	2024-04-30	2024-00401	Fernando Cesar De la cruz Julian	Horseshoe Indianapolis	Costly Pass	Crop
VIEW	2024-04-23	2024-00378	Jaime Alexis Torres	Horseshoe Indianapolis	Get By	Crop
VIEW	2024-04-16	2024-00357	Agustin Gomez Flores	Horseshoe Indianapolis	Sergeant Gump	Crop
VIEW	2024-04-16	2024-00358	German Terraza	Horseshoe Indianapolis	N/A	Crop
VIEW	2024-04-16	2024-00356	Rogelio Miranda	Horseshoe Indianapolis	Bekhamboy	Crop

CONTROLLED

DATE OF RESOLUTION

6/28/2024

DATE OF EVENT

(5/22/2024)

COVERED PERSON

Joseph D. Davis

COVERED HORSE

Vino Caldo

ALLEGED VIOLATION

**Rule 3312--Presence of a
Controlled Medication
Substance and/or its
Metabolites or Markers (Post-
Race/Vets' List)**

PROHIBITED SUBSTANCE(S) METHODS

● **Dexamethasone** ↗

CONSEQUENCES IMPOSED

**A fine of \$500; imposition of
1.5 Penalty Points.**

STATUS

Resolved

[Final Decision of HIWU](#)

BANNED

DATE OF RESOLUTION

2/12/2024

DATE OF EVENT (6/1/2023)

COVERED PERSON

Jonathan Wong

Suspended

COVERED HORSE

Heaven and Earth

ALLEGED VIOLATION

Rule 3212--Presence of a Banned Substance and/or its Metabolites or Markers (Post-Race/Vets' List Workout)

PROHIBITED SUBSTANCE(S) METHODS

● **Metformin** ↗

CONSEQUENCES IMPOSED

2-year period of Ineligibility for Covered Person, beginning on July 1, 2023; Disqualification of Covered Horse's Race results, including forfeiture of all purses and other compensation, prizes, trophies, points, and rankings and repayment or surrender (as applicable); a fine of \$25,000; payment of \$8,000 of HIWU's arbitration costs.

STATUS

Resolved

[Final Decision of Arbitral Body](#)
[Administrative Law Judge Decision on Application for Review](#)

Agenda Item #5



State of Indiana Indiana Horse Racing Commission

Eric Holcomb, Governor

www.in.gov/hrc

Sent Via Email: Andrew.Silver@twinspires.com and Alyssa.Layhue@twinspires.com

May 24, 2024

Andrew Silver
Corporate Counsel
TwinSpires
Churchill Downs Technology Initiatives Company
600 N. Hurstbourne Parkway, Suite 400
Louisville, KY 40222

Secondary Pari-Mutuel Organization Probationary License Approval

Dear Mr. Silver,

This letter is to inform you that the Indiana Horse Racing Commission (“IHRC”) has received and reviewed the email notice from Churchill Downs Technology Initiatives Company (“CDTIC”) that CDTIC will be suspending the majority of its live operator assisted wagering capacity, planned for on or about Tuesday, May 21, 2024.

Pursuant to IHRC rules, “[a] licensed SPMO shall not make subsequent material changes in the plan of operations or advance deposit wagering terms and agreement, or both, unless ordered by the commission or until approved by the commission after receiving a written request.” 71 Ind. Admin. Code 9-2.2-4(d), (emphasis added). Since prior IHRC approval has not been granted, the IHRC Executive Director has authorized (under 71 IAC 2-2-1(b)) **probationary** approval to amend CDTIC’s secondary pari-mutuel organization (“SPMO”) license application to reflect CDTIC’s plan to suspend the majority of its live operator assisted wagering capacity.

Pursuant to 71 IAC 9-2.2-2, the IHRC may issue an SPMO license if the commission: (1) finds that the applicant satisfies the requirements of this article; and (2) approves the contract submitted under section 6 of the rule. The IHRC has determined that it is in the best interest of the horse racing industry and the betting public to expedite the approval process and ensure that advance deposit wagering is being offered as a wagering option legally at both Indiana racetracks.

The issuance of this probationary approval confirms that IHRC has found that CDTIC’s plan to suspend the majority of its live operator assisted wagering capacity on or about May 21, 2024, is substantially compliant with the application requirements set forth in 71 IAC 9-2.2-3 and 71 IAC 9-2.2-4. This probationary approval does not, however, waive any right of the IHRC to request additional application information or conduct an additional investigation of the matter, pursuant to the authority set forth in 71 IAC 9-2.2-4. CDTIC’s probationary approval is contingent upon its ongoing commitment to supplement or amend its SPMO application as required by the IHRC.

The CDTIC SPMO license amendment will be presented to the commission for approval/denial at the next publicly scheduled meeting of the IHRC. CDTIC must continue to comply with IHRC requests for additional information and/or IHRC investigations of the information offered. Any failure



State of Indiana Indiana Horse Racing Commission

Eric Holcomb, Governor

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to cooperate with IHRC in its continuing evaluation process may result in immediate revocation of the probationary license.

If you have any additional questions or concerns, please do not hesitate to contact IHRC Staff Attorney Dale Lee Pennycuff via email at DPennycuff@hrc.IN.gov or General Counsel David Rothenberg via email at DRothenberg@hrc.IN.gov or Deputy General Counsel Matt Eggiman via email at MEggiman1@hrc.IN.gov.

Sincerely,

Deena Pitman
Executive Director
Indiana Horse Racing Commission

Cc: David Rothenberg, General Counsel
Matt Eggiman, Deputy General Counsel
Dale Lee Pennycuff, Staff Attorney

Agenda Item #6

Organization Name	January	February	March	April	May	June
Alzheimer's Association - Walk to end				\$5,000		
American Foundation For Suicide Prevention					\$6,000	
Anderson Black Expo					\$5,000	
Anderson Madison County Black Chamnber of Commerce		\$16,000				
Anderson Madison County Vistors Bureau				\$7,500		
Anderson Museum of Art	\$5,000					
Aspire Indidna Helath-Anderson			\$5,000			
Boy Scouts of America-Anderson				\$10,000		
Chogaffirm, Inc. Anderson Pride						\$3,500
Combat Ministries, Inc.				\$5,000		
Community Health Network (Giving Gig)					\$2,000	
Community Hospital Anderson Foundation			\$6,000			
CommunityLTC INC (ESSENTIALS Senior Connections)				\$5,000		
Damien Center						\$3,500
Heart of Indiana United Way-Madison County						\$2,500
Hopewell Center						\$7,500
Indiana Coalitiion of Domestic Violence						\$7,500
Indiana Plan	\$1,000					
Indiana Standarbred Association	\$10,000					
Indy Pride, Inc.						\$10,000
IVY Tech Foundation- Anderson			\$2,500			
Kiwanis of Alexandria			\$1,000			
Leadership Academy of Madison County			\$10,000			
Leukemia Society of America					\$3,000	
Lifestream Services				\$5,000		
Madison County Chamber of Commerce		\$8,500				
Madison County Community Foundation			\$25,000			
Madison County Humane Center						\$7,500
Pendleton Pride						\$2,500
Sista's of Royalty					\$10,000	
St. Vincent Foundation				\$12,500		
Teenworks INC						\$1,000
The Gathering of Queens, 765 Food Dessert Project					\$5,000	
Top Notch Service of Excellence-Union industry					\$1,850	
TOTALS	\$16,000	\$24,500	\$49,500	\$50,000	\$32,850	\$45,500

\$218,350 Spent of \$430,000

Agenda Item #7

(Recap of Eclipse Day - No materials)