



**CASE RESOLUTION WITHOUT A HEARING/  
FINAL DECISION**

On July 28, 2023, Mr. John Pimental was served an Equine Anti-Doping (“**EAD**”) Notice at his barn at Monmouth Park in Oceanport, New Jersey relating to an Adverse Analytical Finding for one of his Covered Horses. In that EAD Notice, he was Provisionally Suspended with immediate effect on that date.

As is routine practice when serving a Trainer with an EAD Notice letter, HIWU Investigators searched Mr. Pimental’s vehicle and barn. During the search of Mr. Pimental’s vehicle, a container labeled “RED LUNG” was found under the back seat. HIWU Investigators opened the RED LUNG container and asked Mr. Pimental what was inside. Mr. Pimental checked with his wife, who explained that the substance in the RED LUNG container was Thyro-L. Thyro-L is a non-specified Category S4 Banned Substance on the Prohibited List and Technical Document–Prohibited Substances. Both Mr. and Mrs. Pimental told the HIWU Investigators that they knew Thyro-L was a Banned Substance under the ADMC Program.

The container of RED LUNG was sent to Industrial Laboratories in Denver, Colorado (“**Industrial**”) for analysis. On September 1, 2023, Industrial confirmed that the powder in the RED LUNG container was the Banned Substance Thyro-L. On September 26, 2023, HIWU imposed sanctions against Mr. Pimental in connection with this Anti-Doping Rule Violation (“**ADRV**”) for Possession based upon an admission signed by him; however, on October 23, 2023, HIWU accepted his request to withdraw that admission and, as a result, withdrew the sanctions that had been imposed for the ADRV.

On October 25, 2023, Mr. Pimental was served with the EAD Charge for a Rule 3214(a) ADRV in connection with his Possession of Thyro-L. Mr. Pimental had until November 1, 2023 to request a hearing before an adjudicator from the Arbitral Body in accordance with ADMC Program Rule 3261 of the Protocol and Arbitration Procedures codified at Rule Series 7000. Mr. Pimental exercised his right to an arbitration hearing within the prescribed deadline. HIWU initiated an arbitration against Mr. Pimental with JAMS, the designated Arbitral Body. JAMS commenced arbitration proceedings and appointed Mr. Stacy La Scala as the arbitrator.

Mr. Pimental also requested a Provisional Hearing to lift his Provisional Suspension. (His Provisional Suspension was not lifted as a result of that hearing.) During the Provisional Hearing, in relation to his Possession of Thyro-L, he explained that his pony horse, Richard, (a

non-Covered Horse) was prescribed 10 pounds of Thyro-L in August 2020 by their veterinarian in New Jersey because Richard was prone to laminitis and suffers from weight gain. In support, Mr. Pimental provided a prescription record for the Thyro-L, as well as a letter from the treating veterinarian. Mr. Pimental's wife testified at the Provisional Hearing that in October 2022, she downsized the Thyro-L from the original 10-pound container to the smaller RED LUNG container to save space as they packed their vehicle for their annual trip down to Florida and placed the container under the back seat of the vehicle. Mrs. Pimental testified that she never took the RED LUNG container out of the vehicle after October 2022 because Richard did not need it.

Mr. Pimental testified that he was aware Thyro-L was a Banned Substance under the ADMC Program and that Possession of a Banned Substance was an ADRV. Mr. Pimental was aware that HISA had made materials available for trainers to educate themselves on the ADMC Program before its implementation, but he did not attend any educational sessions and admitted that he received information about the new rules only through hearsay from other trainers. Mr. Pimental also acknowledged he never conducted a spring cleaning to ensure he was not in Possession of any Banned Substances when the ADMC Program went into effect.

A hearing on the merits for the Possession ADRV was scheduled for February 2, 2024. Before the scheduled hearing, Mr. Pimental and HIWU agreed to a Case Resolution Without Hearing with respect to the Possession matter. Mr. Pimental accepted a fifteen (15)-month period of Ineligibility for his Possession ADRV, with credit given from July 28, 2023 for the time he has been Provisionally Suspended, and a fine of \$10,000.

In light of the following, a fifteen (15) month period of Ineligibility is proper for Mr. Pimental's possession ADRV:

Under ADMC Program Rule 3214(a), Possession of a Banned Substance is prohibited in the absence of a compelling justification for such Possession. Following the reasoning of the panel in CAS 2008/A/1744, *UCI v. Schacl & ORV*, HIWU finds that "compelling justification" must be strictly construed and that the level of blamelessness required to meet the "compelling justification" defense is equal to that which must be shown under the "No Fault or Negligence" defense. Given this understanding, a finding of either "compelling justification" or "No Fault or Negligence" is limited to "exceptional circumstances". Here, no such "exceptional circumstances" exist.

Under ADMC Program Rule 3225(a), there can be a reduction of the Period of Ineligibility if there is No Significant Fault or Negligence on the part of the Covered Person. If it is established that the Covered Person bears No Significant Fault or Negligence for the ADRV involving a non-Specified Substance, the period of Ineligibility can be between 3 months and 2 years, depending on the Covered Person's degree of Fault. Under ADMC Program Rule 3121(b), the standard of proof for the Covered Person shall be by a balance of probability (*i.e.*, a preponderance of the evidence).

Under ADMC Program Rule 1020, “No Significant Fault or Negligence” is defined as the Covered Person establishing that his or her fault or negligence, “when viewed in the totality of the circumstances . . . was not significant in relationship to the Anti-Doping Rule Violation.” Under Program Rule 1020, “*Fault* means any breach of duty or any lack of care appropriate to a particular situation. . . In assessing the Covered Person’s degree of Fault, the circumstances considered must be specific and relevant to explain the Covered Person’s departure from the expected standard of behavior.”

In order to assess a Covered Person’s degree of Fault under the ADMC Program, panels have followed the reasoning of *HIWU v. Poole*, JAMS CASE NO. 1501000576 which adopted the methodology and framework first established in CAS 2013/A/3327, *Cilic v. International Tennis Federation*, which Court of Arbitration for Sport Panels utilize to assess an athlete’s degree of Fault under the World Anti-Doping Code.

As explained in *Cilic v. International Tennis Federation*, there are both objective and subjective elements of Fault that should be considered in determining Consequences. The objective elements determine what standard of care is expected from a reasonable person in the Covered Person’s situation. The subjective element describes what is expected from that particular individual, in light of his personal capacities.

There are three ranges of objective fault: slight or insignificant fault; moderate fault; and significant fault. In circumstances involving the Possession of a non-Specified Banned Substance, the *Poole* Panel considered the following ranges for periods of Ineligibility: light or insignificant fault— 3 to 10 months; moderate fault—10 to 17 months; and significant fault—17 to 24 months. The exact number of months of the Covered Person’s period of Ineligibility can be decreased or increased within the ranges of Fault by taking into account mitigating and/or aggravating circumstances. As noted in *Cilic v. International Tennis Federation*, if the subjective elements are significant enough, they may move a Responsible Person’s degree of Fault into a completely different category.

In this matter, HIWU has determined that, based on the circumstances, Mr. Pimental has a moderate degree of Fault for the violation of ADMC Program Rule 3214(a).

Mr. Pimental’s objective degree of Fault falls in the significant range. Mr. Pimental did not educate himself on the impending ADMC Program rules, he took no precautions to ensure he was not in Possession of Thyro-L once the ADMC Program took effect, and he failed to supervise the disposal of the Thyro-L in his Possession.

Mr. Pimental’s subjective degree of Fault has significant mitigating factors that move Mr. Pimental’s degree of Fault from the significant to moderate range and place his sanction at the high end of the moderate degree of Fault range: (1) Mr. Pimental has been a licensed Trainer for 37 years, nearly all of which has been under the old horseracing system with rules that were

different from the ADMC Program, which went into effect on May 22, 2023; (2) he acquired Thyro-L in August 2020 prior to the ADMC Program going into effect; (3) Mr. Pimental produced a valid prescription record for the Thyro-L, as well as a letter from his veterinarian, supporting its use in a non-Covered Horse; (4) there is no evidence that Mr. Pimental possessed the Thyro-L for use in a Covered Horse after the ADMC Program went into effect; (5) Richard, the pony horse for whom the Thyro-L was prescribed, is a non-Covered Horse and was still alive and in the Pimentals' possession and care at the time the Thyro-L was found; and (6) both Mr. and Mrs. Pimental openly admitted their mistake.

ADMC Program Rule 3223 requires the imposition of a fine when a violation of ADMC Program Rule 3214(a) has been established. Given Mr. Pimental's Admission and Acceptance of Consequences and the above-cited facts and circumstances, a fine of \$10,000 is appropriate in this case.

**THE HORSERACING INTEGRITY & WELFARE UNIT**  
**JANUARY 30, 2024**