

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

COMMISSIONERS: Andrew N. Ferguson, Chairman
Mark R. Meador

In the Matter of:

Philip Serpe,

Appellant.

Matter No. 9441

ORDER DENYING IN PART APPELLANT’S COMBINED MOTION

The Horseracing Integrity and Safety Act, 15 U.S.C. ch. 57A (“the Act”), tasks the Federal Trade Commission with overseeing the Horseracing Integrity and Safety Authority and approving rules pertaining to horseracing. Consistent with that mandate, in 2023, the Commission approved the Equine Anti-Doping and Controlled Medication Protocol (“the Rule”), which prohibits covered horse trainers’ administration of certain substances to covered horses.¹ Under the Rule, covered horse trainers whose horses have tested positive for such substances may be suspended from participating in covered horse races for two years and fined unless they can show that they were neither at fault for, nor negligent in allowing, exposure to the substance.²

Appellant Philip Serpe is a horse trainer covered by the Act.³ In September 2024, Mr. Serpe was notified that one of his horses, Fast Kimmie, had tested positive for clenbuterol.⁴ The Rule bans clenbuterol because it is “typically used to improve the flow of air to the lungs in a horse” and can have “muscle-building effects in racehorses.”⁵ So, in October 2024, the Horseracing Integrity and Welfare Unit (“HIWU”), a private entity tasked with enforcing the Rule, notified Mr. Serpe that it was charging him for violating the Rule.⁶

¹ See Fed. Trade Comm’n, Order Approving the Anti-Doping and Medication Control Rule Proposed by the Horseracing Integrity & Safety Authority (Mar. 27, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/P222100CommissionOrderAntiDopingMedication.pdf.

² Rules 3223–29, 88 Fed. Reg. 5101–05 (Jan. 26, 2023), <https://bphisaweb.wpengine.com/wp-content/uploads/2025/07/FR-Searchable-3000-Series-1.26.23.pdf>.

³ ALJ Decision 4.

⁴ *Id.* at 6.

⁵ *Id.*

⁶ *Id.* at 7.

That charge was litigated before a neutral arbitrator in June 2025.⁷ Mr. Serpe provided letters from his veterinarians, who swore they did not prescribe or dispense clenbuterol to Mr. Serpe’s horses, and he argued that any of a dozen or so individuals who came into contact with Fast Kimmie in the days leading up to the positive drug test could have been responsible.⁸ But on July 9, 2025—ten months after Mr. Serpe was put on notice that Fast Kimmie tested positive for clenbuterol—the arbitrator determined that Mr. Serpe had violated the Rule and suspended him for two years.⁹ The arbitrator did not levy a fine.

Mr. Serpe timely sought review by an Administrative Law Judge (“ALJ”). He only nominally disputed liability, choosing to focus on whether the arbitrator was authorized to suspend him without fining him. Mr. Serpe asked the ALJ to “‘set aside’ the Arbitrator’s decision as ‘unlawful,’” and “remand with directions for HIWU not to initiate an arbitration against” him.¹⁰ On September 12, 2025, the ALJ instead added a \$25,000 fine on top of the arbitrator’s sanctions.¹¹ Three days later, the Commission, on its own motion, granted review of the matter.¹² Since then, Mr. Serpe has asked the Commission to more clearly delineate the scope of our review and twice asked to expand it.¹³

In response to Mr. Serpe’s September 23, 2025, motion for clarification of the issues, the Commission ordered the parties to address: (1) whether the Administrative Law Judge was authorized to impose a civil sanction not imposed by the arbitrator and not requested to be imposed by any party to the proceeding; (2) whether, if authorized, the additional sanction, here the fine, was appropriate; and, (3) if the fine was authorized and appropriate, whether Mr. Serpe’s Seventh Amendment jury-trial right was triggered.¹⁴

On December 10, nearly three months after the Commission granted review, Mr. Serpe filed his first motion for leave to brief additional issues. These issues were: (4) whether the Commission has the authority to adjudicate sanctions imposed pursuant to the Act; (5) whether enforcement under the Act violates the private-nondelegation doctrine; and (6) whether the Authority violated Mr. Serpe’s due-process rights.¹⁵ Before the Commission could resolve his

⁷ *Id.* at 11–12.

⁸ *Id.* at 8.

⁹ Notice of Appeal and Appl. for Review Ex. A.

¹⁰ ALJ Decision 17–18, 22 (quoting Serpe’s Opening Brief).

¹¹ See generally ALJ Decision.

¹² Order Partially Staying ALJ Decision, https://www.ftc.gov/system/files/ftc_gov/pdf/d9441_2025.09.15_commission_order_partially_stay__0.pdf.

¹³ Mot. Clarification and Extension (Sep. 23, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/614134.2025.09.23_motion_for_clarification_and_extension_of_time.pdf; Mot. Leave to Br. Add’l Issues (Dec. 10, 2025), http://www.ftc.gov/system/files/ftc_gov/pdf/614420.2025.12.10_serpe_ftc_mot._to_expand_briefing.pdf; Combined Mot. Consider Add’l Evid. (Jan. 22, 2025).

¹⁴ Order Granting Mot. Clarification (Sept. 30, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/d9441_2025.09.30_commission_order_regarding_clarification_.pdf.

¹⁵ Mot. Leave to Br. Add’l Issues (Dec. 10, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/614420.2025.12.10_serpe_ftc_mot._to_expand_briefing.pdf.

motion, Mr. Serpe filed his opening brief, so we denied that motion as moot and notified the parties that we would consider the brief in full.¹⁶

Now, Mr. Serpe again moves the Commission for leave to brief additional issues. He requests reconsideration of whether Mr. Serpe was liable at all, in light of new evidence that he concurrently moves us to consider. Specifically, Mr. Serpe seeks consideration of: (1) two affidavits, dated December 2, 2025, from his former employees, in which they assert that, seventeen months ago, Fast Kimmie’s “caretaker carried an inhaler and regularly touched Fast Kimmie’s mouth”;¹⁷ and (2) documents showing that HIWU’s expert in the June 2025 arbitration is the president of two organizations, one that has HIWU’s general counsel as a board member, and one that received preliminary accreditation from HIWU one month before the ALJ affirmed the arbitrator’s finding of liability.

As an initial matter, we decline to consider this additional evidence. On a party’s motion, we may consider new evidence when it is material to our review and there are reasonable grounds on which the party failed to previously submit it.¹⁸ Mr. Serpe—who has been ably represented by counsel throughout these proceedings—has not demonstrated reasonable grounds for waiting seventeen months to procure affidavits from two former employees. He merely notes that he is “no trained investigator.”¹⁹ Nor has Mr. Serpe provided reasonable grounds for not earlier presenting the evidence of HIWU’s expert’s alleged bias. That evidence consists of corporate documents pre-dating the arbitration and a press release from August 2025, over a month before the ALJ issued its decision.²⁰ While the evidence about provisional accreditation may not have been available at the time of arbitration, Mr. Serpe had ample opportunity to raise the issue to the ALJ or to the Commission in his earlier motions concerning the scope of our review.

We also decline to further expand our review to include Mr. Serpe’s liability or the length of his suspension. The Commission has discretion to review ALJ decisions that either (1) erroneously applied the Rule or (2) involved a questionable exercise of discretion or a decision of law or policy that warrants review.²¹ Mr. Serpe does not claim that the ALJ misapplied the Rule; he instead argues that “the ALJ’s decision ‘warrants review’ . . . because new evidence undermines” any finding that he is “liable for the presence of clenbuterol in Fast Kimmie’s urine.”²² We are not persuaded that further review of the ALJ’s decision as to his liability or suspension is warranted.

Mr. Serpe all but abandoned any argument about his liability before the ALJ. As the ALJ recognized, “[a]part from a perfunctory assertion that he dispute[d] liability, Serpe d[id] not

¹⁶ Order Den. As Moot (Jan. 2, 2026), https://www.ftc.gov/system/files/ftc_gov/pdf/d9441_2026.01.02_order_denying_motion_regarding_additional_issues_.pdf.

¹⁷ Combined Mot. Consider Add’l Evid. 4 (Jan. 22, 2025).

¹⁸ 16 C.F.R. § 1.147(c)(2)(ii).

¹⁹ Combined Mot. Consider Add’l Evid. 8.

²⁰ *Id.* at 6 & n.4; *id.* Exs. C–E.

²¹ 16 C.F.R. § 1.147(b)(4)(ii).

²² Combined Mot. Consider Add’l Evid. 9–10.

develop any argument” to that end.²³ Had Mr. Serpe chosen to develop the argument, the additional evidence—which, as discussed above, was available to Mr. Serpe at the time—could have been raised before the ALJ, who could have considered it in the first instance. We will not question the ALJ’s decision to affirm the arbitrator’s liability finding in light of an argument that was not presented to the ALJ.²⁴ And, in any event, for the above reasons, the Commission is not considering that evidence, so the premise underlying Mr. Serpe’s request to expand the scope of review no longer exists.

* * *

Consistent with the above, it is hereby **ORDERED** that Mr. Serpe’s combined motion is **DENIED IN PART**. Mr. Serpe’s combined motion remains under consideration to the extent it concerns a stay of his suspension pending a final decision in this case.

By the Commission.



April J. Tabor
Secretary

SEAL:
ISSUED: February 4, 2026

²³ ALJ Decision 22.

²⁴ See *W.R. v. Ohio Health Dep't*, 651 F. App'x 514, 520 (6th Cir. 2016); *In re Luis Jorge Perez*, 2024 WL 3824065, at *4 (F.T.C. Aug. 8, 2024); see also *In re Luis Jorge Perez* (Comm'r Ferguson, concurring), 2024 WL 3824062, at *2 (F.T.C. Aug. 7, 2024).