

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

ADMINISTRATIVE LAW JUDGE: Jay L. Himes

IN THE MATTER OF: DOCKET No. D09423

NATALIA LYNCH, APPELLANT

MOTION FOR *IN CAMERA* INSPECTION

Pursuant to 5 U.S.C. § 556(c) and 16 C.F.R § 1.146(c) and in light of Judge Himes’s May 1, 2024 issuance of a subpoena *duces tecum* (“the Subpoena”) to Respondent Horseracing Integrity and Safety Authority (“HISA”), Appellant Natalia Lynch (“Ms. Lynch”) hereby submits this unopposed motion requesting that Judge Himes order *in camera* inspection of one of the documents HISA has produced with redactions in response to the Subpoena.¹

BACKGROUND

An evidentiary hearing in this matter is scheduled for May 20, 2024. On April 19, 2024, after HISA had refused to voluntarily produce documents, Ms. Lynch moved for issuance of a subpoena *duces tecum* to compel HISA to disclose information regarding its investigation of trainer Bruno Tessore. As Ms. Lynch outlined in her motion, MOTION TO STRIKE, the horse

¹ When Ms. Lynch asked for the justification for the redactions, HISA’s counsel stated that “The basis for the redactions” “is set forth on page 3 of Judge Himes’ May 1 Order: ‘The Agency may make narrowly tailored redactions to restrict disclosure of investigative sources and methods.’” (May 11, 2024 email from A. Farrell to G. May, et al.) On May 13, Ms. Lynch’s counsel sought to meet and confer with counsel for HISA to gain more information regarding the bases for the redactions. Counsel for HISA declined to meet and confer, instead stating that it had “no objection to Judge Himes reviewing the complete document[t] *in camera* if that is what you intend to request.” (May 13, 2024 email from A. Farrell to H. C. Boehning.)

at issue for the alleged Presence violation in this case, was shipped to Mr. Tessore's barn at Monmouth Park on June 24, 2023. A few weeks later, HISA pursued a Presence violation against Mr. Tessore for Altrenogest, the same substance allegedly found in MOTION TO STRIKE.

HISA blasted Ms. Lynch's motion as an improper attempt at "impermissible discovery," contending that contamination at Monmouth Park was not "at all relevant" to Ms. Lynch's case "[a]s a matter of common sense." (HISA's Opposition to Ms. Lynch's Motion for Issuance of Subpoena Duces Tecum at 2-3.)

On May 1, 2024, Judge Himes granted Ms. Lynch's motion in part ("May 1 Order"). The May 1 Order stated that: "To the extent the Authority contends that responsive documents are protected by confidentiality provisions under HISA or HISA regulations, the Authority may prepare and submit to Appellant a proposed protective order limiting disclosure of confidential information, for subsequent entry by the Court, either on consent or on a contested motion by the Authority. Any proposed confidentiality provisions shall be narrowly tailored and shall not unnecessarily restrict access to information allowed under the Subpoena ordered. Redactions, if any, must avoid impairing document intelligibility or integrity. The Authority may make narrowly tailored redactions to restrict disclosure of investigative sources and methods." (May 1 Order at 2-3.)

HISA did not seek to negotiate a protective order with Ms. Lynch. HISA produced documents on May 10, 2024 and supplemented its production following inquiries from Ms. Lynch's counsel on May 12, 2024.

As Ms. Lynch will demonstrate at the forthcoming evidentiary hearing, the documents HISA has finally turned over after being compelled to do so tell a different story from

the one advanced in HISA's opposition to the Subpoena. Far from it being not "at all relevant," HISA itself undertook a contemporaneous investigation into contamination at Monmouth Park in the course of investigating Ms. Lynch's case, repeatedly investigating the connection between Monmouth Park and Ms. Lynch's adverse analytical finding. (Ms. Lynch's Proposed Exs. 3 and 4, as set forth in her disclosures served yesterday.) HISA's findings were not shared with Ms. Lynch until a few days ago and they were never shared with HISA's expert in the arbitration proceeding. (App. Bk. at 3276:18-23.)

One of the documents HISA produced in response to Ms. Lynch's subpoena, which is attached as Exhibit A to this motion, has extensive redactions. There are 15 redactions on a single page. These redactions do not, as Your Honor's order may have assumed, appear to relate to any privacy concerns involving Mr. Tessore. Rather, they appear to be directly relevant to HISA's investigation of Ms. Lynch. Indeed, in all of HISA's production in response to the Subpoena, HISA does not appear to have produced a single document shedding any light on its investigation of Mr. Tessore and the positive finding in his Monmouth barn. Instead, having denied any relevance of the events at Monmouth, all of the documents relate to HISA's pursuit of Ms. Lynch.

Ms. Lynch now moves that Judge Himes undertake *in camera* inspection of an unredacted copy of the document HISA has produced in redacted form at Exhibit A to determine whether the redactions HISA has applied are warranted.

ARGUMENT

First, it is not clear what authority supports HISA's decision to refuse to produce parts of responsive documents to Ms. Lynch due to some purported investigation privilege,

especially when the documents appear on their face not to concern Mr. Tessore or implicate the privacy concerns of another individual.²

Second, to the extent any such privilege is properly asserted, it must be “narrowly tailored,” as the May 1 Order provides, to strike an appropriate balance with Ms. Lynch’s right to receive information responsive to the Subpoena. The extensive redactions on the document at Exhibit A suggest that the redactions may not be narrowly tailored.

Third, given that HISA does not oppose *in camera* inspection—in fact, HISA proposed it—*in camera* inspection is an appropriate avenue to ensure that Judge Himes’s May 1 Order has been followed.

Fourth, to the extent the redactions even remotely touch upon privacy concerns, Ms. Lynch is prepared to enter into an appropriate protective order or allow the unredacted document to be produced to her counsel subject to an “attorneys’ eyes only” restriction which can be revisited at the hearing if necessary.

2 Following Ms. Lynch’s testimony that HIWU’s investigators repeatedly mentioned their separate inquiry into another trainer in the course of their interrogation of her (App. Bk. at 2807:22-2808:14), Gregory Pennock, a HIWU investigator who testified in the hearing below, repeatedly denied that there was any link or connection between their interrogation of Ms. Lynch, their search of her barn, and the inquiry into any other trainer. (*Id.* at 2984:13-2985:9; 3030:9-13.) Accordingly, understanding what information is redacted could be probative of Ms. Lynch’s argument that she has been unfairly targeted by HISA and subjected to sanctions that are unduly punitive given the facts of her case. As Ms. Lynch outlined in her March 1 brief, HISA pursued Ms. Lynch, a trainer with no prior violations, with great intensity—personally serving her, interrogating her, searching her barn, and illegally searching her mother’s car—when all that was required was a letter notifying her of the test results.

CONCLUSION

For the forgoing reasons, Ms. Lynch respectfully requests that Judge Himes order *in camera* inspection of an unredacted copy of document found at Exhibit A. A proposed order to that effect is attached at Exhibit B.

Dated: May 14, 2024

Respectfully submitted,

/s/ Grant S. May

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Exhibit A

NATALIA LYNCH

Person ID: P-000-020-883 Username: nl6285

Name: Natalia Lynch

Date of Birth: 1993-11-29

Mobile Number:

Email: natali.lynch54@gmail.com

Address: 139 Magnolia Ave, Floral Park, NEW YORK, 11001, USA

Listed as RP in portal for 12 horses, 3 as Owner

Positive test (altrenogest) gelding Motion To Strike 6/24/23 at MTH; claimed by Silvino Ramirez

HORSES AT BELMONT (Barn 57):

Provision (gelding) – [REDACTED]

Wendell Fong (colt) – [REDACTED]

Road to Remember (mare) – [REDACTED]

Saratoga Strong (gelding) – [REDACTED]

Chasin' You (gelding) – [REDACTED]

Serenade Soldier (filly) – [REDACTED]

Joeybignose (filly) – [REDACTED]

Mary Katherine (filly) – [REDACTED]

Eloquent Speaker (mare) – [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

HORSES OWNED BY LYNCH

Turtleneck Ted – in training with Kelton Brown at Colonial Downs

Mary Katherine – Lynch still owns and trains

EXHIBIT B

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

ADMINISTRATIVE LAW JUDGE: JAY L. HIMES

**IN THE MATTER OF:
NATALIA LYNCH, APPELLANT**

DOCKET No. D09423

[PROPOSED] ORDER GRANTING MOTION FOR IN CAMERA INSPECTION

By motion filed on May 14, 2024 (“the Motion”), Appellant Natalia Lynch (“Appellant”) has sought *in camera* inspection of the unredacted copy of a document produced by Respondent Horse Integrity and Safety Authority (“HISA”) in response to a May 1, 2024 subpoena issued in this matter, which is found in redacted form at Exhibit A of the Motion.

Appellant has shown good cause for *in camera* inspection of the document to determine whether HISA has adhered to the terms of order accompanying the May 1 subpoena, including the requirement that any redactions be “narrowly tailored” “to restrict disclosure of investigative sources and methods.” Moreover, HISA does not oppose the Motion.

Therefore, the Motion is **GRANTED**.

HISA is **ORDERED** to produce the unredacted version of the document at Exhibit A in the Motion to the Office of the Administrative Law Judges by end of day on May 14, 2024 for *in camera* inspection by the undersigned.

ORDERED

Jay L. Himes
Administrative Law Judge

Date: May [14], 2024

CERTIFICATE OF SERVICE

I hereby certify that on May 14, 2024, pursuant to Federal Trade Commission Rules of Practice 4.2(c) and 4.4(b), I caused the foregoing to be filed and served as follows:

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Federal Trade Commission
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(by email to electronicfilings@ftc.gov)

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Office of Administrative Law Judges
Federal Trade Commission
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