

PUBLIC

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

IN THE MATTER OF:
DERRICK PARRAM, APPELLANT

HISA ACTION NO.: 2023-00124

DOCKET 9424

APPELLANT'S REPLY BRIEF

Now comes the Appellant, Derrick Parram, by his attorney, Richard J. Hackerman, and files the within reply brief, and says:

INTRODUCTION

HISA's position is that it can combine portions of two sets of laws, ignoring other portions of those same laws to make their case that Derrick Parram violated HISA Rule 2262(c)(5), and that their delays in enforcement are the problem of Mr. Parram of which they should bear no responsibility and he should shoulder alone.

PORTIONS OF HISA'S PROPOSED FINDINGS OF FACT ARE NOT SUPPORTED BY

THE RECORD

The following proposed findings of fact are not supported by the record:

Proposed finding of fact 11. While the stipulation set forth in Tab 5 provides that the Stewards received a Certificate of Analysis which alleged the presence of Dexamethasone and Trichlormethiazide, no certificate of analysis is part of the record nor is there any evidence of a Maryland or HISA medication violation. HISA's proposed finding provides "On January 6, 2023, the lab returned the blood sample results that indicated the presence of Dexamethasone and Trichlormethiazide in Girls Love Me's blood at the time of the December 9, 2022, race". This statement is unsupported because no certificate of analysis is in evidence.

PUBLIC

Proposed finding of fact 12. The description of the medications in this proposed finding of fact is not part of the record.

ARGUMENT

HISA argues that it can rely upon their own guidance dated March 14, 2022 which says it can rely on state law “with respect to matters on which the FTC has not yet approved and promulgated a final rule under HISA by the program effective date”. (Guidance-March 14, 2022, page 2). The problem with that assertion is that while HISA seeks to rely on Maryland’s medication rules for its non-existent medication rules in effect on December 9, 2022, HISA wishes to add its penalties to Maryland’s previously imposed penalties. As set forth in Appellant’s Brief, Maryland’s equine medication rules were in place at the time of the purported December 9, 2022 violation. Maryland had its own set of penalties for alleged medication violations in place at the time of the alleged violation, some of which were imposed. See COMAR Sections 09.10.03.02 and 09.10.01.45.V. If HISA’s position is that Maryland’s medication rules apply, then Maryland’s penalties apply, not HISA’s.

Similarly Maryland’s void claim rule (COMAR 09.10.01.07) was in place on December 9, 2022. That rule was not violated. If HISA’s position is that the HISA void claim rule preempts Maryland law, which apparently is its position, then its entire set of rules apply. As explained in Appellant’s brief because HISA’s medication rules had yet to go into effect, Mr. Parram did not violate a Prohibited Substance rule and therefore did not violate HISA Rule 2262(c)(5)

Moreover, the Guidance upon which HISA relies does not have the force of law. 16 CFR 1.140 defines HISA Guidance as: “Horseracing Integrity and Safety Authority (Authority) guidance issued under 15 U.S.C. 3054(g)(1), which does not have the force of law.”

PUBLIC

While HISA paints with a broad brush to allege Mr. Parram did not suffer prejudice as result of its delays, this simply is belied by the facts. As set forth in Appellant's brief, the 28 day period for the drug analysis to be received by the Laurel Park Stewards after the December 9, 2022 race was a sufficient period of time for the new owners of Girls Love Me to enter her in the December 31, 2022 race, and therefrom her injury and ultimate death. All parties agree Mr. Parram bears no responsibility for her unfortunate death. (Tab 5-Stipulation).

Additionally, as set forth in the Appellant's brief, the protest by Mr. Capuano on behalf of the new owners was lodged both improperly (not in writing, See COMAR Section. 09.10.01.35 A) and was untimely (not lodged within the 48 hour window, See COMAR Section 09.10.01.35 I). While HISA argues there is no time limit to make a HISA complaint, Mr. Capuano's complaint was founded upon a violation of Maryland's medication rules, therefore Maryland's rules apply to his protest. The delay in making the protest not only violated Maryland law but caused the delay in having Hearing 3 as set forth below.

While Mr. Parram was advised of his right to a split sample at Hearing 1, he was given no such opportunity at Hearing 3 though the consequences of the purported drug positive were far more serious. When Mr. Parram waived his right to a split sample at Hearing 1 he was aware that he would bear the cost of the split sample under Maryland Law. Mr. Parram had a moment at Hearing 1 to decide and waived this right. When one makes a decision various factors are weighed including the cost which the Appellant would incur, the likelihood of success with a second test and the consequences he was facing. Mr. Parram knew that the horse could be disqualified and he would be subject to a point system violation, but he was not aware that additional sanctions would be sought a month later including being forced to buy back a deceased horse. Mr. Parram would have requested a split sample at Hearing 1 had he known of the possibility of the additional consequences which he is now facing. (Transcript 41-43 and Tab 5-Stipulation).

PUBLIC

COMAR, Section 09.10.03.09 provides that Mr. Parram had a right to a split sample, but at Hearing 3 on February 4, 2024 he was not advised of his right to a split sample nor is it clear whether a second sample was still available after he waived his right at Hearing 1 and the matter was final 7 days later as set forth below.

It was too late to request a split sample at Hearing 3 because the finding of the drug positive was final after Hearing 1 when no timely appeal was filed under Maryland law. There is a 7 day time limit in which to appeal the Stewards' ruling to the Maryland Racing Commission pursuant to COMAR Section 09.10.04.04 B(3). The delay in prosecuting the void claim charge prejudiced Mr. Parram as had he been advised of the potential penalty of a voided claim he would have exercised his right for a split sample at Hearing 1 or perhaps hired or consulted counsel. As a result, the potential for a negative test result was lost to Mr. Parram.

The Appellant incorporates his proposed statement of facts, arguments and conclusions of law set forth in his April 2, 2024 filings as if set forth in their entirety herein.

CONCLUSION

HISA's jigsaw approach to enforcement of only portions of applicable federal and state common law is arbitrary, capricious, an abuse of discretion and not in accordance with law. The evidence fails to prove that Derrick Parram violated HISA Rule 2262(c)(5) as there is no evidence of a Prohibited Substance Violation as defined in the HISA Rules 4000 series.

The burden for the care of and responsibility for the welfare of Girls Love Me passed to the new owners when they entered her in the December 31, 2022 race. Under HISA's theory, the horse could run for years, be claimed, be sold, etc., and then years later Mr. Parram should be forced to purchase her back, dead or alive, good condition or poor condition, and no matter what transpires in between the date of the claim and when HISA gets around to enforcing its rules.

PUBLIC

HISA's position seems to be that while Mr. Parram is subject to all of its rules, its own agents and the other participants involved herein seem willing to select portions of various different laws to arbitrarily attempt to enforce its incomplete void claim regulation against the HISA mandate for uniform application of its rules and regulations.

The decision finding a violation of HISA Rule 2262(c)(5) was not in accordance with law.

The decision by the Maryland Stewards dated February 9, 2023 and by HISA dated December 14, 2023 should be reversed.

/s/ Richard J. Hackerman

Richard J. Hackerman
3635 Old Court Road, Suite 208
Baltimore, Maryland 21208
(410) 243-8800
(410) 630 7232 (fax)
Attorney for the Appellant, Derrick Parram
CPF 8212010181
Richard@richardhackerman.com

CERTIFICATE OF SERVICE

Pursuant to 16 CFR 1.146(a) and 16 CFR 4.4(b), a copy of the forgoing is being served this 12th day of April, 2024, via First Class mail and/or email upon the following:

PUBLIC

Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue NW,
Suite CC-5610
Washington, DC 20580

Dana L. Gross, dgross@ftc.gov

OALJ OALJ@FTC.GOV

ElectronicFilings@ftc.gov

Hon. D. Michael Chappell
Chief Administrative Law Judge
Office of Administrative Law
Judges Federal Trade
Commission

600 Pennsylvania Avenue, NW
Washington, DC 20580

(Courtesy copies via e-mail to oalj@ftc.gov and electronicfilings@ftc.gov)

John Forgy, Esquire
Attorney for HISA
830 Vermillion Peak Pass
Lexington, KY 40515
johnforgy1@gmail.com

Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue NW,
Suite CC-5610
Washington, DC 20580

Hon. D. Michael Chappell
Chief Administrative Law Judge
Office of Administrative Law
Judges Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

(Copies via e-mail to oalj@ftc.gov and electronicfilings@ftc.gov)

PUBLIC

Samuel Reinhardt, Assistant General Counsel
samuel.reinhardt@hisaus.org.
Horsereading Integrity and Safety Authority
40 I West Main Street, Suite 222
Lexington, KY 40507

Bryan H. Beauman, Esquire
via email to: bbeauman@sturgillturner.com
Sturgill, Turner, Barker & Moloney, PLLC
333 W. Vine Street, Suite 1500
Lexington, KY 40507-1681

Rebecca C. Prince Esquire
rprice@sturgillturner.com
Sturgill, Turner, Barker & Moloney, PLLC
333 W. Vine Street, Suite 1500
Lexington, KY 40507-1681

Leigh Reed lreed@sturgillturner.com

Erik Winker e winker@ftc.gov

April Tabor atabor@ftc.gov

Joel Christie jchristie@ftc.gov

Pablo Zylberglait Pylberglait@ftc.gov

Anita Thomas CTR athomas@ftc.gov

Walter Vieser, II
walt.vieser@redarchsolutions.com

Louis Ulman, Esquire
ulmanlouis@gmail.com