

PUBLIC

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES  
FTC DOCKET NO. 9420**

**COMMISSIONERS:**      **Lina M.Khan, Chair  
Rebecca Kelly Slaughter  
Alvaro Bedoya**

**IN THE MATTER OF:**

**LUIS JORGE PEREZ**

**APPELLANT**

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**THE AUTHORITY’S RESPONSE TO APPELLANT’S NOTICE OF APPEAL AND  
APPLICATION FOR REVIEW**

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Comes now the Horseracing Integrity and Safety Authority (“**HISA**”) pursuant to the 16 CFR 1.147 and submits the following Response to Appellant’s Notice of Appeal and Application for Review, dated March 8, 2024.

**CERTIFICATE OF SERVICE**

Pursuant to 16 CFR 1.146(a) and 16 CFR 4.4(b), a copy of this Response to Appellant's Notice of Appeal and Application for Review is being served on March 18, 2024, via Administrative E-File System and by emailing a copy to:

Hon. D. Michael Chappell  
Chief Administrative Law Judge  
Office of Administrative Law Judges  
Federal Trade Commission  
600 Pennsylvania Ave. NW  
Washington DC 20580  
via e-mail to [OALJ@ftc.gov](mailto:OALJ@ftc.gov)

April Tabor  
Office of the Secretary  
Federal Trade Commission  
600 Pennsylvania Ave. NW  
Washington, DC 20580  
Via email: [electronicfilings@ftc.gov](mailto:electronicfilings@ftc.gov)

Robert G. Del Grosso,  
114 Old Country Road, Suite 600  
Mineola, New York, 11501  
[Rgdesq@yahoo.com](mailto:Rgdesq@yahoo.com)  
Attorney for Appellant

/s/ Bryan Beauman  
Enforcement Counsel

## I. OVERVIEW

On October 9, 2023, Arbitrator Barbara A. Reeves, Esq. issued a decision (the “**Arbitrator’s Decision**”), finding that Appellant violated Rule 3214(a) of HISA’s Anti-Doping and Medication Control Program (“**ADMC Program**”) by possessing Levothyroxine, a Banned Substance, and imposed reasonable Sanctions on that basis. On November 9, 2023, Appellant appealed that decision, challenging those Sanctions. On February 7, 2024, Chief Administrative Law Judge D. Michael Chappell (the “**ALJ**”) issued a decision affirming the imposition of the Sanctions (the “**ALJ’s Decision**”). On March 8, 2024, Appellant filed a Notice of Appeal and Application for Review. HISA submits this Response to Appellant’s submission.

As an initial matter, Appellant appears to be seeking review of both the Arbitrator’s Decision and the ALJ’s Decision. However, 16 CFR 1.147(c)(1) makes clear that the nature of the Commission’s review is limited to review “of the factual findings and conclusions of law made by the Administrative Law Judge.” In addition, 16 CFR 1.147(b)(4)(ii) provides the standard by which the Commission determines whether to grant an application for review upon a “reasonable showing” – a standard which Appellant has not even addressed.

Instead, Appellant’s application relies on inappropriate arguments regarding the jurisdiction of HISA and the Horseracing Integrity & Welfare Unit (“**HIWU**”) and the due process afforded to Covered Persons under the ADCM Program that were properly rejected in the ALJ’s Decision. Neither of these issues have any bearing on Appellant’s application, let alone provide a “reasonable showing” that a “prejudicial error” occurred in the conduct of those proceedings, or that the ALJ’s Decision involved an “erroneous application” of the rules of the ADCM Program or involved the “exercise of discretion or decision of law or policy that warrants review by the Commission.”

## II. APPELLANT HAS NOT MET THE REQUIRED STANDARD FOR REVIEW

Appellant's application for review does not include any claim that there was any prejudicial error in the conduct of the proceedings before the ALJ, as he only challenges the legal conclusions contained in the ALJ's Decision.<sup>1</sup> However, his arguments challenging those conclusions do not appropriately address the considerations set forth in 16 CFR 1.147(b)(4)(ii)(B).

Appellant's argument that HISA and HIWU's lack of jurisdiction over Non-Covered Horses should permit Appellant to possess a Banned Substance without providing *any* evidentiary showing of the "compelling justification" required by Rule 3214(a) was correctly rejected in the ALJ's Decision. It concluded that, as a Covered Person, HISA and HIWU have jurisdiction over Appellant and, as a result, he is required to meet the evidentiary standard for a "compelling justification" for his Possession of a Banned Substance. In addition, the ALJ's Decision properly determined that Appellant did not support his claim that, in order to provide "due process" for Covered Persons, Rule 3214 should be required to identify factual scenarios that may meet the "compelling justification" standard. As set forth in the ALJ's Decision, requiring proof of this defense is clearly not a "due process" violation; Appellant was afforded due process under the ADMC Program because he had "ample opportunities" to provide a defense in two separate forums. Rather, Appellant is essentially arguing that he did not receive "due process" because his arguments were rejected by two adjudicators.

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<sup>1</sup> Contrary to Appellant's assertion, the acknowledgement that there was no evidence that he used the Banned Substance to treat Covered Horses is completely irrelevant to whether a Possession violation has been established. The ALJ's Decision correctly recognizes that this fact is relevant to Appellant's degree of Fault and the determination of Sanctions; it was considered in both the Arbitrator's Decision and the ALJ's Decision as a factor in reducing Appellant's period of Ineligibility.

Appellant contends that HIWU's argument that his defense was only theoretical should have been rejected by the ALJ, but the record reflects that he failed to produce *any* evidence to corroborate this defense. He also claims that the ALJ's Decision "interfered" with his treatment of Non-Covered Horses and he is not obligated to provide proof of such treatment to HISA or HIWU. The ALJ's Decision properly addresses this contention as follows:

Appellant's proposal to create a blanket exemption to ADMC Rule 3214 for covered veterinarians by virtue of their treating non-covered horses contradicts the "compelling justification" evidentiary standard requirement, which by nature of the inclusion of the word "compelling," suggests the need to put forth evidence beyond an unsupported, theoretical allegation, and to analyze such evidence on a case-by-case basis. Appellant's statement that his veterinary practice includes non-covered horses, is thus not by itself a compelling justification for the possession.

Any other reading of Rule 3214 is untenable and would create a Non-Covered Horse blanket exception that would wholly swallow the Rule, essentially preventing HIWU from regulating the Possession of Banned Substances and eviscerating a portion of its Congressional mandate.

Lastly, Appellant's reliance on *Nat'l Horsemen's Benevolent & Protective Ass'n v. Black*, 53 F.4<sup>th</sup> 869 (2022), to establish that the Horseracing Integrity and Safety Act's (the "Act") constitutionality is in doubt is misplaced. That case was decided with reference to another version of the Act, which was subsequently amended and held to be constitutional by the Sixth Circuit Court of Appeals in *State of Okla., et al. v. United States, et. al*, No. 22-5487, at p.3 (6<sup>th</sup> Cir. 2023). The Fifth Circuit has yet to opine on the current, governing Act.

Since Appellant's application fails to meet the standard for review by the Commission set forth in 16 CFR 1.147(b)(4)(ii), Appellant's application for review should be denied.

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ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 18<sup>th</sup> day of March, 2024.

/s/Bryan H. Beauman

BRYAN BEAUMAN  
REBECCA PRICE  
333 W. Vine Street, Suite 1500  
Lexington, Kentucky 40507  
Telephone: (859) 255-8581  
[bbeauman@sturgillturner.com](mailto:bbeauman@sturgillturner.com)  
[rprice@sturgillturner.com](mailto:rprice@sturgillturner.com)  
**HISA ENFORCEMENT COUNSEL**

MICHELLE C. PUJALS  
ALLISON J. FARRELL  
4801 Main Street, Suite 350  
Kansas City, MO 64112  
Telephone: (816) 291-1864  
[mpujals@hiwu.org](mailto:mpujals@hiwu.org)  
[afarrell@hiwu.org](mailto:afarrell@hiwu.org)  
**HORSERACING INTEGRITY &  
WELFARE UNIT, A DIVISION OF  
DRUG FREE SPORT LLC**