

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

In the Matter of)	
)	
Derrick Parram,)	Docket No. 9424
)	
Appellant.)	
)	

**ADMINISTRATIVE LAW JUDGE DECISION ON APPEAL OF CIVIL SANCTION
IMPOSED BY THE HORSERACING INTEGRITY AND SAFETY AUTHORITY**

This is an appeal by Derrick Parram (“Parram” or “Appellant”), pursuant to 15 U.S.C. § 3058 and 16 C.F.R. § 1.146, seeking reversal of a final civil sanction imposed against him by the Horseracing Integrity and Safety Authority (the “Authority”) pursuant to Rule 2262(c)(5) of the Horseracing Integrity and Safety Act (“HISA”).

Specifically, the Authority, affirming the determination of the stewards at Laurel Park, a racetrack in Laurel, Maryland, voided the claim to Girls Love Me (“GLM”), a racehorse previously owned and trained by Parram, pursuant to HISA Rule 2262(c)(5) and required Parram to return the \$12,500 purchase money to the claimants (the “Sanction”). Appellant objects to the Authority’s application of HISA Rule 2262(c)(5) to impose the Sanction. As explained below, the Sanction is REVERSED.

I. BACKGROUND

A. Scope of the Appeal

The Horseracing Integrity and Safety Act of 2020, 15 U.S.C. §§ 3051-3060 (“HISA”), empowered the Authority, under the oversight of the Federal Trade Commission, to develop rules on a variety of subjects, including a racetrack safety program and an anti-doping and medication control program. *See id.* §§ 3053-3056.

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At issue in this case is the Authority's enforcement against Appellant of a sanction under HISA Rule 2262 (also referred to herein as the "Void Claim Rule"), which became effective on July 1, 2022 as part of the Racetrack Safety Program. 87 Fed. Reg. 435, 456 (Federal Trade Commission ("FTC") Notice of Horseracing Integrity and Safety Authority (HISA) proposed rule; request for public comment, Jan. 5, 2022); Order Approving the Racetrack Safety Rule Proposed by the Horseracing Integrity and Safety Authority (March 3, 2022) (available at https://www.ftc.gov/system/files/ftc_gov/pdf/order_re_racetrack_safety_2022-3-3_for_publication.pdf) ("HISA Rules"). HISA's anti-doping and medication control ("ADMC") program became effective on May 22, 2023. 88 Fed. Reg. 27894 (May 3, 2023) (FTC Notice of Final Rule) ("ADMC Rules").

The Void Claim Rule includes, among other things, the circumstances under which a "Claim" to a horse that was vested pursuant to a "Claiming Race" can be reversed. A "Claiming Race" is a race in which a horse, "after leaving the starting gate may be claimed in accordance with the rules and regulations of the applicable State Racing Commission." HISA Rule 1020 (definitions). A "Claim" refers to the purchase of a horse after the Claiming Race for a designated amount. HISA Rule 1020 (definitions). Under HISA Rule 2262(c):

The claim shall be voided, and ownership of the Horse retained by the original Owner if:

- (1) The Horse dies on the racing track;
- (2) the Horse is euthanized before leaving the racing track;
- (3) the Horse is vanned off of the racing track by discretion of the Regulatory Veterinarian;
- (4) the Regulatory Veterinarian determines within 1 hour of the race that the Horse will be placed on the Veterinarians' List as Bled, physically distressed, medically compromised, unsound, or lame before the Horse is released to the successful claimant; or
- (5) the Horse has a positive test for a Prohibited Substance.

Pursuant to 15 U.S.C. § 3058(b)(2)(A), this appeal requires a review of whether the Sanction imposed against Appellant by the Authority "was arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law." *See also* 16 C.F.R. §1.146(b)(3) ("FTC

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Rules”). This determination is made *de novo*. 15 U.S.C. § 3058(b)(1); 16 C.F.R. §1.146(b)(2)(3). Thus, the Administrative Law Judge must review the record “anew,” as though the issue had not been heard before, and no decision had previously been rendered. *See Freeman v. DirecTV, Inc.*, 457 F.3d 1001, 1004 (9th Cir. 2006) (describing *de novo* review by appellate court of district court dismissal of complaint under Federal Rule of Civil Procedure 12(b)(6)). *De novo* review requires an independent examination of the record. *See Agyeman v. INS*, 296 F.3d 871, 876 (9th Cir. 2002) (describing scope of *de novo* review of agency’s interpretations of statute). With *de novo* review, there is no deference owed to the determinations made below. *See Barrientos v. Wells Fargo Bank, N.A.*, 633 F.3d 1186, 1188 (9th Cir. 2011) (holding that, on *de novo* review by an appellate court, there is no deference to the district court). The administrative law judge “may rely on the factual record developed before the Authority and may supplement that record by evidence presented in an administrative hearing.” 16 C.F.R. §1.146(b)(1).

B. Summary of Material Facts

The material facts are not disputed.

On December 9, 2022, Appellant Parram ran his horse GLM in a Claiming Race at Laurel Park Racetrack. GLM was Claimed by Louis J. Ulman and Walter Vieser, II, for \$12,500. Also on December 9, 2022, after the Claiming Race, Laurel Park officials took a blood sample from GLM, which was sent to Industrial Laboratories (“Industrial”) for testing.

On December 31, 2022, while the blood sample test results were still pending, Ulman and Vieser raced GLM at Laurel Park. During the race, GLM suffered a knee injury.

On January 6, 2023, the stewards at Laurel Park (“Stewards”) received a certification from Industrial that the post-race blood sample taken from GLM on December 9, 2022 tested positive for the drugs dexamethasone and trichlormethiazide.

On January 8, 2023, the Stewards held a hearing regarding the lab findings. The Stewards concluded, based on the presence of dexamethasone and trichlormethiazide in GLM on December 9, 2022, that Parram violated Section 09.10.03.04(C) of the Code of Maryland Regulations (“COMAR”) prohibiting the use of certain drugs in horseracing. Applying COMAR 09.10.03.02, Section A, the Stewards sanctioned Parram for the violation by placing GLM last in

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the December 9, 2022 race and ordering the forfeiture of the \$6,500 purse. No request to void the claim was made during the January 8 hearing, nor was the claim discussed in the Stewards' ruling. Parram did not appeal the January 8 ruling by the Stewards.

On January 20, 2023, GLM underwent surgery in connection with the knee injury suffered in the December 31, 2022 race. GLM died of colic nine days after the surgery, on January 29, 2023. Neither the horse's injury nor the horse's death were related to the presence of dexamethasone and trichlormethiazide

On February 1, 2023, three days after the death of GLM, Dale Capuano, a trainer associated with Ulman and Vieser, contacted the Stewards by telephone to protest the claim to GLM. According to Ulman and Vieser, they did not learn of the medication violation until after an examination of GLM's history following the horse's death. Appeal Book of Horseracing Integrity and Safety Authority ("HAB") Tab 8 at 39.

C. The Void Claim Rulings

On February 4, 2023, the Stewards conducted a hearing as to whether to void the claim to GLM. Applying HISA Rule 2262(c)(5), the Stewards voided the claim and ordered all monies pertaining to the claim be refunded "due to a positive test for a Prohibited Substance" in GLM on December 9, 2022. HAB Tab 1 at 2.

On February 10, 2023, Parram appealed the Stewards' February 9, 2023 ruling voiding the claim to GLM under HISA Rule 2262(c)(5) to the HISA Board of Directors ("Board"). HAB Tab 2. Parram contended that the phrase "Prohibited Substance" used in HISA Rule 2262(c)(5) refers to those substances that are specifically defined as prohibited pursuant to ADMC Rules, which were not yet effective, and that the Stewards could not properly interpret HISA Rule 2262(c)(5) to authorize voiding a claim based on a substance prohibited under state law. Parram further argued that the Stewards' ruling was improper because the delay in undertaking to void the claim until after the horse had died violated Maryland void claim regulations and applicable legal and equitable principles.

On December 14, 2023, the Board affirmed the Stewards' ruling. HAB Tab 11. The Board held that it was not improper to rely on Maryland prohibited drug regulations to void the claim

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under HISA Rule 2262(c)(5). The Board reasoned that because HISA's prohibited substance regulations had not yet been promulgated at the time of the Stewards' February 9, 2023 ruling, and because HISA had not yet preempted Maryland's regulation of prohibited substances, Maryland's regulations should be applied to HISA Rule 2262(c)(5). The Board further held that the delay between the first hearing, which addressed Parram's violation of Maryland's drug prohibition regulations, and the second hearing, which addressed the voiding of the claim to GLM under HISA Rule 2262(c)(5), did not make the Stewards' void claim ruling invalid because the two hearings presented distinct issues and there is no requirement that the Stewards "hold hearings on state and HISA violations simultaneously." HAB Tab 11 at 75.

The Authority thereafter filed a Notice of Final Civil Sanction with the FTC pursuant to 15 U.S.C. § 3057(d) affirming the voiding of the claim to GLM "due to a positive test for a Prohibited Substance" in violation of HISA Rule 2262(c)(5). This appeal followed.

II. ANALYSIS

A. Summary of the Arguments

Appellant raises two arguments in support of reversing the void claim ruling and the resulting Sanction. Appellant first argues that the Authority's application of Maryland drug prohibition regulations to HISA's void claim rule violates the Authority's mandate to apply only federal law. Appellant asserts that HISA gave the Authority responsibility for enforcing a uniform set of federal rules applicable to racetrack safety and anti-doping, and nothing in HISA grants the Authority the ability to enforce Maryland regulations in connection with enforcing HISA Rules. Appellant contends that the term "Prohibited Substance" in HISA Rule 2262(c)(5) means the specific substances defined in the HISA rules as prohibited under the ADMC rules, not those defined under Maryland law. Appellant concludes that, because the ADMC prohibited substance rules had not yet become effective, and because such rules cannot be applied retroactively, HISA Rule 2262(c)(5) cannot be applied to void the claim. Appellant accuses the Authority of "cherry-picking" the law by declining to apply Maryland's void claim rule, but choosing to apply Maryland's drug prohibition rules, creating an enforcement "jigsaw" puzzle.

Appellant's second argument is that the Sanction should be reversed because of delays in the enforcement proceedings, due process violations, and various legal and equitable doctrines,

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including res judicata, equitable estoppel, assumption of risk, statute of limitations, election of remedies and impossibility.

In response, the Authority acknowledges that: (1) the term “Prohibited Substance” as set forth in HISA Rule 2262(c)(5) is defined in the HISA rules as a substance designated as prohibited pursuant to ADMC rules; and (2) that the HISA rules establishing Prohibited Substances were not in effect at the time the Stewards voided the claim under HISA Rule 2262(c)(5). The Authority argues, however, that the substances found in GLM were prohibited under Maryland’s prohibited drug regulations, which remained in force pending promulgation of the Authority’s Prohibited Substance rules, and therefore it was appropriate to apply Maryland’s prohibited drug rules in order to avoid a gap in enforcement of HISA Rule 2262(c)(5). According to the Authority, reading Maryland regulations into HISA Rule 2262(c)(5) serves the statutory and regulatory purposes of ensuring the safety of horses and the integrity of horseracing.

The Authority further argues that Appellant has failed to demonstrate that any alleged delays in the Stewards’ hearings caused him prejudice and that the Stewards were not required to hold the prohibited substance violation hearing and the void claim hearing at the same time.

B. Discussion

To void a claim under HISA Rule 2262(c)(5), it must be demonstrated that the horse had “a positive test for a Prohibited Substance.” By using initial capital letters for “Prohibited Substance,” the drafters of the HISA regulations intended for this to be a defined term. *See, e.g.*, ADMC 3010(k) (stating that “words and terms . . . that are capitalized are defined terms”); *see also* HISA Rules 5020, 6010. The term “Prohibited Substance” is defined in the HISA Rules: “Prohibited Substance” means “any substance or class of substances so described on the Prohibited List” HISA Rule 1020 (Definitions). “Prohibited List means the list identifying Prohibited Substances” set forth in the HISA Rules. *Id.*

The “Prohibited List” of “Prohibited Substances” did not become effective until May 22, 2023, as part of HISA’s comprehensive ADMC Program, months after the claiming race and the void claim hearing in this case. Thus, based on the clear, plain language of the HISA Rules, the substances found to be present in GLM’s blood on the day of the December 9, 2022 claiming

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race could not have been “Prohibited Substances” for purposes of HISA Rule 2262(c)(5). Indeed, the Authority would have been prohibited from attempting to enforce HISA anti-doping regulations against Appellant “before the program effective date.” 15 U.S.C. § 3054(k)(2)(A). Rather, under HISA, prior to the effective date of the ADMC Program, the investigation and prosecution of anti-doping rule violations remained under the authority of “the applicable State racing commission” *Id.* § 3054(k)(2)(B); *see also* ADMC Protocol, Rule 3080(a) (providing that ADMC Rules “shall not apply retroactively to matters pending before” the effective date of the ADMC Program).

In the instant case, the Authority ignored the plain language of HISA Rule 2262(c)(5) and instead essentially incorporated, or borrowed, Maryland prohibited substance regulations. The Authority has failed to demonstrate a proper legal basis for this result, as explained below.

The Authority first relies on the fact that Maryland’s drug prohibition regulations were not preempted and remained in effect prior to the effective date of the HISA Prohibited Substance list. *See* 5 U.S.C. § 3054(b) (providing, in pertinent part, that “[t]he rules of the Authority promulgated in accordance with this [Act] shall preempt any provision of State law or regulation with respect to matters within the jurisdiction of the Authority under this [Act]”); *see also* March 14, 2022 Guidance issued by the Authority (stating in part that “while State laws are preempted with respect to matters on which the FTC has approved and promulgated a final rule, State law will continue to regulate matters on which the FTC has not yet approved and promulgated a final rule”).¹ However, whether or not Maryland’s drug prohibition regulations were still in force prior to the effective date of the HISA Prohibited Substance list is beside the point. As stated above, pursuant to 15 U.S.C. § 3054(k)(2), until preempted, state anti-doping regulations remained enforceable by the applicable *state authorities*. The Authority’s jurisdiction is limited to enforcement of HISA and the rules duly promulgated thereunder. *See* 15 U.S.C. § 3054 (a)(1), (2)(B) (providing that the Authority shall “implement and enforce the horseracing anti-doping and medication control program and the racetrack safety program” and exercise “exclusive national authority over all horseracing safety, performance, and anti-doping and medication control matters”). The fact that Maryland’s drug prohibition regulations were not

¹ Guidance issued by the Authority does not have the force of law. 16 C.F.R. §1.140.

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preempted does not justify ignoring the plain text of HISA Rule 2262(c)(5) and effectively rewriting the rule to incorporate Maryland rules.

The Authority next contends that it was necessary to interpret the phrase “Prohibited Substance” in HISA Rule 2262(c)(5) to mean Maryland prohibited substances because otherwise HISA Rule 2262(c)(5) would be unenforceable until final promulgation of the Prohibited Substance list under the ADMC Program and that such an enforcement gap contravenes the intent of HISA. It is true that an accurate reading of the plain text of HISA Rule 2262(c)(5) would bar the Authority from voiding a claim based on the presence of a Prohibited Substance until after the effective date of the ADMC Program. But this is a consequence of the plain language of the Rule itself, which was drafted by the Authority and approved by the FTC. *Oklahoma v. U.S.*, 62 F.4th 221, 229-30 (6th Cir. 2023) (“At the outset, the Horseracing Authority drafts rules on racetrack safety and anti-doping matters, and the FTC must approve those proposals if they are consistent with the Act.”). Indeed, the FTC was aware when adopting the Racetrack Safety rules that they did not include “other related rules such as an anti-doping and medications control enforcement rule” and rejected requests from commenters that the FTC defer adoption until it received all such rules from the Authority. The FTC stated that, while it was “understandable” that commenters wanted the FTC “to evaluate all possible proposed rules at once,” “it is not the process that Congress chose in the Act. Instead, piecemeal consideration is baked into the Act.” Order Approving the Racetrack Safety Rule Proposed by HISA at 6-7 (March 3, 2022) (“Plainly, Congress had in mind seriatim rule review.”) (https://www.ftc.gov/system/files/ftc_gov/pdf/order_re_racetrack_safety_2022-3-3_for_publication.pdf). A delay in final implementation of the ADMC Program, and therefore the gap in enforcement of HISA Rule 2262(c)(5), was thus “baked into the Act.” The enforcement risk associated with this gap should fall on the Authority, not on the targets of the Authority’s enforcement powers.

While not legally dispositive, it should be noted that holding the Authority to the plain language of HISA Rule 2262(c)(5) does not create an inequitable result on the facts of this case. Appellant was sanctioned for the use of a prohibited drug in violation of Maryland regulations, including forfeiture of the purse. It is undisputed that GLM’s injury and death were unrelated to either GLM’s care and training or to the presence of drugs in the horse’s blood at the time of the

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race on December 9, 2022. HAB Tab 5 at 22 (Agreed Stipulation 8). Further, it is undisputed that the death of GLM on January 29, 2023, nearly two months after the December 9, 2022 claiming race, was a consequence of an injury suffered as a result of Ulman and Vieser having entered GLM in a race on December 31, 2022. HAB Tab 5 at 22 (Agreed Stipulations 6-7). It is also noted that Ulman and Vieser did not take any steps to void the claim until after the horse's death.²

III. CONCLUSION

To find an abuse of discretion, the record must reveal a clear error of judgment. *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 422 F.3d 782, 798 (9th Cir. 2005). An abuse of discretion is defined as "a plain error, discretion exercised to an end not justified by the evidence, a judgment that is clearly against the logic and effect of the facts as are found." *Id.* For the reasons set forth above, incorporating Maryland prohibited substance rules to void a claim under HISA Rule 2262(c)(5) in contravention of the plain language of the rule was not in accordance with law and was an abuse of discretion. Accordingly, the Sanction is REVERSED.

Given the basis for this ruling, whether the Sanction should also be reversed because of delays in the enforcement proceedings, due process violations, or the other various legal and equitable doctrines raised by Appellant, need not and will not be determined.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: May 1, 2024

² It is noteworthy that the Authority has proposed modifications to Rule 2262 that would disallow the void claim action that had been allowed in this case. Specifically, under proposed Rule 2262 (published for public comment on April 8, 2024), a claimant would be barred from voiding the claim, notwithstanding a positive drug test in connection with the claiming race, if: (1) the claimant fails to protest the claim in writing within 48 hours from notification of the positive drug test; or (2) if the claimant runs the horse in a race; or (3) if the horse dies or is euthanized. 89 Fed. Reg. 24574, 24620-621 (FTC April 8, 2024) (Notice of Horseracing Integrity and Safety Authority (HISA) proposed rule modification; request for public comment).