

**PUBLIC**

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES  
FTC DOCKET NO. D-09432**

**ADMINISTRATIVE LAW JUDGE:**

**IN THE MATTER OF:**

**CHRIS ALLEN HARTMAN**

**APPELLANT**

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**THE AUTHORITY'S RESPONSE TO APPELLANT'S APPLICATION FOR STAY**

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**CERTIFICATE OF SERVICE**

Pursuant to 16 CFR 1.146(a) and 16 CFR 4.4(b), a copy of the Authority's Response is being served on June 14, 2024, via Administrative E-File System and by emailing a copy to:

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*/s/ Bryan Beauman*  
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The Horseracing Integrity and Safety Authority (the “**Authority**”) files this Response to Appellant’s Application to stay sanctions issued pursuant to the Internal Adjudication Panel’s (the “**IAP**”) Final Decision of June 3, 2024, under the Authority’s Anti-Doping and Medication Control (“**ADMC**”) Program. The Commission should deny Appellant’s request, as he has failed to satisfy, or even address, the requirements for a stay articulated in 16 CFR § 1.148(d).

First, the likelihood of Appellant’s success on review is low. The requirements of the ADCM Program Rules (the “**Rules**”) were appropriately followed by both the Horseracing Integrity & Welfare Unit (“**HIWU**”) and the IAP.

Appellant’s claim that the matter should have been dismissed for failure to comply with Rule 3348 is meritless. Rule 3348 provides that a Charge Letter shall include the Rule that the Covered Person is charged with violating and “provide a summary of the relevant facts upon which the charge is based.” Its purpose is to provide notice to Covered Persons as to the allegations they are facing. Although the body of the ECM Charge did not expressly cite Rule 3312, it explained the underlying facts relating to the presence of a metabolite of Acepromazine in Necker Island’s Sample. In addition, Rule 3312 was cited in the ECM Notice received by Appellant and in the admission form attached to the Charge.<sup>1</sup> The Charge references the full name of HEPS (2-(1-hydroxyethyl) promazine sulfoxide) and states several times that the matter involves a Controlled Medication Rule Violation. There is no requirement in Rule 3348 that the concentration of a substance be included in a Charge. Appellant was therefore well aware of the Rule he was alleged to have violated and the facts underlying that allegation.

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<sup>1</sup> See ECM Charge, dated 9/8/23; ECM Notice, dated 7/13/23.

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HIWU carried its burden to show that any departures from the Rules did not “cause the Adverse Analytical Finding” by providing substantial evidence that HEPS was present in the Sample at issue:

- Three different laboratories detected HEPS in the Sample (analysis of the A and B Sample and Further Analysis of Sample B) after the initial testing of the A Sample found the presence of HEPS in an amount above the Screening Limit.
- Appellant’s own expert did not dispute the finding of the presence of HEPS in the Sample.
- The Covered Horse’s veterinarian admitted he had dispensed three hundred doses of Acepromazine to Appellant’s horses in the four-month period leading up to Sample collection.
- Appellant failed to testify at the merits hearing on February 15, 2024 to answer questions from HIWU about the administration of these doses of Acepromazine to his horses.

Appellant merely disagrees with the IAP’s decision about the admissibility and weight of Dr. Scott Stanley’s testimony on February 15. HIWU did not stand in the way of Dr. Stanley testifying at the supplemental hearing on May 7, 2024, and Appellant’s counsel contacted Dr. Stanley but were unable to produce him as a witness on that later date. In addition, there is no evidence that the investigation involving Dr. Stanley affected the analysis of the relevant Sample in any way.

There is no factual basis in the Rules to draw an adverse inference against HIWU from the fact that Dr. Stanley did not testify at the supplemental hearing (see above). In any event, Rule 3122(f) only permits the IAP to draw an adverse inference against a Covered Person who refuses to testify, and such an inference was properly made against Appellant here.

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Contesting the existing testing standard for Acepromazine that uses the detection of HEPS contravenes the Rules. Not only has it been used in equine anti-doping for decades, but it has also been approved by the Commission and, under Rule 3113, its validity cannot be challenged by Appellant. It is improper for him to argue that the proposed testing standard urged by his expert, which is based on a proposed metabolite presented in a single study, should be adopted.

As with the decision on Dr. Stanley's testimony, Appellant merely disagrees with the decisions made by the IAP regarding the issuance of subpoenas and performance of DNA testing. Appellant provides no argument beyond mere conclusions as to why these decisions are incorrect and does not detail how these decisions were violative of the Rules or did not follow applicable legal standards.<sup>2</sup>

Second, Appellant will not suffer irreparable harm. Appellant's period of Ineligibility lasts through June 20, 2024, and he will not be irreparably harmed by serving the entire period just because he will miss certain Thoroughbred races. Only "one-time" events that are a once in a lifetime occurrence, such as the Olympics, qualify as irreparable harm,<sup>3</sup> but there were 30,592 Thoroughbred races in 2023.<sup>4</sup> Appellant can also compete in Louisiana, West Virginia, and Texas, which are not currently regulated by the Authority. Moreover, harm can only be considered irreparable "where there is no adequate remedy at law, such as monetary damages,"<sup>5</sup> and any lost funds could be recoverable here.

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<sup>2</sup> These decisions were not violations of "due process." Due process does not entitle a Covered Person to have every issue decided in his favor.

<sup>3</sup> *Reynolds v. Int'l Amateur Athletic Fed'n*, [505 U.S. 1301, 1302](#) (1992); *Revels v. Miss Am. Org.*, No. 7:02CV140-F(1), 2002 WL 31190934, at \*7 (E.D.N.C. Oct. 2, 2002)

<sup>4</sup> See The Jockey Club 2023 Factbook, available at <https://www.jockeyclub.com/default.asp?section=Resources&area=11>

<sup>5</sup> *Janvey v. Alguire*, 647 F.3d 585, 600 (5th Cir. 2011).

**PUBLIC**

Third, other parties will be harmed if a stay is granted. The ADMC Program protects the integrity of horseracing and the confidence of its stakeholders, including the betting public.<sup>6</sup> Granting the stay will undermine the Authority's efforts to protect the integrity of horseracing and will harm other Responsible Persons and the betting public by permitting Appellant's participation therein.

Fourth, the public interest is served by individual compliance with the rules and regulations validly promulgated by federal agencies.

The Authority requests the Commission deny Appellant's Application for a stay.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 14th day of June, 2024.

*/s/Bryan H. Beauman*

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<sup>6</sup> Rules 3010(a), 3010(d)(7).