

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
MATTER NO.**

IN THE MATTER OF:  
DERRICK PARRAM APPELLANT

HISA ACTION NO.: 2023-00124

**NOTICE OF APPEAL, APPLICATION FOR REVIEW**  
**AND**  
**REQUEST FOR STAY**

Pursuant to 15 U.S.C. §3051 et seq., including §3058, 5 U.S.C. §556 et seq., and 16 CFR §1.145 et seq., including CFR §1.146, aggrieved Appellant Derrick Parram gives notice that he hereby appeals the December 14, 2023 decision which affirmed the Laurel Park stewards' sanctions voiding the claim of the thoroughbred horse named Girls Love Me by Louis J. Ulman and Walter Vieser, II from a horse race which occurred at Laurel Park on December 9, 2022 and ordering that all monies pertaining to the claim be refunded. Copies of the Decision on Appeal and Notice to Federal Trade Commission of Notice of Final Civil Sanction imposed by the Horse Racing Integrity and Safety Authority under 15 U.S.C. Section 3057(d) are attached hereto.

HISA rules provide for review of Final Civil Sanctions by a Federal Administrative Law Judge pursuant to 15 U.S.C §3058. The rules further provide for a stay of the Sanction set forth above if such stay is requested and approved by the Administrative Law Judge.

Appellant challenges the Final Civil Sanction and requests de novo review under 15 U.S.C. § 3058(b)(1) - (3) and 16 C.F.R. §1.146(b) for multiple reasons:

A. The penalty assessed was arbitrary, capricious, an abuse of discretion, prejudicial, or otherwise not in accordance with law. It violates accepted standards established in the decisional law of the FEI and CSA as to how the punishment must follow and be commensurate with the violation. It is also unconstitutional as violative of the Eighth Amendment's excessive fine

clause.

B. The Rule the Commission relied upon, Rule 2262, provides only that a claim shall be voided if a horse tests positive for a Prohibited Substance. The Prohibited Substance list to which the rule refers did not go into effect until May 22, 2023, i.e, long after the date of the purported violation.

C. The conducting of a third hearing and the imposition of a third set of sanctions regarding the same purported positive drug test result violates the doctrines of waiver, estoppel, res judicata, equitable estoppel, collateral estoppel, judicial estoppel, laches, and election of remedies. There were multiple hearings and delays by the Laurel Park Stewards which prejudiced the rights of the Appellant, to the end and effect that the Stewards were requiring that the claim be voided and the claim monies be refunded after the new owners raced Girls Love Me and after the horse passed away while in the new owners' care. There were two initial hearings that took place on January 8, 2023 regarding the purported positive test result. After the horse passed away the new owners complained to the Stewards. Their complaint was improperly lodged verbally and long after the time for objections had passed pursuant to Maryland law and long after Mr. Parham had waived his right to a split sample of the purported positive drug result. The Stewards then conducted a third hearing on February 4, 2023 to consider the new owners's request. The matter was final after the first ruling on January 8, 2023 and no further action could be taken by the Laurel Park Stewards yet on February 9, 2023 the Stewards voided the claim and ordered that the claim monies be refunded.

D. There was no violation of any relevant safety law, safety regulation, drug law or drug regulation.

#### REQUEST FOR EVIDENTIARY HEARING

Pursuant to 16 CFR 1.146(a)(1), Appellant requests an evidentiary hearing. Appellant requests a hearing to contest the Final Civil Sanction, to contest the facts, and to contest the

interpretation of law that formed the basis for the imposition of the Sanction. In particular the Appellant contends the Appellee did not meet its burden that the Appellant violated any relevant safety law, safety regulation, drug law or drug regulation.

Moreover the Appellant intends to present evidence that the Appellant was prejudiced by the multiple delays set forth in paragraph C herein which permitted the new owners to run the horse and have her pass away while in their care. Moreover Mr. Parram was asked whether he would waive his right to a split sample at the hearing on January 8, 2023 (which he did) while unaware that a third hearing would be taking place on February 4, 2023 with the possibility of additional sanctions.

#### REQUEST FOR STAY

Appellant requests a stay of the Final Decision and Consequences during the pendency of the Administrative Law Judge's review. A stay is necessary and fair because if the stay is not granted and the Maryland Racing Commission deducts the claim price from the Appellant's Maryland Purse account, the account will go negative and any earnings of Mr. Parram will go to replace the claim price being deducted from Mr. Parram's purse account. Mr. Parram would suffer irreparable harm should the stay not be granted, there is little harm to others should the stay be granted, the argument of the Appellant has merit, there is a likelihood of success on appeal, and the stay is in the public interest to have a final decision prior to the imposition of any sanction.

/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  
CPF 8212010181  
[Richard@richardhackerman.com](mailto:Richard@richardhackerman.com)

**CERTIFICATE OF SERVICE**

A copy of the forgoing is being served this 21<sup>ST</sup> day of December 2023, via First Class mail and email upon the following:

John Forgy, Esquire  
Attorney for HISA  
830 Vermillion Peak Pass  
Lexington, KY 40515  
[johnforgy1@gmail.com](mailto: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](mailto:oalj@ftc.gov) and [electronicfilings@ftc.gov](mailto:electronicfilings@ftc.gov))

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

Bryan H. Bauman, Esq.  
via email to: [bbauman@sturgillturner.com](mailto:bbauman@sturgillturner.com)  
Sturgill, Turner, Barker & Moloney, PLLC  
333 W. Vine Street, Suite 1500  
Lexington, KY 40507-1681

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

Walter Vierser, II  
[walt.vieser@redarchsolutions.com](mailto:walt.vieser@redarchsolutions.com)

Louis Ulman, Esquire  
[ulmanlouis@gmail.com](mailto:ulmanlouis@gmail.com)

  
/s/ Richard J. Hackerman

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

**HORSERACING INTEGRITY AND SAFETY AUTHORITY  
ACTION NO. 2023-00124**

IN RE: APPEAL OF DERRICK PARRAM

APPELLANT

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**DECISION ON APPEAL**

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This matter arises under the jurisdiction of the Horseracing Integrity and Safety Authority (the "Authority"), established pursuant to the Horseracing Integrity and Safety Act (the "Act") at 15 U.S.C. § 3051, *et seq.*

Appellant Derrick Parram raced GIRLS LOVE ME in a claiming race at Laurel Park on December 9, 2023. The horse was claimed by Louis J. Ulman and Walter Vieser, II. On January 6, 2023, the Laurel Park stewards received notice from Industrial Laboratories that the analysis of a post-race blood sample taken from GIRLS LOVE ME after the race confirmed the presence of Dexamethasone and Trichlormethiazide in the horse's blood on the day of the race. On January 8, 2023, the stewards conducted a hearing concerning the laboratory findings. Appellant attended the hearing. At the conclusion of the hearing, the stewards issued a ruling disqualifying GIRLS LOVE ME from the race and redistributing the purse pursuant to Maryland rules of racing (COMAR 09.10.03.04.). The stewards at this time inadvertently failed to address and implement the terms of HISA Rule 2262(c)(5), which requires that a claim be voided if a Covered Horse has a positive test for a Prohibited Substance.

GIRLS LOVE ME underwent surgery for a knee injury on January 20, 2023. While recuperating from the surgery, GIRLS LOVE ME developed colic and died on January 29, 2023. On or about February 1, 2023, Mr. Ulman's trainer, Dale Capuano, contacted the Laurel Park stewards by telephone to request that the claim be voided, pursuant to HISA Rule 2262. The stewards, now alerted to the oversight, conducted a hearing with Appellant on February 4, 2023, regarding the claim. On February 9, 2023, the stewards issued a ruling citing Appellant Parram for violation of Rule 2262(c)(5), voiding the claim of GIRLS LOVE ME, and ordering that all monies pertaining to the claim be refunded. Pursuant to Rule 8350, Appellant appealed the ruling to the Board for review.

The Board convened a hearing to consider Appellant's appeal remotely via Zoom on Wednesday, October 4, 2023, at 9:30 AM EDT. Attorneys Bryan H. Beauman and Rebecca C. Price appeared as counsel for the Authority. Appellant was served with notice of the hearing on September 13, 2023, by email, and Appellant was represented by Attorney Richard Hackerman, who appeared on his behalf. Additionally, Mr. Lou Ulman, claimant, appeared before the Board at the hearing without representation.

At the hearing, the Board heard argument from Mr. Hackerman, HISA attorney Bryan Beauman, and Mr. Ulman. The Board then directed the parties to submit written briefs on two legal issues:

1. Whether the term "Prohibited Substance" in Rule 2262(c)(5) applies only to Prohibited Substances as defined in the Authority's rules, or if the term also refers to relevant state law;

2. Whether the delay in voiding the claim affected the validity of the stewards' ruling voiding the claim.

The facts relevant to this appeal are not in dispute, and therefore the resolution of Appellant's case turns instead on the legal issues. The Board's rulings on these issues are set forth in turn.

**1. The term "Prohibited Substance" as set forth in HISA Rule 2262(c)(5) was properly defined by Maryland law at the time of the race.**

The Act establishes the Authority and charges the Authority with establishing, implementing, and enforcing an anti-doping and medication control program and a racetrack safety program applicable to all thoroughbred racing participants. To fulfill this mission, the Act directs the Authority to promulgate a uniform set of rules for these programs, to be administered nationally. The Authority developed the Racetrack Safety Program to regulate a range of racing safety matters. The Federal Trade Commission (the "Commission") approved the rules for the Racetrack Safety Program on March 3, 2022, and the rules went into effect on July 1, 2022. The Authority subsequently created the Anti-Doping and Medication Control ("ADMC") Program to regulate controlled medications and illicit banned substances administered to Covered Racehorses. The Commission approved the rules for the ADMC Program on March 27, 2023, and these rules became effective on May 22, 2023.

In specifying the extent of the Authority's jurisdiction over racing, the Act addresses federal preemption of state law as follows: "The rules of the Authority promulgated in accordance with this chapter shall preempt any provision of State law or regulation with respect to matters within the jurisdiction of the Authority under



this chapter, as limited by subsection (j). Nothing contained in this chapter shall be construed to limit the authority of the Commission under any other provision of law.” 15 U.S.C § 3054(b). The Authority provided further detail concerning preemption of state law in Guidance filed with the Commission on March 14, 2022: “Accordingly, 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.” See Guidance of the Authority filed March 14, 2022.

Rule 2262, Void Claim, is part of the Rule 2000 Racetrack Safety Program and governs the voiding of claims in claiming races. The rule states in part, “A claim shall be voided, and ownership of the Horse retained by the original Owner if...the Horse has a positive test for a **Prohibited Substance**.” Rule 2262(c)(5) (emphasis added). Rule 2010 (“Definitions”) defines a Prohibited Substance as “any substance, or class of substances, so described on the Prohibited List.” The Prohibited List, codified in the ADMC Rule 4000 Series, was not yet in effect at the time of the race.

Rule 2262(c)(5) requires the stewards to void a claim if a horse tests positive for a Prohibited Substance. The rule is mandatory and not discretionary. See Rule 2262(c)(5). Because the Authority had not yet promulgated the Prohibited List detailing the substances that would be classified as prohibited under the ADMC program, HISA had not yet preempted Maryland’s regulation of prohibited substances in thoroughbred racing. Therefore, Maryland regulations applied. Only when the ADMC Program went into effect on May 22, 2023, did the Authority’s rules

preempt the states' regulation of specific prohibited substances in thoroughbred racing.

At the time of the race, Maryland regulations addressed prohibited substances. The Code of Maryland Regulations ("COMAR") in COMAR 09.10.03.04 ("Drug Prohibition – Horses") makes clear in Section B that "a horse participating in a race may not carry in its body... a drug[.]" There is no dispute that GIRLS LOVE ME tested positive for Dexamethasone and Trichlormethiazide which Maryland law defines and penalizes as prohibited drugs. *See* COMAR 09.10.03.01.B(2)(c) and 09.10.03.04.C. GIRLS LOVE ME tested positive for the prohibited substances Dexamethasone and Trichlormethiazide in violation of the Maryland rules of racing.

To hold that Maryland regulations did not specify those substances prohibited in Maryland prior to implementation of the ADMC Program would mean that Rule 2262 had no legal effect until the Prohibited List became effective on May 22, 2023. Such a result does not comport with the intent of Congress to establish and effectively regulate a program ensuring a safe and fair environment for all thoroughbred racing participants. The void claim rule, as part of that program, is a crucial guarantor of horse safety that penalizes the running of a Covered Horse with prohibited substances in its system.

Applying Rule 2262(c)(5) as supplemented by Maryland's prohibited substance regulations, the Board holds that Laurel Park stewards properly voided the claim of GIRLS LOVE ME.

## **2. The Stewards' delay in voiding the claim did not affect the validity of the ruling.**

Appellant argues that because the stewards did not address the voided claim rule violation in the first hearing on January 8, 2023, the stewards were precluded from conducting a second hearing on the matter and issuing a ruling voiding the claim. Neither the rules of the Authority or the Maryland racing regulations support this conclusion. The Laurel Park stewards held two hearings on two distinct issues: a Maryland state regulation violation concerning prohibited substances, and a HISA Rule 2262 violation resulting in the voided claim. Though the violations of Maryland and HISA regulations arise from GIRLS LOVE ME's positive test for Dexamethasone and Trichlormethiazide, the violations for which the stewards cited the Appellant were distinct. The first ruling, which disqualified GIRLS LOVE ME from the Race on January 8, 2023, was based upon a Maryland rule of racing (COMAR 09.10.03.04) that provides for disqualification of a horse from a race due to a positive drug finding. The second hearing was held to adjudicate the voiding of the claim based on a violation of the HISA 2262 void claim rule. The ruling issued after that hearing cites HISA Rule 2262 and does not reference the Maryland drug prohibition rules underlying the stewards' previous disqualification of the horse. The hearings and rulings dealt with different violations arising from the same positive test.

The HISA rules do not require stewards to hold hearings on state and HISA violations simultaneously. Further, the weighty considerations embodied in the principles of res judicata and collateral estoppel, which bar the re-litigation of claims and issues in multiple lawsuits and complex administrative cases, are not properly

applicable to the comparatively simple matter of imposing sanctions in two successive stewards' hearings to cure an oversight in the first hearing. Neither does this case invoke double jeopardy considerations, as would be the case if multiple and repetitive sanctions for the violation of a single rule were imposed upon on Appellant. In this case, separate sanctions were properly imposed for the violation of two separate rules.

Appellant argues that the doctrine of laches precludes the voiding of the claim. As cited by Appellant, laches “applies when there is an unreasonable delay in the assertion of one’s rights and that delay results in prejudice to the opposing party.” Liddy v. Lamone, 919 A.2d 1276, 398 Md. 233 (2007). Appellant asserts that the 27-day period which transpired pending the completion of the laboratory post-race testing analysis was unreasonable. Invoking the doctrine of equitable estoppel, Appellant similarly maintains that he was placed by the conduct of the parties in the “untenable position of being forced to buy back a deceased horse though he shares no blame for the time-consuming drug testing process nor the running and caring for Girls Love Me by Mr. Ulman, et. al.” See Appellant’s Brief at age 5. The rules applicable to this case did not impose a time limit on the completion of the analysis, and the Board takes judicial notice that the 27-day period was not an unreasonably long period when measured against industry standards. It was not “prejudicial” to Appellant that the claim was voided as a consequence of the positive test for prohibited substances; put simply, the claim was voided pursuant to proper application of Rule 2262. Further, it is a well-established principle that persons who request equitable relief “must come with clean hands.” Precision Instrument Mfg. Co.

v. Automotive Maintenance Machinery Co., 324 U.S. 806, 65 S.Ct. 993, 89 L.Ed. 1381 (1945). In accordance with this principle, and given the specific facts and circumstances of this case, the Appellant's prohibited substance violation precludes him from obtaining equitable relief.

Appellant argues that Mr. Capuano failed to lodge a timely written objection concerning the failure to void the claim; this failure, according to Appellant, precludes the stewards from taking action to void the claim. Appellant misunderstands the nature of an objection. State racing rules typically do require that objections to certain matters pertinent to a race be raised in writing and within a specified time. Such matters include, for example, a contention that a horse or jockey is ineligible to run in a race, a misstatement or omission in the entry information under which a horse is to run, or a foul that occurs during the running of the race. Such matters are often required to be brought to the attention of the stewards promptly and in writing to allow the stewards to investigate and determine the facts of the matter within a reasonable time. In this appeal, however, no factual matter required investigation. Instead, the stewards merely imposed a penalty pursuant to established rules after discovering a previous oversight. The stewards may properly rectify an oversight regardless of how or in what form the matter comes to their attention.

The Board holds that the delay in voiding the claim after the disqualification of the horse from the race did not violate the Appellant's legal or equitable rights or invalidate the stewards' ruling voiding the claim. The stewards addressed an oversight and followed the mandate of Rule 2262(b)(5), voiding the claim based upon

a positive test for a Prohibited Substance. No improper or unfair penalty was imposed upon Appellant.

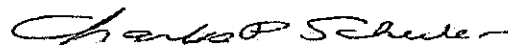
The standard of review is set forth in Rule 8350(f): “Upon review of the decision which is the subject of the appeal, the Board shall uphold the decision unless it is clearly erroneous or not supported by the evidence or applicable law.” The Board finds that the stewards’ ruling in this case is not clearly erroneous and is supported by the evidence and applicable law. The Board therefore **AFFIRMS** the stewards’ ruling voiding the claim.

This decision is the final decision of the Authority pursuant to 5 U.S.C. § 3058.

### **APPEAL RIGHTS**

Pursuant to 15 U.S.C. § 3058(b), an Appellant may appeal the civil sanction imposed by this decision to the Federal Trade Commission within 30 days of the Authority’s submission to the Federal Trade Commission of notice of the civil sanction. The Authority will provide notice of this decision to the Federal Trade Commission on the date that this decision is issued to the Appellant.

So **ORDERED** this 14th day of December, 2023.



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Charles P. Scheeler  
Chair, Board of Directors

## CERTIFICATE OF ISSUANCE

Undersigned enforcement counsel certifies that on December 14, 2023, this

Decision on Appeal was issued via email and first-class mail to:

Richard Hackerman  
[richard@richardhackerman.com](mailto:richard@richardhackerman.com)  
3635 Old Court Road, Suite 208  
Baltimore, Maryland 21208

Lou Ulman  
[ulmanlouis@gmail.com](mailto:ulmanlouis@gmail.com)  
10201 Wincopin Cir,  
Columbia, MD 21044

Bryan Beauman  
Rebecca Price  
[bbeauman@sturgillturner.com](mailto:bbeauman@sturgillturner.com)  
[rprice@sturgillturner.com](mailto:rprice@sturgillturner.com)  
333 West Vine Street, Suite 1500  
Lexington, Kentucky 40507

/s/ John Forgy  
John L. Forgy  
Counsel to HISA  
830 Vermillion Peak Pass  
Lexington, KY 40515  
(859)-940-1215  
Email: [johnforgy1@gmail.com](mailto:johnforgy1@gmail.com)

**NOTICE TO FEDERAL TRADE COMMISSION OF FINAL CIVIL SANCTION IMPOSED BY THE HORSERACING INTEGRITY AND SAFETY AUTHORITY UNDER 15 U.S.C. § 3057(d)**

Pursuant to 15 U.S.C. § 3058, this document shall constitute notice of a final civil sanction imposed under 15 U.S.C. § 3057(d) by the Horseracing Integrity and Safety Authority (“HISA”) on the following Covered Persons resulting from a violation of a HISA rule:

Covered Person(s)/Appellant(s)	Action Number	Rule(s) Violated	Final Civil Sanction
Derrick Parram	2023-00124	HISA Rule 2262(c)(5)	HISA Decision on Appeal affirming stewards ruling which voided the claim of GIRLS LOVE ME due to a positive test for a Prohibited Substance

Contact information for the HISA employee responsible for communications regarding review of the civil sanction is:

John Forgy  
 Counsel to HISA  
 830 Vermillion Peak Pass  
 Lexington, KY 40515  
 (859)-940-1215  
[johnforgy1@gmail.com](mailto:johnforgy1@gmail.com)



**Proof of Service**

I hereby certify that on December 14, 2023, pursuant to Federal Trade Commission Rule of Practice §4.4(d), I transmitted this HISA Civil Sanction Notice via email to Mr. Richard Hackerman, counsel for Derrick Parram, at the email address [richard@richardhackerman.com](mailto:richard@richardhackerman.com).

John L. Forgy  
Counsel to HISA  
830 Vermillion Peak Pass  
Lexington, KY 40515  
(859)-940-1215  
Email: [johnforgy1@gmail.com](mailto:johnforgy1@gmail.com)

/s/ John Forgy\_\_\_\_\_

John L. Forgy  
Counsel to HISA