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**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

IN THE MATTER OF:
DERRICK PARRAM, APPELLANT

HISA ACTION NO.: 2023-00124

DOCKET 9424

APPELLANT'S BRIEF

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

ISSUES

1. Whether HISA's attempted enforcement of Maryland's equine medication rules violates its mandate for uniform application of only federal law?
2. Whether HISA's enforcement of Appellant's purported state law medication violations are barred by a myriad of delays, due process considerations, assumption of risk, res judicata, collateral estoppel, statutes of limitation, election of remedies and impossibility.

PROPOSED FINDING OF FACTS

Derrick Parram is a thoroughbred owner and trainer based out of Laurel Park in Maryland. (Transcript 36-37).

Mr. Parram's racehorse known as "Girls Love Me" was entered in a claiming race on December 9, 2022. The horse ran second that day and was claimed by Messrs. Ulman and Vieser, who took all right, title and interest to the horse. (Tab 5-Stipulation).

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The claim price for the horse was \$12,500.00. (Transcript 38).

Mr. Ulman is an attorney and former member and chairman of the Maryland Racing Commission. (Mr. Ulman's verbal statement at the October 4, 2023 HISA hearing and testimony of Derrick Parram. (Transcript p.39).

The horse ran in the 6th race on December 31, 2022 for her new owners. (Tab 5-Stipulation).

On January 6, 2023 the Maryland Stewards were notified that Girls Love Me tested positive for dexamethason and trichlormethiazide with respect to the December 9, 2022 race. (Tab 5-Stipulation).

On January 8, 2023 Appellant was summoned over the loud speaker system at Laurel Park to immediately appear at two hearings before the Maryland Stewards. He was advised Girls Love Me purportedly tested positive for dexamethasone and trichlormethiazide during the December 9, 2022 race. Mr. Parram was not advised he could or would later be charged for a violation of HISA rule 2262 (c)(5) or any other HISA rule. Mr. Parram was advised two blood samples were taken and that he had a right to have the other sample tested. Under Maryland law Appellant would have to bear the cost of testing the second sample. Mr. Parram waived his right to a split sample. (Transcript 39 -44 and Tab 5-Stipulation, Stewards Ruling dated January 8, 2023).

At the conclusion of the first hearing (Hearing 1) Mr. Parram was found to be in violation of the Code of Maryland Regulations ("COMAR") Section 09.10.03.04 as a result of the alleged finding of dexamethasone and trichlormethiazide in the system of Girls Love Me on December 9, 2023. Girls Love Me was placed last and the \$6,500,00 purse money received by Appellant was forfeited and the purse redistributed accordingly. (Tab 5-Stipulation and Transcript 38).

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A second hearing (Hearing 2) was held immediately thereafter. Mr. Parram was assigned One (1) point under the Multiple Medication Violation Point system. (Tab 5-Stipulation).

On January 20, 2023 Girls Love Me had surgery . (Tab 5-Stipulation).

On January 29, 2023 the horse passed away. Neither the horse's injury or death are related to the care, training or alleged positive result while the horse was in the care of Mr. Parram. (Tab 5-Stipulation).

On February 1, 2023 the trainer for Messrs. Ulman and Vieser contacted the stewards via telephone to protest the claim. (Tab 5-Stipulation)

Mr. Parram was notified to appear at third hearing (Hearing 3). The hearing was conducted on February 4, 2023 in connection HISA Rule 2262(c)(5). He was not advised of his right to a split sample. He would have requested a split sample at the first hearing had he known of the possibility of the additional consequences which he is now facing. (Transcript 41-43 and Tab 5-Stipulation).

On February 9, 2023 the Stewards voided the claim and ordered a refund of the claim monies to Messrs. Ulman and Vieser. (Tab 5-Stipulation).

BURDEN OF PROOF

The burden of proof is on HISA to show, by a preponderance of the evidence, that the covered person has violated a rule issued by the Authority. 16.CFR 1.146 (c)(6)(I).

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STANDARD OF REVIEW

Pursuant to 15 U.S.C. § 3058(b)(1), a HISA civil sanction is subject to de novo review by an Administrative Law Judge of the FTC. The ALJ “shall determine whether – (i) a person has engaged in such acts or practices, or has omitted such acts or practices, as the Authority has found the person to have engaged in or omitted; (ii) such acts, practices, or omissions are in violation of this Act [15 USCS §§ 3051 et seq.] or the anti-doping and medication control or racetrack safety rules approved by the Commission; or (iii) the final civil sanction of the Authority was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 15 U.S.C. § 3058(b)(2)

ARGUMENT

I. HISA’S attempted enforcement of Maryland’s equine medication rules violates its mandate for uniform application of only uniform federal law.

The legislative history of the Horseracing Integrity and Safety Act, also referred to herein as “HISA”, is set forth in House bill H.R. 1754, received in the U.S. Senate on September 30, 2020 provides the purpose of HISA is:

“To improve the integrity and safety of horseracing by requiring a uniform anti-doping and medication control program to be developed and enforced by an independent Horseracing Anti-Doping and Medication Control Authority”.

The Horseracing Integrity and Safety Act, 11 USC 15 USC 3050 was signed into law on December 27, 2020. HISA’s Racetrack Safety Program took effect July 1, 2022. Its Prohibited Anti- Doping and Medication Control Program took effect May 22, 2023.

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HISA's mission and regulations are found on its website. It provides on page 1:
"Overseeing national uniform integrity and safety rules for Thoroughbred racing in the U.S."

On page 2: "Our Mission

HISA was created to implement, for the first time, a national, uniform set of integrity and safety rules that are applied consistently to every Thoroughbred racing participant and racetrack facility."

The Background and Purpose of HISA published in the request for public comment in the Federal Register, Volume 87, No 95 Page 29862 on May 17, 2022 and in Federal Register, Volume 88, No 17 Page 5070 on January 26, 2023 states: "The Horseracing Integrity and Safety Act of 2020 ("Act") recognizes that the establishment of a national set of uniform standards for racetrack safety and medication control will enhance the safety and integrity of horseracing."

15 USC 3052 provides:

"a) In general

The private, independent, self-regulatory, nonprofit corporation, to be known as the "Horseracing Integrity and Safety Authority", is recognized for purposes of developing and implementing a horseracing anti-doping and medication control program and a racetrack safety program for covered horses, covered persons, and covered horseraces.

15 USC 3051((4) through (7) defines covered horses, covered horseraces, covered person and equine constituencies very broadly, i.e, virtually anyone and any horses participating in horse racing in the United States.

HISA Rule 3010 (a) provides:

"The Horseracing Integrity and Safety Act of 2020 ("Act") mandates and empowers the Horseracing Integrity and Safety Authority ("Authority") to establish a uniform anti-doping and controlled medication program to improve the integrity and safety of horseracing in the United States ("Program")."

In short the safety and drug rules are supposed to be uniformly applied across the United

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States. Maryland drug rules are not relevant.

15 USC 3053 provides: “Federal Trade Commission oversight

(a) In general

The Authority shall submit to the Commission, in accordance with such rules as the Commission may prescribe under section 553 of title 5, any proposed rule, or proposed modification to a rule, of the Authority relating to—

....

(2) a list of permitted and prohibited medications, substances, and methods, including allowable limits of permitted medications, substances, and methods; ...

(5) racetrack safety standards and protocols;

Similarly 15 USC 3056(a)(1) provides:

(a) Establishment and considerations

(1) In general

Not later than the program effective date, and after notice and an opportunity for public comment in accordance with section 3053 of this title, the Authority shall establish a racetrack safety program applicable to all covered horses, covered persons, and covered horseraces in accordance with the registration of covered persons under section 3054(d) of this title.

The Maryland Equine Drug Rules have never been noticed, nor has there been an opportunity for public comment nor have same been approved by the Federal Trade Commission.

15 USC 3054 provides for uniform implementation of the safety and anti-doping rules, and that the program shall be enforced prospectively beginning on the program effective date. It also states these rules are subject to the approval of the Commission.

(2) Approval of Commission

Similarly 15 USC 3055(a)(1) provides that: (a) Program required

(1) In general

Not later than the program effective date, and after notice and an opportunity for public comment in accordance with section 3053 of this title, the Authority shall establish a horseracing anti-doping and medication control program applicable to all covered horses, covered persons, and covered horseraces in accordance with the registration of covered persons under section 3054(d) of this title.

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Likewise 15 USC 3056(a)(1) provides:

(a) Establishment and considerations

(1) In general

Not later than the program effective date, and after notice and an opportunity for public comment in accordance with section 3053 of this title, the Authority shall establish a racetrack safety program applicable to all covered horses, covered persons, and covered horseraces in accordance with the registration of covered persons under section 3054(d) of this title.

There is nothing in the enacting legislation for HISA that provides Congress granted authority to HISA to enforce a purported Maryland drug violation, or as will be shown below, only a portion of relevant Maryland Laws. Nor does the law permit HISA enforcement of any state law. HISA was to submit for approval safety rules and medication rules that would be applicable in all jurisdictions in this country. HISA did not submit for public comment or approval to the Federal Trade Commission the Maryland equine medication rules.

Moreover HISA may not rely on state law to enforce its own laws when the determination of a violation could be different, not because of the outcome of the test, but because of the state law drug prohibitions or medication thresholds in the state where the race took place.

The term “Prohibited Substance” referred to in Rule 2262(c)(5) applies only to Prohibited Substances as defined in the Authority’s rules and not state law.

The rule HISA is alleging was violated is Rule 2262, which provides:

“(c) The claim shall be voided, and ownership of the Horse retained by the original Owner if: (5) the Horse has a positive test for a Prohibited Substance.”

The term “Prohibited Substance” is defined by HISA rules only. Rule 3010 provides:

“(k) Unless specified otherwise, words and terms in the Protocol that are capitalized are defined terms that have the

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meaning given to them in Rule 1020.” As the term “Prohibited Substance” is capitalized, it is a defined term as set forth in Rule 1020. Therefore only substances prohibited by HISA rules in effect at the Federal Level at the time of the purported violation may be considered.

To emphasize the point, Rule 1010(f) of the Rules of Interpretation provides: “any term defined in this Rule 1000 Series shall supersede the definition of that term in the Rule 2000 Series.” Even if there was another definition of Prohibited Substance set forth in the Rule 2000 series, which there is not, only the definition rules of Rule 1020 apply.

Rule 1020 sets forth the following definitions:

“Prohibited List means the list identifying Prohibited Substances and Prohibited Methods set forth in the Rule 4000 Series. Prohibited Method means any method so described on the Prohibited List. Prohibited Substance means any substance or class of substances so described on the Prohibited List or the Technical Document—Prohibited Substances. Protocol means the Rule 3000 Series (Equine Anti-Doping and Controlled Medication Protocol), as amended from time to time.”

The notice in the Federal Register, Vol. 88, No. 17, January 26, 2023, page 5076 provides:

“c. Terms of Substance: Rule Series 1000—General Provisions

The Protocol and other Series are supported by the general rules of interpretation (Rule 1010) and a list of defined terms (Rule 1020) to assist with clarity of meaning.

d. Terms of Substance: Rule Series 4000—Prohibited List As directed by sections 3053 and 3055 of the Act, the Authority has developed a list of permitted and prohibited medications, substances, and methods ...”

Page 5077 of the notice provides:

“In preparing the Prohibited List and the “Technical Document—Prohibited Substances,” the Authority considered lists of prohibited substances and methods published by other organizations including the ARCI, World Anti-Doping Agency (“WADA”), the FEI, and the British Horseracing Association. Documents considered in preparing the Prohibited List are exhibited below:

Exhibit B.7. IFHA International
Screening Limits for urine.

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Exhibit B.8. IFHA International
Screening Limits for plasma.

Exhibit B.9. ARCI Uniform
Classification Guidelines for Foreign
Substances and Recommended
Penalties Model Rule.

Exhibit B.10. WADA 2022 Prohibited
List.

Exhibit B.11. 2022 FEI Equine
Prohibited Substances List.

Exhibit B.12. British Horseracing
Association Equine Prohibited List
Code (2022).

Exhibit B.13. British Horseracing
Association Published Detection
Times (June 2019).

Exhibit B.14. Hong Kong Jockey Club
Medication and Prohibited
Substances....”

Conspicuous by its absence is any submission compiled by the State of Maryland.

Rule 4001 provides “Purpose In accordance with Rule 3111, the Prohibited List identifies substances and methods that are prohibited at all times (Banned Substances and Banned Methods) and those that are prohibited for Use or Administration in relation to a Covered Horse during the Race Period and prohibited to be present in a Post-Race Sample or Post-Work Sample, except as otherwise specified in the Prohibited List (Controlled Medication Substances and Controlled Medication Methods). ... The Prohibited List is supplemented by the “Technical Document – Prohibited Substances,” which provides guidance on the Prohibited Substances that fall into the general categories listed in the Prohibited List and on the Screening Limits, Thresholds, or Detection Times ...”

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Rule 3110 explains the Prohibited Substances, Prohibited Methods and Prohibited List. Of note the first letter of each word in that rule is capitalized and there is no reference to Maryland Law or any other state's law.

The enacting legislation of HISA, USC Title 15, CH57A, Section 3054(k) provides:

“ Limitations on authority

(1) Prospective application

The jurisdiction and authority of the Authority and the Commission with respect to the horseracing anti-doping and medication control program and the racetrack safety program shall be prospective only.

(2) Previous matters

(A) In general The Authority and the Commission may not investigate, prosecute, adjudicate, or penalize conduct in violation of the horseracing anti-doping and medication control program and the racetrack safety program that occurs before the program effective date.

(B) State racing commission With respect to conduct described in subparagraph (A), the applicable State racing commission shall retain authority until the final resolution of the matter.”

HISA regulations have transitional Provisions established to prevent issues such as the one that exists in the instant case. Rule 3080(a) provides:

“The Protocol shall not apply retroactively to matters pending before the Program Effective Date.” Similarly 3080(d) provides that changes to the Prohibited List are not to be applied retroactively.

HISA also set a hard “Program Effective Date”, defined by HISA (Rule 1010) as “the date on which the Commission approves the proposed rule.”

Similarly Rule 3010(g) provides:

“The Protocol comes into force on the Program Effective Date and will apply in full as from that date. In accordance with section 3054(k)(1) of the Act, the Protocol only has prospective effect, i.e., it does not apply to, and does not give the Authority or Agency authority to investigate, prosecute, adjudicate, or penalize conduct that occurred before the Program Effective Date (Rule 3080).”

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Mr. Parram did not violate Rule 2262(c)(5) because he did not violate any HISA Prohibitions in effect on December 9, 2022. There is nothing in the rules that provides that the Maryland equine drug rules are to be used in interpreting Rule 2262. State equine drug rules vary nationally. The use of any state's laws, particularly a state's drug laws in interpreting Rule 2262 would inevitably lead to inconsistent results nationally which is what HISA was designed to prevent.

Additionally there is nothing in the record other than the Stewards ruling indicating the presence of substances in Girls Love Me which are illegal under any State or Federal Law. No certified drug analysis nor result of any kind is in evidence. There is no evidence of any Federal or Maryland medication violation.

2. HISA's enforcement of Appellant's purported state law medication violations are barred by a myriad of delays, due process considerations, assumption of risk, res judicata, collateral estoppel, statutes of limitation, election of remedies and impossibility.

The first part of HISA's jigsaw approach ignores virtually every mandate of HISA's enacting legislation and regulations when interpreting Rule 2262(c)(5). The second part of this approach ignores relevant state regulations which are part and parcel of Maryland's equine drug rules. Mr. Parram was found to have violated COMAR 09.10.03.04 as a result of an alleged finding of dexamethasone and trichlormethiazide in the system of Girls Love Me on December 9, 2023. On January 6, 2023 the Maryland Stewards were notified that Girls Love Me had tested positive for dexamethason and trichlormethiazide after the December 9, 2022 race. On January 8, 2023 Mr. Parram was sanctioned pursuant to Maryland law.

DELAY 1

After the horse's death, on February 1, 2023 the trainer for Mr. Ulman et al complained to

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the Stewards via telephone to protest the claim. He failed to properly protest in writing and was beyond the applicable deadline to protest.

The Code of Maryland Regulations (hereinafter "COMAR") Section. 09.10.01.35 A. provides:

"All objections shall be made to the stewards by the objector. Objections that are not claims of interference shall be in writing and signed by the objector." The objection by Mr. Capuano was not in writing nor signed. It was therefore invalid.

COMAR Section 09.10.01.35 I. provides:

"Grounds for Objections.

(1) Objections shall be received by the stewards within 48 hours, exclusive of Sundays, after the close of a race meeting, based on these grounds:

(a) Misstatement, omission, or error in the entry under which a horse has run; (b) That the horse which ran was not the horse he was represented to be at the time of entry, or that his age was erroneously given; (c) That he was not qualified under the conditions of the race; (d) That he was run without regard to the rules of partnership or registration.

(2) In all other cases, objections shall be received by the stewards within 48 hours, exclusive of scheduled dark days, of the incident in question."

The objection lodged by Mr. Capuano was not lodged within 48 hours of the incident in question as required by COMAR Section 09.10.01.35 I.(2). The objection was lodged 54 days after the day the horse was claimed, 26 days after the positive test result and 24 days after the Stewards Hearings and Rulings on January 8, 2023. Because the objection violated the applicable limitations period it may not be considered by the Stewards. The protest lodged by Mr. Capuano was because of a purported violation of a Maryland drug law, not a HISA Prohibited Substance rule. Therefore Maryland law applied to the processing of his protest.

To state the obvious, Mr. Capuano complained to the Stewards to shift the expense for the horse to Appellant after the horse had no value.

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As part of its jigsaw/cherry-picking approach of using one Maryland Regulation to support its prosecution, HISA ignores the other relevant state law regulations.

Similarly the stewards had the power to exclude the new owners from running the horse in the December 31, 2022 race pursuant to COMAR Section. 09.10.01.45 (BB). That Section provides:

“When the ownership of any horse entered in a race is in dispute, the stewards may not permit the horse to run in the race unless, and until, its ownership is definitely established to their satisfaction”.

If HISA rule 2262(c)(5) applied, the new owners should not have entered nor been permitted to enter Girls Love Me until the drug result from the race in which she was claimed was available. The stewards did not bar the running of the horse by Messrs. Ulman and Vieser because they owned the horse. The ownership of the horse is governed by state law.

COMAR 09.10.01.07 provides:

“G. If the stewards determine that a horse was improperly entered in a claiming race, they may:

- (1) Void a claim of the horse;
- (2) Order the claiming monies, including all taxes, refunded to the claimant through the Clerk of the Course, the horsemen's bookkeeper, or otherwise; and
- (3) Order the return of the horse to the original owner.

H. Except as provided in §H-1 or H-2 of this regulation, unless there is a violation of this regulation by the claimant, or the stewards determine that a horse was improperly entered:

- (1) The claim is irrevocable and the claimed horse becomes the property of the successful claimant from the time the horse is a starter; and
- (2) A purse earned in the race from which a horse is claimed is the property of the owner from whom the horse is claimed.

H-1. A claim shall be voided if a horse is a starter and the horse:

- (1) Dies on the racetrack; or
- (2) Suffers an injury which requires the euthanasia of the horse, as determined by a State veterinarian, while the horse is on the racetrack.

H-2. A claim is voidable at the sole discretion of the new owner, for a period of 1 hour after the race is made official, for any horse that:

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- (1) Is vanned off the track after the race at the discretion of the State Veterinarian; or
 - (2) Is sent to the detention barn and observed to be lame by the State Veterinarian.
- I. After the race has been run, the successful claimant shall present verification of the claim by the Racing Secretary to the person accompanying the claimed horse.
- J. A properly claimed horse shall be delivered to the successful claimant in the:
- (1) Paddock, immediately after the running of the race, if the horse is not subject to post-race testing; or
 - (2) Detention area, after the horse has undergone post-race testing, if the horse is subject to that testing.

The claim was not void, voided nor voidable under Maryland Law. The horse was delivered to her new owners. The claim was “irrevocable”. Girls Love Me became the property of Messrs. Ulman and Vieser immediately after the December 9, 2022 contest.

The new owners of the horse assumed the risks attendant with the entering, running and training a thoroughbred horse which risks include injury or death.

ASSUMPTION OF RISK

In most cases a void claim occurs immediately after a race. Once that short period passes, the assumption of risk of training and racing a thoroughbred falls to the current owner. The doctrine of assumption of risk rests upon an intentional and voluntary exposure to a known danger and, therefore, consent on the part of one party to relieve another party of an obligation of conduct toward him and to take his chances from harm from a particular risk. Rogers v. Frush, 257 Md. 233, 243 262 A. 2d 549 - Md: Court of Appeals (1970). The new owners voluntarily undertook the risk of owning, training and racing Girls Love Me.

Moreover if the stewards had not permitted the entry by Mr. Ulman, et al in the race on December 29, 2022 the injury may not have occurred and Mr. Parram would not find himself in a situation where the connections of a deceased horse are trying to force the repurchase of a deceased horse by the prior owner though the prior owner bears no responsibility for the unfortunate death of the horse.

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This situation is left totally unaddressed in the HISA safety rules. It is unaddressed under Maryland Law because under Maryland law this situation is impossible. Minnesota which has a law similar to HISA's however has addressed this with a sensible approach:

“Voidance of a claim is not an option if, after coming under the care, custody, and control of the claimant, the horse has already run for the claimant or has died.: [MN.Gov./rules/7883.0140](https://www.mn.gov/rules/7883.0140) Subp. 15 D.

DELAY 2

The delay in obtaining the drug result permitted the re-entry of Girls Love Me by her new owners. It took 28 days for the drug analysis to be received after the December 9, 2022 race which was a sufficient period of time for the new owners of Girls Love Me to enter and run her in the December 31, 2022 race at Laurel Park. The delay in obtaining the drug result was no fault of Mr. Parram. It was the fault of the Stewards, the Maryland Racing Commission, HISA, the laboratory that did the drug analysis or a combination of all. In the end this delay permitted the re-entry of the horse and the effort by Mr. Ulman et al to force Mr. Parram to take the horse back after her death.

HISA and their agents, the Maryland Stewards are guilty of laches. In Liddy v. Lamone, 919 A. 2d. 1276, 1284, 398 Md. 233 (2007) the Court opined that 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.

Had the drug result been promptly made available, and the Stewards immediately voided the claim, and if Rule 2262((c)(5) actually did apply which of course it does not, the horse would have been returned to Mr. Parram. Mr. Parram was prejudiced as result of the drug result delay though he bears no responsibility for the delay. The stewards and through them HISA bear the ultimate responsibility for equine drug testing. Mr. Ulman acknowledged the untenable delay in his verbal statement (at the Board hearing on October 4, 2023) when he suggested that HISA pay

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him and his partner as well as Mr. Parram as a result of the delay. Both Messrs. Ulman and Vieser, in their written filing to the Board urged HISA to make all parties whole and noted that “The Stewards are HISA agents under your agreement with the Maryland Racing Commission. Had they promptly voided the claim, this issue would not be before you.” (Tab 8. Statement of Louis Ulman and Walter Vieser, II).

Similarly the doctrine of equitable estoppel nullifies the void claim ruling.

“The basis of equitable estoppel is the effect of the conduct of one party on the position of the other party. See Travelers v. Nationwide, 244 Md. 401, 414, 224 A.2d 285, 293 (1966). The estopped party is therefore “absolutely precluded both at law and in equity, from asserting rights which might perhaps have otherwise existed... against another person, who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse and who on his part acquires some corresponding right, either of property, of contract, or of remedy.” Cunninghame v. Cunninghame, 364 Md. 266, 289, 772 A.2d 1188, 1201 (2001). The doctrine of equitable estoppel is properly invoked where the enforcement of the rights of one party would work an injustice upon the other party due to the latter's justifiable reliance upon the former's words or conduct. Kosakow v. New Rochelle Radiology Associates, PC, 274 F. 3d 706 - Court of Appeals, 2nd Circuit 2001.

The conduct of all parties involved in this case but Mr. Parram has placed Mr. Parram 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. These series of actions bar the stewards from voiding the claim pursuant to the doctrine of equitable estoppel.

DELAY 3

Another intolerable delay was the failure to bring the HISA void claim charge at Hearing 1 or even Hearing 2, both conducted on January 8, 2023.

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At Hearing 3 conducted on February 4, 2023 the void claim charge was first brought. 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 to decide and waived this right. When one makes a decision various factors are weighed including the cost which the Appellant would incur as set forth below, 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 repurchase a deceased horse.

COMAR, Section 09.10.03.09 provides:

“ H. Split Samples.

(1) The Commission, together with the applicable association representing a majority of the owners and trainers racing in Maryland, shall designate laboratories to which split samples of urine and blood may be sent for confirmatory testing.

(2) Within 72 hours of being notified of a determination by the Commission laboratory that the testing of the blood or urine sample evidences the presence of a drug, the owner or trainer of the horse in question may request that the split sample of urine or blood, or both, be forwarded to one of the designated laboratories for confirmatory testing.

(3) Upon a request for confirmatory testing, before the split sample is forwarded to the designated laboratory, the owner or trainer and a representative of the Commission shall execute an agreement that binds the owner or trainer and the Commission to the designated laboratory's findings. If the owner or trainer declines to execute the agreement, the split sample may not be forwarded to the designated laboratory for confirmatory testing.

(4) After testing the split sample, if the designated laboratory:

(a) Does not confirm substantially the Commission laboratory's findings, then any allegations that the drug in question was in the horse's system at the time of the race shall be dismissed; or

(b) Confirms substantially the Commission laboratory's findings, then the finding shall be considered conclusive.

(5) If, for whatever reason, confirmatory testing is not possible, §H(1)----(4) of this regulation is of no effect.

I. The owner or trainer requesting the confirmatory testing shall bear the costs of the confirmatory testing.”

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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 result was lost to Mr. Parram.

Hearings 1 and 2 were conducted on January 8, 2023 with the regard to the instant purported drug positive. COMAR Section 09.10.03.02 provides a multitude of potential sanctions available to the Stewards:

“In addition to a specific sanction applicable to a particular violation, an individual found by the:

A. Stewards or judges to have violated a provision of this chapter may be subject to:

(1) A fine of up to \$2,500; (2) The suspension of any license issued by the Commission for a period of up to 360 days; and (3) Referral to the Commission for additional sanctions if the stewards or judges determine that a greater sanction is warranted than they are empowered to impose; and

B. Commission to have violated a provision of this chapter may be subject to:

(1) A fine of up to \$5,000; (2) The suspension or revocation of any license issued by the Commission; and “

COMAR Section 09.10.01.45. provides for a variety of additional sanctions available to the Stewards, including:

”V. Violations.

(1) If the stewards find that an individual licensed by the Commission has violated a regulation of the Commission or has been involved in any improper turf practice, they may:

(a) Exclude the individual from the grounds, or any portion of the grounds, of the association conducting the meeting; (b) Exclude the individual from the grounds of any association under the jurisdiction of the Commission; (c) Suspend the license of the individual to act or ride for a period not exceeding 90 days; (d) Fine the individual not more than \$2,500; or (e) Impose any combination of the sanctions set forth in §V(1)(a)----(d) of this regulation.

(2) If the stewards consider that the violation merits sanctions beyond those permitted under §V(1) of this regulation, they shall promptly refer the matter to the Maryland Racing Commission, which shall institute proceedings against the individual as set forth under COMAR 09.10.04.05.

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(3) The stewards shall have the power to suspend the license of the individual pending action by the Commission.

(4) In determining the penalty to be imposed, the stewards shall consider the:

(a) Seriousness of the violation; (b) Harm caused by the violation; (c) Good faith or lack of good faith of the licensee; and (d) Licensing history of the licensee.

(5) A person licensed by the Commission who is fined, excluded from the grounds, or disciplined by the stewards may appeal to the Maryland Racing Commission from the stewards' ruling.

W. If any case occurs which is not, or which is alleged not to be, provided for by these rules, it shall be determined by the stewards in such manner as they think just and conformable to the usages of the turf.”

The void claim charge as well as an assortment of sanctions were available to the Stewards at Hearings 1 and 2. The Stewards determined which charges and sanctions to bring at Hearings 1 and 2. It is unlawful to add new charges and seek new sanctions after Hearings 1 and 2 took place and the rulings were final. As the void claim issue should have been raised and litigated at Hearings 1 and 2 which involved the same alleged positive result, due process and the doctrines of collateral estoppel, res judicata, laches, equitable estoppel and election of remedies bar the re-litigation of this issue.

DUE PROCESS

Due process requires that the procedures by which laws are applied must be evenhanded, so that individuals are not subjected to the arbitrary exercise of government power. Marchant v. Pennsylvania R.R., 153 U.S. 380, 386 (1894). Exactly what procedures are needed to satisfy due process, however, will vary depending on the circumstances and subject matter involved. Hagar v. Reclamation Dist., 111 U.S. 701, 708 (1884). In civil contexts, however, a balancing test is used that evaluates the government's chosen procedure with respect to the private interest affected, the risk of erroneous deprivation of that interest under the chosen procedure, and the government interest at stake. Mathews v. Eldridge, 424 U.S. 319, 335 (1976).

Mr. Parram was given just minutes notice of the first two hearings and several days for the third. He was given seconds to determine whether to waive the split sample. Weeks later he was

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unable to obtain a split sample or at the very least was not apprised whether this right was still available to him and/or if a second sample was still available. The process was flawed and should result in the reversal of the HISA decision.

COLLATERAL ESTOPPEL, RES JUDICATA, ELECTION OF REMEDIES AND LACHES

In Janes v. State, 350 Md. 284, 711 A.2d 1319 (1998), the Maryland Court of Appeals opined: Collateral estoppel, or issue preclusion, began life and retains life as a common law doctrine. A common and well-established articulation of the doctrine is that "[w]hen an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim." Murray International v. Graham, 315 Md. 543, 547, 555 A.2d 502, 504 (1989), quoting from RESTATEMENT (SECOND) OF JUDGMENTS, § 27 (1982). The functions of this doctrine, and the allied doctrine of res judicata, are to avoid the expense and vexation of multiple lawsuits, conserve judicial resources, and foster reliance on judicial action by minimizing the possibilities of inconsistent decisions. Graham, supra, 315 Md. at 547, 555 A.2d at 504, citing Montana v. United States, 440 U.S. 147, 153-54, 99 S.Ct. 970, 973-74, 59 L.Ed.2d 210, 217 (1979). *Id.* at 1325.

The Court in MPC, Inc. v. Kenny, 279 Md. 29, 367 A. 2d. 486 (1977) stated: "The delineation between res judicata and collateral estoppel was expressed in Sterling v. Local 438, 207 Md. 132, 140-41, 113 A.2d 389, cert. denied, 350 U.S. 875 (1955)."

"... If the second suit is between the same parties and is upon the same cause of action, a judgment in the earlier case on the merits is an absolute bar, not only as to all matters which were litigated in the earlier case, but as to all matters which could have been litigated [res judicata]. If, in a second suit between the same parties, even though the cause of action is different, any determination of fact, which was actually litigated in the first case, is conclusive in the second case [collateral estoppel]." In short a judgment between the same parties and their privies is a final bar

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to any other suit upon the same cause of action and is conclusive, not only as to all matters decided in the original suit, but also as to matters that could have been litigated in the original suit. Lockett v. West, 914 F.Supp. 1229 (D.Md.1995).

The doctrines of collateral estoppel and res judicata apply not just under Maryland Law but in Federal Administrative decisions. In Mervin v. FTC, 591 F. 2d 821 (1978), the Court ruled: “Principles of res judicata prevent relitigation not only on the grounds or theories actually advanced, but also on those which could have been advanced in the prior litigation”. Id at 830. Similarly the Supreme Court in United States v. Utah Constr. & Mining Co., 384 US 394 (1966) ruled “When an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply res judicata to enforce repose”. Id at 422.

The void claim charge brought late by the Stewards is also barred by the doctrine of election of remedies as it involves the same nucleus of facts. See Norma Guerra v Andrew Cuomo, Secretary, Department of Housing and Urban Development, 176 F. 3rd 547 (1999).

The Stewards/HISA are also guilty of laches in bringing the void claim charge. There was no reason justifiable reason for the delay. Mr. Parram lost his right to a split sample by the delay in bringing the void claim charge. Laches is an equitable defense that bars an action if the plaintiff was negligent or lacked diligence in asserting his rights, causing prejudice or injury to the defendant. Staley v. Staley, 251 Md. 701, 703, 248 A.2d 655, 657 (1968).

Similarly the doctrine of equitable estoppel bars the void claim charge due to the delay and the prejudice to Mr. Parram who relied on the fact that he would not face multiple hearings for one alleged drug positive.

Additionally the doctrine of impossibility applies to the voiding of the claim in this case. because of the unexpected occurrence of an intervening act, i.e, the death of the horse which

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makes the return of the horse impossible. Legal Information Institute. Cornell Law School.

Similarly The Maryland Commercial Law which governs the sale of goods provides:

“§ 2-613. Casualty to Identified Goods.

Where the contract requires for its performance goods identified when the contract is made and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer, or in a proper case under a “no arrival, no sale” term (§ 2-324) then

(a) If the loss is total the contract is avoided.

In this case because the horse passed under the care Messrs. Ulman and Vieser, the stewards mandate for voiding of the claim is not possible.

Void is defined by the Legal Information Institute, Cornell Law School, as “Having no legal effect from the start”. Voiding the claim is not possible as the horse can not be returned. Moreover under Maryland Law the claim was final moments after the December 9, 2022 race.

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.

A decision is arbitrary and capricious "if it is `without reason, unsupported by substantial evidence or erroneous as a matter of law.'" Abnathya v. Hoffmann-La Roche, Inc., 2 F.3d 40, 45 (3d Cir.1993). There was no discretion under HISA to ignore the plain language of the definition of Prohibited Substance which is required finding for a violation of Rule 2262(c)(5). The decision was not in accordance with applicable law.

First there is no evidence in the record of a Prohibited Substance violation. There is no certified result of the December 9, 2022 sample taken from Girls Love Me. There is no evidence of any violation of HISA’s Prohibited Substance Regulations.

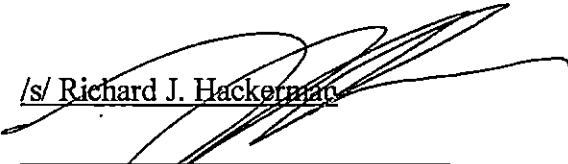
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Second the jigsaw approach by HISA is highlighted by its substitution of its void claim rule in place of Maryland's void claim rule, but by doing so, the void claim rule only applies to Prohibited Substance rules that had yet go into effect. Maryland's distinct drug rules have state law consequences-not Federal consequences. To rule otherwise would mean that had this purported violation of Maryland law occurred in a state where the medications at issue are not banned or where these substances had come back under a permitted threshold this same set of facts would not constitute a violation. Such a possibility contravenes HISA's mandate for uniformity across the United States. Additionally Maryland's equine rules have not been approved by the Federal Trade Commission. Constitutional guarantees of fairness, due process and deeply enshrined doctrines of res judicata, estoppel, statutes of limitation, election of remedies and impossibility mandate the reversal of the HISA decision.

PROPOSED CONCLUSIONS OF 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. Therefore the decision finding a violation of HISA Rule 2262(c)(5) was not in accordance with law.

The decision by HISA dated December 14, 2023 should be reversed.


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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 2nd day of April, 2024, via First Class mail and/or email upon the following:

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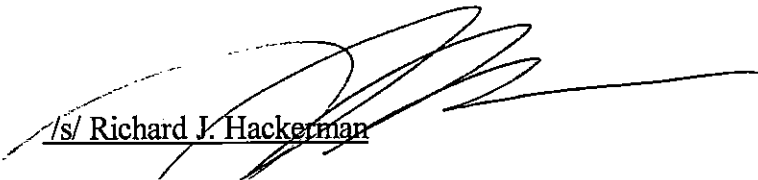
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