UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
DOCKET NO. D-9432

ADMINISTRATIVE LAW JUDGE: ____________

IN THE MATTER OF:

CHRIS ALLEN HARTMAN **APPELLANT**

AUTHORITY'S RESPONSE TO APPELLANT'S APPLICATION FOR REVIEW

NOW COMES the Horseracing Integrity and Safety Authority ("**HISA**") pursuant to 16 CFR 1.146 and submits the following Response to Appellant's Application for Review.

On June 3, 2024, IAP Member Edward Weiss ("**IAP**") issued a decision finding that Appellant violated Rule 3312 of HISA's Anti-Doping and Medication Control Program ("**ADMC Program**") for the presence of 2-1(Hydroxyethyl) Promazine Sulfoxide ("**HEPS**") (a metabolite of Acepromazine, which is a Class B, Non-Threshold Controlled Medication on the Prohibited List) above the Screening Limit[1] of 10 ng/mL in his Covered Horse's Post-Race urine sample on June 18, 2023, and imposed reasonable Sanctions on that basis. On June 7, 2024, Appellant appealed the Decision, challenging both the IAP's determination that Appellant violated the ADMC Program as well as the Sanctions.

Appellant's appeal must be dismissed because (1) HIWU successfully met its burden to establish a Rule 3312 Controlled Medication Rule Violation ("**CMRV**") against Appellant, (2) none of the alleged departures or errors have any merit or negate his CMRV, and (3) the Consequences were proportionate.

[1] Appellant's attempt to classify HEPS as a Threshold Substance because it has a Screening Limit of 10 ng/mL is an incorrect reading of the ADMC Program.

I. HIWU Has Established a Rule 3312 CMRV

Based on the record, HIWU has established a Rule 3312 CMRV[2] against Appellant for the presence of HEPS in his Covered Horse's Post-Race sample above the Screening Limit of 10 ng/mL:

- Dr. Scott Stanley (the director of the UK Laboratory) and Michael Hedge (a UK Laboratory scientist who handled Appellant's Covered Horse's Sample during laboratory analysis) both credibly testified that the UK Laboratory successfully detected HEPS in Appellant's Covered Horse's A Sample at a concentration above the Screening Limit and there were no chain of custody issues that jeopardized the integrity of the sample or called into question whether Appellant's Covered Horse provided the Sample;
- Appellant could not establish that the amount of HEPS in the A Sample was below the Screening Limit. His expert witness, Dr. Steven Barker, even conceded under oath that: (1) HEPS was in the Covered Horse's A and B Samples, (2) HEHP – a **theoretical** metabolite that Dr. Barker argued could have impacted the concentration of HEPS is not capable of reliable detection, and (3) Dr. Barker himself had never even attempted to create a testing standard for the theoretical HEHP metabolite when he directed a horseracing sample testing laboratory;
- Brendan Heffron, director of the UIC Laboratory, credibly testified that his laboratory correctly confirmed the presence of HEPS in Appellant's Covered Horse's B Sample in accordance with Rule 6312(g), which does not mandate quantification of the

[2] Appellant's Charging Letter (which references the initial Notice Letter) sets out all the information required under Rule 3348.

Prohibited Substance in question or its metabolite; and

- Dr. Benjamin Moeller, director of the UC Davis Laboratory, credibly explained that the Further Analysis his laboratory conducted on the B Sample also confirmed the presence of HEPS at the estimated concentration of 18 ng/mL.

II. No Departure Caused HEPS To Appear in The Sample

Appellant's attempt to avoid liability by alleging a plethora of supposed departures[3] from the relevant rules and standards is unavailing because Rules 3122(c) and (d) make clear that Appellant must not only prove a departure occurred, but also that it "could reasonably have caused the Adverse Analytical Finding." Here, not only did Appellant fail to establish any meaningful departures occurred, but even if he did, *quod non*, he has not proven that they could have reasonably caused HEPS to appear in Appellant's Covered Horse's Sample.

III. No Errors Occurred During the Hearing Process

The IAP gave all parties an equal and fair opportunity to submit motions and advocate for their respective positions throughout the hearing. The fact that he did not rule in favor of Appellant on various requests does not mean the IAP committed any error. In fact, the IAP's decisions were well-reasoned and supported by both evidence and the rules:

- In a seven-page reasoned decision, the IAP rejected Appellant's request for DNA testing because there was no genuine doubt or reasonable basis to justify such an order (the unique microchip number on the Sample Collection Form matched that of the Covered Horse's).
- The IAP denied Appellant's overly broad subpoena request, which was, in effect, an attempt to conduct his own parallel investigation of the UK Laboratory, because the

[3] Appellant has never proven how any alleged breach of Rule 1020, Rule 3348, Rule 5510(b), Rule 6308(b), Rule 6309(e)(1), and Rule 6315(b) could have caused HEPS to appear in his Covered Horse's urine Sample.

"Rules do not authorize or support the broad, open ended supplemental presentation that … [Appellant] seeks."

- Lastly, the IAP found that while it was proper to hold an adverse inference against Appellant under Rule 3122(f) because he refused to testify, there was no similar "basis to draw an adverse inference against Dr. Stanley with respect to his testimony and the matters at issue in [Appellant's] case."

IV. The Sanctions Imposed Are Reasonable

Because the Sixth Circuit Court of Appeals has upheld the constitutionality of the current ADMC Program[4] and the Consequences imposed by the IAP were made in accordance with Rule 3323(b) of the ADMC Program for a Rule 3312 CMRV of a Class B substance, the Sanctions are not arbitrary, capricious, or otherwise against the law.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 17th day of June, 2024.

/s/*Bryan H. Beauman*

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

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CERTIFICATE OF SERVICE

Pursuant to 16 CFR 1.146(a) and 16 CFR 4.4(b), a copy of this Response to Appellant's Application for Review is being served on June 17, 2024, via first-class mail and/or Administrative E-File System and by emailing a copy to:

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