

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
FTC DOCKET NO. D09432**

ADMINISTRATIVE LAW JUDGE: DANIA L. AYOUBI

IN THE MATTER OF:

CHRIS ALLAN HARTMAN

APPELLANT

THE AUTHORITY’S PROPOSED CONCLUSIONS OF LAW AND ORDER

Comes now the Horseracing Integrity and Safety Authority, Inc. (the “**Authority**”) pursuant to the briefing schedule of the Administrative Law Judge, dated June 27, 2024, and submits the following Proposed Conclusions of Law and Proposed Order.

HORSERACING INTEGRITY & SAFETY AUTHORITY

/s/Bryan H. Beauman

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**HORSERACING INTEGRITY &
WELFARE UNIT, A DIVISION
OF DRUG FREE SPORT LLC**

CERTIFICATE OF SERVICE

Pursuant to 16 CFR 1.146(a) and 16 CFR 4.4(b), a copy of this Proposed Conclusions of Law and Proposed Order is being served on July 8, 2024, via Administrative E-File System and by emailing a copy to:

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PROPOSED CONCLUSIONS OF LAW

1. The June 3, 2024 decision of IAP Member Edward J. Weiss (the “**IAP Member**”), as corrected, (the “**Final Decision**”) appointed by the Horseracing Integrity & Welfare Unit (“**HIWU**”) for the Authority, considered and applied the Authority’s Anti-Doping and Medication Control Program (“**ADMC Program**”) and imposed civil sanctions of an Ineligibility period of 15 days for Trainer Hartman, a fine of \$1,000.00, assignment of 2 penalty points, Disqualification of Necker Island’s results obtained at Ellis Park in Henderson, Kentucky on June 18, 2023 and forfeiture of all purses, prizes, trophies, points, ranking, and repayment or surrender (as applicable) to the Race Organizer (the “**Consequences**”) in accordance with ADMC Program Rule 3323.
2. The IAP Member clearly considered, applied, and followed all applicable rules of the ADMC Program.
3. The IAP Member found that Appellant breached ADMC Program Rule 3312, under which the Presence of a Controlled Medication Substance and/or its Metabolites or Markers in a Covered Horse is a strict liability offense for which the “intent, Fault, negligence, or knowing Use on the part of the Responsible Person” is not required to establish a violation. This finding was supported by the facts and evidence.
4. The evidence established that Appellant could not demonstrate the source of the Controlled Medication Substance detected in Necker Island, and there was, therefore, no basis under the ADMC Program to consider his degree of Fault or to reduce the applicable sanctions.
5. The IAP Member assessed all relevant evidence in concluding that none of the laboratory errors raised by Appellant could have reasonably caused the AAF, and that Appellant was, therefore, “strictly liable for any Controlled Medication Substance or its Metabolites or

Markers found to be present in a Post-Race Sample collected from his or her Covered Horse(s)” under ADMC Program Rule 3312(a) and sufficiently established under ADMC Program Rule 3312(b). As was conceded by Appellant’s own expert, Acepromazine was present in Necker Island’s Samples and none of the alleged errors raised by the Appellant caused the AAF since Acepromazine’s metabolite, HEPS, was present in a quantity above the Screening Limit (which was set at 10 ng/mL) as confirmed by three independent equine racing laboratories.

6. The IAP Member appropriately considered the universe of relevant factors in assessing Appellant’s liability and his theories as to the source of the Controlled Medication Substance. Because Appellant failed to establish the source of the Controlled Medication Substance, no mitigation of the period of Ineligibility to be served or the amount of mandatory fine to be paid by Appellant under ADMC Program Rule 3323(b) was permissible.
7. The Consequences are not arbitrary or capricious. They are supported by and rationally connected to the evidence.
8. Trainer Hartman’s appeal contesting the liability and civil sanctions imposed in the Final Decision is rejected and the imposed civil sanctions of an Ineligibility period of 15 days, a fine of \$1,000.00, assignment of 2 penalty points, Disqualification of Necker Island’s results obtained at Ellis Park in Henderson, Kentucky on June 18, 2023 and forfeiture of all purses, prizes, trophies, points, ranking, and repayment or surrender (as applicable) to the Race Organizer are affirmed.

PROPOSED ORDER

The undersigned Administrative Law Judge (“ALJ”), having reviewed the parties’ submitted proposed findings of fact and conclusions of law, supporting legal briefs and reply to conclusions of law and briefs, hereby makes the following findings of fact and conclusions of law.

INTRODUCTION

On June 7, 2024, Appellant Chris Allan Hartman (“Appellant” or “Trainer Hartman”), pursuant to 15 U.S.C. § 3051 *et seq.*, 5 U.S.C. § 556 *et seq.*, and 16 C.F.R. § 1.145 *et seq.*, filed an Application for Review of Final Civil Sanctions and an Application for a Stay of Final Civil Sanctions borne out of the June 3, 2024 decision of IAP Member Edward J. Weiss, as corrected, (the “Final Decision”) appointed by HIWU for the Horseracing Integrity and Safety Authority, Inc. (the “Authority”). The Final Decision determined that Appellant violated ADMC Program Rule 3312 of the ADMC Program as a result of the Presence of Controlled Medication Substance Acepromazine in the Sample of his Covered Horse, Necker Island, and imposed civil sanctions of an Ineligibility period of 15 days, a fine of \$1,000.00, assignment of 2 penalty points, Disqualification of Necker Island’s results obtained at Ellis Park in Henderson, Kentucky on June 18, 2023 and forfeiture of all purses, prizes, trophies, points, ranking, and repayment or surrender (as applicable) to the Race Organizer in accordance with ADMC Program Rule 3323(b).

In his Application for Review, Appellant asserted that the IAP Member had committed a number of reversible legal errors. But, while Appellant stated that he disagreed with how the IAP Member weighed the evidence and reached its factual findings, he neither requested an evidentiary hearing nor the chance to supplement the record with additional evidence.

The Authority filed its response to Appellant’s Application for Review on June 17, 2024, asserting Appellant’s appeal must be dismissed because (1) HIWU successfully had met its burden

to establish a Rule 3312 Controlled Medication Substance Rule Violation (“**CMRV**”) against Appellant, (2) none of the alleged departures or errors had any merit or negated his CMRV, and (3) the Consequences imposed by the IAP Member were proportionate and proper.

On June 27, 2024, it was ordered that the factual record would be deemed closed and no evidentiary hearing would be held limiting proceedings to briefing by the parties because “neither party seeks to supplement or alter the evidentiary record. Further, there was no basis for concluding that the evidentiary record was insufficient.”

This appeal is thus concerned only with whether Appellant was properly found liable for a Presence-based Controlled Medication Substance violation under ADMC Program Rule 3312(a) by the IAP Member, and whether the civil sanctions imposed upon Appellant are arbitrary, capricious, an abuse of discretion, prejudicial, or otherwise not in accordance with law based on the existing record.

THE AUTHORITY’S RULE ON SANCTIONS AND CONSEQUENCES

The Final Decision below concerned Presence of a Controlled Medication Substance in breach of ADMC Program Rule 3312(a), a CMRV for which sanction can only be mitigated or reduced if the source of the Controlled Medication Substance can be proven.

Under ADMC Program Rule 3323(b), the required sanction for a violation of Rule 3312(a) for the Presence, of Acepromazine is a period of Ineligibility of 15 days, a fine of up to \$1,000, and Automatic Disqualification of Race Day results. Further, assignment of 2 penalty points, and Public Disclosure pursuant to ADMC Program Rule 3620.

A Covered Person *may* be entitled to mitigation of the above noted sanctions where he establishes the source of the Controlled Medication Substance, and is deemed to have acted with either No Fault or Negligence (Rule 3324), or No Significant Fault or Negligence (Rule 3325). The

ADMC Program provides that assessment of Fault is only relevant where source of the Controlled Medication Substance has been established with specific, reliable evidence. In the absence of such proof, no mitigation is available.

THE FINAL DECISION

The expert that testified for Appellant admitted unequivocally that Acepromazine's major metabolite known as HEPS was present in Necker Island's sample at the time of collection. The only issue was whether the major metabolite of the Controlled Medication Substance Acepromazine was present in an amount above the Screening Limit of 10 ng/mL.

Appellant's theory, as introduced by his expert Dr. Barker, was too speculative as to be deemed credible. Specifically, he could not prove that a different proposed metabolite of Acepromazine known as HEHP could have been present in an amount that brought the amount of HEPS present in the Sample below the Screening Limit of 10 ng/mL. The IAP member was correct in finding that it was not appropriate to substitute Appellant's theoretical science for the long-established methodology used by three independent equine racing laboratories (1) the University of Kentucky Equine Analytical Lab, (2) the University of Illinois Chicago Analytical Forensic Testing Laboratory, and (3) the University of California, Davis Maddy Laboratory that handled, analyzed and reported the results of the Necker Island samples properly.

Further, Appellant offered no evidence as to the source of the Acepromazine present. In this regard, an adverse inference was properly found against Appellant under ADMC Program Rule 3122(f), which permits a hearing panel to draw an inference adverse to a Covered Person who is asserted to have committed a violation based on the Covered Person's refusal to cooperate with the Agency, including a knowing refusal to answer questions. Here, Appellant knowingly refused to testify at the merits hearing on February 15, 2024.

The IAP Member did not disregard any ADMC Program Rules regarding Sample collection, storage, chain of custody, and testing procedures, nor any other legislation or piece of evidence, in his comprehensive analysis. Appellant's numerous submissions on alleged deviations from the Laboratory Standards and custody and storage requirements were covered extensively in advance of and during the hearing. The IAP Member considered and properly rejected Appellant's claims since there was no evidence that Laboratory Standards or chain of custody rules were breached.

As set out in ADMC Program Rule 3122(d), any argued departure from any other rule, standard, or provision of the ADMC Program, can only succeed in defeating the presumption of liability where that departure can reasonably have caused the AAF. This is in addition to ADMC Program Rule 3122(c), which establishes an analogous requirement for purported departures from Laboratory Standards. The IAP Member scrutinized each of Appellant's alleged errors under the relevant framework and determined there was no evidentiary basis on which to conclude that an error occurred that could have "reasonably caused" the AAF.

Further, the IAP member found that three hundred potential doses of Acepromazine in an approximately four-month period raised suspicion, particularly since no explanation for how, when and to which horses those doses of Acepromazine were administered since Appellant refused to testify at the merits hearing. The IAP Member properly found that it was troubling that Appellant did not have a helpful or at least a neutral or innocuous explanation for what happened to the 300 doses of Acepromazine that were prescribed for his Covered Horses.

As Appellant failed to establish the source of the Acepromazine, no reduction in sanction was available to him. The IAP Member therefore imposed civil sanctions of an Ineligibility period of 15 days, a fine of \$1,000.00, assignment of 2 penalty points, Disqualification of Necker Island's

results obtained at Ellis Park in Henderson, Kentucky on June 18, 2023, forfeiture of all purses, prizes, trophies, points, ranking, and repayment or surrender (as applicable) to the Race Organizer in accordance with ADMC Program Rule 3323(b) and Public Disclosure pursuant to ADMC Program Rule 3620.

THE STANDARD OF REVIEW ON APPEAL

Pursuant to 15 U.S.C. § 3058(b)(1), whether Appellant engaged in acts or practices in violation of the ADMC Program is subject to *de novo* review by an Administrative Law Judge of the FTC, limited to the factual record below.

Pursuant to 15 U.S.C. § 3058(b)(3), a civil sanction is subject to *de novo* review by an Administrative Law Judge; however, the review at hand is limited to a determination of whether “the final civil sanction of the Authority was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”¹ Generally, a decision or sanction will not be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law where (1) the decision abides by the applicable rules,² and (2) the sanction is rationally connected to the facts.³

CONCLUSIONS OF LAW

1. The June 3, 2024 decision of IAP Member Edward J. Weiss, as corrected (the “**Final Decision**”), appointed by the Horseracing Integrity & Welfare Unit (“**HIWU**”) for the Horseracing Integrity and Safety Authority, Inc. (the “**Authority**”) considered and applied the Anti-Doping and Medication Control Program (“**ADMC Program**”) and imposed civil sanctions of an Ineligibility period of 15 days, a fine of \$1,000.00, assignment of 2 penalty points, Disqualification of Necker Island’s results obtained at Ellis Park in Henderson,

¹ 15 U.S.C. § 3058(b)(2)(A)(iii).

² *Guier v. Teton County Hosp. Dist.*, 2011 WY 31, 248 P.3d 623 (Wyo. 2011)

³ *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983); *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971)

Kentucky on June 18, 2023 and forfeiture of all purses, prizes, trophies, points, ranking, and repayment or surrender (as applicable) to the Race Organizer in accordance with ADMC Program Rule 3323(b) (the “**Consequences**”).

2. The IAP Member clearly considered, applied, and followed the rules of the ADMC Program.
3. The IAP Member’s finding on liability was supported by the facts and evidence. He correctly concluded that none of the alleged errors could have “reasonably caused” Appellant’s AAF, as required under ADMC Program Rules 3122(c) and (d).
4. Having failed to establish the source of the Controlled Medication Substance, Appellant was not entitled to any assessment of Fault or corresponding reduction of the applicable sanctions.
5. The Consequences are not arbitrary or capricious. They are rationally connected to the evidence and the applicable Rules, which were canvassed and incorporated by the IAP Member.
6. Trainer Hartman’s appeal contesting the civil sanctions imposed in the Final Decision is rejected and the sanctions in the Final Decision of an Ineligibility period of 15 days, a fine of \$1,000.00, assignment of 2 penalty points, Disqualification of Necker Island’s results obtained at Ellis Park in Henderson, Kentucky on June 18, 2023 and forfeiture of all purses, prizes, trophies, points, ranking, and repayment or surrender (as applicable) to the Race Organizer are affirmed.

Based on the foregoing findings of fact and conclusions of law, it is hereby **ORDERED AND ADJUDGED** as follows:

The Commission hereby **AFFIRMS** the Final Decision and **UPHOLDS** the civil sanctions imposed in the Final Decision, dated June 3, 2024.

Entered this _____ day of _____, 2024

DANIA L. AYOUBI
ADMINISTRATIVE LAW JUDGE

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
FTC DOCKET NO. D09432**

ADMINISTRATIVE LAW JUDGE: DANIA L. AYOUBI

IN THE MATTER OF:

CHRIS ALLAN HARTMAN

APPELLANT

**THE AUTHORITY'S SUPPORTING LEGAL BRIEF FOR PROPOSED
CONCLUSIONS OF LAW AND ORDER**

Comes now the Horseracing Integrity and Safety Authority, Inc. (the “**Authority**”) pursuant to the briefing schedule of the Administrative Law Judge, dated June 27, 2024 and submits the following Supporting Legal Brief.

CERTIFICATE OF SERVICE

Pursuant to 16 CFR 1.146(a) and 16 CFR 4.4(b), a copy of this Proposed Conclusions of Law and Proposed Order is being served on July 8, 2024, via Administrative E-File System and by emailing a copy to:

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INTRODUCTION

On June 3, 2024, IAP Member Edward J. Weiss (“**IAP Member**”), appointed by the Horseracing Integrity & Welfare Unit (“**HIWU**”) for the Authority, issued a decision (the “**Final Decision**”) finding that Chris Allan Hartman (“**Trainer Hartman**” or “**Appellant**”) violated Rule 3312 of the Authority’s Anti-Doping and Medication Control Program (“**ADMC Program**”), under which he is “strictly liable for any Controlled Medication Substance or its Metabolites or Markers found to be present in a Post-Race Sample collected from his or her Covered Horse(s).”¹ The IAP Member properly found that the major metabolite of Acepromazine known as HEPS was present in Necker Island’s Sample collected Post-Race on June 18, 2023 at Ellis Park in Henderson, Kentucky in an amount above the Screening Limit of 10 ng/mL.²

Since Appellant had no evidence to warrant mitigation of his mandatory civil sanctions, and even knowingly refused to testify during the merits hearing that took place on February 15, 2024, the Final Decision properly imposed civil sanctions of an Ineligibility period of 15 days for Trainer Hartman, a fine of \$1,000.00, assignment of 2 penalty points, Disqualification of Necker Island’s results obtained at Ellis Park in Henderson, Kentucky on June 18, 2023 and forfeiture of all purses, prizes, trophies, points, ranking, and repayment or surrender (as applicable) to the Race Organizer (the “**Consequences**”) in accordance with ADMC Program Rule 3323(b).³

On June 7, 2024 Appellant filed an Application for Review of Final Civil Sanctions and an Application for a Stay of Final Civil Sanctions borne out of the Final Decision (as corrected). In his Application for Review, Appellant asserted that the IAP Member had committed a number of legal errors in the proceedings below. But, while Appellant stated that he disagreed

¹ HISA’s Appeal Book, at 1363-1370.

² *Id.*

³ *Id.*

with how the IAP Member weighed the evidence and reached its factual findings, he neither requested an evidentiary hearing nor the chance to supplement the record with additional evidence.

The Authority filed its response to Appellant's Application for Review on June 17, 2024, asserting Appellant's appeal must be dismissed because (1) HIWU successfully had met its burden to establish a Rule 3312 Controlled Medication Substance Rule Violation ("CMRV") against Appellant, (2) none of the alleged departures or errors had any merit or negated his CMRV, and (3) the Consequences imposed by the IAP Member were proportionate and proper.

On June 27, 2024, it was ordered that the factual record would be deemed closed and no evidentiary hearing would be held limiting proceedings to briefing by the parties because neither party had sought to supplement or alter the evidentiary record. Further, there was no basis for concluding that the evidentiary record was insufficient.

This appeal is thus concerned only with whether Appellant was properly found liable for a Presence-based Controlled Medication Substance violation under Rule 3312(a) of the ADMC Program by the IAP Member, and whether the civil sanctions imposed upon Appellant are arbitrary, capricious, an abuse of discretion, prejudicial, or otherwise not in accordance with law based on the existing record.

Based on the record, including a concession from Appellant's own expert, Dr. Steven Barker,⁴ it is evident that Appellant is strictly liable under ADMC Program Rule 3312(a) for the Presence of a Controlled Medication Substance named Acepromazine, which was detected in the Sample of Trainer Hartman's Covered Horse, Necker Island, through its major metabolite or marker, known as HEPS, at a level that exceeded the Screening Limit of 10

⁴ *Id.* at 1364.

ng/mL. Thus, evidence of an ADMC Program violation has been sufficiently established under Rule 3312(b).⁵

Since Appellant failed to establish the source of Acepromazine detected in Necker Island's Sample, Appellant is not entitled to any mitigation of sanctions. Further, since Trainer Hartman knowingly refused to testify at the hearing on the merits on February 15, 2024, the IAP member properly drew an adverse inference against Appellant under ADMC Program Rule 3122(f), which permits a hearing panel to draw an inference adverse to a Covered Person who is asserted to have committed a violation based on the Covered Person's refusal to cooperate with HIWU, including a knowing refusal to answer questions at a hearing. Therefore, the IAP Member properly found that it was troubling that Appellant did not have a helpful or at least a neutral or innocuous explanation for what happened to the 300 doses of Acepromazine that he was prescribed for his horses during the four-month period immediately prior to the June 18, 2023 race at issue.

For these reasons, Consequences in this case were properly imposed in accordance with and as mandated by ADMC Program Rule 3323(b), are rationally connected to the relevant evidence and should be affirmed.

I. STATEMENT OF FACTS

1. On June 18, 2023, Necker Island participated in Race 7 at Ellis Park in Henderson, Kentucky.⁶
2. After Necker Island's victory, Sample Collection Personnel notified Mr. Daniel Lopez (a person nominated by Appellant) that Necker Island had been selected for Sample collection.⁷
3. The HIWU Sample Collection Personnel verified Necker Island's identity prior to

⁵ *Id.*

⁶ *Id.* at 23.

⁷ *Id.* at 216.

- Sample collection via its microchip.⁸
4. The Sample Collection Personnel subsequently collected both urine and blood from Necker Island and labeled the samples U100220573 and B100220573, respectively.⁹
 5. Mr. Lopez signed the Sample Collection Form, which confirmed the documentation, including the sample labels, accurately reflected the details of Necker Island's Sample Collection Session and that the Sample Collection Session was conducted in compliance with the applicable HIWU Sample collection procedures.¹⁰
 6. No comment was made on the Sample Collection Form to the contrary.¹¹
 7. Necker Island's Sample was sent to the University of Kentucky Analytical Chemistry Laboratory in Lexington, Kentucky (the "UK-EACL"), for analysis.¹²
 8. The UK-EACL analyzed the Post-Race Urine A-Sample #U100220573 in accordance with the Equine Standards for Laboratories and Accreditation.¹³
 9. The UK-EACL detected HEPS, the major metabolite of Acepromazine, in the Post-Race Urine A Sample #U100220573 and estimated its concentration at 18.954 ng/mL.
 10. Acepromazine is a category B, Schedule 7 Controlled Medication Substance on the Prohibited List.¹⁴
 11. HEPS has a Screening Limit of 10 ng/mL in urine.¹⁵
 12. Because the amount of HEPS found in the Post-Race A Sample exceeded the Screening Limit, the UK-EACL reported an Adverse Analytical Finding ("AAF") and produced an A Sample Laboratory Documentation Package detailing its analysis.¹⁶

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 219-262.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 391.

¹⁶ *Id.* at 219-262.

13. On July 13, 2023, HIWU sent Appellant, as the Responsible Person for Necker Island, an Equine Controlled Medication (“**ECM**”) Notice of Alleged CMRV, which informed him that he had potentially committed a Rule 3312 CMRV because Necker Island’s Post-Race A urine Sample tested positive for Acepromazine above the Screening Limit.¹⁷
14. On or before July 18, 2023, Appellant requested the analysis of Necker Island’s Post-Race B Urine Sample #U100220573.
15. Necker Island’s B Sample #U100220573 was shipped to the University of Illinois-Chicago Analytical Forensic Testing Laboratory (“**UIC Laboratory**”) solely to confirm the presence of HEPS, as required under ADMC Program Rule 6312(g).¹⁸
16. In accordance with the Equine Standards for Laboratories and Accreditation and following its Standard Operating Procedure (“**SOP**”), the UIC Laboratory confirmed the presence of HEPS in Necker Island’s Post-Race B Sample #U100220573.¹⁹
17. The UIC Laboratory issued its Summary of Results on September 5, 2023, and subsequently produced a B Sample Laboratory Documentation Package, which was provided to Mr. Hartman.²⁰
18. On September 8, 2023, HIWU served an ECM Charge on Appellant, charging him with “a Controlled Medication Rule Violation for the presence of 2-(1-Hydroxyethyl) Promazine Sulfoxide, a metabolite of Acepromazine, in Necker Island’s urine Sample #U100220573.”²¹
19. Further Analysis of the B Sample was requested by HWU under ADMC Program Rule 6313 and took place without objection from Appellant.²²

¹⁷ *Id.* at 264.

¹⁸ *Id.* at 276.

¹⁹ *Id.* at 276-291.

²⁰ *Id.*

²¹ *Id.* at 312.

²² *Id.* at 719.

20. On December 15, 2023, the University of California Davis Kenneth L. Maddy Equine Analytical Chemistry Laboratory (“**UC Davis Lab**”) conducted the Further Analysis of the B Sample and not only confirmed the presence of HEPS in the B-Sample, but also confirmed that the estimated concentration of HEPS in the B-Sample was above the established Screening Limit (the UC Davis Lab estimated the concentration of HEPS present in Necker Island’s June 18, 2023 Sample at 17-18 ng/mL).²³
21. Appellant’s request for DNA analysis of the Sample was rejected by the IAP Member on January 9, 2024 since there was no genuine doubt about the integrity of Necker Island’s A Sample and B Sample, after a hearing was held on Appellant’s Motion for DNA analysis on December 20, 2023.²⁴

II. PROCEDURAL HISTORY

22. On or before September 15, 2023, Mr. Hartman requested to have a hearing in accordance with ADMC Program Rule 3361.
23. Following Appellant’s request for a hearing, HIWU initiated proceedings with the Internal Adjudication Panel (“**IAP**”) pursuant to Rule 7020(b) of the ADMC Program.
24. On September 19, 2023, Mr. Edward J. Weiss accepted his appointment as the IAP member presiding over the case.²⁵
25. A hearing was held on the merits on February 15, 2024.²⁶
26. A supplemental hearing was held on May 7, 2024 to determine whether the chain of custody of Necker Island’s Sample was intact and not implicated in any way in the ongoing investigation of the UK Lab.²⁷
27. The IAP Member issued the Final Decision on June 3, 2024.²⁸

²³ *Id.* at 1035-1098.

²⁴ *Id.* at 1100-1106.

²⁵ *Id.* at 5-6.

²⁶ *Id.* at 1342-1344 (Video of Merits Hearing).

²⁷ *Id.* at 1361 (Video of Supplemental Hearing).

²⁸ *Id.* at 1363-1370.

28. On June 7, 2024, Appellant filed an Application for Review of Final Civil Sanctions and an Application for a Stay of Final Civil Sanctions borne out of the Final Decision.

III. APPLICABLE ADMC PROGRAM RULES

The Authority was created pursuant to the federal *Horseracing Integrity and Safety Act of 2020*, as amended (the “Act”),²⁹ to implement a national, uniform set of integrity and safety rules that are applied consistently to every Thoroughbred racing participant and racetrack facility in the United States.³⁰ It is not disputed that Appellant is both a Covered Person and a Responsible Person, or that Necker Island is a Covered Horse under the ADMC Program.

The Final Decision below concerned a Controlled Substance Medication Violation (“CMRV”) for Presence of a Controlled Medication Substance in breach of Rule 3312(a), a strict liability offense for which the “intent, Fault, negligence, or knowing Use on the part of the Responsible Person” is not required to establish a violation. Appellant’s Application for Review is concerned with contesting his liability for a Presence-based violation under 16 CFR §1.146(b)(1)(2), and secondarily seeks to dispute whether the Consequences were arbitrary, capricious, an abuse of discretion prejudicial, or otherwise not in accordance with law under 16 CFR §1.146(b)(3).

Under Rule 3323(b), the required sanction for the presence of Acepromazine, a category B, Schedule 7 Controlled Medication, is an Ineligibility period of 15 days, a fine of \$1,000.00, assignment of 2 penalty points, Disqualification of Necker Island’s results obtained at Ellis Park in Henderson, Kentucky on June 18, 2023, and forfeiture of all purses, prizes, trophies, points, ranking, and repayment or surrender (as applicable) to the Race Organizer.

Where a CMRV is established, a Covered Person is only entitled to the potential mitigation of the above noted sanctions where he is able to establish the source of the

²⁹ 15 U.S.C. 3051–3060.

³⁰ HISA’s Appeal Book, at 1132 (ADMC Program Rule 3010(a)).

Controlled Medication Substance, and where he subsequently establishes on a balance of probabilities that he acted with either No Fault or Negligence (Rule 3324), or No Significant Fault or Negligence (Rule 3325).³¹

In order to establish source, a Covered Person has “a stringent requirement to offer persuasive evidence of how such contamination occurred.”³² Speculation as to the source of a Prohibited Substance is not evidence.³³ A Covered Person has the evidentiary burden to “adduce specific and competent evidence that is sufficient to persuade the Tribunal that the explanation advanced is more likely than not to be correct.”³⁴

IV. THE FINAL DECISION

The IAP Member found that Appellant had committed a Presence-based violation under Rule 3312(a) of the ADMC Program.³⁵ In this regard, the IAP Member held that Appellant had failed to establish that any of the alleged laboratory errors could reasonably have caused the AAF.³⁶ The IAP Member also found that Appellant had failed to adequately and properly explain how 300 doses of Acepromazine were dispensed in the months leading up to Sample collection on June 18, 2023.³⁷ As a result, Appellant was not entitled to any mitigation of potential Consequences.³⁸

The IAP Member assessed each of the laboratory errors asserted by Appellant, including his claims of chain of custody irregularities under Rule 6315(b) and the 6000 Laboratory Series.³⁹ To the extent that the IAP Member did not refer specifically to a rule in

³¹ *Id.* at 377.

³² *WADA v CPA & Karim Gharbi*, [CAS 2017/A/4962](#) at para. 53.

³³ *WADA v. Damar Robinson & JADCO*, [CAS 2014/A/3820](#) at para. 80.

³⁴ *FEI v Aleksandr Kovshov*, FEI Tribunal Decision dated 27 November 2012 at para. 18. See also *Khaled Abdullaziz Al Eid & Abdullah Waleed Sharbatly v. FEI*, [CAS 2012/A/2807 & 2808](#), at para. 10.8.

³⁵ HISA’s Appeal Book, at 1363-1370.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

the Final Decision, it is clear that all storage and chain of custody requirements were evaluated and rejected.⁴⁰

The IAP Member summarized the testimony of each of Laboratory witness in detail, and extensively considered the testimony of Appellant's testifying expert, Dr. Steven Barker, who opined that HEPS, the major metabolite of Acepromazine might not have been present in Necker Island's Sample in an amount that exceeded the screening limit of 10 ng/mL.⁴¹ Specifically, Dr. Barker opined that the laboratories analyzing Necker Island's Sample should have used a new and different testing standard that would have differentiated between the known Acepromazine metabolite HEPS and a proposed a theoretical metabolite known as HEHP.⁴² Dr. Barker theorized that this alternative methodology would have reduced the level of HEPS below the Screening Limit and would have eliminated the evidence that Trainer Hartman had committed a CMRV.⁴³

The IAP Member meticulously detailed Dr. Barker's theory that compared the twin peaks reflected in the laboratory panels of the Necker Island sample with the twin peaks that were supposed to have indicated HEHP according to Dr. Barker.⁴⁴ The IAP Member then rejected the theory floated by Dr. Barker, finding that his evidence did not provide a basis to ignore the existing testing standard (used by equine racing laboratories for decades) and expressly set forth on the Prohibited List. In sum, the IAP Member found that the proposed testing method urged by Dr. Barker must be rejected.⁴⁵ The IAP Member reasoned that following Dr. Barker's proposed structure would be a novel and unprecedented departure from long established scientific precedent particularly since Dr. Barker himself testified that no

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

commercially available reference standard for HEHP existed, making the methodology he was proposing impossible to implement.⁴⁶

In sum, the IAP Member was not persuaded that the evidence presented justified reducing the presence of HEPS in Necker Island's Sample by half because dividing the quantity of HEPS in this way would be a choice based on mere speculation.⁴⁷ Thus, there was no reason to doubt the reliability of the analysis that led to a finding that HEPS was present at approximately 18.954 ng/mL, which exceeded the Screening Limit of 10 ng/mL.⁴⁸

It was thus found on the evidence before the IAP Member, that Appellant did not rebut the presumption that the Laboratories that tested Necker Island's conducted Sample analysis and custodial procedures in accordance with the Laboratory Standards.⁴⁹ In other words, Appellant did not establish that a departure from the Laboratory Standards occurred that could reasonably have caused the AAF, as required under ADMC Program Rule 3122(c).⁵⁰

The IAP Member then properly found that Appellant was subject to an adverse inference under ADMC Program Rule 3122(f) since he knowingly refused to testify and answer questions during the hearing on the merits.⁵¹ Specifically, Trainer Hartman was found to have no helpful or at least a neutral or innocuous explanation for what happened to the 300 doses of Acepromazine that he was prescribed for his horses during the four-month period immediately prior to the race at issue.⁵²

The IAP Member found that "[t]hree hundred potential doses of Ace in an approximately four-month period raises suspicion" after the uncontroverted evidence showed that Appellant had received prescriptions and was dispensed Acepromazine on three separate

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

occasions by Dr. Ethan Wilborn, the Covered Person's veterinarian, between February and May 2023.⁵³ According to Dr. Wilborn's own testimony, each time Dr. Wilborn prescribed Acepromazine, a bottle containing 100 therapeutic doses was dispensed to Appellant's Covered Horses. No explanation for how, when and to which horses those doses of Ace were administered was provided.⁵⁴

The IAP Member rejected Appellant's argument that an adverse inference should have been found against HIWU since Dr. Stanley did not testify in the supplemental hearing on May 7, 2024.⁵⁵ The IAP Member found that there was no basis to draw an adverse inference against HIWU since (1) ADMC Program Rule 3122(f) only permits the IAP to draw an adverse inference against a Covered Person who refused to testify (Dr. Stanley was not a Covered Person), and (2) there was no evidence presented that Dr. Stanley had knowingly refused to testify.⁵⁶ In contrast, Appellant's counsel indicated that he had attempted to secure Dr. Stanley's agreement to voluntarily testify and even represented that Dr. Stanley had not ruled out appearing voluntarily, as of the date and time of the supplemental hearing on May 7, 2024. Unfortunately for Appellant, he could not secure the commitment of Dr. Stanley to testify at the supplemental hearing.⁵⁷

In making his Final Decision, the IAP Member took notice of and considered that there was an ongoing investigation at the UK-EACL and that Dr. Stanley was the subject of an investigation and no longer the Lab Director.⁵⁸ This included consideration of a March 14, 2024 newspaper article from Thoroughbred Daily News (which was admitted into evidence) that reported that the Authority and HIWU had opened an investigation into the UK-EACL's

⁵³ *Id.* at 1364.

⁵⁴ *Id.*

⁵⁵ *Id.* at 1363-1370.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

performance and that there was an ongoing personnel investigation relating to Dr. Stanley, who had been removed from his position as director of UK-EACL.⁵⁹

Further, the IAP Member considered the testimony presented at the supplemental hearing held on May 7, 2024 which demonstrated that the ongoing investigation of UK-EACL of which Dr. Stanley was a subject did not have anything having to do with the analysis of Necker Island's A Sample for HEPS during the period in question in and around July 2023.⁶⁰ The IAP Member found that HIWU's two witnesses called during the supplemental hearing: (1) Kate Mittelstadt, HIWU's Chief of Operations; and (2) Michael Hedge, a Scientist II at UK-EACL, were both credible witnesses who testified that the chain of custody for the Necker Island Sample had not been compromised and that the Standard Operating Procedures at the UK Lab had been followed. Mr. Hedge was directly involved in the analysis of Necker Island's Sample at UK-EACL and his name appears on the A Sample Laboratory Documentation Package.⁶¹

V. STANDARD OF REVIEW

Pursuant to 15 U.S.C. § 3058(b)(1), whether Appellant committed a Presence-based violation under ADMC Program Rule 3312(a) is a determination made *de novo* by the ALJ, on the basis of the existing factual record.

Pursuant to 15 U.S.C. § 3058(b)(3), a civil sanction is subject to *de novo* review by an ALJ. However, the review is limited to a determination of whether “the final civil sanction of the Authority was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”⁶² Despite the fact that the ALJ conducts an independent review of the record,⁶³ a decision or sanction will not be arbitrary, capricious, an abuse of discretion, or otherwise not

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² 15 U.S.C. § 3058(b)(2)(A)(iii).

⁶³ *Agyeman v. INS*, [296 F.3d 871, 876](#) (9th Cir. 2002).

in accordance with law where (1) the decision abides by the applicable rules,⁶⁴ and (2) the sanction is rationally connected to the facts.⁶⁵ Similarly, to find an abuse of discretion, the record must reveal a clear error of judgment.⁶⁶ This standard of review has been confirmed in recent appeals from ADMC Program civil sanctions, *see In Re Jeffrey Poole*⁶⁷ and *In Re Luis Jorge Perez*.⁶⁸

VI. NONE OF APPELLANT'S ALLEGED LABORATORY ERRORS COULD HAVE "REASONABLY CAUSED" AN AAF

Under ADMC Program Rule 3122(c), the three Laboratories that conducted analysis of Necker Island's A Sample and B Sample are presumed to have conducted the Sample analysis and custodial procedures in accordance with the Laboratory Standards.⁶⁹ Appellant, in alleging a violation may rebut this presumption only by establishing that a departure from the Laboratory Standards occurred that could reasonably have caused the presence of HEPS at an amount that exceeded the Screening Limit of 10 ng/mL. As the IAP Member correctly found, Appellant's claim that there was a departure that could reasonably have caused the AAF was not convincing. Specifically, Appellant's argument that the three Laboratories that analyzed Necker Island's Sample should have abandoned the long-established test for Acepromazine that utilizes the identification of HEPS, its major metabolite, and instead used a new and different testing standard that sought to identify the concentration of HEHP, a proposed metabolite with no available reference standard, had no merit.

First, importantly, Dr. Barker did not dispute the presence of HEPS in the Sample. Further, Dr. Barker admitted that he himself did not pursue the identification and quantification of HEHP when he was the director of the Louisiana State University laboratory beginning in

⁶⁴ *Guier v. Teton County Hosp. Dist.*, 2011 WY 31, [248 P.3d 623](#) (Wyo. 2011).

⁶⁵ *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, [463 U.S. 29](#) (1983); *Citizens to Preserve Overton Park, Inc. v. Volpe*, [401 U.S. 402](#) (1971).

⁶⁶ *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, [422 F.3d 782, 798](#) (9th Cir. 2005).

⁶⁷ Docket No. 9417, November 13, 2023.

⁶⁸ Docket No. 9420, February 7, 2024.

⁶⁹ HISA's Appeal Book, at 1138.

1985, to differentiate between HEPS and HEHP.⁷⁰ Moreover, even assuming *arguendo* that the theory endorsed by Dr. Barker were accepted as true, according to Dr. Stanley, the total concentration of HEPS would still have been closer to 15 ng/mL (still above the Screening Limit of 10 ng/mL), rather than the 9 ng/mL suggested by Dr. Barker (which would have been below the Screening Limit). In addition, Dr. Stanley testified that Dr. Barker misunderstood the chromatography data and there was separation by molecular mass that Dr. Barker did not credit in his analysis and in formulating his opinions.

The only way for Dr. Barker to show that a theoretical HEHP peak could have made the amount of HEPS less than 10 ng/mL would have been for him to prove that the HEHP metabolized at a rate equal to or faster than HEPS. However, Dr. Barker admitted in his testimony that no one (including himself) knew the actual metabolic clearance rate of HEHP as compared to HEPS and that there was no evidence to support his hypothetical calculation that a theoretical HEHP peak would bring the amount of HEPS present in the sample below the established Screening Limit.⁷¹ At best, Dr. Barker was guessing when he estimated an HEHP concentration of 50% and suggested a theoretical HEPS concentration under the established Screening Limit only on the basis that the peaks “do look like they are about equal peaks.”⁷² This is not a scientifically rigorous method that carries Appellant’s sizeable burden to establish that a departure from the Laboratory Standards occurred here that could reasonably have caused HEPS to be present at an amount that exceeded the Screening Limit of 10 ng/mL.

VII. APPELLANT’S OTHER ARGUMENTS ARE EQUALLY UNPERSUASIVE

Under ADMC Program 3122(d), a departure from any other Standards or any provisions of the Protocol shall equally not invalidate analytical results or other evidence of a

⁷⁰ *Id.* at 1363-1370.

⁷¹ *Id.* at 1342-1344, Video Recording of February 15, 2024 merits hearing (beginning circa 6:14:13, beginning circa 6:20:46).

⁷² *Id.* beginning circa 5:48:57.

violation, and shall not constitute a defense to a charge of such violation unless Appellant can establish that the claimed departure could reasonably have caused the AAF (the presence of HEPS in an amount that exceeded the 10 ng/mL Screening Limit in Necker Island's Sample at issue).⁷³ This he cannot do.

Appellant's unsuccessful claims of alleged departures are addressed as follows:

1. HIWU's charge letter was **not** defective, and, in any event, could not reasonably have caused the AAF,
2. HIWU's burden under ADMC Program Rule 3122(c) never materialized because Appellant never met his initial burden to establish that a departure from the Laboratory Standards occurred that could reasonably have caused the AAF.
3. Dr. Stanley's testimony was properly considered by the IAP Member, since he was eminently qualified and oversaw the proper analysis of the A Sample, but, in any event, this decision by the IAP Member could not reasonably have caused the AAF.
4. There was no basis either legally or factually for the IAP Member to hold an adverse inference against HIWU since (a) Dr. Stanley was not a Covered Person (ADMC Program Rule 3122(f) only permits the IAP to draw an adverse inference against a Covered Person who refuses to testify) and (b) in any event, Dr. Stanley did not knowingly refuse to testify in the supplemental hearing. Beyond everything else, this decision by the IAP Member could not reasonably have caused the AAF.
5. The IAP Member's recognition that the UC Davis Lab found HEPS in an amount that exceeded the Screening Limit in the Further Analysis was not improper, and, in any event, could not reasonably caused the AAF.

⁷³ See *id.* at 362.

6. The denial of DNA analysis by the IAP Member was proper and Appellant's arguments regarding DNA analysis are unavailing since there is no legal or factual foundation to justify such a request – the Sample at issue was collected from Necker Island and does belong to Necker Island, as the sample collection documents overwhelmingly establish, and the case law cited by Appellant does not support DNA analysis in this case.
7. There was no basis to issue subpoenas for the supplemental hearing since HIWU voluntarily produced two witnesses to provide evidence on the topics at issue.

VIII. APPELLANT IS NOT ENTITLED TO ANY MITIGATION OF SANCTIONS, AND THE CONSEQUENCES ARE RATIONALLY CONNECTED TO THE EVIDENCE

Appellant has presented no discernable argument for why the Consequences imposed can be considered “arbitrary, capricious, an abuse of discretion, prejudicial, or otherwise not in accordance with law.” In order to benefit from reduced sanctions flowing from his CMRV on account of No Fault or Negligence or No Significant Fault or Negligence, Appellant must first have established the source of the Acepromazine metabolite in Necker Island's Sample.⁷⁴ Where, as here, a Responsible Person cannot establish how a Controlled Medication Substance entered the horse's system, the degree of Fault cannot be properly assessed.⁷⁵ In other words, it is “simply unfeasible to discuss a reduction based on the Athlete's No Fault or Negligence or No Significant Fault or Negligence if it is uncertain or unsubstantiated what actually caused the presence of the prohibited substance.”⁷⁶

⁷⁴ *Id.* at 1129.

⁷⁵ *International Wheelchair Basketball Federation v UK Anti-Doping & Simon Gibbs*, [CAS 2010/A/2230](#) at paras. 12.19-12.20, cited at *Re Alicia Brown*, [SDRCC DAT-15-0006](#) at para. 125(e).

⁷⁶ *WADA v. Elsalam*, [CAS 2016/A/4563](#) at para. 63.

Since Appellant failed to prove the source of Acepromazine, it was incumbent on the Arbitrator to impose civil sanctions in accordance with ADMC Program Rule 3323(b) as mandated:⁷⁷

1. An Ineligibility period of 15 days;
2. A fine of \$1,000.00;
3. Assignment of 2 penalty points;
4. Disqualification of Necker Island's results obtained at Ellis Park in Henderson, Kentucky on June 18, 2023;
5. Forfeiture of all purses, prizes, trophies, points, ranking, and repayment or surrender (as applicable) to the Race Organizer; and
6. Public Disclosure pursuant to ADMC Program Rule 3620.⁷⁸

IX. CONCLUSION

The Final Decision properly considered and applied the ADMC Program in imposing liability for Presence of a Controlled Medication Substance under ADMC Program Rule 3312(a) and civil sanctions in accordance with ADMC Program Rule 3323(b). The Consequences are in keeping with the statutory framework, rationally connected to the evidence, and were made with adequate consideration of the circumstances. The imposed sanctions should be affirmed and the Appeal should be dismissed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 8th DAY OF JULY 2024

⁷⁷ See HISA's Appeal Book, at 1151.

⁷⁸ *Id.* at 1161.

/s/Bryan H. Beauman

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