

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Lina M. Khan, Chair
Rebecca Kelly Slaughter
Alvaro M. Bedoya
Melissa Holyoak
Andrew Ferguson

In the Matter of)	
)	
Luis Jorge Perez,)	Docket No. 9420
)	
Petitioner)	

DECISION OF THE COMMISSION ON APPLICATION FOR REVIEW UNDER
15 U.S.C. § 3058

Pursuant to the Horseracing Integrity and Safety Act, 15 U.S.C. § 3051 (the Act), veterinarian Luis Jorge Perez (“Dr. Perez”) has petitioned the Federal Trade Commission (“the Commission” or the FTC) to review the decision issued February 7, 2024, by FTC Administrative Law Judge D. Michael Chappell (the ALJ), affirming the finding of liability and final civil sanctions imposed on Dr. Perez by the Horseracing Integrity and Safety Authority (“the Authority” or “HISA”). For the reasons explained below, the petition is DENIED.

Factual Background and Arbitrator’s Decision

The operative facts in this case are not in dispute. In June 2023, the Horseracing Integrity and Welfare Unit (“HIWU”) which enforces the Authority’s AntiDoping and Medication Control (“ADMC”) Program, issued a Equine AntiDoping Notice of Alleged AntiDoping Rule Violation (“Notice Letter”) to Dr. Perez based on his possession of two one-pound tubs of levothyroxine (“ThyroL”), a banned substance, in alleged violation of the Authority’s ADMC Rule 3214(a). The ThyroL was found in Dr. Perez’s trailer at Belmont Park. An investigator from the New York Racing Association, who alerted HIWU, Dr. Perez admitted in his written response to the Notice Letter that he did, in fact, possess the ThyroL. Dr. Perez accepted responsibility for possessing the substance, stating that his offense was not intentional and that he “completely forgot it was there.” HIWU then formally charged Dr. Perez with Possession of a Banned Substance (Charge Letter), noting that Dr. Perez’s explanation of the circumstances did not satisfy his burden to establish compelling justification that would excuse the possession of Thyro-L, as required by ADMC Rule 3214(a). In arbitration proceedings resulting

from the Notice

assertion that his practice includes treating non-covered horses. As a result, the ALJ found that Dr. Perez was liable under ADCM Rule 3214(a).

Further, when reviewing the evidentiary record de novo, the ALJ found the sanctions imposed on Dr. Perez to be “in accordance with ADCM Rules, reasonable, and rationally related to [Dr. Perez’s] degree of fault.” The ALJ noted that Dr. Perez did not take any steps to ensure that the Thyro-L was disposed of after the ban went into effect and that Dr. Perez’s failure to act “was not due to his belief that he lawfully possessed the Thyro-L, but rather because he forgot he had it.” Dr. Perez now petitions the Commission for review of the ALJ’s decision.

Dr. Perez’s Petition for Review

The Act gives the Commission discretion to grant or deny an aggrieved person’s petition for review of an adverse ALJ decision. The Act provides:

In determining whether to grant such an application for review, the Commission shall consider whether the application makes a reasonable showing that—

- (I) a prejudicial error was committed in the conduct of the proceeding; or
- (II) the decision involved—
 - (aa) an erroneous application of the anti-doping and medication control or racetrack safety rules approved by the Commission
 - (bb) an exercise of discretion or a decision of law or policy that warrants review by the Commission

15 U.S.C. § 3058(c)(2)(C) (i) see FTC Rule 1.147(b)(4). Dr. Perez’s petition for review briefly sets forth three grounds for Commission review of the ALJ’s decision. His first argument is that “HISA and HIWU do not have jurisdiction over non-race horses even if said non-race horses are stabled on racetracks.” Given that Dr. Perez would treat both covered horses and non-covered horses at the same racetrack, his argument goes, he “could legitimately possess a medication, banned for race horses but not for non-race horses, for use upon non-race horses.” Dr. Perez finds fault with the ALJ’s treatment of this argument.

Second, Dr. Perez claims that HISA’s ADCM rules “fail[] to provide the necessary due process protections with respect to the issue of this case, a veterinarian’s possession of a medication banned for race horses but not for non-race horses, which [Dr. Perez] could provide for non-race horses on a racetrack.” According to Dr. Perez, “neither HISA nor HIWU promulgated any written procedure(s) or regulation(s) regarding prescribing and dispensing of a banned substance for a non-covered horse at a racetrack. No prohibition of said practice has been issued.”

⁶ Applying the standard of review in the statute, the ALJ found that Dr. Perez failed to demonstrate that the arbitrator’s sanctions determination was “arbitrary, capricious, an abuse of discretion, or not in accordance” with applicable law. See 15 U.S.C. § 3058(b)(2)(A)(iii); FTC Rule 1.146(b)(3).

Dr. Perez's final argument is that "HISA's regulatory scheme with respect to a designated banned substance as applicable to this case, is vague as well as being arbitrary and capricious." His single premise for this argument is a claim that the Act is "facially unconstitutional," citing *NHBPA v. Black*, 53 F. 4th 869 (5th Cir. 2022).

Commission Decision

Upon our careful review of the entire record – the arbitration proceedings, the proceedings before the ALJ, the arguments made in Dr. Perez's petition for review, and the Authority's response to that petition – we conclude that Dr. Perez has failed to demonstrate that Commission review of the ALJ's decision is warranted. First, Dr. Perez's petition does not identify any prejudicial error in the conduct of the ALJ's proceeding. Nor can we identify any such error. Dr. Perez, who has been represented by counsel throughout these FTC proceedings, was given ample opportunity to contest in a hearing the facts as found by the arbitrator, as well as the opportunity to supplement the record. He declined to do so. He also declined to invoke his right under 15 U.S.C. § 3058(c)(3)(C)(ii) to seek leave to supplement the record in our consideration of his petition. We therefore conclude that there was no prejudicial error in the conduct of this proceeding.

Dr. Perez has also failed to demonstrate "an erroneous application" of the ADMC rule prohibiting his possession of Thyro-15 U.S.C. § 3058(c)(2)(C)(ii)(II)(aa). By his own admission, Dr. Perez violated ADMC Rule 3214(a)'s proscription against possession of Thyro-15. Although that rule does provide an exception for liability if the covered person can demonstrate facts showing a "compelling justification," Dr. Perez has failed to adduce any such facts. In his petition for review, he posits a situation in which a covered veterinarian is treating both covered horses (to which the proscription applies) and noncovered horses (to which the proscription does not apply). The problem with his argument is that, despite having ample opportunities to correct and supplement the record, Dr. Perez submitted no evidence that he in fact needed the substance to, for example, treat noncovered horses at Belmont Park that day because of some other compelling justification. Rather, he rested on the mere assertion that his practice includes treating noncovered horses. We therefore conclude that the ALJ and the Authority both properly

