

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
FTC DOCKET NO. D-9415**

ADMINISTRATIVE LAW JUDGE: D. MICHAEL CHAPPELL

IN THE MATTER OF:

JOSEPH PEACOCK AND OSCAR CEBALLOS

APPELLANTS

**AUTHORITY'S PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW AND
PROPOSED ORDER**

Comes now the Horseracing Integrity and Safety Authority (the "Authority") pursuant to the briefing schedule provided by the Administrative Law Judge after the July 13, 2023, evidentiary hearing held in this matter, and submits the following Proposed Findings of Fact and Conclusions of Law and Proposed Order.

STURGILL, TURNER, BARKER &
MOLONEY, PLLC

/s/ Bryan Beaman

BRYAN BEAMAN

REBECCA PRICE

333 W. Vine Street, Suite 1500

Lexington, Kentucky 40507

Telephone: (859) 255-8581

bbeaman@sturgillturner.com

rprice@sturgillturner.com

HISA ENFORCEMENT COUNSEL

CERTIFICATE OF SERVICE

Pursuant to 16 CFR 1.146(a) and 16 CFR 4.4(b), a copy of this Proposed Findings of Fact and Conclusions of Law and Proposed Order is being served on August 14, 2023, via Administrative E-File System and by emailing a copy to:

Hon. D. Michael Chapel
Chief Administrative Law Judge
Office of Administrative Law Judges
Federal Trade Commission
600 Pennsylvania Ave. NW
Washington DC 20580
via e-mail to Oalj@ftc.gov and electronicfilings@ftc.gov

Joel B. Turner
Frost Brown Todd
400 W Market St. Suite 3200
Louisville KY 40202-3363
jturner@fbtlaw.com

Nolan M Jackson
Frost Brown Todd
20 F St. NW Suite 850
Washington DC 20001
njackson@fbtlaw.com

/s/ Bryan Beaman
Enforcement Counsel

PROPOSED FINDINGS OF FACT

1. The Horseracing Integrity and Safety Authority (the “Authority”) maintains its headquarters at 401 West Main Street, Suite 222, Lexington, Kentucky 40507.
2. The Authority was created by the Horseracing Integrity and Safety Act, 15 USC 57A § 3051 *et seq.*¹
3. The Authority exists to develop and implement a racetrack safety program for covered horses, covered persons, and covered horseraces.
4. Albuquerque Downs is a Racetrack, pursuant to the Authority’s Rules, where Covered Horseraces are conducted.
5. Albuquerque Downs maintains its racing operations at 145 Louisiana Boulevard NE, Albuquerque, New Mexico 87108.
6. SHERIFF BROWN is a Covered Horse, pursuant to the Authority’s Rules.
7. Joseph Peacock, Jr. is currently the owner of SHERIFF BROWN and was owner of SHERIFF BROWN on September 24, 2022.²
8. Todd Fincher is currently the trainer of SHERIFF BROWN and was trainer of SHERIFF BROWN on September 24, 2022.³
9. Oscar Ceballos was rider of SHERIFF BROWN on September 24, 2022, at Albuquerque Downs.⁴

¹ 15 U.S.C. § 3051 *et seq.*

² Authority Exhibit 1.

³ Transcript of Evidentiary Hearing at 217.

⁴ Transcript of Evidentiary Hearing at 115.

10. On September 24, 2022, SHERIFF BROWN raced at Albuquerque Downs in Race 6.⁵
11. SHERIFF BROWN placed first in Race 6 on September 24, 2022.⁶
12. During the course of the race, jockey Oscar Ceballos struck SHERIFF BROWN eleven times with the riding crop.⁷
13. The Albuquerque Downs stewards reviewed the race footage and observed jockey Ceballos use the riding crop eleven times during the race.⁸
14. The Albuquerque Downs stewards conducted hearings with jockey Ceballos and trainer Fincher, in place of owner Peacock, on September 25, 2022.⁹
15. The Albuquerque Downs stewards reviewed the race footage with Ceballos and Fincher during the September 25, 2022, hearings. This review involved Ceballos and Fincher counting aloud the number of strikes they observed during the race.¹⁰
16. The Albuquerque Downs stewards issued Ceballos a ruling citing him for a Class 2 Violation of HISA Rule 2280(b)(1) for striking the horse eleven times.¹¹

⁵ Authority Exhibit 2.

⁶ Authority Exhibit 3.

⁷ Authority Exhibit 2.

⁸ Transcript of Evidentiary Hearing at 80-82.

⁹ Transcript of Evidentiary Hearing at 82; Transcript of Evidentiary Hearing at 231.

¹⁰ *Id.*

¹¹ Authority Exhibit 2.

17. The Albuquerque Downs stewards issued Peacock a ruling citing him for a Class 2 Violation of HISA Rule 2280(b)(1) for Ceballos' striking the horse eleven times.¹²
18. Ceballos filed a Request for Stay Pending Appeal of the Albuquerque Downs stewards' ruling with the Authority on October 3, 2022.¹³
19. Peacock filed a Notice of Appeal of the Albuquerque Downs stewards' ruling with the Authority on September 29, 2022.¹⁴
20. The Authority granted a stay of penalties on October 3, 2022.¹⁵
21. The Authority consolidated the appeals on October 19, 2022.¹⁶
22. The Authority conducted a Board hearing of the matter on March 27, 2023. Jockey Ceballos, trainer Fincher, owner Peacock, and Steward Larry Fontenot appeared as witnesses at the hearing.¹⁷
23. The Authority issued a written decision on appeal on May 17, 2023.¹⁸
24. Peacock and Ceballos filed an appeal with the Federal Trade Commission of the Authority's decision on June 13, 2023.¹⁹

¹² Authority Exhibit 3.

¹³ Authority Exhibit 5.

¹⁴ Authority Exhibit 4.

¹⁵ Authority Exhibit 6.

¹⁶ Authority Exhibit 10.

¹⁷ Authority Exhibit 15.

¹⁸ Authority Exhibit 19.

¹⁹ Notice of Appeal and Application for Review filed by Appellants, In the Matter of Joseph Peacock and Oscar Ceballos, FTC No. D-9415, June 15, 2023.

25. The Federal Trade Commission conducted a hearing in this matter on July 13, 2023.²⁰

PROPOSED CONCLUSIONS OF LAW

- I. Jockey Oscar Ceballos struck SHERIFF BROWN eleven times during Race 6 on September 24, 2022.
- II. No underlying safety concern served as the basis for strikes but rather the strikes were made in an effort to encourage the horse to achieve optimal placing in the race.
- III. The Albuquerque Downs stewards did not consider any taps, HISA Rule 2280(b)(2), or any flags, HISA Rule 2280(b)(3), when counting the number of strikes Ceballos committed during the race. The Commission agrees.
- IV. The Albuquerque Downs stewards appropriately applied HISA Rule 2280(b)(1) and found that Ceballos had committed a Class 2 Violation of the Authority's crop rule.
- V. The Albuquerque Downs stewards appropriately applied HISA Rule 2282(b)(2) and issued the following penalties in the ruling: a \$500 fine for the jockey or 20% of the purse, whichever is greater; a three-day suspension for the jockey; 5 HISA points for the jockey; and a disqualification of purse earnings.

²⁰ Transcript of Evidentiary Hearing.

The Commission finds Ceballos violated HISA Rule 2280(b)(1) on September 24, 2022, in Race 6 by striking his horse more than six times and imposes the following penalties: a \$500 fine for the jockey or 20% of the purse, whichever is greater; a three-day suspension for the jockey; 5 HISA points for the jockey; and a disqualification of purse earnings.

Proposed Order

The undersigned Chief Administrative Law Judge (“ALJ”), having held an evidentiary hearing on July 13, 2023, having reviewed the entire record *de novo*, and having reviewed the parties’ submitted proposed findings of fact and conclusions of law, hereby makes the following findings of fact and conclusions of law.

Introduction

On September 25, 2022, the stewards at Albuquerque Downs stewards issued jockey Oscar Ceballos a ruling for violating Horseracing Integrity and Safety Authority (“HISA” or the “Authority”) Rule 2280(b)(1) when he struck his mount, SHERIFF BROWN, eleven times during the sixth race the previous day.²¹ As a result, the stewards imposed on Ceballos a penalty of a \$500 fine or 20% of purse earnings, whichever is greater; a three-day suspension from racing; five HISA points; and the disqualification of the purse monies won in the race pursuant to HISA Rule 2282(a)(2). The Albuquerque Downs stewards also issued a ruling to the owner of SHERIFF BROWN, Joseph Peacock, imposing a penalty of a disqualification of purse monies won in the race pursuant to HISA Rule 2282(a)(2).²² Both Ceballos and Peacock, appealed the ruling to the Authority’s Board,²³ where Ceballos and Peacock

²¹ Authority Exhibits 2 and 3. All exhibits referenced hereinafter are in reference to exhibits admitted at the Federal Trade Commission evidentiary hearing held on July 13, 2023, in this matter. The exhibits were provided in “Horseracing Integrity and Safety Authority Pre-Hearing Exhibit List and the Record Below” and were admitted during the hearing. Exhibits will be referred to as “Party’s Name Exhibit” in this filing.

²² Authority Exhibit 3.

²³ Authority Exhibits 4 and 5.

PUBLIC

(the “Appellants”) were afforded a full hearing on the appeal.²⁴ The HISA Board affirmed the stewards’ ruling finding that the ruling lacked any “clear error, and that the stewards’ ruling was supported by evidence and applicable law...”²⁵ The Appellants appealed the Authority’s decision to the Federal Trade Commission (the “Commission”),²⁶ and received a full evidentiary hearing conducted on July 13, 2023.²⁷ Appellants argued Ceballos exceed the number of strikes HISA Rule 2280(b)(1) permitted due to safety reasons, despite never raising that mitigation factor at the initial Albuquerque Downs stewards’ hearing.²⁸

The evidence presented in the record, at all underlying proceedings, and at the Commission’s evidentiary hearing, supports the conclusion Ceballos struck his mount SHERIFF BROWN eleven times during the race at Albuquerque Downs on September 24, 2022, with no basis to preserve safety for himself, his mount, or other riders; and the stewards imposed the appropriate penalty pursuant to HISA Rules 2280 and 2282, which the Authority’s Board upheld in its May 17, 2023, decision.²⁹

The Authority’s Rules on Use of Riding Crop and Penalties

HISA Rule 2280 Use of Riding Crop allows jockeys to use riding crops to encourage horses to achieve optimal performance. HISA Rule 2280(a). However, the Authority has limited a jockey to only striking a horse six times during a race to

²⁴ Authority Exhibit 15.

²⁵ Authority Exhibit 19.

²⁶ Notice of Appeal and Application for Review filed by Appellants, In the Matter of Joseph Peacock and Oscar Ceballos, FTC No. D-9415, June 15, 2023.

²⁷ Transcript of Evidentiary Hearing.

²⁸ Transcript of Evidentiary Hearing at 106.

²⁹ Authority’s Exhibit 19.

achieve the best outcome. HISA Rule 2280(b)(1). If a jockey strikes a horse more than six times during a race, the Authority has defined a schedule of accompanying penalties. Riders may contact a horse via a tap on the shoulder if both hands are on the reins and simultaneously touching the neck of the horse at the time of the tap; this tap does not qualify as one of the rider's six permitted strikes. HISA Rule 2280(b)(2). A rider may also show or wave the crop to the horse, a term of art in the industry called "flagging," without making contact with the horse; a flag is not considered a strike pursuant to the Authority's rules. HISA Rule 2280(b)(3).

A jockey incurs a Class 2 Violation of HISA Rule 2280 Use of Riding Crop by using four to nine strikes over the maximum six permitted strikes during the race; resulting in a penalty of a \$500 fine for the jockey or 20% of the purse earnings, whichever is greater; a three-day suspension for the jockey; five HISA points for the jockey; and a disqualification of the horse from purse earnings. HISA Rule 2282(b)(2).

The Authority's rules on the use of the riding crop went into effect on July 1, 2022, and all Covered Horseraces run after that date have been subject to the Authority's regulations governing the use of the riding crop.³⁰ The Authority delegated the adjudication of alleged violations of HISA Rule 2280 to racing stewards, whether employed by the Authority, state racing commissions, or tracks. HISA Rule 8320(a). The stewards follow state racing commission procedural rules for track hearings for riding crop violations. If a rider receives a stewards ruling, the rider or other interested party may appeal the stewards' decision to the Authority's Board for

³⁰ 15 U.S.C. § 3051 *et seq.*

further review. HISA Rule 8350(a). The Authority's Board reviews the stewards' decision under a clearly erroneous standard.

Ceballos Used the Riding Crop Eleven Times During Race 6 on September 24, 2022

Evidence in the record and presented at the Commission hearing is clear that Ceballos contacted the horse with his riding crop eleven times during the race on September 24, 2022. Albuquerque Downs stewards, HISA steward Larry Fontenot, Elizabeth Garcia, and Connie Estes, observed Ceballos committing eleven strikes during the race.³¹ The strikes that the stewards observed and counted in their assessment were "actually hits." The strikes were not taps, per HISA Rule 2280(b)(2), or flags, per HISA Rule 2280(b)(3).³² The Albuquerque Downs stewards reviewed the race footage immediately upon the conclusion of the race and each counted the number of strikes they observed. Each steward observed Ceballos use the crop eleven times during the race.³³

The next day, the stewards conducted a hearing with Ceballos regarding his use of the crop,³⁴ and a hearing with SHERIFF BROWN trainer, Todd Fincher, on behalf of owner Peacock, regarding the same.³⁵ During the hearings, the stewards reviewed the race footage with Ceballos and Fincher, and the parties counted the strikes used during the race.³⁶ Ceballos and the stewards agreed that Ceballos had

³¹ Transcript of Evidentiary Hearing at 81.

³² Transcript of Evidentiary Hearing at 78-79.

³³ Transcript of Evidentiary Hearing at 82.

³⁴ *Id.*

³⁵ *Id.*; Authority Exhibit 1, Transcript of Evidentiary Hearing at 231.

³⁶ Transcript of Evidentiary Hearing at 82, Transcript of Evidentiary Hearing at 98.

struck SHERIFF BROWN eleven times during the race.³⁷ Steward Larry Fontenot then issued a Stewards Ruling to Ceballos citing him for violating HISA Rule 2280(b)(1) by striking his mount “5 Strikes over the Limit” of six strikes per race.³⁸

Appellants then appealed the ruling to the Authority’s Board.³⁹ At the Authority’s hearing, Steward Fontenot appeared to testify as the Authority’s witness. Steward Fontenot remained steadfast in his testimony that Ceballos struck the horse eleven times during the course of the race.⁴⁰ On the record at that hearing, Steward Fontenot reviewed the race footage and counted aloud the strikes he observed.⁴¹ It is clear from the underlying record that Ceballos made contact with the horse eleven times, five times in excess of what HISA Rule 2280(b)(1) allows.

Ceballos Was Not Justified in Exceeding the Allowed Amount of Strikes to the Horse

No basis exists to support Appellants’ claim that Ceballos used the strikes over the allowed six times for safety reasons. At the Commission’s evidentiary hearing, Appellants theorized Ceballos’ strikes were a necessary safety measure because the horse was “lugging in.”⁴² Appellants are correct in their assertion that the Authority’s rules contemplate a scenario in which riders may use strikes to preserve the safety of themselves, their mounts, and other participants in the race. HISA Rule 2280(b)(4).

³⁷ Transcript of Evidentiary Hearing at 103.

³⁸ Authority Exhibits 2 and 3.

³⁹ Authority Exhibits 4 and 5.

⁴⁰ Authority Exhibit 15 at 11:50-12:28.

⁴¹ *Id.*

⁴² Transcript of Evidentiary Hearing at 112-172; 217-238; and 238-270. For the purposes of this appeal, “lugging in” is a racing term of art that means a horse is drifting to the inside rail of a race.

However, Appellants' hypothesis that Ceballos acted to prevent a dangerous situation arose only after the stewards' hearings with Ceballos and Fincher and was raised by the owner. While Appellants are certainly not prohibited from raising this issue here with the Commission, if Ceballos was truly concerned during the race about safety of horse and rider, he surely would have raised it contemporaneously, immediately after the race with the stewards.

On September 25, 2022, the date of the stewards' hearings with Ceballos and Fincher, both jockey and trainer reviewed the race film with the stewards. Neither Ceballos nor Fincher raised any claim of potential safety measures as a basis for the additional five strikes.⁴³ Per the testimony of Steward Fontenot, Ceballos "came in, we sat there. He watched the race. He counted the whips. I counted the whips. We talked about it...And he said... **'it is what it is.'**"⁴⁴ Later, when Ceballos filed his Request for Stay Pending Appeal, he provided the following justification for seeking relief from the Authority:

I know I was penalized for 6 strike rule, but I believe many of the strikes were flags or brushes on the shoulder I believe the brushes or flags are being considered strikes. I believe my actions with the whip are being counted against me, **I believe my actions are to encourage the horse to the best of my ability.**⁴⁵

Based on his own admission to the stewards and written statement, in the days immediately following the race, Ceballos clearly believed that his use of the riding crop was for the limited purpose of encouraging SHERIFF BROWN to win the race.

⁴³ Transcript of Evidentiary Hearing at 82; Transcript of Evidentiary Hearing at 231.

⁴⁴ Transcript of Evidentiary Hearing at 103 (emphasis added).

⁴⁵ Authority Exhibit 5 (emphasis added).

The evidence in the record reflects that Ceballos was familiar with the crop rule as a rider in multiple New Mexico jurisdictions. In fact, Ceballos served as a Spanish language interpreter for New Mexico Stewards at Zia Park to explain the Authority's crop rule to other riders.⁴⁶ Ceballos understood the parameters of HISA Rule 2280, and the associated penalties with striking five times over the limit.⁴⁷ With his full understanding of HISA regulations, and with his review of the race footage with the Albuquerque Downs stewards, Ceballos never expressed any concern that a safety issue existed during the race until his appeal was consolidated with Peacock's appeal.⁴⁸

Peacock was the first party to raise the argument to the Authority's Board that Ceballos struck his horse – not Ceballos or Fincher who were present for the race and for the stewards' hearings.⁴⁹ At the time of the race and the subsequent hearings, Peacock was traveling.⁵⁰ Peacock, recipient of the vast majority of the purse money that SHERIFF BROWN would collect but for the HISA Rule 2280 violation, is not a racing steward⁵¹ nor a former race rider.⁵² However, he felt “qualified to review the race” and use his “best judgment” to determine how many strikes Ceballos committed.⁵³ Peacock's “opinion” of the race led him to believe the strikes Ceballos

⁴⁶ Transcript of Evidentiary Hearing at 108-109.

⁴⁷ Transcript of Evidentiary Hearing at 103-104.

⁴⁸ Authority Exhibit 10.

⁴⁹ Appellants Exhibit 10; Transcript of Evidentiary Hearing at 103; Transcript of Evidentiary Hearing at 82.

⁵⁰ Transcript of Evidentiary Hearing at 240.

⁵¹ Transcript of Evidentiary Hearing at 251.

⁵² Transcript of Evidentiary Hearing at 265.

⁵³ Transcript of Evidentiary Hearing at 258.

committed additional strikes for safety purposes.⁵⁴ Peacock’s “best judgment” led him to plead in his Notice of Appeal, “It does not appear that Mr. Ceballos struck Sheriff Brown the required number of times over the limit. Also, Mr. Ceballos appeared to use the crop to preserve the safety of the horses and riders in the race.”⁵⁵ Peacock testified that he neither consulted with Ceballos about the race nor the purpose of Ceballos’ strikes prior to conducting his review of the race.⁵⁶

Appellants’ case presented to the Commission reflects Peacock’s theory of the case, which he formulated after the stewards’ hearing with the jockey and trainer and conflicts with the rider’s own representations and written statements about the race. As such, Appellants’ emergent theory that Ceballos needed to strike the horse five times over the limit of permitted strikes to stop the horse from “lugging-in” is inconsistent with the evidence in the record in this matter.

Additionally, to bolster this theory of the case, Appellants presented Steward Jeff Williams as a witness to provide his opinion about the Albuquerque Downs stewards’ ruling. Williams testified that he has been “good friends” with Fincher, an interested party to this matter, for 35 years.⁵⁷ Williams testified upon the request of Appellants and his friend, whose purse earnings are subject to redistribution pending the Commission’s decision in this matter, because “they didn’t know a lot of other stewards...”⁵⁸

⁵⁴ Transcript of Evidentiary Hearing at 251.

⁵⁵ Authority Exhibit 4.

⁵⁶ Transcript of Evidentiary Hearing at 249.

⁵⁷ Transcript of Evidentiary Hearing at 212.

⁵⁸ Transcript of Evidentiary Hearing at 215.

Williams also acknowledged in his testimony that stewards across the country could watch the same race and reach different determinations in good faith about rule violations and infractions from race replays.⁵⁹ Mr. Williams' testimony suggests that his opinion could justifiably differ from the Albuquerque Downs stewards rulings, even if both opinions were formed in good faith. However, only Williams, not Steward Fontenot, testified that he was long-time friends with an interested party in this matter. Only Williams' testimony, not Steward Fontenot's testimony, ignores the underlying record of events, admissions in this case, and collaboration with other adjudicating stewards and relies exclusively on his own opinion of the race.

Findings of Fact

1. The Authority maintains its headquarters at 401 West Main Street, Suite 222, Lexington, Kentucky 40507.
2. The Authority was created by the Horseracing Integrity and Safety Act, 15 USC 57A § 3051 et seq.⁶⁰
3. The Authority exists to develop and implement a racetrack safety program for covered horses, covered persons, and covered horseraces.
4. Albuquerque Downs is a Racetrack, pursuant to the Authority's Rules, where Covered Horseraces are conducted.
5. Albuquerque Downs maintains its racing operations at 145 Louisiana Boulevard NE, Albuquerque, New Mexico 87108.

⁵⁹ Transcript of Evidentiary Hearing at 211.

⁶⁰ 15 U.S.C. § 3051 *et seq.*

6. SHERIFF BROWN is a Covered Horse, pursuant to the Authority's Rules.
7. Joseph Peacock, Jr. is currently the owner of SHERIFF BROWN and was owner of SHERIFF BROWN on September 24, 2022.⁶¹
8. Todd Fincher is currently the trainer of SHERIFF BROWN and was trainer of SHERIFF BROWN on September 24, 2022.⁶²
9. Oscar Ceballos was the jockey of SHERIFF BROWN on September 24, 2022, at Albuquerque Downs.⁶³
10. On September 24, 2022, SHERIFF BROWN raced at Albuquerque Downs in Race 6.⁶⁴
11. SHERIFF BROWN placed first in Race 6 on September 24, 2022.⁶⁵
12. During the course of the race, jockey Oscar Ceballos struck SHERIFF BROWN eleven times with the riding crop.⁶⁶
13. The Albuquerque Downs stewards reviewed the race footage and observed jockey Ceballos use the riding crop eleven times during the race.⁶⁷
14. The Albuquerque Downs stewards conducted hearings with jockey Ceballos and trainer Fincher, in place of owner Peacock, on September 25, 2022.⁶⁸

⁶¹ Authority Exhibit 1.

⁶² Transcript of Evidentiary Hearing at 217.

⁶³ Transcript of Evidentiary Hearing at 115.

⁶⁴ Authority Exhibit 2.

⁶⁵ Authority Exhibit 3.

⁶⁶ Authority Exhibit 2.

⁶⁷ Transcript of Evidentiary Hearing at 80-82.

⁶⁸ Transcript of Evidentiary Hearing at 82; Transcript of Evidentiary Hearing at 231.

15. The Albuquerque Downs stewards reviewed the race footage with Ceballos and Fincher during the September 25, 2022, hearings. This review involved Ceballos and Fincher counting aloud the number of strikes they observed during the race.⁶⁹
16. The Albuquerque Downs stewards issued Ceballos a ruling citing him for a Class 2 Violation of HISA Rule 2280(b)(1) for striking the horse eleven times.⁷⁰
17. The Albuquerque Downs stewards issued Peacock a ruling citing him for a Class 2 Violation of HISA Rule 2280(b)(1) for Ceballos' striking the horse eleven times.⁷¹
18. Ceballos filed a Request for Stay Pending Appeal of the Albuquerque Downs stewards' ruling with the Authority on October 3, 2022.⁷²
19. Peacock filed a Notice of Appeal of the Albuquerque Downs stewards' ruling with the Authority on September 29, 2022.⁷³
20. The Authority granted a stay of penalties on October 3, 2022.⁷⁴
21. The Authority consolidated the appeals on October 19, 2022.⁷⁵

⁶⁹ *Id.*

⁷⁰ Authority Exhibit 2.

⁷¹ Authority Exhibit 3.

⁷² Authority Exhibit 5.

⁷³ Authority Exhibit 4.

⁷⁴ Authority Exhibit 6.

⁷⁵ Authority Exhibit 10.

22. The Authority conducted a Board hearing of the matter on March 27, 2023.

Jockey Ceballos, trainer Fincher, owner Peacock, and Steward Larry Fontenot appeared as witnesses at the hearing.⁷⁶

23. The Authority issued a written decision on appeal on May 17, 2023.⁷⁷

24. Peacock and Ceballos filed an appeal with the Federal Trade Commission of the Authority's decision on June 13, 2023.⁷⁸

25. The Federal Trade Commission conducted a hearing in this matter on July 13, 2023.⁷⁹

Conclusions of Law

1. Jockey Oscar Ceballos struck SHERIFF BROWN eleven times during Race 6 on September 24, 2022.
2. No underlying safety concern served as the basis for strikes but rather the strikes were made in an effort to encourage the horse to achieve optimal placing in the race.
3. The Albuquerque Downs stewards did not consider any taps, HISA Rule 2280(b)(2), or any flags, HISA Rule 2280(b)(3), when counting the number of strikes Ceballos committed during the race. The Commission agrees.

⁷⁶ Authority Exhibit 15.

⁷⁷ Authority Exhibit 19.

⁷⁸ Notice of Appeal and Application for Review filed by Appellants, In the Matter of Joseph Peacock and Oscar Ceballos, FTC No. D-9415, June 15, 2023.

⁷⁹ Transcript of Evidentiary Hearing.

PUBLIC

4. The Albuquerque Downs stewards appropriately applied HISA Rule 2280(b)(1) and found that Ceballos had committed a Class 2 Violation of the Authority's crop rule.
5. The Albuquerque Downs stewards appropriately applied HISA Rule 2282(b)(2) and issued the following penalties in the ruling: a \$500 fine for the jockey or 20% of the purse, whichever is greater; a three-day suspension for the jockey; 5 HISA points for the jockey; and a disqualification of purse earnings.
6. The Commission finds Ceballos violated HISA Rule 2280(b)(1) on September 24, 2022, in Race 6 by striking his horse more than six times and imposes the following penalties: a \$500 fine for the jockey or 20% of the purse, whichever is greater; a three-day suspension for the jockey; 5 HISA points for the jockey; and a disqualification of purse earnings.

Conclusion

The video footage of the race clearly shows that Ceballos committed eleven strikes in the race. The strikes were not used as a tool to prevent SHERIFF BROWN from lugging in, but rather were hits to propel the horse to run faster and win the race.⁸⁰ Ceballos rode the race to win and used the crop eleven times to spur SHERIFF BROWN to cross the finish line first. The Albuquerque Downs stewards ruling appropriately accounted for all eleven strikes Ceballos used during the race, and appropriately applied the Authority's penalties.

⁸⁰ Authority Exhibit 14.

PUBLIC

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

The Commission hereby **AFFIRMS** the stewards' rulings and **UPHOLDS** the attendant penalties as the record supports the Albuquerque Downs stewards' findings in the stewards ruling from September 25, 2022, and the May 17, 2023, decision by the Authority's Board.

Entered this _____ day of _____, 2023

D. Michael Chappell
Chief Administrative Law Judge