

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

**ADMINISTRATIVE LAW JUDGE:** \_\_\_\_\_

**IN THE MATTER OF:**

**JOSEPH PEACOCK AND OSCAR CEBALLOS**

**APPELLANTS**

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**RESPONSE TO NOTICE OF APPEAL  
AND APPLICATION FOR REVIEW**

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The Horseracing Integrity and Safety Authority (the “Authority”) files this Response to Appellants’ Peacock and Ceballos Notice of Appeal and Application for Review. The Authority moves the Commission to uphold the Authority’s Decision on Appeal (the “Decision”) and deny Appellants’ request for an evidentiary hearing, as it is unnecessary to supplement or contest facts in the record. Pursuant to 16 CFR 1.146(c)(3) of this Commission’s Procedures for Review of Final Civil Sanctions Imposed under the Horseracing Integrity and Safety Act, the appeal should be limited to briefing by the parties or oral argument.

It is important to first identify the HISA rule that governs this case. Appellants’ assert the Decision of the Board of the Authority (the “Board”) failed to contain written findings of fact,<sup>1</sup> that the appeal proceeding conducted by the Board was guided by standards set forth in the Authority’s Rule 8340, and that a

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<sup>1</sup> See Notice of Appeal and Application for Review, at p. 2-3, second allegation of error.

“preponderance of the evidence did not establish that Appellant Ceballos committed a violation” of Rule 2280.”<sup>2</sup> These arguments are based upon a misreading of the Authority’s Rules. Rule 8340 establishes procedures for an *initial hearing* by a *Board Panel*. This proceeding conducted by the Board was not a Board Panel hearing, but instead a hearing on an appeal of a stewards’ ruling pursuant to Rule 8350. Rule 8340 and the “preponderance of the evidence” standard set forth in Rule 8340(f) do not apply to this case.

The Authority’s rules clearly outline the adjudication and appeal of violations of Rule 2280, Use of Riding Crop. Rule 8320(a) confers upon the stewards presiding at the racetrack the authority to adjudicate violations of Rule 2280. If the stewards issue a ruling finding a violation, the ruling may be appealed to the Board: “Any ruling by the stewards finding a violation may be appealed to the Board of the Authority under the procedures described in **Rule 8350.**” Rule 2280 (emphasis added). The Board then conducts the appeal and “shall uphold the decision unless it is **clearly erroneous or not supported by the evidence or applicable law.**” Rule 8350(f) (emphasis added). The clearly erroneous standard set forth in Rule 8350(f) is the applicable standard. The Board considered all of the evidence presented by the parties at the hearing and in post-hearing briefs, and found “there was no clear error, and that the stewards’ ruling was supported by evidence and applicable law...”<sup>3</sup> Rule 8350 does not require the Board to issue findings of fact.

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<sup>2</sup> Notice of Appeal, at p. 2

<sup>3</sup> Attachment A. Decision on Appeal, at p. 2.

Appellants are required under 16 CFR 1.146(a)(1) to “state whether the hearing is sought to supplement or context facts” and that “each issue must be plainly and concisely stated.” The Notice of Appeal curiously states “[a]ppellants request a hearing to contest facts that HISA may claim it found, and to supplement the record with testimony of the Stewards’ witness that Appellants could not present because the witness did not appear in person.”<sup>4</sup> Appellants’ Notice makes clear that the only fact they seek to contest is whether any of the strikes to the horse were made in order to preserve the safety of horse and rider or were not actually strikes.<sup>5</sup> Thus, if the ALJ decides to conduct a hearing, the testimony at the hearing should be limited to how many strikes to the horse were for safety purposes, or were taps to the shoulder or mere waves of the crop, and therefore not countable strikes under Rule 2280’s prohibition.<sup>6</sup> This is the same factual issue litigated at the Board appeal hearing. Appellants identify no new evidence which requires the record to be to be *supplemented before the ALJ*. There is no basis for Appellants’ request to supplement the record on appeal.

Further, Appellants assert the Authority denied them due process under Rule 8340 (the inapplicable rule) because Albuquerque Downs Steward Fontenot appeared via Zoom. Rule 8350(e) specifically permits the hearing to be conducted “by means of an audio-visual videoconferencing system or a telephone audio system.” *Id.*

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<sup>4</sup> Notice of Appeal, at p. 3.

<sup>5</sup> *Id.*

<sup>6</sup> See Rule 2280(b)(1) (stating that a rider may “use the crop on the hindquarters to activate and focus the horse a maximum of 6 times during a race...”)

Appellants allege that the hearing did not allow a full presentation of evidence or the opportunity to conduct cross-examination.<sup>7</sup> In fact, the hearing included a thorough review of audio-visual race footage. Steward Fontenot then gave direct testimony against Appellants for approximately seven and one-half minutes and was extensively cross-examined by Appellants' attorney *for 48 minutes*. Appellant Ceballos, Appellant Peacock, trainer Todd Fisher were all permitted to testify. The Board held an exhaustive hearing for one hour and fifty-six minutes that allowed Appellants ample opportunity to present their case. The Appellants' assertion that the Authority denied them the right to be heard and present evidence ignores the lengthy record created during the Board hearing, and Appellants' Notice identifies no area of testimony that they were denied from exploring. The record is complete, and no supplementation of the record is required.

Similarly, Appellants have not established that a hearing is necessary to *supplant* the record. Appellants identify no "weighty, probative, and substantial evidence and compelling argument" that the procedure below violated 15 U.S.C. 3057(c) or the Authority's Rule 8300 Series.<sup>8</sup> Appellants also far fall short of identifying a failure of adequate due process.

There is no need for an additional hearing, as the underlying record is fully complete and was reviewed at length by the Board. Appellants have not identified any new supplemental evidence the Board did not already consider during the appeal

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<sup>7</sup> Notice of Appeal, at p. 8.

<sup>8</sup> 16 CFR 1.146(c)(5).

hearing. The Board applied the appropriate standard and found the Stewards' ruling was not clearly erroneous. The Authority therefore moves the Commission to uphold the Decision, and to limit the ALJ's review to briefing or oral argument by the parties, pursuant to 16 CFR 1.146(a)(c)(3).

Respectfully submitted,

STURGILL, TURNER, BARKER &  
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*/s/ Bryan Beauman*

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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 is being served on June 26, 2023, via U.S. First Class Mail and by emailing a copy to:

Hon. D. Michael Chapel  
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Office of Administrative Law Judges  
Federal Trade Commission  
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*/s/Bryan Beauman*  
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**HORSERACING INTEGRITY AND SAFETY AUTHORITY  
ACTION NO. 2022-00431**

IN RE: APPEAL OF JOSEPH PEACOCK  
AND OSCAR CEBALLOS

APPELLANTS

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**DECISION ON APPEAL**

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This matter arises under the jurisdiction of the Horseracing Integrity and Safety Authority (the “Authority”) established pursuant to the Horseracing Integrity and Safety Act (the “Act) at 15 U.S.C. § 3051, *et seq.*

On September 25, 2022, a stewards ruling was issued by Stewards at Albuquerque Downs to Joseph Peacock, Jr. (“Appellant Peacock”), as owner of a Covered Horse registered as SHERIFF BROWN and to Oscar Ceballos (“Appellant Ceballos”), as jockey of SHERIFF BROWN. The ruling stated that Appellant Ceballos violated HISA Rule 2280, Use of Riding Crop, by striking SHERIFF BROWN eleven times during the running of the sixth race at Albuquerque Downs on September 24, 2022. As a result of Appellant Ceballos’ violation of Rule 2280, the Stewards imposed a fine of \$500.00, a three-day suspension from participating in a Covered Horserace, five HISA points, and disqualification of SHERIFF BROWN from any eligible purse earnings.

Pursuant to Rule 8350, Appellants Ceballos and Peacock appealed the decision to the Board of the Authority (the “Board”) for review. The standard of review for appeals to the Board is set forth in Rule 8350(f): “Upon review of the decision which is the subject of the appeal, the Board shall uphold the decision unless it is clearly erroneous or not supported by the evidence or applicable law.”

Notice of the appeal hearing was served electronically on both Appellants on March 6, 2023. In accordance with the notice, the Board convened remotely via Zoom on Monday, March 27, 2023, at approximately 10:30 a.m. EDT. Attorneys Bryan H. Beauman and Rebecca C. Price appeared as counsel for the Authority. Attorney Joel Turner appeared as counsel for the Appellants. Appellant Ceballos and Appellant Peacock appeared for the hearing and were accompanied by the trainer of SHERIFF BROWN, Todd Fincher. All parties were provided the opportunity to present testimony, evidence, and argument to the Board, and did so. The Board notes that both parties received excellent legal representation.

After hearing the evidence, the Board retired to deliberate, and then rendered its decision on the record. This was a factually difficult and well-argued case. The Board did not reach a view on how it would have decided the matter in a de novo setting. The standard of review, however, is whether the stewards ruling in this case is clearly erroneous or is not supported by the evidence and applicable law. The Board finds there was no clear error, and that the stewards' ruling was supported by evidence and applicable law, and therefore **AFFIRMS** the stewards ruling and the attendant sanctions imposed upon Appellants, including disqualification of SHERIFF BROWN from any eligible purse earnings in connection with the sixth race on September 24, 2022, at Albuquerque Downs. Appellant Ceballos shall have thirty (30) days from the date of the order to pay any fine and will serve dates of suspension to be set by the stewards at Albuquerque Downs.

This decision is the final decision of the Authority pursuant to 15 U.S.C. § 3058.


### **APPEAL RIGHTS**

Pursuant to 15 U.S.C. § 3058(b), the Appellants may appeal the civil sanction imposed by this decision to the Federal Trade Commission within 30 days of the Authority's submission to the Federal Trade Commission of notice of the civil sanction. The Authority will provide notice of



this decision to the Federal Trade Commission on the date that this decision is issued to the Appellants.

So **ORDERED** this 17th day of May, 2023.



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Charles P. Scheeler  
Chair, Board of Directors

## CERTIFICATE OF ISSUANCE

Undersigned counsel certifies that on May 17, 2023, this Decision on Appeal was issued via first class mail and email to:

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/s/ John Forgy  
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