

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
Office of Administrative Law Judges

In the matter of

Elanor Martin and Oscar Ceballos,

Appellants

HISA Action No. 2024-00155

NOTICE OF APPEAL AND APPLICATION FOR REVIEW

Pursuant to 15 U.S.C. 3501 et seq., including 15 U.S.C. 3058(b)(2)(B) and 16 C.F.R. 1.145 et seq., 16 C.F.R. 1.146, aggrieved Appellants, Elanor Martin and Oscar Ceballos (“Appellants”), hereby give notice of their appeal to the Federal Trade Commission (“FTC”) regarding the decision of the Horseracing Integrity and Safety Authority (“HISA”) (Number 2024-00155). This decision affirmed the ruling and civil sanction imposed by a panel of Stewards at Sunland Park, April 16, 2024.

1. Incorrect Application of HISA Racetrack Safety Rule 2280

The Stewards and HISA erroneously ruled jockey Ceballos violated HISA Racetrack Safety Rule 2280(b)(1), resulting in the disqualification of the horse, ALOTOLUCK, from purse earnings of \$85,000, moving its official finish from second to unplaced, imposing a fine on Ceballos for \$853.60, and enforcing a three-day suspension. Appellants request a de novo review under 15 U.S.C. 3058(b)(1)-(3) and 16 CFR 1.146(b).¹

¹ The constitutionality of HISA’s enabling statute, Horseracing Integrity and Safety Act (15 U.S.C. 3051 et seq.) is in serious question. The Fifth Circuit Court of Appeals held in *Nat’l Horsemen’s Benevolent & Protective Ass’n v. Black*, 53 F. 4th 869 (5th Cir. 2022), that the statute “is facially unconstitutional.” Accordingly, Appellants reserve the right to challenge HISA’s April 16, 2024, decision it is facially unconstitutional. The Fifth Circuit is also expected to render

First, the Stewards were incorrect that Appellant Ceballos engaged in acts violating HISA Racetrack Safety Rule 2280. Rule 2280(b) (“Use of Riding Crop”) provides a rider may:

4. Use the crop to preserve the safety of Horses and riders.

HISA’s rule specifically states such strikes shall not be counted toward the maximum six (6) permitted uses. Evidence showed **and the HISA Committee agreed** “the videotape of the race **showed** the horse was lugging out and moving toward the rail at different points during the race.”²

HISA was presented with testimony from a licensed thoroughbred trainer, attending veterinarian, and attending farrier advising ALOTOLUCK suffered an abscessed foot injury, a primary cause for the horse to lose its path and drift out during the stretch. *For the safety of the horse and riders*, Ceballos engaged the crop and tapped ALOTOLUCK’s shoulder to safely steer the horse. HISA was provided evidence using the crop on the shoulder of the **horse is the best way to safely control** the horse. HISA allows unlimited strikes to the horse when such scenario occurs.

The stewards and HISA Committee misapplied the law and HISA’s rule and *injected their own personal opinions* Ceballos should have attempted to use the reins to control the horse before engaging the use of the crop to control the horse. HISA relied solely upon testimony from Steward Larry Fontenot, who has never held a professional jockey license and only galloped horses when he was younger how he would have attempted to control the horse. Fontenot was also not credible when claimed Ceballos *might have* told him **one time** he engaged the crop for the safety of the

a decision any day on the full merits of the *Black* case and whether or not it will strike down HISA as a whole being unconstitutional.

² See Page 6 of 9 of Exhibit “A”

horse. After being played the audiotape of the hearing, Fontenot was forced to admit Ceballos *repeatedly* pleaded to Fontenot he was using the crop for safety of the horse.

The tape also showed that Fontenot made his ruling *before asking any questions of any other witnesses or learning of the horse's injury*. HISA's Chairman refused to allow Appellant's expert jockey, Scott Stevens who won over 5,000 races in his career, to opine why Ceballos was allowed to use the crop for the safety of the horse. Yet, HISA was allowed to call a rebuttal witness, Violet Smith, who last rode as a professional jockey *over 35 years ago*. Smith *admitted* her opinions were how *she would've attempted* to steer the horse. Smith *admitted* Ceballos was under no obligation to steer the horse using the reins before engaging use of the crop for the safety of the horse and rider per HISA. Her testimony confirmed Ceballos didn't commit any violations of HISA 2280(b)(4), as there is no limit to the number of strikes by a crop when engaged for safety under HISA 2280 (b)(4). On *de novo* review, Ceballos didn't violate Rule 2280 and the ruling was capricious, an abuse of discretion, prejudicial or otherwise not in accordance with law.

2. Lack of Findings of Fact

Second, HISA's decision didn't contain findings of fact. HISA Enforcement Rule 8340(i) required HISA to issue "a written decision setting forth findings of fact..." (emphasis added). The Stewards ruling didn't contain findings of fact, thus, HISA's decision couldn't incorporate them. On *de novo* review, the Administrative Law Judge should find HISA's April 16, 2024, decision wasn't in accordance with the law.

3. Procedural Deficiencies

Third, HISA reached its decision following a hearing lacked guaranteed protections under Rule 8340. Among other deficiencies, the hearing didn't allow "a full presentation of evidence" and didn't allow Appellants to "present" their full case or defense or "conduct such limited cross-

examination as may be required for a full and true disclosure of facts” because the Stewards’ didn’t appear in person, but rather Zoom.³ On *de novo* review, the ALJ should find HISA’s decision was reached in contravention of Rule 8340, therefore, was arbitrary, capricious, an abuse of discretion, prejudicial or otherwise not in accordance with law.

4. Request for Evidentiary Hearing and Stay of Sanctions

Pursuant 16 C.F.R. 1.146(a)(1), Appellants request an evidentiary hearing to contest HISA’s claimed findings and supplement the record with testimony.

Finally, pursuant 16 C.F.R. 1.148, Appellants request a stay of HISA’s decision and civil sanctions during pendency of ALJ’s review. As HISA determined during Appellants’ appeal, there is “good cause” under HISA Enforcement Rule 8350(c) for stay.

Respectfully submitted,

MOTTA LAW, LLC



VANESSA MOTTA (#36915)

3632 Canal Street

New Orleans, LA 70119

Telephone: (504) 500-7246

Facsimile: (504) 513-3122

Email: vanessa@mottalaw.com

CERTIFICATE OF SERVICE

Pursuant to 16 CFR 1.146(a) and 16 CFR 4.4(b), a copy of the forgoing is being served this 21st day of May, 2024 via First Class mail and electronic mail upon the following:

Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue NW, Suite CC-5610
Washington, DC 20580

Hon. D. Michael Chappell
Chief Administrative Law Judge

³ See Rule 8340(g)-(h); see also 5 U.S.C. 556; U.S. Const. amend. V, XIV (guaranteeing due process of law); U.S. Const. Amend. VII (guaranteeing jury trial right where the value in controversy exceeds \$20.00).

Office of Administrative Law Judges
Federal Trade Commission
600 Pennsylvania Avenue. NW
Washington, DC 20580
(Courtesy copies via e-mail to oali@ftc.gov and electronicfilings@ftc.gov)

Bryan Beauman
Sturgill Turner Barker & Moloney PLLC
West Vine Street, Suite 1500
Lexington, KY 40507
bbeauman@sturgillturner.com

Charles P. Scheeler
Chair, Board of Directors
Horseracing Integrity and Safety Authority
401 West Main Street, Suite 222
Lexington, KY 40507
charles.scheeler@dlapiper.com

John L. Forgy
Counsel. Horseracing Integrity and Safety Authority
401 West Main Street. Suite 222
Lexington, KY 40507
johnforgy1@gmail.com

EXHIBIT “A”

**NOTICE TO FEDERAL TRADE COMMISSION OF FINAL CIVIL
SANCTIONS IMPOSED BY THE HORSERACING INTEGRITY AND
SAFETY AUTHORITY UNDER 15 U.S.C. § 3057(d)**

Pursuant to 15 U.S.C. § 3058, this document shall constitute notice of final civil sanctions imposed under 15 U.S.C. § 3057(d) by the Horseracing Integrity and Safety Authority (“HISA”) on the following Covered Persons resulting from a violation of a HISA rule:

Covered Person(s)/Appellant(s)	Action Number	Rule(s) Violated	Final Civil Sanction
Oscar Ceballos Jr. and Eleanor Martin	2024-00155	HISA Rule 2280 and 2282	Penalty imposed upon Oscar Ceballos, Jr.: \$853.60 fine and three-day suspension from participating in a Covered Horserace. Penalty imposed upon Oscar Ceballos, Jr. and Eleanor Martin: Disqualification of Covered Horse (“ALOTALUCK”) from any eligible purse earnings and horse is unplaced in the race.

Contact information for the HISA employee responsible for communications regarding review of the civil sanction is:

John Forgy
 Counsel to HISA
 830 Vermillion Peak Pass
 Lexington, KY 40515
 (859)-940-1215
johnforgy1@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that this notice is being served electronically this 26th day of April, 2024 to the Federal Trade Commission c/o Secretary of the Commission (electronicfiling@ftc.gov) and by first class mail and email to Vanessa Motta, counsel to the persons aggrieved by the civil sanctions, in accordance with 16 C.F.R. § 4.4(b).

John L. Forgy
Counsel to HISA
830 Vermillion Peak Pass
Lexington, KY 40515
(859)-940-1215
Email: johnforgy1@gmail.com

/s/ John Forgy _____
John L. Forgy
Counsel to HISA

**HORSERACING INTEGRITY AND SAFETY AUTHORITY
ACTION NO. 2024-00155**

IN RE: APPEAL OF OSCAR CEBALLOS, et al.

APPELLANTS

DECISION ON APPEAL

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 February 22, 2024, Stewards’ rulings were issued at Sunland Park to Jockey Oscar Ceballos and Owner Eleanor Martin for Jockey Ceballos’ violation of HISA Rule 2280, Use of Riding Crop, by striking his horse, ALOTALUCK, 11 times during the Sunland Park Derby, the ninth race on February 18, 2024. The ruling issued to Ceballos imposed upon him a penalty of a \$853.60 fine and a 3-day suspension and ordered Ceballos to repay the purse monies derived from the race. The ruling issued to Martin disqualified ALOTALUCK from 2nd place and ordered the horse unplaced. The ruling also disqualified Martin from purse monies derived from the race, which resulted in disqualification of the horse from receipt of Kentucky Derby points as well. Pursuant to Rule 8350, both Appellants appealed the decision to the Board for review.

The Board convened a hearing to consider Appellant’s appeal remotely via Zoom on Tuesday, April 16, 2024 at 9:30 AM EST. Attorneys Bryan Beaman and Rebecca Price appeared as counsel for the Authority.

Appellants were served with notice of the hearing on March 22, 2024, by email. Appellants appeared for the hearing and were represented by counsel Vanessa Motta. Appellants and the attorneys for the Board were each given the opportunity to present testimony, evidence, and argument to the Board.

The Authority presented testimony from Sunland Park steward Larry Fontenot. Appellants presented testimony from ALOTALUCK's trainer Ty Garrett, veterinarian Dr. Kara Theis, farrier Jody Roberts, Mr. Ceballos, and jockey Scott Stevens. The Authority presented rebuttal testimony from state steward and jockey Violet Smith.

The Board reviewed the underlying record in the matter including the Stewards' rulings, the audio recording of the Stewards' hearing with Mr. Ceballos, and Appellants' Notices of Appeal. The Authority presented the following items for the Board's review at the hearing: two photographs taken by Steward Fontenot of ALOTALUCK's right hind foot taken on February 21, 2024; a video of ALOTALUCK jogging on February 21, 2024; and a statement from regulatory veterinarian Dr. Brandi O'Sullivan upon evaluating ALOTALUCK on February 21, 2024. Appellants presented the following additional items for the Board's review at the hearing: a photograph of ALOTALUCK's right hind hoof taken on February 21, 2024; a photograph of ALOTALUCK's right hind hoof taken on March 1, 2024; a photograph of ALOTALUCK's right hind leg taken on March 1, 2024; and a photograph of the February 18, 2024, race appearing in an article about the Sunland Park Derby in the *El Paso Times*.

Appellants acknowledged at the hearing that Mr. Ceballos struck the horse eleven times with his riding crop during the race. However, Appellants asserted that some of Mr. Ceballos' strikes were for safety purposes, as permitted by HISA Rule 2280(b)(4). (Rule 2280(b) states: "A jockey may: (4) Use the crop to preserve the safety of Horses and riders").

Steward Fontenot testified that he and the other stewards in the stand on February 18, 2024, closely reviewed the race videotape after the race, as per their usual procedure. He stated that the videotape clearly shows that ALOTALUCK veered toward the outside rail, and also shows that Mr. Ceballos made no attempt to steer the horse. Steward Fontenot testified that the HISA rule allows crop strikes to be used for safety purposes, but the crop may not be used as a tool for steering. Steward Fontenot testified that at the stewards hearing, he asked Mr. Ceballos if he used the crop to preserve the safety of horses and riders in the race, and that Mr. Ceballos told the stewards that he used the crop for safety purposes because the horse was sore and lugging out. However, Mr. Ceballos provided no explanation to the stewards as to why he did not attempt to steer the horse with the reins and instead relied exclusively upon the crop. Steward Fontenot testified that ALOTALUCK gave no sign of behaving in an unsafe manner or any indication that an injury or other condition caused the horse to lug out, or prevented Mr. Ceballos from using the reins rather than shoulder strikes to steer the horse. Steward Fontenot testified that Mr. Ceballos used the crop repeatedly in an effort to try to win the race, rather than for

safety purposes. ALOTALUCK finished the race in second place, catching the ultimate third-place finisher down the stretch and beating him by a nose.

Trainer Ty Garrett testified that ALOTALUCK lugged out at the outset of the race and continued to lug out down the stretch at the end of the race. Garrett said that Mr. Ceballos' shoulder strikes to ALOTALUCK were intended to steer the horse in response to lugging out. According to Garrett, the effort to steer the horse by means of strikes to the shoulder was a safety tactic to avoid collision with other horses. Garrett justified Ceballos' absence of efforts to steer with horse with the reins down the stretch because Ceballos had unsuccessfully attempted to use the reins to prevent lugging out early in the race.

Garrett opined that the horse lugged out because the horse had a sore right hind hoof. After the race, Garrett and veterinary examiners noticed that ALOTALUCK had popped an abscess on the right hind hoof. Ultimately, this abscess resulted in significant swelling of the horse's right hind leg. The horse did not race or work for two weeks to allow the swelling to subside. Garrett testified that he believed the horse to be sound at the time of the race and that he and the veterinarians cleared the horse for racing.

Attending veterinarian Kara Theis testified that she examined ALOTALUCK before and after the race on February 18, 2024. On February 16, 2024, she examined ALOTALUCK and believed the horse to be sound. After the race, on February 21, 2024, she examined the horse and noticed the abscess on the horse's foot. This abscess

later resulted in swelling of the horse's right hind leg. Dr. Theis treated the horse for several weeks to reduce the swelling of the leg.

Farrier Jody Roberts testified that he did not evaluate or reshoe ALOTALUCK prior to the February 18, 2024, race, and he had no knowledge of the condition of the horse's hoof immediately before the race. He stated that he examined the horse's hoof several days after the race and observed an abscess on the foot. He also testified that pain or sensitivity may precede the presence of an abscess, but a horse's caretaker may be unaware of the problem until an abscess forms.

Mr. Ceballos testified that ALOTALUCK lugged out on multiple occasions during the race. He stated that the horse lugged out at the beginning of the race and, at that point, did not respond to any attempts to guide him via use of the reins. Mr. Ceballos testified that he did not believe that he could use the reins down the stretch to steer the horse because pulling on the reins would have caused the horse to lug out even more, or cause the horse to react in a potentially unsafe manner. Mr. Ceballos stated that he used the crop to strike ALOTALUCK on the shoulder to guide the horse as he lugged out to keep the horse running straight, and that he never used the reins for steering. He asserted that his strikes to ALOTALUCK's shoulders were steering strikes used to preserve the safety of horses and riders in the race.

Testimony from jockey Scott Stevens was offered in support of Mr. Ceballos' testimony. Stevens testified that despite a horse's injury on an outside leg, a horse may lug out in either direction. He stated that a rider would be aware of a horse's sensitivity and adjust his riding style to the horse's condition. Stevens also testified

that a rider may use the crop to steer the horse. In his view, ALOTALUCK lugged out and Mr. Ceballos made reasonable use of the crop in attempting to steer the horse.

The Authority presented rebuttal testimony by New Mexico state steward and jockey Violet Smith. Smith testified in an expert capacity that Mr. Ceballos never attempted to steer the horse because he never used the reins and questioned the appropriateness of whipping a horse that the jockey thought might be “off” (in the words of Mr. Ceballos)

After hearing the evidence, the Board retired to deliberate, and then rendered its decision on the record. The standard of review 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.” The Board finds that the stewards ruling in this case is not clearly erroneous and is supported by the evidence and applicable law.

There is no dispute that Mr. Ceballos struck ALOTALUCK 11 times during the race. The evidence established that seven of the eleven strikes were to the shoulder of the horse. There was no testimony that the strikes to the shoulder were taps on the shoulder with the crop while both hands were holding the reins and both hands were touching the base of the horse’s neck, as permitted by Rule 2280(b)(4). The videotape of the race clearly shows that the horse was lugging out and also moving toward the rail at different points during the race. The videotape also shows that Mr. Ceballos was trying to properly position the horse in order to win the race.

The Board does not believe that Mr. Ceballos administered shoulder strikes to ALOTALUCK for safety purposes, contrary to his testimony. The videotape shows that the horse was not running amid close traffic, and Mr. Ceballos was not looking behind him or otherwise manifesting signs that he was concerned about safety. In addition, Mr. Ceballos testified that the horse was “off” during the race, and the Board is concerned that Mr. Ceballos continued to strike the horse with the crop if he thought the horse was in trouble. The Board concludes that Mr. Ceballos struck the horse eleven times in an effort to win the race, five strikes in excess of the six strikes permitted under Rule 2280(b)(2). The Board also concludes that Mr. Ceballos did not use the crop to preserve the safety of horses and riders during the race.

The Board therefore **AFFIRMS** the stewards ruling and the attendant sanctions imposed upon Appellants.

The Board previously issued a stay of penalties during the pendency of this appeal. The Board hereby lifts the stay of penalties for all sanctions except the distribution of the purse monies derived from the race. The stay for the distribution of purse monies will be automatically lifted after all of Appellants’ appeal rights have lapsed. Appellants may make a motion to the Board to stay any other penalties for good cause shown until all of Appellants’ appeal rights have lapsed.


This decision is the final decision of the Authority pursuant to 5 U.S.C. § 3058.

APPEAL RIGHTS

Pursuant to 15 U.S.C. § 3058(b), 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 26th day of April, 2024.



Charles P. Scheeler
Chair, Board of Directors

CERTIFICATE OF ISSUANCE

Undersigned counsel certifies that on April 26th, 2024, this

Decision on Appeal was issued via email and first-class mail to:

Vanessa Motta
Motta Law, LLC
3632 Canal Street
New Orleans, Louisiana 70119
vanessa@mottalaw.com

Bryan Beauman
Rebecca Price
Sturgill, Tuner, Barker & Moloney, PLLC
333 West Vine Street, Suite 1500
Lexington, Kentucky 40507
bbeauman@sturgillturner.com
rprice@sturgillturner.com

/s/ John Forgy
Counsel to HISA