

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
FTC DOCKET NO. D-9431**

ADMINISTRATIVE LAW JUDGE: _____

IN THE MATTER OF:

ELEANOR MARTIN AND OSCAR CEBALLOS

APPELLANTS

RESPONSE TO REQUEST FOR STAY

The Horseracing Integrity and Safety Authority (the “Authority”) files this Response to Appellants Eleanor Martin and Oscar Ceballos’ (the “Appellants”) Request for Stay.

The Authority takes no position on the Appellants’ Request for Stay though Appellants have not met the burden set forth in 16 CFR § 1.148 to receive a stay during the pendency of this appeal. In its Decision on Appeal,¹ the Board of the Authority lifted the stay of all penalties except the distribution of purse monies until Appellants’ appeal rights lapsed. As the appeal is before the Federal Trade Commission (the “Commission”), the matter remains stayed pursuant to the Board’s Decision on Appeal.

Neither Appellants nor any other third party will be injured if the Commission grants or denies a stay in this matter as it has already been stayed by

¹ Attachment 1 – Decision on Appeal.

the Authority's Board. Further, Appellants have not shown the Commission that they will likely be successful on review. Appellants only present the Commission with points of dissatisfaction with the Board's Decision. Appellants failed to raise any concrete assertions that the Board abused its discretion or failed to appropriately apply HISA Rule 2280, Use of Riding Crop.

The Authority takes no position as to Appellants' request for a stay; however, the Authority submits that the distribution of purse monies remains stayed pursuant to the Decision on Appeal and Appellants have failed to meet the requirements of 16 CFR § 1.148 to receive a stay in this matter.

Respectfully submitted,

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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 May 28, 2024, via Administrative E-File System and by emailing a copy to:

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ATTACHMENT 1

**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.

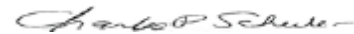
This decision is the final decision of the Authority pursuant to 5 U.S.C. § 3058.

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:

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