

**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 NOTICE OF APPEAL
AND APPLICATION FOR REVIEW**

The Horseracing Integrity and Safety Authority (the “Authority”) files this Response to Appellants’ Martin and Ceballos (collectively the “Appellants”) 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. Pursuant to 16 CFR 1.146(a)(c)(3), the appeal should be limited to briefing by the parties or oral argument.

In their Notice of Appeal and Application for Review, Appellants only present the Commission with points of disagreement with the Decision relating to the weight the Authority gave testimony from witnesses and evidence presented at the April 16, 2024, hearing. Mere dissatisfaction with the Decision does not constitute a claim that the Authority acted in a manner that was capricious, prejudicial, or abused its discretion or constituted appealable error.

Appellants also assert that the Decision did not articulate findings of fact. This is incorrect. The Authority enumerated factual findings in the Decision. The United States Supreme Court is settled that, “absent of special findings, the general finding of the court is conclusive upon all matters of fact, and prevents any inquiry into the conclusions of law embodied therein...” *Fleischmann Construction Co. v. U.S., to Use of Forsberg*, 270 U.S. 349, 355 (1926). The Authority found in the Decision:

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 the 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.¹

The Authority made factual findings in the Decision.

Appellants claim the Authority precluded them from presenting a complete case because the Sunland Park stewards appeared at the hearing by videoconferencing rather than in-person. In fact, the entire hearing on April 16, 2024,

¹ See Attachment 1 - Decision on Appeal at 6-7.

was conducted by videoconferencing. All participants, including counsel for Appellants, Appellants, counsel for the Authority, and the Board of the Authority appeared at the hearing by videoconferencing. Appellants' witnesses, trainer Ty Garrett, veterinarian Kara Theis, farrier Jody Roberts, Appellant Ceballos, and jockey Scott Stevens, all testified remotely. As such, the Sunland Park stewards appearance by videoconferencing for direct testimony and cross-examination by Appellants' counsel in no way prejudiced Appellants. Any hearing before the ALJ would likewise occur via teleconference so this alleged point is no error.

Appellants present the Commission with points of dissatisfaction with the Decision and the procedure used in the April 16, 2024, hearing. Appellants have not articulated any additional evidence necessary to supplement the record for the ALJ's review of this appeal. 16 CFR 1.146(a)(1) requires that if Appellants request a hearing to supplement facts "each issue must be plainly and concisely stated. Further, the applicant must provide support for each issue raised...no assignment of error by the aggrieved party may rely on any question of fact or law not presented to the Authority." Appellants have neither identified issues in the underlying record that require additional facts nor identified issues not contained in the record that would facilitate the ALJ's review of the record.

The Authority therefore requests the Commission uphold the Decision and limit the ALJ's review to briefing or oral argument by the parties pursuant to 16 CFR 1.146(a)(c)(3). Briefing will address all issues raised by the Appellant in this matter. The Authority will assert, relying on the underlying record, that the Authority's

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Decision was not clearly erroneous; Appellant Ceballos struck his mount eleven times with no regard for safety; and the Sunland Park stewards correctly applied Rule 2280, Use of Riding Crop, when they found Appellant Ceballos in violation of the rule, requiring the disqualification of purse monies as a resulting sanction. If the ALJ affords Appellants the opportunity to present new evidence at a hearing, the Authority requests the opportunity to present rebuttal evidence and testimony to Appellants' supplemental evidence.

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 31, 2024, via Administrative E-File System and by emailing a copy to:

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