

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of)	
Joseph Peacock and Oscar Ceballos,)	Docket No. 9415
Appellants.)	

**ADMINISTRATIVE LAW JUDGE DECISION ON APPEAL OF CIVIL SANCTION
IMPOSED BY THE HORSERACING INTEGRITY AND SAFETY AUTHORITY**

I. INTRODUCTION

A. Summary of the Case

This is an appeal by Joseph Peacock (“Peacock”) and Oscar Ceballos (“Ceballos”) (“Appellants”) of the decision by the Horseracing Integrity and Safety Authority (“HISA”) Board affirming the ruling and civil sanction imposed by a panel of Stewards (the “Stewards”) at the Albuquerque Downs Racetrack on September 25, 2022. The Stewards ruled that during a September 24, 2022 race, Ceballos struck racehorse Sheriff Brown five more times than permitted under HISA Racetrack Safety Rule 2280(b)(1). HISA affirmed the Stewards’ ruling and imposed a sanction. Pursuant to 15 U.S.C. § 3058(b)(2)(B) and 16 C.F.R. § 1.146, Appellants appealed to the Federal Trade Commission (“FTC”) and an evidentiary hearing was held before an Administrative Law Judge (“ALJ”) at the FTC. For the reasons explained below, the Stewards’ ruling and civil sanction are reversed.

B. Summary of Applicable Rules

The Horseracing Integrity and Safety Act of 2020, 15 U.S.C. §§ 3051-3060, charges HISA with developing proposed rules on a variety of subjects. *See id.* § 3053(a). At issue in this case are HISA racetrack safety rules 2280(b)-(c) and 2282, effective July 1, 2022. *See* 87 Fed. Reg. 435, 457-58 (FTC Notice of Horseracing Integrity and Safety Authority (HISA) proposed

rule; request for public comment, Jan. 5, 2022); Order Approving the Racetrack Safety Rule Proposed by the Horseracing Integrity and Safety Authority (March 3, 2022) (available at https://www.ftc.gov/system/files/ftc_gov/pdf/order_re_racetrack_safety_2022-3-3_for_publication.pdf) (hereafter, “HISA Rules”).

HISA Rule 2280(b) (“Use of Riding Crop”) provides that a rider may:

1. Use the crop on the hindquarters to activate and focus the Horse a maximum of 6 times during a race.
2. Tap the Horse on the shoulder with the crop while both hands are holding on to the reins and both hands are touching the neck of the Horse.
3. Show or wave the crop to the Horse without physically contacting the Horse.
4. Use the crop to preserve the safety of Horses and riders.

HISA Rule 2280(c) provides that a rider may not:

1. Raise the crop with the rider’s wrist above the rider’s helmet when using the crop;
2. Injure the Horse with the crop or leave any physical marks, such as welts, bruises, or lacerations;
3. Use the crop on any part of the Horse’s body other than the shoulders or hindquarters;
4. Use the crop during the post parade or after the finish of the race other than to avoid a dangerous situation or preserve the safety of Horses and riders;
5. Use the crop if the Horse has obtained its maximum placing;
6. Use the crop persistently even though the Horse is showing no response;
7. Use a crop on a 2-year-old Horse in races before April 1 of each year other than to avoid a dangerous situation or preserve the safety of Horses and riders; or
8. Strike another Horse or person with the crop.

HISA Rule 2282 (“Riding Crop Violations and Penalties”) provides that:

- a) Violations of Rule 2280 shall be categorized as follows, with the exception that use of the crop for the safety of Horse and rider shall not count toward the total crop uses:
 - 1. Class 3 Violation – 1 to 3 strikes over the limit.
 - 2. Class 2 Violation – 4 to 9 strikes over the limit.
 - 3. Class 1 Violation – 10 or more strikes over the limit.

- b) Unless the stewards determine the merits of an individual case warrant consideration of an aggravating or mitigating factor, the penalties for violations are as follows:
 - 1. Class 3 Violation –
 - i. \$250 or 10% of Jockey’s portion of the purse, whichever is greater;
 - ii. Minimum 1-day suspension for the Jockey; and
 - iii. 3 points;

 - 2. Class 2 Violation –
 - i. \$500 or 20% of Jockey’s portion of the purse, whichever is greater;
 - ii. Horse disqualified from purse earnings,
 - iii. Minimum 3-day suspension for the Jockey; and
 - iv. 5 points;

 - 3. Class 1 Violation –
 - i. \$750 fine or 30% of Jockey’s portion of the purse, whichever is greater,
 - ii. Horse disqualified from purse earnings,
 - iii. Minimum 5-day suspension for the Jockey;
 - iv. 10 points.

C. Procedural History

The Stewards determined that a Class 2 violation had taken place during the September 24, 2022 race at the Albuquerque Downs Racetrack based on finding an excess of 5 strikes over the permissible 6 strikes allowed under HISA Rule 2280(b). The Stewards imposed a sanction in accordance with HISA Rule 2282, consisting of a \$2,160.00 fine, a 3-day racing suspension for Ceballos, the imposition of 5 HISA points, and disqualification of the purse monies won in the

race. (Appellants' Exhibits 2-3; Tr. 31). On March 27, 2023, the HISA Board heard an appeal of the Stewards' decision and on May 17, 2023, the HISA Board affirmed the Stewards' decision. (Appellants' Exhibits 1, 4).

Pursuant to 15 U.S.C. § 3058(b)(2)(B) and 16 C.F.R. § 1.146, the FTC's Chief ALJ conducted an evidentiary hearing on July 13, 2023. The following five witnesses testified: Larry Fontenot ("Fontenot"), who served on the panel of stewards during the September 24, 2022 race; Ceballos, the jockey who rode Sheriff Brown on September 24, 2022; Jeff Williams ("Williams"), an accredited steward since 2013 and former jockey; Todd Fincher ("Fincher"), Sheriff Brown's trainer; and Peacock, Sheriff Brown's owner. Ten exhibits from Appellants and 21 exhibits from HISA were admitted into evidence, including video footage of the race. On August 14, 2023, the parties filed their Proposed Findings of Fact and Conclusions of Law, and on August 24, 2023, the parties filed their reply briefs. Neither party requested closing statements. This decision is issued pursuant to 16 C.F.R. §1.146(d)(1).

D. Standard of Review

Pursuant to 15 U.S.C. § 3058(b)(1), a HISA civil sanction is subject to *de novo* review by an Administrative Law Judge of the FTC. The ALJ "shall determine whether – (i) a person has engaged in such acts or practices, or has omitted such acts or practices, as the Authority has found the person to have engaged in or omitted; (ii) such acts, practices, or omissions are in violation of this Act [15 USCS §§ 3051 et seq.] or the anti-doping and medication control or racetrack safety rules approved by the Commission; or (iii) the final civil sanction of the Authority was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 15 U.S.C. § 3058(b)(2).

E. Summary of Arguments of the Parties

Appellants argue that the evidence fails to show that Ceballos struck Sheriff Brown more than 6, unexcused times, as prohibited by HISA Rule 2280(b). Specifically, Appellants assert that the evidence shows that Ceballos struck Sheriff Brown 3 times in the hindquarters, and that any contacts made on Sheriff Brown's shoulder were for safety reasons and were thus permitted, pursuant to HISA Rule 2280(b)(4). Appellants assert that Sheriff Brown has a history of

“lugging in,” or not running straight, and that any shoulder contacts were made to keep Sheriff Brown from hitting other horses or jockeys.

HISA asserts that the evidence shows that Ceballos struck Sheriff Brown on the hindquarters and the shoulder a combined total of 11 times. HISA relies on the findings of the Stewards and argues that the Stewards correctly found the violation and determined the sanction. HISA argues that no underlying safety concern served as the basis for any strikes in the race.

II. FINDINGS OF FACT

On September 24, 2022, Peacock’s horse, Sheriff Brown, participated in the sixth race at The Downs Racetrack in Albuquerque, New Mexico, with Ceballos serving as the jockey. (Appellants’ Exhibits 2-3, 5-7.¹) Ceballos has been a jockey for 41 years and has participated in over 7,600 races. (Ceballos, Tr. 113-114.²) Ceballos understood HISA’s rules and was aware that interference with another horse or jockey could result in a suspension from the race or being fined. (Ceballos, Tr. 121, 124-125, 146, 150-151, 168).

Sheriff Brown started the race in the eighth post position (“path”) and entered the final stretch of the race in the tenth or eleventh path, ultimately finishing in the third path. (Appellants’ Exhibits 5-7; Ceballos, Tr. 89-90). Sheriff Brown has a history of lugging in and was lugging in during the September 24 race. (Appellants’ Exhibits 5-7; Ceballos, Tr. 115-117; Williams, Tr. 191-192; Peacock, Tr. 253). During the final stretch of the race, Ceballos endeavored to control Sheriff Brown’s lugging in and to keep him straight, for safety purposes. (Appellants’ Exhibits 5-7; Ceballos, Tr. 117, 125).

Sheriff Brown placed first in the race but was disqualified the next day by a panel of Stewards who, after reviewing the race footage, determined that Ceballos struck Sheriff Brown 11 times with the riding crop, in violation of HISA Rule 2280. (Appellants’ Exhibits 2-3, 5-7; Fontenot, Tr. 62, 64, 66, 75-76). The panel of Stewards consisted of Fontenot, who has been an accredited steward for approximately 5-6 years; Liz Garcia, who is not an accredited steward;

¹ Appellants’ Exhibits 2-3 are the Stewards’ Ruling against Oscar Ceballos and Joseph Peacock. Appellants’ Exhibits 5-7 are video recordings of the September 24 race.

² “Tr.” refers to the transcript of the July 13, 2023 hearing before the ALJ.

and Connie Estes, who does not have much experience with horseracing. (Fontenot, Tr. 55, 57, 59-60; Williams, Tr. 206).

At the evidentiary hearing before the ALJ, Williams, an accredited steward since 2013 and former jockey who has ridden in approximately 20,000 races over the course of 32 years, credibly opined that strikes to the shoulder do not motivate a horse to speed up or go forward, but rather are used to straighten out the horse (Williams, Tr. 190-192, 195, 197), consistent with Ceballos' and Fincher's testimony stating the same. (Ceballos, Tr. 120; Fincher, Tr. 220-221). In contrast, Steward Fontenot's testimony about the absence of a safety issue was not particularly persuasive. Fontenot does not have professional jockey experience and his opinion that a safety concern did not exist because he did not see Ceballos rise from Sheriff Brown during the final stretch of the race (Fontenot, Tr. 91-92) was contradicted by testimony of Ceballos, Williams, and Fincher, who have significantly more experience than him in the field. (Ceballos, Tr. 125-126; Williams, Tr. 191-192; Fincher, Tr. 217-218).

The video footage of the September 24, 2022 race is poor and fails to show that Ceballos struck Sheriff Brown more than 6 times on the *hindquarters*. (Appellant Exhibits 5-7; Ceballos, Tr. 135, 165-167, 170; Williams, Tr. 195; Peacock, Tr. 244-245, 260-261). Moreover, even assuming the footage showed Ceballos striking Sheriff Brown on the *shoulder*, the weight of the evidence proves that any such strikes would have been for safety reasons to stop Sheriff Brown from lugging in. (Appellants Exhibits 5-7; Ceballos, Tr. 146; Williams, Tr. 191-193, 201-202; Peacock, Tr. 253).

III. CONCLUSIONS OF LAW AND ANALYSIS

Pursuant to Rule 1.146(c)(6)(i), “[t]he burden of proof is on the Authority to show, by a preponderance of the evidence, that the covered person has violated a rule issued by the Authority, but the proponent of any factual proposition is required to sustain the burden of proof with respect thereto.” 16 C.F.R. § 1.146(c)(6)(i). As found above, the evidence fails to prove that Ceballos struck Sheriff Brown more than the 6 times on the hindquarters that are permitted under HISA Rule 2280(b)(1). Moreover, the evidence proves that even if there were strikes to the shoulder, the strikes would have been made to stop Sheriff Brown from lugging in to preserve the safety of horses and riders. Accordingly, such shoulder strikes would have been permitted

under HISA Rule 2280(b)(4) and would not be included as strikes for purposes of any sanction under HISA Rule 2282. For all these reasons, the evidence fails to support the civil sanction imposed by HISA on Appellants under Rule 2282 and therefore was not in accordance with law.

IV. ORDER

For the reasons stated above and pursuant to 15 U.S.C. § 3058(b)(3)(A)(ii), HISA's decision affirming the Stewards' ruling and the final civil sanction of HISA are hereby REVERSED.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: September 11, 2023