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

In the Matter of

Elanor Martin and Oscar Ceballos,

Appellants.

Docket No. 9431

ORDER ON APPLICATION FOR REVIEW DENYING REQUEST FOR EVIDENTIARY HEARING AND SETTING BRIEFING SCHEDULE

On May 21, 2024, Appellants Elanor Martin and Oscar Ceballos ("Appellants") filed a Notice of Appeal and Application for Review ("Application for Review"), appealing the final civil sanctions ("Sanctions") imposed by the Horseracing Integrity and Safety Authority ("Authority"), an agency established pursuant to the Horseracing Integrity and Safety Act ("HISA"). Specifically, Appellants challenge the April 26, 2024 decision of the Authority in Action Number 2024-00155, which affirmed the ruling and sanctions determined by a panel of stewards at Sunland Park on April 16, 2024 ("Stewards"). Appellants request an evidentiary hearing and *de novo* review of the Authority's finding that Appellant Ceballos violated HISA Racetrack Safety Rule 2280 ("Use of Riding Crop") and to supplement the record with testimony, pursuant to 15 U.S.C. § 3058(b)(1)-(3) and 16 C.F.R. § 1.146(b). The Authority filed a response to the Application for Review on May 31, 2024, opposing the request for an evidentiary hearing.

Appellants contend that: (1) the Stewards and the Authority should have concluded that Appellant Ceballos, the jockey in the horserace at issue on this appeal, used the riding crop for safety reasons, which is allowed under HISA Rule 2280, and that they failed to permit Appellants' proffered expert "to opine why Ceballos was allowed to use the crop" (Application for Review at 3); (2) the Authority's written decision failed to include findings of fact as required under HISA Rule 8340(i); and (3) the proceeding before the Stewards was procedurally deficient because it was conducted via Zoom video conferencing rather than live.

The Authority responds that Appellants fail to raise any issue requiring either an evidentiary hearing or supplementation of the record; rather, Appellants raise legal issues and disagree with the weight given by the Stewards and the Authority to particular testimony and other evidence.

Rule 1.146 of the Procedures for Review of Final Civil Sanctions Imposed under the Horseracing Integrity and Safety Act provides in pertinent part:

In reviewing the final civil sanction and decision of the Authority, the Administrative Law Judge may rely in full or in part on the factual record developed before the Authority through the disciplinary process under 15 U.S.C. 3057(c) and disciplinary hearings under Authority Rule Series 8300. The record may be supplemented by an evidentiary hearing conducted by the Administrative Law Judge to ensure each party receives a fair and impartial hearing. Within 20 days of the filing of an application for review, based on the application submitted by the aggrieved party or by the Commission and on any response by the Authority, the Administrative Law Judge will assess whether:

- (i) The parties do not request to supplement or contest the facts found by the Authority;
- (ii) The parties do not seek to contest any facts found by the Authority, but at least one party requests to supplement the factual record;
- (iii) At least one party seeks to contest any facts found by the Authority; . . . or
- (v) In the Administrative Law Judge's view, the factual record is insufficient to adjudicate the merits of the review proceeding.

16 C.F.R. § 1.146(c)(2).

While Appellants contest the factual findings of the Stewards and the Authority and have requested to supplement the factual record, Appellants only contest the weight given to the evidence in the record. Moreover, Appellants do not specify any relevant evidence needed to supplement the factual record. Appellants allude to disallowed expert witness opinion as to "why" Appellant Ceballos was permitted to use the riding crop; however, the Authority's decision states that Appellants' proffered expert witness did, in fact, testify at the hearing that, in his opinion, Ceballos "made reasonable use of the crop in attempting to steer the horse" because the horse was failing to maintain a straight course on the racetrack (referred to as "lugging"). HISA Regulations govern why such use is permitted and further expert opinion on the issue is unnecessary. Thus, Appellants' remaining points on appeal, regarding the existence of findings of fact and the procedural adequacy of using Zoom video conferencing can be addressed by written submissions. In summary, the existing factual record is sufficient to resolve this appeal.

Accordingly, Appellants' request for an evidentiary hearing is DENIED, and it is hereby ORDERED, that the hearing of this appeal will be limited to briefing by the parties, in compliance with Rule 1.146(c)(3), in accordance with the following schedule:

1. The parties shall file proposed findings of fact, proposed conclusions of law, a proposed order, and a supporting legal brief providing the party's reasoning no later than June 20, 2024.

2. The parties shall file reply findings of fact and conclusions of law and supporting reply briefs no later than July 1, 2024.

It is further ORDERED that the parties shall confer and submit, no later than June 12, 2024, a joint Appeal Book containing the evidentiary record presented below, including without limitation all hearing video and transcripts, and all documentary and video exhibits.

ORDERED:

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D. Michael Chappell Chief Administrative Law Judge

Date: June 5, 2024