

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

ADMINISTRATIVE LAW JUDGE: D. MICHAEL CHAPPELL

IN THE MATTER OF:

ELEANOR MARTIN AND OSCAR CEBALLOS

APPELLANTS

JOINT STIPULATION TO TESTIMONY AT THE HISA BOARD HEARING

Come now Appellants and the Horseracing Integrity and Safety Authority (the “Authority”) to submit a joint stipulation of testimony and material facts that were unrecorded at the HISA Board hearing on April 16, 2024, as instructed by order of the Commission. The parties hereby stipulate as follows:

The Authority presented testimony from Sunland Park steward Larry Fontenot. Appellants presented testimony from ALOTALUCK’s trainer Ty Garret, 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.

Steward Larry Fontenot testified:

1. Mr. Fontenot has been an accredited steward since 2011. He galloped horses for thirty years, and he has experience training horses. Mr. Fontenot has never held license as a professional jockey or ridden in a thoroughbred race.

2. Mr. Fontenot and the other Sunland Park stewards reviewed the race Sunland Park Derby race videotape after the race on February 18, 2024. The stewards reviewed the race footage after the race according to their customary procedure.
3. The Sunland Park stewards believed the videotape footage of the race was clear that ALOTALUCK veered to the outside rail, but Mr. Ceballos made no attempt to steer the horse.
4. The Sunland Park stewards also believed the videotape footage of the race showed Mr. Ceballos used the crop to strike his mount more than six times during the race, a potential violation of HISA Rule 2280.
5. On February 19, 2024, the Sunland Park stewards conducted a hearing with Mr. Ceballos regarding his use of the riding crop in the race. Mr. Ceballos appeared at the stewards hearing with jockey Alfredo Juarez who testified the horse got out on the backside of the track. State steward and former jockey Violet Smith was present for the hearing. She provided her opinion that the horse drifted out on the backside and down the stretch.¹ Mr. Garrett was not called by the stewards to participate in the hearing.
6. During the hearing, Mr. Fontenot asked Mr. Ceballos if he had any safety concerns in the race. Mr. Ceballos responded that ALOTALUCK was sore

¹ At the Authority's Board hearing, Mr. Fontenot relayed what occurred during the stewards hearing. The full recording of the hearing is available for the Commission's review in the record of this matter.

- and was lugging out² while running; this caused a safety concern and prompted Mr. Ceballos to use the crop to steer the horse.
7. During the stewards' hearing, Mr. Ceballos claimed the horse was sore. Mr. Fontenot responded to him that if the horse was sore the horse should not be in the race.
 8. Mr. Fontenot and the Sunland Park stewards believe Mr. Ceballos struck the horse in excess of six times in an effort to win the race rather than to preserve his safety and the safety of other riders and horses.
 9. Mr. Fontenot testified that the Sunland Park stewards believe the Authority's crop rule allows a rider to strike the horse for safety purposes, but the rule does not allow a rider to exclusively use the crop for steering the horse.
 10. Mr. Fontenot previously discussed with Mr. Ceballos the Authority's crop rule, technique for riding, and penalties with Mr. Ceballos. Mr. Ceballos previously served as a Spanish language interpreter for the stewards to inform other jockeys of the Authority's crop rule.
 11. Two days after the race and hearing, Mr. Fontenot visited the barn on February 21, 2024, and examined ALOTALUCK's foot. He was accompanied by New Mexico state regulatory veterinarian. Mr. Fontenot testified that the regulatory veterinarian assessed the horse to be sound on

² "Lugging out" is a term in horseracing used to describe how a horse may veer towards the outside rail of the track rather than continue running in a straight line.

February 21, 2024. Mr. Fontenot documented photos of the horse's foot. He did not observe any swelling on February 21, 2024.

12. The New Mexico state regulatory veterinarian was never called at the Board hearing.³

13. The stewards did not conduct a subsequent hearing after visiting the barn to evaluate ALOTALUCK.

14. The stewards issued an oral ruling at the time of the hearing on February 19, 2024. The stewards issued the written ruling against Mr. Ceballos on February 22, 2024, after the hearing and visit to the barn.⁴

15. Mr. Fontenot questioned the validity of the photos Appellants presented during the hearing. Steward Fontenot could not ascertain from the photographs if it was ALOTALUCK's leg depicted in the photographs.

Trainer Ty Garrett testified:

1. Mr. Garrett is a licensed trainer with a lifetime career training thoroughbred horses.
2. Mr. Garrett trained ALOTALUCK.
3. Mr. Garrett is the nephew of Appellant Martin.

³ A written statement from regulatory veterinarian Brandi O'Sullivan is included in the hearing record for the Commission's review.

⁴ This ruling is available in the appeal record for the Commission's review.

4. ALOTALUCK lugged out toward the rail at the beginning of the race and continued to lug out down the stretch⁵ at the end of the race.
5. Mr. Ceballos struck ALOTALUCK on the shoulder to steer the horse.
6. Mr. Ceballos used shoulder strikes to steer the horse as a safety tactic to avoid collision with other horses during the race.
7. Mr. Garrett, subsequent to the race, came to believe an abscess on the horse's right hind hoof caused the horse soreness.
8. Mr. Garrett posited that he believed ALOTALUCK lugged out because the horse had a sore right hind hoof.
9. Mr. Garrett testified that he waited outside the steward's office during the hearing the stewards conducted with Mr. Ceballos on February 19, 2024. Mr. Garrett would have provided testimony at the stewards' hearing, but he was not called to participate in the hearing.
10. Two days after the race, Mr. Garrett and veterinarians examined ALOTALUCK's right hind hoof and observed that an abscess popped. Ultimately, the abscess resulted in the swelling of the horse's right hind leg.
11. Mr. Garrett and his team did not race or work the horse for two weeks to tend to the swelling.
12. Mr. Garrett believed the horse to be sound at the time of the race.

⁵ "Down the stretch" refers to the final stretch of a race before the finish line. It begins after the last turn on the track.

13. Hours before the race, regulatory veterinarians and ALOTALUCK's veterinarians cleared the horse as being sound and able to race in the Sunland Park Derby.
14. Mr. Garrett documented ALOTALUCK's foot after the Sunland Park Derby via photographs. The Chairman entered the photographs as hearing exhibits at the Board hearing.
15. Mr. Garrett provided a newspaper photograph of the Sunland Park Derby to the Board at the hearing to indicate ALOTALUCK got out at the beginning of the race. This photograph was entered as a hearing exhibit.
16. Mr. Garrett testified that ALOTALUCK was pre-race checked by the state regulatory veterinarian hours before the race on February 18, 2024. The state veterinarians believed the horse to be sound at the time of examination.
17. Mr. Garrett testified that a horse could injure its foot suddenly, after the race-day regulatory veterinarian examination, if the horse becomes nervous and kicks the back of a stall or steps on a rock while walking from the barn to the racetrack.
18. Mr. Garrett testified that he did not know exactly when ALOTALUCK injured its foot. He testified that he believed the injury to be present at the time of the race.

Veterinarian Kara Theis testified:

1. Dr. Theis is a licensed veterinarian.
2. Dr. Theis examined ALOTALUCK on February 16, 2024, prior to the race on February 18, 2024, and believed the horse to be sound.
3. Dr. Theis examined the horse on February 21, 2024, and observed an abscess on the horse's foot.
4. The abscess later caused the horse's right hind leg to swell.
5. Dr. Theis treated the horse for the abscess for several weeks to reduce swelling.
6. Dr. Theis admitted that her veterinary practice did not enter treatment records for ALOTALUCK or many other horses into the Authority's veterinarian records recording system until four days after treatment. This violated the Authority's rule requiring veterinarians to report treatment records for covered horses within 24 hours of treatment. Though her practice untimely reported treatments, the reports had no impact on her care for ALOTALUCK. Dr. Theis testified that her staff is responsible for the submission of records to the Authority.
7. Dr. Theis testified that, in her professional, veterinary opinion, ALOTALUCK's abscessed foot more likely than not was the reason for the horse encountering a safety issue as the horse, ALOTALUCK, turned for the home stretch.

Farrier Jody Roberts testified:

1. Mr. Roberts did not reshoe ALOTALUCK prior to the Sunland Park Derby.
2. Mr. Roberts had no knowledge of the horse's hoof immediately before the race.
3. Mr. Roberts examined ALOTALUCK's hoof days after the race and observed an abscess.
4. Pain or sensitivity may precede the presence of an abscess on a horse's hoof, which would prevent a responsible person or caretaker from being aware of a problem.
5. Mr. Roberts testified that an abscess in the foot more likely than not was the reason why the horse drifted in and out during the race.

Appellant Oscar Ceballos testified:

1. Mr. Ceballos is a licensed professional jockey with many years of thoroughbred racing experience.
2. ALOTALUCK lugged out multiple times during the race.
3. At the beginning of the race, the horse got out⁶ and did not respond to Mr. Ceballos' attempts to steer him with the reins.
4. Mr. Ceballos did not use the reins down the home stretch to steer the horse because the horse previously did not respond to the use of the reins at the beginning of the race.

⁶ "Got out" or "getting out" is a term used to describe a horse deviating from a straight path of forward motion during a race.

5. Mr. Ceballos used the crop on ALOTALUCK's shoulder to steer the horse and keep the horse running straight.
6. Mr. Ceballos never looked behind him down the stretch to observe the position of other horses behind him.
7. At the end of the stretch, Mr. Ceballos testified he did not know how many horses were behind him, but in cross-examination and upon reviewing the video of the race he agreed that he and ALOTALUCK were not surrounded by other horses.

Jockey Scott Stevens testified:

1. Mr. Stevens is a licensed professional jockey who has ridden in over 5,000 thoroughbred races.
2. Even if a horse is injured on an outside leg, the leg closest to the outside rail on the track, a horse may lug out in the direction of the injured foot.
3. Riders are aware of a horse's soreness or sensitivity and adjust their riding style to accommodate the horse's condition.
4. Riders may use a crop to steer the horse.
5. Mr. Ceballos used the crop to steer ALOTALUCK after the horse got out.
6. Mr. Stevens' testimony purported to provide an expert opinion on crop safety and riding safety. After receiving an objection from counsel for the Authority, the Chair sustained the objection as Mr. Stevens was attempting to provide fact testimony rather than an expert opinion.

7. Had Mr. Stevens testified as he intended, Appellants proffer that he would have testified that ALOTALUCK got out down the stretch and Mr. Ceballos used the crop to steer the horse rather than to make the horse travel faster during the race. Mr. Stevens would also have testified that in his opinion Mr. Ceballos did not violate the Authority's crop rule as Mr. Ceballos used the crop to preserve the safety of horse and rider.

State steward and former jockey Violet Smith testified:

1. Ms. Smith is an accredited New Mexico state steward and a former licensed jockey who has not held a jockey license since the mid 1980s. Ms. Smith was present at Mr. Ceballos' hearing regarding the Sunland Park Derby though she did not preside over the hearing.
2. Mr. Ceballos never attempted to steer the horse because he never used the reins.
3. Mr. Ceballos never used the crop on the outside turn at the beginning of the race when the horse got out.
4. Down the stretch, Mr. Ceballos pulled the reins to direct the horse's head to the outside to try to get around another horse running in front of ALOTALUCK.
5. Ms. Smith testified that the Authority's crop rule does not mention steering but is designed for the riders to use the reins rather than the crop to steer the horse.

6. Ms. Smith's testimony was presented as rebuttal testimony to that provided by Mr. Stevens. Though counsel for Appellants objected to Ms. Smith's testimony on the same basis as the Authority objected to Mr. Stevens' testimony, the Chairman overruled the objection and allowed Ms. Smith to testify as a rebuttal witness to the testimony Mr. Stevens did provide at the hearing.

Respectfully submitted,

/s/ Bryan Beauman

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CERTIFICATE OF SERVICE

Pursuant to 16 CFR 1.146(a) and 16 CFR 4.4(b), a copy of this Joint Stipulation is being served on June 26, 2024, via Administrative E-File System and by emailing a copy to:

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