

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

_____))
In the Matter of))
Natalia Lynch,)) Docket No. 9423
Appellant.))
_____)

ORDER ON PHOTOGRAPH AND VIDEO EXHIBITS

A session of the evidentiary hearing to receive supplemental evidence in this case, was held on July 16, 2024, during which various photographs and videos (“Visual Evidence”) were admitted into evidence as exhibits. During the hearing I instructed, in pertinent part, as follows:

There are many photographs that are also a part of the stipulated record

And if . . . you’re showing them to me to show me, I assume, the conditions of a racetrack, . . . you ought to be telling me when, in fact, these depictions of, you know, racing facilities were taken as best you can, and . . . if you can't agree that what’s depicted there is an accurate depiction of conditions that existed at the time of the events here, which would presumably be June and July of 2023, then somebody better say that about an exhibit, because that's the inference you want me to draw, okay?

Tr. at 67.

In response, the OALJ received by email the following from the parties:

Pursuant to Judge Himes’ instruction at the July 16, 2024 evidentiary hearing, the Authority prepared the below list reflecting the dates each of the photos or videos in the parties’ jointly submitted exhibit list were taken.

Ms. Lynch adds the following note regarding the list:

The Authority has indicated that the dates reflected below are accurate. Ms. Lynch does not have a reason to dispute that representation based on the documentation provided to her to date.

As for the relevance and probative value of the photos and videos, Ms. Lynch does not oppose reliance on the photos and videos for the limited purpose of depicting, at a general level, the barns in question. Ms. Lynch believes Judge Himes can rely on these photos and videos, if helpful, to depict the general conditions in barns and contamination risks arising therefrom. As Ms. Lynch

noted in her Statement of Contested Facts and Specification of Additional Evidence (at p. 16 n.14), Ms. Lynch does object to any effort by the Authority to use the photos and videos taken at Belmont Park in late September and early October 2023 to reflect the precise conditions of Ms. Lynch's barn at the time of the alleged Presence violation and the events leading up to that alleged violation. (JX1 at 650-651.) Those photos and videos were taken months after the alleged violation—long after Ms. Lynch had moved out of the barn and had been provisionally suspended. In addition, among other things, those pictures depict a barn in which many stalls are vacant and also show evidence of recent repairs (e.g., JX1 at 674, 675, 677, 678, 682, 690, 692), all of which clearly demonstrates that the photos and videos are not reliable as evidence of the precise conditions in the barn in June 2023. Ms. Lynch will develop this point further in her next filings.

[List of Exhibits Deleted]

To be probative, visual evidence must “accurately depict[] the scene it purports to represent.” *United States v. Lawson*, 494 F.3d 1046, 1052 (D.C. Cir. 2007). *See also, e.g., Zerega Ave. Realty Corp. v. Hornbeck Offshore Transp., LLC*, 571 F.3d 206, 214 (2d Cir. 2009) (the photo must be “a fair representation of what it purports to portray.”).

It is hereby **ORDERED** as follows:

1. On or before July 29, 2024, the parties shall file an appropriate stipulation setting forth a list of the Visual Evidence that they agree accurately depicts the scene it purports to represent, stating for each individual exhibit: (a) the exhibit's number (b) its file name; (c) the date it was taken; and (d) the racetrack facility at which it was taken.

2. Visual Evidence not included on the list provided for above shall not be cited or otherwise referred to by the parties in any papers filed in this case.

3. The parties are reminded that all papers intended to be part of the docket in this case shall be transmitted by email to the Secretary of the Commission at electronicfilings@ftc.gov. Email is not the appropriate method for communicating to the ALJ the parties' legal positions and arguments, or desire for adjudicative action or rulings by the ALJ. As a general rule, such matters are to be raised by pleadings, motions, briefs or similar papers that must be filed with the Office of the Secretary, with a courtesy copy by email to OALJ.

ORDERED:

Jay L. Himes
Jay L. Himes
Administrative Law Judge

Date: July 24, 2024