

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

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AUTHORITY'S REPLY BRIEF, REPLY FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

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The Horseracing Integrity and Safety Authority (“HISA”) files this Reply to Appellants’ Proposed Findings of Fact, Proposed Conclusions of Law, and Supporting Legal Brief. The Authority requests the Federal Trade Commission (“Commission”) to uphold the Board of the Authority’s Decision on Appeal (“Decision”) and affirm the Sunland Park stewards’ ruling.

**Introduction**

*The Board does not believe that Ceballos administered the [eleven] shoulder strikes to ALOTALUCK for safety purposes... 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)<sup>1</sup>... Ceballos did not use the crop to preserve the safety of horses and riders during the race.<sup>2</sup>*

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<sup>1</sup> The Board’s citation to Rule 2280(b)(2) is to the subsection in effect at the time of the Sunland Park Derby. The current rule governing the number of permitted strikes to achieve maximum placement is located at 2280(b)(1).

<sup>2</sup> Appeal Book, Tab 21, at 60-61.

On April 26, 2024, the HISA Board (“Board”) issued the above ruling when it affirmed the Sunland Park stewards’ ruling that Ceballos violated Rule 2280(b)(1) (“Crop Rule”) when he struck his mount eleven times during the Sunland Park Derby. The Crop Rule permits a jockey to use a riding crop a total of six times during a race to reach the horse’s maximum placement.<sup>3</sup>

Appellants present the Administrative Law Judge with an argument founded on a misinterpretation of the Board’s ruling. Appellants’ central argument is that ALOTALUCK “lugged out” during the race,<sup>4</sup> creating a safety concern to justify Ceballos’ excessive use of the riding crop.

The parties agree that ALOTALUCK lugged out during the race.<sup>5</sup> Witnesses testified that the horse lugged to the outside throughout the race<sup>6</sup> and the video footage shows the horse drifted to the outside at various points.<sup>7</sup> The Board found in its Order, “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.”<sup>8</sup> Yet, lugging in and out during a race does not, by itself, constitute a safety issue justifying the use of the riding crop more than six times.

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<sup>3</sup> Rule 2280(b)(1).

<sup>4</sup> “Lugging out” is a phrase used to describe a horse drifting to its right. “Lugging in” would refer to a drift to its left.

<sup>5</sup> Authority’s Supporting Brief and Proposed Findings of Fact, Conclusions of Law, and Order at 4-5; Appellant’s Proposed Findings of Facts Proposed Conclusions of Law and Supporting Legal Brief at 5.

<sup>6</sup> Appeal Book, Tab 23, at 66, 69, 72, 73, 74.

<sup>7</sup> Appeal Book, Tab 20.

<sup>8</sup> Appeal Book, Tab 21, at 60.

Appellants incorrectly state the Board made an “unequivocal finding that ALOTALUCK’s ‘lugging out’ presented an immediate safety issue...”<sup>9</sup> In fact, the Board’s findings are the opposite of Appellants’ interpretation:

**The Board does not believe that Ceballos administered shoulder strikes to ALOTALUCK for safety purposes, contrary to his testimony.** The videotape shows that the horse was not running amid close traffic, and Ceballos was not looking behind him or otherwise manifesting signs that he was concerned about safety. In addition, Ceballos testified that the horse was “off” during the race, and the Board is concerned that Ceballos continued to strike the horse with the crop if he thought the horse was in trouble. The Board concludes that 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 Ceballos did not use the crop to preserve the safety of horses and riders during the race.<sup>10</sup>

The video footage supports the Board’s findings that Ceballos was not “amid close traffic,” “looking behind him,” or “otherwise manifesting signs that he was concerned about safety” as he rode ALOTALUCK down the stretch.<sup>11</sup> Additionally, witness testimony at the hearing confirmed that no safety issue arose justifying the use of the crop. Steward Fontenot, an accredited steward since 2011, who galloped horses for 30 years and trained horses,<sup>12</sup> testified that Sunland Park stewards reviewed the race, held a hearing with Ceballos at the track, and visited the barn to evaluate ALOTALUCK’s physical condition. After this analysis, the stewards found that Ceballos struck the horse eleven times in an effort to win the race – not to

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<sup>9</sup> Appellant’s Proposed Findings of Facts Proposed Conclusions of Law and Supporting Legal Brief at 6.

<sup>10</sup> Appeal Book, Tab 21, at 61 (emphasis added).

<sup>11</sup> Appeal Book, Tab 20, at 1:40-1:51.

<sup>12</sup> Appeal Book, Tab 23, at 65.

preserve the safety of race participants.<sup>13</sup> Notably, only witnesses who had a financial interest in the outcome of the Sunland Park Derby or who were employed by Martin testified at the Board hearing that a safety concern justified Ceballos' excessive use of crop strikes during the race.<sup>14</sup> Ceballos testified that he attempted to steer ALOTALUCK with the reins at the beginning of the race after the horse lugged out, but the horse did not respond to the use of the reins. This, he claimed, justified his exclusive use of the crop rather than the reins to steer the horse down the stretch.<sup>15</sup>

Based solely on Appellants' rationale presented in their briefing before the ALJ, the first instance of lugging out would have created a perilous<sup>16</sup> racing condition at the outset of the race. Yet, despite the lugging out Ceballos experienced at the outset of the race, he continued to race the horse. Ceballos' claims that the horse would not have responded to the reins if he attempted to use them down the stretch reveal that he willingly continued racing ALOTALUCK despite not being able to use an essential tool for guiding the horse and preserving the safety of horse and rider: the reins. Ceballos opted to race ALOTALUCK despite experiencing the "peril" of

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<sup>13</sup> Appeal Book, Tab 23, at 67-68.

<sup>14</sup> Garrett is the nephew of Martin and is the trainer of ALOTALUCK who will receive a share of the purse, and who testified that the horse was sound at the time of the race; Ceballos is the rider employed by Martin who will receive a portion of the purse, and faces a fine and suspension pending the outcome of this appeal; Roberts is a farrier who is contracted by Garrett on behalf of Martin, and Roberts did not examine ALOTALUCK prior to the race; Theis is a veterinarian who is contracted by Garrett on behalf of Martin, and Dr. Theis did not examine ALOTALUCK prior to the race. Appeal Book, Tab 23, at 68-73.

<sup>15</sup> *Id.*, at 72.

<sup>16</sup> Appellant's Proposed Findings of Facts Proposed Conclusions of Law and Supporting Legal Brief at 9.

lugging out at the beginning of the race. Even more, Ceballos, claiming that his horse could not be steered with the reins, raced ALOTALUCK down the stretch without looking around at the position of the other horses behind or around him.<sup>17</sup>

The Crop Rule allows a rider to strike a horse six times during a race with the exception that a rider may strike a horse to preserve the safety of himself, his horse, or other horses and riders.<sup>18</sup> The function of the Crop Rule is to limit the number of strikes a rider may use during the race except in dangerous circumstances. A jockey may use additional strikes to preserve the safety of horses and jockeys. As Violet Smith, accredited New Mexico state steward and former licensed jockey,<sup>19</sup> testified, the Crop Rule “is designed for the riders to use the reins rather than the crop to steer the horse.”<sup>20</sup> Fontenot similarly testified, “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.”<sup>21</sup>

To apply the Crop Rule, stewards review a race and observe the number of strikes a jockey uses during a race.<sup>22</sup> After observing a potential Crop Rule violation, they conduct a hearing with the jockey and discuss the events of the race with the jockey.<sup>23</sup> At hearings, jockeys may explain the number of strikes they used during the

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<sup>17</sup> Appeal Book, Tab 23, at 73.

<sup>18</sup> Rule 2280(b)(1); Rule 2280(b)(6).

<sup>19</sup> Appeal Book, Tab 23, at 74.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*, at 67.

<sup>22</sup> *Id.* at 66.

<sup>23</sup> *Id.*

race.<sup>24</sup> The stewards consider the facts gathered at the hearing and any other relevant information, and issue a written ruling imposing an appropriate penalty under the Crop Rule if a violation occurred.<sup>25</sup>

The Sunland Park stewards watched the race on February 18, and had reason to believe Ceballos committed a Crop Rule violation by using excessive strikes during the race.<sup>26</sup> The stewards conducted a hearing with Ceballos on February 19 and reviewed the race footage with him and jockey representative Alfredo Juarez.<sup>27</sup> Ceballos claimed that ALOTALUCK lugged to the outside because of a sore foot causing a safety concern.<sup>28</sup> Fontenot told Ceballos that if a horse was sore and unfit to race, a horse should not be in the race.<sup>29</sup> Two days after the hearing, Fontenot visited ALOTALUCK's barn with New Mexico state regulatory veterinarian.<sup>30</sup> The regulatory veterinarian assessed the horse and found the horse to be sound, and Fontenot took photos of the horse's hoof.<sup>31</sup> The stewards issued a written ruling against Ceballos on February 22, 2024.<sup>32</sup>

Stewards use the information and resources available to them to apply the Crop Rule uniformly on all riders racing in HISA jurisdictions. Stewards undergo training and accreditation to ensure that they are equipped to officiate thoroughbred

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<sup>24</sup> *Id.* at 66-67.

<sup>25</sup> *Id.* at 68.

<sup>26</sup> *Id.* at 66.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 66-67.

<sup>29</sup> *Id.* at 67.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 67-68.

<sup>32</sup> *Id.* at 68.

racers. Fontenot has been an accredited steward since 2011 and has vast experience in other facets of the thoroughbred racing industry.<sup>33</sup> Smith, present at the stewards' hearing with Ceballos, is also an accredited New Mexico state steward and former licensed jockey.<sup>34</sup> Using their education, training, and personal experience, the Sunland Park stewards reviewed the race to ensure compliance with HISA and state racing regulations. The stewards exercised their best judgment based on their review of the race, hearing with Ceballos, and veterinary examination of ALOTALUCK after the race. They determined that no safety concern justified Ceballos' eleven strikes to ALOTALUCK during the race. The Board, receiving testimony and reviewing the underlying record in this matter, affirmed because "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)... Ceballos did not use the crop to preserve the safety of horses and riders during the race."<sup>35</sup>

Although a portion of the video recording of the Board appeal hearing is available, another portion did not record due to a technical error, which was thoroughly explained to the ALJ on June 18, 2024.<sup>36</sup> Appellants now complain the Board expressed the view during the hearing that a rider may use a riding crop if the horse is lugging out.<sup>37</sup> But the written Order makes clear that was not the substance

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<sup>33</sup> *Id.* at 65.

<sup>34</sup> *Id.* at 75.

<sup>35</sup> Appeal Book, Tab 21, at 61.

<sup>36</sup> See Attachment A.

<sup>37</sup> Appellant's Proposed Findings of Facts Proposed Conclusions of Law and Supporting Legal Brief at 6.

of the Board’s view. Instead, the Board April 26, 2024 Order states: “Ceballos testified that the horse was “off” during the race, and the Board is concerned that Ceballos continued to strike the horse with the crop if he thought the horse was in trouble.”<sup>38</sup> Board Chair Scheeler, in stating the Board’s decision during the hearing, expressed concern that a rider would strike a horse that was sore, injured, or otherwise in peril – not that a rider should never strike a horse if the horse is lugging out.

### **Reply Findings of Fact**

- *On February 18, 2024, Martin’s horse, ALOTALUCK, participated in the ninth race at Sunland Park in a prestigious race known as the Sunland Derby.*
  - **Reply:** Agree.
- *The Sunland Derby is a prep race for 3-year-old horses to obtain points to qualify for the Kentucky Derby.*
  - **Reply:** Agree.
- *Ceballos served as the jockey for ALOTALUCK.*
  - **Reply:** Agree.
- *Ceballos has been a licensed jockey for more than 40 years and has participated in more than 7,000 races.*
  - **Reply:** Agree.
- *Ceballos testified that he understood HISA’s rules and was aware that interference with another horse or jockey could result in suspension from the race or being fined.*
  - **Reply:** Agree.
- *Almost as soon as the horses left the starting gate, ALOTALUCK, began “lugging out”.*

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<sup>38</sup> Appeal Book, Tab 21, at 61.



- **Reply:** Agree.
- *Ceballos attempted to try and control the horse by using the reins.*
  - **Reply:** Agree.
- *There was no dispute among the parties, and it was a finding of fact in the HISA Committee ruling that during the stretch run, ALOTALUCK drifted significantly from the 4 path and into the 8 path – presenting a safety issue to horse and riders.*
  - **Reply:** Agree in part. ALOTALUCK drifted to the outside during the race, but, as stated above, no safety concern arose during the horse’s run. “Presenting a safety issue” is a conclusion of law rather than a finding of fact.
- *HISA’s committee ruling made a finding of fact that the safety of ALOTALUCK occurred during the race: “The videotape of the race clearly shows that the horse was lugging out and moving toward the rail at different points during the race.”*
  - **Reply:** Disagree. The quoted finding from the Board Order supports the fact that the Board found ALOTALUCK lugged out during the race but not that the Board found a safety concern existed.
- *Despite HISA’s unequivocal finding that ALOTALUCK’s “lugging out” presented an immediate safety issue, HISA inexplicably found that Ceballos was required to use the reins for steering before resorting to use of the crop to help safely steer the horse.*
  - **Reply:** Disagree. This is a misstatement of the Board Order. No finding of a safety concern was ever made. The Board also never issued any finding as to the use of the reins.

### Reply Conclusions of Law

- *The New Mexico Stewards and HISA's Committee improperly and incorrectly made interpretations and findings of its own rule.*
  - **Reply:** Disagree. Contrary to Appellants' misinterpretation of the Sunland Park stewards' ruling and the Board Order, neither the stewards nor the Board ever opined that a rider must use the reins to steer the horse prior to using the crop.<sup>39</sup> The stewards and the Board applied the Crop Rule that a rider may only exceed the six permitted strikes during a race if extra uses of the crop would preserve the safety of race participants.<sup>40</sup> In the present matter, the Stewards and the Board found that no basis of a safety concern existed to justify Mr. Ceballos' excessive strikes during the race. As such, HISA has not engaged in rulemaking or extra-judicial interpretation of HISA regulations. The Sunland Park stewards appropriately applied the Crop Rule and found that Mr. Ceballos violated the Crop Rule.
  
- *Use the crop to preserve the safety of Horses and riders.*
  - **Reply:** The Crop Rule provides an exception to the six-strike limit if a safety concern exists causing the rider to use additional strikes to preserve the safety of racing participants.<sup>41</sup>
  
- *HISA has been found unconstitutional.*

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<sup>39</sup> Appellant's Proposed Findings of Facts Proposed Conclusions of Law and Supporting Legal Brief at 19.

<sup>40</sup> Appeal Book, Tab 2, at 4-5; Tab 3, at 7-8; Tab 21, at 61; Rule 2280(b)(1); Rule 2280(b)(6).

<sup>41</sup> Rule 2280(b)(6).

- **Reply:** Disagree. HISA has not been found unconstitutional. The Fifth Circuit's judgment in *NHBA v. Black*, 107 F.4th 415 (5th Cir. 2024), is not a final judgment until the mandate has issued.<sup>42</sup> The mandate has not issued in that matter. In a similar case, the Sixth Circuit rejected another challenge to the constitutionality of HISA on grounds of non-delegation when it found that HISA constituted an inferior body to the FTC.<sup>43</sup> The United States Supreme Court denied certiorari.<sup>44</sup>

### **Conclusion**

Mr. Ceballos violated the Crop Rule by striking ALOTALUCK eleven times during the race for the purpose of obtaining maximum placement in the race. The Sunland Park stewards properly applied the Crop Rule, and the HISA Board properly affirmed the ruling.

Respectfully submitted,

STURGILL, TURNER, BARKER &  
MOLONEY, PLLC

*/s/ Bryan Beauman*

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HISA ENFORCEMENT COUNSEL

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<sup>42</sup> See, e.g., *First Gibraltar Bank, FSB v. Morales*, 42 F.3d 895, 898 (5th Cir. 1995).

<sup>43</sup> *Oklahoma v. United States*, 62 F.4th 221, 229-31 (6th Cir. 2023).

<sup>44</sup> *Oklahoma v. United States*, No. 23-402 (U.S. June 24, 2024).

## 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 September 3, 2024, via Administrative E-File System and by emailing a copy to:

Hon. D. Michael Chappell  
Chief Administrative Law Judge  
Office of Administrative Law Judges  
Federal Trade Commission  
600 Pennsylvania Ave. NW  
Washington DC 20580  
via e-mail to [Oalj@ftc.gov](mailto:Oalj@ftc.gov)

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*/s/ Bryan Beauman*  
\_\_\_\_\_  
Enforcement Counsel

# ATTACHMENT

## A

**From:** [Bryan Beaman](#)  
**To:** [Asberry-Beach, LaShaon](#); [Vanessa Motta](#); [OALJ](#)  
**Cc:** [Rebecca C. Price](#); [John Forgy](#); [Gross, Dana](#); [samuel.reinhardt@hisaus.org](mailto:samuel.reinhardt@hisaus.org); [Leigh Reed](#)  
**Subject:** RE: FTC Docket No D-9431 - Elanor Martin and Oscar Ceballos,, In the Matter of  
**Date:** Tuesday, June 18, 2024 3:33:53 PM

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Judge Chappell, thank you for this opportunity to respond and address Ms. Motta's inquiry. She and I have been in discussion about this issue and agreeable to reaching a resolution. I concur that a telephone call to discuss with you would be appropriate if you desire.

I will explain below the issue with the recording of the appeal hearing before the Board, but first I believe a sufficient remedy would be to permit a supplement or supplanting of the record by way of a hearing. I would presume that will include the witnesses identified to testify below I would have no objection to that.

As for the record below, the appeal book contains a recording of the stewards' hearing in full. That recording is complete. Once Ms. Martin (owner of the horse) and Mr. Ceballos (jockey) appealed, the appeal was heard by the Board and conducted via Zoom. The Board appeal is where the recording is incomplete. At the time the recording ends, the steward has testified and completed direct examination and Ms. Motta had started her cross-examination but not yet finished. During that cross-examination, the hearing was paused to allow for a break and for counsel to exchange a video to be used on cross-examination. When the hearing resumed, and for the remainder of it, we confirmed the "recording" function was operating on Zoom. Unfortunately, it appears that our Zoom recording functions failed. After that pause during the steward's cross-examination there is no further recording of the Zoom proceedings. We connected with Zoom support, but they were unable to offer any assistance as to where the other recorded segments were stored. Our internal IT professionals also assisted but were unable to locate these later segments.

In the unsaved segments, the cross-examination of the steward was completed, the Appellants called their witnesses, and I called a rebuttal witness. The Board deliberated (privately) and returned on-camera to issue its ruling.

To address this issue, I offered to Ms. Motta to stipulate as to what the testimony was before the Board on appeal. If she believes that task is too difficult or insufficient, I understand. The other best alternative I believe is for the parties to supplement the existing record with your permission of course. Since the appeal is before you on a de novo review, I do not see any prejudice would result to Appellants to proceed in that manner especially since those witnesses to supplement the record would likely be the ones who previously testified on the Board appeal.

If a supplemental hearing for testimony is amenable, Ms. Motta and I have discussed dates since we both have planned family vacations and other professional obligations over the next few weeks. We can provide further dates to you as you like but they would be after July 29. If it is preferable we address all these points in an Agreed Order, I am happy to work with Ms. Motta to tender that to the Commission. I believe we will reach an agreement on that. I also concur in a temporary stay of any pending deadlines.

Bryan

**Bryan H. Beauman**

Member

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Sturgill Turner



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**From:** Asberry-Beach, LaShaon <lasberrybeach@ftc.gov>

**Sent:** Monday, June 17, 2024 5:40 PM

**To:** Vanessa Motta <vanessa@mottalaw.com>; OALJ <OALJ@ftc.gov>

**Cc:** Bryan Beauman <BBeauman@sturgillturner.com>; Rebecca C. Price <rprice@sturgillturner.com>;

John Forgy <johnforgy1@gmail.com>; Gross, Dana <DGROSS@ftc.gov>;

samuel.reinhardt@hisaus.org; Leigh Reed <lreed@sturgillturner.com>

**Subject:** RE: FTC Docket No D-9431 - Elanor Martin and Oscar Ceballos,, In the Matter of

Dear Counsel:

Judge Chappell instructs the Authority to submit a response to the assertions and issues raised in Ms. Motta's email below by 5:00 p.m. on June 18, 2024.

Regards,

**LaShaon Asberry-Beach**

Legal Administrative Specialist

Office of Administrative Law Judges, Federal Trade Commission

202-326-2105 [lasberrybeach@ftc.gov](mailto:lasberrybeach@ftc.gov)

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**From:** Vanessa Motta <[vanessa@mottalaw.com](mailto:vanessa@mottalaw.com)>

**Sent:** Wednesday, June 12, 2024 11:25 AM

**To:** OALJ <[OALJ@ftc.gov](mailto:OALJ@ftc.gov)>

**Cc:** Bryan Beauman <[bbeauman@sturgillturner.com](mailto:bbeauman@sturgillturner.com)>; Rebecca C. Price <[rprice@sturgillturner.com](mailto:rprice@sturgillturner.com)>; John Forgy <[johnforgy1@gmail.com](mailto:johnforgy1@gmail.com)>; Gross, Dana <[DGROSS@ftc.gov](mailto:DGROSS@ftc.gov)>; Winker, Erik <[ewinker@ftc.gov](mailto:ewinker@ftc.gov)>; [samuel.reinhardt@hisaus.org](mailto:samuel.reinhardt@hisaus.org); [lreed@sturgillturner.com](mailto:lreed@sturgillturner.com)

**Subject:** Re: FTC Docket No D-9431 - Elanor Martin and Oscar Ceballos,, In the Matter of

Some people who received this message don't often get email from [vanessa@mottalaw.com](mailto:vanessa@mottalaw.com). [Learn why this is important](#)

Good morning,

I hope this email finds you well. I am reaching out regarding a unique situation this case is in, and our options on how we need to proceed. I have never been in this situation before and I am not 100% certain but I believe once you read what is the status of this case, you will feel the same way.

I just found out from opposing counsel that the HISA hearing on April 16, 2024, was not recorded in its entirety. There is only 42 minutes when the hearing was over 2 hours long. This is a significant issue on how to proceed in this matter.

Please note, If I would have known, I would have included this issue for my application and argued Rule 1.146 of the Procedures for Review of Final Civil Sanctions Imposed under the Horseracing Integrity and Safety Act.

I am requesting a possible conference call with the Judge with all parties. Moreover, I am requesting a stay on any deadlines until we are able to come to an agreement, or plan on how to proceed. Please be advised, a separate request of extensions will be filed hereafter for other reasons pertaining to both sides of counsel availability.

In our opinion, this is a due process issue when the record is not available for my clients to fight fairly in this appeal. I could not imagine having a trial and when going up on appeal, the trial court advises the court reporter did not transcribe the trial.

Please advise of our options.

Thank you in advance.

Sincerely,

Vanessa Motta  
Attorney at Law  
Motta Law, LLC  
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