

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between

Re: **01 17 0004 6306**

KELLEY FARMER and DAVID “LARRY” GLEFKE

Claimant

and

UNITED STATES EQUESTRIAN FEDERATION, INC.,

Respondent

INTERIM RULING

I, Lawrence A. Saichek, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with 36 USC 220522(a)(4) also known as the Ted Stevens Olympic and Amateur Sports Act of 1976 (the “Act”) and having been duly sworn and having duly heard and fully considered the Claimant’s Motion for Interim Measures/Temporary Injunction (the “Motion”) and having heard and considered the arguments presented by Claimant and Respondent and having reviewed the submissions of the parties and the transcript of the Hearing Committee [Federation File No. 2016-47 held on June 6 and 7, 2017] (the “Hearing”), FIND and AWARD, as set forth below.

This matter has been administered under the Commercial Arbitration Rules of the American Arbitration Association. In this matter, Mark Romm, Esq., John J. Pappas, Sr., Esq., Bonnie Navin, Esq., and Paul Regensdorf, Esq., represented Claimant and Ira Finkelstein, Esq., Brent Rychner, Esq., and Suzanne Crespo, Esq., represented Respondent. The hearing on the Motion took place on August 15, 2017 at the Miami offices of the American Arbitration Association.

All findings in this Award, where the evidence or inferences therefrom have been disputed, not agreed to, or simply not discussed by either counsel, have been made using the preponderance of the evidence standard.

I. Preliminary Matter.

As of the commencement of this hearing, Claimant had not yet filed its Amendment to Complaint. Respondent moved to dismiss this hearing due to a lack of jurisdiction. The Amendment to Complaint was filed contemporaneously with the commencement of the hearing. Claimant’s reasons for the late filing were stated and Respondent stated on the record that it was not prejudiced by the late filing and was ready to proceed. This Arbitrator withheld a ruling on this motion and now denies that motion.

II. Ruling.

The Motion is hereby DENIED. In the Motion, Claimants seek an order staying enforcement of the Hearing Committee's decision dated June 30, 2017 ("Decision"), which concluded that the horse, Unexpected, had tested positive for GABA in excess of the "action level" for that prohibited substance. The Hearing Committee imposed sanctions on Claimant Glefke for a period of twenty-four (24) months beginning July 1, 2017 and for Claimant Farmer for a period of eighteen (18) months beginning July 1, 2017. Fines were also imposed. To grant a preliminary injunction or comparable interim measures, the law requires the moving parties to demonstrate: (1) the likelihood of ultimate success on the merits; (2) irreparable injury to them absent granting of the preliminary injunction; and (3) a balancing of equities. It is the finding and conclusion of this Arbitrator that the Claimants have not demonstrated a substantial likelihood of ultimate success on the merits.

III. Discussion.

To have prevailed on its Motion, Claimants would have had to show that the decision of the Hearing Committee was arbitrary or capricious. Claimant has failed to show the Hearing Committee ruling to be made on irrational grounds or not supported by logic or fact.

Claimants raised issues regarding the "B" sample test results and, quite candidly, this Arbitrator had serious questions regarding a result that was categorized as "off the charts" by one of its experts. However, three industry experts testified that one could rely on the "B" result as showing the presence of GABA in the horse and this conclusion was accepted by the Hearing Committee. This Arbitrator cannot rule that the acceptance by the Hearing Committee of this conclusion was arbitrary or capricious.

A chain of custody as to the "B" sample was established to the satisfaction of the Hearing Committee. This issue was contested and there is no question that Respondent could have had a better means of maintaining its chain of custody.

Claimants contend that the Hearing Committee improperly denied Claimants' motion to permit a *Frye* challenge to the scientific reliability of the GABA protocol established by USEF. The Arbitrator finds that the Hearing Committee did not abuse its discretion, or act arbitrarily or capriciously, in denying Claimants' motion for a *Frye* hearing.

Participating in competitive events such as this is not a right but rather a privilege. Each National Governing Board can establish its own rules and regulate its respective sport. Clearly, Claimants disagree with Respondent's rules and the way Respondent enforces its rules.

Claimants also contend that the Hearing Committee imposed excessive sanctions against them. The Arbitrator does not reach these issues at this time, as there was no dispute that the current sanctions against Claimants would preclude Claimants' participation in the event scheduled for August 17-19, 2017. This parties should note that this Arbitrator is very concerned about the Hearing Committee's imposing additional penalties and fines on Claimant Farmer due to an alleged "shifting of horses".

IV. Conclusion.

This Arbitrator finds that Claimants failed to carry their burden of showing a likelihood of success on the merits. As a result, there is no need to address the issues of irreparable injury and balance of equities.

I, Lawrence A. Saichek, do hereby affirm upon my oath as Arbitrator that I am the individual described herein and who executed this instrument which is my Award.

By: /s/
Lawrence A. Saichek, Arbitrator

Date: August 15, 2017