

# AMERICAN ARBITRATION ASSOCIATION

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In the Matter of the Arbitration between

Rider / Horse Combination, James North / The Man to See, Claimant

and

United States Equestrian Federation, Respondent.

Re: 77 190 00444 10 JENF

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## JURISDICTIONAL AWARD OF ARBITRATOR

I, THE UNDERSIGNED ARBITRATOR, having been designated by the American Arbitration Association and in accordance with the Ted Stevens Olympic and Amateur Sports Act (“Sports Act”) and the United States Olympic Committee (“USOC”) and the United States Equestrian Federation, Inc. (“USEF”) Bylaws, having been duly sworn, and having duly heard the allegations of the Parties, do hereby, DECIDE, as follows:

1. This is a case involving an athlete’s opportunity to participate in USEF-sanctioned competitions. The issue to be recorded here is whether the Arbitrator had jurisdiction to hear this dispute.

### **Background**

2. The Claimant, James North, is an experienced horse rider, trainer and competitor. The Respondent, USEF, is the National Governing Body (“NGB”) recognized by USOC for equestrian sport in the United States.
3. On October 6, 2010, the Fédération Equestre Internationale (“FEI”) provisionally suspended James North due to an “alleged violation” of the FEI Equine Anti-Doping Rules based on the presence of a prohibited substance in his horse’s A sample.
4. Also on October 6, 2010, USEF informed Mr. North by letter that, pursuant to the FEI Statutes and USEF Bylaws, the FEI provisional suspension was “being recognized and enforced by USEF.” The letter stated that Mr. North was “found not in good standing, suspended from membership and forbidden from the privilege of taking part whatsoever in any Licensed Competition, and ... excluded from all competition grounds” until the final decision of his case by the FEI Tribunal. By letters of October 22 and 25, 2010, Mr. North’s counsel requested USEF to lift its provisional suspension of Mr. North pending

final resolution before the FEI. On October 28, 2010, Mr. North submitted a complaint against USEF under Section 9 of the USOC Bylaws.

5. On November 3, 2010, Mr. North filed a Demand for Arbitration with the American Arbitration Association (“AAA”). Mr. North’s request for relief included an expedited hearing before the AAA and an order granting him immediate reinstatement to participate in all USEF-sanctioned competitions unless and until he was found by the AAA in a subsequent hearing to have committed the alleged offense.
6. On November 5, 2010, USEF sent Mr. North’s counsel a letter that replaced and superseded the October 6, 2010 letter previously sent to Mr. North. In the November 5 letter, USEF noted that it was obligated to comply with the FEI Tribunal’s decision and that FEI’s provisional suspension “applie[d] with automatic effect under the FEI rules without any independent action by the USEF.”
7. On November 8, 2010, David W. Rivkin was selected by the AAA to serve as the sole Arbitrator in this case. After receiving certain disclosures from the Arbitrator, the parties agreed to the selection of Mr. Rivkin.
8. On November 10, 2010, USEF sought to withdraw its agreement to arbitrate this dispute because Mr. North had filed a Protest against the FEI “seeking the same relief that he seeks in the action filed against USEF.” Mr. North replied on November 11, 2010 that he was not seeking the same relief from USEF as he was from FEI and that USEF, as an NGB, could not “withdraw its agreement to arbitrate.” I ordered the parties to submit statements of position on the jurisdictional issue.
9. The parties submitted the requested statements of position on the jurisdictional issue on November 12, 2010. On November 13, 2010, I held a one-hour conference call, which included the legal representatives of both parties, to hear oral arguments on the jurisdictional issue. Each party was able to present arguments and was subject to questioning by me.
10. On November 16, 2010, I issued the following ruling via email:

I find that I have jurisdiction under the Sports Act and under USEF Bylaw 705, but only on the very narrow questions whether USEF had to provide any procedure before issuing the November 5, 2010 letter to Mr. Williams (which superseded USEF's letter of October 6, 2010 to Mr. North) and, if so, whether USEF complied with any such requirements. I will provide further reasoning on this jurisdictional decision in my Final Award in this matter.

11. On November 17, 2010, FEI sent to Mr. North's counsel a letter informing him that the B sample in Mr. North's case had been tested on November 16, 2010 and that the results were negative. Accordingly, the provisional measure imposed on Mr. North was lifted with immediate effects, both as to international and national events. On the same day, USEF sent an email to Mr. North's counsel and to me, which stated that Mr. North was in good standing to participate in competitions effective immediately. On November 18, 2010, I sent an email to the parties in which I said that "now that the case has been withdrawn, I am *functus officio*."
12. Despite the fact that I am *functus officio*, the parties have requested that I issue an award to provide the reasons for my decision on jurisdiction made during the arbitration. On that basis, I issue this reasoned decision.

### **Decision**

13. Mr. North's claims involve allegations that due process requirements of the Sports Act and of USEF's Bylaws were violated by USEF's "summary denial" of Mr. North's opportunity to participate in USEF-sanctioned competitions. Mr. North's position on jurisdiction is that the AAA is the exclusive venue for dispute resolution with regard to this "opportunity to participate" dispute between him and USEF.
14. USEF claims that Mr. North is seeking to overturn an anti-doping suspension imposed by FEI. USEF argues that the World Anti-Doping Code and FEI's Anti-Doping Rules grant exclusive jurisdiction to FEI and the Court of Arbitration for Sport with respect to FEI's decision to suspend Mr. North and the underlying anti-doping rule violation. According to USEF, there is no residual jurisdiction that would allow USEF or the Arbitrator to review or to overturn FEI's provisional suspension.
15. According to the November 5, 2010 letter sent by USEF to Mr. North's counsel, which replaced and superseded the October 6 letter, USEF would ensure that Mr. North did not compete in any event until the provisional measure imposed by FEI was lifted and U.S.A. competition organizers would be notified that they must refuse any effort by Mr. North to participate in any competition.
16. The Sports Act states that:

An amateur sports organization is eligible to be recognized, or to continue to be recognized, as a national governing body only if it ... agrees to submit to binding arbitration in any controversy involving ... the opportunity of any amateur athlete ... to participate in amateur athletic competition, upon demand of ... any aggrieved amateur athlete ...

conducted in accordance with the Commercial Rules of the American Arbitration Association...<sup>1</sup>

17. Section 9 of the USOC Bylaws establishes that any athlete may file a complaint to protect his or her “opportunity to participate” in a “protected competition” and that, “[i]f the complaint is not settled to the athlete’s satisfaction the athlete may file a claim with the AAA against the respondent for final and binding arbitration.”<sup>2</sup>
18. USEF Bylaw 705 further provides that USEF “agrees to submit to binding arbitration in any controversy involving (i) its recognition as a national governing body ... or (ii) the opportunity of any amateur athlete ... to participate in amateur athletic competition ... in accordance with the Commercial Rules of the American Arbitration Association...”<sup>3</sup>
19. The questions presented in this arbitration -- namely, whether USEF owed Mr. North any due process before issuing the November 5 letter, which affected Mr. North’s opportunity to participate in equestrian competitions, and whether USEF complied with any such requirements -- fall within the terms of the above-cited provisions. Moreover, the cited provisions show that (i) USEF is required to agree to arbitrate under the AAA rules disputes related to an athlete’s opportunity to participate in order to continue to be recognized as an NGB, and (ii) USEF has so agreed in its Bylaws.
20. For these reasons, I found that, pursuant to the Sports Act and USOC’s and USEF’s Bylaws, as stated in my November 16, 2010 email, I had jurisdiction over the narrow issues regarding due process and the November 5 letter. Any other issues, including a decision related to Mr. North’s request for a subsequent hearing on the underlying “doping” charges brought by FEI to be adjudicated under the auspices of the AAA, would fall outside the scope of the jurisdiction provided by the Sports Act and USOC and USEF Bylaws. In this regard, I remind the parties that, according to Article 13.2 of the World Anti-Doping Code and Article 12 of the FEI Equine Anti-Doping Rules, a decision to impose a provisional suspension may be appealed to the Court of Arbitration for Sport. Additionally, in ordinary course, a challenge to a doping charge would follow testing of the B sample and then be arbitrated under applicable World Anti-Doping Code and FEI rules.
21. My decision on jurisdiction expresses no view as to whether any due process was in fact necessary before USEF took the actions challenged here. That question would have been left for the merits had this case proceeded past the jurisdiction stage.

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<sup>1</sup> Ted Stevens Olympic and Amateur Sports Act, 36 U.S.C. § 220522(a)(4)(B).

<sup>2</sup> *Bylaws of the United States Olympic Committee*, § § 9.1, 9.2 and 9.7.

<sup>3</sup> *United States Equestrian Federation Bylaws*, Bylaw 705.

Therefore, I DECIDE as follows:

The Arbitrator had jurisdiction under the Sports Act and under USOC and USEF Bylaws, but only on the very narrow questions whether USEF had to provide any procedure before issuing the November 5, 2010 letter to Mr. Williams (which superseded USEF's letter of October 6, 2010 to Mr. North) and, if so, whether USEF complied with any such requirements.

Each party shall bear its own attorneys' fees and costs from this proceeding.

Since this case has been withdrawn as of November 17, 2010, no Award on the merits will follow this decision.

December 13, 2010  
Date

David W. Rivkin  
David W. Rivkin, Arbitrator

STATE OF NEW YORK    )  
                                  :  
COUNTY OF NEW YORK )

I, David W. Rivkin, hereby affirm on my oath as Arbitrator that I am individual described herein and executed this instrument, with his my Award.

December 13, 2010  
Date

David W. Rivkin  
David W. Rivkin, Arbitrator