

AMERICAN ARBITRATION ASSOCIATION
ARBITRATION TRIBUNAL

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In the Matter of the Arbitration Between:

GEORGE L. LINDEMANN, JR.

and

AMERICAN HORSE SHOWS ASSOCIATION, INC.,

CASE NO. 13 E 190 00442 95

-----:
AWARD OF ARBITRATOR

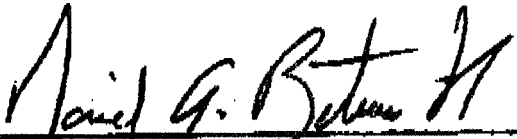
I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the Constitutions and Bylaws of the United States Olympic Committee and the American Horse Shows Association, Inc., and having been duly sworn, and having duly heard the proofs and allegations of the Parties, do hereby Find and AWARD as follows:

1. The suspension of George L. Lindemann, Jr., by the American Horse Shows Association is nullified insofar as it prevents Mr. Lindemann from participating in "protected competitions" which are subject to the Rules of the United States Olympic Committee. Mr. Lindemann, if he otherwise qualifies without regard to the indictment of insurance fraud underlying the suspension, shall be permitted to perform in all protected events, including the 1995 Millers/USET National Grand Prix Championships. If Mr. Lindemann is convicted of the crimes alleged in the indictment, the suspension shall be automatically reinstated and this award shall have no further force or effect.

2. The compensation of the Arbitrator shall be borne equally by the parties.

3. The administrative fees and expenses of the American Arbitration Association shall be borne equally by the parties.

4. This Award is in full settlement of all claims submitted to this Arbitration.




David A. Botwinik, Esq.

Dated: June 22, 1995

STATE OF NEW YORK)
) s.s.:
COUNTY OF NEW YORK)

I, David A. Botwinik, Esq., do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument which is my Award.



(Dated)



(Signature)

Pan American Sport Organizations member in accordance with a defined selection or tryout procedure that is open to all and publicly announced in advance, except for domestic amateur athletic competition, which, by its terms, requires that entrants therein be expressly restricted to members of a specific class of amateur athletes such as those referred to in Article VII, Section 4 of this Constitution.

The term 'protected competition' shall also include any domestic amateur athletic Organization member in its selection procedure and publicly announced in advance as a competition or event directly qualifying each successful competitor therein as an athlete representing the United States in a protected competition as defined in the immediately preceding sentence of this subsection."

While Lindemann is seeking to overturn his suspension with regard to all protected competitions, he has asked for expedited hearing and determination of claims because of his desire to participate in the 1995 Miller's/USET National Grand Prix Championships which are to be held in Gladstone, New Jersey on June 22 through June 25, 1995.

The Procedural Background

In July 1994, Lindemann, who is a life member of AHSA, was indicted by a federal grand jury in the Northern District of Illinois. The indictment charged that Lindemann participated in a conspiracy to fraudulently obtain insurance proceeds by causing the death by electrocution of a horse called Charisma. As a result of the indictment, AHSA held a hearing to determine whether Lindemann should be removed as a member in good standing.

A hearing was had in August 1994 before a panel of the Hearing Committee of the AHSA, and a decision was rendered that the allegations in the indictment were sufficient to warrant the suspension of Lindemann (Hearing 1). Either just before or just after the decision was issued, attorneys for Lindemann brought proceedings in the Supreme Court of the State of New York seeking to enjoin enforcement of the order of suspension and asking that it be set aside. The case was heard by Justice Edward Greenfield. In an opinion dated December 1, 1994, Justice Greenfield nullified AHSA's suspension of Lindemann, without prejudice, to the AHSA's right to hold new hearings in accordance with the Court's decision. Justice Greenfield explained the scope of his review as follows:

"There is no inherent unsoundness in the Association's Rules. They do not in and of themselves permit arbitrary or automatic suspension. The rule provides that the Hearing Committee "may" deny or suspend the privilege to participate. Clearly, then, the work of the Committee is not to be perfunctory or automatic, and its members are required to exercise their discretion as to whether or not, even in the light of an indictment, suspension is appropriate. The rule explicitly provides for the denial or suspension of privileges only "following a hearing." Obviously, the hearing must be something more than a pro forma recital of the accusation. The question here presented is whether, under the Association's own rules, plaintiffs were accorded a meaningful hearing, and whether the discretion exercised by the Hearing Committee was reasonable, or whether it was pretextual, and hence arbitrary and capricious, with no real discretion being exercised at all."

After a detailed examination of the hearing, he concluded that "the determination by the Association suspending the plaintiffs was arbitrary and capricious and imposed without a meaningful hearing and in the absence of substantial evidence.

Justice Greenfield's decision prompted the commencement of a second proceeding before a new panel of the Hearing Committee (Hearing 2). After a hearing which lasted for three days, the Committee again ruled that Lindemann should be suspended. Once again, Lindemann brought proceedings before Justice Greenfield. In their second application to Justice Greenfield, Lindemann's attorneys took the position that Hearing 2 was unfair because the Chairman of the Hearing Committee was biased and should have disqualified himself, that a decision should not have been made until certain exculpatory material had been provided by the U.S. Attorney and that in view of the conflicting evidence presented at the hearing, the determination of the Hearing Committee was arbitrary and capricious. AUSA argued that the Court had no jurisdiction because binding arbitration was an athlete's exclusive remedy. Justice Greenfield rendered a Solomonian decision. He found that arbitration was required only insofar as the suspension affected protected competitions under the Rules of the USOC, but that he had jurisdiction over all other aspects of the suspension. He then dismissed the claims relating to the refusal to delay the proceeding and the bias of the Chairman. He found, however, that there was an insufficient evidentiary basis for finding that Lindemann had arranged to kill the horse,

Charisma, and thereby violated the AHSA's rules. Accordingly, he found that AHSA's determination was arbitrary and capricious and nullified his suspension from membership to the extent that he could do so. However, Justice Greenfield had ruled that the question of participation in protected competitions was subject to arbitration, and that question is now before me.

Scope of Inquiry In an Arbitration
Involving Protected Competitions

AHSA is recognized as the national governing body for three equine sporting activities by the United States Olympic Committee. It has included in its constitution the following provision:

"In consideration of the continued recognition of the Association as a National Governing Body by the United States Olympic Committee (USOC), the Association agrees that it will submit, upon demand of the USOC, to binding arbitration conducted in accordance with the commercial rules of the American Arbitration Association in any controversy involving the Association's recognition as a National Governing Body, as provided for in Section 205 of the Amateur Sports Act of 1978, or involving the opportunity of any amateur athlete, coach, trainer, manager, administrator or official to participate in amateur athletic competition, as provided in the Constitution and By-Laws of the USOC."

The Constitution and Bylaws of the USOC referred to in the foregoing clause provide as follows:

**"ARTICLE IX - RIGHT OF OPPORTUNITY TO
PARTICIPATE IN CERTAIN
INTERNATIONAL AMATEUR ATHLETIC
COMPETITIONS**

Section 1. No member of the USOC may deny or threaten to deny any amateur athlete the opportunity to compete in the Olympic Games, the Pan American Games, a World Championship competition, or other such protected competition as defined in Article I, Section 2(G); nor may any member, subsequent to such competition, censure, or otherwise penalize, (1) any such athlete who shall, by all lawful means at its disposal, protect the right of an amateur athlete to participate if selected (or to attempt to qualify for selection to participate) as an athlete representing the United States in any of the aforesaid competitions.

Section 2. Any amateur athlete who alleges that he/she has been denied by a USOC member a right established by Article IX, Section 1, shall immediately inform the Executive Director of the USOC, who shall cause an investigation to be made and steps to be taken to settle the controversy without delay. Without prejudice to any action that may be taken by the USOC, if the controversy is not settled to the athlete's satisfaction, the athlete may submit to any regional office of the American Arbitration Association for binding arbitration, a claim against such USOC member documenting the alleged denial not later than six (6) months after the date of denial. The Association, however, (upon request by the athlete in question) is authorized, upon forty-eight (48) hours' notice to the parties concerned, and to the USOC, to hear and decide the matter under such procedures as the Association deems appropriate, if the Association determines that it is necessary to expedite such arbitration in order to resolve a matter relating to a competition which is so scheduled that compliance with regular procedures would not be likely to produce a sufficiently early decision by the Association to do justice to the affected parties. By maintaining membership in the USOC, each USOC member agrees that any such aforesaid controversy may be submitted to binding arbitration as provided in this Section and furthermore agrees to be bound by the arbitrators' award as a result thereof."

Unfortunately, neither the AHSa, nor the USOC Constitution discusses the scope of the arbitration. Under the Rule 43 of the Commercial Arbitration Rules of the American Arbitration Association ("AAA"), an arbitrator has the right to "grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties." Under Rule 52, the arbitrator is given the power "to interpret and apply these rules insofar as they relate to the arbitrator's powers and duties."

In order for an arbitrator to carry out his or her obligations under the foregoing rules, I believe he or she should take the following approach:

The arbitrator should first determine whether the hearing was conducted in accordance with the Rules of the National Governing Body and determine if the result of the hearing was supported by clear and convincing evidence. If the answer to this inquiry is positive, then the suspension should be upheld. If the answer is in the negative, the arbitrator then must determine whether he should return the matter to the National Governing Body for rehearing, or himself conduct a hearing de novo. The exercise of the discretion of the arbitrator with regard to remand or hearing de novo depends upon his findings with regard to the necessity of speed and the likelihood that a rehearing will be conducted fairly. Of course, if there is a hearing de novo, any decision reached by the arbitrator should be his own. The arbitrator, however, cannot ignore the findings of

other persons who have heard the issues, including the Grand Jury, the judge in the criminal case, the Hearing Committee, and any judge who may have previously been asked for relief.

Preliminary Proceedings

On Monday, June 19, 1995, I met with the attorneys for the parties to discuss certain procedural matters. After hearing both sides, I decided that an expedited hearing was required and that in order to make a meaningful decision with regard to Lindemann's participation in the Grand Prix Championships, evidence would be presented on the assumption that the hearing would be de novo. In order to limit the scope of the hearing, however, the parties agreed that the findings of the Hearing Committee, except those directly pertaining to Mr. Lindemann, would be considered binding for purposes of the arbitration. The next day, at the start of the arbitration hearing, I indicated to the parties that on the basis of my review of the court decisions they had provided to me, I believed that they should address two issues: (1) Is there exculpatory evidence which indicates that there is a strong possibility that Lindemann might be acquitted of the crime--a burden which was on Lindemann; and (2) What would be the effect of the continued participation by Lindemann on the integrity of the sport--the burden of which is AHSA's.

After hearing the testimony, reading the exhibits, and reviewing the law and decisions cited by the parties, I have come to the conclusion that Lindemann's suspension should be lifted

and that he should be permitted to participate in protected competitions, including the Grand Prix Championships. The reasons for my determination are as follows:

The Proceedings Before The Hearing Committee

The Rules of AHSA:

Rule VII covers violations subject to sanction by AHSA. Article 701 specifically provides that the provisions of the Rule apply in connection with any recognized competition. While Article 702 provides that a violation is any act prejudicial to the best interests of the Association, including among others, "physical assault upon a person and/or cruelty to a horse as defined in Art. 302," Article 702 is subject to the limitations of 701. I specifically find, therefore, that Rule VII does not apply to Lindemann's case, since the acts of which he is accused did not occur in connection with any recognized competition.

Article 614 provides:

"On receipt of notice that disciplinary action has been taken by an administrative agency, body, humane society or court of law, whether civil, criminal or administrative, against a person for an act which would be a violation of Association rules if committed during a Recognized competition, an officer of this Association may make a charge against the person under the provisions of Rule VI, and following a hearing, the Hearing Committee may impose any penalty provided for in Rule VII."

I also specifically find that Article 614 does not apply, since it requires a finding of guilt and sentencing by a court, rather than a mere indictment. Of course, if Lindemann is found

guilty, a suspension would be warranted, since the acts complained of would be violative of Article 702 as "if committed during a recognized competition."

This leaves Article 302, Subsection 6, as the sole basis for the action taken against Lindemann. That section provides:

"6. Following a hearing, the Association's Hearing Committee may deny or suspend the privilege to participate in or go upon the grounds of Recognized competitions, and/or deny, expel or suspend the privileges of membership in the Association to any person, whether or not a member of the Association, whom an indictment, information or charge (criminal, administrative, or civil) has asserted or whom any civil, criminal or administrative court or tribunal has found, to have committed or participated in any plan or conspiracy to commit, any act of cruelty or abuse to a horse, whether or not any such alleged or actual act, plan, or conspiracy occurred on the grounds of a Recognized competition, or was in conjunction with, or was an element of some other offense, actual or alleged. For purposes of this subsection, cruelty and abuse shall include, but shall not be limited to, any of the acts enumerated in Art. 302.4, and in addition, killing, crippling, abandoning, mistreating, neglecting, or any other form of abuse of a horse."

Subsection 6 was inserted into the Rules in 1993, shortly after the publication of accusations with regard to the involvement of members of AHSA in substantial insurance fraud arising out of the maiming and killing of horses. It seems to have been written in haste, since in effect, it repeats the provisions of Rule 614 with regard to convictions, while adding new language with regard to indictments. That the section was intended to cover the issues raised by the scandal is emphasized

by its inclusion only of crimes against horses and not those against riders, who would seem to be equally proper subjects of the AHSA's concern.

Hearings under Article 302 are to be conducted by the AHSA's Hearing Committee. The Hearing Committee is a standing committee of AHSA appointed pursuant to the provisions of Article VII of its Constitution which reads, in pertinent part:

"Sec. 2. Committee on Protests, Charges and Hearings. There shall be appointed annually by the President, with the approval of the Executive Committee, a committee on protests, charges and hearings, hereinafter referred to as the Hearing Committee. This committee shall consist of not less than eight members who shall serve as a court. Three members of the Committee shall constitute a quorum.

* * *

The Hearing Committee may designate one or more of its members to investigate such grievances, to conduct any necessary fact finding, to hear evidence, to review memoranda submitted by interested parties, and to make proposed factual findings to the Hearing Committee. The Hearing Committee shall thereupon review the record and promptly issue its findings in accordance with Rule VI, which findings shall be final, except where otherwise provided in the Constitution and Bylaws of the USOC."

As I read the foregoing provision, the Hearing Committee as a whole must rule on the protests and charges. It may appoint a panel of one or more of its members to hear the evidence and report to the Committee. The report submitted to me and to Justice Greenfield seems to be the report of the investigating panel, rather than the Hearing Committee itself. It is unclear

to me, therefore, whether the Hearing Committee actually followed its own rules. In any event, I find the report deficient.

Deficiencies of the Report:

I find that if there is proper proof of prejudice to the sport, an indictment, standing alone without refutation, is sufficient grounds for the Hearing Committee to order suspension if it had before it evidence of prejudice of the sport, which would occur as a result of Lindemann's continued participation in competitions. Since Lindemann made no attempt to provide the Hearing Panel with exculpatory evidence, the Panel had ample ground for its reliance on the indictment as a prime facia basis for the suspension.

I find, however, that the report is deficient for two reasons. First, the participation of Mr. Alan Balch, as Chairman of the Hearing Panel, was improper in light of his substantial involvement in the preparation and production of a brochure requesting contributions to a fund which would finance the defense against the proceedings brought by Lindemann. Second, I find that the Hearing Panel did not have before it clear and convincing evidence which addressed the question of prejudice.

Lindemann has the right to the presumption of innocence until he is convicted by a court. To impose penalties upon him on the basis of charges alone, without balancing the possible benefit to AHSA against the possible harm to Lindemann, is

unfair. To quote Justice Greenfield, with whom I completely agree,

"The exercise of discretion as to whether or not suspension is to be imposed should take into account not only the fact that there has been an indictment and that this has caused great public concern, but that individual rights may be curtailed or eliminated. It is apparent that the Hearing Committee gave great weight as to what the consequences of its decision would be to an association intent on avoiding any possible taint of scandal, but it does not appear that those considerations were balanced by any weighing of what the consequences of suspension would be to the individuals charged. Was there any attempt to weight the balance of hardships? The Association suggests that no real problems are presented because it was a private organization and plaintiffs were free to withdraw if they did not agree to its procedures. This, of course, blinks the realities of the situation, for in light of the Association's total control of the field of equestrian sport, there was no meaningful way in which plaintiffs could voluntarily withdraw.

Distinctions have to be made between charges which go to the heart of the integrity of a sport or business and those charges which are extrinsic to the sport or business itself. There is a serious risk in keeping a possible race fixer, an embezzler, or a crooked policeman in a position where he can continue his misdeeds. A jockey accused of throwing a race, or a trainer accused of doping a horse, if he is kept on without further inquiry, can continue to tip the scale in future events, much more than one who has committed past perjury or tax fraud. The crimes here charged, although involving egregious cruelty to animals, do not directly impact on the conduct or the outcome of future horse shows and exhibitions. Even if plaintiffs had been guilty of insurance fraud, in the coming meets their horses would run no faster, jump no higher, nor perform any better. If they are suspect, they may not be given universal public approbation.

But even under a cloud they may perform. If ultimately plaintiff Lindemann is convicted of the crime charged, he can be stripped of any titles and trophies he may have won. If he is acquitted after having been suspended, he has been denied any chance to compete, and unlike the ordinary job holder, he cannot be reinstated or compensated with back pay."

Since I do not believe that the Panel in Hearing 2 received sufficient evidence or gave proper regard to the question of balancing of benefit and harm, I have decided to proceed to a de novo determination of the rights of the parties based on the hearing before me.

The Evidence Presented to the Arbitrator

Prior to the arbitration hearing, I was provided with the Demand For Arbitration, which included a copy of the report of the Hearing Panel and copies of Justice Greenfield's Decision. In addition, I was provided with copies of the affidavits and briefs submitted to the Appellate Division in support of AHSA's Motion to Stay Justice Greenfield's second Decision. The parties also submitted pre-arbitration briefs setting forth the legal basis for their respective positions. At the arbitration hearing I was given the full transcript and copies of the evidence presented at Hearing 2. Lindemann submitted additional proof beyond that submitted to the AHSA Hearing Panel. This proof included:

- (a) an affidavit from Lindemann denying his guilt;
- (b) affidavit and documentary proof purporting to show that Lindemann's sister, Sloan Lindemann, owned Charisma;

(c) an insurance investigator's May 1991 interview of Colleen Fitzpatrick which contradicted in part her testimony at the AHSA hearing about Lindemann's treatment of Charisma and Lindemann's attitude towards the horse's performance;

(d) a defense investigator's December 1992 interview of Ms. Fitzpatrick which also contradicted in part her AHSA hearing testimony about Lindemann's treatment of the horse;

(e) testimony from Ashley Nicole about Lindemann's reputation and her opinion of him as a humane horse owner;

(f) the affidavit of Earl Jacques; and

(g) the Plea Agreement between the U.S. Attorney, Tim Ray (Tom Burns), the major witness against Lindemann.

Lindemann's additional proof was submitted for the purpose of showing that at least some of the allegations of the indictment were weak or non-existent, including

(a) that the only proof directly tying Lindemann to the alleged conspiracy was quadruple hearsay;

(b) that the testimony revealed by the hearsay was that of a testimony of a person who admitted he had lied to federal agents and who told another person (Earl Jacques) that his testimony was false;

(c) that the allegations that Lindemann had instructed employees to lie related only to an instruction as to what should be said about who the rider of the horse was and not to lie about the horse's health or the circumstances of its death;

(d) that Lindemann had no financial interest in the horse.

In addition, through the examination of Ms. Nicole and the cross-examination of AHSA's witnesses, proof was submitted that Lindemann would be harmed if he was not permitted to compete in protected competitions, because

(a) Participation in competition is necessary to sharpen a rider's skills.

(b) There is a subjective aspect to judging which would be affected by a person's status as national champion or as the recipient of other awards.

(c) There is no way to correct the denial of the right to compete, while it is always possible to take back medals and other awards if it is determined that participation was inappropriate.

Finally, various witnesses testified, with regard to harm to the sport, that:

(a) There was no loss of membership, sponsorship, or attendance at horse shows.

(b) There was only a small number of complaints originally and the number of complaints declined in recent times.

(c) Lindemann has participated in competitions pursuant to the stays issued by Justice Greenfield without there being substantial outcry about his participation.

(d) The reputation of AHSA has already been affected by the insurance fraud scandal involving over 20 of its members and Lindemann's participation in protected competitions will not create additional harm.

(e) A large part of the AHSA's problem arises from general complaints by animal rights supporters unrelated to the insurance fraud scandal.

The AHSA also presented additional proof, through the testimony of Jessica Ranshousen and Bonnie Jenkins, and the affidavit of Robert Standish. AHSA's additional proof was submitted to demonstrate that the continued participation by Lindemann would have a deleterious effect upon:

- (i) the integrity of the sport and the public's perception of the sport;
- (ii) the sport's ability to attract new sponsors whose participation is essential to the ability to hold dressage competitions;
- (iii) the Association's legitimate authority to set standards of conduct for its members and provide meaningful mechanisms to enforce those standards; and
- (iv) the sport's determination to protect the welfare of horses, and to uphold the highest standards of integrity and sportsmanship.

AHSA, through the same witnesses, submitted proof which purported to show that:

- (i) the suspension of Lindemann will not interfere with Lindemann's right to attempt to qualify for selection to participate in the 1996 Summer Olympics;

(ii) the suspension will not interfere with Lindemann's right to qualify for the selection trials in the 11 CDI qualifiers scheduled between February 1 and May 2, 1996;

(iii) whatever possible value a national championship might have will be dissipated a year from now when the Olympic selection trials will take place, and would not give the winner of that championship any advantages in the trials;

(iv) Lindemann, who is 30 years old, will not be harmed by the suspension even if he does not qualify for the Olympics since the average active career of an international dressage rider is between 35 and 49 years of age; and

(v) that it is practice and training, and not competition, which is mostly responsible for the preparation and success of horse/rider combinations in dressage, and that Lindemann will be fully able to continue his practice and training activities during the term of a suspension.

On the basis of all the information which I have received and examined, I have determined that the suspension of Lindemann by AHSA should be nullified insofar as it prevents Lindemann from participating in "protected competitions" which are subject to the Rules of the USOC. Lindemann, if he otherwise qualifies without regard to the indictment for insurance fraud underlying the suspension, shall be permitted to perform in all protected events, including the 1995 Miller's/USET National Grand Prix Championships. If Lindemann is convicted of the crimes alleged in the indictment, the suspension shall be automatically

reinstated and this award shall have no further force or effect. I further determine that if Lindemann is convicted, he shall return to the AHSA all medals and purses which he has received from the date of this Order to the date of the conviction, and that AHSA shall, in turn, return the medals and purses to the awarding persons or organizations.

The following are the findings of fact and conclusions of law which underlie my determination:

FINDINGS OF FACT

1. Lindemann is a member of the AHSA, which is the National Governing Body for equestrian sports and a member of the United States Olympic Committee.
2. Lindemann instituted this arbitration pursuant to Article IX of the Constitution of the USOC, claiming the AHSA unfairly denied him the opportunity to compete for selection to protected competitions as defined in Article I therein, by reason of his suspension by the AHSA.
3. This arbitration decision pertains solely to Lindemann's eligibility to participate in protected competitions, and has no applicability his ability to participate in non-protected competitions which are not governed by Article I of the USOC Constitution.
4. Lindemann was charged by the AHSA with violation of its rule against abuse of horses, Rule III, Article 302.6.

5. The AHSA's charge came after Lindemann was indicted by a Federal grand jury in the Northern District of Illinois in July 1994. The indictment alleges that Lindemann participated in a scheme to kill, by electrocution, a horse named Charisma owned by Cellular Farms, Inc., in order that the farm might collect \$250,000 in insurance proceeds.

6. The AHSA gave Lindemann notice of the charge against him, a hearing, and an opportunity to be heard in connection with that charge. At all times, the AHSA believed it was acting in good faith toward Lindemann in furtherance of its goal and responsibility to protect the integrity of equestrian sports.

7. If unrefuted, the indictment standing alone would have been sufficient cause for the AHSA to suspend Lindemann. The AHSA was not required to prove that the crime alleged therein was committed, but could rely upon the indictment as the basis for its determination, while offering Lindemann the opportunity to provide exculpatory evidence. However, the AHSA did present evidence independently corroborating some of the allegations of the indictment.

8. The act which forms the basis for the crime alleged in the indictment, killing a horse by cruel means, is a heinous act such as to warrant serious public concern regarding the participation by the indicted individual as a participant in a protected competition and, potentially, as a representative of his country in competition abroad.

9. Lindemann has not been convicted of the crime for which he was indicted.

10. Lindemann has provided exculpatory evidence which could provide substantial defenses to the claims asserted against him.

11. The Court, before which the criminal case is pending, has released Lindemann pending trial without requiring bail or providing any restrictions on his movements.

12. If Lindemann is not permitted to participate in protected competitions, he will be irreparably harmed by reason, among other things, of:

(a) his inability to completely perfect his skills in competition;

(b) his loss of the opportunity to compete in each missed competition; and

(c) his loss of the opportunity to achieve the reputation and success which may have a subtle effect on judges' evaluations of his performance in a competition.

13. When balanced against the harm to Lindemann, the damage to the interests of AHSA is insubstantial, since:

(a) the AHSA can, to an extent, correct any harm done by recalling the medals and purses, if any are awarded to Lindemann prior to his conviction, if he is convicted;

(b) the harm to AHSA's reputation has already occurred as a result of the insurance fraud scandal; and

(c) the action of AHSA in reinstating Lindemann, pursuant to an arbitration award, will indicate to the public the absence of voluntary action on AHSA's part.

CONCLUSIONS OF LAW

1. AHSA, as a National Governing Body for several international sporting competitions, is subject to the provisions of the Amateur Sports Act ("ASA"), 36 U.S.C., § 371 et seq.

2. Under Section 392(a)(5)(b) of the ASA, AHSA is required to allow an amateur athlete to compete in protected competitions unless it has determined by clear and convincing evidence that such participation would be detrimental to the best interests of the sport.

3. AHSA, pursuant to the requirements of Section 391(b)(3) of the ASA, has agreed to submit to binding arbitration in any controversy involving the opportunity of any athlete to participate in protected competitions.

4. Under Rule 43 of the Commercial Rules of the American Arbitration Association, an arbitrator may grant any remedy or relief that the arbitrator deems just and equitable, and within the scope of the agreement of the parties.

5. Even in the absence of its consent to arbitration, the ASHA's action in suspending Lindemann would be subject to review by the courts. Jacobson v. N.Y. Racing Association, 33 N.Y.2d 144 (1973).

6. In reviewing the actions of private organizations, the courts determine whether there is a rational basis for a decision or whether it is arbitrary or capricious. Warder v. Board of Regents, 53 N.Y.2d 186 (1981); Matter of Pell v. Board of Educ., 34 N.Y.2d 222 (1974).

7. Necessarily included in a determination of whether an Order is reversible is a review of whether clear and convincing evidence was considered before the action to be reviewed was taken. 36 U.S.C. 392(b).

8. Even if an arbitrator's review of the actions of a National Governing Body were limited to the standards applied by the Court, which it is not, the determination that Lindemann's suspension should be lifted would be proper.

CONCLUSION

After the hearing of the arbitration, the attorneys for AHSA provided me with a statement prepared and signed by the eleven finalists in the dressage competition at the Miller's/USET Grand Prix Dressage Championships. That statement reads as follows:

"We, the 11 finalists in the Miller's/USET Grand Prix Dressage Championships, express our support for the Code of Conduct established by the AHSA, our National Federation, and the USET. We support their efforts to uphold the principles of good sportsmanship and horsemanship."

My decision in no way undermines the AHSA's Code of Conduct. If Lindemann is guilty of the crimes alleged in the indictment, he will certainly have violated the principles of good sportsmanship and horsemanship, and should be suspended or expelled from AHSA. The competitors must recognize, however, that Lindemann has not yet been found guilty, and thus far, the charges against him have not yet been presented to a court for determination. Under those circumstances, and in light of the American tradition, a man is innocent until proven guilty. I would hope that the finalists would recognize the unfairness of the continuation of Lindemann's suspension.

AMERICAN ARBITRATION ASSOCIATION
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ADDENDUM TO
DECISION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

Page 1

Insert footnote 1 after ("USOC") in 6th line of 1st paragraph as follows:

¹The USOC is the corporation established under the provisions of the Amateur Sports Act, 36 USC 371, et seq., to coordinate and control amateur athletic activities in the United States relating to international amateur athletic competitions.

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Strike the words from "if" through "result" in the 4th and 5th lines of the 1st full paragraph on the page.

Page 20

(1) Strike the words "the indicted individual" on the 4th line of paragraph 8, and insert in place thereof, "an individual involved in such a crime,".

(2) Insert an additional sentence at the end of paragraph 8 as follows:

The crime, however, did not occur in connection with a competition governed by the AHSA.

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(1) Strike the word "a" from the last line of paragraph 12(c), and substitute the word "future".

(2) Strike the word "in" in the 2nd line of paragraph 13, and substitute the word "is".

Page 23

Strike the period at the end of paragraph 8 and insert a comma, and the following words: "since there is no clear and convincing evidence demonstrating that Lindemann's participation in protected events would be detrimental of the best interests of any sport governed by the AHSA."

Page 24

Strike the period at the end of the paragraph and add "under the facts as I have found them."