

**AMERICAN ARBITRATION ASSOCIATION
Commercial Tribunal**

DEBRA LEMMONS,

CLAIMANT,

V.

Case No. 01-19-0004-2218

**UNITED STATES EQUESTRIAN
FEDERATION,**

RESPONDENTS.

FINAL AWARD

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the statutory arbitration agreement governing the above-named Parties, and having been duly sworn, and having heard the proofs and allegations of the Parties, and having previously rendered an Interim Award dated December 13, 2019, hereby AWARD as follows:

Claimant's December 3, 2019 Demand For Arbitration ("Demand") contends that Respondent United State Equestrian Federation ("USEF" or "Respondent") either denied Claimant the opportunity to enter and compete in, or threatened to deny her the opportunity to participate in, one domestic equestrian event and one international equestrian event. Claimant alleged that her participation was denied or threatened by Respondent's inclusion in certain pre-competition applications and agreements of terms that Claimant did not want to accept. Claimant alleged that the participation denials arose because, if she did not accept those terms, she would be precluded from participating in the events.

This was an expedited matter under the American Arbitration Association (AAA) Commercial Rules because the first event, the domestic competition, was to be held on

December 20 - 23, 2019 in Florida. The Hearing in this matter was therefore held telephonically and concluded on December 12, 2019. Claimant (*pro se*) and Respondent (through counsel Bryan Cave Leighton Paisner LLP) were represented. There were four witnesses, and both sides tendered many exhibits (some identified below), all of which were admitted into evidence without objection. Given the time constraints, on December 13, 2019, this Arbitrator issued a Summary And Interim Ruling On Claimant's Demand For Arbitration ("Interim Ruling"), which set forth the primary findings and conclusions. It denied Claimant's claims. This Final Award sets forth the reasoning behind the decision.

There are few factual disputes. The case instead centers on the scope and impact of allegedly offensive terms. The core issue is whether the inclusion of those terms deprives Claimant of her opportunity to enter the endurance events.

Background

Claimant competes in endurance horseback riding, where athletes ride horses over long distances (often 50 miles or more) and are timed for their run. In addition to riding, Claimant owns horses that are ridden, by her and others, in the endurance events. Before November 30, 2019, Claimant had been a member of USEF and of the Federation Equestrian Internationale (FEI), which oversees the international events. The USEF is a national governing body (NGB) of domestic equestrian events under United States Olympic And Paralympic Committee (USOPC) ByLaws.

Hoping to compete in the domestic Florida competition – the Greenway Gallavant event ("GG Event") – Claimant sought to renew her USEF membership that was expiring on November 30, 2019 because USEF membership is a prerequisite for application to the GG Event (Cl. Exh. B) and other competitions. The 2020 USEF Membership Application (Cl. Exh. A)

contains two sections that Claimant found objectionable: (i) a Forum Selection Clause that said that Claimant would be liable for USEF's attorneys' fees, costs and expenses if Claimant ever sued and lost that case against USEF, and (ii) the Federation Release that said that Claimant: (a) released and held harmless USEF of liability for injury to Claimant or her horse that is suffered during competitions, including harm resulting from the negligence of USEF; (b) assumed all risk of harm to her and her horse arising out of the competitions, even if resulting from USEF negligence; and (c) indemnified and held harmless USEF for such claims for harm and for claims by others for harm caused by Claimant or her horse in the competitions. The Membership Application also says that the applicant "agree[s] to be bound by the Forum Selection Clause and the Federation Release" Thus, once signed and submitted, the Membership Application¹ becomes an agreement.

Claimant would not agree to those terms and therefore refused to sign the Membership Application. As a result, she was unable to renew her USEF membership. That, in turn, precluded her from entering the GG Event. Allegation I of Claimant's Demand states that the GG Event was a protected competition under USOPC ByLaws, but she was denied the opportunity to enter and compete because she was improperly required to waive certain legal rights in order to renew her USEF membership. Her Demand asks this Arbitrator to "remove" the offensive clauses so she can renew her membership on terms that she deems more equitable. In the course of the Arbitration, Claimant primarily criticized the terms that allowed the USEF to escape its own negligence, but Allegation I still sought broad relief.

Allegations II and III of the Demand raise similar claims, although both specifically concern competition in the 2020 FEI World Championship (WEC) to be held in Italy in

¹ This Arbitrator erroneously called it the "Membership Agreement" in the Interim Ruling. While it does create an agreement once completed and signed, its title is "Application."

September 2020. Allegation II focuses specifically on USEF's Horse Loan Agreement ("HLA"; Cl. Exh. F), which again requires acceptance of USEF's Federation Release (but not specifically the Forum Selection Clause). The HLA additionally vests USEF with broad discretion to protect the horse by, for example, scratching the horse from the competition, changing the rider, and administering medication to the horse. Claimant alleged that those terms were vague and ambiguous and imposed improper requirements upon the horse owner that also denied the opportunity to compete if not accepted. In this instance, Claimant is a horse owner for the 2020 FEI WES, so she complains of a personal impact on her (threatened denial of participation), not just a theoretical problem with the HLA terms.

Allegation III complained about USEF's Endurance Application Of Intent ("AOI"; Cl. Exh. D), for the 2020 FEI WEC, which also required USEF membership. Claimant repeated her claim of threatened denial of participation. Thus, while Allegation II has some unique grounds of complaint, both Allegations II and III relate back to the fundamental USEF membership concerns set forth in Allegation I. Indeed, paragraph 7 of the Demand, which this Arbitrator construes as part of Allegation I, refers to the AOI, other FEI procedures (Cl. Exh. E), and the FEI horse passport (Cl. Exh. C) that all made USEF membership a condition of submission. Thus, the USEF membership issue impacts all Allegations, including the claims about denied participation in the 2020 FEI WEC.

Respondent denied the substantive allegations, contending that the terms and conditions in the various applications, agreements, and documents had a rational basis, were not applied to Claimant arbitrarily or capriciously, and did deny or threaten to deny her the opportunity to participate. Respondent also contests the jurisdiction of the AAA and this Arbitrator to hear the Demand. That is addressed first.

Discussion

Jurisdiction

This Arbitrator finds and concludes that the claims set forth in Allegations I, II and III of Claimant's Demand are all arbitrable, directly or indirectly, under USOPC ByLaws, and thus this Arbitrator has jurisdiction, albeit with one caveat. Allegations II and III specifically relate to the 2020 FEI WEC, and this Arbitrator has jurisdiction to decide them. However, this Arbitrator lacks jurisdiction to decide the narrow aspect of Allegation I as it relates solely to the GG Event. Nonetheless, notwithstanding the absence of narrow jurisdiction on Allegation I, this Arbitrator also decides the merits of Allegation I because, as mentioned above, the Membership Application issues raised in Allegation I carry over to Allegations II and III since the HLA and AOI addressed in Allegations II and III require USEF membership, including agreement with the terms and conditions that Claimant contends are improper in the Membership Application. Thus, this Arbitrator concludes that a complete ruling on Allegations II and III requires an underlying decision on those aspects of Allegation I that go beyond just the GG Event and impact the 2020 FEI WEC.

The 2020 FEI WEC. With respect to Allegations II and III, the 2020 FEI WEC is a "protected competition" under USOPC ByLaws. The ByLaws (Section 9.1) protect athletes from an NGB's (here, the USEF) denial or threatened denial of the opportunity to participate in a "protected competition". A "protected competition" includes international amateur athletic competition between athletes of the United States and athletes of other countries. (ByLaws Section 1.3(w)(1).) There is no dispute that the 2020 FEI WEC is Section 1.3(w)(1) competition. Therefore, Allegations II and III satisfy the tests under the USOPC ByLaws for jurisdiction of all three claims.

This Arbitrator does not accept Respondent's point that the 2020 FEI WEC is not protected because Claimant has not shown that she is ready to qualify for that competition. As this Arbitrator construes the ByLaws, the definition in Section 1.3(w)(1) does not contain any qualifier based on an athlete's actual or likely qualification for international competition. Rather, Section 1.3(w)(1) looks exclusively at the nature of the competition (between athletes authorized by different countries, and sponsored by an NGB). As noted below in the discussion about the GG Event, Section 1.3(w)(1) is different than Section 1.3(w)(2), where, as this Arbitrator construes it, the protection of an athlete's participation in a domestic event does depend on the athlete's qualification. Given the broader scope of Section 1.3(w)(1), Claimant presents claims in Allegations II and III which are arbitrable.

The GG Event. However, this Arbitrator concludes there is a limit of jurisdiction regarding Allegation I, and that one aspect of Allegation I is not directly arbitrable but a part of it is. Allegation I is two-part: it raises issues that tie into the direct claims regarding the 2020 FEI WEC, but the primary focus of Allegation I is the GG Event, a domestic competition. As this Arbitrator construes them, the ByLaws do not include the GG Event as a "protected competition" because it falls outside of ByLaws Section 1.3(w)(2) as that applies to Claimant. Under Section 1.3(w)(2), a domestic amateur athletic competition is a protected competition if it is: (i) organized and conducted by an NGB, and (ii) the NGB publicly announces in advance that "each successful competitor" will "directly qualify[]" for a Section 1.3(w)(1) competition.

This Arbitrator construes that second test to mean that protection exists in domestic events only for athletes who, by being "successful" (ie, winning or placing in the right spots), will then become eligible for a world competition. That does not cover Claimant, however, because she is entering the GG Event to compete at the *2 level, whereas only successful athletes

in GG Event level *3 will qualify for the 2020 FEI WEC. The GG Event has three levels of competition - *1 being the lowest, *2 the middle, and *3 the highest. Success at any level qualifies the athlete only for the next step up. Thus, were Claimant to be successful at the *2 level, she would only then qualify for the higher *3 level competition. Since Claimant would not be riding at the GG Event at the *3 level that could “directly qualify[]” her for the 2020 FEI WEC, her participation in the GG Event at level *2 is not protected under the test set out in Section 1.3(w)(2). Therefore, the narrow claim in Allegation I regarding the GG Event is not arbitrable under the ByLaws, and this Arbitrator does not have jurisdiction over it.

Notwithstanding that specific absence of jurisdiction on Allegation I, this Arbitrator must still decide the merits of Allegation I because the Membership Application issues raised in Allegation I (including paragraph 7) carry over to Allegations II and III, as the applications and agreements addressed in Allegations II and III require USEF membership and/or agreement with the terms and conditions that Claimant contends in Allegation I are improper. Thus, all of the Allegations commonly claim that Respondent is, directly or indirectly, denying or threatening to deny Claimant the opportunity to participate in the 2020 FEI WEC, which is a World Championship. For that reason, a complete ruling on Allegations II and III requires a decision on Allegation I.

Merits

USEF Has Authority To Create The Terms. This Arbitrator first finds and concludes that USEF was authorized by Federal law, by USOPC ByLaws and Policies, and by USEF Rules to create the Membership Application, HLA, AOI, and other documents, and to include the allegedly offensive terms and conditions in them. The Ted Stevens Act, 36 U.S.C. Chapter 2205 (1998), which legislated the protections afforded athletes who compete in domestic and

international competitions. The Act expressly empowered NGBs, among other things, to broadly “establish procedures for determining eligibility standards for participating in competition”. (Section 220523(a)(5).) The USOPC ByLaws (Section 9.1) further directed NGBs to use “all reasonable means” to protect athlete’s opportunities to participate, and said that the reasonable means should consider the mix of responsibilities to the athletes, the USEF mission, and USEF members.

Similarly, USOPC Policy (Cl. Exh. I) states that an NGB can require certain terms in documents “that balances the rights and needs of both NGBs and athletes”, and that such terms can be “conditions of participation”, provided the terms are clear and consistently applied. Indeed, the Policy says that each NGB “should implement” a clear participation agreement that every athlete “must comply with, without amendment or alteration in any particular case.” Finally, USEF General Rules (Resp. Exh. 2, Section 908) includes the Federation Release as terms which it will impose in determining whether athletes may or may not participate. Collectively, these layered and interlocking statute, bylaw, policy, and rule give USEF broad discretion to create the documents and include the terms that are challenged here.

The Terms And Conditions Are A Reasonable Balance. Second, this Arbitrator finds and concludes that the terms and conditions in the Membership Application, HLA, AOI, and other documents: (i) strike reasonable balances between the rights and obligations of the athletes and the USEF, (ii) are set forth clearly, and (iii) are applied consistently. This Arbitrator combines the “reasonable means” guideline from ByLaw Section 9.1 with the “balanced” standard from USOPC Policy to arrive at a “reasonable balance” benchmark to analyze the challenged terms and conditions.

In this analysis, this Arbitrator considers the risks and exposures to the riders, horses, horse owners, and USEF in this high-stakes competition that could lead athletes to push the limits in order to win. Also, the inclusion in the ByLaws and Policy of benchmarks of reasonableness and balance signals that the documents' terms can impose conditions on athletes' participatory rights, provided it is not excessive. There is no bright line on that.

Here, the evidence showed the huge number of riders (3,000+) and horses (4,000+) in USEF competitions, factors which create significant management issues for the USEF and the need for standardized clauses that eliminate or reduce specialized treatment. One USEF witness testified that the challenged terms were standard among NGBs, and even Claimant acknowledged there could be chaos without uniform rules. Also, there is the reality that the horses cannot speak for themselves in order to be reasonably protected, warranting the more objective care allowed under the HLA. Moreover, the evidence showed that USEF's insurer insisted on some shifting of responsibility for injuries onto riders, an external consideration that impacts this analysis.

Considering all of these factors, this Arbitrator upholds USEF's broad exercise of its discretion to find the correct balance of rights and obligations in these documents. Notably, Claimant conceded there was a rational basis for the various terms, even as she said they improperly precluded her participation. At minimum, the challenged terms and conditions do not create an arbitrary or capricious imbalance between Claimant and USEF, and there was no evidence that they did. Indeed, the Membership Application does not protect USEF from gross negligence, or from reckless and intentional behavior. Also, the Membership Application (§ 2) allows members like Claimant to purchase liability insurance at seemingly modest annual rates. That further balances out the risks facing members under the Federation Release. The terms are

also very clear and consistently applied to all competitors, and Claimant did not adduce evidence to the contrary.

In particular, the fee shifting provision in the Membership Application's Forum Selection Clause is similarly allowed by the sources listed above and is also a reasonable balance of the rights and obligations of the athlete and USEF. Those terms should not dissuade a plaintiff from pursuing a meritorious claim against USEF, such a claim for reckless or intentional acts that injured a rider. The inclusion of such terms also does not jeopardize the opportunity of Claimant to participate or to attempt to qualify for selection to participate in a protected competition.

Specifically with respect to Allegation II, this Arbitrator additionally finds and concludes that the terms and conditions in the HLA regarding the care of the horse and other aspects (other than the release, etc. which are addressed above) are a reasonable balance of the rights and obligations of the horse owner and USEF in order to prioritize the welfare of the horse. Two USEF witnesses emphasized the need for horse protection, and one noted the importance of such terms where care decisions are immediately needed but the horse owner cannot be contacted. This Arbitrator also sees where the intercession of an independent party may be best able to determine the right course of care. The absence of more specific provisions regarding expenses and other logistics about the horse does not make the HLA vague and ambiguous.

The Terms And Conditions Do Not Preclude Claimant's Participation. At the core of this case, this Arbitrator finds and concludes that the inclusion of such terms and conditions does not unreasonably jeopardize the opportunity of Claimant to participate or to attempt to qualify for selection to participate in protected competitions. Since those terms strike a reasonable balance of the rights and responsibilities between Claimant, USEF, other USEF member athletes, and also horse owners, the many applications and agreement are proper under USOPC ByLaw

Section 9.1. As noted, USOPC Policy (Cl. Exh. I) that applies to NGBs expressly allows USEF to create “parameters for certain agreements” that impose conditions for participation without individualized exceptions. That permission also is weighty evidence that USEF is not violating ByLaws Section 9.1. Moreover, the “clear and consistent” factors set forth in the Policy have been met, as concluded above. If Claimant elects to not sign the Membership Application and other documents, she may be excluded from participation, but this Arbitrator does not fault USEF for that outcome. These findings and conclusions apply to all Allegations.

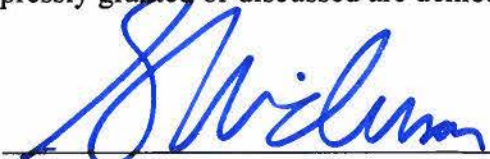
Accordingly, this Arbitrator denies all of Claimant’s claims in Allegations I, II, and III of her Demand.²

Costs, Expenses, And Attorneys’ Fees. Under AAA Commercial Rules (R-47), this Arbitrator shall assess, and may apportion between the Parties, fees and expenses of the proceeding. There is no current agreement between the Parties regarding any such allocation. Therefore, both sides are to pay their respective costs and expenses in connection with this Arbitration, as well as their respective attorneys’ fees.

Conclusion

For the reasons set forth above, a Final Award is entered in favor of Respondent United States Equestrian Federation and against Claimant Debra Lemmons. No fees or costs are awarded to either side. This Final Award is a full resolution of all claims and defenses submitted in this Arbitration. Any claims and defenses not expressly granted or discussed are denied.

DATED: December 26, 2019



Stuart M. Widman, Arbitrator

² These holdings on the narrow question of eligibility do not address or decide other aspects of contract formation, such as those arising from adhesion contracts. Those issues are beyond the scope of the eligibility dispute before this Arbitrator.