AMERICAN ARBITRATION ASSOCIATION
NEW YORK CITY REGIONAL OFFICE

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LINDA SHAHINIAN, NICOLE SHAHINIAN SIMPSON and EL CAMPEON FARMS, Petitioners, - v - AMERICAN HORSE SHOWS ASSOCIATION, INC., Respondent.	:	AAA No. 30 190 00014 00 **AWARD**

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WE, THE UNDERSIGNED ARBITRATORS, having been designated in accordance with the stipulation entered into by the above-named parties on April 26, 2000, and having been duly sworn and having duly heard the proofs and allegations of the parties, AWARD as follows:

Introduction

This saga began on June 12, 1999 when a show horse named REVEAL, owned by El Campeon Farms and trained by Linda Shahinian and Nicole Shahinian Simpson, Linda's daughter, competed in a horse show, the June Jamboree Horse Show ("Showpark") in San Diego, California. Showpark was an American Horse Show Association ("AHSA") sanctioned event, and the rules of the AHSA, to which the trainers and owner were concededly bound, applied.

AHSA, among other functions, sanctions horse show events such as Showpark and, in that connection, provides for random drug testing of the horses that compete in its shows.

In accordance with the AHSA's random drug testing program, Dr. Ruth Sobeck, a veterinarian duly appointed by the AHSA, randomly selected two horses, REVEAL and MRS. ROBINSON, for testing. REVEAL was selected at 4:35 p.m. after competing in Hunter Ring No. 1 in event no. 107, a modified junior hunter class event.[1] MRS. ROBINSON was selected at 5:25 p.m. after having competed in the same ring as REVEAL in event no. 107 and then in a subsequent event (no. 501). In accordance with the AHSA's testing procedures, Dr. Sobeck informed Linda Shahinian, one of REVEAL's trainers, that REVEAL had been selected for testing and offered Ms. Shahinian the opportunity to be present when the testing took place. Ms. Shahinian declined the invitation, and REVEAL was led back to its stall in the company of Dr. Sobeck and her assistant, Jacqueline Ball.

Dr. Sobeck collected a blood sample from REVEAL at 4:42 p.m. that afternoon, and Ms. Ball collected a urine sample 8 minutes later. Both samples were collected in the manner prescribed by the AHSA's procedures. The samples were labeled, sealed and sent for analysis to the AHSA testing facility at Ithaca, New York.

The evidence at the hearing confirmed that the sampling was uneventful and comported with AHSA's standard testing procedures. The panel found no credible evidence that the samples were adulterated by a foreign substance during the testing process, or touched by either Dr. Sobeck or Ms. Ball.

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[1] The record reflects that REVEAL finished last of seven competitors in that event.

The blood sample tested negative, but the urine sample was found to contain 18.7 ng/ml of benzoylecgonine ("BE") and a trace level of ecgonine methyl ester, both metabolites (*i.e.*, chemical by-products) of cocaine. Dr. John Lengel, the head of the AHSA's testing program, was informed of the positive test results by the AHSA laboratory by letter of August 3, 1999. The Petitioners were notified thereafter.

The Petitioners do not contest either the accuracy of the testing results or the fact that the urine sample tested was the same as the sample collected from REVEAL on June 12th. Indeed, subsequent DNA testing confirms that the urine sample most certainly came from REVEAL.

MRS. ROBINSON, the other horse randomly selected by Dr. Sobeck for sampling that same day, also tested positive for metabolites of cocaine. MRS. ROBINSON's urine revealed 10.2 ng/ml of BE but no trace of ecgonine methyl ester.

Cocaine is classified by the AHSA as a "forbidden substance" under AHSA Rule IV, Art. 410. Even though all parties concede that 18.7 ng/ml is a very small quantity, the AHSA issued a charge (the "Charge") against the Petitioners based upon its "zero tolerance" policy with regard to cocaine, *i.e.*, a policy that declares, among other things, that the presence of any amount of the drug, or one of its metabolites, no matter how small, requires a charge of a rules violation if found in the body of the horse.

The Charge is dated September 30, 1999. It is set forth in a document entitled "Official Charge Form" and charges that each Petitioner:

> "violated Rule IV, Articles 401-408 and 410-411 of [the AHSA] in that in connection with the Showpark June Jamboree Horse Show held June 10-13, 1999, [each of the Petitioners] exhibited the horse REVEAL after it had been administered cocaine. Benzoylecgonine and a trace level of ecgonine methyl ester (both metabolites of cocaine) were detected in the urine sample."

After unsuccessful attempts to resolve the matter short of formal dispute resolution, the Petitioners commenced this proceeding contending that, in view of the penalty threatened against Ms. Simpson, a nationally recognized competitive rider, the Olympic Rules came into play entitling the Petitioners to have the Charge adjudicated before a panel of the American Arbitration Association, rather than before the AHSA's hearing committee. The parties stipulated to the jurisdiction of the AAA and to this panel's ability to adjudicate the Charge.

The panel heard the testimony of thirteen witnesses over six days of hearings conducted on June 5, 6, 7, 8, 12 and 13. Affidavits of several additional witnesses were also submitted and the arbitrators had the benefit of highly skilled presentations of their clients' positions by the attorneys and outstanding briefs by both sides. The following constitutes the findings and the Award of the arbitrators.

The AHSA Rules hold the horse's trainer ultimately responsible for a drug violation. Article 404(2)(a) and (b) of the AHSA Rules provides as follows:

> Trainers in the absence of substantial evidence to the contrary, are responsible and accountable under the penalty provisions of these rules,
>
> a) for the condition of a horse or pony at a Recognized competition (whether or not they have signed an entry blank),
>
> b) to guard each horse and/or pony at, and sufficiently prior to, a Recognized competition such as to prevent the administration by anyone of, or its exposure to, any forbidden substance; . . .

In addition, Rule 404(3) provides that "the trainer represents the owner regarding the horse . . . being trained or managed . . ."

No one disputes the wisdom of this rule. The trainer is in the best position to supervise and guard the horse.

The AHSA, in urging that the panel sustain the Charge against REVEAL's trainers, argues strenuously for a reaffirmation of its "zero tolerance" rule. Applied to the facts in this arbitration, that rule has two distinct aspects: first, with respect to a defined list of forbidden substances, including cocaine, any "positive" test result with respect to that forbidden substance or any of its metabolites leads to a formal AHSA charge against the horse's trainer. Put another way, the AHSA deems certain forbidden substances so pernicious that no threshold level will be tolerated. Cocaine is one of those substances.

The second aspect of the AHSA's zero tolerance policy relates to the burden of proof imposed by the rules upon the AHSA on the one hand and trainers who are formally charged on the other. While the AHSA concedes that it bears the ultimate burden to prove the Charge, Article 404(2) of its Rules provide that a trainer is responsible and accountable "in the absence of substantial evidence to the contrary" when a forbidden substance is found in the body of a horse which he or she was training. Thus, while the AHSA at all times retains the burden of proof, the presence of cocaine in a horse raises a rebuttable presumption against the horse's trainer which can only be overcome by "substantial evidence." Article 404(2)(c) defines "substantial evidence" as follows:

> For purposes of this rule, substantial evidence means affirmative evidence of such a clear and definite nature as to establish that said trainer, or any employee or agent of the trainer was, in fact, not responsible or accountable for the condition of the horse and/or pony.

The AHSA has consistently interpreted the interplay of Articles 404(2) and (2)(c) as mandating the sustaining of a Charge against the trainer unless the trainer is able to prove affirmatively how the forbidden substance found its way into the horse, and that the manner of administration was not attributable to any fault of the trainer. This clearly places a heavy burden on a trainer charged with a drug violation. According to counsel for the AHSA, only two trainers so charged have met the standard; no trainer was found to have met the standard in the nine prior cases decided by the AHSA involving cocaine.

The Petitioners attack both elements of the AHSA's zero tolerance rule. They argue that some drugs, such as cocaine, are so pervasive in our society that any policy that does not differentiate between tiny amounts on the one hand and meaningful quantities on the other creates an unfair, arbitrary policy that exposes trainers to penalties simply for showing horses at competitions freely open to the public.

The Petitioners also attack the "substantial evidence" test in Article 404(2)(c) to the extent that AHSA decisions implement the Rule by placing the burden on the trainer to demonstrate affirmatively how the forbidden substance wound up in the horse. That often impossible burden, say the Petitioners, is at best unfair and at worst unconstitutional as applied by the AHSA to sustain charges that often have dire consequences to a trainer's reputation and employment prospects.

We will deal with each aspect of the zero tolerance rule in turn.

We begin with that aspect of the policy that holds that a trainer will be charged with a drug rule violation if any amount of a certain forbidden substance, such as cocaine, no matter how small, is detected in the blood or urine of a horse for which the trainer is responsible.

In support of the rule, as its relates to cocaine, the AHSA argues that cocaine, which is illegal to possess, is a powerful stimulant that may result in a depressive effect on the horse after initial administration and, thus, most certainly is a "forbidden substance" as that term is defined in AHSA Rule IV, Article 410.1 (a "forbidden substance" is "any stimulant, depressant, tranquilizer, local anaesthetic, psychotropic (mood and/or behavior altering) substance or drug which might affect performance of a horse…").

The AHSA further argues that a small quantity of cocaine in the urine of a horse at the time of testing may well be consistent with a significantly larger dose being administered earlier and that the chance of inadvertent administration from some ambient source, such as, for example, a bystander with cocaine powder on his hands feeding a carrot to a horse, is remote. Finally, the AHSA points out that its zero tolerance rule for drugs such as cocaine is no more draconian than the zero tolerance rules of other equestrian organizations, most notably the Federation Equestre Internacionale (the "FEI"), the internationally recognized equestrian federation. Indeed, the zero tolerance drug policy enforced by the AHSA is the same policy as that enforced in the International Olympic Rules. In that sense, the AHSA states that it would be inappropriate for the AHSA to impose a lesser standard on U.S. competitors who, in any event, also compete in international competitions.

The Petitioners, on the other hand, argue that cocaine is a pervasively common drug in America. In support of this contention Petitioners cite a well-regarded study prepared in 1995 for the National Institute of Health that found that 79% of one dollar bills selected at random in several cities in the United States were contaminated with cocaine. Petitioners further point out that the widespread presence of cocaine and the resulting possibility of inadvertent exposure to

the drug have led other well-regarded organizations, such as the Department of Health and Human Services, to promulgate threshold levels which enable an individual to have a certain level of cocaine metabolites in his or her blood without incurring administrative penalties. They point to the fact that airline pilots, for example, are permitted to have up to 300 ng/ml of cocaine in their systems and still fly an airplane. They further argue that there is a substantial risk of an inadvertent, very low level of contamination in a horse show, such as Showpark. The Petitioners presented a video of the Showpark facility that emphasized the open nature of these competitions. They argue that it is grossly unfair for the AHSA to impose a zero tolerance standard while at the same time declaring the competitions to be open freely to public access, unlike FEI and Olympic competitions that provide heightened security and stalling areas restricted to competitors, trainers and grooms.

The panel, after due deliberation, finds no basis to impose a standard for actionable levels of cocaine that differs from the AHSA's zero tolerance policy. The Petitioners knew of that policy and implicitly accepted it when they showed REVEAL at Showpark in accordance with the AHSA rules. Moreover, while the Petitioners make some compelling arguments, this panel is not constituted to apply a rule that is not before it. The AHSA is in the best position to reassess its rule in light of modern drug testing methods that can detect even minute quantities of a cocaine metabolite, and reliable empirical studies that document the ubiquitous presence of cocaine in our society. These matters are best left to experts and to open debate by the equestrian community.

The Charge As It Relates To The Trainers

We now turn to the evidentiary burden to be applied to the Petitioners and whether, under that burden, they have come forward with sufficient proof to defeat the Charge. In order to rebut the Charge, Rule 404(2)(c) requires the trainers to come forward with "affirmative evidence of such a clear and definite nature as to establish" that the trainer was not responsible or accountable for the positive drug test result. AHSA hearing decisions have required a trainer to present affirmative evidence of precisely how cocaine found its way into the horse's body in order to defeat the Charge. AHSA counsel, however, observed at the hearing (Tr., pgs. 515-16; 603-04), and we conclude, that the language of Rule 404(2)(c) permits a panel to find that the test of "substantial evidence" may be met even when the trainer cannot affirmatively prove how the forbidden substance found its way into the horse.

We find that the Petitioners, under the peculiar facts of this case, have met the standard of "substantial evidence" notwithstanding the fact that they have failed to come forward with proof of how the drug came to be found in REVEAL. Accordingly, we conclude that, under the facts of this case, the AHSA has failed to sustain its burden against Petitioners Linda Shahinian and Nicole Shahinian Simpson.

The evidence established that both trainers, mother and daughter, have a total of over 50 years of competitive experience. No evidence was presented that either has ever been the subject of any other AHSA charge. Ms. Simpson is an accomplished rider of Olympic caliber. Some of the most prestigious names in the sport attended the hearing to testify as to the trainers' character and reputation; Hap Hansen, a former Horseman of the Year and winner of over 80 Grand Prix events, was one of these. An affidavit was submitted from Susan Ashe, an AHSA board member

for the last 5 years and a member of its Drugs and Medications Committee. Dr. Steven Soule, the Shahinian's veterinarian for many years, also testified to the meticulous and loving care these trainers provide to their horses. He testified that Ms. Simpson, in particular, was extremely careful in her choice of medications often seeking advice several times before using them.

The Petitioners themselves each testified that they would never use cocaine on a horse or otherwise; that they made every reasonable effort to discover the source of the administration but were unable to do so; and that they do not know how BE came to be found in the body of REVEAL. The panel finds their testimony credible. That, however, did not end the inquiry.

Two of El Campeon's grooms also testified: the head groom, Jose Manuel Montanez, and Ernesto Reyes Rodriguez, the groom with direct responsibility to care for REVEAL on that June day at Showpark. Mr. Montanez has been employed for five years by El Campeon; Mr. Rodriguez for two. Both testified that neither they, nor any of the other El Campeon grooms, had ever used cocaine. Mr. Montanez related an incident in the past in which he asked permission from the Shahinians to make arrangements so he would not have to ride to a hotel with a groom from another stable whom he knew had taken cocaine.

The panel accepts the testimony of Messrs. Montanez and Rodriguez that none of the El Campeon grooms used cocaine. First, the panel finds these witnesses credible. Furthermore, the grooms work long hours during a show and at El Campeon. They eat together and sleep in the same quarters. It is highly unlikely that one of their number could be a user of cocaine unbeknownst to the others. Further, the El Campeon grooms as a group offered to submit to a polygraph examination if the Shahinians thought that that would be helpful in defense of the Charge. Ms. Shahinian declined that invitation.

The trainers used a high degree of care to monitor access to REVEAL, to the extent possible given the open show conditions at Showpark. The horse was separately stalled and watered from El Campeon's own buckets. REVEAL was escorted to the show ring and back by Mr. Rodriguez. At night, El Campeon hired Nightwatch, a service commonly retained by horse show participants, to monitor the animals periodically. The braider and transportation people used by El Campeon were known to them and had been used on prior occasions. In any event, there was no testimony that any of these people had access to REVEAL on the day of the positive test result.[2]

Much discussion was also had concerning the extraordinary fact that MRS. ROBINSON also tested positive for cocaine metabolites on that day. During the five years since the advent of modern drug testing procedures capable of detecting minute quantities of cocaine in a horse's system, the AHSA has recorded only 11 positives for cocaine or its metabolites (including REVEAL and MRS. ROBINSON) in over 15,000 urine tests. Curiously, two of these positives were found in the urine of two horses, MRS. ROBINSON and REVEAL, that competed on the same day in the same show ring at Showpark only minutes apart. While the reason for this phenomenon was never discovered, the coincidence tends to the conclusion that some third agent might have been at work that day to account for the two cocaine positives. This is particularly so since REVEAL and MRS. ROBINSON had virtually nothing in common other than their exposure to the general conditions at Showpark, *i.e.*, they were stabled in different locations

[2] There was some speculation at the hearings that REVEAL might have ingested cocaine in wood chips or otherwise in his stall where, perhaps, a cocaine user may have urinated. That possibility was eliminated, however, when tests by the AHSA failed to find either wood chips or human DNA in REVEAL's urine sample.

within Showpark and came into contact with different trainers, veterinarians, grooms, braiders and riders.

The AHSA argues that, even if the panel were not to apply the AHSA's usual standard (affirmative proof by the trainer of how the forbidden substance got into the horse), the Petitioners fall short. The AHSA points out that an investigator hired by El Campeon inquired into the backgrounds of Dr. Sobeck and her assistant, but failed to investigate El Campeon's own grooms, its braider or the transporters of the horse. The AHSA also points out that Ms. Shahinian declined the grooms' invitation to submit to a polygraph examination and points to other avenues of possible administration which remain a mystery. Notwithstanding the Petitioners' failure to disprove every possible scenario, the panel still finds that, under the peculiar facts here presented, the Petitioners have met the burden imposed upon them by Rule 404(2)(c).

In so finding, the arbitrators recognize that they have applied a lesser standard than that urged by the AHSA. They have not imposed upon Petitioners the need to prove affirmatively how cocaine came to be found in the body of the horse.[3] The AHSA argues, not without force, that this finding will make it difficult for the AHSA to enforce its strict policy against drugs. There is no trainer, argues the AHSA, who would not deny culpability, often in credible tones; nor a trainer who would be unable to marshal at least a few prominent equestrians to attest to his or her fine character. To accept such evidence as a defense would (the argument goes) take the teeth out of the rule and ultimately harm the sport. We respectfully disagree.

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[3] Rule 404(2)(c) only requires that the Petitioners come forward with "substantial evidence [not conclusive evidence] . . . to establish that said trainer . . . was, in fact, not responsible or accountable for the condition of the horse." The panel believes that the Petitioners have met their burden.

To be sure, the testimony of Mrs. Simpson, Ms. Shahinian and the El Campeon grooms were credible. Similarly, the testimony of Petitioners' character witnesses, all of whom were at the elite level of their profession, was compelling. However, the evidence presented by the Petitioners in this case has gone far beyond a mere denial or the presentation of prominent character witnesses. First, this is a cocaine case; it is not a case involving a forbidden substance that is not used by humans, and is not broadly available. The harsh reality is that cocaine use is prevalent in America and 18 ng/ml in the urine of a horse could have been caused by something other than deliberate administration by the trainer or someone acting under his or her control. Second, the minute quantity found in REVEAL is consistent with the possibility of an inadvertent administration, perhaps through a feed handler at Showpark or a cocaine user who fed something to the horse. Indeed, in the absence of the ELISA testing technique that the AHSA began to utilize in 1995, REVEAL would have passed the drug test if the same urine sample had been analyzed prior to 1995.

Third, the two horses that were selected for testing at the same show on the same day both tested positive for cocaine. While the evidence did not establish that the sampling procedure was in any way deficient, or that the samplers, Dr. Sobeck and Ms. Ball, came into contact with the samples, something may have occurred at Showpark on that particular day that accounted for this rather striking coincidence.

Fourth, and perhaps most persuasive, is the seeming lack of motive for the administration of the drug. Cocaine is a stimulant. A hunter like REVEAL is not a racehorse. It requires a calm and even disposition. To be sure, evidence was offered through Dr. Maylin, that cocaine, while a stimulant, has been observed to have depressive effects on a horse at some point after its

initial administration. Although Dr. Maylin's reading of the study by Dr. Thomas Tobin, "Drugs and the Performance Horse", excerpted as Petitioners' Exhibit II, and his own observations were subjected to strenuous cross-examination, the panel finds his testimony on that point credible and supported -- albeit inferentially -- by the Tobin study. This might explain why cocaine "might" beneficially affect a hunter's performance in the ring and, thus, support the listing of cocaine as a forbidden substance.[4] Dr. Maylin also testified, however, that horses, like people, react idiosyncratically to the drug, and that no trainer can predict the effect of cocaine without testing it on a trial and error basis. Thus, if either of the trainers in this case had deliberately administered cocaine to REVEAL, it would have likely been in furtherance of a program designed to gauge the effects of various dosages of the drug on the horse.[5] Given the obvious character and experience of the trainers in this case, the panel is unable to accept this supposition. Finally, the riders of REVEAL on the day of the testing were Eva and Jonathan Gonda, children of the owner of El Campeon Farms. Jonathan, age 12 or 13, rode REVEAL in event no. 107 that day. It strains credulity to suggest that the trainers would countenance the administration of cocaine to a hunter when the owner's own minor children were scheduled to ride it. This is particularly true since there are legal, commonly used and far less risky ways to calm a hunter than through the use of cocaine, which is a crime to possess.

[4] Of the 11 cocaine positives recorded by the AHSA, 10 have involved hunters.

[5] It is unlikely that cocaine would have been administered as an anesthetic. REVEAL was in sound condition. In any event, there are several non-prohibited, legal substances that would have been available if the goal was to anesthetize the horse.

In sum, we believe that the Petitioners have come forward with substantial evidence to rebut the Charge notwithstanding the fact that they have failed to prove how BE got into REVEAL.

In deciding that "substantial evidence" when used in Rule 404(2)(c) means something less than the quantum of proof urged by the AHSA, the panel was persuaded by several things. The AHSA rules anticipate situations in which a penalty could be imposed not only for a willful violation, but simply for being a trainer whose horse was found with a forbidden substance in its system. This possibility was denominated at the hearings as either the "trainer responsibility rule" or the "trainer insurer rule." The rules thus impose vicarious liability in addition to liability for a wilful infraction. However, the AHSA rules provide only penalties with severe consequences for a violation. This would appear to be inconsistent with a regime that imposes liability vicariously.

If the rules and the consequences of an infraction differentiated between wilful violations of the rule and technical violations that occurred simply because a drug was found in the horse without any proof that it was placed there by, or at the behest of, the trainer, then the situation might be different. As it stands, however, the panel was offered no choice other than to penalize the trainers in this case -- a determination that no matter what the wording of the published result, would have implied culpability with all of its ramifications including adverse consequences to the trainers' reputations and, perhaps, to their future employment prospects as well.[6]

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[6] The Petitioners placed into evidence an affidavit by one trainer who claims that she was fired from her position after a drug charge was levied by the AHSA.

The AHSA urges that the arbitrators should uphold its interpretation, and make allowance for inadvertent administration at the penalty stage. However, once the charge were sustained, the damage would be done and the imposition of a lesser "penalty" would be closing the barn door after the horse had left.

The Charge As It Relates To El Campeon Farms

El Campeon Farms is owned by Louis Gonda, a California resident. There is no allegation, or even a suggestion, that Mr. Gonda bears any responsibility whatsoever for the condition of REVEAL at Showpark, except in his vicarious capacity as owner of El Campeon Farms. Mr. Gonda was not even present at Showpark during the horse show in which REVEAL was tested. His children rode REVEAL on the day that the horse was found to have a cocaine metabolite in its urine.

The AHSA Rules, however, provide that there are consequences to the owner of a horse that is found to contain a forbidden substance. The relevant rule is Article 406(5) which states, in part, as follows:

> The owner or owners of a horse and/or pony found to contain a forbidden substance or any metabolite or analogue thereof may be required to forfeit all prize money, sweepstakes, added money and any trophies, ribbons and "points" won at said competition by said horse and/or pony and the same will be redistributed accordingly. The owner must pay a fee of $50 to said competition…

Thus, the AHSA Rules create a different penalty regime for owners, than for trainers. An owner of a horse found to contain a forbidden substance may be required to "forfeit" prize money, ribbons or points won at a competition. The owner must also pay a "fee" of $50 to the competition, presumably to reimburse the competition for redistributing the ribbons and/or prize

money. These are consequences different in kind from the imposition of a penalty that implies culpable conduct. By contrast, as explained above, a trainer of a horse found to contain a forbidden substance "may be fined and may be suspended from all participation in Recognized Competitions [for a determined period of time] . . ." AHSA Rule Art. 406(6).

The panel, notwithstanding its determination that the trainers of REVEAL have come forward with substantial evidence to rebut the Charge, hold, under the circumstances, that any ribbons won by REVEAL on June 12, 1999 at Showpark should be returned for redistribution. All competitors in a sport should compete on a level playing field. REVEAL had a metabolite of cocaine in its system that day. It would be unfair to the competitors to have to compete with a horse in that condition even if the horse's trainers were not responsible and even if it is improbable that the metabolite affected the horse's performance. The panel notes in this regard that it is the horse, not the rider, that is judged in a competition such as this.

The Adequacy Of The Charge

Considerable debate ensued at the hearings regarding whether or not the Charge levied by the AHSA could be sustained in the absence of any proof of a wilful violation. The Petitioners argued that the Charge specifically accused each Petitioner only of exhibiting the horse REVEAL "after it had been administered cocaine."

Petitioners argued that the word "administered" expresses an element of intent and, thus, that the Charge could not be sustained without proof of a deliberate doping of the horse. The AHSA, on the other hand, argued that the Charge could and should be sustained if either a deliberate dosing was proven, or if it was proven merely that a metabolite of a forbidden substance was found in REVEAL. The AHSA argued that the Charge, as written, was broad

enough to place the Petitioners on notice that either circumstance might result in a penalty. They point to the last sentence of the Charge and also to the first sentence that references the AHSA articles that are alleged to have been violated. These articles include the portion of the Rules that provides penalties for trainers whose horses test positive for forbidden substances, whether or not the administration of the drug is found to be deliberate.

While the wording of the Charge leaves something to be desired, the panel notes that the Charge is not publicly disseminated by the AHSA. The purpose of the Charge is to put the Petitioners fairly on notice as to what the AHSA will be seeking to prove at any hearing. We find that the Petitioners in this case were fairly placed on notice as to the conditions under which they might be penalized and, therefore, were given ample opportunity to mount a complete defense. The alleged inadequacy of the Charge could, of course, be remedied by a simple expansion of the language to make it explicit that the AHSA is seeking a penalty even in the absence of an act of deliberate administration. We leave it to the AHSA to consider such expansion in future charges that it might bring.

CONCLUSION

Accordingly, the Arbitrators conclude, and direct, as follows:

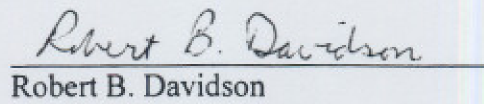
1. Respondent has failed to sustain the burden of proof respecting the Charge against Petitioners Linda Shahinian and Nicole Shahinian Simpson, and, accordingly, the Charge is dismissed:

2. All trophies, ribbons and points won by REVEAL at Showpark on June 12, 1999 are forfeited, Petitioner El Campeon Farms is directed promptly to return such trophies and ribbons, and El Campeon Farms is directed promptly to pay $50 to Showpark as provided in Article 406, paragraph 5, of the AHSA Rules;

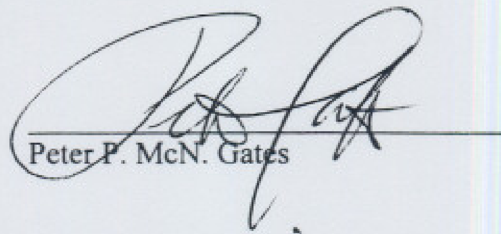
3. All fees and charges of the Association in connection with this matter will be borne equally by the Petitioners, on the one hand, and Respondent, on the other and will be paid as directed by the Association; and

4. Each side will bear its own costs, expenses and attorneys' fees.

Date: August 28, 2000



Robert B. Davidson



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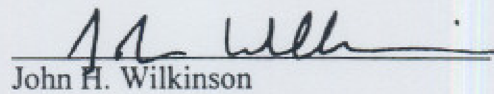

John H. Wilkinson