

Petitioner Brigid Colvin respectfully submits this memorandum in support of her request for a stay pursuant to C.P.L.R. §7805.

PRELIMINARY STATEMENT

This action pertains to a decision rendered by the Hearing Committee of Respondent United States Equestrian Federation, Inc. (the “Respondent” or “USEF”). The Hearing Committee considered a claim brought against Mrs. Colvin and another individual by the USEF’s Drugs and Medication Program, the gist of which was that one or both of the defendants was responsible under the USEF’s strict liability rule of “trainer responsibility” for the fact that a horse called “Inclusive” tested at above-expected levels for a naturally-occurring substance after competing in a USEF event.¹

After the hearing, the Hearing Committee ruled that both Mrs. Colvin and the other individual were responsible as the “Trainers” of the horse, and it levied dramatic, seven-month, bans from all USEF events as well as monetary fines against both defendants. This, in spite of the fact that the USEF’s prosecutor conceded at the hearing that Mrs. Colvin did not fit the USEF’s definition of a “Trainer.”

Mrs. Colvin seeks a stay of the USEF’s ban on her appearance at and participation in USEF events (the “Suspension”). The Suspension, which will begin on Tuesday, September 1, will prevent Mrs. Colvin from accompanying her teenage daughter – one of the nation’s leading equestrians – to equine competitions, including some of the most significant competitions in her daughter’s career to date, even as this Court reviews whether Mrs. Colvin’s claim that she should not have been found responsible and sanctioned in the first place. This harm is immediate and

¹ A third individual also was charged in connection with this matter, but she was charged (and found responsible) as being the owner of the horse, not as being a “Trainer.”

irreparable. On the other side of the ledger, there would be no harm visited upon the USEF should the Court grant a stay, as Mrs. Colvin can and will serve the Suspension at another time if her claims before this Court fail.

RELEVANT FACTUAL BACKGROUND

This motion is based on the detailed allegations set forth in the Verified Petition (the “Petition”) pursuant to N.Y. C.P.L.R. §§7800-06 that is being filed herewith and is incorporated herein by reference.

Petitioner is the mother of V■■■■ C■■■■ (“T■■■”), a minor who is one of the nation’s leading equestrians in the “hunter/jumper” discipline. As T■■■’s mother, Petitioner attends with her daughter all equestrian events and has done so for all of the years that her daughter has competed. (Pet. at ¶¶ 11-13).

Due to T■■■’s age, 2015 is the last year in which she can compete as a junior rider. There are three remaining junior championship titles for which T■■■ is eligible and intends to compete: the “Medal,” “the USET Talent Finals,” and the “Washington.” Each of these events is scheduled for the fall of 2015, during the period of the Suspension. (*Id.* at ¶8). T■■■’s committed show schedule for this fall follows. It includes a show in Saugerties, New York that begins on September 2 – one day after the beginning of the Suspension.

September 2 – 6	HITS on the Hudson VIII, Saugerties, NY
September 9 – 13	American Gold Cup, North Salem, NY
September 28 – October 4	Capital Challenge, Upper Marlboro, MD
October 2 – 5	USET Talent Finals, Gladstone, NJ
October 8 – 17	Penn Nat’l Horse Show, New Cumberland, PA
October 20 – 25	Washington Int’l Horse Show, Washington, DC
October 27 – Nov. 1	CP National Horse Show, Lexington, KY

The effect of the Suspension is that the Mrs. Colvin will be entirely unable to attend or support her daughter in any of the upcoming junior championship events. Further, she will be unable to attend or support her daughter in events beyond the championships, extending into early 2016. (*See id.* at ¶71).

The Hearing Committee's decision with respect to Mrs. Colvin is arbitrary and capricious because, as demonstrated by the Hearing Committee's Findings and Decision itself, it is not based on any evidence that could support a finding that Ms. Colvin was the Trainer of the horse. Indeed, the USEF's own prosecutor conceded at the hearing, "I do not think that based on the testimony she fits the definition of a trainer." (Ex. C at 104:17-105:9).² The Hearing Committee abandoned its duty to make evidence-based findings and essentially concluded that because it could not determine which individual was the actual trainer of the horse at issue, it would penalize both. This is a textbook case of arbitrary and capricious action, and it should not be condoned under the laws of New York (the body of law chosen by the USEF) or any other jurisdiction.

After the Hearing Committee's Decision, Petitioner timely filed a motion for reconsideration the Respondent. (Pet. at ¶71). On August 3, 2015, the USEF denied the motion for reconsideration and set the term of the Suspension to be September 1, 2015 – March 31, 2016. (*Id.*).

Pursuant to USEF Bylaw 706, Petitioner has exhausted all available administrative remedies. (*Id.* at ¶78).

² Exhibits referenced herein are annexed to the Affirmation of Courtney Devon Taylor, dated August 28, 2015, submitted in support of the Petition.

ARGUMENT

I. A STAY IS APPROPRIATE PENDING DETERMINATION OF THE ARTICLE 78 PETITION

C.P.L.R. §7805 permits the entry of a stay from enforcing an administrative decision that is under review. C.P.L.R. §7805. The function of the Rule is to preserve the status quo until the matter is resolved. *Id.*; *Town of E. Hampton v. Jorling*, 181 A.D.2d 781 (2d Dep’t 1992) (explaining that the lower court properly exercised its discretion in granting stays where there existed the possibility of irreparable injury if the administrative decision were enforced). Courts generally consider three factors when deciding motions under C.P.L.R. §7805: (i) the movant’s likelihood of success on the merits; (ii) the alleged irreparable injury that movant will suffer in the absence of provisional relief; and (iii) a balancing of the equities stemming from a grant or denial of the relief. *Harbor View Ass’n v. Sucher*, 237 A.D.2d 488 (2d Dep’t 1997) (affirming lower court decision granting a preliminary injunction upon consideration of the three factors); *Matter of Yung Bros. Real Estate Co. Inc. v. Limandri*, 26 Misc. 3d 1203(A) (Sup. Ct., N.Y. Cty. 2009, Tolub, J.) (in a C.P.L.R. §7805 motion, granting a stay pending the court’s review of the evidence submitted by the parties).

However, the law is clear that courts need not give equal weight to each of these factors. Courts have broad discretion when considering requests for equitable relief. *Matter of Ricelli Enters., Inc. v. State of N.Y. Workers’ Comp. Bd.*, No. 10-6901, 2012 N.Y. Misc. LEXIS 2241, at *84 (Sup. Ct., Onondaga Cty, Cherundolo, J.) (granting a stay in an Article 78 proceeding), *aff’d*, 117 A.D.3d 1438 (4th Dep’t 2014). Where a movant demonstrates irreparable harm that would be particularly severe, or where a movant shows that a final judgment will be rendered ineffectual absent a stay, there is less of a need to demonstrate success of the underlying claim on the merits. *State v. City of N.Y.*, 275 A.D.2d 740 (2d Dep’t 2000) (“although the State may not

ultimately prevail on the merits, the equities lie in favor of preserving the status quo while legal issues are determined in a deliberate and judicious matter.”); *Republic of Lebanon v. Sotheby’s*, 167 A.D.2d 142 (1st Dep’t 1990) (“where denial of injunctive relief would render the final judgment ineffectual, the degree of proof required to establish the element of likelihood of success on the merits should be accordingly reduced.”).

Here, each of the three considerations points in Petitioner’s favor. Therefore, this Court should grant a stay pending adjudication of the Petition.

A. Petitioner Will Suffer Irreparable Harm if She is Banned from Attending USEF Competitions

The harm that Mrs. Colvin will suffer here is a perfect example of what is irreparable, because she literally will miss out on events and opportunities in which her daughter will compete and will, by definition, not be able to go back and recapture those moments in time. While this is understandable as a sanction once a matter is adjudicated fully and a suspension upheld, it is incomprehensible that Mrs. Colvin might be forced to serve the Suspension while this Court is determining whether she should be forced to serve any suspension at all. Were that to be the case, Mrs. Colvin’s right to have this matter reviewed would in practicality be mooted because of the absence of a stay.

Moreover, in this particular case, the harm that Mrs. Colvin will suffer absent a stay is uniquely irreparable. Her daughter, T■■■, is about to begin the final season of her junior riding career and to prepare a campaign for the upcoming Olympic Games. During the period of the Suspension, among the many horse shows that Mrs. Colvin would be forced to miss are three junior championship events. As explained in detail in the Petition, Mrs. Colvin’s role as T■■■’s mother, informal coach, chaperone and more is irreplaceable. If the Suspension is not stayed, Mrs. Colvin will be unable to provide her daughter with meaningful parental support,

encouragement, and oversight necessary for T■■ to compete at her highest level.³ Further, the Suspension will significantly reduce the T■■'s chances for Olympic selection, something which T■■ has dreamed of and worked towards her entire life. The harm brought upon Mrs. Colvin and T■■ if a stay is not imposed will be severe and will be irreparable, to be sure.

B. The Balance of the Equities Favors A Stay

A court will issue a stay under C.P.L.R. §7805 where a petitioner demonstrates significant injuries or harm that is both irreparable and more burdensome than any harm the respondent would suffer. *Matter of Riccelli Enters., Inc.*, 2012 N.Y. Misc LEXIS 2241, at *246 (granting a C.P.L.R. §7805 motion where Petitioner successfully demonstrated that a stay was required due to a balancing of the equities, among other factors). In performing the balancing test, courts consider a variety of factors, including public interests, if any are involved; the fairness of the situation as between the parties; and the availability of other remedies. *Id.*

Courts are more inclined to issue stays where, like here, maintaining the status quo is at most a relatively minor inconvenience to the respondent. *Grammercy Co. v. Benenson*, 223 A.D.2d 497 (1st Dep't 1996) (explaining that the balance of equities "tilt in favor of plaintiffs, who merely seek to maintain the status quo," where defendants could proceed with their desired action at any point in the future.).

In no way will the USEF be prejudiced if the Court maintains the status quo. If ultimately Mrs. Colvin's Petition is dismissed, she will then serve the Suspension. Because the

³ Indeed, Mrs. Colvin's role as T■■'s mother and guardian is particularly important given the safety risks involved in the equestrian sport, in which statistics show that the rate of serious injury is higher than for motorcyclists and automobile racers. Head and neck injuries are common for horseback riders, as are fractures and dislocations. (Ex. H) Mrs. Colvin must present in the event that any medical or safety issues arise in which she needs to make medical decisions on behalf of her minor daughter.

equestrian sport runs throughout the year, Mrs. Colvin will be forced to miss many important horse shows no matter when she serves the Suspension, and there will be no difference to the USEF.

Further, there are other remedies at play here. In addition to the Suspension, the USEF has fined Mrs. Colvin a sum of \$7,000. Mrs. Colvin is prepared to pay that sum at this time (subject to the USEF's agreeing to repay the sum if Mrs. Colvin prevails on her Petition and the sanctions are therefore overturned). Thus, even if a stay is granted, Mrs. Colvin will suffer immediate harm. The difference, of course, is that the Court will have properly distinguished between harm that can be cured by an exchange of money and harm that can never be cured.

To the extent that the public interest is impacted by a decision on this stay request, we submit that the public interest is served by a ruling in Mrs. Colvin's favor. While the public surely has an interest in seeing that rules – including those of the USEF – are enforced, there is no dispute that the USEF's rules will be enforced if the USEF ultimately is determined to be in the right. The public, however, has no interest in seeing the rights and liberties of its members deprived because their relief was mooted by the passage of time while their claims are being considered. Justice delayed truly would be justice denied in this situation.

C. The Petition is Likely to Succeed on the Merits

A court will overturn the decision of an administrative body where that decision was arbitrary or capricious, where there was an abuse of discretion and/or where the decision was not supported by substantial evidence. C.P.L.R. §§7801, 7803. Here, all three of those situations applies. And in a situation where the final judgments on the merits would be ineffectual in the absence of a stay – as is true here, a court may grant a stay upon a showing by the movant only

that there are disputed issues of fact or law and there is a reasonable possibility that these issues could ultimately be resolved in the movant's favor. *Republic of Lebanon*, 167 A.D.2d at 142-45.

The Petition makes clear that the determinations of the Hearing Committee were arbitrary and capricious. Indeed, by designating Mrs. Colvin a "Trainer" in spite of the USEF's prosecutor's admission that the testimony did not support such a finding, the USEF exceeded its authority under its own rules and policies. *Riccelli Enters., Inc.*, 2012 N.Y.Misc. LEXIS 2241, at *162 (explaining that petitioners showed a likelihood of success, if only relying on respondent's own admissions and statements made).

The prosecutor's statement was accurate and is indicative of the core infirmity that plagues the Hearing Committee's ruling. As demonstrated in the Petition and accompanying documents, the Hearing Committee could not and did not provide an explanation or justification for its finding that Petitioner was a "Trainer" of the horse at issue during the event in question.

In short, there surely are disputed issues of fact and law, and there is more than a reasonable possibility that this matter could be resolved in Mrs. Colvin's favor. Accordingly, the Court may and should enter a stay here.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that her Order to Show Cause for a Stay pursuant to C.P.L.R. §7805 should be GRANTED.

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