TAS / CAS
TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

CAS 2021/A/8112 Andrew Kocher v. Fédération Equestre Internationale (FEI)

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Prof. Jan Paulsson, Manama, Bahrain
Arbitrators: Mr David Evans, Attorney-at-law, Boston, USA
Dr. Hon. Annabelle Bennett AC SC, Retired Judge, Sydney, Australia

in the arbitration between

Mr Andrew Kocher, USA

Represented by Mr Michael Romm, Attorney-at-law, Davie, Florida, USA

Appellant

and

Fédération Équestre Internationale (FEI), Lausanne, Switzerland

Represented by Louise Reilly BL, Dublin Ireland, and Lauren Pagé and Lereesa Easterbrook, Bird & Bird, London UK

Respondent

I. PARTIES

1. Andrew Kocher (the "Appellant") is a US national and 39-year-old professional show jumper who has represented the USA in international competitions since 2010.

2. The Fédération Equestre Internationale (the "Respondent" or "FEI") is the international governing body for equestrian sport disciplines that include show jumping.

3. Appellant and Respondent will together be referred to as the "Parties".

II. INTRODUCTION AND ANTECEDENTS OF THESE PROCEEDINGS

4. The Appellant seeks to overturn a decision of a three-member FEI Tribunal ("the Decision") dated 10 June 2021, consisting of 54 pages and rendered after three days of hearings by videoconference. It found him guilty of infractions of the FEI's General Regulations ("the GR"), declared him to be suspended for ten years (concluding on 27 October 2030), disqualified his results in the eight events for which the Tribunal was provided evidence of infractions, ordered him to pay a fine of CHF 10,000, and ordered him to pay CHF 7,500 towards the cost of the proceedings. In the alternative, the Appellant seeks a reduction of his suspension and fine.

5. The circumstances discussed below constitute a summary of the relevant facts and evidence as set forth by the Parties in their respective written submissions and orally during the hearing. This chapter on the factual background is made for the sole purpose of providing an overview. Additional facts may be set out where relevant.

A. The process leading to the FEI Decision

6. The Appellant's life and livelihood revolve around equestrian sport. His international ranking in jumping has been as high as 70, and as high as 7th in the North American Eastern Sub-League of the FEI World Cup Standings. He is also a horse trainer and owner, and has operated a large horse sales business, which he explained to the Panel involved the identification of "*difficult*" horses that might be purchased for a low price, trained to higher performance capability, and resold for a high price. He has also ridden horses owned by others with a view to obtaining good results which would lead to sales on which he would earn a profit or commission.

7. The following Paragraphs of FEI's Answer in this arbitration are disputed, but explain the genesis of the dispute and are therefore reproduced verbatim (footnotes omitted):

> *2.3 Between 2018 and 2020, the Appellant was in a business partnership with Erica Hatfield, an equestrian enthusiast who had recently decided to get involved in the business of show-jumping by acquiring a number of sport horses and setting up a show-jumping and equestrian business (she was first an owner of Hatfield Sporthorse International and then later set up a business with her family called Eye Candy LLC). Ms Hatfield hired the Appellant to train and ride*

her horses in competitions and she would buy horses based on Mr Kocher's advice. The Appellant would also sell horses owned by Ms Hatfield and would receive a commission for doing so. Given that Mr Kocher operated a large horse sales business, he would also employ his own riders to help him ride horses belonging to other owners in training and/or competition in order to increase their value or in order to sell them. Two of those riders were [Witness X.] *and* [Witness Y.], *who worked for the Appellant between* [...] *2019 and* [...] *2020, after which they were employed* [...]. *As part of the* [...] *business, Ms Hatfield owned three stables in the United States at which the Appellant would train her horses as well as the other horses he was responsible for. Ms Hatfield employed a number of grooms to work at those stables,* [...].

2.4 Ms Erica Hatfield reported to the Equestrian Community Integrity Unit (ECIU) that the Appellant had been using a homemade electric spurs device to inflict electric shocks on numerous horses both in competition (at national and international events) and in training. Ms Hatfield informed the ECIU that she was in possession of one of the devices used by the Appellant, which had been found at a farm where he had trained, and she was asked to make a video, which she did around May 2020. She also reported that it was common knowledge within the team that the Appellant used electric spurs on his horses in training, and that some members of the team [...] *were aware that the Appellant also used electric spurs in competition. Ms Hatfield also informed the ECIU that she was in possession of a pair of the Appellant's old riding boots, which had holes in them out of which the exposed wires would exit so they could be taped to the spurs. In support of her allegations, Ms Hatfield provided the ECIU with over 500 photographs of the Appellant competing at competitions.*

1.6 On 26 June 2020, the Appellant's use of electric_spurs was reported by the French equestrian journal Grandprix.info.fr (the Grandprix), in an article titled 'Andrew Kocher suspected of using electric spurs in competition' (original in French: Andrew Kocher soupconné d'avoir utilisé des éperons électriques en concours). The article included five in-competition photographs, which showed the Appellant using electric spurs.

1.7 As a result of all the media attention, the ECIU and the FEI were provided with extensive video footage and over 1000 photographs of the Appellant at various competitions by a number of amateur and professional equine photographers.

8. As the FEI Tribunal was to observe in Paragraph 17 of the Decision (see below), the publicity surrounding the allegations against the Appellant had the effect that the FEI received

significant quantities of photographic, video and witness evidence, under the following headings:

(a) *Photographic evidence: approximately one thousand photographs were provided to the ECIU by various members of the equestrian community and a sample of 81 photographs that underwent additional analysis. In 73 out of 81 photographs, a trigger button was identified. In several photographs, a cable which runs down the Respondent's arm, was visible. The submitted photographs were taken at various National and eight International (FEI) Events.*

(b) *Video evidence: two videos were submitted to the ECIU, and two other videos were obtained by ECIU. For the purposes of this Decision the Tribunal only relied on the following videos:*

Video 1: (V001 in the ECIU Report prepared for the FRI, October 2020) exhibited an Electric Shock Device and how it worked, this video showed an electrical power bank connected to three cables. It was noted that the main cable had a trigger button at the end and the other two cables had ends with exposed wirings. It is shown in the video that upon pressing of the trigger button electricity would run through the cables releasing an electric charge at the exposed ends demonstrated by an electric spark toward the end of the video. The exposed ends would be connected to) the spurs resulting in an electric shock being inflicted upon the horse. It was reported that this Electric Shock Device was found at a farm of one of the witnesses where the Respondent trained. It was allegedly common knowledge within the team that the Respondent used these devices during training.

Video 2: (V002 in the ECIU Report) showed the Respondent's old boots (the Boots) that he wore during competitions and training. One of the FEI witnesses had kept these Boots after they were replaced by a new pair. The video showed small holes visible on the inside of the Boots where the cables would allegedly run through, and the position of the holes matched the place where the spurs would need to be positioned.

Video 4: (V004 in the ECIU Report) was submitted to the FEI directly and displayed the Respondent's Boots that were sprayed gold by a witness to the proceedings and were kept with the intention of creating a museum dedicated to the Respondent. A video of these Boots was created on 9 October 2019 and shared by a witness in a WhatsApp group entitled "Jumping Amsterdam". The Respondent was a member of that group and when he saw the Boots he commented: "Boots are looking sharp". It was therefore submitted by the FEI that the Boots therefore clearly belonged to the

Respondent and that the video corresponded with the photographic evidence thereby confirming the Respondent's use of an Electric Shock Device.

(c) Witness Statements: five (5) testimonies were provided. It is noted that three (3) witnesses provided their testimonies to the ECIU which formed an integral part of the ECIU Report.

The FEI submitted that the evidence confirmed their contention that the Respondent had used an Electric Shock Device at the following:

a) in International and National competitions, as well as training;

b) repetitively and on numerous horses;

c) for several years dating back to 2013/2014.

The videos and photographs are indeed considered in the report prepared by the ECIU after the conclusion of a formal investigation of the Appellant. As part of its investigation, the ECIU collected the testimony of Ms Hatfield; of witness X, a former rider of the Appellant and current rider for [...]; and of witness Z, a stable manager [...].

9. The ECIU is described by FEI as an independent body that is responsible for investigating any integrity issues related to the FEI. The ECIU's investigation concluded that the Appellant had been using an electric shock device on multiple occasions and on numerous horses throughout his career in competition and in training.

10. In addition, the FEI carried out a parallel investigation in the course of which witness Y, one of the Appellant's former riders and a current rider for [...], also came forward, as did Witness W, a full-time horse trainer acquainted with the Appellant but unrelated to the other witnesses; he was prompted to make himself known upon being informed of the allegations against the Appellant.

11. These references to the evidence said to have been produced and considered in the course of the proceedings before the FEI Panel is by way of background. The task of the present Panel is to consider the evidence which is put before it as part of the CAS appeal process, while understanding that these materials naturally include evidence that was before the FEI Panel.

12. On 29 June 2020, the Appellant was informed by the FEI of the investigation. On 15 July 2020, he replied by denying the allegations in their entirety.

13. On 16 October 2020, the ECIU Report was issued. It concluded that there was evidence "*clearly*" indicating regular use of electric spurs "*during training and competition*". It further observed that video footage and 77 of the 81 photographs analysed showed a trigger button or cable consistent with the description of the electric spur alleged to have been used by Appellant over a period of at least seven years.

14. On 28 October 2020, the FEI sent a Notification Letter to the Appellant announcing the commencement of disciplinary proceedings. The consequent Claim Brief was submitted on 26 November 2020, charging him with:

    1. Abuse of the Horse (FEI GR Article 164.12(b)
    2. Criminal Act (Article 164.12(c)
    3. Conduct that brings the FEI and/or equestrian sport into disrepute (Article 164.12(g)
    4. Breach of the FEI Code of Conduct on the Welfare of the Horse (Article 164.12(i)
    5. Breach of the FEW Code on the Manipulation of Competitions (Article 164.12(j)
    6. Incorrect Behaviour (Article 164.12 (a)

B. Proceedings before the FEI Tribunal

15. The three-member FEI Panel was appointed on 8 December 2020.

16. The Appellant filed his answer on 16 February 2021.

17. On 6 March 2021, the Appellant filed a supplemental brief.

18. On 17 March 2021, the Appellant requested an opportunity to inspect boots which the FEI alleged were riding boots that he had used and which had been perforated in a manner which indicated a passage for the concealed electric wires leading to the spurs outside. Although efforts were made to facilitate this inspection, the Appellant rejected the opportunity for his counsel to attend this inspection, citing an unwillingness to allow the Chairman to supervise the inspection without the presence of the two other Panel members. (Arrangements for inspection of the boots were fixed for 15 April 2021 and the Appellant was so informed. The following day, he objected to the arrangements for the inspection, notably on the grounds that it was improper for the President of the Tribunal alone to supervise the process.)

19. The hearing before the FEI Panel, conducted by videoconference, took place on 14-16 April 2021. The FEI called five witnesses. The Appellant spoke on his own behalf but called no witnesses.

20. The FEI Panel's Decision was issued on 10 June 2021. It concluded that the Appellant breached the General Regulations of the FEI on each of the counts asserted by the FEI. Factually, it found that he had repeatedly over a long period used an electric shock device ("electric spurs") on several horses.

21. The Decision notes in Paragraph 14 that the following evidence was provided by the FEI:

    a) Photographic evidence – numerous photographs were provided to the ECIU and form an integral part of the ECIU Report and the Claim;

b) *Video evidence – two videos were provided to the ECIU, one video was additionally obtained by the ECIU from the Event Organiser and one video was provided to the FEI - all four videos form a fundamental part of the Claim;*

c) *Witness evidence – in total five (5) witnesses provided their testimonies in relation with the current proceedings: three (3) of them provided their testimonies to the ECIU (and form an integral part of the ECIU Report).*

22. In Paragraph 15, the Decision records that the FEI's submission proved

that the Electric Shock Device used by the Respondent was a modified electrical power bank, to which a trigger button and cables with exposed endings were attached. The Electric Shock Device was strapped to the Respondent's body with the trigger cable running down the arm and with the trigger placed into the hand. Two other cables were fed down the legs of the Respondent with the exposed cable endings connected to his spurs. When the trigger was activated, the cables had live electricity passing through them. Electricity was conducted through the cable to the metal spurs and subsequently gave an electric shock to the horse.

23. In the following Paragraph of the Decision, the FEI Tribunal explained that

the Electric Shock Device would force the horse to be more sensitive i.e., reactive to riding aids such as legs in order to move forward and accelerate (exempting the instances where the horse would not comply with this abusive aid resulting in increased bolting, rearing, bucking of the horse etc. when compared to aids that would be used normally). In addition, the aim of the user of these devices would be to change unwanted behaviour and that when the device was triggered its activation had several purposes. For example in the case of the Respondent, the benefit of triggering the device was to provide an immediate acceleration in between obstacles or within an A-B or A-B-C combination in order to avoid having a rail down resulting in penalty points, to prevent a hesitant or nervous horse to stop in front of an obstacle resulting in penalty points, whether be it in front of a particular obstacle where a horse would be more reluctant to jump (due to its specific colours, shape, positioning...) or throughout the course on the approach to obstacles in cases of very nervous horses and to force a tired horse to continue in a certain pace when normally a horse would start slowing down or be more "flat" etc.

24. Accordingly, the Decision imposed the following sanctions on the Appellant:

(a) *a ten-year suspension barring the Appellant from participating in or attending, in any capacity, including as a spectator, any Competition or Event that is authorised or organised by the FEI or any National Federation;*

(b) disqualification of results obtained by the Appellant at the eight events for which the Tribunal was provided with photographic evidence establishing the Respondent's use of the electric spurs;

(c) a fine of CHF 10,000; and

(d) an order to pay CHF 7,500 towards the costs of the proceedings.

25. The Appellant now appeals the Decision as a whole. In the alternative, he seeks a reduction of the sanctions imposed.

III. PROCEEDINGS BEFORE THE CAS

A. The sequence of pre-hearing written exchanges

26. The written exchanges were voluminous and their accumulation is in many respects repetitive or otiose. What follows is a summary of significant communications.

27. On 1 July 2021, the Appellant filed his Statement of Appeal (dated 30 June 2021) with the Court of Arbitration for Sport ("CAS") in accordance with Articles R47 and R48 of the CAS Code of Sports-related Arbitration of the Court of Arbitration for Sport ("the CAS Code"), seeking the following requests for relief:

a) determine that the appeal is admissible and permit a new Final Arbitration Proceeding as an arbitration de novo;

b) set aside the Decision of the FEI Tribunal;

c) eliminate or otherwise reduce the period of ineligibility imposed on the Appellant; and order the FEI to:

d) order the FEI to:

(i) reimburse the Athlete his legal costs and other expenses pertaining to this appeal; and

(ii) bear the costs of the arbitration.

28. On 31 August 2021, the Parties were informed by the CAS of the constitution of the Panel comprising the three arbitrators identified on the signature page of this Award.

29. On 22 December 2021, the FEI provided an index and electronic copies of the documents/evidence filed in the FEI proceedings.

30. After a lengthy series of contested extensions that lasted over half a year, the Appellant finally filed his Appeal Brief on 24 February 2022. Attached to it were so-called "witness statements" in the form of unsigned and unverified copies of short emails or screen shots of emails.

31. Most of these "*statements*" contain harsh criticism of Ms Erica Hatfield, the owner of an equestrian training facility and of horses. A number of her horses have been trained by the Appellant. Her business relations with the Appellant have become acutely contentious; they are engaged in US court litigation. The statements [...] suggest that she harboured ill will toward the Appellant [...]. Many of these messages contain statements which are highly personal and neither need nor bear repeating. It is clear without reference to these accounts that Ms Hatfield and the Appellant have an adversarial relationship and that her assertions with respect to him (and indeed vice versa) are therefore subject to doubt unless confirmed by other probative evidence.

32. The Appeal Brief asserts that one of these 23 witnesses, a Ms Stella Manship, "*is an expert whose testimony will include that shown in her statement attached.*" That statement is a photocopy of an 11-line email of which she is purportedly the author, and in which she explains that she has

> *been in the business of owning and competing(sic) top level show jumpers for the past 40 years*

and is

> *qualified to provide professional opinion as to all aspects involved in the management of an equestrian training facility; facility; ownership of competition horses; the buying and selling of competition horses; the care, maintenance and training of competition horses; including the mechanisms and expense involved, as well as the financial undertakings that are required to keep these equine athletes at the top of their sport.*

33. The email contains no reference to any expertise in the determination of wrongful use of electric spurs, let alone her opinion of the implications of the evidence in this case.

34. Only three of the factual "*statements*" relate in substance to the treatment of horses.

35. The first is a single-page email signed "*Abby Evans*" expressing severe criticism of Erica Hatfield's allegedly poor treatment of a horse which was transported in "*freezing conditions*" and the conclusion that Ms Hatfield is "*a liability to the equestrian industry*". There is no mention of the Appellant's treatment of horses. It thus has no probative value.

36. The second is a screen shot of an email exchange between "*Aymen Tsouri*" and Ms Hatfield in which the latter asks why he was "*protecting him*" (presumably the Appellant) by stating that he "*did not see the spurs*" to which he responds that "*I didn't see them with my own eyes but saw them on social media and everybody was talking about I heard about them yes*". While this screen shot may be said to indicate Ms Hatfield's eagerness to secure corroboration of the accusation against the Appellant it contributes nothing by way of proof of the Appellant's guilt or innocence.

37. The third is a three-sentence email signed "*Heidi Hildebrand*" stating that she attended a horse show, was in proximity of the Appellant and helped him groom, tack up and take his horses to the ring and back to the barn; and did not see any harm caused to his horses. The fact that

competitors sometimes obey the rules obviously does not lead to the conclusion that they have not infringed the rules on other occasions .

38. In any event, as with the 20 other witness statements in this batch, these three are inadmissible (see Paragraph 56 below).

39. On 3 March 2022, after receipt of communications from the Appellant concerning various errors allegedly committed by the FEI Tribunal with respect to matters of evidence and his need to have further information relating thereto, the CAS wrote to him as follows on behalf of the Panel:

> *the Parties are reminded that this is an appeal de novo; the Panel is tasked with determining whether proof of the Appellant's guilt has been demonstrated to its comfortable satisfaction. The Panel is not interested in evaluating the way the FEI handled the matter except to the extent that it is contended that specific considerations either enhance or detract from the reliability of particular evidence.*
>
> *If the Appellant considers that the Respondent is in possession of relevant evidence which has not been produced in adequate form, he should make an application (A) to identify it precisely, and (B) to explain why he could not have made his request known sooner, in time for the evidence to be addressed in his Appeal Brief.*

40. The FEI's Answer Brief was submitted on 30 May 2022, along with its documents and authorities.

41. On 1 June 2022, the CAS invited the Parties to state whether they wished that a hearing be conducted or that the dispute be determined "*on the papers*".

42. On 8 June 2022, the FEI wrote to express a preference for a one-day hearing in a hybrid format, with witnesses participating remotely by video.

43. On 9 June 2022, the Appellant requested a full hearing in which he stated that more than 35 witnesses would be heard, and requested an opportunity to present approximately 300 pages of new evidence which had been disclosed in the course of commercial litigation between himself and Ms Hatfield.

44. On 16 June 2022, the FEI observed that the Appeal Brief had not submitted any witness statements at all, but only "*copies of various text messages and emails*" from 23 purported witnesses (not 35) "*many of which do not fully identify the relevant witnesses and none of which is accompanied by a statement of truth or confirms that the 'witness' even knows or intends the information they provide to be used for the purposes of these proceedings.*" This does, so the FEI asserted, not comply with Article R51 of the CAS Code, which requires the Appeal Brief to "*specify the name(s) of any witnesses, including a brief summary of their expected testimony.*" As for the "*new*" evidence sought to be produced, the FEI observed that Article R56 of the CAS Code does not permit the introduction of new evidence "*after the submission of the appeal brief and the Answer*" unless agreed otherwise by the parties (which

is not agreed) or ordered by the President in "*exceptional circumstances*". The FEI maintained that the Appellant had not identified, let alone established, exceptional justifying circumstances "*particularly after he has already received a total extension of over six months to file his submissions and supporting evidence*" and most of the evidence now sought to be submitted "*would have been available to him (and his counsel) long before the submission of his Appeal Brief and therefore does not constitute "newly discovered evidence*". In any event, so the FEI observed, the evidence in question is broadly irrelevant, since it pertains to the litigation between the Appellant and Ms Hatfield which pertains to issues of ownership of horses and alleged breaches of commercial relations which does not shed light on the infractions of FEI Regulations which are the subject of these proceedings.

45. On 27 June 2022, the CAS informed the Parties of the Panel's ruling to the effect that it was prepared to conduct a two-day hearing in Lausanne, with witnesses to be free to appear in person or remotely. With respect to evidentiary matters, the Panel ruled as follows:

> *1. No witness will be heard without the Panel's authorization, following submittal on or before 6 July 2022 ... of a signed summary of the substantive affirmations made by the proposed witness ... limited to one single-spaced page. In the absence of such a timely submitted summary the testimony in question will not be considered and the proposed witness will not appear.*
>
> *2. The Panel is interested in concrete facts related by proposed witnesses and said to indicate the Athlete's guilt or innocence/ The Athlete's conduct in other circumstances of general attestations as to his character, or calls to draw adverse or favourable inferences, will not warrant testimony...*
>
> *3. No other new evidence will be admitted at this late stage.*
>
> *4. Upon perusal of the witness summaries, the Panel will decide whether the appearance of the witness is warranted.*

46. On 5 July 2022, the Appellant wrote to express his concern about the use as evidence what he described as the "*most damning evidence against him*", namely the boots and electric spur device said to have belonged to him and once but no longer apparently in the possession of "*the Hatfield family*" and of which a video had putatively been shown to the FEI Tribunal. It is convenient to interrupt the chronology here to mention that the FEI stated at the commencement of the hearing that the boots (perforated for the supposed purpose of permitting passage to the spurs of wires hidden in the rider's breeches) had been recovered and were available for the Panel's inspection in the hearing room. The Panel was uncertain of the evidentiary weight that could be given to such an inspection in the physical absence of the Appellant and his counsel (participating remotely) and therefore had no regard to the boots or the spur device.

47. On 6 July 2022, the Appellant asserted that five days minimum would be required to hear 32 witnesses, although the Appellant could not afford to pay the cost of travel of himself and his counsel to Switzerland.

48. On 2 August 2022, the CAS informed the Parties of the Panel's rulings to the effect that

> 1. *The hearing will be conducted in Lausanne on 25 and 26 October 2022, from 10 am to 5 pm each day.*
> 2. *All written evidence on which the Appellant wishes to relay must be submitted by the end of business on 15 August 2023. All witness statements must be signed.*
> 3. *Each party must identify the any witness it intends to call by 1 September 2022.*
> 4. *Each party (and/or counsel) is entitled to be present in Lausanne. Either party may also participate by videoconferencing, but if so will bear the consequences of the time difference at its location.*
> 5. *Each side will dispose of a strict maximum of 5 hours to present its arguments and to put questions to any appearing witnesses, whether its own or its opponent's. Each side will dispose of an hour for rebuttal. It is expected that the written witness statements will comprise the direct evidence of the witnesses so that witness questioning will consist primarily of cross-examination with the opportunity of redirect. Each party will be strictly responsible for managing its time. The time limit will be enforced.*

49. In view of the common unavailability of the Parties on the chosen dates, the dates for the CAS hearing were subsequently changed to 8 and 9 November 2022.

50. After a request (opposed by the FEI) for the extension of a prior deadline, the Appellant was granted extra time to provide signed statements of his witnesses by 22 August 2022.

51. The Appellant filed five statements, and did so only on 26 August 2022. Each of them exceeded the page limit permitted by the Panel's order of 27 June 2022. The FEI promptly objected on grounds of inadmissibility on 31 August 2022 adding that contrary to the Panel's order the statements did not concern "*concrete facts ... said to indicate the Athlete's guilt or innocence*", but rather speculations, opinions, legal arguments, and not assertions of fact.

52. On 1 September 2022, the Appellant sought to introduce another statement, to the admissibility of which the FEI objected on 5 September 2022. The Appellant asserted that the witness had had problems with the signature function of his computer; the FEI retorted unsurprisingly that this should have been raised before the expiry of the deadline, and in any event it was not a valid excuse, all the more so as other proposed witnesses had been able to use the same e-signature program in timely fashion. The statement was ruled inadmissible (see Paragraph 56 below).

53. On 5 October 2022, the President held a telephone conference with the Parties (lasting 75 minutes) to discuss time management and other practicalities relating to the November hearing.

54. On 13 October 2022, the FEI sent a nine-page letter setting out detailed objections to any additional evidence that might be presented by the Appellant, as well as its objections to witness evidence filed by the Appellant on 26 August and 1 September 2022. The FEI therein also confirmed its wish to present five named witnesses of fact and Dr Andrew McLean as expert witness as well as its acceptance that its second expert not appear if the Appellant decided not to cross-examine him.

55. On 18 October 2022, the Appellant sent a number of applications which were dealt with by the Panel in a ruling dated 24 October 2022. The ruling contained the following material elements (excluding the discussion of a prior criminal conviction mentioned in Section III.E below, which the Appellant considers, and the Panel accepts, is extraneous to these proceedings and therefore unnecessarily prejudicial to himself):

> *New evidence*
>
> *The Appellant has had more than adequate time to prepare his case, having already gone through the adversarial process before the FEI Tribunal and having had in hand on 10 June 2021 its adverse decision from which he appeals. His statement of appeal was filed on 30 June 2021. He was given a series of extensions of time to file his Appeal Brief, which ultimately was submitted on 23 February 2022. CAS Code Art. R56 proscribes new evidence after submission of the appeal brief and of the answer unless agreed by the parties or ordered by the Panel in "exceptional circumstances".*
>
> *While it is possible to invoke exceptional circumstances at any time, the admission of applications must be weighed against the prejudice to the opposing side, and in particular the difficulty of responding as time diminishes before the hearing. That basis diminishes with time as the date of the hearing approaches and the opposing side is faced with greater difficulties of responding. FEI has objected to the six witness statements filed by the Appellant (including appendices) on these three grounds:*
>
> *"(i) first, it must be exercised in a timely manner and in accordance with the applicable procedural requirements, (ii) second, the evidence sought to be adduced must relate to a relevant fact, and (iii) third, the evidence proffered must not be redundant or duplicative."*
>
> *Without ruling as to whether the Appellant has established exceptional circumstances, the Panel considers that the objection is well founded on the basis of one or another of these grounds. Nevertheless, the members of the Panel have read the written statements and will, with some hesitation and indulgence toward the Appellant, allow short oral submissions as to their weight and relevance. The FEI will have the right to respond.*

Witnesses called by the FEI

The FEI has sought to rely on two experts and five witnesses of facts. Of the two experts, the FEI does not seek to put questions to Dr Åkerström at the hearing, since the Appellant did not avail himself of the opportunity of requesting the right to cross-examine Dr Åkerström by 17 October 2022 (or indeed the following day, when the final applications of the Appellant were actually dated and received). He will therefore not give oral evidence at the hearing. As for Dr McLean, the Panel is willing to hear a presentation by him (on FEI's time) and to allow the Parties to put questions to him (each on own time). Accordingly, the Appellant's application to cross-examine Mr McLean is granted, but by counsel, and not by the Appellant's expert.

As for the five FEI fact witnesses, the Appellant has requested the opportunity to cross-examine them. That application is granted. Their witness statements will constitute their direct evidence, but the FEI will have the opportunity of redirect examination in light of cross-examination. (There is no need for further direct fact evidence at all in light of the fact that no fact witnesses called by the Appellant are admitted, and neither the Respondent nor the Panel has sought to question them.)

Witnesses may be asked if they have been given immunity from prosecution in order to testify but the Panel has no powers of compunction so any answers in this respect would be voluntary.

The Appellant's "outstanding applications"

The FEI asserts that it has responded to "all of the Applicant's many and repetitive 'motions' and procedural objections". With respect to the possible inspection of the "golden" boots and electric spurs device, the FEI has expressed its willingness to produce the device and boots in its possession for inspection at the CAS hearing. However, it observes that this possibility was given to the Appellant during the proceedings before the FEI Tribunal, but the Appellant made objections to the inspection arrangements on the day it had been scheduled, and indeed after the time scheduled for it - and thereafter refused to participate in the proffered inspection.

The FEI's willingness to produce the boots and spurs at the CAS hearing seems entirely unlikely to lead to any meaningful opportunity for inspection by the Appellant, given the fact that the Appellant intends to participate in the hearing by video link. In any event, he has not denied that he refused to examine the boots and spurs when offered the opportunity to do so in connection with the FEI proceedings. It is unacceptable to forgo an opportunity to examine evidence before a lower jurisdiction and to keep that fact "in reserve" as a claimed basis to seek review of an unfavourable

decision. The Panel observes that there is yet time for the Appellant to elect to appear at the hearing, or liaise with the FEI to inspect by video or by an agent prior to the hearing.

The video of the first instance hearing

This being a de nova hearing on the merits, and the Appellant having in any event a written transcript, there is no basis for the Appellant to demand a copy of the video as of right, and indeed it would be contrary to Article 27.2 of the FEI Internal Regulations.

Further instructions

The Panel as well as the FEI's participants will travel to Lausanne for the hearing. The Appellant and his counsel have decided not to appear in person. Their participation by video link will be treated with equal dignity with that of the FEI, but subject to the proviso that delays for technical issues arising on the Appellant's end will be deducted from the time available to him. The same holds true for both parties with respect to the prompt appearance of all participants called by them and admitted to the hearing, as well as with respect to time spent in housekeeping once the floor is given to either one of them.

56. On 29 October 2022, the Appellant responded to the Panel's rulings, expressing the intention to "*file objections and exceptions*" by 31 October 2022. No such "*exceptions or objections*" were in fact presented at that date or thereafter.

57. Both Parties signed the Order of Procedure, issued by the CAS Court Office on behalf of the President of the Panel, prior to the CAS hearing.

B. The Appellant's application for provisional measures

58. The Appellant's Appeal Brief contained an application for provisional measures in accordance with Article R37 of the CAS Code, namely an order to the effect of allowing the Appellant to be permitted to sell horses during his period of suspension. He contended that the Decision had been transmitted to the US Equestrian Federation ("USEF") for collection of the monies which the Appellant had been ordered to pay, and that USEF exceeded its authority by preventing the registration of horses he might be in a position to sell. This application has never matured, in the absence of a demonstration of the mechanism of the alleged action taken by USEF, in the light of FEI's representation that in fact the Appellant has not been precluded from selling horses, and last but not least in the face of a failure to demonstrate that the Panel has authority to issue the orders requested to be addressed to USEF, which is not a party to this Appeal.

C. The Appellant's applications in relation to the hearings

59. The Appellant made a number of applications for information about the manner in which the record had been kept in the course of the proceedings before the FEI Tribunal. These are of no moment, as the present appeal process makes *de novo* determinations of all claims and defences on the basis of an autonomous presentation of evidence at the hearings before CAS.

D. The Appellant's CAS pre-hearing "outstanding applications"

60. The FEI asserts that it has responded to "*all of the Appellant's many and repetitive 'motions' and procedural objections*". With respect to the possible inspection of a pair of painted ("*golden*") boots and electric spurs device said to have been used by the Appellant and subsequently located by Ms Hatfield in her stables, the FEI expressed its willingness to produce the device and boots in its possession for inspection at the CAS hearing. (The painting of the boots had no purpose except, it seems, a humorous one.) However, it observes that this possibility was given to the Appellant during the proceedings before the FEI Tribunal, but the Appellant made objections to the inspection arrangements on the day it had been scheduled, and indeed after the time scheduled for it – and thereafter refused to participate.

61. The FEI's willingness to produce the boots and spurs at the CAS hearing seemed entirely unlikely to lead to any meaningful determinations given the fact that the Appellant participated in the CAS hearing by video link. In any event, he has not denied that he refused to examine the boots and spurs when offered the opportunity to do so in connection with the FEI proceedings. It is unacceptable to forgo an opportunity to examine evidence before a lower jurisdiction and to keep the fact that one did not avail one's self of a procedural opportunity "in reserve" as a claimed basis to seek review of an unfavourable decision. (The opportunity may of course be taken will full reservation as to the right to object if the process was flawed.)

62. As for the Appellant's request for the production of the video of the first instance hearing: as mentioned in Paragraph 60 above, this is a *de novo* hearing on the merits (and the Appellant in any event is in possession of a written transcript of the FEI proceedings). There is no basis for the Appellant to demand a copy of the video as of right, and that would indeed be contrary to Article 27.2 of the FEI Internal Regulations.

E. The Appellant's last-minute application regarding a prior criminal conviction

63. On the morning of the CAS hearing, the members of the Panel received an application on behalf of the Appellant with respect to information that had been presented to the FEI Tribunal concerning a criminal matter in which he had been implicated as a teenager. The Appellant felt aggrieved that this matter had been ventilated by the FEI Tribunal and sought a declaration by the CAS Panel that the FEI Tribunal had acted improperly in "*making a finding of fact*" in regard to that matter.

64. The present Panel has no authority to pass judgment on the observations of the FEI Tribunal as its mandate is only adjudicate the appeal against the disciplinary sanctions as such. In any event, the present Panel, deciding *de novo*, gives no weight to this distant and peculiar event

as to which it not sufficiently informed to consider it of any present relevance, and so informed Mr Romm at the outset of the CAS hearings.

F. The CAS Hearing

65. On 9 and 10 November 2022, the substantive CAS hearing was conducted at the CAS seat in Lausanne, Switzerland, in the presence of all three arbitrators, and the CAS Counsel.

66. The Appellant was represented by Mr Michel Romm Esq., in virtual attendance by videoconference. He requested and received a list of all persons attending the hearing.

67. The FEI was represented by Ms. Ana Kričej, Louise Reilly, Lauren Pagé and Lereesa Easterbrook, all physically in attendance.

68. The Appellant gave evidence, also in virtual attendance. Before giving evidence, all witnesses, including the Appellant, promised to tell the truth and acknowledged their awareness that false testimony may give rise to serious consequences.

69. Four witnesses of fact, all called by the FEI, were called in person, by way of virtual attendance . A fifth witness for the FEI, Witness W, was not called by the FEI because the Appellant declined the opportunity to cross-examine him. His statement was received in evidence. Three of the FEI's witnesses are identified herein only by letters X, Y, and Z because they were young assistants who worked under the supervision and instruction of the Appellant and may, if identified, run the risk of being associated with his wrongdoing. It is important in such circumstances not to create a disincentive for subordinate personnel to reveal the actions of persons in positions of authority. (It would be unacceptable that an offender who orders his employees to engage in illicit activity should be in a position to insulate himself from the risk of their reporting his offences for fear that they would endanger their future employment prospects or to increase the risk that they could be prosecuted themselves.) The fourth witnesses was Ms Erica Hatfield. All four witnesses promised to tell the truth and acknowledged their awareness that false testimony may give rise to serious consequences. All of them were cross-examined by Mr Romm.

70. One expert witness was called by FEI (Dr Andrew McLean) and cross-examined by Mr Romm. Dr McLean affirmed that his evidence represented his sincerely held opinions.

71. Neither Party objected at any time to the composition of the Panel. At the conclusion of the CAS hearing, the Parties likewise confirmed without objection that the proceedings could be closed. Shortly after the hearings, the FEI sought to expand on the answer it gave to a question from the Panel regarding the Appellant's complaint of the USEF's preventing his conduct of his selling of horses. The Panel regards it as inadmissible. The FEI also sought to introduce versions of photographic materials already on the record which it suggested would provide enhanced visibility. This too was excluded as inadmissibile and the Parties were so informed by the CAS Court Office on 17 November 2022.

IV. JURISDICTION OF THE CAS

72. Article R47 of the CAS Code provides the following:

"An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body. [...]"

73. This appeal is brought before the CAS under FEI Statutes Article 39.1 and FEI GR Article 162.1. The jurisdiction of the CAS is not contested by either Party and all of them signed the respective Order of Procedure.

74. Therefore, in accordance with Article R47 of the CAS Code and the provisions cited above, the Panel considers that it is competent to decide the present matter.

V. ADMISSIBILITY

75. Article R49 of the CAS Code provides as follows:

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against."

76. Article 162.7 of the FEI Statutes reads in its pertinent part as follows:

"*Appeals to the CAS together with supporting documents must be dispatched to the CAS Secretariat pursuant o the Procedural Rules of the CAS Code of sports-related Arbitration so as to reach the CAS within twenty-one (21) days of the date on which the notification of the FEI Tribunal Decision was sent to the National Federation of the Person Responsible.*"

77. The Decision was issued on 10 June 2021, and the Appellant filed his Statement of Appeal on 1 July 2021, hence within the 21-day term established by the applicable regulations.

78. The Parties accept that the CAS has authority to hear this appeal pursuant to Article R57 of the CAS Code, which provides that:

The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance.

79. There is no issue with respect to timeliness. As will be seen, this Award replaces the Decision. It follows that the appeal is admissible.

VI. APPLICABLE LAW

80. Article R58 of the CAS Code reads as follows:

> *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision."*

81. In accordance with Article R58 of the CAS Code, the FEI Statutes and the 2020 FEI General Regulations ("GR") are applicable, and the Appellant is bound by them as a registered athlete and participant in FEI events.

82. Swiss law applies subsidiarily to fill any lacuna, and to intervene in case of a contravention of Swiss law, such as a due process violation of such a gravity as to merit annulment.

83. Given the time period during which the alleged misconduct took place, there is no dispute as to the applicability of the 2018, 2019, and 2020 editions of the FEI GR. They all encompass the wrongdoing covered by the term "*abuse of horse*", in addition to which it hardly needs to be said that cheating brings the relevant sport into disrepute (as indeed explicitly stated in Article 164.14 of the 2020 GR).

84. Pursuant to Article 39 of the FEI Statutes, the CAS shall judge all appeals properly submitted to it against decisions of the FEI Tribunal; the seat of the CAS is in Lausanne, Switzerland; and proceedings before the CAS are "*governed by Swiss Law*" (FEI Statutes, Article 39.4).

85. As a clear choice-of-law clause is included in the FEI Statutes and therefore agreed between the Parties, the Panel shall decide the matter according to Swiss law. In any event, had the Parties not agreed on the applicable law, Swiss law would apply to the merits of the dispute pursuant to Article R58 of the CAS Code, as the FEI is based in Lausanne, Switzerland.

VII. THE MERITS

A. The standard of proof

86. The Appellant recognizes that the "*standard under FEI regulations is the comfortable satisfaction of the tribunal.*"

87. The Section of the FEI Decision devoted to "*standard of proof*" concluded in Paragraph 127 that:

> *In view of all the evidence the Tribunal is comfortably satisfied, to the level of beyond reasonable doubt that the FEI has proved its case.*

88. The Appellant considers that this statement alone means that "*the entire Decision should be overturned.*" (*Ibid.)* His reasoning is that this is the equivalent (using his words) to saying that "*We find on a 51% standard that the FEI proved its case 'to the level beyond a reasonable doubt' which is the highest standard required of any Court in any country...*"

89. This is a radical and illogical misreading of the Decision, rather surprising given the Appellant's acceptance that culpability is established if the evidence has left the arbitrators with a comfortable satisfaction to the effect that an infraction has been proved. "*Comfortable satisfaction*" is more than a balance of probability, which means "*more likely than not*", because it requires a positive belief rather than a mere assessment of greater likelihood. To lead to conviction of a criminal offence, proof must generally be "*beyond reasonable doubt*". In other words, the "*comfortable satisfaction*" test is, in effect, an intermediate standard; it is adopted in the interest of fair play and the avoidance of injustice to other competitors.

90. In light of these observations, the standard articulated by the FEI Tribunal in Paragraph 127 clearly adopts the comfortable satisfaction standard while observing that its conclusion would have been the same even if the requirement for conviction would be that of "*beyond reasonable doubt*". The FEI Tribunal was saying that even if the Appellant had been given the advantage of a far more demanding standard for conviction than that of the FEI Regulations, he would in its assessment have failed. Its wording may have been confusing to the Appellant, but the import is unmistakably that (i) the arbitrators were not applying the "*beyond a reasonable doubt*" standard, and (ii) they make the observation *obiter dictum* that even if they had been applying a test more lenient to the Appellant he would not have prevailed. While this is a *de novo* hearing, the Panel makes these observations with regard to the Decision because of the submissions of the Appellant as to the standard of proof to be applied.

91. The Appellant makes a number of allegations of procedural irregularities and demands for the disclosure of materials relating to the process before the FEI Tribunal and potentially corroborative of his contention that the Tribunal lacked impartiality. Those allegations and those demands are immaterial for present purposes, because the appeal is plenary (Article 57 of the CAS Code). It involves a full *de novo* hearing of the merits of the case. As was well stated in CAS 2008/A/1480, at para. 24, in response to an allegation that the IAAF had previously prejudged the matter and not considered the evidence properly, such a contention

> *"makes little difference, if any, to the outcome of this appeal ... a de novo process. The merits of the issues are to be investigated, in a judicial manner, on the evidence and submissions presented to the Panel during the appellate process."* (Emphasis added.)

B. THE POINTS OF CONTENTION

92. The question now is whether the present CAS Panel, with plenary powers of review, considers itself comfortably satisfied that the Appellant was held guilty of an infraction, and that the consequent sanction of suspension and fine was proper.

93. The use of an electric shock device is expressly prohibited under Article 142 of the GR; the precise wording of Article 142.1(ii) is

> *To subject a Horse to any kind of electric shock device.*

94. The sanction for violations is variable in light of their gravity. The FEI Tribunal found the Appellant guilty of

> *prolonged use of the Electric Spurs by the Respondent and additionally, that [his] use was deliberate, methodical, repetitive and on numerous horses, both in competition and training. (Paragraph 128.)*

95. It continued:

> *In this case the breaches are exacerbated by the length of time over which the use continued, the number of horses involved and the encouragement of their use by other riders over whom the Respondent had influence. It is in fact an example not only of horse abuse but also of gross cheating over a lengthy period; to the great detriment of the reputation of the sport, the Respondent's owners and the other riders in his competitions, not to mention the criminality in some jurisdictions. Respondent's conduct during the hearing, including flat denials and consequently a total lack of remorse, only makes matters worse. In these circumstances the Tribunal assesses the offending as justifying more serious sanctions than the minimum requested by the FEI. When the FEI asked for minimum 5 years suspension it did not know that the Respondent would persist in his denials which the Tribunal has found to be untrue, nor did it expect the total lack of remorse inherent in his case. In relation to the recommended period of suspension, the Tribunal refers to Article 164.14 of the of the FEI General Regulations and the table set out at this Article detailing the sanctions that will apply for certain offences listed in Article 164.12 in relation to the "Abuse of the Horse" offence and taking into account the top-end to max penalty range of "2-5 years" or "life". In this regard, the Tribunal are satisfied that 10 years is a proportionate penalty under these guidelines on foot on all the evidence in this case and that more serious sanctions than the minimum requested by the FEI are required. (Paragraph 129).*

96. If these serious finding are also reached to its comfortable satisfaction by the present Panel of the CAS, severe sanctions are undoubtedly merited, for the reasons set out by the FEI Tribunal.

97. At the heart of the controversy lies a dispute as to whether the Appellant was using electric spurs (as the FEI says is proven) or only a manual clicker producing an innocuous sound which encourages the horse by triggering a learned association with a positive reward. (Non-electrified spurs are permitted; at the lower extremity is a knob with which the rider prods the horse.) The Appellant submits that it is important, indeed seemingly in his view determinative, to decide whether there is evidence that he used an inoffensive clicker. The Panel does not accept this submission. Whether or not the Appellant has used a permitted device is not the

issue. The question is whether he used electrified spurs, and that is of course possible even if on other occasions he was engaged in innocent activity. Thus assertions by friendly witnesses to the effect that "*I never saw him using an electric spur*" are not exculpatory.

98. This in a nutshell is what the FEI asserts in its Answer on appeal:

> *1.2 This case involves the deliberate, methodical, and repetitive abuse of horses by the Appellant, a high-level professional show jumping rider and horse dealer, who not only abused many horses over many years using electric spurs both in training and in competition (a criminal act in many jurisdictions), but also instructed his employees to do the same, and made electric spurs devices to give and/or sell to others. It also involves gross cheating to the detriment of equestrian sport because the electric spurs were used to enhance the performance of horses (through pain and fear) both for competitive advantage in show jumping competitions and for commercial gain through the sale of horses. The deliberate and knowing conduct of the Appellant, who has a history of animal abuse and a complete disregard for horse welfare, is extreme and warrants severe punishment.*

The Appellant contends that there is no evidence save unreliable or biased assertions based on conjecture. On the one hand. he rejects videos and photographs as "*showing nothing more than an unidentified device in the hand of Andrew Kocher during some competitions*" and, on the other, he attacks the reliability of the five witnesses against him on the grounds of bias, or because they relied on hearsay rather than personal observation; "*which of them has never [sic] seen Andrew Kocher use an electronic device personally?*". He says that he did no more than use a clicker, an acceptable device which assists in positive reinforcement by edible rewards given in timely conjunction with an audible click.

99. It cannot be seriously doubted that evidence has indeed been proffered to the effect that the Appellant used electric spurs; the simple fact is that testimony has been given that he did. The Appellant contends that witnesses have mistaken an innocent clicker for an electric spur, or are simply offering false and biased testimony; in the case of witness _Y accusing the Appellant of what in fact Y was doing: "*he admits that he did using the rockets [electronic spurs] without success to modify the horse's behaviour ... I fired him. In retaliation he tells Erica Hatfield (my sworn business-legal-lawsuit-enemy!) that his device belongs to me and that I used that device.*"

100. In other words: there is evidence, and the key to the appeal is whether the evidence of abuse is convincing, or doubtful by reason of mistaken impressions (to be corrected by an innocent explanation) or by bias and animosity. The Appellant's allegations of bias and animosity are of a wide range and tend to be very personal; he accuses adverse witnesses to harbouring resentment toward him because of financial disputes or anger at having been dismissed from employment by him or (in one case) jealousy [...]. Three of the witnesses are alleged to be part of a Hatfield conspiracy to ruin him. The present Panel strives to be objective, being disinclined to make any evaluation of the sincerity of emotional interpretations of behaviour

and aware of the dangers that allegations of animosity may too easily be raised in the absence of any other grounds to impugn adverse testimony.

C. THE ASSESSMENT OF THE PRESENT PANEL

101. The most decisive elements of evidence in this case are visual and testimonial.

102. As to the former, the FEI introduced some 77 photographs, videos and frames from videos showing the Appellant's use of what plainly appears to be an electric spur device of the type produced at the hearings and described in the testimony of the five witnesses called by FEI. The Panel has reviewed those materials and is comfortably satisfied that they prove the Appellant's infractions. The Panel specifically rejects the credibility of the Appellant's alternative explanation that the trigger shown in the visual evidence is actually a homemade clicker crafted by Appellant from a flashlight handle and secured by a string slung over his shoulder and affixed to his belt. This alleged assembly would seem entirely unnecessary to secure a small plastic clicker of the type testified to by the Appellant. While the Appellant denied that the photo of the outline of a wire running down each of his legs was in fact a wire, the Appellant had no alternative theory for that depiction in the photo, or the for the holes in each of his boots.

103. Among the most compelling video and photographic evidence, the Panel specifically notes the following:

1. Exhibit DD 10: depicts an electronic spur device constructed by Appellant and given to Witness Y. We reject Appellant's contention that the device was manufactured by Witness Y.
2. DB 24: Photo of Appellant's boot with perforation to feed wire to spur
3. Exhibit EH-7: Photos showing Appellant riding Navalo de Poheton with trigger button in right hand (FEI World Cup in Paris, April 2018)
4. DB 27: Photo showing wires running down inside of Appellant's breeches while riding Fashion V (CS12* show in Lexington, KY, 24 May 2019.
5. DB 28: Photo showing Appellant riding Navalo de Poheton with trigger button in right hand (Hickstead Derby, 24 June 2018)
6. DB 29: Photo showing Appellant riding Darius De W with trigger button in right hand (Spruce Meadows, 9 June 2019)
7. DB 30: Photo showing Appellant riding Cat Ninja with trigger button in right hand (CS15* Spruce Meadows, 28 June 2019)
8. DB 32 Photo showing Appellant riding La Luciole with trigger button in right hand (EyeCandyLand South, 1 March 2020)
9. DB 33 Photo showing Appellant riding Cold Play with trigger button in right hand (EyeCandyLand South, 3 March 2020)

104. As for the witnesses, it has already been pointed out that the witness declarations sought to be entered into evidence by the Appellant were on their face of little import and in any event inadmissible.

105. The FEI's witnesses, on the other hand, had much to contribute, with the exception of Ms Hatfield, whose stormy relationship with the Appellant makes it difficult to consider her to be dispassionate. That leaves one expert witness and four fact witnesses whom the Appellant chose to cross-examine, and a fifth fact witness whom he did not – unaccountably, as shall be seen, in the Panel's view – seek to cross-examine.

DR ANDREW MCLEAN

106. Dr McLean had a long equestrian background and has earned a doctorate in animal cognition. His expert testimony focused on the external signs of stress that could be an indicator of electric shock administered to horses, such as hyperactivity, heart rate, ears pinioned backward or widened at the bottom, or a flurry of evasive behaviour. He explained that horses are not evolved to react to electrical pain in explicit ways, even though pain may be "*mentally very damaging*" and inescapable pain is an aggravating factor. His testimony was impressive, and all the more so for his evident prudence and disinclination to overstate his conclusions. It was very useful to the Panel in that it enhanced the arbitrators' general understanding. As will now be seen, however, it was not dispositive of this case – but that is by no means a criticism.

107. The Panel is not primarily interested in determining whether pain has been caused to a horse, but whether the rules have been disobeyed. The FEI rule-makers have forbidden the use of electric spurs, and it would be no excuse to prove (if it were possible to do so) that no pain was inflicted when disobeying that prohibition. (Of course the infliction of pain is the reason electric shockers are, according to Dr McLean, irrespective of their prohibition in equestrian sports, generally banned and unavailable for purchase "*in most Western countries*"). The relevance of Dr McLean's testimony is thus of a narrower evidentiary nature: does his second-hand observation of photographs and videos assist in the determination whether the horses shown and ridden by the Appellant had been subjected to electric shock? (He saw about 150 photos and 60 videos, some of which in his view "*beyond doubt show intense pain*"). The Panel has no doubt as to Dr McLean's expert understanding and judgment. It is also to his credit that he acknowledged the variability of reactions by different animals, as well as what he referred to as the "*confounding effect*" of alternative causes. For example, a tossing head may be the result either of electric shock or of insensitivity of a rider's hand.

108. The arbitrators surmise that while the absence of any behavioural signs of stress may warrant an exculpatory inference, the presence of some indications that are susceptible of a variety of explanations inhibits a confident conclusion of guilt. In sum, Dr McLean's expert testimony, albeit both troubling and consistent with guilt was not, as borne out by Mr Romm's cross-examination, necessarily conclusive in and of itself. The Panel does not need to determine whether Dr McLean's testimony to the effect that some of the images he reviewed "*beyond doubt show intense pain*" would alone have been sufficient to establish the use of electric spurs by the Appellant. This is because of the presence of other direct evidence, consistent with that of Dr McLean, which is indeed conclusive to the Panel's comfortable satisfaction.

WITNESS ERICA HATFIELD

109. Although Ms Hatfield appeared composed and well-spoken, her low opinion of the Appellant for reasons that are extraneous to his conduct as a rider is evident; her testimony is therefore not given weight given the acrimonious nature of her relationship with the Appellant, which

makes it preferable to decide this appeal by relying on the more probative evidence which fortunately is at hand.

WITNESS X

110. X is a show jumping rider employed since [...] 2020 by the [...] stables in [...], owned by [...], and prior to that by the Appellant between January [...] and [...]. X has been working full time for a number of professional riders for around seven years.

111. X states that at the time of X's first meeting Ms Hatfield, the latter was new to show jumping; "*her equestrian knowledge seemed very limited ... [she] did not make training decisions ... did not know how to train a horse or what a typical training programme looked like for a top level show jumper.*" *The Appellant, in contrast, was "an experienced high-level rider*".

112. Salient passages of X's statement follow:

> *Mr Kocher used the electric spurs device frequently in both training and competition on at least a dozen horses. The horses included horses owned by Mr Kocher, Ms Hatfield, and other owners, including the horses named Fashion V, Darius de W, Chunk (formerly Cavalli), Cat Ninja, and Abalone of the Lowlands.*
>
> *I cannot recall the specific date when I first realised that Mr Kocher was using electric spurs on horses in training at the home stables, but it would have been around two months after I started working for him, so around March* [...]. *I first realised that Mr Kocher was using the electric spurs device based on the behaviour of the horses that he rode, but then in subsequent months I saw him put the electric spurs device on at the home stables on a few occasions, and he also later gave me a device and instructed me to use it...*
>
> *Mr Kocher's use of electric spurs was not limited to occasional use on horses that had behaviour problems (like stopping before a jump), rather he used them often on well-behaved horses as well to get more out of them (i.e. to make them quicker or more powerful, which often enabled them to jump in bigger classes than they might otherwise have done). He would also use the spurs on horses that did not have much 'blood' (i.e.that were a bit slow/lethargic) in order to make them more responsive/active. As far as I am aware, Mr Kocher always trained the horses with electric spurs first at the home stables, before competing with them.*

113. X's detailed statement names individual horses and identifies a particular competition when X witnessed the Appellant's use of electric spurs:

> *Shortly prior to competing in the Grand Prix [on 26 May 2029], Mr_ _Kocher went into one of his horses' stalls in the FEI stables (it was either*

the stall of Fashion V or Darius de W). He had something in his hand that was in a bag, but I do not recall what the bag looked like. When he was in the stall, he got semi-undressed and then put on the electric spurs device. By semi-undressed I mean that he unbuttoned and loosened his breeches and then slid the wires down his legs. It was the same with his shirt, he did not take it off but it was unbuttoned or loose enough to slide the wire up and down through the sleeve. At the time, I was in the aisle between the rows of stalls getting the tack/equipment ready for the class, standing about three metres away from Mr Kocher. The stalls were typical competition stalls, which had solid panelling on the bottom half of the stall, and bars on the upper half of the stable, so it was easy for me to see in the stall through the bars from where I was standing. I was the only person standing near the stall when Mr Kocher put on the device. I knew that he was putting on the electric spurs device because I could see the wires, and I had previously seen him put the device on in training.

114. X also provided these explanations:

I could also tell when Mr Kocher was using the electric spurs because I could sometimes see that he had black electrical tape on his spurs, which he had told me to use to connect the exposed wires to the spurs. If you did not know what to look for, you probably would not have noticed, because the tape blends in with black boots. I have also seen photos of Mr Kocher competing at horse shows, and there are times when you can see the trigger button in his hand or part of a wire by his wrist.

Mr Kocher would also frequently say that he needed to get 'changed' before riding a horse. He did that both when training at F Road stables and at competitions. At the time when I did not yet know about the electric spurs, I found it strange that Mr Kocher would say he needed to get changed._as he would go into a trailer or bathroom to do so, but then would come out wearing the same clothing that he had gone in with. It took me a while to piece it together, but after I learned about the electric spurs device, I realised that he went to get 'changed' so that he could put the electric spurs device on. I saw Mr Kocher do this many times, I would say at least 10/12 times. At the F Road stables, there was a trailer by the outdoor arena that he would use. At competitions he would often leave to get 'changed' right before his class started.

Based on what he told me, i. e. that he was going to 'make a new pair',_Mr Kocher made it clear that he made the electric spurs device himself. I also recall that on at least one other occasion he said that 'he needed to make a pair tonight'._Mr Kocher did not explain to me where/how he learned to make the spurs. However, I know that he had a soldering gun because I saw it in the horse truck on one or two of our long haul trips (e.g. when we were driving from Florida to states up North), and I remember him saying

to whoever was driving at the time something to the effect of 'we can't lose that [pointing to the soldering gun], I'll need that'.

115. X admits that as instructed by the Appellant X used the device "on a handful" of occasions, starting around end of "May/June 2019". X describes the device and its use in detail, notably as follows:

I did once accidentally shock myself when using the device because I had not securely taped the exposed wire to my spur, and so the wire ended up inside my boot, touching my calf. The shock was unpleasant and painful, and startled me completely. I am not even sure that I felt the full shock, because when Mr Kocher gave me the device, he said that he was making a new pair for himself because the device was weak or not full strength as it had lost some power, but that I might as well still use them.

Mr Kocher knew that I did not like using the electric spurs, because I had told him that and because I often resisted using them. However, Mr Kocher nevertheless instructed that I use them in training on specific horses, and was particularly insistent on a couple of occasions. He insisted that I use the electric spurs a couple of times on [...] *because he would stop at jumps. He also made me use them on* [...] *because the horse would sometimes rear in the corner of the arena and refuse to go forward, so Mr Kocher said that I needed to give him a buzz to send him forwards. Mr Kocher did not tell me exactly when to press the trigger button, but I specifically recall him telling me to press it a few times when warming up before jumping a course at home in order to get the horse ramped' up to jump. He also told me to use it at the take off point for a jump on* [...] *to prevent him from stopping and on* [...] *when he reared or when he was transitioning to canter to send him forward. I also recall Mr Kocher complaining about the other riders not pressing the trigger enough.*

Mr Kocher would often instruct me to use the electric spurs on other occasions and on other horses in training, but when he did not insist or when I was working at other stables and he was not present, I would not use them. I would often tell Mr Kocher that I had used the device when I had in fact not done so.

Mr Kocher also instructed me to use the electric spurs in a national competition at the Winter Equestrian Festival (WEF) in 2020. WEF is a series of national and international show-jumping competitions that takes place in Florida, between January to March each year. At WEF 2020, I was riding [...] *and he stopped at a fence in the show ring. I specifically recall that Mr Kocher told me something to the effect of 'either you put the spurs on to show it tomorrow or you don't show the horse anymore'. I told him that I would not use the electric spurs and in response Mr Kocher*

> *called me a 'pussy' and said something to the effect of 'fine you are not showing the horse any more'. I had the impression that Mr Kocher probably would have liked me to use the electric spurs at other horse shows but that he knew that was a boundary I had.*
>
> *I used the electric spurs only in training at the home stables and never in competition. I did not feel good about using the spurs but I felt like I had no choice as Mr Kocher's employee. I reluctantly used the device no more than a handful of times in training on* [...] *and* [...]. *Mr Kocher instructed me to use the device more frequently, but I did not want to do so because I did not think that it was necessary and I did not like the reaction that it caused in the horses. I did not use the electric spurs in competition because I felt that crossed the line because it was blatant cheating and a clear breach of the competition rules, and I was not willing to take that risk.*

116. In addition, X asserts that the Appellant caused other employees to use the electric spurs:

> *I was not alone in being instructed to use the electric spurs device. Mr Kocher had three other riders working for him at the F Road stables at the same time as me and, while we did not discuss the electric spurs routinely, all of the riders were aware of the electric spurs and were instructed to use them. In particular, I recall that we would sometimes meet together as a group of riders, and Mr Kocher would go through the horses to be ridden that day and he would say which ones should get the spurs. I remember that happening at least a handful of times towards the end of WEF 2019 or shortly afterwards. We did not have many group conversations after that time as we were all on the road in different places. When we were all working together at the F road passing comments like 'it would be stupid to use the spurs on this horse', or 'I don't know why he wants me to do that'. I am confident that the other riders were also given an electric spurs device by Mr Kocher, but I cannot recall if they told me that or if Mr Kocher mentioned it to me or in my presence.*

117. X's final paragraph reads as follows:

> *I regret that I did not report Mr Kocher's use of electric spurs earlier, and I also regret using them myself on Mr Kocher's instructions. In my view, the electric spurs are harsh, unnecessary, and abusive to horses. At the time, I did not know how to go about reporting wrongdoing and I was also very worried that if I reported Mr Kocher I would lose my job and possibly not get another. At the time, I rationalised the use of the spurs because I thought that using them once or twice on a horse that misbehaved might have a disciplinary purpose that would fix the horse's issue [sic]. However,*

> *I do not see it that way anymore, and am firmly of the view that there is no place for such devices in equestrian sport.*

118. X's oral testimony confirmed the written statement, and provided what appeared to the Panel to be spontaneous, credible, and well-articulated answers to questions; the Panel accepts X's evidence to the extent that it reflects X's own observations and conversations. The cross-examination sought to suggest that X was testifying as an obedient employee [...] and enlisted in the latter's disputes with the Appellant, but the Panel finds otherwise. It seems unlikely that it was in X's personal interest to make untruthful statements at the bidding of [...], and unlikely that any assurance that X would not be sanctioned for X's own use of electric spurs would be sufficient. X is an experienced rider and presumably employable. And X presumably would have signed the witness statement without knowing who might come into possession of it, and whether such recipients might make its contents known without taking the precautions of anonymity which this Panel is taking. Dishonesty at the behest of Ms Hatfield seems a risk which even an unscrupulous person would be reluctant to take (and the Panel has no basis to make such an assumption about X in any event).

WITNESS Y

119. Witness Y has been an employee of [...] since March 2020. During the year plus two months prior to that Y worked as a rider for the Appellant.

120. Y confirms X's testimony to the effect that Ms Hatfield had "*very little knowledge about horses and show jumping*".

121. Y affirms having first become aware of the Appellant's use of electric spurs in January 2019, immediately upon accepting employment with him:
I recall walking into the tack room at the F Road stables (i.e. the room where all the saddles, bridles, and other equipment are kept) while Mr Kocher was getting dressed. He was in the middle of putting his riding breeches on. While I was only there for a moment, I could see that he was putting on a device that had wires sticking out of it. I did not know exactly what it was at that stage but I had heard of electric spurs before and it was clear that it was some kind of electrical device, given the wires sticking out of it. Mr Kocher looked up as I walked in and gave a little laugh (I am not sure why he laughed, but it might have been because it was awkward that I had seen him undressed or because I had seen him putting on electric spurs). I quickly turned around and walked out of the tack room without saying anything to him.

122. Y's written statement continues:

> *After that first incident, I saw Mr Kocher putting on, carrying, and/or using the electric spurs device on a number of occasions. The device that Mr Kocher used looked very similar to the one that he later gave me and instructed me to use (as I explain in the next section below). The device had a battery pack that connected to wires, where two of the wires connected to the spurs and the other wires connected to a black trigger button that*

looked like the top of a riding whip/crop. Sometimes Mr Kocher would be walking around or sitting down and you could see a wire coming out of his sleeve. I specifically remember one day when we were just sitting in the tack room talking about logistics/transporting horses and I saw a wire and the trigger button coming out from his sleeve. Mr Kocher would usually put the device on before riding his first horse of the day and would keep the battery pack in his pocket. He would then keep the device on for all the other horses that he rode as well, which could be anywhere from one to five horses per day at the F Road stables.

123. Y gives detailed indications of how the Appellant configured the device and instructed in its use. Y gives examples of individual horses behaving fitfully (running sideways, bolting off, even running straight into a drain) after administration of shocks, and remaining anxious for long periods of time after having received shocks.

124. Y confirms having been instructed by the Appellant to use the spurs, and how to do so. Y's statement is quite detailed; the following passages stands out:

On Mr Kochner's instructions, I used the electric spurs device on one occasion in training on a horse called Balthazar, as he was refusing to go forwards properly. Balthazar would take a step forward and then rear up a bit, and then take another step, etc. After that happened a couple of times, Mr Kochner shouted at me t 'spur him'. As I did not want to lose my job I did as I was told. When I pressed the trigger button and touched Balthazar with the spurs, he bolted and took off like a race horse coming out of the starting blocks. His reaction was extreme and abrupt, and I lost control momentarily because he became so strong. Balthazar remained extremely nervous for the rest of the time that I rode him that day and was difficult to control. I therefore experienced myself that there is a big difference between a horse being naturally sharp off the leg and one that is scared due to the device.

I certainly empathise with the fear that Balthazar felt because, when I used the electric spurs on him, I accidentally received an electric shock myself too. I do not know the voltage or milliamps of the electric spurs, and as far as I am aware the device did not have different settings that would adjust the level of electric shock (i.e. it was just on/off). However, I know that the shock was strong. It went straight through my leg and my body and put me into a state where I felt like I did not know what I was doing. The closest thing I can compare it to is touching very strong electric fencing, like that which is sometimes used around horse and cow pastures. I will never forget the feeling. It felt like someone took a knife all the way through my body.

After experiencing Balthazar's reaction to the electric spurs, and feeling the electric shock myself, I knew that I did not want to use the electric spurs again. However, Mr Kocher repeatedly instructed me to use the electric

> *spurs. I did not feel as though I could say no to him, so I usually put the device on and pretended to use it, but I did not press the trigger button again.*

125. Y also recounts having seen the device in Mr Kocher's possession on the occasion of competitions, in a bag which the latter took into the washroom from whence he re-emerged wearing the same clothes and then putting away the now apparently empty bag. Later, "*based on the reaction of the horses at certain points in the rounds, I am convinced that he was using the electric spurs. For example, I saw him squeeze Squirt Gun with his legs and the horse took off and he nearly fell off.*" This evidence is, of course, only of Y's personal opinion based on Y's own observations and not factually conclusive.

126. Y testified: "*It is my understanding that Mr Kocher made the electric spurs devices himself. In around April 2019, I went to pick up a cheque from Mr Kocher at a house he was staying at in Las Palmas (Florida), which was owned by Erica's parents. When I went inside the house, Mr Kocher led me through to his bedroom and I saw an open bag on the ground containing rolls of wire. I also saw another bag containing a bunch of battery packs that had wires coming out of them, and there was a soldering gun on a table (i.e. a tool used to join materials together, including wires).*"

127. Y's testimony is to the effect that the Appellant used exceptionally strong bits and tight reins in order to control horses which reacted to the electric spurs.

128. Y affirms never having seen the Appellant use a clicker, nor discuss their use with Y.

129. Y's witnesses statement states as follows with respect to Y's failure to report the Appellant's "horse abuse":

> *I did not report Mr Kochner's use of the electric spurs device when I first became aware of it for a number of reasons. I was worried about losing my job, which was the only way I could stay in the United States, and I was also worried that I might not get another job because of it. I also did not feel confident enough to report the matter to the FEI on my own given that I am young (I was 21 years old at the time) and it would be my word against someone who has jumped in senior Nations Cups (i.e. the very top level of show jumping). However, I recognise that I should have come forward earlier because I know that the use of electric spurs is wrong.*

130. As with respect to X, the Appellant impugns this testimony on that basis that Y is [...] employee and therefore motivated by the need to please the latter. But like X, Y also gave what appeared to be unrehearsed answers, and has competed in show jumping competitions at a national level since the age of "*10 or 11*", and in FEI competitions since 2015. Y has been employed in a number of professional stables including with two Olympic medallists. Even on the assumption that Y likes Y's present job, there is no basis to speculate that that Y is

otherwise unemployable to the point of taking the risk of bringing false testimony against an established and ranked rider.

131. As for the Appellant's allegations about misconduct by Y, they are based on information from third parties which have not been accepted as admissible evidence. The Panel disregards them, as it disregards Y's somewhat uncorroborated allegation that the Appellant made threats against Y on a chance meeting after finding out that Y had spoken to the FEI about the Appellant's use of electric spurs.

WITNESS Z

132. Z has been employed at [...] since March [...], after having been a freelance show groom [...] since mid [...]. After having ceased competing in equestrian events at age 18, Z studied [...] and [...] worked as a flat rider and groom, including assisting riders in eventing and show jumping, including three Olympic competitors [...].

133. Z expresses criticism of the Appellant's lack of regard for the well-being of horses, and recounts observations that the horses that the Appellant rode frequently behaved in uncharacteristically disturbed ways.

134. Z's most specific allegation relates to observations on the occasion of a competition in March 2020, about which Z says the following:

> *After riding at home, I recall that he [the Appellant] got changed for the show (putting on his white breeches and show shirt/jacket) in the tack room (i.e. a room where all the equipment is kept). The tack room at the home stables is in the middle of the barn and has a glass door, so if you were working in one of the grooming stalls (which is where I was at the time) you could easily see inside. I did not stare, because I did not want to see Mr Kocher get undressed, but I could not help but notice that he was taking an unusually long time to get changed and that he was holding something in his hand that he was trying to put down his breeches. Based on what I had seen in Kentucky in October 2019, and on rumours that I had heard from Mr Kocher's staff in the couple of months or so leading up to the event on 4 March 2020 that he used electric spurs, it was immediately obvious to me that he must be putting the electric spurs device on.*
>
> *I was surprised that Mr Kocher would put the electric spurs on so openly. While it was the only occasion that I saw him do so, I was told by some of the other grooms later on that they had seen him use or put on the device on other occasions. I think that Mr Kocher was generally more discreet with me because we did not have a close relationship, whereas he might have felt more comfortable being open about using the device with other grooms or riders.*

> *After getting changed, Mr Kocher left the home stables and drove over to the WEF showgrounds. I also made my way over there separately to help* [...] *with the horses. When I arrived at the show ground, the horses were ready for me to take to the ring. However, I called* [...] *and told him that, while I would still help him with looking after the horses, I was not going to take* [...] *to the competition arena for Mr Kocher, because I disagreed with Mr Kocher's use of the electric spurs. Very shortly after that happened, Erica fired Andy, and so I never took any horses to the ring for him after that day.*

135. While the Panel does not consider Z's sincerity to be in doubt, Z's evidence is best classified as having corroborative and cumulative rather than decisive weight. To the extent that it is speculative and not based on Z's own observations, the Panel does not place weight on that part of the testimony.

WITNESS W

136. The import of Witness W's testimony is particularly significant given the Appellant's criticism of the three other witnesses [...]. (As explained above, this dismissal of X, Y, and Z's testimony is not accepted by the Panel.) The passages in FEI's Answer Brief highlighting the core of Witness W's observations merit reproduction as follows:

> *Witness W (a full-time horse trainer known to the Appellant) had horses stabled in the same barn as the Appellant at the [...] horse show that took place in [...] 2014. One morning early in the week, Witness W was in his tack stall (i.e. an empty horse stall used to store riding equipment at the show) when he heard a loud 'snapping' noise that sounded like an electrical wire was short-circuiting. Witness W ran out of the tack stall to see where the sound was coming from as he was concerned that an electrical fire might be starting and saw the Appellant and his groom working at a table at the end of the aisle of stalls.*
>
> *As the electrical snapping sound seemed to be coming from that area, Witness W went to see what they were doing. When he approached, Witness W saw 'black wires, a rectangular battery pack (which I believe was black/grey), a pair of spurs, and some tools (including a screwdriver) that Mr Kocher was using to work on the device. Two of the black wires had exposed ends. The other end of those wires connected to the battery pack. There were two other wires that then connected the battery pack to a black trigger button. The trigger was cylindrical in shape, sort of like the top part of a riding crop/whip, with a round button on the top'. 'Witness W further recalls the Appellant explaining to him that the spurs were 'running too hot' (which he understood to mean that the 'electric shock was too strong'), and that they 'had been trying to fix them for a few days.'*

> *The Appellant then explained to Witness W how the electric spurs worked: 'He explained that the exposed wires had to be connected to the spurs (although he did not explain how that was done), and that when he pressed the trigger button it would provide a connection between the battery pack and the spurs. Mr Kocher also explained how he wore the electric spurs. While I do not recall the exact details of what he told me, I do specifically recall him telling me that he ran the wires through his boots. I also recall asking him whether he ran the wires and the trigger button through his shirt. He replied that he did not, and that instead he ran the wires and the trigger button through his jacket, and so he always had a jacket on'.*
>
> *Witness W does not know any of the other FEI witnesses in this matter. His independent description of the electric spurs device and how they worked (which is consistent with what the other witnesses have described and with the photographs and videos of the electric spurs devices that they have provided) therefore strongly corroborates the Appellant's use of electric spurs, and establishes that the Appellant was using the electric spurs as early as June 2014, and likely before.*

137. Witness W's testimony, apart from its inherent weight, corroborates the accounts given by the other fact witnesses. It is therefore incomprehensible that the Appellant did not call him to seek to contest his testimony by cross-examination, to put it squarely to Witness W that his assertions are false or otherwise somehow mistaken, or that he is in some way biased. The evidence relates to 2014, which is earlier than the events directly in issue and so does not establish the making or use of electric spurs in the particularised events. However, the Appellant denies both making and using electric spurs. Witness W's uncontradicted evidence is that he saw the Appellant involved in the making of such a device and that the Appellant described to him the method of threading the wires and the trigger for the use of the spurs. It was not put to Witness W that, as suggested in the Appellant's submissions, he would not have heard sparking noises at the distance between himself and the table. The Appellant's submission must therefore be rejected and the evidence accepted. It was not put to him that the conversation as to the method of use did not take place. It follows that the evidence contradicts the denial of making which, in turn, affects the credibility of the denial of using. The Appellant's case is not that he once made and used electric spurs but had ceased in the relevant period; it was a blanket denial, thus making Witness W's evidence probative.

138. The Appellant himself sought otherwise to dealt with Witness W's testimony in a dismissive, indeed nonchalant way, suggesting that he scarcely knows Witness W and has reason to doubt the veracity of one who lives "*within an hour's distance*" of Ms. Hatfield. This is, to put it bluntly, a rather lame attempt at rebuttal on the part of someone who has much to lose if Witness W's testimony is accepted, whereas there is no indication that it is in Witness W's interest to see the Appellant sanctioned – and that that interest is sufficient to cause him to give false testimony in formal legal proceedings.

139. It seems useful and appropriate to reproduce his written testimony in its entirety:

My name is [...] *from the United States of America. I am a* [...] *trainer based in* [...] *and have been training horses most of my adult life. I have served on the* [...] *when I was the coach of the* [...] *Equestrian team. I also am current the* [...]. *I train horses and people from their beginnings up into including Grand Prix.*

I first met Mr Andrew Kocher when he was a child [...]. *I would say I really didn't know him as an adult till around 2011, it may have been a bit earlier or later than that when he started showing in* [...] *on a regular basis. In those few years around then we were friendly. Had dinner together a time or two and he did try to sell me horses and approached me about buying one of mine. We had no transactions of any type. I know one time he did buy my dinner and drinks. Since he has moved out of the area I do occasionally get a text, which is generic and looking for either help to hire or to sell horses.*

In June of 2013 or 2014 I am not sure which year exactly I was at a USEF horse show in [...]. *I was stabled in the same barn as Mr Kocher. It was only my horses and his in this barn. I was in the tack stall when I heard a large series of pops. I came out and walked up behind Mr Kocher and his groom who were working on something on a table. I saw wires attached to spurs. I asked "What's that?" He said "electric spurs and that they were too hot". They had been trying to fix them for a few days and hadn't been able to do it. I asked them how they worked. He described that the button and showed how that triggered them. I recall him telling me how he put them through his boots, but I don't remember specifically how that worked. He mentioned that he always wore a jacket to hide the battery and the cord. Again, the exact details on that are vague.*

I like Mr Kocher personally and enjoy interacting with him. He is a tremendous talent and the hardest worker I have ever met in my life. When I saw this I should have reported it. When I saw that he was using this to compete at the highest levels of the sport and perhaps when representing the United States, I was beyond horrified. My hope was that he had risen beyond this. He certainly has the talent and work ethic to have done that.

140. In sum, the witnesses called by the FEI testified that they saw the Appellant prepare electric spurs for use, discussed with them their purpose and use, as well as the way he suited up in such a fashion as to conceal the wires within his riding coat, his breeches, and his boots (which were perforated so that the wires could be connected with the spurs). This is direct first-hand evidence, as to which the Appellant's counter is simply to accuse them of prevarication, the fruit of personal bias against him. Those who are employees of the stables he discredits *en bloc* with the sweeping assertion that they were anxious to please [...] and are therefore prepared to concoct detailed and elaborate lies.

141. The problem for the Appellant, apart from the fact that these are mere assertions that suits his defence, is that it is not suggested that Witness W knows any of the FEI's other witnesses and yet his testimony is consistent with theirs. (That Witness W did not take the initiative seven years ago to report what he had seen may be criticised in hindsight, but it is understandable that he did not want to involve himself in controversy by making accusations against someone with whom he had had friendly relations, and which in the absence of objective evidence would simply be adamantly denied.) Unrebutted save by the Appellant's own denial, Witness W's testimony confirms the detailed reports of X, Y, and Z, and presents a powerful obstacle to the Appellant's defence.

VIII. CONCLUSION

142. The FEI has established to the Panel's comfortable satisfaction that the Appellant is guilty of the violations of the GRs as pleaded by the FEI.

143. Considering the dual iniquity of cruelty to animals and disloyalty to competitors, as well as the actions of the Appellant in not only using electric spurs himself but also in instructing or encouraging others to do so, the Panel reaches the same conclusion as the FEI Tribunal to the effect that a ten-year period of suspension was merited, and entailing disqualification from the eight events tainted by the evidence of infractions.

144. The Panel sees no reason to reassess the fine of 10,000 CHF imposed by the FEI Tribunal.

IX. COSTS

(...).

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The Appeal filed on 1 July (dated 30 June) 2021 by Mr Andrew Kocher against the decision issued by the FEI Tribunal of 10 June 2021 is dismissed.

2. The decision issued by the FEI Tribunal on 10 June 2021 is confirmed.

3. (…).

4. (…).

5. All other applications and requests for relief are dismissed.

Lausanne, Switzerland, 13 June 2023

THE COURT OF ARBITRATION FOR SPORT

Mr Jan Paulsson
President of the Panel

Mr David L. Evans
Arbitrator

Hon. Dr Annabelle Bennett
Arbitrator