

**Levy v United States Equestrian Federation, Inc.**

2006 NY Slip Op 30111(U)

June 28, 2006

Supreme Court, New York County

Docket Number: 0060142/2006

Judge: Rosalyn H. Richter

Republished from New York State Unified Court  
System's E-Courts Service.

Search E-Courts (<http://www.nycourts.gov/ecourts>) for  
any additional information on this case.

This opinion is uncorrected and not selected for official  
publication.

SUPREME COURT OF THE STATE OF NEW YORK -- NEW YORK COUNTY

PRESENT: ROSALYN RICHTER  
*Justice*

PART 24

LEVY  
- v -  
USEF

INDEX NO. 601428-06  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 1  
MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause -- Affidavits -- Exhibits ...  
Answering Affidavits -- Exhibits \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED


Cross-Motion:  Yes  No

**UNFILED JUDGMENT**  
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 1415).

Upon the foregoing papers, it is ordered that this motion be

**MOTION IS DECIDED IN ACCORDANCE WITH THE ATTACHED MEMORANDUM DECISION.**

Dated: 6/28/06

  
\_\_\_\_\_  
ROSALYN RICHTER J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 24

-----x

KATE LEVY,

Plaintiff,

-against-

UNITED STATES EQUESTRIAN  
FEDERATION, INC.,

Defendant.

-----x  
ROSALYN RICHTER, J.:

ORDER AND JUDGMENT  
Index No. 601428-2006  
UNJ Motion, Seq. No. 1

*This judgment has not been entered by the County Clerk and notice of entry cannot be served based thereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).*

On May 3, 2005, defendant United States Equestrian Federation, Inc. ("USEF") charged plaintiff equestrian Kate Levy with several violations of USEF Rules in connection with an incident that occurred in May 2004. According to the Official Charge Form submitted to the USEF Hearing Committee by USEF's Executive Director, Levy "yanked her horse's reins; continuously kicked her horse; and hit her horse behind the ears several times". A full evidentiary hearing was held on September 12, 2005, and on November 3, 2005, the Hearing Committee issued a written decision finding Levy guilty of a number of the charges. As punishment, the Hearing Committee suspended Levy from competing or taking part in any "Recognized Competitions" for a period of two months.

In January 2006, in an entirely different incident, Levy was adjudged guilty of riding her horse in an aggressive and unsafe manner. As punishment for that offense, the Hearing Committee added an additional two months to Levy's suspension, in light of the fact that she already had a prior violation. In this action,

Levy seeks a declaration that both of USEF's orders are null and void on the grounds that USEF violated its own rules and Levy's due process rights.

In this motion, Levy seeks a preliminary injunction staying the enforcement of the suspension orders,<sup>1</sup> and USEF cross-moves to dismiss the action. It is well-settled that "[a] trial court may decline to entertain an action for declaratory judgment where other adequate remedies are available, such as a CPLR Article 78 proceeding to challenge an administrative determination." *Gable Transport, Inc. v. State of New York*, \_\_\_ A.D.3d \_\_\_, 2006 N.Y. App. Div. LEXIS 6126 (3d Dept. 2006); see also *Greystone Management Corp. v. Conciliation and Appeals Board of the City of New York*, 62 N.Y.2d 763 (1984) (declaratory judgment action is not the proper vehicle to challenge an administrative procedure where judicial review by way of Article 78 proceeding is available). Because the essence of Levy's claim seeks review of USEF's decision and asks for relief in the nature of an Article 78 proceeding, this Court will consider the claim as such. See *City of New York v. State Board of Equalization & Assessment of the State of New York*, 60 A.D.3d 932 (3d Dept. 1978) (court converted declaratory judgment action into an Article 78 proceeding).

Upon review of the parties extensive submissions, the Court

---

<sup>1</sup> This Court previously denied Levy's request for a temporary restraining order.

concludes that Levy's claim is baseless and this Article 78 proceeding must be dismissed. There is no merit to Levy's claim that in the course of bringing the charges against her, USEF violated a number of its own procedural rules. Rule 603 applies to situations where a Protest is lodged and Rule 605 refers to Grievances. However, the charge against Levy stemmed not from a Protest or a Grievance but rather from an Eyewitness Report of Alleged Abuse, which sets in motion an entirely different process. Levy's reply papers do not specifically challenge USEF's interpretation of its own rules in this regard, and neither will this Court. See *Consolation Nursing Home, Inc. v. Commissioner of New York State Department of Health*, 85 N.Y.2d 326, 331 (1995) ("agency's exercise of its rule-making powers is accorded a high degree of judicial deference, especially when the agency acts in the area of its particular expertise"). Nor was there any violation of Rule 606 requiring that written notice of a Protest or a Charge be provided with sixty days. As noted, no Protest was ever lodged, and Levy was informed of the filing of the Charge within the requisite time period.

There is no merit to Levy's claim that USEF violated Rule 604 which requires that charges be brought within a "reasonable time" after the incident. In light of the fact that USEF receives, processes and investigates hundreds of reports of alleged rules violations each year, the Court cannot hold, as a matter of law,

that the one-year time period between the incident and the date the charges were brought is unreasonable. This is particularly true where, as here, a subsequent allegation of horse cruelty was lodged against Levy. Finally, Levy's claims of due process violations are baseless since she has not alleged, let alone proven, any state action. See *Moghimzadeh v. College of Saint Rose*, 236 A.D.2d 681 (3d Dept. 1997). In any event, the Court cannot find any due process violation here, particularly in light of the fact that the laws of this State provide for much longer statutes of limitations for criminal offenses. Accordingly, it is

ORDERED and ADJUDGED that defendant's cross-motion to dismiss is granted to the extent that the Court converts this action to an Article 78 proceeding, and upon conversion, the proceeding is dismissed;<sup>2</sup> and it is further

ORDERED that plaintiff's motion for a preliminary injunction is denied as moot.

This constitutes the order and judgment of the Court.

June 28, 2006

**UNFILED JUDGMENT**  
This judgment has not been entered by the County Clerk and notice of entry cannot be given based hereon until the County Clerk obtains entry, counsel for the party against whom judgment is entered shall appear in person to the County Clerk to obtain entry.  
Justice Rosalyn Richter

whether or not of this disposition, the Court need not determine whether this proceeding was timely brought.