

Case number: NST-E25-62866

Case Title: Vivien Lipshut v Equestrian Australia & Dressage New South Wales

Determination

National Sports Tribunal General Division

sitting in the following composition:

NST Member: Mr Anthony Lo Surdo SC

in the arbitration between

Vivien Lipshut

Applicant

Represented by Mr Alistair Oakes, of Counsel, instructed by Mr Marco Tomasello, Macpherson Kelley
and

Equestrian Australia

First Respondent

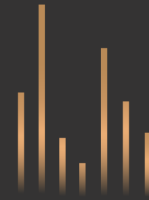
Represented by Mr Darren Kane, Advocatus Lawyers instructed by Mr Ben Houston, Chief Executive Officer, Mr Dan Tranter, National Integrity Manager, and Holly Noue, General Manager – Governance, Communications & Safety, Equestrian Australia

and

Dressage New South Wales

Second Respondent

Represented by Mr Jeff Oliver, President, Dressage NSW



PARTIES

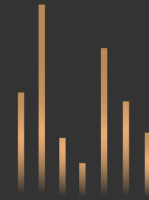
1. The Applicant, Ms Vivien Lipshut (the **Applicant**), is the owner of the horse Estupendo.
2. The First Respondent, Equestrian Australia (the **First Respondent**), is the national sporting organisation for the sport of Equestrian in Australia.
3. The Second Respondent, Dressage New South Wales (the **Second Respondent**), is the state sporting organisation in New South Wales for the sport of Dressage.

INTRODUCTION

4. The dispute concerns the results of the Australian Dressage Championships 2024, held in Sydney, New South Wales, on 17-20 October 2024 (the **Competition**).
5. The Competition was conducted by the Second Respondent on behalf of the First Respondent and Equestrian New South Wales.
6. At the Competition, the horse and rider combination of Ivanhoe 1 and Mary Hanna was awarded the title of Australian Grand Prix Champion (the **Award**).
7. The winner of the Award was determined on a points-based scoring system.
8. The Applicant alleges that the method used to determine the winner of the Award was contrary to the Competition rules. In summary, the Applicant alleges that if a percentage-based scoring system had been used to determine the Award, in accordance with the relevant Competition rules, the horse and rider combination of Estupendo and Mr David McKinnon would have won the Award.
9. Equestrian New South Wales, Mary Hanna and David McKinnon were each given notice of the dispute the subject of these proceedings and invited to complete an application to be joined. Each declined the invitation to join the proceeding.

NST JURISDICTION AND ADMISSIBILITY

10. The jurisdiction of the NST is engaged by section 23(1) of the *National Sports Tribunal Act 2019* (Cth) (the **NST Act**) and Article 163 of the Equestrian Australia General Regulations effective from 27 February 2025 (the **EA General Regulations**).
11. The jurisdiction of the NST including the admissibility of the protest was confirmed by a determination of the NST, dated 14 October 2025, under section 18(2) of the *National Sports Tribunal (Practice and Procedure) Determination 2024* (the **Determination**).
12. The parties confirmed the jurisdiction of the NST in the Arbitration Agreement signed by the Applicant on 6 February 2026 and by the First and Second Respondents on 9 February 2026 (the **Arbitration Agreement**).
13. The NST comprises the “Hearing Tribunal” as defined in the EA General Regulations for the determination of a “Protest” lodged by the Applicant in accordance with Article 163(5) and (6) of those regulations.

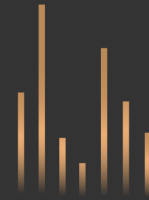


FACTUAL BACKGROUND

14. Below is a summary of the relevant facts and allegations based in part, on the Determination and, in part, on the parties' written submissions, pleadings and evidence adduced at the hearing on 25 June 2026. Additional facts and allegations found in the parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows.
15. While the NST Member has considered all the facts, allegations, legal arguments, and evidence submitted by the parties in the present proceedings, in this determination he refers only to the submissions and evidence considered necessary to explain the reasoning.
16. The Applicant is the owner of the horse Estupendo, ridden by Mr David McKinnon at the event the subject of the dispute. She is a member of Equestrian Australia (**EA**).
17. The dispute concerns the Australian Dressage Championships held in Sydney from 17 to 20 October 2024, conducted by Dressage NSW on behalf of EA and Equestrian NSW (the **Event**).
18. The Applicant contends that the rules for determining the Australian Grand Prix Champion required the use of a percentage scoring system as set out in the EA National Dressage Rules, 2024 (the **EA Dressage Rules**), specifically Rule 10.10(e).
19. Contrary to these rules, the NSW Dressage Committee applied a points-based system (allocating points for placings), which the Applicant argues was an arbitrary change made after entries had closed and without proper notice to competitors. The Applicant claims that the change was not communicated to her or the rider prior to the competition.
20. Under the points-system, the horse Ivanhoe 1, ridden by Mary Hanna, was awarded the title of Australian Grand Prix Champion. However, had the percentage-based system been used, Estupendo and Mr McKinnon would have been the rightful winners, with a total percentage score of 145.818 (average 72.909%) compared to Ivanhoe 1 and Ms Hanna with a total percentage score of 143.636 (average 71.818%).
21. The First Respondent asserts that the term "score" in the relevant rule means a points-based system, that this was confirmed by the Australian Dressage Championships 2024 Program (the **ADC Program**) and correctly applied to determine the winner of the Award.
22. It maintains that the relevant rules including the ADC Program were published and accessible to all competitors prior to the event, including via the official event website and in hard copy at the venue.

PROCEEDINGS BEFORE THE NST

23. Following the Determination, the parties entered the Arbitration Agreement.
24. Clauses 7.1 to 7.5 of the Arbitration Agreement set out the procedural timetable for the filing and service of submissions and evidence, as follows:
 - "7.1 On Wednesday, 31 December 2025, The Applicant filed with the NST Registry and served on the First Respondent their written submissions and any other witness statement(s), evidence, and all other documents they wish to rely. This filing and service was in-advance

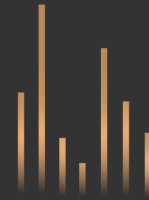


of the pre-agreed time and date for same between these Parties of 4:00pm AEDT on Friday, 16 January 2025. For completeness, the NST Registry served these submissions and materials on all Parties by email on 5 February 2026.

- 7.2 *By 4:00pm AEDT on Friday, 20 March 2026, the First Respondent and Second Respondent to file with the NST Registry and serve on the Applicant their written submissions and any other witness statement(s), evidence, and all other documents they wish to rely on.*
- 7.3 *By 4:00pm AEST on Friday, 10 April 2026, the Applicant to file with the NST Registry and serve on the First Respondent and Second Respondent their written submissions and all other documents they wish to rely on in reply.*
- 7.4 *By 4:00pm AEST on Friday, 10 April 2026, the Parties are to file with the NST Registry and serve on one another notice of the list of witnesses they require to be called (if any) to provide oral evidence at the Hearing.”*
25. With one exception, the parties complied with the procedural timetable and agreed to the hearing date of 25 June 2026.
26. On 22 June 2026, the First Respondent notified the NST Registry and the Applicant of its intention to call the Applicant to be cross-examined on the contents of her written statement, dated 31 December 2025. That notice was given in breach of procedural direction 7.4. The Applicant contended that the First Respondent accordingly required leave to cross-examine and that if such an application was to be made, it ought to give notice of the topics upon which it wished to cross-examine the Applicant.
27. On 23 June 2026, the NST Member notified the parties that it would determine the question as to whether leave should be granted to the First Respondent to cross-examine the Applicant as a preliminary matter at the hearing (the **Preliminary Issue**). The NST Member also indicated that he would hear any application to adjourn the hearing in the event that the Applicant is prejudiced by any leave that may be granted. He made directions requiring the parties to file with the NST Registry and serve written submissions limited to three pages in support of any applications either party proposed to make by 2 pm, 24 June 2026. The NST Member also directed the parties to confer with a view to resolving the Preliminary Issue without further intervention by the Tribunal.
28. On 24 June 2026, the NST Registry was notified that the Preliminary Issue had been resolved by the parties with the consequence that the Applicant was to be made available for cross-examination. To the extent that leave was required for the Applicant to be cross-examined that leave was granted.
29. On 25 June 2026, a hearing took place by videoconference. Besides the NST Member and Mr Thomas Vanehouse, Senior Case Manager, NST, the following people attended the hearing:

For the Applicant:

Mr Alistair Oakes, of Counsel
Mr Marco Tomasello, Solicitor
Ms Vivien Lipshut, Applicant



Mr Peter Lipshut, Support Person (without objection and on condition that Mr Lipshut acknowledged and agreed to be bound by the confidentiality obligations in sections 40, 41 and 54 of the *National Sports Tribunal (Practice and Procedure) Determination 2024*).

For the First Respondent:

Mr Darren Kane, Solicitor

Mr Dan Tranter, National Integrity Manager

Ms Holly Noue, General Manager – Governance, Communications & Safety

For the Second Respondent

Mr Jeff Oliver, President, Dressage NSW

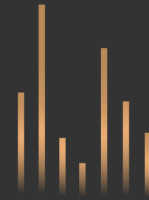
30. No objection was made to the NST Member's appointment under section 25 of the *National Sports Tribunal (Practice and Procedure) Determination 2024*.
31. At the conclusion of the hearing, the parties confirmed that their procedural rights had been fully respected.

APPLICABLE RULES

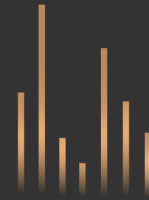
32. The proceedings concern the determination of a protest under the EA General Regulations, in particular, Articles 163(4)-(6) and (8) of those regulations.
33. At issue is whether the Award in the 2024 Australian Dressage Championships was determined and conferred in accordance with the EA Dressage Rules, in particular, Rules 10.10(e).
34. Article 110 of the EA General Regulations provides that the organising committee for events must publish or provide an "Event Schedule" at least four weeks prior to an event commencing. The Australian Dressage Championship Event Rules 2024 is an "Event Schedule" (the **Event Rules**) for the purposes of Article 110 of the EA General Regulations.
35. By their written submissions, the Applicant and the First Respondent accept that the EA General Regulations, the EA Dressage Rules and the Event Rules apply to the determination of this protest. The Second Respondent did not specifically address the applicable rules in its submissions.
36. Therefore, the applicable rules are the EA General Regulations, the Dressage Rules and the Event Rules.

THE EVIDENCE

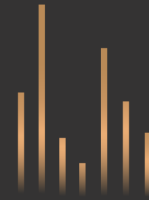
37. The parties co-operated to produce a Tribunal Book (the **TB**) comprising 732 folios.
38. The TB contains the parties' respective written submissions together with documentary evidence upon which they rely.
39. The NST Member notified the parties at the commencement of the hearing that he would only have regard to those documents in the TB to which reference was specifically made in either the written or oral submissions and to such other documents which the NST Member considered relevant to inform himself.



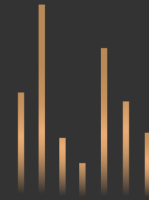
40. The Applicant's evidence comprised a written statement signed by her on 31 December 2025 (the **Applicant's Statement**), the exhibits referred to in her Application, dated 31 December 2025, and the exhibits referred to in her written submissions in reply, dated 10 April 2026 (being the documents in TB 57-538). Subject to a correction to the dates referred to in paragraphs 27 (replacing "11 November 2023" with "11 November 2024") and 29 (replacing "11 September 2024" with "11 December 2024") of her statement, each of which were made without objection, the Applicant relied on her statement without objection. The Applicant affirmed the contents of her statement immediately prior to being cross-examined.
41. The First Respondent's evidence comprised a written statement by Ms Toni Venhaus, signed 18 March 2026 (the **Ms Venhaus Statement**), read without objection (TB 557 – 567), the ADC Program (TB 568 – 620) and the exhibits referred to in the First Respondent's written submissions, dated 20 March 2026. Ms Venhaus also took an affirmation before being cross-examined.
42. The Second Respondent furnished an undated document described as "*Dressage NSW Timeline of Awarding GP Champion*" (the **Timeline**) (TB 656 – 660). Given the absence of any evidence of the provenance of the Timeline and documentary or other evidence to substantiate its contents, the Timeline was received not as evidence of the facts asserted in it but as submission only.
43. The Applicant's Statement may be relevantly summarised as follows:
- she is an experienced participant in equestrian sports, having been involved since 1966. After ceasing to ride due to a stroke in 2017, the Applicant became an owner of Grand Prix horses, including Estupendo, which she has owned since 2022. She is a member of EA through Equestrian Victoria and was also a supporter member of Equestrian New South Wales in 2024 and 2025;
 - in early 2023, Ms Lipshut engaged David McKinnon as the rider for Estupendo. Mr McKinnon managed all competition entries and administrative matters, with Ms Lipshut covering expenses and fees, sometimes offset by prize money;
 - in July 2024, Mr McKinnon informed Ms Lipshut of the upcoming Australian Dressage Championships 2024 and entered Estupendo in the event with her agreement. Ms Lipshut accessed the event website and downloaded the Event Rules to familiarise herself with the competition's structure and requirements;
 - she attended the event in Sydney on 18 October 2024 and observed Estupendo and Mr McKinnon compete in the FEI Grand Prix and Grand Prix Freestyle competitions;
 - after the event, Ms Lipshut reviewed the published results on the "Nominate" website, the official source for results. She noted that Estupendo and Mr McKinnon achieved a combined percentage score of 145.818% in the Grand Prix and Grand Prix Special;
 - based on her understanding of the rules, Ms Lipshut believed Estupendo and Mr McKinnon should have been awarded the Australian Grand Prix Champion title, as they had the highest aggregate percentage score from the relevant tests;



- g. upon discussing the outcome with Mr McKinnon, she learned that the Award had been given to Ivanhoe 1 and Ms Hanna. Further enquiry with the event director, Ms Venhaus, confirmed that a points-based system (rather than a percentage based system) had been used to determine the winner;
 - h. on 23 October 2024, Ms Lipshut attempted to lodge an integrity report via the EA website but found the form unsuitable for owners. She instead emailed the EA integrity mailbox, outlining her concerns about the scoring methodology;
 - i. she engaged in further correspondence with EA staff, including Paul Williams, who referenced an “ADC Competition Booklet” as the basis for the points system. Ms Lipshut had never received or been informed of this booklet nor had Mr McKinnon.
44. During cross-examination, the Applicant:
- a. accepted that the 2024 Dressage Championships were conducted under a body of rules including the EA Dressage Rules and the Event Rules and that she was bound by them;
 - b. agreed that the 2024 Dressage Championships were not conducted by reference to any other unwritten or other rules;
 - c. said that she had read the Event Rules before the competition but had not downloaded them until after the competition had concluded;
 - d. was taken to rule 10.10 of the EA Dressage Rules and accepted that the Australian Grand Prix Champion in 2024 would be determined in accordance with rule 10.10(e). She further agreed that Rule 10.10(a) to (f) all appear under the heading “*Determining of placings*” and that Rule 10.10(e) does not in terms use the word “*percentage*” as a means of determining the “*best two scores*” and that the only place where “*percentage*” is used in rule 10.10 is in subparagraph (d) as a means of breaking a deadlock;
 - e. said that the EA website refers to a percentage scoring system;
 - f. was taken to the ADC Booklet and accepted that it refers to the Australian Grand Prix Champion as being the combination that achieves the best two results based on the Championship point score system but she was not aware of the ADC Booklet or its contents until after the conclusion of the Championships; and
 - g. accepted that her belief that Estupendo and Mr McKinnon had won the title of Australian Grand Prix Champion was based on her understanding of the Rules that it would be awarded to the combination that achieves the highest percentage score across the two relevant competitions and that Ms Venhaus would give evidence that a points system in fact applied to determine the winner.
45. Ms Venhaus’ Statement may be relevantly summarised as follows:
- a. she was the Event Director for the 2024 Australian Dressage Championships and a member of the Organising Committee, appointed by Dressage NSW;



- b. the rules for determining the Australian Grand Prix Champion were based on the best two scores in either the Grand Prix and Grand Prix Freestyle or the Grand Prix and Grand Prix Special, as per Rule 10.10(e) of the EA Dressage Rules 2024;
 - c. the scoring used was a points-based system (35 points for first, 34 for second etc) in accordance with Rule 10.10(a) – (c), not aggregate percentage scores;
 - d. after entries closed, she received queries about whether the champion would be determined by points or percentages;
 - e. she sought clarification from the Equestrian Australia Dressage Committee (the **EADC**), which agreed to use the points system;
 - f. the rule for determining the Grand Prix Champion was clarified and changed in September 2024, after entries closed but before the event;
 - g. the ADC Program was updated to reflect this, but riders were not directly notified of the change;
 - h. the ADC Program was available for download from the Championship website before the event and hard copies were also made available to competitors and owners on the day of the Championship;
 - i. the method of scoring was further formalised in January 2025 to ensure clarity for future events;
 - j. Ivanhoe 1/Mary Hanna were awarded the Australian Grand Prix Champion based on the points system, despite another combination (Estupendo/McKinnon) having higher aggregate percentage; and
 - k. the system used was strictly in accordance with the rules and EADC guidance.
46. During cross-examination, Ms Venhaus said that:
- a. in dressage, a “*test*” is a series of prescribed movements by a horse and rider combination;
 - b. each movement is marked out of 10. The marks are then added together from which marks are deducted for any errors and the total marks are converted into a percentage score;
 - c. the results for a “*test*” are published in percentage terms;
 - d. the horse and rider combination with the highest percentage score for the “*test*” is placed first;
 - e. a reference to a “*score*” in dressage would ordinarily be understood to mean a percentage score;
 - f. on 27 September 2024, she sent an email to members of the EADC with the subject line “*Overall GP Champion*” in which she posed a question for the EADC’s consideration: “*Do we use the point score system (which in this case I think is fairer) or do we go by highest scores in either GP & Freestyle or GP & Special? If we use the highest scores this will*”



favour the riders who ride the Freestyle as the percentages are higher...” The email concludes by setting out in full EA Dressage Rules, rule 10.10;

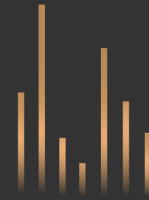
- g. the words in Rule 10.10(e) “...*the best two scores*” is a reference to percentage scores;
- h. she reviewed the Event Schedule (TB 460) before its publication. It was made available to competitors some time in late July 2024 and before entries for the event opened. It sets out the criteria that applied in determining “*championships*” and “*Championship Rugs*.” She agreed that “*Championship Rugs*” would be presented using the championship point score system or as “*detailed below*” and that one of those “*details*” concerned the “*Overall Grand Prix Champion (as per 10.10(e))*”;
- i. the award of “*Australian Grand Prix Champion*” is a special award that sits separately to a championship and it was to be determined in accordance with Rule 10.10(e);
- j. the wording in the ADC Program for the determination of Australian Grand Prix Champion contains wording that is different to the Event Schedule. It was published after her 27 September 2024 email to the EADC; in fact, some 7 – 10 days before the Event. It was also available in hard copy on the day of the Event. It was published after entries for the Event had closed and after the rules for the event had been issued. Ms Venhaus does not know whether the Applicant or Mr McKinnon had accessed the ADC Program;
- k. there is no evidence that she can point to in which the re-wording of the rule was brought to anyone’s attention; and
- l. she accepted that the wording in the ADC Program for the determination of the Australian Grand Prix Champion changed the effect of Rule 10.10(e).

MAIN SUBMISSIONS OF THE PARTIES

47. What follows is a summary of the principal submissions made by each of the parties both in writing and as supplemented orally at the hearing.

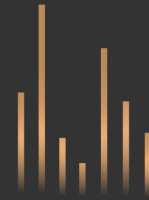
Summary of the Applicant’s Submissions

- 48. The determination of the Award is governed strictly by the EA Dressage Rules and the Event Rules, specifically Rule 10.10(e) of the EA Dressage Rules, which are contractually binding on all participants and organisers and any deviation is not permissible.
- 49. Rule 10.10(e) of the EA Dressage Rules provides that the Australian Grand Prix Champion is the highest placed Australian combination that achieves the best two scores in either the Grand Prix and Grand Prix Freestyle, or the Grand Prix and Grand Prix Special.
- 50. The proceedings turn on the proper construction of the phrase “*achieves the best two scores*” which appears in both the EA Dressage Rules and the Event Rules.
- 51. The Dressage Rules and the EA Dressage Rules set out the contractual relationship agreed between the organisers of the Event and participants. Accordingly, the ordinary rules of



construction of contractual terms apply, namely, that the words should be given their natural and ordinary meaning, having regard to the document as a whole, there is a rebuttable presumption that a word or expression appearing multiple times in a document has the same meaning throughout and there is a rebuttable presumption the different words used in a document have different meanings.

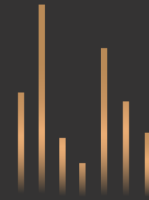
52. The Macquarie Dictionary identifies multiple meanings for the word “score” including a record of points made by competitors in a game or match, the aggregate of points made by a side or individual and the scoring of a point or points. These definitions provide support for the proposition the word “score” in Rule 10.10(e) is a reference to the percentage or mark scores for a horse and rider combination rather than a point system.
53. The following contextual references are relevant to the proper construction of the phrase “*achieves the best two scores*”:
 - a. the word “score” is sometimes used to refer to marks determined by judges (see Rule 8.4). However, it is predominantly used to refer to the percentage score which is a combination allotted from a test (see Rules 7.6 and 7.14); and
 - b. where used in Rules 10.1-10.11, which specifically apply to the Australian Dressage Championships, it is used as a reference to percentage scores for tests (see Rules 10.2(a), 10.2(d) and 10.7(i))
54. Ms Venhaus confirmed in her evidence that “score” is commonly understood to refer to percentages. It is also consistent with what Ms Venhaus said in her email to the EADC on 27 September 2024 which led to a change of wording of, in effect, Rule 10.10(e) in the ADC Booklet, away from a percentage score to a points-based determination.
55. To the extent that the ADC Booklet, in this regard, is inconsistent with the EA Dressage Rules, the latter must prevail.
56. On its proper construction, Rules 10.10(a) to 10.10(d), only apply to the determination of “*championships*”. They do not apply to the determination of the Australian Grand Prix Champion. This is demonstrated by the fact that: Rule 10.10(e) expressly identifies the Australian Grand Prix Champion as being separate to “*championships*” as referred to in Rule 10.10(a) (which is consistent with the Event Rules which identifies the Australian Grand Prix Champion as one of the “*special national awards and trophies*”); and Rule 10.10(e) uses the term “*best two scores*” which is not used any of Rules 10.10(a) to 10.10(d).
57. The Applicant therefore submits that the Rules do not contemplate or authorise use of a points-based system for determining the Award.
58. The Applicant further contends that the Event Rules, as published prior to the competition, made no reference to a points-based system and that the introduction of such a system after entries had closed was both procedurally unfair and contrary to the published rules.
59. The change to a points-based system was not communicated to competitors, including Ms Lipshut and Mr McKinnon. The lack of notice further undermines the legitimacy of the results as declared by the organisers.



60. Had the EA Dressage Rules been properly applied, Estupendo and Mr McKinnon would have been conferred the Award as their aggregate percentage scores were higher than those of any other combination.
61. The Applicant requests the following relief:
- “1. To conclude that Ms Lipshut’s protest is admissible.*
 - 2. To conclude that the scoring system and method used to award the Australian Grand Prix Champion at the Australian Dressage Championships held in Sydney on 17 to 20 October 2024 (the competition), namely to use a points-based scoring system rather than a percentage based scoring system, was contrary to paragraph 10.10(e) of the Equestrian Australia Dressage Rules & official procedures for dressage competition as at 1 January 2024 (which were the rules applicable at the relevant time).*
 - 3. To conclude that Equestrian Australia and/or Equestrian NSW shall determine the ranking of the Australian Grand Prix Champion and assign the title and Championship Rug in accordance with the above.”*

Summary of the First Respondent’s Submissions

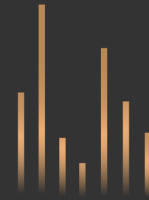
62. The EA Dressage Rules require that the Award be determined by a points-based system, not by adding together average percentage marks. Specifically:
- a. Rule 10.10(a): provides that the “...*final placings of the Australian Dressage Championships are determined by the following...(a) Championships are to be decided on [sic] points system...*”
 - b. Rule 10.10(c): “*the first placed horse will receive 35 points, second will receive 34 points, third will receive 33 points and so on to the last placed horse...*”
 - c. Rule 10.10(e): “*The Australian Grand Prix Champion is the highest placed Australian combination that achieves the best two scores in either... the Grand Prix and the Grand Prix Special.*”
63. The term “score” in Rule 10.10(a) refers to the points score as defined in rule 10.10(c), not to percentage scores.
64. This interpretation is supported by the structure and language of the rules, which consistently use “points” as the basis for placings.
65. The ADC Program and Event Rules also explicitly refer to the points system as the method for determining the Champion, reinforcing the interpretation of the rules. The ADC Program states that the Australian Grand Prix Champion is the competitor who “...*achieves the best two results based on the Championships point score system in the Grand Prix and Grand Prix Freestyle or the Grand Prix and the Grand Prix Special.*”
66. The Rules were published and accessible to all competitors prior to the Event. In particular, the ADC Program was:
- a. printed in hard copy in advance of the 2024 Championships, after entries had closed, and was made available to competitors at the event venue;



- b. published electronically and was publicly available and downloadable on the official event website prior to the commencement of the 2024 Championships; and
 - c. accessible through the “COMPETITOR INFO” tab on the Event website and could be downloaded by any interested party from the bottom of the webpage.
67. There is no provision in the Competition Rules for determining the Champion by adding together average percentage marks from the Grand Prix, Grand Prix Freestyle, and Grand Prix Special.
68. The Applicant’s understanding to the contrary is incorrect and not supported by the Rules.
69. Ivanhoe/Mary Hanna received 35 points in the Grand Prix and 35 in the Grand Prix Special (total 70), while Estupendo/McKinnon received 34 in the Grand Prix and 25 in the Grand Prix Freestyle (total 69).
70. These points were accumulated and calculated pursuant to EA Dressage Rules 10.10(a) – 10.10(e). The use of the word “score” in Rule 10.10(e) is a reference to the points scored achieved by the application of rule 10.10(c).
71. Thus, Ivanhoe/Mary Hanna was correctly declared Champion under the Rules.
72. The “*field of play doctrine*” applies such that the decision is not subject to challenge unless there is evidence of bad faith, corruption or arbitrariness none of which is alleged in this case.
73. The First Respondent accordingly contends that the Application should be dismissed.

The Second Respondent’s Submissions

74. The Second Respondent provides a helpful timeline of relevant events together with some supporting documents. It otherwise and quite properly assumes a neutral stance, that is, does not advocate for one position over another.
75. Mr Oliver made the following oral submissions:
- a. as an event organiser, Dressage NSW is present in the proceedings to protect the integrity of the sport;
 - b. decisions were made in good faith;
 - c. the provisions of Rule 10.10(e) were intended to address the weighted advantage of the freestyle test;
 - d. the EADC changed the wording in the program schedule to address this issue;
 - e. “scores” is generally a reference to the percentage achieved; it is not a point;
 - f. the ADC Program with the changed wording to determine the Australian Grand Prix Champion became available to competitors online about 7 to 10 days before the Event and in hard copy on the day of the Event;
 - g. competitors did not therefore have a reasonable opportunity to consider the changes; and
 - h. if competitors had known in advance and before entries had closed, they could have determined what events to enter to better vie for the title.



The Applicant's Submissions in Reply

76. The Dressage Rules and the Event Rules are the governing documents for the competition, not the ADC Program.
77. The ADC Program is merely an administrative document and cannot override the Dressage Rules or Event Rules. It cannot alter the effect of the rules. If there is any inconsistency between the ADC Program and EA Dressage Rule 10.10(e), the latter must prevail.
78. The Applicant points to EA Dressage Rule 10.10(e) and the Event Rules, both of which state that the Australian Grand Prix Champion is the combination that achieves the best two scores in either the Grand Prix and Grand Prix Freestyle or the Grand Prix and the Grand Prix Special.
79. The phrase "*best two scores*" in Rule 10.10(e) refers to percentage scores, not championship points. She supports this by referencing an email from the Event Director, Toni Venhaus, of 27 September 2024, who questioned whether the rules required the use of the point score system or the highest scores (which the Applicant interprets as percentage scores).
80. The Applicant argues that the fact the ADC Program was reworded to specify "*the best two results based on the Championships point score system*" shows that the original rules did not require the point system, and that the change was a substantive one.
81. The 2023 Australian Dressage Championships determined the Grand Prix Champion using the percentage methodology, not the championship points system and the scoring system used for the 2024 championships represented a marked change.
82. The "*field of play*" doctrine does not apply. The Tribunal is being asked to interpret the applicable rules, not to review a factual or technical decision made during the competition.

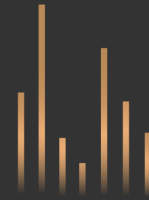
THE ISSUES

83. The key question that arises for consideration is whether, upon a proper construction of the applicable rules, the winner of the Award is the horse and rider combination with the highest percentage scores, as the Applicant contends, or the horse and rider with the highest score using the point score method set out in Rules 10.10(a) to (c) as contended by the First Respondent.
84. The parties agreed that if the scoring methodology that applies is the highest percentage score, then Estupendo/Mr McKinnon should have won the Award.
85. In the event that the construction for which the Applicant contends prevails, an additional issue arises, namely, whether the "*field of play*" doctrine applies and, if so, whether it acts to deny the Applicant the relief that she seeks.

MERITS

Principles of Construction

86. The relationship of the Applicant and First Respondent is governed by the contract which arises from the Applicant's membership of EA.
87. Accordingly, the key question identified earlier for the Tribunal's determination concerns the proper construction of EA Dressage Rule 10.10(e).



88. The principles surrounding the construction of contracts are well-settled and can be summarised as follows.
89. The rights and liabilities of a party under a contract are to be determined objectively, that is, by reference to its text, context (the entire text of the contract as well as any contract, document or statutory provision referred to in the text), surrounding circumstances known to the parties and the purpose and object (see, for example, *Mount Bruce Mining Pty Ltd v Wright Prospecting Pty Ltd* (2015) 256 CLR 104).
90. Words in a contract should be given their ordinary meaning as understood by the ordinary reasonable person. Courts start with the natural meaning of the words and will interpret commercial contracts fairly and broadly. Where a word has both an ordinary and a technical meaning, the ordinary meaning will apply unless the parties clearly intended the technical meaning (see, for example, *Byrnes v Kendle* (2011) 243 CLR 253).
91. Parol or extrinsic evidence is not generally admissible in construing a written contract. Evidence of surrounding circumstances is admissible to assist in the interpretation of a contract if the language is ambiguous or susceptible of more than one meaning but it is not admissible to contradict the language of the contract when it has a plain meaning. Evidence of prior negotiations and actual subjective intentions of the parties remains inadmissible (see, for example, *Codelfa Construction Pty Ltd v State Rail Authority* (1982) 149 CLR 337 and *Mount Bruce Mining Pty Ltd v Wright Prospecting Pty Ltd* (2015) 256 CLR 104).
92. Where words used in a contract have special or technical meanings, regard can be had to extrinsic evidence including expert evidence demonstrating that words have meanings specific to particular localities, trade, customary, or technical usage. Where a special or technical term is used there is a rebuttable presumption that the parties have intended to use it according to its correct technical meaning (see, for example, *Electricity Generation Corporation v Woodside Energy Ltd* (2014) 251 CLR 640 and *Quasar Resources Pty Ltd v APG Aus No 3 Pty Ltd* [2023] WASCA 171).
93. In terms of the admissibility or otherwise of evidence relevant to the issue of construction, the NST Member has proceeded, in accordance with section 40(1)(c) of the NST Act, that the Tribunal is not bound by the rules of evidence but may inform itself in such manner as it thinks appropriate.

The Rule

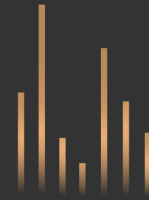
94. The principal rule in question is EA Dressage Rule 10.10, in particular, 10.10(e).
95. The full text of the Rule is as follows:

“10.10 Determining of placings

The final placings of the Australian Dressage Championships are determined by the following:

a) championships are to be decided on points system

b) all competing horses will be ranked on the combined results of tests at each level



c) the first placed horse will receive 35 points, second will receive 34 points, third will receive 33 points and so on to the last placed horse

d) where there are equal places, the Champion will be the horse with the highest aggregate percentage at that level • in the event of a further tie, the horse with the highest percentage in the higher competition at that level will be deemed the Champion

e) the Australian Grand Prix Champion is the highest placed Australian combination that achieves the best two scores in either:

- the Grand Prix and Grand Prix Freestyle
- the Grand Prix and the Grand Prix Special

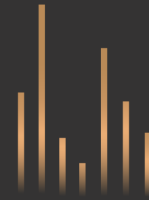
f) where both a CDN and CDI-W are offered, only CDI-W Grand Prix performances will count.”

96. The Event Rules expressly incorporate Rule 10.10(e). Under the heading “*Special National Awards and Trophies*” (Event Rules, page 4) appears the following:

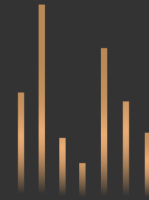
“Australian Grand Prix Champion: The Australian Grand Prix Champion is the combination that achieves the best two scores in **the Grand Prix and Grand Prix Freestyle or the Grand Prix and the Grand Prix Special** (as per rule 10.10 e).”

Construction of the Rule

97. The object of Rule 10.10 is, self-evidently, to set out the manner by which final placings in the “*Australian Dressage Championships*” are to be determined. Unfortunately, that is where the clarity ends and the ambiguity begins. So much is apparent from the competing submissions advanced by the Applicant on the one hand and the First Respondent on the other.
98. Properly construed, “*Australian Dressage Championships*” for the purposes of Rule 10.10, when considered in context and with the Event Rules, prescribes the mechanism for the determination of final placings in two distinct categories of “*champion*”: first, for “*championships*” generally, which are to be determined on the “*point system*” referred to in sub-paragraphs (a) to (d); and secondly for the “*Australian Grand Prix Champion*” which is the “*highest placed Australian combination that achieves the best two scores in either...*” of the events there mentioned.
99. The “*Australian Grand Prix Champion*” is the “*highest placed Australian combination that achieves the best two scores in ...*” of the events there mentioned. The reference to “*scores*”, properly construed, is to highest percentage scores.
100. The Tribunal has so concluded for the following reasons:
- a. the Event Rules provide that “*Championship Rugs will be presented using the championship point score system or as detailed below...*”
 - b. The Event Rules provide that “*Overall Grand Prix Champion*” is to be determined “(as per 10.10 e).” Under the heading “*Special National Awards and Trophies*” the Event Rules provide that the “*Australian Grand Prix Champion is the combination that achieves the two best scores in the Grand Prix and Grand Prix Freestyle or the Grand Prix and the Grand Prix Special (as per rule 10.10 e).*”;



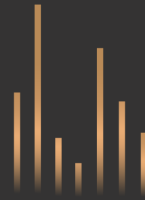
- c. the Event Rules provide the events that qualify for consideration for a “*Championship Rug*” and those that qualify for “*Australian Grand Prix Champion*.” They are not the same;
 - d. the word “*score*” is sometimes used to refer to marks determined by judges (see, for example, Dressage Rule 8.4). However, it is predominantly used to refer to the percentage score which is a combination allotted from a test (see, for example, EA Dressage Rules 3.17, 3.21, 4.8.3.2, 7.6, 7.14, 8.1(g), 8.4 – 8.6, 8.8, 8.9 – 8.11, 9 & 10). Indeed, Ms Venhaus confirmed in her evidence that, in effect “*score*” is a technical term in dressage and is commonly understood to refer to percentages and that the words in Rule 10.10(e) “...*the best two scores*” is a reference to percentage scores;
 - e. it was also Ms Venhaus’ evidence that “*Championship Rugs*” will be presented using the championship point score system or as “*detailed below*”, that one of those details referred to the “*Overall Grand Prix Champion (as per 10.10(e))*” and that the award of “*Australian Grand Prix Champion*” is a special award that sits separately to a championship and it was to be determined in accordance with Rule 10.10(e);
 - f. cognisant of the distinction in EA Dressage Rule 10.10 in determining “*Championship Rugs*” on the one hand and the “*Australian Grand Prix Champion*” on the other, on 27 September 2024, Ms Venhaus wrote to members of the EADC in which, relevantly, she asked, “[d]o we use the point system (which in this case is fairer) or do we go by highest scores in either GP & Freestyle or GP & Special? If we use the highest scores this will favour the riders who ride the Freestyle as the percentages are higher.” That email concludes with setting out EA Dressage Rule 10.10 in full and a request for a response “...so I can advise riders.”;
 - g. following a response from the EADC, Ms Venhaus prepared the ADC Program. She accepted that the wording in the ADC Program for the determination of Australian Grand Prix Champion contains wording that is different to the Event Schedule. It was published some 7 – 10 days before the Event. It was also available in hard copy on the day of the event. It was published after entries for the Event had closed and after the rules for the event had been published;
 - h. Ms Venhaus could not identify any evidence that the re-wording of the Rule was brought to anyone’s attention; and
 - i. she accepted that the wording in the ADC Program for the determination of the Australian Grand Prix Champion changed the effect of Rule 10.10(e).
101. In coming to this conclusion, the Tribunal is conscious that the “*Preamble*” to the EA Dressage Rules provides that the EADC “...*has full discretion and complete authority to omit, amend and interpret these rules in their absolute discretion and to give or withhold any explanation of its decision.*” The ADC Program, as Ms Venhaus accepted, changed the effect of Rule 10.10(e) of the EA Dressage Rules.
102. However, the EADC purported to do so well after entries had closed and the Event Schedule, which relevantly confirmed the contents of Rule 10.10(e), had been published.



103. In *Kioa v West* (1985) 159 CLR 550, the High Court of Australia recognised a duty to accord procedural fairness when a decision is made that affects a person's rights, interests or legitimate expectations.
104. Similarly, the Court of Arbitration for Sport (**CAS**) has consistently found that when a governing body publishes rules and opens entries, it creates a legitimate expectation that those rules will govern the event and they will not be altered to a competitor's detriment without notice and an opportunity to respond or withdraw (see, for example, *CAS 94/129*, *CAS 95/150*, *CAS OG 96/005*, *CAS 2002/A/363*, *CAS 2008/A/1557*, *CAS 2009/A/1768*, *CAS 2020/A/7517*).
105. Competitors must have the opportunity to make informed decisions before committing to participation. Changing rules post-entry undermines this because entrants made their decision based on a particular set of conditions.
106. Therefore, the ADC Program could not validly alter the applicable rules.
107. For these reasons, the Tribunal determines that upon a proper construction of the applicable rules, the winner of the Award is the horse and rider combination with the highest percentage scores, as the Applicant contends and that as the highest percentage score was achieved by the horse and rider combination of Estupendo and Mr McKinnon, they should have won the Award.

Field of Play Doctrine

108. That leaves for consideration whether the “*field of play*” doctrine applies.
109. The field of play doctrine is a concept enshrined in the *lex sportiva* and consistently applied by CAS. It is based on the belief that the rules of the game, in the strict sense of the term, are not subject to judicial control. The rationale is twofold: to ensure that match officials have the requisite authority and autonomy to make decisions; and to ensure that sporting contests are completed and deliver a result.
110. It operates as a form of arbitral self-restraint, not as a jurisdictional bar (see, for example, *CAS 2010/A/2090*).
111. For the doctrine to apply, two cumulative conditions must be met: first, the decision was made on the playing field by judges, referees, umpires and other officials who are responsible for applying the rules of a particular game; and secondly, the effects of the decision are limited to the field of play (see, for example, *CAS 2017/A/5373*).
112. A referee's decision affecting the result of a race or game cannot be reviewed on appeal absent proof of bias, malice, bad faith, arbitrariness or legal error. The burden of proof lies with the challenger and is high. Applicants are required to show direct evidence that an official's decision is tainted by fraud, bad faith or bias. The rationale is that it preserves the finality and clarity of sporting decisions made by officials in line with the rules of the game and ensures the authority of the referee and match officials who are technical experts in their sports.
113. CAS jurisprudence has developed a distinction between: judgment calls by match officials, which the doctrine protects; and rule compliance, namely whether the decision was made at all in conformity with the governing rules, which the doctrine does not protect (as to the latter, see, for example, *CAS OG 24/15-16* and *CAS OG 24/17*).



114. Decisions about eligibility, rule changes, entry conditions, and the governance processes by which rules are made and applied to competitors are made by federation administrators, not referees in the heat of competition, and their effects can extend beyond any single event.
115. The field of play doctrine does not apply to a case, such as the present, which concerns whether the decision was made in conformity with the governing rules.

THE TRIBUNAL THEREFORE DETERMINES THAT:

1. The scoring system and method used to award the Australian Grand Prix Champion at the Australian Dressage Championships held in Sydney on 17 to 20 October 2024, namely to use a points-based scoring system rather than a percentage based scoring system, was contrary to paragraph 10.10(e) of the Equestrian Australia Dressage Rules for dressage competition as at 1 January 2024 and the Australian Dressage Championship Event Rules 2024.
2. Equestrian Australia and/or Equestrian NSW shall determine the ranking of the Australian Grand Prix Champion and assign the title and Championship Rug in accordance with the findings and determination of the Tribunal.

Date: 29 June 2026



Mr Anthony Lo Surdo SC