

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

AAA Case No. 01-18-0003-8879

In the Matter of the Arbitration between

██████████, Claimant

and

USA DIVING, INC., Respondent.

AWARD AND REASONED DECISION

I, THE UNDERSIGNED ARBITRATOR, having been designated by the American Arbitration Association ("AAA"), and in accordance with the Ted Stevens Olympic and Amateur Sports Act ("ASA") and Section 9 of the United States Olympic Committee ("USOC") Bylaws, having been duly sworn, and having fully considered the Claimant's Section 9 Demand for Arbitration, Respondent's Answer, and their respective briefs and exhibits as well as their oral arguments during a November 19, 2018 telephonic hearing¹ (at the conclusion of which counsel for both parties agreed they had a full and fair opportunity to be heard and it was closed by the Arbitrator) does hereby, AWARD, as follows:

On October 18, 2018, Claimant ██████████² filed this Section 9 arbitration demand asserting that Respondent USA Diving, Inc.'s³ July 12, 2018 interim suspension of his athlete membership and future participation in any events or practices under its auspices pending the U.S. Center for SafeSport's ("Center") investigation and final resolution of sexual misconduct allegations against him violate his procedural rights under the Ted Stevens Olympic and Amateur Sports Act ("ASA"), Section 9 of the United States Olympic Committee's ("USOC") Bylaws, and USA Diving's Bylaws. (Claimant's Section 9 Complaint, Statement of the Dispute at 1.6).

¹ The Arbitrator expresses his appreciation for the professional and high quality advocacy of the parties' respective counsel identified below.

² Claimant was represented by Howard L. Jacobs and Lindsay S. Brandon, Law Offices of Howard L. Jacobs, Westlake Village, California.

³ Respondent was represented by Bernard L. Pylitt and Kristopher N. Kazmierczak, Katz Korin Cunningham PC, Indianapolis, Indiana.

On July 12, 2018, pursuant to Article 22.10 of USA Diving's Bylaws, USA Diving imposed an interim suspension on [REDACTED] pending resolution of the Center's investigation of the sexual abuse allegations against him. Its Notice of Interim Suspension stated:

“USA Diving is aware that the Response and Resolution Office of the U.S. Center for SafeSport has received allegations in which you were named that, if true, constitute a violation of relevant safe sport policies and procedures, including without limitation the SafeSport Code for the U. S. Olympic and Paralympic Movement and the USA Diving Bylaws.

This letter is formal notification of your suspension as an athlete member. A suspension of your membership is the equivalent of a temporary cancellation, and you are not permitted to act or represent yourself as a USA Diving Athlete Member while the suspension is in effect. Any violation of the rules governing your suspension may be considered a separate violation and result in further or additional proceedings by USA Diving. Please note that the U.S. Center for SafeSport has exclusive jurisdiction regarding the outcome of USA Diving matters which pertain to sexual abuse. All other items outside of the jurisdiction of the U.S. Center for SafeSport, will be ruled on by the USA Diving Board of Review.

Based on the allegations against you, USA Diving believes that a possible Code of Conduct violation has occurred. . . .

Beginning on July 12, 2018, you will be suspended from participating in any sanctioned event or practice in any capacity that is authorized by, organized by or under the auspices of USA Diving, pending the outcome of a U.S. Center for SafeSport investigation and a USA Diving Board of Review. This includes but is not limited to the FINA World Junior Championships and the USA Diving Junior National Championships.”

On July 13, 2018, USA Diving's CEO provided [REDACTED] with notice of alleged violations of section 30.4 of its Code of Conduct for his alcohol usage based on the information provided by the Center and requested that a USA Diving National Board of Review hearing be convened to determine appropriate punishment for these violations.

On July 16, 2018, without providing any hearing, the National Board of Review rejected [REDACTED] July 13, 2018 written appeal of his interim suspension: “The National Board of Review finds that USA Diving had sufficient information and evidence to reasonably conclude [REDACTED] committed a violation of the USA Diving Code of Conduct, and therefore to suspend him. Accordingly, the appeal is DENIED.”

USA Diving's July 12, 2018 interim suspension and its National Board of Review's July 16, 2018 denial of his appeal precluded [REDACTED] from participating in the July 2018 FINA World Junior Championships, which is a “protected competition” pursuant to USOC Bylaw 1.3 (w) (1).

On September 10, 2018, the National Board of Review dismissed the alleged violations of USA Diving's Code of Conduct based on ██████ alleged alcohol usage because they were outside the applicable USA Diving Bylaws' 180-day statute of limitations period, while maintaining ██████ interim suspension based on his alleged sexual misconduct currently being investigated by the Center:

“The Chair wants to make it very clear to the parties that this decision in no way effects the Interim Suspension issued by USA Diving against ██████, which was upheld on appeal by the National Board of Review. That suspension continues in effect pending further action by the Center.”

The 2018 USA Diving Winter Trials will be held December 16-21, 2018, which will determine teams for designated 2019 FINA Grand Prix meets, is a “protected competition” pursuant to USOC Bylaw 1.3 (w).

On October 18, 2018, ██████ timely filed his Section 9 arbitration demand against USA Diving with the American Arbitration Association in accordance with USOC Bylaw 9.10, which requires its filing no later than six months after the date of the alleged action (i.e., USA Diving's July 12, 2018 interim suspension of him and its National Board of Review's July 16, 2018 denial of his appeal) denying him the opportunity to participate in a protected competition (i.e., 2018 USA Diving Winter Trials).

LEGAL ANALYSIS

A. Arbitrator Jurisdiction

█████ asserts the Arbitrator has jurisdiction to resolve the parties' dispute pursuant to Section 9 of the USOC Bylaws because USA Diving's interim suspension is denying him the opportunity to participate in its 2018 Winter Trials, a protected competition. He asserts the Arbitrator has authority under Section 9 to set aside USA Diving's interim and to issue “an Order that he cannot be precluded by USA Diving from competing the [2018 USA Diving Winter Trials] until he is afforded a hearing, as guaranteed by the [ASA], the USOC Bylaws, and the USA Diving Bylaws.” (Section 9 Complaint, V). The Arbitrator's granting of this relief would not violate Section 9.12 of the USOC Bylaws, which states that “[a] decision concerning a safe sport rule violation adjudicated by the [Center] shall not be reviewable through, or the subject of, these complaint procedures,” because the Center has not adjudicated the sexual abuse allegations against ██████.

In response, without disputing that its 2018 Winter Trials is a protected competition, USA Diving contends that ██████ does not satisfy the definition of an “amateur athlete” under Section 1.3 (c) of the USOC Bylaws because his interim suspension precludes him from meeting “the eligibility standards established by the NGB . . . for the sport in which the athlete competes.” It

also contends that the ASA, 36 U.S.C. §220541 (a) (2), gives the Center exclusive jurisdiction “with regard to safeguarding amateur athletes against abuse, including physical, emotional, and sexual abuse, in sports.” Therefore, the Arbitrator’s granting of ██████ requested relief would contravene the Center’s exclusive authority over cases of alleged sexual misconduct.

AAA Commercial Rule R-7 authorizes the Arbitrator to determine his jurisdiction to resolve this dispute and to grant ██████ requested relief, which jurisdiction he finds exists in this case. The Arbitrator rejects USA Diving’s argument that ██████ is not an “amateur athlete” who may challenge the denial of his opportunity to participate in a protected competition in a Section 9 arbitration proceeding because its interim suspension renders him ineligible to compete. The Arbitrator’s adoption of its view would contravene the express language of the ASA, 36 U.S.C. §220522 (a) (4), requiring a national governing body (“NGB”) “to submit to binding arbitration in any controversy” involving the denial of an otherwise eligible athlete to compete in a protected competition. Moreover, the acceptance of USA Diving’s circular reasoning would enable an NGB to deprive an athlete of his procedural right to arbitration under the ASA and Section 9 of the USOC Bylaws simply by imposing a disciplinary suspension or sanction that renders him ineligible to participate in a protected competition—an untenable result that conflicts with federal law and prevents Congressionally mandated recourse to the USOC’s dispute resolution procedures. Because the granting of ██████ requested narrow scope of relief would not constitute arbitral review of the Center’s final resolution of the sexual misconduct allegations against him (which has not occurred yet) or otherwise interfere with or adversely affect its investigation or any adjudication of the merits of these allegations, the Arbitrator also rejects USA Diving’s contention that such procedural relief necessarily would intrude into the realm of the Center’s exclusive authority. The Arbitrator notes the following statement in an August 3, 2018 email from the Center’s counsel to USA Diving regarding a pending investigation of an alleged SafeSport violation by someone other than ██████: “USA Diving took interim action based on the severity of the allegations and should utilize its own policies and procedures in addressing a member’s challenging of that interim action. The Center will proceed with its investigative process and inform USA Diving once a decision has been rendered.” (emphasis original) (Respondent’s Brief in Support of its Decision for Interim Suspension and Opposing Petitioner’s Demand for Relief in Arbitration at p. 9).

B. Denial of ██████ Procedural Rights to an Arbitration Hearing

Membership in USA Diving “is a privilege and not a right” and adherence to its Code of Conduct “is an obligation of membership.” (USA Diving Bylaws, Article 30.1). Article 30.4 of USA Diving’s Code of Conduct prohibits “Sexual Misconduct, including Sexual Abuse” by its members, including athletes. However, USA Diving has no investigative or adjudicatory authority regarding the sexual misconduct allegations against ██████, which is within the Center’s exclusive jurisdiction pursuant to the ASA (36 U.S.C. §220541(a)), Center’s SafeSport Code for the U.S. Olympic and Paralympic Movement (“SafeSport Code”), and USA Diving Bylaws.

Section IV(A) (“Exclusive Authority—sexual misconduct”) of the SafeSport Code provides:

The [Center] has the exclusive authority to investigate and resolve conduct involving (a) sexual misconduct; and (b) prohibited conduct under the *Code* that is reasonably related to the underlying allegation of sexual misconduct. Exclusive authority means that (a) only the Office will investigate and manage any related hearings involving sexual misconduct and (b) neither the NGB nor USOC will conduct its own investigation or arbitration with respect to possible sexual misconduct, except as otherwise provided. See Appendices A and B.

Consistent with the SafeSport Code, Article 26.1(a) of the USA Diving Bylaws states the Center “shall have exclusive jurisdiction of all matters of misconduct arising under [Article] 30.4(c)(2)(A), namely, sexual misconduct, including sexual abuse.”

Pursuant to the SafeSport Code Practices and Procedures for the U.S. Olympic and Paralympic Movement (“SafeSport Code Practices and Procedures”) (Appendix A), the Center “may, at any point before a matter is final, seek interim measures as set forth below in Part V.” (Part III, B, 2).

Part V of the SafeSport Code Practices and Procedures provides:

INTERIM MEASURES

At any point before a matter is final through these Procedures or arbitration, interim measures may be appropriate to ensure the safety or well-being of the Reporting Party, Athletes, other Non- athlete Participants or the Responding Party. Interim measures may also be appropriate where an allegation against the Responding Party is sufficiently serious that the Responding Party’s continued participation could be detrimental to sport or its reputation. Nothing in these Procedures prevents the [Center], LAO, NGB or USOC from taking appropriate interim measures upon notice of an imminent threat of harm. In such emergency circumstances, it may be appropriate to immediately remove a Covered Individual to address such a threat. (emphasis added).

A. Notice

Unless imposed under emergency circumstances involving an imminent threat of harm, the Office will notify a Responding Party that it will impose interim measures unless the Responding Party requests an interim measures hearing as set forth in the Rules.

B. Rules

Any interim measures hearing will be conducted according to the [Supplementary Rules for U.S. Olympic and Paralympic SafeSport Arbitrations].

C. Scope

The interim measures hearing is not to be a full hearing on the merits and is limited to determining whether there exists reasonable cause to impose one or more interim measure(s).

D. Measures

Interim measures may include, but is not limited to, altering training schedules, providing chaperones, implementing contact limitations between the parties, and suspensions.

Article 22.10 of its Bylaws permits USA Diving to impose interim measures on an athlete for alleged sexual misconduct, specifically an immediate suspension, if certain requirements are met:

Immediate Suspension.

(a) Notwithstanding anything to the contrary in this Subpart C, the CEO, with the concurrence of the Chair of the Board of Directors or, in his/her absence, the Vice Chair Administration (and if the subject member/applicant is an athlete, an Athlete Representative serving on the Board of Directors), may immediately suspend a member upon the receipt of notice that such person is committing or has committed any of the following acts:

- (i) any violation of the Safe Sport requirements;
- (ii) any act of abuse, harassment, or a drug or alcohol offense involving a minor;
- (iii) an act of theft or violence against a member;
- (iv) any other act that could be reasonably construed as a violation of the purpose of the Code.

(b) The decision whether to suspend a member shall be based upon the following:

- (i) the seriousness of the alleged act (immediate suspension is reserved for serious misconduct);
- (ii) the likelihood that the alleged act occurred and was committed by the member;
- (iii) any harm suffered by others as a result of the alleged act;
- (iv) the likelihood that further harm may occur to others if the member is not suspended immediately.

(c) A suspension need not be based upon information which would necessarily be admissible as evidence.

(d) This section shall apply to members and member applicants.

(e) The duration of any suspension shall be indefinite, until terminated by the Corporation or upon final decision by the BOR or a hearing panel.

(f) A suspension under this section shall have the same effect as a temporary cancellation or denial of membership. Any suspension of a member . . . shall be appealable to the [National Board of Review] . . .

(i) The review of a suspension by the [National Board of Review] shall be limited to consideration whether the suspension is based upon sufficient information to reasonably conclude that at least 3 of the 4 factors set forth in 22.10(b) 1-4 were properly applied in making the decision to suspend the member . . .

USA Diving contends that its interim suspension of █████ pending the Center's investigation and final resolution of sexual misconduct allegations against him pursuant to Article 22.10 of its bylaws "is in the best interest of all involved, justified under the national heightened scrutiny of athlete welfare measures and an authorized measure under [its] Bylaws and [the ASA]." (Respondent's Brief, p. 1). In support of its position, USA Diving contends that "Congressional oversight and public view demand the increased use of interim suspension measures in light of the outcry that NGBs are not doing enough." (Respondent's Brief, p. 10). It also cites a USA Gymnastics professional report recommending "err on the side of protecting the athlete in all situations" (Respondent's Brief, p. 10) and two pending federal class action tort suits against USA Diving alleging "albeit incorrectly, that not enough has been done to protect █████ female divers." (Respondent's Brief, p. 8). It contends that "the Center's Code strictly prohibits █████ request for a hearing on arbitration, as its rules clearly mandate that only the Center may investigate or hold a hearing on arbitration." (Respondent's Brief, p. 1). USA Diving asserts that the Arbitrator's determination of whether USA Diving's interim suspension of █████ for alleged sexual abuse without an arbitration hearing violates his procedural rights would necessarily require unauthorized arbitral review of the evidence regarding these allegations and the investigation thereof, which would conflict with the Center's exclusive jurisdiction. Rather than filing a Section 9 arbitration demand, USA Diving claims that █████ sole recourse is either to request that the Center order USA Diving to rescind his interim suspension because of its exclusive jurisdiction, or to bring an arbitration proceeding under the SafeSport Code.

USA Diving has a legal duty under federal law, specifically the "Protecting Young Victims From Sexual Abuse and Safe Sport Authorization Act of 2017," to implement and abide by the policies and procedures established by the Center to protect and safeguard its member athletes from "abuse, including emotional, physical, and sexual abuse in sports." 36 U.S.C. §220541(a) and (b) and §220524. As one means of complying with this duty, Part V of the SafeSport Code Practices and Procedures and Article 22.10 of its Bylaws authorizes USA Diving

to impose an interim suspension on an athlete who allegedly has sexually abused another athlete. In this case, USA Diving exercised this authority by immediately and effectively indefinitely suspending █████ membership and his participation in any sanctioned event or practice under its auspices pending the Center’s investigation and final resolution of sexual misconduct allegations against him.

█████ asserts that USA Diving’s interim and indefinite suspension without an arbitration hearing denies him the opportunity to participate in a protected competition for which he is otherwise eligible (i.e., 2018 USA Diving Winter Trials), which violates his procedural rights under the ASA and Section 9 of the USOC Bylaws. He also asserts that USA Diving imposed this interim and indefinite suspension without satisfying the requirements of Article 22.10 of its Bylaws, which suspension USA Diving contends is not subject to arbitral review.

The ASA requires the USOC to “establish and maintain provisions in its constitution and bylaws for the swift and equitable resolution of disputes involving any of its members [e.g., an NGB such as USA Diving] and relating to the opportunity of an amateur athlete . . . to participate in the Olympic Games, the Paralympic Games, the Pan-American Games, world championship competition, or other protected competition as defined in [its constitution and bylaws].” 36 U.S.C. §220509 (a). In accordance with this mandate, Section 9 of the USOC Bylaws creates a comprehensive and detailed procedure for resolving a dispute arising out of an NGB’s alleged denial of an athlete’s “opportunity to participate in . . . [a] protected competition as defined in Section 1.3 of these Bylaws.” Section 9.1. Pursuant to Section 9.7 of the USOC Bylaws, an athlete whose Section 9 Complaint is not resolved to his satisfaction “may file a claim with the AAA against the respondent [e.g., an NGB] for final and binding arbitration.” As a condition of being recognized by the USOC as the NGB for the sport of diving in the United States, the ASA requires USA Diving to agree “to submit to binding arbitration in any controversy involving . . . the opportunity of any amateur athlete . . . to participate in any amateur athletic competition [in diving], upon demand of . . . any aggrieved amateur athlete . . . conducted in accordance with the Commercial Rules of the [AAA].” 36 U.S.C. §220522 (a) (4).

Consistent with the requirements of the ASA and Section 9 of the USOC’s Bylaws applicable to NGBs that deny an amateur athlete the opportunity to participate in a protected competition, if the Center imposes an interim suspension on an athlete for alleged sexual misconduct pending its investigation and final resolution of these allegations (including any necessary adjudication), R-40 of the Supplementary *Rules* for U.S. Olympic and Paralympic SafeSport Arbitrations (“Supplementary *Rules* for SafeSport Arbitrations”) (Appendix B of the SafeSport Code), requires that the athlete be given the opportunity for an arbitration hearing:

R-40 Interim measures

If the Office [i.e., Center] seeks interim measures, it will offer an opportunity for a hearing. The following *Rules* govern interim measures hearings ...

e. Standard of review

To impose interim measures, the arbitrator must find based on the evidence presented, that: (i) the interim measure is appropriate based on the allegations and facts and circumstances of the case as they appear to the arbitrator; (ii) the interim measure is appropriate to maintain the safety or well-being of the Reporting Party, Athletes, or other Non- athlete Participants; or (iii) the allegations against the Responding Party are sufficiently serious that the Responding Party's continued participation in the sport could be detrimental to the reputation of sport.

f. Decision

The arbitrator may approve, reject, or modify the interim measures imposed or proposed by the Office. The arbitrator shall issue a decision regarding the Office's request for interim measures either orally at the conclusion of the interim measures hearing, with a written reasoned order to follow, or by a written reasoned decision issued within 24 hours of the close of the interim measures hearing. The decision shall be given no weight in the hearing of the case.

In contrast to the Center's Supplementary *Rules* for SafeSport Arbitrations, USA Diving's Bylaws do not clearly provide an athlete who has been immediately suspended for alleged sexual misconduct by USA Diving pending the Center's investigation and final resolution of these allegations with the right to a Section 9 arbitration hearing if its suspension prevents participation in a protected competition. The only potentially applicable provision in USA Diving's Bylaws submitted as evidence in this proceeding is Article 24.2:

Arbitrator's Discretion.

In the event a member has a right to demand arbitration under the Act and makes such demand in compliance with its terms and the regulations relating to arbitration and the Rules and regulations of the USOC, then to the extent permitted by law, an arbitrator may give whatever weight or authority to the decision of a Hearing Panel or Appeal Panel as the arbitrator deems appropriate; unless otherwise provided by applicable law, the Arbitrator shall adopt and use the Rules, Regulations and Bylaws of the Corporation (including any construction thereof made by the Hearing Panel or BOR), together with such other authorities as may be applicable in determining the issues presented; the filing fee for the appeal shall be paid initially by the Appellant, and all costs for the appeal shall be evenly divided between/among all parties to the appeal without regard to the party prevailing. All parties shall pay their own attorney's fees and costs except as provided herein. (emphasis added).

The Arbitrator determines that USA Diving's July 12, 2018 interim and indefinite suspension of ██████ (which was upheld by its National Board of Review's July 16, 2018 denial of his appeal and reaffirmed by its September 10, 2018 dismissal of his alleged violations of USA Diving's Code of Conduct based on his alleged alcohol usage) constitutes a denial of his opportunity to participate in its 2018 Winter Trials (and potentially other future protected competitions) pending the Center's investigation and final resolution of sexual misconduct allegations against him. This action by USA Diving is the underlying basis of ██████ Section 9 Complaint filed with the USOC under Section 9.2, which provides that an amateur athlete such as ██████ who alleges "he or she has been denied by [an NGB] an opportunity to participate as established by Section 9.1 . . . may seek to protect his or her opportunity to participate by filing a complaint with the [USOC]."

The sole issue that ██████ has asked the Arbitrator to resolve in this Section 9 proceeding is whether USA Diving's July 12, 2018 interim and effectively indefinite suspension of him without an arbitration hearing violates the ASA, USOC Bylaws, or USA Diving Bylaws. Because this suspension denies ██████ the opportunity to participate in a protected competition, the Arbitrator determines that his procedural right to arbitration under the ASA and Section 9 of the USOC Bylaws is violated.⁴ For the same reason, it appears Article 24.2 of the USA Diving Bylaws also may provide ██████ with a procedural right to Section 9 arbitration to challenge his suspension (which USA Diving denies), but it is unnecessary for the Arbitrator to resolve this issue because of his determination that ██████ procedural right to arbitration under the ASA and Section 9 of the USOC Bylaws clearly has been violated.

Contrary to USA Diving's contention, any future Section 9 arbitral determination of the narrow issue of whether ██████ suspension complies with the substantive requirements of Article 22.10 of the USA Diving Bylaws for imposing an immediate suspension on him does not contravene the Center's exclusive jurisdiction to investigate, resolve, and adjudicate the merits of his alleged sexual misconduct. As the Center's counsel stated in an August 3, 2018 email to USA Diving regarding its imposition of an interim suspension on a member pending the Center's investigation of an alleged SafeSport violation: "USA Diving took interim action based on the severity of the allegations and should utilize its own policies and procedures in addressing a

⁴ This ruling does not preclude an NGB, USOC, or Local Affiliated Organization (as defined by Section II, L of the SafeSport Code) from taking appropriate interim measures upon notice of an imminent threat of harm, including immediately removing an athlete or other Covered Individual (as defined by Section II, E of the SafeSport Code) from an athletic event, (including a protected competition), practice, or other event under its auspices pursuant to Part V of the SafeSport Code Practices and Procedures. Such an emergency situation constitutes circumstances very different from the facts of this case.

member's challenging of that interim action. The Center will proceed with its investigative process and inform USA Diving once a decision has been rendered." (Respondent's Brief at p. 9). The Arbitrator rejects USA Diving's assertion that Section 9 arbitral determination of this issue would necessarily require unauthorized review of the evidence regarding these allegations uncovered by the Center's investigation. As the Center's counsel also stated in the foregoing email, "Importantly, federal law also requires that the U.S. Center for SafeSport, as an independent entity with exclusive jurisdiction over certain types of alleged misconduct, must keep its response and resolution process confidential. Accordingly, while the Center may—and has—shared with USA Diving the general nature of the allegations involving one or more of its members, the Center is unable to share any information it obtains through its investigations." The Arbitrator notes (but is not asked to resolve in this proceeding) the conundrum created by the current language of Article 22.10 (b), which requires USA Diving's decision to immediately suspend a member for "any violation of Safe Sport requirements" to be based on consideration of four factors (including "the likelihood that the alleged act occurred and was committed by the member," which necessarily requires specific facts constituting confidential information the Center will not share and USA Diving is prohibited from determining in its own investigation).

Rather than filing a Section 9 arbitration demand, USA Diving asserts that ██████ sole recourse is either to request that the Center order USA Diving to rescind his interim suspension because of its exclusive jurisdiction, or to bring an arbitration proceeding under the SafeSport Code pursuant to its Supplementary Rules for SafeSport Arbitrations. Regarding the first contention, there is no record evidence that it would be an effective and timely means of ensuring that ██████ is not denied an opportunity to participate in protected competitions in the sport of diving for which he is otherwise eligible to compete. Regarding the second contention, the R-40 of the Supplementary Rules for SafeSport Arbitrations provides only for arbitration to challenge the Center's interim suspension of an athlete pending its investigation and final resolution of alleged conduct that violates the SafeSport Code (e.g., sexual abuse), not arbitration of an NGB's interim suspension of an athlete for such alleged misconduct.

To protect and safeguard its member athletes from sexual abuse, USA Diving may establish appropriate and reasonable conditions regarding ██████ participation in practices and competitions under its auspices (e.g., chaperoning and/or contact limitations between ██████ and the victim of his alleged sexual misconduct as well as other female divers), but the ASA and Section 9 of the USOC Bylaws prohibit USA Diving from denying him the opportunity to participate in a protected competition without Section 9 arbitral review of his interim and effectively indefinite suspension. Notwithstanding the resolution of this Section 9 arbitration proceeding, the Center has valid authority to impose an interim suspension on ██████ pursuant to Part V of the SafeSport Code Practices and Procedures, which would be subject to arbitral review in accordance with R-40 of the Supplementary *Rules* for SafeSport Arbitrations.

DECISION AND AWARD

Based on the foregoing undisputed material facts and legal analysis, the Arbitrator decides and awards as follows:

The Arbitrator has jurisdiction to resolve this dispute and to grant [REDACTED] requested relief.

USA Diving, Inc.'s July 12, 2018 immediate and effectively indefinite suspension of [REDACTED] is vacated because it denies him the opportunity to participate in a "protected

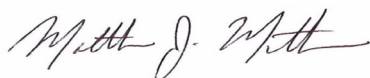
competition” under Section 1.3 (w) of the USOC Bylaws without providing him an arbitration hearing as required by the Ted Stevens Olympic and Amateur Sports Act and Section 9 of the USOC Bylaws.

If he is otherwise eligible to participate, USA Diving is ordered not to deny [REDACTED] the opportunity to compete in its 2018 Winter Trials to be held on December 16-21, 2018 or any other future protected competitions until he is afforded an arbitration hearing pursuant to Section 9 of the USOC Bylaws and a valid arbitration award is rendered permitting USA Diving to impose an interim suspension precluding his participation in events and practices under its auspices pending completion of the U.S. Center for SafeSport’s investigation and final resolution of his alleged sexual misconduct that violates the SafeSport Code.

In accordance with USA Diving Bylaw 24-2, which provides that all arbitration costs “shall be evenly divided between/among all parties . . . without regard to the party prevailing [and] [a]ll parties shall bear its own attorney’s fees and costs,” the administrative fees of the American Arbitration Association totaling \$1,000.00 and the compensation of the arbitrator totaling \$2, 000.00 shall be borne equally by the parties and each party shall bear its own attorney’s fees and costs associated with this arbitration. Therefore, USA Diving has to pay [REDACTED], the amount of \$500.00 for administrative fees incurred.

This Award fully resolves all claims and defenses submitted by the parties to this Arbitration, but it does not consider or resolve the merits of the allegations of sexual misconduct by [REDACTED] that currently are being investigated and will be finally resolved by the U.S. Center for SafeSport pursuant to its exclusive jurisdiction under the Ted Stevens Olympic and Amateur Sports Act and SafeSport Code for the U.S. Olympic and Paralympic Movement. All claims and defenses not expressly granted herein are hereby denied.

November 30, 2018



Matthew J. Mitten, Arbitrator