

**AMERICAN ARBITRATION ASSOCIATION  
Commercial Arbitration Tribunal**

---

**ALEN HADZIC**

v.

**UNITED STATES FENCING ASSOCIATION**

§  
§  
§  
§  
§

**AAA Case No. 01-21-0017-0527**

---

**FINAL ARBITRATION AWARD**

---

I, the undersigned arbitrator (“**Arbitrator**”), having been duly sworn, and having duly heard the proofs and allegations, and considering any and all evidence provided by Alen Hadzic (“**Hadzic**” or “**Claimant**”) and the United States Fencing Association (“**USFA**”) (individually “**Party**” or collectively the “**Parties**”) hereby finds, concludes, determines, and awards as follows:

**I. Procedural History**

On October 25, 2021, Claimant submitted his *Commercial Arbitration Rules Demand for Arbitration* and *Section 9 of USOPC Bylaws Complaint Form*.

On October 25, 2021, the Arbitrator was appointed to serve as the arbitrator in this proceeding.

On October 25, 2021, the Parties exchanged emails and agreed upon the date and time of hearing. The Parties agreed to conduct the evidentiary hearing on October 26, 2021 beginning at 12:00 p.m. CT.

On October 26, 2021 at 10:25 a.m. CT, AAA issued the *Notice of Hearing* confirming the evidentiary hearing to be held on October 26, 2021 beginning at 12:00 p.m. CT.

The final hearing was held via Zoom conference on October 26, 2021 commencing at 12:00 p.m. CT and concluding at 12:59 p.m. CT. During the hearing, Claimant appeared by and through his counsel, Michael Palma of the Palma & Prince, P.A., and USFA appeared by and through its counsel, Stephen Hess of Sherman & Howard, L.L.C. and representatives Kris Ekeren, Kate Reisinger, and Donald Alperstein. In addition to the Parties and counsel, the following individuals attended the telephonic hearing: Kacie Wallace (USOPC Office of the Ombudsman) and Sara Pflipsen (USOPC Senior Counsel, Dispute Resolution and Athlete Affairs). At the conclusion of the hearing, the Parties confirmed they were provided a full and fair opportunity to submit and argue necessary facts, allegations, legal arguments, evidence, and present all witnesses they deemed appropriate. During and at the conclusion of the hearing, no party or counsel filed an objection or indicated additional time was necessary to fully and fairly present this matter for consideration. Following the conclusion of the evidentiary hearing, on October 26, 2021 at 1:26 p.m., Mr. Palma, on behalf of Claimant, submitted an email setting forth

additional argument. The Arbitrator received and considered the information submitted in such email.

## **II. Evidence Submitted by the Parties**

The Parties submitted the exhibits and called witnesses as set forth below. All such exhibits were admitted into evidence.

### *A. Claimant*

Claimant submitted exhibits labeled C-1-C-5 and such exhibits included the following:

*Exhibit C-1:* USA Today Article, *US Fencer Accused of Sexual Misconduct Unhappy with Treatment at Tokyo Olympics* (July 21, 2021)

*Exhibit C-2:* *Order on Interim Measures Arbitration*, JAMS Case No. 1501000310 (June 28, 2021)

*Exhibit C-3:* Various email correspondence between Claimant (and his counsel) and representatives of USFA (between Oct. 12, 2021 and Oct. 19, 2021)

*Exhibit C-4:* Emails between Mr. Hess and Mr. Palma (between Oct. 20, 2021 and October 21, 2021)

*Exhibit C-5:* USA Today Article, *USA Fencing Blocking Alen Hadzic from Entering Events 'for the Foreseeable Future'* (Oct. 20, 2021)

Claimant did not call any witnesses.

### *B. USFA*

USFA submitted exhibits labeled R-1 – R-8<sup>1</sup> and such exhibits included the following:

*Exhibit R-1:* Bylaws of the United States Paralympic Committee, effective March 11, 2021

*Exhibit R-2:* Bylaws of the United States Fencing Association, Amended and Restated, effective August 31, 2021

*Exhibit R-3:* European Fencing Confederation Administrative Rules

*Exhibit R-4:* European Fencing Confederation Handbook of Regulations, effective November 2019

*Exhibit R-5:* European Fencing Confederation Rules of EFC Cadets Circuit Competitions, effective June 2019

---

<sup>1</sup> The exhibits presented by USFA were not numbered. The Arbitrator numbered the exhibits for ease of reference.

*Exhibit R-6:* European Fencing Confederation Rules of EFC U23 Circuit Competitions, effective June 2019

*Exhibit R-7:* 2022 Senior Men’s Epee Pan American Zonas & 2022 Senior Men’s Epee World Championships Selection Procedures, posted September 29, 2021

*Exhibit R-8:* 2021/2022 International Calendar: Men’s Epee 10/15/2021

USFA called the following witness at the final hearing who was sworn in and provided testimony under oath:

1. Kate Reisinger

### III. Jurisdiction

An arbitrator has jurisdiction over disputes if the dispute is protected under the Ted Stevens Olympic and Amateur Sports Act (“**Act**”), 36 U.S.C. § 220501, *et seq.*, and the controversy involves the opportunity to participate in national and international competition representing the United States. Section § 220522(a)(4) of the Act states:

An amateur sports organization, a high-performance management organization, or a paralympic sports organization is eligible to be certified, or to continue to be certified, as a national governing body only if it . . . agrees to submit to binding arbitration in any controversy involving . . . the opportunity of any amateur athlete . . . to participate in amateur athletic competition, upon demand of . . . any aggrieved amateur athlete . . . , which arbitration under this paragraph shall be conducted in accordance with the standard commercial arbitration rules of an established major national provider of arbitration and mediation services based in the United States and designated by the corporation with the concurrence of the Athletes' Advisory Council and the National Governing Bodies' Council, as modified and provided for in the corporation's constitution and bylaws, except that if the Athletes' Advisory Council and National Governing Bodies' Council do not concur on any modifications to such Rules, and if the corporation's executive committee is not able to facilitate such concurrence, the standard commercial rules of arbitration of such designated provider shall apply unless at least two-thirds of the corporation's board of directors approves modifications to such Rules. . . .

Additionally, Section § 220522(a)(8) of the Act states that a national governing body (“**NGB**”) must:

[P]rovide[ ] an equal opportunity to amateur athletes, coaches, trainers, managers, administrators, and officials to participate in amateur athletic competition, without discrimination on the basis of race, color, religion, sex, age, or national origin, and with fair notice and opportunity for a hearing to any amateur athlete, coach, trainer, manager, administrator, or official before declaring the individual ineligible to participate. . . .

Section 9.1 of the USOPC (“**USOPC**”) Bylaws provides as follows:

No member of the corporation may deny or threaten to deny any amateur athlete the opportunity to participate in a Protected Competition nor may any member, subsequent to such competition, censure, or otherwise penalize, (i) any such athlete who participates in such competition, or (ii) any organization that the athlete represents. The corporation will, by all reasonable means, protect the opportunity of an amateur athlete to participate if selected (or to attempt to qualify for selection to participate) as an athlete representing the United States in any of the aforesaid competitions. In determining reasonable means to protect an athlete's opportunity to participate, the corporation will consider its responsibilities to the individual athlete(s) involved or affected, to its mission, and to its membership.

Under USOPC Bylaws Section 1.3(x), "Protected Competition" means:

- i. any Delegation Event<sup>2</sup> as defined by these Bylaws
- ii. any international competition between athlete(s) officially designated by the appropriate NGB as representing the United States, either individually or as part of a team, and any athlete(s) representing any foreign country where
  1. the terms of such competition require that the entrants be individuals or teams representing their respective nations; and
  2. the athlete(s) representing the United States are organized and sponsored by the appropriate NGB in accordance with a defined selection or tryout procedure that is open to all and publicly announced in advance except for domestic amateur athletic competition, which, by its terms, requires that entrants be expressly restricted to members of a specific class of athletes such as those referred to in Section 220526(a) of the Act (i.e., high school students, college students, members of the Armed Forces, or similar groups or categories);
- iii. any domestic competition or event (i.e., a camp, tryout, or trials event) organized and conducted by an NGB or PSO in its selection procedure and publicly announced in advance as a competition or event directly qualifying each successful competitor as an athlete representing the United States in a Delegation Event or protected international competition as defined in ii. above.

USOPC Bylaws Section 9.7 provides that, "[i]f the complaint [under Section 9.1] is not settled to the athlete's satisfaction the athlete may file a claim with the arbitral organization designated by the corporation Board against the respondent for final and binding arbitration." Under both Sections 9.7 and 9.9 of the USOPC Bylaws, the arbitration proceeding may be expedited.

#### **IV. Discussion and Analysis**

<sup>2</sup> A "Delegated Event" is defined in Section 1.03(l) of the USOPC Bylaws as "the Olympic Games, the Olympic Winter Games, the Paralympic Games, the Paralympic Winter Games, the Pan American Games, and the Parapan Am Games."

The undersigned has considered all the facts, allegations, arguments, testimony, and evidence submitted by the Parties in the present proceeding. In drafting and explaining the *Arbitration Award*, the arbitrator refers in this *Arbitration Award* only to the submissions and evidence considered necessary to explain the reasoning in this decision. After considering all evidence submitted, based on the preponderance of the evidence, the undersigned makes the following findings:

USFA is the NGB for fencing in the United States and is recognized as such by the USOPC and Federation International d'Escrime ("**FIE**"). Claimant is a fencing athlete who served as an alternate for the United States Olympic Team competing at the 2020 Olympic Games held in Tokyo, Japan. Claimant filed this arbitration under Section 9 of the USOPC Bylaws and, specifically, requested in the *Section 9 Complaint Form* to be "[a]dmi[tted] into [the] upcoming Colmar event" (*i.e.*, the U23 European Circuit event to be held in Colmar, France). Claimant argued that USFA is acting as the "gatekeeper" and refusing to permit him to compete solely because he is involved in an "ongoing SafeSport investigation". Claimant further argued that he is being sanctioned by USFA in violation of the *SafeSport Code for the U.S. Olympic and Paralympic Movement*.

Claimant and USFA acknowledge and agree that Claimant is currently being investigated by the U.S. Center for SafeSport ("**SafeSport**"). SafeSport sought to impose Temporary Measures on Claimant consisting of a "No Contact Directive" and "Temporary Suspension" in accordance with Article XII of the *SafeSport Code for the U.S. Olympic and Paralympic Movement*, effective April 1, 2021 ("**Code**"). *See Code* at art. XII (eff. Apr. 1, 2021). In accordance with R-40 of the *Code*, Claimant exercised his right to challenge the Temporary Measures implemented by SafeSport. *Code* at art. XIV, R-40 (eff. Apr. 1, 2021). Following a hearing, on June 28, 2021, the Temporary Measures Arbitrator ruled, in pertinent part, as follows:

[REDACTED]

[REDACTED]

[REDACTED]

*See Exhibit C-2.* Claimant correctly notes that Section V(D) of the *Code* prohibits "a suspension or other restriction that may deny or threaten to deny a Respondent's opportunity to participate in sport." *Code* at § V(D) (eff. Apr. 1, 2021). Section V(D) of the *Code* states as follows:

The Center will issue a Notice of Exercise of Jurisdiction to the USPOC, NGB, or LAO when the Center determines it has jurisdiction over an allegation of Prohibited Conduct. When the Center expressly exercises jurisdiction over particular allegations regarding a particular Participant, the relevant organization(s) cannot issue—in response to those allegations—a suspension or other restriction that may deny or threaten to deny a Respondent’s opportunity to participate in sport. The relevant organization may implement any necessary safety plan(s) or temporary measure(s).<sup>3</sup>

*Id.* Claimant indicated that USFA has violated this provision and pointed to the following quote from an article that appeared in the USA Today: “USA Fencing does not intend to enter Mr. Hadzic in any competitions for the foreseeable future.” *See Exhibit C-5.*

USFA acknowledges that USFA is not entitled to suspend or restrict Claimant from participation for matters that fall within the jurisdiction of the SafeSport. However, USFA argued that the Arbitrator does not have jurisdiction to hear this dispute, because the U23 European Circuit event to be held in Colmar, France (“**Colmar Competition**”) is not a “Protected Competition” as defined by Section 1.3(x) of the USOPC Bylaws. Section 9.1 of the USOPC Bylaws provides that USFA may not “deny or threaten to deny any amateur athlete the opportunity to participate in a **Protected Competition**....” The relevant provisions of Section 1.3(x) of the USOPC Bylaws require an international competition where 1) “the terms of such competition require that the entrants be individuals or teams representing their respective nations;” **and** 2) USFA issued a “defined selection or tryout procedure that is open to all and publicly announced in advance....” The Parties appear to agree that, if registered, Claimant would be representing the United States in the Colmar Competition. USFA argued, however, there was no “defined selection or tryout procedure” and no there was no procedure to publicly post. Kate Reisinger, the Director of Sports Performance for USFA, testified she oversees the USFA national team and selection of athletes to represent the United States in competition. Ms. Reisinger testified that no selection criteria or tryout procedure was created for the Colmar Competition and, further, the Colmar Competition does not qualify as a “Protected Competition” nor does it provide a pathway for qualification for “Protected Competition”. Based on the evidence submitted and the testimony elicited at the hearing, the Colmar Competition does not qualify as a “Protected Competition” and, thus, the Arbitrator does not have jurisdiction to hear this aspect of the Section 9 Complaint filed by Claimant nor does the Arbitrator have jurisdiction to order USFA to register Claimant for the Colmar Competition. *See Crowell v. United States Equestrian Federation*, AAA Case No. 77-190-E-00193-09-JENF at pp. 5-10 (May 3, 2009 (analyzing whether an event constitutes a “Protected Competition”).

Although Claimant’s *Section 9 Complaint Form* requests only “admission into [the] upcoming [Colmar Competition]” as his remedy, in Claimant’s briefing, Claimant requested additional relief and requested, in pertinent part, as follows:

43. For the reasons provided, Mr. Hadzic respectfully respects [sic] that the Arbitrator remove the open restrictions USA Fencing has imposed on him and compel USA Fencing

---

<sup>3</sup> *Hadzic v. United States Fencing Assn.*, AAA Case No. 01-21-0004-8169 at pp. 1-2 (July 21, 2021)(concluding that Claimant failed to prove by the preponderance of the evidence that the “Safety Plan” put in place by USFA denied him the opportunity to compete in the 2020 Olympic Games held in Tokyo, Japan).

to register Mr. Hadzic to the upcoming Colmar competition. Additionally, it requests that the Arbitrator provide USA Fencing with a reprimand in how it is treating Mr. Hadzic, especially since USA Fencing has openly and shamelessly stated to the public that it will not promote or protect Mr. Hadzic's right as a member of the USOPC and therein USA Fencing.

44. Mr. Hadzic also requests that the Arbitrator not allow USA Fencing to continue restricting Mr. Hadzic's ability to participate in the sport regarding future events – a position USA Fencing has openly and publicly taken against Mr. Hadzic.

*See Cl. Sect. 9 Compl. & Request for Expedited Procs.* at p. 15. Arguably, Claimant is seeking relief pertaining to future competitions that could constitute “Protected Competition” as defined by Section 1.3(x) of the USOPC Bylaws. Claimant has registered to compete in a senior men's epee event (“**Byrn Event**”), which the Parties agree constitutes a “Protected Competition”. Ms. Reisinger testified that USFA has published selection procedures setting forth the criteria for selection for the team representing the United States at the Byrn Event. *See Exhibit R-7*. In accordance with the terms of the selection procedures, athletes are to register for the Byrn Event no later than November 1, 2021, which Claimant has done, and USFA will select the team on November 2, 2021. Ms. Reisinger testified that the last day for USFA to provide its selected members to the represent the United States in the Byrn Event is November 17, 2021 for the competition to begin on November 19, 2021. At this point, according to Ms. Reisinger's testimony, USFA has not made any selections for the team representing the United States at the Byrn Event and will not do so until November 2, 2021. Ms. Reisinger further testified that Claimant is eligible to participate and compete at the Byrn Event as long as he meets and complies with the selection criteria and is not otherwise sanctioned including by SafeSport or for a doping violation. Conversely, Claimant pointed to comments attributed to USFA that were posted in the above-referenced USA Today article as proof that USFA will deny Claimant entry into the Byrn Event. Ms. Reisinger, however, testified under oath that USFA has not made selections for the the team representing the United States at the Byrn Event and has not “den[ied] or threaten[ed] to deny” Claimant an opportunity to be selected and participate in the Byrn Event. Accordingly, this dispute is not yet ripe for the Arbitrator's review. *Lemmons v. United States Equestrian Fed.*, AAA Case No. 01-19-0000-5250 at pp. 5-6 (Mar. 4, 2019).

## **V. Decision**

Based on the foregoing findings and analysis, the undersigned decides and awards as follows:

- The Arbitrator finds that he lacks jurisdiction as the Colmar Competition, because the Colmar Competition is not a “Protected Competition” as defined by Section 1.3(x) of the USOPC Bylaws and, thus, is not a properly presented dispute under Section 9 of the USOPC Bylaws.
- The Arbitrator finds that he lacks jurisdiction as to the Byrn Event, because USFA has not “den[ied] or threaten[ed] to deny” Claimant the opportunity to be selected and participate in the Byrn Event and, thus, such determination is not yet ripe for the Arbitrator's review.

- The Parties shall bear their own attorneys' fees and costs associated with this arbitration.
- The administrative fees and arbitrator compensation for AAA are to be borne as incurred.
- This award is in full settlement of all claims submitted in this arbitration. All claims not expressly granted herein are hereby denied.



Christian Dennie, FCI Arb  
Arbitrator

Date October 26, 2021