

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between

AAA Case Number: 01-17-0001-1733

Peter Lopez, Claimant

and

USA Taekwondo, Inc, Respondent.

AWARD AND REASONED DECISION OF ARBITRATOR

Pursuant to the Commercial Arbitration Rules of the American Arbitration Association (“AAA”), and Section 9 of the United States Olympic Committee (“USOC”) Bylaws, a lengthy evidentiary hearing was held in the above-captioned matter, by telephone, on July 28, 2017 before the sole arbitrator John T. Wendt (the “Panel” or the “Arbitrator” or “I”), who was empowered by the parties to determine the issues raised herein *de novo* and to consider the alleged infraction and the full range of penalties anew. After fully considering and based on the parties’ arguments, including pre- and post-hearing briefing and full evidentiary hearing submissions, the Arbitrator renders the final reasoned award herein as follows:

1.0 THE PARTIES AND FACTUAL SUMMARY

1.1 Respondent, USA Taekwondo, Inc. (“USAT”), is the United States Olympic Committee (“USOC”) recognized National Governing Body (“NGB”) for the sport of Taekwondo. USA Taekwondo was represented by Messrs. Richard F. Bednarski, Esq. and Stephen A. Hess, Esq. both of Sherman & Howard, Colorado Springs, Colorado.

1.2 Claimant Peter Lopez is an accomplished athlete and coach in the sport of Taekwondo for both the United States of America and the country of Peru. Mr. Lopez was represented by Mr. George R. Weissfish, Esq. of Pasadena, Texas.

1.3 A Hearing Panel of USAT's Ethics and Judicial Committee held an evidentiary hearing on January 15, 2016. The Hearing Panel issued a "Complaint and Hearing Report" on February 18, 2016 and found that Claimant was a USAT member and was subject to the ethical laws and standards imposed on all members regardless whether such activities take place during an event or within the boundaries of the United States.

1.4 The Hearing Panel found that Lopez did engage in non-consensual and uninvited sexual advances and misconduct toward the victim, [REDACTED], that he violated several provisions of USAT's Code of Ethics.

1.5 Specifically, the Hearing Panel found that the Claimant entered the victim's room without invitation or permission and unlikely for the purpose of retrieving a wallet and/or key; undressed and attempted to sexually advance himself upon the victim. The Hearing Panel did take into consideration that the testimony of the victim and the Claimant that the Claimant stopped the advance when told to do so and that the Claimant does not have a prior history of inappropriate sexual advances to the knowledge of the Panel. The Panel further found that Respondent's judgment may have been impaired as a result of alcohol, but that such impairment did not excuse the conduct and, in and of itself to be contrary to the expected standards for a coach/member of the USA Taekwondo.

1.6 The Panel found that such conduct is in violation of the USAT Code of Ethics and Sexual Harassment Policy and is inconsistent with the aims of the organization and the sport. Specifically, the Panel found that Respondent's conduct was contrary to USAT Coaching Ethics Code Section 1.11, 1.09, Section 3.08. The Panel further found that Respondent's conduct was in violation of USA Taekwondo Code of Ethics Sections 1.0 and the 4.0. The Panel further found that the conduct was in violation of USA Taekwondo Sexual Harassment Policy as well as being inconsistent with the World Taekwondo Federation Code of Ethics and the USA Taekwondo Sports Strategy, Policy and Procedures.

1.7 The Hearing Panel unanimously recommended that Peter Lopez' membership/status with USA Taekwondo be revoked provided, however, that Claimant Lopez be permitted to petition the Board of Directors after a period of five (5) years from the date of revocation for membership, and provided that Claimant at that time can satisfactorily

demonstrate to the Board that he is not suffering from an alcohol/substance abuse condition and/or has satisfactorily completed a generally recognized program of treatment for same; and provided Claimant can satisfactorily demonstrate to the Board that he does not present sexual predatory or unethical personality/character traits and/or that he has satisfactorily completed a generally recognized course of treatment and/or program same; and provided that Claimant had not been found to have committed any additional ethical violations; and provided that Claimant can demonstrate by convincing evidence and/or support that inappropriate sexual conduct will not be repeated.

1.8 Claimant filed the instant Section 9 on the basis that the suspension impermissibly denies him a right to participate in protected competitions.

2.0 JURISDICTION

2.1 As discussed more fully below, this arbitrator has jurisdiction over this dispute pursuant to the Ted Stevens Olympic and Amateur Sports Act ("Act") 36 U.S.C. §220501, et seq., because this is a controversy involving Claimant's opportunity to participate in national and international competition representing the United States. The Act states that:

An amateur sports organization is eligible to be recognized, or to continue to be recognized, 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..., conducted in accordance with the Commercial Rules of the American Arbitration Association, as modified and provided for in the corporation's constitution and bylaws. . .

2.2 The Act also provides that a NGB must:

provide[] 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.

2.3 Section 9.1 of the USOC Bylaws provides as follows:

No member of the corporation may deny or threaten to deny any amateur athlete the opportunity to participate in the Olympic Games, the Pan American Games,

the Paralympic Games, a World Championship competition, or other such protected competition as defined in Section 1.3 of these Bylaws 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...

2.4 Under USOC Bylaws Section 1.3(u), "protected competition" means:

1) Any amateur athletic competition between any athlete or athletes officially designated by the appropriate NGB or PSO as representing the United States, either individually or as part of a team, and any athlete or athletes representing any foreign country where (i) the terms of such competition require that the entrants be teams or individuals representing their respective nations and (ii) the athlete or group of athletes representing the United States are organized and sponsored by the appropriate NGB or PSO 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 or amateur athletes such as those referred to in Section 220526(a) of the Act; and

2) any domestic amateur athletic competition or event organized and conducted by an NGB [*sic*] 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 protected competition as defined in 1) above.

2.5 USOC Bylaws Section 9.7 provides that, "If the complaint [under Section 9.1] is not settled to the athlete's satisfaction the athlete may file a claim with the AAA against the respondent for final and binding arbitration."

3.0 STANDARD OF REVIEW/BURDEN OF PROOF

3.1 The applicable standard of review in Section 9 cases is, and long has been, de novo. E.g., *Nadmichettu v. United States Table Tennis Association*, AAA Case No. 77-190-169-10 JENF (April 23, 2010), *Merson v. USA Triathlon*, AAA O1 14 0001 6464 (May 28, 2015), and *Lopez v. USA Taekwondo*, AAA O1 15 0003 4488 (Jun. 15, 2015). Section 9 proceedings are not appeals of NGB decisions and there is no requirement for an arbitrator in

these proceedings to give deference to any prior decision and in fact it would be incorrect to do so.

3.2 The burden of proof is not as clearly defined in the USOC Bylaws or the Act, or prior cases. However, the Arbitrator decides to follow *Nadmichettu v. United States Table Tennis Association*, AAA 77 190 169 10 (Apr. 23, 2010), and its progeny, where the arbitrator decided that the NGB “bears the burden of proof to demonstrate by at least a preponderance of the evidence that the rule in question, or the NGB’s application of the rule in question to the facts at hand, was reasonable and not for any improper purpose.” This is also seen in *Lopez v. USA Taekwondo*, AAA 01 15 0003 4488 (Jun. 15, 2015) where the arbitrator found that the National Governing Body “bears the burden of proof by a preponderance of the evidence to establish its charged violations...of the Code of Conduct.” This case will not deviate from these well-established principles.

4.0 ANALYSIS

The arbitrator has determined the following:

4.1 The Claimant’s first argument is that a National Governing Body cannot remove one’s membership. As support Claimant cites only one case, *Lopez v. USA Taekwondo*, AAA 01 15 0003 4488 (Jun. 15, 2015) (Jeffrey G. Benz, Arb.), where the arbitrator reduced the sanction from a suspension to a public reprimand and probation. However, even in that particular case one of the conditions of the probation was that,

If, during the Probationary Period, Jean Lopez violates the relevant rules and regulations, in addition to any other penalty he may receive, *he shall be suspended from membership* in USA Taekwondo, Inc....(Emphasis added).

The question in *Lopez* was not about the ability of the NGB to sanction a coach or athlete with suspension, but rather whether the suspension in that case was appropriate.

4.2 Claimant also argued that under Section 9 that USA Taekwondo does not have the authority “to take away someone’s membership, and with that the right to coach and to compete, because once they do that they’re interfering with federal law, the Ted Stevens act, and the USOC constitution and bylaws.” Again, *Lopez* dealt with the disciplinary application of internal ethics procedures in a manner that resulted in a suspension of a coach for a period of

time. As stated in *Lopez*, Claimant's argument, "(W)ould mean that USAT and any NGB would be virtually powerless to discipline misbehavior... This simply cannot be an outcome intended by the TSOASA or the USOC Bylaws."

4.3 In addition, there are several cases in which an athlete/coach has been suspended including, *Parker v. National Archery Assn.*, AAA 30 190 00162 00 (Jul. 27, 2000) (Edwin S. Kahn, Arb.) where the athlete was suspended resulting in loss to compete at 2000 Games, and *Meloon v. USA Taekwondo, Inc.*, AAA 30 190 E 00199 07 (May 25, 2007) (Lawrence A. Saichek, Arb.) where the arbitrator found that USAT was justified in suspending and athlete denying them the opportunity to participate in the 2007 World Championships.

4.4 This is not a new or novel issue. For example, in the now more than 20 year old case of *Tonya Harding v. US Figure Skating Association*, the US Figure Skating Association banned her for life from the sport (albeit without there being any appeal) for actions that were criminal in nature directed to a fellow competitor. (See "Harding Stripped of Title; Banned for Life," Christine Brennan, Washington Post, July 1, 1994).

4.5 In fact, the entire anti-doping regime, overseen in the US by USADA and implemented in 2001, under the WADA umbrella, and the SafeSport regime in the US, enacted by the USOC and enforced by the US Center for SafeSport, is based on the premise that in the US NGBs, as private associations, can sanction their members for misconduct and those sanctions can and will have an effect on the sanctioned member's rights to participate in protected competitions and other activities in their sport. This is a fundamental principle of the Olympic *lex sportiva* in this country and abroad.

4.6 In addition, as a member of USAT, Claimant Lopez agreed to be bound by the USAT Code of Ethics which states that, "Any member or prospective member of USAT may be denied membership, censured, placed on probation, suspended for a definite or indefinite period of time with or without terms of probation, fined or expelled from USAT if such member violates the provisions of the USAT Code of Ethics or aids, abets or encourages another person to violate any of the provisions of the USAT Code of Ethics." As stated in *Meloon v USA Taekwondo*, "being an USAT team member is a privilege not a right."

4.7 Claimant argued that the Code of Ethics does not apply because [REDACTED] was not at the time or any time Peter Lopez's athlete, that the event had ended, and that he was at the event as a member of Team Peru. However, this is too narrow a reading. Despite being a

member of Team Peru, at the time, Lopez was still a member of USAT. *Mitchell Whitmore v. International Skating Union (ISU)* (CAS 2016/A/4558) dealt with the question of how broad the scope of application of an international federation's Code of Ethics is in respect of time and location, including only during and/or at the federation's events. The Panel in *Whitmore* found that the Code "should not be given a narrow interpretation, which would render it entirely ineffective... The intention of the...Code of Ethics, in fact, is to ensure that the persons subjected to its provisions do not bring the sport...into disrepute" (*Whitmore* at ¶ 62). The Panel in *Whitmore* found that a Code of Ethics may extend to behavior not only during participation during a federation activity, but also beyond to behavior that is not related to federation activity, such as possession of illegal drugs, causing damage to persons or property, or engaging in illegal activity. This is "despite the fact that such behaviour (sic) and infringements would normally not be seen during sports events, but rather in an athlete's private life." (*Whitmore* at ¶ 58). The Arbitrator finds *Whitmore* persuasive and that Claimant had a responsibility to abide by the USAT Code of Ethics at all times, not just when it suited him. This very same principle applies to lawyers and other professionals practicing in different jurisdictions; they are bound by the rules of all jurisdictions to which they are admitted at the time of their conduct.

4.8 Mr. Lopez presented no persuasive evidence that the USAT Hearing Panel overstepped its bounds, acted improperly or with ill will, fraud, or malice toward Mr. Lopez, or that the sanction imposed somehow exceeded their authority or was otherwise unreasonable. Accordingly, this Arbitrator declines to find that the mere fact that an incidental effect of Mr. Lopez' underlying misconduct and the hearing relating to it, is that he will be suspended from participation in USAT activities, including as an athlete or a coach, is not sufficient to trump the right to participate in protected competitions as set forth in the USOC Bylaws.

4.9 The conduct alleged, and ultimately established before the USAT Hearing Panel, is serious and there is no place for sexual misconduct or the abuse of relative power positions in sport. There was no disagreement on these underlying facts here and the right to compete offers no safe haven from having to follow the rules on how to treat others engaged in the sporting endeavor.

5.0 DECISION AND AWARD

On the basis of the foregoing facts and legal aspects, this arbitrator renders the following decision:

- 5.1 Claimant has violated USA Taekwondo's Code of Conduct by
- a. Improperly obtaining a key for [REDACTED] room from the front desk;
 - b. Using that key to enter the room without [REDACTED] permission;
 - c. Without permission or consent, getting naked and in bed with [REDACTED];
 - d. Without permission and consent, making unwanted sexual advances toward [REDACTED];
 - e. Without permission or consent, sexually touching [REDACTED]; and
 - f. Without permission or consent, attempting to have non-consensual sex with [REDACTED].

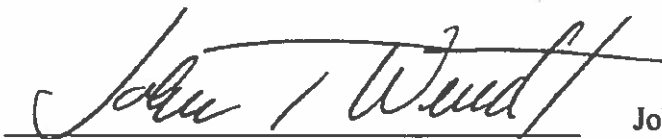
5.2 While the Claimant's judgment may have been impaired as a result of alcohol, such impairment does not excuse the conduct and is, in and of itself, contrary to the expected standards for a coach/member of USA Taekwondo at a competitive event.

5.3 The Claimant's membership/status with USA Taekwondo shall be revoked for a period of five (5) years, dating from February 18, 2016, the date of the Complaint and Hearing Report.

5.4 The parties shall bear their own attorney's fees. The administrative fees and expenses of the American Arbitration Association totaling \$850 shall be borne, and the compensation and expenses of the arbitrator totaling \$2000 shall be borne as incurred.

5.5 This Award is in full settlement of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby denied.

Dated: August 8, 2017



John T. Wendt
Arbitrator