

**AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal**

Case No. 01-21-0002-0289

In the Matter of the Arbitration between

CHERYL MURPHY, Claimant

and

USA NATIONAL KARATE-DO FEDERATION, INC., Respondent,

and

ASHLEY DAVIS, CIRRUS LINGL, SKYLA LINGL, and MAYA WASOWICZ,
Affected Athletes.

FINAL AWARD

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"), 36 U.S.C. §220505 et seq., and Section 9 of the United States Olympic and Paralympic Committee ("USOPC") Bylaws, having been duly sworn, and having fully considered the Claimant's Demand for Arbitration and attached Complaint, Respondent's Answer, Respondent's Motion to Dismiss Demand for Arbitration, and Claimant's Opposition to Respondent's Motion to Dismiss as well as the parties' respective exhibits and witness testimony during a March 5, 2021 Zoom hearing, does hereby, AWARD, as follows:

THE PARTIES

Claimant Cheryl Murphy is a karate athlete who is a 5-time Pan American champion, a 6-time U.S. Open champion, a 2-time World Championships bronze medalist, and a World Games bronze medalist. She currently competes in the +61 kg and -68 kg weight categories and is a member of USA National Karate-Do Federation, Inc. ("USAK"). Ms. Murphy was represented

by Howard L. Jacobs and Katy Freeman, Law Offices of Howard L. Jacobs, Westlake Village, California.

Respondent USAK is the National Governing Body (“NGB”) for the sport of karate in the United States, which is recognized by the USOPC and the World Karate Federation (“WKF”), the International Federation (“IF”) for the sport of karate. USAK was represented by Stephen A. Hess and Allison Burke, Sherman & Howard, LLC, Colorado Springs, Colorado.

The Affected Athletes are Ashley Davis, Cirrus Lingl, Skylar Lingl, and Maya Wasowicz, karate athletes who are members of USAK that competed in the 2020 Senior Olympic Qualifier Selection in the +61 kg weight category. Each of them was provided with notice of this arbitration proceeding. Cirrus Lingl and Skylar Lingl attended this hearing via Zoom.

FACTUAL AND PROCEDURAL BACKGROUND

On January 18, 2020, Ms. Murphy competed in the 2020 Senior Olympic Qualifier Selection in the women’s elite individual +61 kg weight category kumite event in Colorado Springs, Colorado. The results of this competition determined which U.S. female athlete would compete in this Olympic weight category in the WKF’s last-chance Olympic qualifier in Paris, France on May 8-10, 2020. This double elimination event was conducted under the authority of USAK pursuant to WKF Competition Rules (“WKF Rules”), and it also was subject to the USOPC Bylaws. (Complaint, ¶1.3).

Approximately 50 seconds into a quarter-final match with Ashley Davis, Ms. Davis and Ms. Murphy hit each other simultaneously, at which point 2 judges indicated their award of points to Ms. Davis. Thereafter, a request for video review (“VR”) of this scoring sequence of their match by Ariel David, Ms. Murphy’s coach, was denied allegedly because “it was ‘too late’” before the match resumed. (Complaint, ¶1.5). Ms. Murphy ultimately lost the match against Ms. Davis and was eliminated in the quarter-final round of competition of this event.

After this match ended (“immediately”, according to Claimant), Coach David informed USAK Chief Referee Cleveland Baxter that “Ms. Murphy wished to file an official protest.” (Complaint, ¶2.7). Claimant asserts that “Mr. Baxter told Coach David that Ms. Murphy could

not file an official protest based on a ‘judgment call’” and that “Coach David took Mr. Baxter’s refusal as the ‘final word’ on the matter.” (Complaint, ¶2.9). Claimant notes that “Coach David has made a number of official protests at past competitions and is familiar with this process.” (Complaint, p. 6, fn. 6). Claimant asserts: “It was not until approximately 15 minutes following the match between Ms. Murphy and Ms. Davis that Coach David was finally informed, by Mr. Baxter, that his VR request had been denied as untimely due to the refereeing panel’s belief that Ms. Davis’ coach had made a VR request as well”, [which] was absolutely not the case.” (Complaint, ¶¶2.10 and 2.11).

As the winning competitor in the 2020 Senior Olympic Qualifier Selection +61 kg weight category for female elite individual kumite, Cirrus Lingl was named the member of the U.S. team for this weight category who would compete in the Paris Olympic Qualifier. Maya Wasowicz was named as the alternate. (Complaint, ¶2.18).

On February 25, 2020, USAK submitted the names of all five female karate athletes who competed in the +61 kg weight category for the 2020 Senior Olympic Qualifier Selection to the WKF as possible U.S. team participants in the May 8-10, 2020 Paris Olympic Qualifier:

“Because WKF’s entry deadline for submission of the long list for the WKF last chance Olympic qualifier in Paris was on February 25, 2020, USA Karate agreed to submit the names of Ms. Murphy, and all affected athletes named in Section IV below, on the long list that was submitted to WKF, so that this matter [i.e., the denial of Coach David’s request for a video review during the January 18, 2020 Senior Olympic Qualifier Selection quarter-final match between Ms. Murphy and Ms. Davis, which resulted in this Section 9 arbitration proceeding] could be resolved without requiring it to be expedited before the February 25, 2020 deadline.”

(Complaint, ¶2.19).

In March 2020, because of the Covid-19 pandemic and postponement of the 2020 Tokyo Olympic Games, WKF indefinitely postponed the Paris Olympic Qualifier that had been scheduled for May 8-10, 2020, which was ultimately cancelled.

On May 20, 2020, after the 2020 Tokyo Olympic Games were rescheduled for July 23-August 8, 2021, WKF announced its revised Olympic Games qualification system for karate athletes, including the Olympic Qualification Tournament (originally scheduled to be held in Paris on May 8-10, 2020) that would “take place in June 2021 at a location to be announced.”

On August 3, 2020, WKF announced that the 2021 Olympic Qualification Tournament would be held in Paris on June 11-13, 2021.

On August 25, 2020, USAK’s May 10, 2019 “Olympic Selection Procedures 2020 Olympic Games Karate – Kata and Kumite” were amended and posted online on September 14, 2020. (Claimant’s Opposition to Respondent’s Motion to Dismiss, p. 5; Exhibits 1 and 2). In relevant part, the amended team selection procedures state: “Qualification to the WKF Olympic Qualification Tournament: The athletes were selected to compete in the WKF Olympic Qualification Tournament on January 18, 2020.” (Claimant’s Opposition to Respondent’s Motion to Dismiss, Exhibit 1).

The date of entry deadline for the 2021 Olympic Qualification Tournament is April 11, 2021, which means that USAK must submit the names of all karate athletes who will compete for the U.S. team to WKF by this date. Currently, Cirrus Lingl is the karate athlete who will compete in the +61 kg weight category for female elite individual kumite for the U.S. team. If Cirrus Lingl is unable to compete in this tournament because of an injury or for some other reason, Ms. Wasowicz would be selected as a substitute for her. Ms. Murphy could possibly be selected as a substitute competitor for the U.S. team only if both Cirrus Lingl and Ms. Wasowicz (and perhaps Ashley Davis and/or Skylar Lingl) were unable to compete in this tournament.

On February 19, 2021, Ms. Murphy filed her Section 9 Demand for Arbitration and Complaint, which alleges that USAK effectively denied her the opportunity to participate in the 2021 Tokyo Olympic Games by wrongfully rejecting her coach’s challenge of a scoring sequence in a quarter-final match during its January 18, 2020 Senior Olympic Qualifier Selection. “Because the referee had no authority to deny Ms. Murphy’s VR request as being ‘untimely’; and because the Head Referee had no authority to deny Ms. Murphy her right to submit an official protest with regard to the same,” she requests that the Arbitrator grant the following relief: “[i]nvalidate the results of the match between [her] and Ms. Davis; [o]rder [her]

and Ms. Davis to a rematch of the quarterfinal match in question; and [o]rder that all semifinal and final matches of th[is] [USAK] Team Trial be conducted anew to determine the team member for the WKF [June 11-13, 2021] last-chance Olympic qualifier in Paris at +61kg.” (Complaint, ¶6.3).

On February 28, 2021, USAK filed its Answer as well as its “Motion to Dismiss Demand for Arbitration” and “Supplement to Motion to Dismiss Demand for Arbitration (Corrected).”

On March 1, 2021, after the parties previously agreed to his selection, the AAA appointed Professor Matthew J. Mitten to serve as the Arbitrator.

On March 1, 2021, a telephonic preliminary hearing was held among counsel for the parties (Howard Jacobs and Katy Freeman for Claimant; Stephen Hess for Respondent) and the Arbitrator. Affected Athlete Maya Wasowicz was present for part of the preliminary hearing. After reviewing the Claimant’s Section 9 Demand for Arbitration and Respondent’s Answer, the Arbitrator agreed with the parties’ determination that the “affected athletes” within the meaning of the USOPC Bylaw 9.8 are Maya Wasowicz, Ashley Davis, Skylar Lingl, and Cirrus Lingl, and he ordered Respondent’s counsel to provide each of them with written notice of this arbitration proceeding as soon as possible (which he did). The Arbitrator ordered that the Claimant’s brief in opposition to USAK’s motion to dismiss be filed by midnight CT on March 3. A Zoom hearing regarding this motion was scheduled for 12pm CT on March 5, and the Arbitrator agreed to render a written award resolving the issues raised by USAK’s motion to dismiss by midnight CT on March 7.

On March 3, 2021, Ms. Murphy filed her “Opposition to Respondent’s Motion to Dismiss.”

On March 5, 2021, a Zoom hearing regarding Respondent’s motion to dismiss Claimant’s Section 9 arbitration demand and complaint was held from 12-1:45pm CT. Ms. Murphy and Phil Hampel, USAK’s Chief Executive Officer, as well as Cirrus and Skylar Lingl attended the hearing. Ms. Freeman appeared on behalf of Ms. Murphy; Mr. Hess and Ms. Burke appeared on behalf of USAK. USOPC Athlete Ombudsman Kacie Wallace as well as Emily Azevedo and Bryce Boarman observed the hearing. With the approval of the parties’ counsel,

Amanda Bethel and Zach Lowe, Marquette University Law School third-year students, attended the hearing and assisted the Arbitrator.

During the hearing, testimony was given by Coach David and Mr. Barksdale, the Tatami Manager for the January 18, 2020 Senior Olympic Qualifier Selection quarter-final match between Ms. Murphy and Ms. Davis. A post-match video posted by Mark Lingl, the father of Cirrus and Skylar Lingl, on Facebook was shown by Respondent's counsel without any objection by Claimant or her counsel.

The hearing was closed by the Arbitrator after both sides' counsel stated they had presented their respective evidence and oral arguments regarding Respondent's motion to dismiss Claimant's Section 9 arbitration demand, thereby acknowledging they had received a full and fair opportunity to be heard regarding this matter.

JURISDICTION

The parties agree that the "2020 (now 2021) WKF Olympic Qualification Tournament, set to take place June 11-13, 2021 in Paris, France" is a "protected competition" under Section 1.3 (w) of the USOPC Bylaws. (Complaint, ¶¶3.1 and 3.2; Answer, ¶¶3.1 and 3.2). The Arbitrator notes that this event is a "protected competition" pursuant to the ASA, 36 U.S.C. § 220522(a)(4)(B), and Section 9.1 of the USOPC Bylaws.

Respondent asserts that Claimant's Section 9 arbitration demand was not timely filed in accordance with Section 9.10 of the USOPC Bylaws, which is a jurisdictional requirement, therefore, her claim that USAK denied her an opportunity to participate in this protected competition is prohibited. In response, Claimant asserts that it was timely filed in compliance with Section 9.10, which would establish the Arbitrator's jurisdiction to resolve her claim.

Pursuant to AAA Commercial Rule R-7 (a), the Arbitrator has "the power to rule on his or her own jurisdiction, including any objections with respect to . . . the arbitrability of any claim . . ." In a Section 9 proceeding, the claimant has the burden of proving the arbitrator's jurisdiction by a preponderance of evidence. *Mertes v. USA Gymnastics*, AAA Case No. 51 190 00775 12 (July 15, 2014).

LEGAL ANALYSIS

Section 9.10 of the USOPC Bylaws states: “Section 9.10 Time Bar. A claim against a respondent will be prohibited unless filed with the arbitrator not later than six months after the alleged date of denial.”

Because the facts “alleged to constitute the ‘denial’ of Ms. Murphy’s opportunity to participate [in the protected competition] occurred in January 2020,” Respondent asserts that Section 9.10 “is a ‘time bar’ under which a claim is ‘prohibited’ if not timely filed” and “[i]t is not relaxed for unusual circumstances.” Acknowledging “[t]he havoc wreaked by COVID-19 on Olympic scheduling left the qualification system uncertain immediately after the January 2020 Senior Olympic Qualifier,” it notes that in May 2020 WKF announced a revised qualification system including an Olympic Qualification Tournament (which was scheduled to be held in Paris on May 8-10, 2020 before its cancellation) to “take place in June 2021 at a location to be announced.” It contends that “[a]ny American [karate athlete] who had Olympic aspirations knew in May 2020 that the Olympic pathway would remain the same.” (Motion to Dismiss Demand for Arbitration, pp. 2-3).

Claimant contends that “because she remains on the ‘Long List’ of names entered to the Paris Olympic Qualifier, an actual denial of the opportunity to participate in that protected competition has yet to occur,” which will not happen until the April 11, 2021 entry deadline for this event. Therefore, her “Section 9 Complaint is timely.” She also contends that if the Arbitrator finds the actual denial of her opportunity to participate in the June 11-13, 2021 Paris Olympic Qualifier occurred in January 2020, “despite the fact that it subsequently added her to the long list for that competition, . . . the amount of uncertainty regarding the date of [this] competition . . . should toll the ‘date of denial’” until September 14, 2020 (the date USAK’s amended Tokyo Olympic Games selection procedures posted online).

In response, Respondent reiterates that the “date of denial” was January 18, 2020 (the date of Ms. Murphy’s quarter-final match during USAK’s Senior Olympic Qualifier Selection); notes that her inclusion in “long list” for the Paris Olympic Qualifier only would enable her to compete as a substitute if other female karate athletes in the +61 kg weight category kumite event were injured; and asserts if April 11, 2021 is the “date of denial” of her opportunity to

participate in this competition, she would have no standing to file her current Section 9 complaint under Section 9.2 (which requires that an athlete “be denied by a corporation member [i.e., NGB] an opportunity to participate” in a protected competition).

The Arbitrator is persuaded by Respondent’s arguments that the “date of denial” of Ms. Murphy’s opportunity to participate in the WKF Paris Olympic Qualifier (despite its rescheduling to June 11-13, 2021 because of the Covid-19 pandemic and postponing of the Tokyo Olympic Games for one year) was January 18, 2020 (the date of the Senior Olympic Qualifier Selection that resulted in Cirrus Lingl being named by USAK as the karate athlete to compete in the women’s +61 kg weight category kumite in that protected competition). This determination is consistent with the objectives of Section 9.10’s requirement that a Section 9 arbitration demand be filed within six months from the date an athlete is denied an opportunity to compete in a protected competition. These objectives include having the athlete’s complaint considered when witnesses’ memories are more likely to be accurate as well as resolved in a timely manner that provides effective relief if her or his claims are meritorious without precluding the USOPC and its NGBs from obtaining “the most competent amateur representation possible” for the Olympic Games, the Paralympic Games, and Pan-American Games pursuant to 36 U.S.C. § 220503(4) and other international sports competitions in which U.S. athletes participate. Accordingly, Claimant’s arguments to the contrary are rejected and her Section 9 arbitration demand is dismissed for lack of jurisdiction.

Although the foregoing ruling effectively resolves this arbitration proceeding, the Arbitrator will briefly consider and resolve Respondent’s contention that Claimant failed to exhaust her administrative remedies with USAK in a timely manner before filing her Section 9 arbitration demand.

In accordance with USAK’s “Rules of Kumite Competition,” the 2020 Senior Olympic Qualifier Selection was conducted pursuant to WKF Rules, including Article 11(5):

“Any protest concerning application of the rules must be announced by the Coach no later than one minute after the end of the bout. The Coach will request the

official protest form from the Tatami Manager and will have four minutes to have it completed, signed and submitted to Tatami Manager with the corresponding fee. The Tatami Manager will immediately hand the completed protest form to a representative of the Appeals Jury that will have five minutes to render a decision.”

Relying on her statement that “Coach David sought out USA Karate Chief Referee, Cleveland Baxter, immediately after the match concluded and advised him that Ms. Murphy wished to file an official protest” (Complaint, ¶2.7), Respondent asserts that Claimant “admits that she did not follow the protest rules, and offers no viable excuse for the failure.” (Motion to Dismiss Demand for Arbitration, p. 4). It contends “[t]here is no question that the mechanism for protesting a decision under the circumstances like those [here] has nothing whatsoever to do with the Chief Referee [who has no jurisdiction to dismiss a protest] and instead requires immediate access to the Tatami Manager.” (Motion to Dismiss Demand for Arbitration, p. 3). In support of its contention that any protest was untimely, Respondent submitted undisputed video evidence that Coach David did not approach or communicate with Mr. Baxter until at least 90 seconds after the end of the subject quarter-final match in the 2020 Senior Olympic Qualifier Selection.

Claimant contends that when the referee signaled that the subject match was over, Coach David verbally announced to the Referee Panel and her opponent (i.e., Ashley Davis) that he would be filing a protest and then proceeded to the Referee Table (where Mr. Baxter was seated) with a protest form in his hand, which is confirmed by the video evidence. According to Claimant, after Coach David informed Mr. Baxter that Ms. Murphy wanted to file an official protest, Mr. Baxter told him she could not protest the referees’ “judgment call” and “Coach David took Mr. Baxter’s refusal [to accept his protest] as the ‘final word’ on the matter.” (Complaint, ¶2.9).

Coach David, has 7-8 years of experience coaching in high level karate kumite competitions such as the 2020 Senior Olympic Qualifier Selection and he “has made a number of official protests at past competitions and is familiar with this process.” His testimony confirmed Claimant’s foregoing assertions. He testified that after the match

ended, he was standing approximately 20-30 feet away opposite the Referee Table, shouted his intention to file a protest regarding the denial of his request for VR of the scoring sequence approximately 50 seconds into the match, and that someone at the Referee Table nodded his head in acknowledgement of his request. Coach David also testified that he thereafter took a protest form from a bag in his possession and was proceeding to the Referee Table when he had the foregoing discussion with Mr. Baxter.

Mr. Barksdale, the Tatami Manager and a member of the Referee Committee for the match between Ms. Murphy and Ms. Davis, was seated at the Referee Table during this match and remained there for at least one minute after it ended. He testified that Coach David did not notify him of his intention to file a protest within one minute after the match ended, or at any time thereafter. In response to the Arbitrator's question, Mr. Barksdale testified "absolutely not" regarding whether a coach was permitted to notify the Tatami Manager of an intention to file a protest by shouting from across the ring. If Coach David did so, he did not hear it. He testified that the correct procedure pursuant to WKF Article 11(5) was for the coach to approach the Referee Table, to ask for the Tatami Manager, to announce the filing of a protest within one minute after the match ends, and to request an official protest form (rather than using the coach's own form). Because protests are "uncommon," Mr. Barksdale testified he would have remembered if Coach David had filed a protest regarding this particular match.

Based on Claimant's admission that Coach David did not comply with WKF Article 11(5) official protest procedure, Mr. Barksdale's very credible testimony, and the undisputed video evidence, the Arbitrator concludes that she failed to exhaust her administrative remedies with USAK in a timely manner before filing her Section 9 arbitration demand.

DECISION AND AWARD

Based on the foregoing facts and legal analysis, the Arbitrator decides and awards:

The Arbitrator has no jurisdiction to resolve the merits of her claims because Claimant did not prove by a preponderance of evidence that her Section 9 arbitration demand was filed

within six months after the January 18, 2020 denial of her opportunity to participate in the 2021 Olympic Qualification Tournament to be held in Paris, France on June 11-13, 2021, which is required by Section 9.10 of the USOPC Bylaws.

Claimant's failure to exhaust her administrative remedies by filing a timely protest in accordance with Article 11(5) of the WKF Rules regarding the denial of her coach's request for video review of the subject scoring sequence during her January 18, 2020 USAK Senior Olympic Qualifier Selection quarter-final match bars arbitral resolution of the merits of the claims asserted in her Section 9 arbitration demand.

All claims in Claimant's Demand for Arbitration and her requested relief are denied.

The Administrative fees of the AAA totaling \$1,000 are to be borne as incurred. The Compensation of the Arbitrator totaling \$2,000 is to be borne as incurred. The parties shall bear their own attorney's fees and/or costs associated with this arbitration.

This Award fully resolves all claims and defenses submitted by the parties in connection with this arbitration proceeding. All claims and defenses not expressly granted herein are denied.



March 7, 2021

Matthew J. Mitten, Arbitrator