

**AMERICAN ARBITRATION ASSOCIATION  
Commercial Arbitration Tribunal**

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AAA Case No. 01-16-0002-6302

Coryn Rivera,	)
	)
<b>Claimant,</b>	)
	)
and	)
	)
	)
USA Cycling, Inc.,	)
	)
<b>Respondent,</b>	)
	)
and	)
	)
Megan Guarnier	)
Evelyn Stevens	)
Lauren Stephens	)
Mara Abbott	)
Kristin Armstrong	)
Taylor Wiles	)
Amber Neben	)
Shelly Olds	)
Carmen Small	)
	)
<b>Affected Parties.</b>	)

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**AWARD OF ARBITRATOR**

I, the undersigned arbitrator (the **Arbitrator**), having been designated by the American Arbitration Association, by agreement of the parties, and in accordance with the Ted Stevens Olympic and Amateur Sports Act (the **Act**) and Section 9 of the United States Olympic Committee (**USOC**) Bylaws, and Part M of the USA Cycling Bylaws, and having been duly sworn, and having duly heard the proofs and allegations of the parties, and conducted a hearing on an expedited basis on July 15, 2016 by telephone, with Claimant, Respondent and Affected Party Mara Abbott (collectively, the **parties**) in attendance and offering argument and evidence, do hereby, AWARD as follows:

## I. PROCEDURAL BACKGROUND

1. This matter arises as a complaint by Coryn Rivera (**Claimant** or **Rivera**), an athlete in the sport of road racing, with respect to the selection made by USA Cycling, Inc. (**Respondent, USA Cycling** or **USAC**) for a discretionary spot on the US Team for the women's Road Race Olympic team event at the Rio Olympic Games. On June 22, 2016, the USAC Selection Committee met and selected Mara Abbott (**Affected Party** or **Abbott**) as the US entrant (the **Nomination**). Rivera contends USAC's Selection Committee failed to follow and fairly apply the USAC's "USA Cycling/USAC Athlete Selection Procedures 2016 Olympic Games Women's Road/Time Trial Amended November 13, 2015" (the **Selection Procedures**) in making the Nomination.
2. Claimant filed her demand for arbitration with the American Arbitration Association on June 29, 2016. Claimant, Respondent and Affected Parties: Evelyn Stevens represented by Scott Baker and James Daire of Reed Smith, Lauren Stephens, Kristin Armstrong represented by Kevin Braley and Gabriel Hamilton of Holland & Hart, Amber Neben represented by Steven J. Thompson of Nixon Peabody, and Carmen Small represented by Howard Jacobs and Lindsay Brandon from the Law Offices of Howard L. Jacobs participated in a preliminary hearing telephone conference on July 6, 2016.
3. Claimant was represented at the hearing and the preliminary hearing by Derek Witte and Tony Mrzlack of Witte Law, Affected Party Mara Abbott was represented by Steven Wieland of Wieland Perdue and Gabriel Hamilton of Holland & Hart at the hearing, and USA Cycling was represented by Stephen Hess of Sherman and Howard. Gary Johansen and Leah Cameron (from Marquette University Law School) of the USOC attended most of the hearing as observers. I thank all the parties for their excellent submissions and cooperation in the hearing.
4. Witnesses for Claimant were: Benjamin Sharp, Claimant's personal coach, Rivera and Michael Tamayo, general manager of the UnitedHealthCare cycling team and Jeff Pierce, member of the USAC Selection Committee. The witness for USA Cycling was Jack Seehafer, Women's Endurance Program Director. Mara Abbott was the only witness on her behalf.
5. Claimant filed a Motion on July 11, 2016 for consideration prior to the hearing on Case Number: 01-16-0002-6766, Carmen Small and USA Cycling, Inc. and the same Affected Parties as in this matter (plus Coryn Rivera) relating to both cases. The motion was to invalidate a portion of Section 1.3 of the Selection Procedures or, alternatively, to modify the criteria for Time Trial selection and postpone the deadline for the Arbitrator's decision in the Small arbitration, which was requested to be decided on July 13, 2016 (prior to the hearing in this matter). USAC filed an opposition to the motion and Affected Parties Evelyn Stevens and Kristin Armstrong and Abbott opposed the motion. The Arbitrator denied the motion prior to the commencement of the hearing based on the criteria for Time Trial selection having a rational basis and the motion being not timely.
6. Claimant's request for relief is that the Arbitrator order USAC to award her the spot as the discretionary fourth member of the U.S. Women's Road Race team for the "protected event" at issue, the Rio Olympic Games instead of Abbott.
7. USA Cycling's reply is to request that Claimant's request be denied.

8. Affected Athlete Abbott's reply is to request that Claimant's request be denied.
9. After the hearing, on July 16, 2016, within the deadline requested by the parties, the Arbitrator issued the following Operative Award:
  - A. Respondent did not violate its Selection Procedures in determining that Mara Abbott was the only "Medal Capable" athlete for the Road Race on the Rio Road Race course. The published selection procedures were followed by USA Cycling in its evaluation of the ability to produce a medal winning result. USA Cycling fairly and consistently applied the criteria as written to each of the Claimant and Affected Party Mara Abbott's respective records, using its discretionary expertise to evaluate the specified objective factors as listed in Principles of Athlete Selection, the Definition and Criteria of Medal Capable and the Data to Support Discretionary Nominations and Selections.
  - B. Claimant Coryn Rivera has not sustained her burden of proof that she should have been named to the Women's Road Race Olympic team and her demand for relief is denied;
  - C. The parties shall bear their own attorneys' fees and costs associated with this arbitration;
  - D. This Award shall be in full and final resolution of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby denied.

## **II. BURDEN OF PROOF, STANDARD OF REVIEW, JURISDICTION AND APPLICABLE LAW**

### **A. Standard of Review**

10. The accepted standard of review for an eligibility case under the Act, where the specific procedures require the exercise of discretion by the national governing body (NGB) is whether the NGB breached its approved and published Selection Procedures, applied its Selection Procedures inconsistently to athletes similarly situated, acted in bad faith towards or with bias against the athlete, and/or violated applicable federal or state laws. *Craig v. USA Taekwondo, Inc.*, AAA Case No. 77 190E 00144 11 JENF at 5 (August 21, 2011); *Hyatt v. USA Judo*, AAA 01 14 0000 7635 (Jun. 27, 2014) at 10; and *Casey Tibbs v. United States Paralympics*, AAA 71-190-E-00406 12 JENF (August 28, 2012) at 14. This has also been stated in multiple selection arbitrations under the Act to mean that a decision by USA Cycling which has no rational basis, i.e. is unreasonable, arbitrary or capricious, will not meet the Act's requirements. Claimant in this case has identified the claimed breach by USAC as a failure to follow and fairly apply its Selection Procedures.
11. The Arbitrator's role is not to determine whether the NGB chose the best process for selecting teams, or to substitute lay judgment for the expert professional judgement of USAC in establishing Selection Procedures. Rather, it is a *de novo* review, with no

deference, of the application of the published selection procedures to the facts of the individual case. *Komanski v. USA Cycling*, AAA Case No. 01-15-0004-9907 (Nov. 15, 2015) at 5.

12. USA Cycling has “the responsibility to athletes and others to make the rules clear, transparent, and easy to apply without confusion.... Athletes are entitled to know what standard they have to meet and precisely how such selections will be made.” *McConneloug and USA Cycling*, AAA 30 190 00750 04 (July 20, 2004) at 7. “The whole purpose for the development of criteria for qualification for [protected competitions] is for the contenders to know how they will be selected and against what criteria they will be judged.” *Klug v. US Ski and Snowboard Association*, AAA 30 190 0056 06 (January 27, 2006) at 2. This principle will apply to both USA Cycling in adopting its Selection Procedures and to the Arbitrator in applying them to these circumstances.
13. Even where “discretionary” factors are included in the athlete selection process, the evaluation of athletes under these factors must be based on objective facts in order to ensure that the factors are fairly applied. *Viola v. USA Diving*, AAA 30 190 00828-05 at ¶28. Clearly defined criteria are necessary to provide guidance to athletes, who are entitled to rely on the criteria as they plan their training and competitive schedules. *Viola* at ¶ 28.

## **B. Burden of Proof**

14. In a case arising under Section 9 of the USOC Bylaws, claimants have the burden of proving their claims by a preponderance of the evidence. *Tibbs v. United States Paralympics*, AAA Case No. 71 190 E 00406 12 (August 28, 2012) at 14; *Beckom v. U.S. Bobsled and Skeleton Federation*, AAA Case No. 77 190 E 00105 JENF (February 12, 2010); *Nieto v. USA Track & Field*, AAA Case No. 77 190 E 00275 08 JENF (July 19, 2008); *Ruckman v. United States Rowing Ass 'n*, AAA Case No. 77 190 E 00189 08 JENF (May 29, 2008); *Cameron Booth v. United States Rowing Ass 'n*, AAA Case No. 30 190 259 07 (March 16, 2008); *Gault v. United States Bobsled & Skeleton Federation*, AAA Case No. 72 E 190 0002 92 (January 11, 1992). Thus, the burden of proving that USA Cycling failed to follow and fairly apply its Selection Procedures consistently, acted in bad faith and/or violated applicable federal or state laws is on the Claimant.

## **C. Jurisdiction**

15. The Arbitrator has jurisdiction over this dispute pursuant to the Act, because this is a controversy involving Claimant’s opportunity to participate in the Olympic Games, which is required to be resolved by final and binding arbitration in accordance with the Commercial Rules of the American Arbitration Association. 36 U.S.C. §§220522(a)(4)(B). Section 9.1 of the USOC Bylaws prohibits an NGB from denying or threatening to deny “any amateur athlete the opportunity to participate in the Olympic Games.” Section 9.7 of the USOC Bylaws 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 AAA against the respondent for final and binding arbitration.” Sections 9.7 and 9.9 of the USOC Bylaws permit the arbitration proceeding to be expedited.
16. No party objected to arbitral jurisdiction to hear this dispute and all parties proceeded without objection in these proceedings.

## D. Applicable Law

17. The Act, 36 U.S.C.A. § 220523(a)(7) provides: “a national governing body may . . . designate individuals and teams to represent the United States in international amateur athletic competition . . .”
18. The Act’s requirements for an NGB’s selection procedures are listed in the Act itself and in the USOC Bylaws which require an NGB to “establish a written procedure, approved by a Designated Committee... of the NGB ... and thereafter approved by the corporation [USOC], to fairly select athletes and team officials for the Olympic, Paralympic or Pan American Games teams, and, upon approval, timely disseminate such procedure to the athletes and team officials”. USOC Bylaws, §8.7(g).
19. USA Cycling has promulgated eight discrete selection procedures that govern selection to all the cycling disciplines that are contested in the Olympic Games. These include the Selection Procedures.
20. The United States was allocated four starting spots for the Women’s Road Race at the Olympic Games through the Union Cycliste Internationale (UCI) Qualification System.
21. The Selection Procedures provide in relevant part as follows:

**2.3** Provide the name of the committee that will be responsible for making discretionary selections, along with a complete list of the members’ titles currently serving on the committee:

### **Discretionary Selection Review Committee**

Recommendations for discretionary nominations will be made by the USA Cycling National coaching staff. However, the USA Cycling Selection Committee will review and approve ALL athlete nominations. Please see below Section 11 for committee members

...

## **11. DEVELOPMENT OF SELECTION PROCEDURES**

The following committee/group (include names and titles) was responsible for creating these Selection Procedures:

USA Cycling Selection Committee

[list of names]

These procedures were developed by the USA Cycling National coaching staff and approved by the USA Cycling Selection Committee (listed above)....

...

## **Attachment B**

## **PRINCIPLES OF ATHLETE SELECTION**

...USA Cycling will be responsible for the nomination and selection of athletes to participate in all protected events. In fulfilling this obligation, USA Cycling will use the principles described in this document. At all times, within the context of the event, USA Cycling will strive to send the best and most prepared team to compete in protected events.

### **USA Cycling Selection Committee**

USA Cycling will maintain a Selection Committee for the purpose of reviewing and approving the final nominations of individual athletes to ... [the Olympic Games]. The Selection Committee provides oversight on the nomination process of athletes to protected events and is the de facto body responsible for the final nomination of athletes to respective teams. This obligation includes review and approval of the process by which athletes receive automatic nominations to teams, as well as the review and final approval of athletes nominated by USA Cycling coaching staff according to the USA Cycling Principles of Selection.

...

### **USA Cycling's Athlete Selection Criteria and Philosophy**

Olympic Games, World Championships and Continental Championships. USA Cycling shall select athletes according to the following priorities. These priorities apply to both automatic and discretionary selections.

1. The **FIRST** priority is the selection of athletes who have demonstrated that they are medal capable.
2. The **SECOND** priority is the selection of those athletes who have demonstrated that their presence on the team will have a positive impact on the overall team performance and create a **MEDAL CAPABLE** team environment.
3. The **THIRD** priority is the selection of those athletes who have demonstrated the capacity to advance to the level of medal capability in the near future.

...

### **Definitions and Criteria**

1. **Medal Capable.** A medal capable athlete is one who has demonstrated the ability to produce a medal winning result by:

...

- consistently beating the World's best in recent (past 12 months)

international competition with top-quality fields; and/or

- other historical performances in International competition that would indicate the athlete is capable of a medal winning performance.

In all cases, the athlete in question must demonstrate that they have the capacity for a medal capable performance at the time of selection and the time of the event to which the athlete has been selected.

...

### **USA Cycling Principles of Discretion**

...

Discretionary nominations may be employed in the event that positions are available after the application of any automatic criteria. ... The primary purpose of discretionary athlete nomination is to ensure that:

- a. USA Cycling has the ability to nominate the best physically, psychologically and technically prepared athlete in order to produce medal-winning performances.

...

### **Data to Support Discretionary Nominations and Selections**

Data to be considered in making discretionary nominations may include any or all of the following in no specific order of priority. The inclusion and order of priority for any data set may be different from event to event as determined by the USA Cycling Coaching staff and USA Cycling Selection Committee.

1. Race results in top international competition;
2. Race results in top domestic competition;
3. Head to head competition results between multiple athletes in consideration for a discretionary position;
4. Athlete's ability to enhance team performance;
5. Athlete's future medal capability;
6. Technological data on athlete and or event. By way of example this could include but is not limited to: times on similar courses or events, athlete power data, aerodynamic drag data (if relevant) or event demand data.

### III. FINDINGS OF FACT

Below is a summary of the relevant facts based on the parties' written and oral submissions, which are relevant to this Arbitrator's reasoning. The parties submitted other additional facts and evidence which was also considered by the Arbitrator.

22. The parties considered that the Selection Procedures were the applicable principles to be used for the selection of the one spot at issue.
23. Coryn Rivera is a world-class athlete in the sport of women's cycling and the discipline of women's road racing. She has extensive success in international road racing.
24. Mara Abbott is also a world-class athlete in the sport of women's cycling and the discipline of women's road racing. She has established a record of winning cycling races with a mountaintop finish.
25. The Selection Committee found that Abbott is the only medal capable athlete in the Women's Road Race among those who were on the "Long Team", i.e. eligible for selection for the one spot at issue.
26. The Selection Procedures were duly adopted and published on the USA Cycling site in March 2015, incorporating the same language as in the past with respect to considerations of a particular race course. The USA Cycling coaching staff visited the Rio ITT course to learn more about it. The USAC coaching staff held a conference call with the "Long Team" in March 2016 to explain the selection process (the **Long Team Call**), the minutes of which reflect, with respect to the Road Race event: "Discussed and emphasized the importance of an athlete's ability to show they can climb in the first group for 30 min".
27. The Selection Procedures and Philosophy priorities are applied in the order of priority as indicated above. Thus, USA Cycling selects those athletes who are "Medal Capable" to fill discretionary slots. If discretionary slots remain after all Medal Capable athletes have been given a starting position, USA Cycling endeavors to populate the team with racers who can "Enhance Team Performance." If USA Cycling has exhausted the pool of athletes who can enhance team performance, then any remaining starting spots are given to the athletes who best demonstrate that they are "Future Medal Capable."
28. According to the Selection Procedures, USAC's Selection Committee is charged with reviewing and approving the final nominations of athletes to the Olympic Games. This duty includes review and approval of the process by which athletes receive automatic nominations as well as review and final approval of athletes nominated by the USAC coaching staff according to the Principles of Athlete Selection which are part of the Selection Procedures.
29. USAC's Selection Committee, whose membership changed in due course after the Selection Procedures were published, convened a telephonic meeting to discuss the women's time trial and road race automatic and discretionary selections on June 22, 2016. At that meeting, USAC's Jack Seehafer presented the coaching staff's recommendations for the one spot at issue. This included the coaching staff's recommendation that due to the unique features of the Rio Road Race course, the ability to lead on the single climb with two pitches that starts at 14 meters above sea level and has a high point of 502 meters



above sea level (the Canoas/Vista Chinesa climb) is the critical determining factor. The course is 140 kilometers with lots of features (cobble sections, wind, 15 kilometers descent after the Canoas/Vista Chinesa climb to the finish).

30. Each of the athletes had supplied the Committee with the results and data they considered relevant, as allowed under the Selection Procedures and these included “power files”, with data relating to the watts/kg she is able to produce. This is an important consideration in climbing ability.
31. Claimant presented considerable race results data about how she met the two criteria applicable under the definition of Medal Capable. In addition, Claimant listed her results in head to head competition against Abbott in 2016 and compared their rankings.
32. Claimant presented testimony about specific stages of multi-day events that she contends were the best comparable courses to the Rio road race course and about her skills at specific climbs and her power capabilities, as well as her cobble, descent and sprinting abilities at the finish among a group of riders.
33. Abbott also presented specific race results and data about her ability to win races and her climbing superiority.
34. The two criteria listed above under the definition of Medal Capable are the only ones applicable in this instance. The Selection Committee applied the results and data of each of Claimant and Abbott with respect to the Rio course only. The Selection Committee did not look at the results or data of these athletes in the context of another type of course.
35. The minutes of the Selection Committee meeting reflect that the Selection Committee concluded that Abbott was “the only medal capable athlete for this course considering chosen team strategy and likely strategy of other teams”. The Selection Committee found that Claimant “[d]oesn’t meet any of the medal capable bullet points for this course.”

#### **IV. SUBMISSIONS OF THE PARTIES**

##### **A. Claimant**

36. Claimant argues that the USAC violated its rules by ignoring the definition of Medal Capable, failing to consider the applicable Medal Capable criteria and instead making its selection solely based upon its perception of the course of the Rio Games, and specifically one aspect of that course, which is not proscribed in the Selection Procedures. This requires that the Arbitrator *de novo* review the Medal Capable criteria, giving no deference to the USAC selection.
37. Claimant argues that the coaching staff in its recommendations and the Selection Committee, failed to consider the criteria of consistently beating the world’s best in recent (past 12 months) international competitions with top-quality fields and other historical performances in international competition that would indicate the athlete is capable of a medal winning performance. Also, the Selection Committee did not consider the head to

head competition between Abbott and Rivera, as allowed under “Data to be considered in making discretionary nominations” section of the Selection Procedures.

38. Claimant argues that consideration of the course itself is not within the definition of Medal Capable which references the capacity for a medal capable performance at the time of the event. She also argues that the course as referenced under the “Data to Support Discretionary Nominations and Selections” simply describes the types of evidence that can be considered. The Selection Committee’s consideration of the Rio course solely ignored the established rules and made it difficult for the athletes to prepare for discretionary consideration.
39. Even if USAC were entitled to analyze only its perception of a rider’s ability on the Rio course itself in determining medal capability, it still made the wrong decision as the course will test several skills, not just climbing. The course is 140 kilometers with lots of features other than the one climb that is the focus of the USAC. When using all the skills required, Claimant is the best rider for the course. She should have been deemed Medal Capable on the Rio course and Abbott should not have been chosen for the Nomination.
40. If both Claimant and Abbott were to be considered as Medal Capable, then the Selection Committee should have looked at the next two priorities and under those priorities, Claimant would be the one whose results match those priorities.
41. USAC further violated Section 2.3 of the Selection procedures by failing to disclose the Selection Committee members that would review and approve all athlete nominations. USAC changed the composition of the Selection Committee and added two new members who were not from Claimant’s event.

## **B. Respondent**

42. USA Cycling argues that it followed its Selection Procedures to select an athlete capable of winning a medal at the 2016 Olympic Games. The data compel the only reasonable conclusion that Abbott is the only athlete who is Medal Capable. She has beaten the world’s best in similar races with climbs over twenty minutes. The Selection Procedures say in several places that the nature of the event is taken into account, not just the timing of the event.
43. Both Claimant and Abbott tailored their Submissions to the Rio course as they each knew that would be what the coaching staff and Selection Committee would consider. The Data to Support Discretionary Nominations and Selections in the Selection Procedures include a reference to the specifics of the event. “Technological data on athlete and or event. By way of example this could include but is not limited to: times on similar courses or events, athlete power data, aerodynamic drag data (if relevant) or event demand data.” It has always been understood that this is vital to the application of the Selection Procedures. If USA Cycling did not consider the specific course for which it made the Nomination, it would be blindly fielding a team, without fulfilling its responsibility to win medals on a course of which the athletes were apprised well in advance.
44. The Selection Committee followed the process of weighing the relative merits of each athlete’s medal capability by reviewing her prior results with an educated understanding of how prior results may demonstrate medal capability based on the

specific attributes of the 2016 Rio Road Race. This means assimilating all the data and predicting results with the exercise of professional judgment and discretion while balancing all the variables over many prior results.

45. The only relevant question for the Selection Committee was the extent to which Abbott and Rivera have demonstrated their ability to medal in the face of a course that includes the torturous finish that Rio 2016 presents.
46. In this regard, USA Cycling does not believe that there is much room for debate. Abbott is recognized in cycling as the best climber in the world and her international results confirm her reputation. Rivera has some significant accomplishments, but USA Cycling believes that the data do not support Rivera's claim to be able to compete at a medal capable level on this particular course.
47. USAC argues that the selection of athletes to represent the United States in the Women's Road Race is a difficult process that requires substantial, sophisticated assessment of historical race performances in a manner that necessarily requires judgment and discretion is determining comparability of prior results as evidence of future prospects. The general procedural manner in which this must be undertaken is set out in the Selection Procedures, where the substantive considerations are also detailed. The coaching staff and the Selection Committee acted well within their discretion in selecting Abbott to represent the United States in Rio de Janeiro.
48. With respect to the composition of the Selection Committee, there is no requirement in the Selection Procedures that USAC has to notify the athletes who the members of the Selection Committee are, but rather the Selection Procedures, Section 11 identifies those Committee members who participated in the drafting of the Selection Procedures when they were made public.

### **C. Affected Party Abbott**

49. Abbott argues that there is ample data to support her selection using the two criteria to be used by the Selection Committee, i.e. consistently beating the world's best and other historical performances indicating the athlete is capable of a medal winning performance, based on her specific results. She is a very versatile capable athlete who can medal on almost any course. Her results alone are enough to make her Medal Capable. When the consideration of the Rio course is added to these criteria, based on her being the strongest climber who can put out more power than any other cyclist, Abbott is the reasonable choice of the Selection Committee. This consideration complies with the directive included as the overarching purposes of the Selection Criteria: "At all times, within the context of the event, USA Cycling will strive to send the best and most prepared team to compete in protected events."
50. The "context" of the event is dominated by the Canoas/Vista Chinesa climb and the ability to lead on this climb is the critical determining factor for "medal capability" on this course as reasonably determined by the USA Cycling coaching staff and advised to the athletes in the Long Team Call for "medal capability" on the Rio course.
51. The standard for this Arbitrator to apply is whether the Selection Committee abused its discretion in making the evaluation it did or that there was no rational basis for the

Selection Committee to make its determination. Claimant's evidence with respect to the criteria and Abbott's lack of medal capability did not establish by a preponderance of the evidence that USA Cycling acted in bad faith towards or with bias against Rivera, and/or violated applicable federal or state laws, as is the required standard of proof.

52. The Selection Procedures allow the Selection Committee to consider athlete submitted data. Both submitted their results matching the criteria. They also both submitted their power data and using those, if the final climb were to take between 27 and 30 mins to climb, side by side, Abbott would beat Rivera to the top by 2 minutes or more. This type of data provides ample reason for the Selection Committee to choose Abbott.
53. The Selection Committee had every reason to decide a climber would be preferable and thus the choice of Abbott should stand.
54. Abbott also requested in her Pre-hearing Brief that the Arbitrator award Abbott "such other and further relief as deemed appropriate, including payment of her attorneys' fees and costs in defense of this action" but did not pursue this claim during the hearing.

## V. MERITS

55. Claimant in this case has identified the breach by USAC as a failure to follow and fairly apply its Selection Procedures. In reviewing USAC's application of its Selection Procedures, I am not substituting my judgment for that of the experts on the USAC coaching staff and the properly composed Selection Committee, but rather reviewing *de novo* the application of the Selection Procedures as published to the facts of this particular case. In addition, I look to whether each of the two athletes competing for this spot were aware of the criteria by which they would be judged by USAC in making its selection.
56. The burden of proving that USAC failed to follow and fairly apply its Selection Procedures consistently, acted in bad faith and/or violated applicable federal or state laws is on the Claimant.
57. The Selection Procedures were interpreted by USAC coaching staff to mean medal capable for the Rio course only. The question is whether that is a breach of the Selection Procedures. The Definition of Medal Capable states: "A medal capable athlete is one who has demonstrated the ability to produce a medal winning **result**". [emphasis added] Thus, the definition itself identifies that the Medal Capable evaluation is not made in a vacuum looking at the applicable criteria/bullet points, but rather in the context within which it is made. The bullet points themselves then point to the objective factors, or results to be considered in evaluating whether a medal winning result can be produced. The definition has lots of redundancies within it, such as the final paragraph which flags that the capacity for a medal capable performance is both at the time of selection and the time of the event to which the athlete has been selected. It also contains a specific reference to event data in the Data to Support Discretionary Nominations and Selections listing. All of these repetitive references point to the objective of a discretionary nomination under the Selection Procedures, which was to consider both the objective factors (results and data) and the specific event for which the nomination is being made. It could be better organized and clearer, but the impression was duly conveyed to the athletes, as they each submitted power files to back up their climbing abilities, among other data. The athletes

were well aware of the criteria by which they were being judged by USAC in making the Nomination. I find that USAC did not breach its Selection Procedures in evaluating the criteria/bullet points listed objective results of each athlete and their data, by considering specifically and only the Rio course.

58. The next inquiry is whether in looking at the criteria identified for the demonstration of the ability to produce a medal capable result, the Selection Committee considered the correct results, i.e. “consistently beating the world’s best in recent (past 12 months) international competition with top-quality fields”; and “other historical performances in international competition that would indicate the athlete is capable of medal winning performance.” The Selection Committee Meeting minutes are clear that the Committee looked at “medal capable for this event – climber’s course”. The Committee identified that the data specified in these two bullets “is pretty thin when trying to look at events that compare to this one.” In his testimony, Seehafer acknowledged that Rivera has similar results to Abbott’s – i.e. consistently beaten world’s best – and could be considered medal capable for another course, but not for the Rio course. When evaluating both Claimant (“doesn’t meet any of the medal capable bullet points for this course”) and Affected Party Abbott (“must demonstrate medal capable at time of selection and time of event to which athlete has been selected and [Abbott] has done this.”), the Selection Committee was consistent for both athletes in looking at results based on this course with the severe climb towards the end of the course being the critical factor. The Selection Procedures dictate this approach, so I find the Selection Committee did look at the correct objective results and data to which they applied their discretionary expertise.
59. Claimant then argues that the Selection Committee failed to look at the entire 140 km course, but instead focused solely on the climbing ability, and failed to consider that Abbott’s climbing successes are mainly at mountaintop finishes, and not on courses that have a descent and are then flat at the finish. The emphasis on climbing ability, including the huge time differential that can be gained in a climb, was within the Selection Committee’s discretion based on the coaching staff’s in person visits to the course and their evaluation of the requirements based on their expertise. Once this skill is accepted as critical, because of the Rio course, the emphasis on picking between Abbott and Claimant was consistent and fairly applied. There is no one day course similar to the Rio course that has been contested and the Selection Committee is doing the best it can to find comparables. Pointing to the Tour of California stage where there was 50 km to the finish after the climb and Rivera won, is not the defining result. The Selection Committee was directed by the Criteria in the definition of Medal Capable to look at more than just one result, and could in good faith consider the different objectives each of the athletes had in this stage race over multiple days and also consider consistency on multiple climbing courses. The fact that there is no similar course to compare specifically to the Rio course is not evidence of error or bad faith. I find the Selection Committee applied its selections procedures consistently to each of these athletes when compared against the Rio course, without any bias or bad faith.
60. The composition of the Selection Committee is not in violation of the Selection Procedures as they do not require notice of changes to its membership.
61. Claimant’s request is therefore denied.

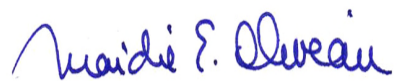
## **VI. ALLOCATION OF ARBITRATION FEES AND COSTS**

62. Claimant and Respondent each paid half of the arbitration fees and neither made a request for any reallocation of such fees. Under AAA Commercial Rules Section R-50, the Arbitrator has discretion to assess and award such fees and costs in the final award.
63. In determining whether to shift the allocation of these fees and costs, as Arbitrator, I look at the conduct that gave rise to the demand for arbitration in this case which was USAC's exercise of its discretion in making the Nomination. It is noted that USAC acted in good faith and fairly. Thus, there is no basis for reallocating the fees. Accordingly, no reallocation of fees is made.
64. With respect to Abbott's request for an award of fees, she did not pursue this claim.

### Decision

I therefore rule as follows:

1. The appeal filed by Claimant is dismissed.
2. This Award is in full settlement of all claims submitted in this Arbitration. All claims not expressly granted are hereby denied.



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Maidie Oliveau  
Sole Arbitrator  
Dated: July 26, 2016