

AMERICAN ARBITRATION ASSOCIATION

North American Court of Arbitration for Sport Panel

In the Matter of the Arbitration between

Cassie Tubbs,

Claimant

and

USA Taekwondo, Inc.

Respondent

and

Anya Sagovnovic

Affected Athlete

Re: AAA No. 01-15-0004-7133

AWARD OF ARBITRATOR

THE UNDERSIGNED ARBITRATOR having been designated by the above-named parties, having been duly sworn and having heard the proofs and allegations of the parties in a hearing held on August 30, 2015, do hereby render this full award.

**I
SUMMARY**

1. When athletes have dedicated themselves to achieve a place on a national team, that hard work should not be easily undone. In this case, Claimant's position on the Junior Pan Am Championship Team vested when she won the national championships and she, along with

her father, signed the USA Taekwondo 2015 Junior National Team Athlete Agreement (“Agreement”).

2. Before USA Taekwondo could remove Claimant from the Junior Pan Am Championship Team competing in a protected competition, it had the obligation to comply with, at a minimum, the USOC Due Process Check List.

3. Unfortunately, USA Taekwondo took away Claimant’s position on the team and gave it to Ms. Anya Sagovnovic without even a mere phone call. A phone call that would have resolved any administrative issues facing USA Taekwondo.

4. Because there was inadequate notice, and USA Taekwondo failed to comply with the minimum requirements under the USOC Due Process Check List, Claimant’s position on the team is restored.

II PROCEDURAL HISTORY

5. On August 20, 2015, Claimant filed a Section 9 complaint with the United States Olympic Committee (“USOC”). In the complaint she requested reinstatement to the Junior Pan Am Championship Team. She requested that the dispute be heard under the AAA’s expedited procedure and identified the Affected Athlete as Ms. Anya Sagovnovic.

6. The Preliminary Hearing took place on August 26, 2015 by telephone conference at 12:00 p.m. pacific time. Appearing at the hearing on behalf of Claimant was the Valparaiso University Law Clinic consisting of Michael Straubel, Esq., and students Marc Brown, Lauren Doby, Maison Haines, Jeremy Owens, Ashley Smith and Phillip Wiehe. Appearing on behalf of Respondent was the law firm of Sherman and Howard, LLC consisting of attorneys Stephen A. Hess, Esq. and Allison Tungate, Esq.

7. The Affected Athlete, Ms. Anya Sagovnovic, did not make an appearance. However, Mr. Hess informed the parties that Ms. Sagovnovic was aware of the preliminary hearing. The USOC's Associate General Counsel, Gary Johansen; Athlete Ombudsman, Kacie Wallace; and Assistant Athlete Ombudsman, Sara Clark attended the telephonic hearing.

8. The Hearing was scheduled on August 30, 2015 because the Junior Pan A Championships were scheduled to commence September 11, 2015 and the entry deadline was August 31, 2015. All parties agreed to the American Arbitration Association's ("AAA") expedited hearing rules.

9. The Hearing took place on August 30, 2015 by telephone conference. Claimant was present at the hearing and represented by the Valparaiso University Law Clinic consisting of Michael Straubel, Esq., and students Marc Brown, Lauren Doby, Maison Haines, Jeremy Owens, Ashley Smith and Phillip Wiehe. Appearing on behalf of the Respondent was the law firm of Sherman and Howard, LLC consisting of attorney Stephen A. Hess, Esq. The affected athlete declined to have legal representation. She participated in the hearing with her coach, George Tapia. The USOC's Associate General Counsel, Gary Johansen and Assistant Athlete Ombudsman, Sara Clark attended the telephonic hearing.

10. Testifying at the Hearing for Claimant were Donovan Rolaff, Greg Tubbs, Nichole Tubbs and Claimant. Testifying at the Hearing for Respondent were Patrick Wentland and Ms. Anya Sagovnovic. All witnesses were sworn under oath.

11. All the documents provided by the parties were admitted into evidence without objection.

12. At the conclusion of the hearing, all parties were asked whether they had been provided an opportunity to fairly present their case. All parties declared that they had been given a fair opportunity to present their case.

13. Because the hearing was on an expedited basis, the parties agreed that the Arbitrator would give a notice of his decision on the same date with a reasoned award to follow.

The Notice of Decision was issued on August 30, 2015 and stated the following:

After a review of the evidence and a hearing on the merits, the relief Claimant requested is granted. The combination of winning the Welterweight Taekwondo National Championships and signing of the USA Taekwondo 2015 Junior National Team Athlete Agreement (Agreement) vested Claimant's position on the team. As a result, her removal from the team comes under strict scrutiny. This means the removal must comply with USA Taekwondo's selection procedures. Those selection procedures must not contain any ambiguity relevant to the dispute. Finally, the process to remove the athlete must comply with, *at a minimum*, the USOC's Due Process Check List.

In this case, the notice provision stated in the Agreement was not adequately followed. The Agreement required two signatories. The notice was sent to only one. As a consequence, the notice was not adequate. This is particularly the case given one of the signatories is a minor.

Second, the requirement of providing an additional confirmation by email that the athlete was going to the event, and the date limitation, did not appear in the Athlete Selection Procedures 2015 Junior National Team, November 24, 2014 (amended 2.5.15) (hereafter "Selection Procedures"). Mr. Wentland testified that this additional requirement was added by the staff. If true, there was no athlete involved in approving this additional provision. As a consequence, without 20% athlete participation that portion of the procedure was invalid.

Having a fair selection procedure based on objective criteria is essential to the integrity of Olympic Sports. Protecting an athletes' right to participate after they have qualified through competition lays the foundation for that integrity. It should not be easy to remove an athlete from a position she has won through combat.

I will provide a reasoned award in the near future. Part of that award will require USA Taekwondo to reimburse Ms. Tubbs for the expenses she incurred in bringing this complaint. In addition, USA Taekwondo will be ordered to use its best effort

to obtain an additional position for Ms. Anya Sagovnovic to participate in the Pan America Championships. However, if only one position is available, that position belongs to the individual who won through competition, Ms. Tubbs. In the event USA Taekwondo cannot gain an additional position for Ms. Sagovnovic, then it shall reimburse Ms. Sagovnovic for her travel costs, including the costs for her coach.

III JURISDICTION

14. As a National Governing Body (“NGB”) USA Taekwondo, Inc. (“USA Taekwondo”) is required to provide amateur athletes’ arbitration to resolve disputes associated with their right to participate in international competition. The Ted Stevens Olympic and Amateur Sports Act (“Stevens Act”) §220522(a)(4)(B) states the following:

An amateur sports organization is eligible to be recognized. . . as a national governing body only if . . . the opportunity of any amateur athlete, coach, trainer, manager, administrator or official to participate in amateur athletic competition, upon demand of the corporation or any aggrieved amateur athlete, coach, trainer, manager, administrator or official, conducted in accordance with the Commercial Rules of the American Arbitration Association, as modified and provided for in the corporation’s constitution and bylaws (Stevens Act §220522(a)(4)(B).)

The United States Olympic Committee’s (“USOC”) bylaws, section 9, states:

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. . . . In determining reasonable means to protect an athlete’s opportunity to participate, the corporation shall consider its responsibilities to the individual athlete(s) involved or affected, to its mission, and to its membership. . . . If the complaint 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. If an impending competition requires immediate resolution of the complaint, an athlete may file a claim with the AAA simultaneously with the filing of the complaint with the CEO. (Unites States Olympic Committee Bylaws Section 9.1 and 9.7.)

15. Claimant is an amateur athlete under the Stevens Act, USA Taekwondo is recognized as an NGB by the USOC, and this matter involves a protected competition. Therefore, this Arbitrator has the jurisdiction to hear and decide this dispute. Furthermore, both parties have agreed to the resolution of this dispute through the AAA.

IV FACTUAL FINDINGS

16. On July 7, 2015, the Sixteen year old Claimant won the Junior Welterweight Taekwondo National Championships in Austin, Texas by defeating Ms. Anya Sagovnovic, the Affected Athlete. USA Taekwondo's Athlete Selection Procedures 2015 Junior National Team, November 24, 2014 (amended 2/5/15) ("Selection Procedures") states: "If the Gold Medalist does not accept the opportunity, it will be offered to the silver medalist. . ." After receiving her gold medal, Claimant received the USA Taekwondo 2015 Junior National Team Athlete Agreement ("Agreement") which she filled out and signed. As a minor her father, Greg Tubbs ("Mr. Tubbs"), was required to sign the Agreement as well. Relevant to this dispute, the Agreement, in part, stated the following:

Athlete commits to USA Taekwondo that it is his/her intention to train for the 2015 Pan AM Open, barring injury, Athlete fully intends to compete in the 2015 Pan Am Open. (Agreement, ¶6.) (emphasis added)

17. The Agreement also provided a notice provision. The notice provision states the following:

Any notice required or permitted to be delivered under this Agreement shall be in writing and shall be deemed properly delivered on the earlier of the actual receipt, one day after being sent via electronic mail, or three days after the date deposited in the U.S. Mail, by first class mail, addressed to the recipient at the Athlete's address set forth below. (Agreement, Article III, ¶6(c).)

18. On July 14, 2015, Mr. Patrick Wentland (“Mr. Wentland”), the High Performance Director of USA Taekwondo, sent Claimant, but not Claimant’s father; an email in which he asked if she was attending the Stars Championship Camp. Claimant responded that she would not attend. The Selection Procedure did not require attendance at this camp.

19. On July 30, 2015, Mr. Wentland sent another email to Claimant, but not her father, under the subject: “2015 Junior Pan Am Championships.” In the email was a line stating, “As discussed at Nationals, I will need in writing from each athlete a ‘yes’ or ‘no’ on if they plan on attending the Pan American Championships.”

20. From the testimony at the hearing, it was admitted that Mr. Wentland had not discussed this additional requirement with Claimant or her father. Apparently, this additional requirement was implemented by the staff of USA Taekwondo without athlete input.

21. Regarding the email, Claimant does not remember receiving or seeing the email from July 30. Claimant went to her mother’s house from August 5, 2015 through August 10, 2015. Her mother’s house did not have cell phone reception or a computer that was working because of a problem with the cable system.

22. Claimant returned to her father’s house on August 10, 2015 and told him about the email. The father then called Mr. Wentland on August 10, 2015. He informed Mr. Wentland that Claimant would be attending the Junior Pan American Championships. Mr. Wentland informed him Claimant’s notice was too late.

23. It is not clear whether Mr. Wentland had called Ms. Anya Sagovnovic, the Affected Athlete, before or after Mr. Wentland’s call. However, on August 10, 2015 Mr. Wentland notified Ms. Sagovnovic that she would be replacing Claimant for her position on the Junior Pan Am Championship Team. On August 10, 2015 Mr. Wentland did not inform Ms.



Sagovnovic that Claimant was disputing her removal from the team. Therefore, on August 11, 2015 Ms. Sagovnovic communicated her acceptance to Mr. Wentland and paid for her travel arrangements.

24. On August 12, 2015, Mr. Wentland asked Ms. Sagovnovic whether she would be willing to give up her spot to accommodate Claimant's late acceptance. Ms. Sagovnovic declined and explained that she had already incurred expenses to attend the Junior Pan American Championships.

V PARTIES ARGUMENTS

25. Claimant submits the following arguments in support of her request to be placed back on the Junior Pan Am Championship Team:

- (a) Claimant's position on the Junior Pan Am Championship Team vested after winning the gold medal and signing the Agreement and USA Taekwondo failed to follow the Selection Procedures methods for removing Claimant from the team.
- (b) USA Taekwondo's email to Claimant was not adequate notice because Claimant was a minor. The notice should have also been sent to her father. It is against public policy to allow a minor to bind herself and her parents to a competition that requires travel to another country.
- (c) USA Taekwondo's email communication to junior athletes was not properly implemented as a Selection Procedure.
- (d) USA Taekwondo's decision to remove Claimant from the National Team was arbitrary and capricious.
- (e) Electronic mail is not a sufficient form of notice unless followed up by a mailed written notice.

26. The Affected Athlete did not submit any arguments. Respondent submitted the following argument in support of its position:

- (a) Claimant did not accept the opportunity to participate in the 2015 Junior Pan Am Championships in accordance with the procedures established by USA Taekwondo.
- (b) At the Junior national Team Fight-off, USA Taekwondo High Performance Director Patrick Wentland reminded the athletes, coaches, and parents that nominees to the team were required to accept the opportunity in writing. Mr. Wentland told Claimant

- and her father to provide an email address so they could provide further notice regarding the event. Claimant did not provide her father's email address.
- (c) The July 30, 2015 email to Claimant was adequate notice that required her to respond by August 6, 2015. Pursuant to the Selection Procedures, Claimant's failure to do so gave her position to the second place finisher at the national championships.
 - (d) Mr. Tubbs August 11, 2015 email to Mr. Wentland did not include a passport scan or GAL#.
 - (e) The USOC requires that NGBs set out procedures in a "brief summary outlining" selection to national teams. They do not have to provide every administrative step in the selection process.
 - (f) The Junior Pan Am Championship is not an event where every athlete accepts the position. The NGB has to determine whether athletes will attend events and email notification is acceptable in that case.
 - (g) Claimant had ample opportunity to timely reply to the email and failed to do so.
 - (h) Claimant cannot rely on the language in the Agreement stating that she had accepted a position on the team because neither she nor her father had the time to read the Agreement before turning it into USA Taekwondo.
 - (i) The expenses incurred by Ms. Sagovnovic precludes changing USA Taekwondo's decision.

VI ANALYSIS

27. It is a well accepted principle of *Lex Sportiva* that sports organizations like NGBs must comply with their rules. This principle has been articulated in the seminal case, *USA Shooting v Quigley* CAS 94/129:

...[T]he rule makers and the rule-appliers must begin by being strict with themselves. Regulations that may affect the careers of dedicated athletes must be predictable. They must emanate from duly authorized bodies. They must be adopted in constitutionally proper ways. They should not be the product of an obscure process of accretion. Athletes and officials should not be confronted with a thicket of mutually qualifying or even contradictory rules that can be understood only on the basis of the defacto practice over the course of many years of a small group of insiders. (*Shooting v Quigley* CAS 94/129)

(a) Claimant adequately notified USA Taekwondo of her acceptance to the team by signing the Agreement.

28. The Selection Procedures requires that the athlete accept the position on the Junior Pan Am Championship Team. The Agreement in paragraph 6 explicitly states that

Claimant accepted a position on the Junior Pan Am Championship Team. There is no good faith argument of an ambiguity regarding this provision of the Agreement. To accept Respondent's argument that Claimant did not accept her position on the team would require that the Arbitrator read Paragraph 6 out of the Agreement. Even if there was an ambiguity, that ambiguity would have to be read in favor of Claimant as USA Taekwondo drafted the Agreement.

(b) Respondent's failed to provide Claimant with adequate due process.

29. Once Claimant was a member of the Junior Pan Am Championship Team, USA Taekwondo was required to provide, at a minimum, the following due process:

- (1) Notice of the specific charges or alleged violations in writing, and possible consequences if the charges are found to be true;
- (2) Reasonable time between receipt of the notice of charges and the hearing within which to prepare a defense;
- (3) The right to have the hearing conducted at such a time and place so as to make it practicable for the persons charged to attend;
- (4) A hearing before a disinterested and impartial body of fact finders, and The right to be assisted in the presentation of one's case at the hearing, including the assistance of legal counsel, if desired;
- (5) The right to call witnesses and present oral written evidence and argument;
- (6) The right to confront and cross-examine adverse witnesses;
- (7) The right to have a record of the hearing if desired;
- (8) The burden of proof shall be on the preponderance of the charge, which burden shall be at least a "preponderance of the evidence" unless the NGB requires or provides for a higher burden of proof;
- (9) A written decision, with reasons therefore, based solely on the evidence of record, handed down in a timely fashion;
- (10) Written notice of appeal procedures, if the decision is adverse to the person charged, and prompt and fair adjudication of the appeal.

30. In this case, Respondent failed to comply with any of these provisions. To be fair, Respondent's position was that Claimant was not a member of the team yet and therefore was not entitled to these protections. The Arbitrator notes Article III of the Selection Procedures contains reasons an athlete can be removed from the team. Claimant had to be given notice of the reason for her threatened removal and a hearing before she could be removed.

(c) Respondent's July 30, 2015 did not provide adequate notice.

31. The Agreement required two signatories. One of those signatories had to be a parent or guardian because Claimant was a minor. Because the Agreement required two signatures and one of those signatures had to be Claimant's parent, any notice under the Agreement had to be sent to both Claimant and Mr. Tubbs, Claimant's father. Because USA Taekwondo sent the email to only one signatory, and not Mr. Tubbs, the Arbitrator finds that the notice under the Agreement, Article III, ¶6(c), was not adequate. When Signatories are bound by an Agreement, the notice provided to the Signatories under that Agreement must be sent to all signatories otherwise notice is defective. This is particularly the case when dealing with minors.

32. Further, contrary to Respondent's written arguments, the evidence was not in conflict, Mr. Wentland did not tell Claimant or her father at the National Championships that another email would be sent for Claimant to accept a position on the team.

(d) Any provision that could result in the threatened removal or removal of an athlete from a protected competition must have athlete representative involvement in passing that provision.

33. Contrary to USA Taekwondo's argument, any provision that can result in the removal of an athlete from a team, or prevent an athlete from being on a team, is not an "administrative step" that is not required to be in the Selection Procedures. Simply stated, if a step or procedure could result in the removal or prevention of an athlete from being on a national team or competing in a protected competition, that provision must be contained or referenced in the Selection Procedure, i.e., Code of Conduct, etc

34. It is not disputed that this July 30, 2015 email notice requiring an additional notice of acceptance was not in the Selection Procedure. It was further noted that this additional procedure was not approved by a committee containing 20% athlete representation as required



by the Stevens Act §220504(b)(2)(B). While the Arbitrator's decision does not rely on this oversight, it is worth noting for future reference.

(d) Misc.

35. The Arbitrator understands the requirement that Claimant had to produce a passport scan and GAL#. However, at the time of the hearing Respondent did not present evidence that Claimant had not produced these documents in time to be accepted by the International Federation.

36. While the Arbitrator has considered all of Respondent's arguments as referenced above, because this decision is based on the failure of adequate due process and notice, the additional issues raised by Respondent were considered and not accepted.

**VII
DECISION AND ORDER**

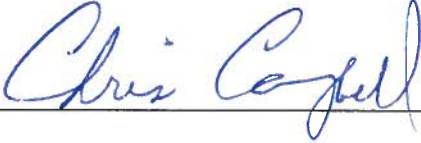
37. On the basis of the foregoing facts and legal aspects, the Arbitrator renders the following decision and order:

- (a) The relief requested by Ms. Tubbs is granted. Her position on the 2015 Junior Pan American Championship Team is fully restored with all rights and privileges associated with her first place finish at the National Championships. Respondent will nominate Ms. Tubbs to participate on behalf of the United States at the Junior Pan American Championships.
- (b) USA Taekwondo shall use its best efforts to have the Affected Athlete also compete at the Junior Pan American Championships. If Ms. Sagovnovic participation is not possible, then USA Taekwondo shall pay Ms. Sagovnovic all the travel expenses she

has incurred in anticipation of competing at the Junior Pan American Championships. This would also include reimbursing Ms. Sagovnovic for her expenses relating to her coach.

- (j) All administrative fees of the AAA totaling Eight Hundred Fifty Dollars and No Cents (\$850.00) shall be borne by Respondent.
- (k) The fees of the Arbitrator totaling One Thousand Five Hundred Dollars and No Cent (\$1,500.00) shall be borne by Respondent. The Affected athletes will not pay for any fees or expenses.
- (l) Therefore Respondent shall reimburse the sum of One Thousand Six Hundred Dollars and No Cents (\$1,600.00) representing that portion of said fees in excess of the apportioned costs previously incurred by Claimant.
- (m) This Final Award is in full satisfaction of all claims submitted to the Arbitrator by the Claimants against the Respondent and in full satisfaction of all defenses submitted by Respondent and the Affected Athletes against Claimant. All other claims and defenses not expressly granted herein are hereby denied.

Dated: September 10, 2015



Christopher L. Campbell, Arbitrator