

AMERICAN ARBITRATION ASSOCIATION
COMMERCIAL ARBITRATION TRIBUNAL

Opinion of Arbitrator

In the Matter of the Arbitration between:

JAMES AKIYAMA and LEILANI AKIYAMA, individual minor children, by and through Mariko Akiyama, JAY DRANGEID, and U.S. JUDO TRAINING CENTER, a Washington nonprofit corporation, Claimants

and

UNITED STATES JUDO, INC., Respondent

CASE NUMBER: 75 E 199 00041 98

The undersigned arbitrator hereby finds and concludes as follows:

1. Claimants James Akiyama and Leilani Akiyama (collectively "Akiyama"), minor children acting through their mother, Mariko Akiyama, Jay Drangeid ("Drangeid"), and U.S. Judo Training Center, a Washington nonprofit corporation (the "Center") operated by John R. Holm, filed a complaint with respondent United States Judo, Inc. ("USJI"), the national governing body for judo in the United States under Section 201 of the Amateur Sports Act ("ASA"), 36 U.S.C. § 371 *et seq.*

2. Claimants seek a ruling that USJI may not require United States amateur judo athletes to perform certain bows in order to participate in judo competition.

3. On June 1, 1997, an administrative hearing committee of USJI conducted a hearing on claimants' complaint pursuant to Article XVI of the USJI Bylaws. The committee dismissed claimants' complaint finding that "the practice of 'bowing', imposed as a procedural requirement in the normal course of athletic competition, and set forth in the rules of the International Judo Federation, is found to be reasonable, nondiscriminatory, and not arbitrary or capricious."

4. Pursuant to Article XXII of the USJI Bylaws, claimants have submitted their complaint to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association.

5. This matter came before the undersigned arbitrator for hearing on June 11 and 12, 1998. The arbitrator heard the testimony of John R. Holm, Jay Drangeid, Mariko Akiyama, Kurt Thompson, Yuko Ito, William T. Rosenberg, Douglas Graham, Barbara Houston, John A. Phillips, Jr., Fletcher Thornton, and Edward Liddie. The arbitrator also considered the declarations of Brannon M. Wheeler and Jim Kojima, the transcript of the deposition of James Kojima, the exhibits admitted at the hearing, and videotapes of judo competition offered by claimants and by USJI.

6. Pursuant to Section 201 of the ASA (36 U.S.C. § 391), USJI must satisfy certain criteria specified by Congress in order to continue to be recognized as the national governing body for judo. Among these criteria are:

1. USJI 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, age, sex, or national origin, and with fair notice and opportunity for a hearing to any amateur athlete, coach, trainer, manager, administrator, or official before declaring such individual ineligible to participate" (36 U.S.C. § 391(b)(6)); and

2. USJI must "not have eligibility criteria relating to amateur status which are more restrictive than those of the appropriate international sports federation" (36 U.S.C. § 391(b)(12)).

7. The conduct and regulation of international amateur judo competition, including the Olympic Games, and the Pan-American Games, is governed by the Contest Rules of the International Judo Federation ("IJF"). The IJF Contest Rules contain a Bowing Guide for judo athletes that is uniformly recognized and enforced in international judo competition.

8. USJI has adopted the IJF Contest Rules, including the bowing requirements, as the rules governing all amateur judo tournament competition in the United States which is sanctioned by USJI and its affiliate members, United States Judo Association and United States Judo Federation.

9. There is no dispute that claimants Akiyama and Drangeid are, and at all relevant times have been, eligible to compete in amateur judo competition sanctioned by USJI. Claimants Akiyama and Drangeid have, in the past, been disqualified from some USJI-sanctioned judo competition for failing and refusing to perform certain bows required by the IJF Contest Rules. Pursuant to a Preliminary Injunction Order entered on May 13, 1997, by the United States District Court for the Western District of Washington at Seattle, claimants Akiyama and Drangeid have been exempted from bowing outside the judo contest area or in the absence of a competitor, and Akiyama and Drangeid may not be required to participate in opening and closing ceremonies during a USJI-sanctioned judo tournament.

10. The sport of judo was founded in Japan by Jigoro Kano. Judo retains certain Japanese cultural traditions for contestants, including using Japanese terms for elements of the competition, wearing a characteristic judo uniform (the *judogi*), and bowing as an expression of respect.

11. Claimants object to the judo competition rules requiring a contestant to bow to the head table (the *joseki*) and to bow onto the mat (the *tatami*) or to the opponent in the safety area outside the judo contest area. Claimants do not object to the judo competition rules requiring contestants to bow to each other in unison at their starting positions within the judo contest area both before and after the contest.

12. Claimants Akiyama, who are Japanese Americans, object to bowing based upon their race, religion, and national origin. Specifically, Akiyama claims that the judo tradition of bowing is derived from Shinto, a race-based religion practiced only in Japan, in which ritual bowing to objects (such as a photograph of the Emperor of Japan) and areas (such as a shrine) was common. Akiyama objects to such bowing as a caricature of being Japanese, offensive in the same manner as if a Native American were required to raise a hand and say "How!". Moreover, Akiyama objects to forced Japanese-style bowing which was traditionally used by the Japanese military as a form of subjugation. Akiyama does not object to bowing to a judo opponent where the opponent is present and bows back.

13. Claimant Drangeid objects to bowing based upon its alleged infringement upon his religion and the religion of other judo contestants. Drangeid claims that the precepts of his Lutheran religion cause him to reserve the gesture of bowing for religious worship and not to bow to "graven images", such as a photo of Jigoro Kano. Drangeid does not object to bowing to his judo opponent before or after the judo contest. He analogizes a bow to the opponent as similar to a handshake or a signal to start the judo contest.

14. Claimant Center objects to having to force its judo students to engage in bowing in order to participate as athletes, and to have their coaches and trainers participate, in USJI-sanctioned judo tournaments. Center believes the judo bowing rules are silly and does not want to teach its students to pretend they are Japanese. Center is one of the few judo clubs in the country that does not teach a bowing protocol. Center's students do, however, bow to their opponents at the starting position within the judo contest area.

15. USJI is a private, nonprofit corporation having as its purpose the advancement of amateur judo competition. The fact that USJI is recognized by the United States Olympic Committee as the national governing body for amateur judo competition in the United States pursuant to the ASA is not sufficient to make USJI a governmental actor for "state action" purposes under the due process and equal protection provisions of the United States Constitution. *See San Francisco Arts and Athletics, Inc. v. U.S. Olympic Committee*, 483 U.S. 522, 97 L. Ed. 2d 427, 107 S. Ct. 2971 footnotes 23 and 27 (1987).

16. Participation in the sport of judo is a voluntary, elective activity.

17. The IJF Contest Rules for judo were adopted by representatives of five continental unions: Pan-America (North, Central and South America); Asia; Europe; Africa; and Oceania (Australia, New Zealand and South Pacific Islands). The IJF Contest Rules were adopted without reference to any common ethnic background or religious beliefs.

18. Athletes of diverse races, religions, and national origins compete in international judo competition without objection to the IJF Contest Rules, including the bowing requirements.

19. The IJF Contest Rules do not require contestants to bow to a photograph of Jigoro Kano, the deceased founder of judo. A photograph of Jigoro Kano is not routinely present at USJI-sanctioned judo tournaments.

20. Although USJI, as the national governing body for amateur judo in the United States, is not required to adopt the IJF Contest Rules as the rules for amateur judo competition in the United States, USJI is permitted to adopt the IJF Contest Rules in the discretion of USJI. USJI's adoption of the IJF Contest Rules for amateur judo competition in the United States is a reasonable exercise of USJI's discretion in that the IJF Contest Rules are consistently observed worldwide and must be known by U.S. judo athletes who aspire to international competition.

21. The bowing requirements of the IJF Contest Rules are rules of judo etiquette that promote respect for the philosophy of judo ("the gentle way"), one's opponent, and one's self. The bow (the *rei*) is a fundamental part of the sport of judo.

22. The rules of the sport of judo, like all other sports, evolve over time. Some of the bowing requirements of the IJF Contest Rules appear to be vestigial remnants of traditional bowing practices from the early days of judo. The IJF may elect to modify its rules and procedures in the future to eliminate some of the bows that are now required.

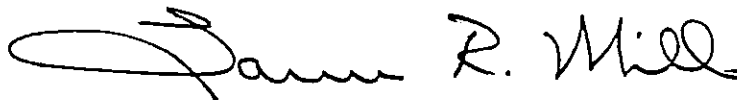
23. USJI has not violated the ASA. USJI does not have eligibility criteria relating to amateur status which are more restrictive than those of the IJF. The same eligibility criteria apply to claimants as apply to any other prospective contestants in USJI-sanctioned judo competition. Likewise, USJI provides 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, age, sex, or national origin. There is no evidence that the USJI, or any referee at any USJI-sanctioned tournament, has engaged in any selective or discriminatory enforcement of the IJF Contest Rules against the claimants.

24. Claimants have not sustained their burden of proof that they have been blacklisted or improperly denied an opportunity to compete in judo tournaments on account of their race, religion, or national origin.

25. Claimants Akiyama and Drangeid have sincere, strongly-held beliefs that the bowing requirements of the IJF Contest Rules infringe upon their spiritual education and the free exercise of their religion. Claimants have failed to sustain their burden of proof that their rights are impermissibly burdened by a "state actor" under the United States Constitution. *See, e.g., Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872, 108 L. Ed. 2d 876, 110 S. Ct. 1595 (1990) ("Conscientious scruples have not, in the course of the long struggle for religious toleration, relieved the individual from obedience to a general law not aimed at the promotion or restriction of religious beliefs." 494 U.S. at 879 quoting Justice Frankfurter in *Minersville School District Board of Education v. Gobitis*, 310 U.S. 586, 594-595, 84 L. Ed. 1375, 60 S. Ct. 1010, 1012-1013 (1940)).

26. USJI does not have a duty under the ASA to accommodate claimants' objections to the uniformly enforced bowing requirements of the IJF Contest Rules of the sport of judo, in which claimants have voluntarily chosen to participate.

DATED this 29th day of June, 1998.

A handwritten signature in black ink, appearing to read "Lawrence R. Mills". The signature is fluid and cursive, with a large initial "L" and "M".

Lawrence R. Mills
Arbitrator

AMERICAN ARBITRATION ASSOCIATION
COMMERCIAL ARBITRATION TRIBUNAL

Award of Arbitrator

In the Matter of the Arbitration between:

JAMES AKIYAMA and LEILANI AKIYAMA, individual minor children, by and through Mariko Akiyama, JAY DRANGEID, and U.S. JUDO TRAINING CENTER, a Washington nonprofit corporation, Claimants

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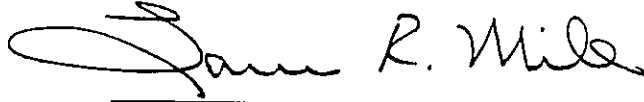
I, the undersigned arbitrator, having been designated in accordance with Article XXII of the Bylaws of United States Judo, Inc., and having been duly sworn and having duly heard the allegations and proof of the parties, hereby make the following award:

Claimants' complaint pursuant to Section 201 of the Amateur Sports Act is dismissed with prejudice.

The administrative fees and expenses of the American Arbitration Association totaling \$1,156.05 shall be borne equally by claimants and respondent. Therefore, claimants and respondent shall each pay to the American Arbitration Association the sum of \$1.90 for American Arbitration Association fees still outstanding.

The compensation and expenses of the arbitrator totalling \$6,900.00 shall be borne equally by claimants and respondent. Therefore, claimants and respondent shall each pay to the American Arbitration Association the sum of \$1,500.00 for arbitrator compensation still outstanding.

DATED this 29th day of June, 1998.

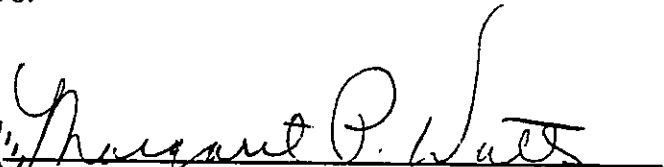
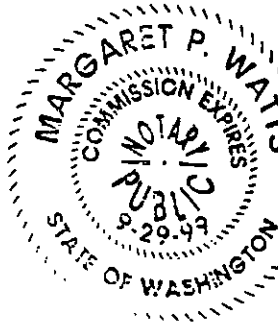


Lawrence R. Mills
Arbitrator

STATE OF WASHINGTON)
) ss:
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Lawrence R. Mills is the individual who personally appeared before me, and said individual acknowledged that he signed this instrument as his free and voluntary act for the uses and purposes mentioned in the instrument.

DATED this 29th day of June, 1998.



Printed Name: Margaret P. Watts
Notary Public in and for the State of
Washington, residing at Mill Creek
My Commission Expires: 9/29/99.