

COMMERCIAL ARBITRATION TRIBUNAL
AMERICAN ARBITRATION ASSOCIATION
CASE NO. 30 190 00994 99

In the Matter of the)
Arbitration between)
)
JAMES AKIYAMA and LEILANI)
AKIYAMA, individual minor)
children, by and through)
through Mariko Akiyama;)
JAY DRANGEID, an)
individual; and PACIFIC)
NORTHWEST OLYMPIC JUDO)
TRAINING CENTER, a)
nonprofit Washington)
corporation,)
)
Claimants,)
)
and)
)
UNITED STATES JUDO, INC.,)
and UNITED STATES)
OLYMPIC COMMITTEE,)
)
Respondents.)
_____)

ORDER DENYING
RESPONDENTS' MOTIONS
TO DISMISS

This matter comes before this Arbitration Tribunal on motions for dismissal filed by respondents United States Judo, Inc. ("USJI") and the United States Olympic Committee ("USOC").

The prior procedural history of this matter is summarized in the "Order Denying Defendants' Motion to Confirm Arbitration Award and Denying Plaintiffs' Motion for Relief from Stay" ("Order") entered by the

Hon. Robert S. Lasnik, United States District Court,
Western District of Washington, in Cause No. C97-0286L,
on September 23, 1999. As permitted by that Order,
claimants filed their Demand for Arbitration ("Demand")
in this matter on October 20, 1999. The undersigned
arbitrators were subsequently appointed by the American
Arbitration Association ("AAA") in accordance with the
procedures specified in the AAA's Commercial
Arbitration Rules ("Rules"). Subsequent proceedings in
this arbitration were summarized in Chairman Cutler's
Record of Preliminary Hearing and Initial Scheduling
Order ("Record"), issued on March 14, 2000. The
parties stipulated at the preliminary hearing conducted
in this matter on March 14, 2000, that respondents'
motions to dismiss could be decided by the Tribunal
based on the parties' written submissions, and without
oral argument. Based on the parties' stipulation, the
Tribunal so ordered. (Record, at 2.)

The Tribunal has considered carefully all of the
written materials and arguments submitted by the
parties in support of, and in opposition to, these
motions. Both motions are denied, for the following
reasons.

I. USJI's Motion to Dismiss.

USJI's motion is based "on principles of claim and issue preclusion" (USJI Motion, at 1) and specifically contends that claimants' present Demand is "barred by the binding and conclusive effect" of the award issued in the 1998 arbitration in AAA Case No. 75 E 199 00041. (Id., at 2.) USJI's motion argues that Article XXII, Section 1, of USJI's By-Laws provides that the 1998 arbitration award is "binding" on the parties, and that claimants are therefore barred from "seeking to re-arbitrate" the same claims and issues "previously disposed of" in the 1998 award. (Id., at 6.)

USJI's motion is denied for two principal reasons. First, the Ted Stevens Olympic and Amateur Sports Act ("ASA"), 36 U.S.C. § 220501 et seq., expressly provides in § 220529(a) that "a party aggrieved by a determination of the corporation [i.e., the USOC] under section 220527 . . . may obtain review by any regional office of the American Arbitration Association." Judge Lasnik's Order expressly held that the letter opinion of the USOC's Executive Director dated October 16, 1998, constituted such "a USOC determination as that term is used in the ASA." (Order, at 4.)

Section 220529(b) of the ASA provides that upon receipt of a timely demand for arbitration of such a determination, the AAA "shall immediately proceed with arbitration" Use of the word "binding" in Article XXII, Section 1, of USJI's By-Laws cannot and does not override the ASA's clear statutory directive entitling claimants to arbitration of the USOC's determination.

Second, Judge Lasnik's Order, after finding that the "statutory prerequisite . . . that there be a 'determination' by the USOC" was satisfied by the Executive Director's letter, expressly held that the presence of such a determination "trigger[s] plaintiffs' right to arbitration" and concluded that "[p]laintiffs may, therefore, appeal that determination to the AAA." (Order, at 3-4.) We regard Judge Lasnik's Order as establishing the law of the case in this proceeding, and therefore deny USJI's motion for this additional reason.

II. USOC's Motion to Dismiss.

USOC's motion to dismiss argues that it "has not agreed to, nor is it otherwise subject to arbitration of claimant's [sic] claims" and that claimants "have no jurisdictional basis upon which to make the USOC a

party to this arbitration" (USOC Motion, at 1.)¹ USOC argues that "claimants cannot point to any contract between themselves and the USOC in which the USOC has consented to arbitration. Further, the Act [i.e., the ASA] does not subject the USOC to arbitration of disputes between a national governing body and one of its members." (Id., at 2.)

USOC's motion is denied for the following reasons. First, exercising our authority under R-8(a) and (b), and generally, under the Rules, we construe Article VIII of USOC's Constitution as an agreement by USOC that it may be required to arbitrate this dispute as a party. Article VIII does not expressly state that the USOC may or must be made a party in an arbitration initiated pursuant to that Article. Section 4(A) of that Article, however, creates a "right to review" in an AAA arbitration by "any party aggrieved by a determination of the USOC" Sections 4(E) and (I) of Article VIII further provide, subject to certain exceptions, that the award in such an arbitration shall be binding upon "the involved parties" and "upon the USOC." Although it might be argued that these

¹USOC also joined in USJI's motion to dismiss. For the reasons given above, that motion has been denied.

provisions' semantic distinction between "parties" and "the USOC" indicates an intention that the USOC not be made a party to arbitrations arising under Section 4, we do not find such an argument persuasive.² Rather, we construe both the text and purpose of Article VIII, Section 4, as permitting USOC to be made a party to the present arbitration: It is "a determination of the USOC" that has "aggrieved" claimants and that claimants here seek to "review" in an arbitration proceeding that must "be binding upon" the USOC as well as USJI. Such provisions impliedly and necessarily contemplate that the USOC is an appropriate party in an Article VIII arbitration convened to review such a USOC determination.

Second, § 220529 of the ASA is to the same effect. Section 220529(a) provides that "a party aggrieved by a

²On the contrary, Section 4(I)'s provision that an arbitral award will be binding upon the USOC appears to be Article VIII's analogue to § 220529(d) of the ASA, which requires "the parties" to be bound by such an award.

³Indeed, there may well be cases where it could be important to the USOC to be permitted to participate in an Article VIII, Section 4, arbitration as a party -- in order to defend its determination. Unless Article VIII is construed to permit participation by USOC as a party in Section 4 arbitrations, the Rules do not appear to contain any basis for such joinder. (See Rules, R-1.)

determination of the corporation" [i.e., the USOC] "may obtain review by any regional office" of the AAA. Section 220529(d) provides that, subject to certain exceptions, the arbitrators' final decision "is binding on the parties." We recognize that the ASA does not expressly provide that the USOC must be made a party to an arbitration begun under § 220529, and we also note certain language in § 220529(b) that might suggest a semantic distinction between "the parties" and "the corporation." On balance, however, as with Article VIII of USOC's Constitution, we construe these analogous provisions of § 220529, and that provision's evident purpose, as requiring, or at least permitting, USOC to be made a party to the present arbitration: It is the USOC's determination that has "aggrieved" claimants and that claimants here seek to "review" in an arbitration proceeding that must "be binding upon" USOC as well as USJI in order for the arbitral award to have the full force and effect intended by the statute.

Third, the Demand in this case seeks "a determination on . . . whether the USOC can continue to recognize USJI as the national governing body of judo" (Demand, at 4.) We read this request for relief as stating a claim under § 220522(a)(4)(A) of

the ASA.⁴ That provision requires a national governing body, such as USJI, to arbitrate any controversy involving its recognition as a national governing body "upon demand of the corporation." The "corporation" is defined in § 220501(b)(4) as the USOC. We construe § 220522(a)(4)(A) as requiring, or at least allowing, arbitrations of recognition controversies to be initiated by service of a demand for arbitration on the USOC. The ASA's provisions concerning arbitration all contemplate arbitrations conducted before the AAA and pursuant to its Rules, and also evidence familiarity with the contents of the Rules by the legislative draftsmen. Under R-4(a) of the Rules, service of a demand for arbitration is to be presented to "the other party (respondent)." Thus, we construe § 220522(a)(4)(A)'s requirement that a recognition arbitration must be initiated with a "demand of the

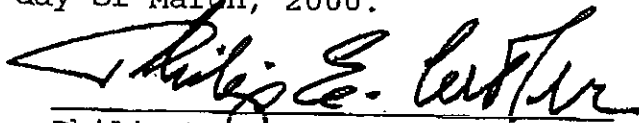
⁴We note the comment in USOC's motion that § 220522 "is the provision in the Act that claimants should have cited in their Demand as a basis for arbitration of this matter" (USOC Motion, at 2, n.2.) In order to eliminate any doubt as to the import of the Demand, we are today issuing a companion Order, pursuant to R-4(d) of the Rules, directing claimants to file a supplemental description of their claims, and of the relief they seek, clearly stating whether they seek arbitration here pursuant to § 220522 as well as § 220527, and whether the Demand seeks revocation of USJI's recognition as the national governing body for judo.

corporation" as intending that the USOC may be made a party in any such arbitration.

Fourth, the legislative purposes of ASA §§ 220522, 220527 and 220529 all appear to envision, and be promoted by, joinder of USOC as a party here. This is the best way to ensure that the entity empowered under the ASA to grant, withhold or revoke recognition of a national governing body, and to ensure compliance by that body with the ASA, is given an opportunity to be heard on such issues in the arbitration proceedings and bound by the eventual award. Such joinder also will further the purpose of the statute by ensuring that the Arbitration Tribunal will have the benefit of the USOC's views concerning such recognition and compliance issues at the hearing of this matter.

For these reasons, respondents' motions to dismiss are DENIED.

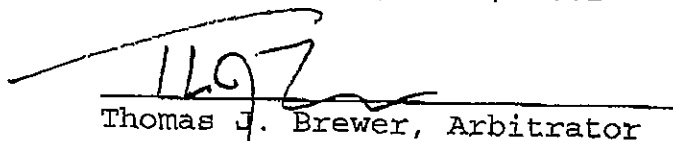
DATED this 28th day of March, 2000.



Philip E. Cutler, Chair of
Arbitration Tribunal



Gary R. Davall, Arbitrator



Thomas J. Brewer, Arbitrator