

**AMERICAN ARBITRATION ASSOCIATION**  
**Commercial Arbitration Tribunal**

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Re: AAA No. 77 190 00511 09 JENF

In the Matter of the Arbitration between

EKATERINA VINOGRADOVA, Claimant

And

US BIATHLON ASSOCIATION, Respondent

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**AWARD OF ARBITRATOR**

I, THE UNDERSIGNED ARBITRATOR, having been duly designated by the American Arbitration Association, by agreement of the parties, and in accordance with the Ted Stevens Olympic Sports Act of 1978 and Section 9 of the United States Olympic Committee (“USOC”) Bylaws, having been duly sworn, and having duly heard the proofs and allegations of the parties on an expedited basis, as permitted by the rules and agreed to by the parties, do hereby, determine and award, as follows:

**1.0 THE PARTIES AND SUMMARY**

1.1 This complaint arises out of the disqualification by Respondent (defined later) of the Claimant (defined later) from being able to participate in a qualifying event for the United States Olympic Team in the sport of biathlon in late 2009.

1.2 The Claimant, Ekaterina Vinogradova, (“Claimant” or “Ms. Vinogradova”) is an experienced and accomplished competitor in the sport of biathlon. Claimant was represented by her counsel Claude Ramoni, Esq., of the law firm Libra Law Ibarrola & Ramoni of Lausanne, Switzerland.

1.3 The Respondent, US Biathlon Association (“Respondent” or “USBA”) is the USOC-recognized National Governing Body (“NGB”) for the sport of biathlon in the United States. Edward Williams, Esq., of the law firm Stewart Occhipinti, LLP of New York, NY.

1.4 Various “affected athletes”, as defined in the USOC Bylaws, Section 9.8,<sup>1</sup> were given notice of the hearing and were permitted to participate. Pursuant to Section 9.8 of the

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<sup>1</sup> Section 9.8 of the USOC Bylaws, entitled “Affected Parties”, provides that:

USOC Bylaws, the Arbitrator determined that the following athletes could be affected and therefore, out of an abundance of caution and in light of the expedited nature of the proceeding, should be provided notice:

Lanny Barnes  
Tracy Barnes  
Grace Boutot  
Carolyn Bramante  
Adeline (Addie) Byrne  
Bethann Chamberlain  
Caitlin Compton  
Annelies Cook  
Susan Dunklee  
Katrina Howe  
Hale Johnson  
Brynden Manbeck  
Hilary McNamee  
Laura Spector  
Sara Studebaker  
Denise Teela  
Meagan Toussaint  
Jennifer Wygant

The notice to affected athletes was substantially agreed to by counsel for Respondent and Claimant and approved by the Arbitrator. US Biathlon, in exemplary fashion, took prompt steps to ensure notice was provided to the affected athletes. Substantially all of these affected athletes

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In any arbitration brought pursuant to this Section 9, the athlete filing the claim with the AAA shall submit with the claim a list of all individuals the athlete believes may be adversely affected by the arbitration. The respondent shall also promptly submit to the AAA a list of individuals it believes may be adversely affected by the arbitration, along with the relevant contact information for the individuals identified by the respondent and by the athlete. The arbitrator may also determine that individuals not listed by either the respondent or the athlete shall be given notice. The arbitrator shall then promptly determine which individuals must receive notice of the arbitration. The arbitration [*sic*] shall also approve the notice to be given. Unless determined otherwise by the arbitrator, the AAA shall then be responsible for providing notice to those individuals. Any individual so notified of the claim, [*sic*] shall have the option to participate in the arbitration as a party. If an individual is notified of the claim, then that individual shall be bound by the decision of the arbitrator even though the individual chose not to participate.

elected to participate in the hearing through the assistance of Paul Greene, Esq.<sup>2</sup> of the law firm PretiFlaherty of Portland, Maine, and Sarah Konrad, an individual.<sup>3</sup>

1.5 This case arises out of Ms. Vinogradova's desire to compete internationally in biathlon representing the United States. Ms. Vinogradova had previously competed for Belarus in numerous international biathlon competitions, including the 2006 Olympic Winter Games. The International Biathlon Union's rules provide for a two-year waiting period between international events at which athletes represent different countries, unless a waiver is applied for and received. On October 27, 2008, Ms. Vinogradova, through her husband and coach, filed a grievance with US Biathlon alleging that US Biathlon wrongfully denied Ms. Vinogradova selection to the national team "that leads to the team selection for the 2010 Olympic Games . . ." Ms. Vinogradova's grievance resulted in a duly convened US Biathlon hearing panel issuing a decision on January 12, 2009 denying her claim. Ms. Vinogradova filed her complaint in this matter on November 23, 2009.

## 2.0 JURISDICTION

2.1 This Arbitrator has jurisdiction over this dispute pursuant to the Ted Stevens Olympic and Amateur Sports Act ("Act") 36 U.S.C. §220501, *et seq.*, because this is a controversy involving Respondent's opportunity to participate in national and international competition representing the United States. The Act states that:

"An amateur sports organization is eligible to be recognized, or to continue to be recognized, as a national governing body only if it . . . agrees to submit to binding arbitration in any controversy involving . . . the opportunity of any amateur athlete . . . to participate in amateur athletic competition, upon demand of . . . any aggrieved amateur athlete. . . , conducted in accordance with the Commercial Rules of the American Arbitration Association, as modified and provided for in the corporation's constitution and bylaws. . ."<sup>4</sup>

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<sup>2</sup> The Arbitrator wishes to acknowledge the excellent briefing and arguments, and overall grasp and communication of the subject matter, and professionalism, by counsel for all parties in this case. The professionalism of counsel made it easier to address this matter on an expedited basis.

<sup>3</sup> Ms. Konrad is not an attorney licensed to practice before any bar. Normally, the Arbitrator might be persuaded to not permit such lay "representation" to occur before it, but in light of the exceptional and limited circumstances of the expedited nature of the proceedings and the many attorneys in the case representing interests similar to those whom Ms. Konrad "represented", the Arbitrator determined to allow her to participate in the case. Another athlete "representative" who served on US Biathlon's board of directors sought to participate in the case despite having no specific interest therein either individually or on behalf of any other party, and the Arbitrator refused to permit such participation because this athlete representative was merely a spectator. In future cases, athletes should consider keenly whether they are best represented by attorneys or themselves, because the chance remains that another arbitrator might not look so favorably on lay representation of their interests in similar proceedings. Having said all of this, the Arbitrator wishes to point out that Ms. Konrad did an exceptionally strong job of fulfilling her representation task and the arbitrator does not question and is indeed thankful for the quality of her effort.

<sup>4</sup> 36 U.S.C. §220521.

2.2 Section 9.1 of the USOC Bylaws provides as follows:

“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. . . .”

2.3 Under USOC Bylaws Section 1.3(u), “protected competition” means:

“1) Any amateur athletic competition between any athlete or athletes officially designated by the appropriate NGB or PSO as representing the United States, either individually or as part of a team, and any athlete or athletes representing any foreign country where (i) the terms of such competition require that the entrants be teams or individuals representing their respective nations and (ii) the athlete or group of athletes representing the United States are organized and sponsored by the appropriate NGB or PSO in accordance with a defined selection or tryout procedure that is open to all and publicly announced in advance, except for domestic amateur athletic competition, which by its terms, requires that entrants be expressly restricted to members of a specific class or amateur athletes such as those referred to in Section 220526(a) of the Act; and

2) any domestic amateur athletic competition or event organized and conducted by an NGB [*sic*] or PSO in its selection procedure and publicly announced in advance as a competition or event directly qualifying each successful competitor as an athlete representing the United States in a protected competition as defined in 1) above.”

2.4 USOC Bylaws Section 9.7 provides that, “If 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.” Under both Sections 9.7 and 9.9 of the USOC Bylaws, the arbitration proceeding may be expedited.

### **3.0 PROCEDURE**

3.1 The parties agreed to expedite this matter.

3.2 The parties jointly agreed to appoint the Arbitrator as the single arbitrator in this case.

3.3 A preliminary hearing was held by telephone on November 27, 2009, the result of which was a scheduling order for the case that was agreed upon by the parties.

3.4 The hearing in this matter was held by telephone on December 4, 2009. Reflecting the truly international nature of this proceeding and of Olympic sport, the Arbitrator participated in the hearing from Shanghai, while Mr. Williams was located in New York City, Mr. Ramoni was located in Lausanne, Mr. Greene was located in Portland, Maine, Ms. Konrad was located in the United States, and the party representatives and witnesses were located in various locations throughout Europe and the United States. Additional post-hearing briefing by the parties was permitted to be filed within 48 hours of the hearing.

3.5 On December 8, 2009, in accordance with the agreement of the parties, the Arbitrator issued a summary decision reading as follows:

“After full briefing and a hearing, and after having considered the arguments and submissions of the claimant and respondent, and the affected athletes, and the relevant law/rules, the arbitrator has determined to deny the relief sought by the claimant. A reasoned award will follow in short order.”

3.6 The parties agreed that this reasoned award would follow the summary decision.

#### **4.0 THE US BIATHLON/INTERNATIONAL BIATHLON UNION AND USOC RULES AT ISSUE**

4.1 Article 2.5 of the IBU Constitution provides as follows:

“An athlete who is a citizen of two or more countries at the same time may represent either one of them, as he may elect, However, after having represented one country in the Olympic Games, in Continental or Regional Games or in World or Continental Championships under the authority of the IBU, he may not represent another country, unless he meets the conditions for athletes having changed their citizenship or acquired a new citizenship. An athlete who has represented one country in the Olympic Games, in Continental or Regional Games, or in World or Continental Championships under the authority of the IBU, and who has changed his citizenship or assumed a new citizenship may not participate in IBU competitions representing his new country until at least two years have passed since the athlete last represented this former country. This period may be reduced or even annulled, with the agreement of the IBU Member Federations concerned, by the Executive Board of the IBU, which will take into account the circumstances of each case.”

4.2 Section 9.10 of the USOC Bylaws, entitled “Time Bar”, provides as follows:

“A claim against a respondent shall be prohibited unless filed with the AAA not later than six (6) months after the alleged date of denial.”

## **5.0 STANDARD OF REVIEW/BURDEN OF PROOF**

5.1 It is well accepted that the standard of review for cases arising under Section 9 of the USOC Bylaws is *de novo*. Section 9 proceedings are not appeals of NGB decisions.

5.2 The burden of proof is not as clearly defined in the USOC Bylaws or the Act, or prior cases. The Arbitrator adopted the formulation of the burden of proof as adopted by arbitrators in other cases arising under USOC Bylaws Section 9 and as put forward by Respondent and agreed to by Claimant, that Respondent, as a NGB, bears the burden of proof to demonstrate by at least a preponderance of the evidence that the rule in questions, or the NGB's application of the rule in question to the facts at hand, was reasonable and not for any improper purpose.

## **6.0 ARGUMENTS/ANALYSIS**

6.1 The following facts were not in dispute:

- a. Claimant is a member of the USBA;
- b. Claimant admits she was a member of the Belarus biathlon team as of at least February 2003;
- c. Claimant admits she competed in various IBU recognized international competitions for the Belarus team between 2003 and 2006, including the Olympic Games in Torino, Italy;
- d. Claimant admits she competed for Belarus at the IBU World Cup Competition in Oslo, Norway on 26 March 2006;
- e. Claimant competed in the North American Championships held in MN (the "NACH") on 21, 22 and 23 March 2008. This competition was less than two years from the date of the IBU World Cup Competition in Oslo, Norway, on 26 March 2006;
- f. Article 2.5 of the IBU Constitution provides as follows:

"An athlete who is a citizen of two or more countries at the same time may represent either one of them, as he may elect, However, after having represented one country in the Olympic Games, in Continental or Regional Games or in World or Continental Championships under the authority of the IBU, he may not represent another country, unless he meets the conditions for athletes having changed their citizenship or acquired a new citizenship. An athlete who has represented one country in the Olympic Games, in Continental or Regional Games, or in World or

Continental Championships under the authority of the IBU, and who has changed his citizenship or assumed a new citizenship may not participate in IBU competitions representing his new country until at least two years have passed since the athlete last represented this former country. This period may be reduced or even annulled, with the agreement of the IBU Member Federations concerned, by the Executive Board of the IBU, which will take into account the circumstances of each case.”

g. The North American [Biathlon] Championships in Minnesota (“the NACH”) held on 21, 22 and 23 March 2008 was an IBU Continental Championships, within the meaning of IBU Rule 2.5;

h. The NACH, in which Claimant competed, was less than two years from the date of the IBU World Cup competition held in Oslo, Norway, on 26 March 2006;

i. Claimant did not request a waiver or reduction from the USBA of the “2 year sit on the bench rule” of IBU Rule 2.5 following the 26 March 2006 World Cup competition and prior to the NACH in MN on 21 March 2008;

j. There was never any agreement reached between the USBA and the Belarus Federation to reduce or annul the 2-year rule imposed by IBU Rule 2.5;

k. The IBU Executive Board was never asked by Claimant to reduce or annul the 2-year rule embodied by IBU Rule 2.5 in connection with Claimant’s participation in the NACH competition in Canada on 21 March 2008;

l. Claimant was able to compete in the NACH competition in Canada on 21 – 23 March 2008 as a member of the USBA, nonetheless did not represent the United States in said competition (nor could she, since she had not met the requirements of IBU Rule 2.5);

m. Claimant was not eligible to receive an IBU medal at the NACH, as determined by the IBU;

n. On October 15, 2008, US Biathlon’s Max Cobb send Ms. Vinogradova an email stating that: “You are not eligible to compete for US Biathlon at IBU competitions and therefore you are not invited to participate in the US Biathlon Team time trials in Utah.” This email and the decision underlying it formed the basis of Ms. Vinogradova’s grievance filed with US Biathlon and resolved against her on January 12, 2009; and

o. Claimant failed to file a Section 9 Complaint seeking arbitration of the decision of the USBA Hearing Panel within the 6-month statute of limitations period provided for in Section 9.10 of the USOC Bylaws.

6.2 The Arbitrator finds that Ms. Vinogradova's claim in the current matter was time-barred by Section 9.10 of the USOC Bylaws. The claim that Ms. Vinogradova brought in October 2008 was substantially similar, if not identical, to that which she brought in the instant action. Both complaints dealt with Ms. Vinogradova's efforts to compete in US qualifying events for international competitions representing the United States when there had been no waiver of the time requirement under Rule 2.5 of the IBU Constitution. As a result of the initial adverse decision she received from the US Biathlon hearing panel on January 12, 2009, under USOC Bylaws Section 9.10, Ms. Vinogradova was obligated to challenge that decision, or the basis for it, no later than July 11, 2009. She did not do so, and the result is that her claim is time-barred. To find otherwise would invite claimants to file multiple, duplicate or nearly duplicate, claims arising out of the same subject matter, a result that is clearly not intended by the time bar provided by USOC Bylaws Section 9.10. Athletes have an obligation to challenge any decisions adverse to them within the 6-month time bar of Section 9.10 or face the prospect that those claims may be time-barred in the future, at least before the AAA.

6.3 Even if, *arguendo*, Ms. Vinogradova's claim was not time-barred by USOC Bylaws Section 9.10, she failed to satisfy the requirements of IBU Constitution Rule 2.5 by remaining out of international competition for 2 years from the date of her last representation of another country. See paragraphs 6.1(d)-(l), hereof. Claimant's participation in the NACH on 21 – 23 March 2008, prior to the expiration of the 2-year period specified in IBU Rule 2.5, and without any agreement of the IBU Member Federations concerned to reduce or annul the two year period, "reset the two year clock" of IBU Rule 2.5 for Claimant as a Belarus competitor. Any waiver of the 2-year waiting period by an IBU Member Federation, provided by IBU Rule 2.5, is entirely permissive, and no evidence or argument was presented suggesting it was mandatory. No evidence demonstrating IBU approval or other permissible waiver of the 2-year time limitation was provided.

## **7.0 DECISION AND AWARD**

7.1 On the basis of the foregoing facts and legal aspects, this Arbitrator renders the following decision:

a. Claimant has failed to show that the Respondent has violated any applicable rules or law, or that Respondent has acted unreasonably, irrationally, and without basis in determining that she was ineligible to compete or participate in the team selection and/or events that formed the basis of her complaint.

b. The parties shall bear their own attorney's fees and costs associated with this arbitration.

c. The administrative fees and expenses of the American Arbitration Association shall be borne by US Biathlon, and the compensation and expenses of the Arbitrator shall be borne by US Biathlon.

d. This Award is in full settlement of all claims and counterclaims submitted to this Arbitration. All claims and arguments that may have been raised but are not expressly granted or accepted herein are hereby denied.

Dated: February 16, 2010.

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Jeffrey G. Benz  
Arbitrator