

BEFORE THE AMERICAN ARBITRATION ASSOCIATION

In the Matter of Arbitration Between:)

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Caroline Barry)

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Arbitration No. 77 190 E 00049 11 JENF

and)

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USA Boxing, Inc.,)

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Order Re: Delineation of "Affected Athletes"

This matter is before the undersigned arbitrator pursuant to Section 9.7 of the Bylaws of the United States Olympic Committee. No party has objected to the jurisdiction or authority of the American Arbitration Association to administer and determine the claim. During the Prehearing Conference conducted by telephone on March 2, 2010, Respondent USA Boxing raised the issue whether its male athletes should be notified of these proceedings in accordance with Section 9.8 of the Bylaws of the United States Olympic Committee. The arbitrator granted Respondent leave to make that request and granted Claimant leave to respond if such a request were submitted. USA Boxing did so request in a timely manner, Claimant responded in opposition to the request, and USA Boxing, with leave of the arbitrator and in compliance with his further instructions to provide certain specific information, submitted a reply to Claimant's arguments. Being fully advised on the issues raised by the parties, the arbitrator resolves the request and ORDERS as follows:

The Bylaws of the United States Olympic Committee, in Section 9.8, require that upon the commencement of an arbitration proceeding under Section 9 the parties shall submit lists of "individuals [the party] believes may be adversely affected by the arbitration" Section 9.8 then imposes upon the arbitrator the duty "promptly [to] determine which individuals must receive notice of the arbitration." This determination is significant because:

Any individual so notified of the claim, 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.

USOC Bylaws, Section 9.8. The clear purpose of the first of these sentences is to assure that every athlete who may be affected by the decision in the arbitration has the opportunity to participate in the proceedings. The second sentence, by binding those who are so notified, serves to protect athletes and the NGB from multiple arbitrations and from the prospect of inconsistent and anomalous resolutions of the same issue.

The crux of the current dispute is whether the rules adopted by Respondent for the qualification and selection of athletes to participate in the 2011 Pan American Games violates the right -- created by the Ted Stevens Olympic and Amateur Sports Act and implemented by Section 9 of the Bylaws of the United States Olympic Committee -- of athletes to participate in competitions, including the Pan American Games. The qualification and selection system published by USA Boxing applies equally to members of both genders.

This arbitration will result in a determination whether the Claimant (and acknowledged affected athletes) has been denied her right to participate by the revisions in the qualification and selection rules adopted by Respondent. If it is determined that a box-off is required, then women who won their respective National Championship classes will be "adversely affected" because under the status quo, they have already qualified for the Pan American Games if they win the required placements in the "qualifying tournaments" designated by the Pan American Games Organizing Committee. If the existing rules are upheld and the incumbent National Champions are qualified to enter the selection tournaments, then Claimant and others in her circumstances will be "adversely affected" because they will not have the opportunity to compete for a slot in the "qualifying tournaments." Male athletes, both those who won their weight classes at the National Championships and those who did not, are similarly situated in regard to the status and application of the rules. If they are not given notice of this arbitration and the chance to be heard herein, they are not bound by the outcome. I see no reason to invite a multiplicity of arbitration proceedings and potentially inconsistent rulings on identical facts.

I am not persuaded by Claimant's argument that the restriction to women of three weight classes at the Pan American Games constitutes a material difference. Any athlete who thought she or he would have an opportunity to seek qualification to the Pan American Games regardless of her or his National Championship results has exactly the same stake in the outcome of this arbitration. The tactical decisions for boxers and their advisors whether to compete in a certain weight class may be different for some men than for some women, but the protected opportunity and right to seek qualification and selection is exactly the same for both genders. In other words, all athletes, regardless of gender, who could reasonably believe they

were eligible for selection to the Pan American Games are potentially "adversely affected" by the resolution of this case.

IT IS THEREFORE ORDERED that notice of this arbitration proceeding and of the right to be heard herein shall be given to (1) the winners of the National Championship weight classes being contested that the Pan American Games; (2) those athletes who qualified for the 2012 U.S. Olympic Team Box-Offs through "preliminary or qualifying" events listed in section I.B.2 of the "USA Boxing Athlete Selection Procedures – 2011 Pan-American Games" dated June 15, 2010 that were conducted prior to January 11, 2011; and (3) to all athletes who are or were qualified to enter the designated "preliminary or qualifying" events listed in section I.B.2 of the "USA Boxing Athlete Selection Procedures – 2011 Pan-American Games" dated June 15, 2010 that were scheduled for dates after January 11, 2011.

IT IS FURTHER ORDERED that USA Boxing promptly compile the list of individuals who meet the criteria set forth in the preceding paragraph (the "affected athlete list") and provide that list and available contact information to the AAA Case Administrator no later than 2:00 MST on Friday, March 4, 2011;

IT IS FURTHER ORDERED that USA Boxing supplement the affected athlete list as USA Boxing obtains the names of additional individuals who meet the enumerated criteria and with contact information not previously available for individuals on the affected athlete list.

Section 9.8 of the Bylaws of the United States Olympic Committee also provides that when additional affected athletes are to be notified of the arbitration and their right to participate in it, "The arbitration (*sic*) shall also approve the notice to be given." The undersigned assumes this was intended to read "The arbitrator shall also approve" To that end,

IT IS FURTHER ORDERED that counsel for USA Boxing provide a suggested form of notice to the arbitrator for review no later than 12:00 noon on March 3, 2011.

Recognizing that the effect of this Order may be to significantly expand the roster of parties and persons who wish to speak during the hearing, the undersigned admonishes all such individuals and their representatives that counsel for the original named parties will be given the lead roles in the arbitration, that it is anticipated that these attorneys will ably represent all persons with interests similar to or coincident with those of their clients, and that the right to participate as a party does not confer on anyone the right to offer cumulative, redundant, inconsequential or irrelevant evidence and argument at the hearing and that the same will not be received.

SO ORDERED this 3rd day of March, 2011

A handwritten signature in black ink, consisting of several overlapping, sweeping strokes that form a stylized, somewhat abstract representation of the name Donald W. Alperstein.

Donald W. Alperstein, Arbitrator