

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

AAA# 77-190 E 00003 12 JENF

In the matter of the Arbitration between

Maura Hamza, Claimant

And

United States Fencing Association, Respondent

FINAL AWARD

BACKGROUND

1. Claimant, Mauro Hamza, was hired by Respondent, United States Fencing Association, to act as the National Coach of the men's foil program, as reflected in a written Memorandum of Obligations and Responsibilities dated August 6, 2009 (the "Agreement"). The Agreement specified that Mr. Hamza was appointed as the National Coach and that his engagement as such ran through the conclusion of the 2012 Olympic Games. The Agreement lists the specific obligations and responsibilities of the National Coach and provides for performance reviews on specific dates and as USFA believes appropriate. The Agreement provides: "If, for reasons addressed in such reviews, or for other reasons that show a violation of the responsibilities and obligations set forth in this [Agreement], this agreement may be terminated by the USFA prior to its anticipated expiration date. [sic]"

2. For the entire duration of Mr. Hamza's employment, he was subject to negative criticism, disdain and interference mainly by the coach of some of the individual men's foil athletes, Greg Massialas. Mr. Massialas also made his wishes to have Mr. Hamza unseated well known. Mr. Hamza testified that he tried to include the individual coaches including Mr. Massialas "in the box" (i.e. acting as coach for the team competitions) as appropriate but that the carping and undermining continued. USFA did nothing to stop Mr. Massialas, who, as coach of several highly ranked senior men's foil competitors, was present at most of the team competitions. USFA witnesses concurred but were of the view that it was Mr. Hamza's responsibility, as National Weapon Director for foil, to work with the individual athletes and their coaches to achieve world results.

3. During this period, the person acting as High Performance Director at USFA, to whom Mr. Hamza reported, changed three times. Also during this period, both the teams' rankings improved.

4. At the 2010 World Championships in Paris, the men's senior foil individuals did very well, but the men's team was deemed by the USFA to have underperformed. The situation of antagonism reached its most difficult moment in October 2011, at the World Championships in

Catania, when the leadership team fell apart and the two people “in the box” were Mr. Hamza and the team manager, instead of another coach. This was blamed on an incident involving misconduct by Mr. Massialas and resulted in a team loss along with negative internal team dynamics. These were all reported as distractions and negative to the team and the USFA again deemed that the team underperformed.

5. Formal performance reviews were not given on the specific dates required in the Agreement, but in January, 2011, Mr. Hamza was given his first written performance review and a raise. Mr. Hamza was under the impression this was a promotion and the USFA claims now this was instead a change of responsibilities. Mr. Hamza was made National Weapon Director for the foil weapon, including both the men’s and women’s programs (the “Promotion”). As of the date of this proceeding, Mr. Hamza was listed on USFA’s web site as the national coach for both the men and women for the foil weapon.
6. USFA in spite of the listing on its web site claims that Mr. Hamza was no longer national coach as of the Promotion, that a letter addressed to Mr. Hamza and other interested parties in the foil program announcing the Promotion in January 2011 (the “Letter Announcement”) was an amendment to the Agreement, especially since Mr. Hamza reviewed and commented upon the letter in draft form and changes were made based on his comments.
7. USFA witnesses testified that Mr. Hamza was clearly told numerous times about this removal of the national coach role and the meaning of his January 2011 performance review, the Promotion and the communications by USFA. Specifically, Mr. Hamza, in his new role as Weapon Director, could determine who acted as the “lead coach” at any given team competition, whether it be himself or other coaches of individual athletes. The testimony was that he was encouraged both in writing and verbally to put the best person “in the box” as lead team coach at the competitions, not necessarily himself. Mr. Hamza testified that he was the National Coach throughout this period.
8. In November 2011, after the Catania World Championships, Mr. Hamza was told by the USFA High Performance Director that he was relieved of any coaching responsibilities for the senior foil teams. The USFA Executive Director, Greg Dilworth, concedes that this communication was badly handled by USFA.
9. Mr. Hamza resisted this change as he was under the impression that the Agreement provided for him to be the National Coach through the 2012 Olympic Games. He then requested reconsideration by the USFA Board of Directors and clarification in writing about specifically what responsibilities he would now have, advising that he would consider legal action. The response to this request was that he could provide no services as long as he was threatening legal action. Thereafter, Mr. Hamza hired legal counsel and filed the demand for arbitration on January 3, 2012. USFA then gave Mr. Hamza a negative written performance review previously scheduled for January 11, 2012 and terminated him.

RELIEF REQUESTED

10. Mr. Hamza requests the following relief under the provisions of the Ted Stevens Olympic and Amateur Sports Act (the “Act”), and under the United States Olympic Committee’s (“USOC”) Bylaws (the “Bylaws”), Section 9.1:

- His rights under the Agreement be enforced;
- He be reinstated as National Coach and Weapon Director for foil;
- He coach the Olympic team at the 2012 Olympic Games and other “protected competitions” as defined in the Bylaws; and
- An award for costs and attorneys’ fees.

11. USFA counters that:

- The complaint should be dismissed;
- USFA was within its rights in terminating Mr. Hamza because the decision to terminate him was made in good faith with substantial justification; and
- The 2012 Olympic Games coach selection procedures for USFA have not been promulgated or approved by the USOC and therefore those procedures under the Bylaws could not have been breached.

APPLICABLE LAW

12. The Bylaws, Section 9.1 provides in relevant part:

No [national governing body] may deny or threaten to deny any [coach] the opportunity to participate in the Olympic Games, ..., or other such protected competition as defined in Section 1.3 of these Bylaws. The [USOC] shall, by all reasonable means, protect the opportunity of [a coach] to participate if selected (or to attempt to qualify for selection to participate) as [a coach] representing the United States in any of the aforesaid competitions. In determining reasonable means to protect [a coach’s] opportunity to participate, the [USOC] shall consider its responsibilities to the individual [coach] involved or affected, to its mission, and to its membership.

13. The Bylaws, Section 1.3 defines “protected competition” as follows:

Any amateur athletic competition between any athlete or athletes officially designated by the appropriate [national governing body] ... 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...

14. There are “protected competitions” between now and the 2012 Olympic Games and Mr. Hamza will not be participating in those competitions if he is no longer employed by USFA.

PARTIES’ ARGUMENTS

15. Mr. Hamza argues that:

- The USFA violated his rights under the Bylaws, Section 9 by breaching the Agreement.
- As set forth in the Bylaws, the Act applies for the determination whether the Agreement was breached, along with common law principles.
- USFA wrongfully retaliated against him when he sought to enforce his rights under the Act by not allowing him to provide his services to USFA and then giving him a negative review to terminate the Agreement/his employment after he filed this action.

16. USFA argues that:

- Colorado law applies for the determination of whether the Agreement was breached.
- The issue of whether Mr. Hamza can be the Olympic National Coach can not yet be determined because the selection criteria have not been promulgated.
- Mr. Hamza rejected its offer to give him continued employment without coaching responsibilities for the senior teams leaving USFA with no choice but to terminate his employment.

17. The issues to be determined therefore are:

- Whether the provisions of the Bylaws, Section 9 apply to Mr. Hamza’s claim;
- If applicable, whether USFA violated the provisions of the Bylaws, Section 9 by denying Mr. Hamza the opportunity to participate if selected (or to attempt to qualify for selection to participate) as a coach at “protected competitions”; and
- Whether USFA’s final termination of Mr. Hamza was a retaliation against his exercise of his rights under the Bylaws, Section 9.

18. Pursuant to the requirements of the Act, the various other coaches in the foil program, Messrs. Greg Massialas, Simon Gershon, Jed Dupree, Amgad Khazbak, Anthony Leach and Sean McClain (the “affected parties”) were each notified of this proceeding and given the

opportunity to participate as a party. As such, they are each bound by the outcome of this proceeding.

ANALYSIS

19. Mr. Hamza was under the impression the Agreement provided he would serve as the Olympic coach (and as the coach at the “protected competitions” leading to the Olympic Games) and that he was fulfilling its terms. Based on the Agreement, he claims rights under the Act to be the senior teams’ coach. The Act does not confer these rights absolutely, but rather in relation to the responsibilities imposed on the USAF, as a member of the USOC. It would be disregarding common sense to interpret his having an Agreement to mean that regardless of his performance in fulfilling the Agreement’s terms, Mr. Hamza would be entitled to be the coach under the Act. It is inherent in the nature of a contract for services that those services must be provided competently and to the reasonable good faith satisfaction of the employer. The Agreement in effect so states by conditioning its termination on his “violation of the responsibilities and obligations” or “reasons addressed in such reviews”. Under the Act, USFA does have to protect his opportunity to do so but the mere existence of the Agreement does not guarantee Mr. Hamza the “opportunity to participate in the Olympic Games” or other “protected competitions”.

20. USFA argues there are no criteria established for the selection of the Olympic coach and thus it could not have violated the provisions of Section 9 in this case. This is self-serving as the promulgation of those criteria depends on USFA first submitting a draft to the USOC. The USFA awaits the outcome of this proceeding before making its submission, thus preventing their promulgation.

21. In any event, whether or not there are published criteria for the selection of the Olympic National Coach, the provisions of the Bylaws, Section 9 apply as there are “protected competitions” in which Mr. Hamza will not be able to participate before the Olympic Games by virtue of his termination. So, the criteria used by USFA to select coaches for the “protected competitions” in the meantime are relevant.

22. USFA’s witnesses testified that they had clearly communicated his duties and their expectations to Mr. Hamza, and argued that he was in “denial” about his lack of performance beginning at the time of his Promotion. The testimony of Mr. Page, Director of Sport Strategy and High Performance Director, was that he did call to the attention of Mr. Hamza in January 2011, as part of Mr. Hamza’s performance review that his position as National Coach was threatened by the team’s underperformance at the 2010 World Championships.

23. USFA did not thereafter attempt to amend the Agreement formally. It did however issue the Letter Announcement to all interested parties in the foil weapon. Mr. Hamza was aware of its contents, as he reviewed and objected to the portion that specified USFA’s “intent ... to name a lead coach for men and for women by the middle of this competition year”. The final Letter Announcement said that “Our goal will be for each of the top athletes to have access to coaching by their personal coach in the individual international competitions they attend and to put together the best team of coaches to support our athletes in team competition.” The reference to Mr. Hamza in this Letter Announcement is as “Director of USA Foil”.

24. By absence of a reference to Mr. Hamza as National Coach, and the inference about a plan for coaches at team competitions, this Letter Announcement does at the very least provide for ambiguity. It is contradictory that USFA retained the reference on its web site to Mr. Hamza as the National Coach of both the men's and women's senior foil teams through the date of this proceeding. USFA easily could have attempted formally to amend the Agreement to exclude the National Coach title in January 2011 and could have updated its web site. In this regard, the USFA is not credible and has done a disservice to Mr. Hamza.

25. In spite of USFA's failings in making Mr. Hamza's duties crystal clear, it is within the reasonable discretion of USFA to evaluate Mr. Hamza's performance and to determine whether he is providing the services necessary to fulfill his obligations under the Agreement. These same evaluations are the standards by which he might be selected or attempt to qualify for selection to participate in "protected competitions", since the Agreement identifies the obligations and responsibilities of the National Coach, or team coach at the 2012 Olympic Games and other "protected competitions". The unsatisfactory results of the 2010 and 2011 World Championships, along with Mr. Hamza's inability to control the negative influence of Mr. Massialas at the 2011 World Championships, culminating in the team underperformance, led USFA to determine it needed to make an additional change. Mr. Hamza had been made aware of the USFA's concern, however ambiguously the USFA implemented the supposed changes to the National Coach role, since January 2011.

26. The USFA's final determination was made in the spirit of the Act, to fulfill the USFA's responsibilities to its athletes and its mission to win medals at the Olympic Games. This is not a denial of the opportunity to participate, if selected, or the denial of the opportunity to attempt to be selected. Nor is it acting unreasonably or in bad faith. Rather, Mr. Hamza was given the opportunity to attempt to be selected, so long as he fulfilled the obligations under the Agreement, one of which was to "design and develop a coaching staff structure to support teams and athletes in attaining medal level results." In the reasonable belief of the USFA, Mr. Hamza was not able to fulfill this function. In selecting Mr. Massialas to act as lead coach/national coach for the men's senior team at the "protected competition" in January 2012, USFA determined he was best qualified "to support teams and athletes in attaining medal level results".

27. The communication of USFA's decision to change Mr. Hamza's role in November 2011 was handled badly, with no regard for following orderly procedures among the decision makers at USFA. This caused inconsistent communication to Mr. Hamza about his new role. The unfortunate circumstances do not change the USFA's responsibilities under the Act nor do they result in the denial of Mr. Hamza's rights. Thus, the determination made by USFA and the standards used do not rise to the level of a denial of the opportunity to participate as required by the Act.

28. With respect to Mr. Hamza's claim that USFA's firing was retaliation against him for exercising his rights under Section 9 and filing this proceeding, there was no proof presented that this was the case. USFA had determined that Mr. Hamza was no longer to provide any coaching to the senior teams as of November 2011. After Mr. Hamza pressed his case with the Board of Directors, and threatened legal action, a formal settlement offer was made in December 2011, which consisted of his Weapon Director job without the senior team coaching, i.e. reiterating what he had been told by Mr. Page in November 2011. This was rejected by Mr. Hamza when

he filed the arbitration demand. Mr. Hamza claims that his subsequent negative performance evaluation was trumped up to terminate him, in spite of the evidence that he had been notified of a negative performance review in essence in November 2011 when he was told that the USFA was dissatisfied with his performance. It was within USFA's discretion to determine he was not capable to attain medal level results, as required by the Agreement and as communicated to him was a job requirement. He rejected the revision of his responsibilities. This is not retaliation.

DECISION

29. Mr. Hamza's claim is denied. In spite of the outcome of this case, because of the lack of clarity of communication in writing to Mr. Hamza and USFA's general handling of his termination, USFA will bear the costs of this arbitration.

30. The administrative fees of the American Arbitration Association totaling \$850.00 shall be borne by USFA, and the compensation and expenses of the arbitrator totaling \$8,349.38 shall be borne by USFA. Therefore, USFA shall reimburse Mr. Hamza the sum of \$5,024.69, representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by Mr. Hamza.

31. This Award is in full settlement of all claims submitted to this arbitration. All claims not expressly granted in this Award are denied.

Dated: February 9, 2012



Maidie E. Oliveau, Arbitrator