

**BEFORE THE AMERICAN ARBITRATION ASSOCIATION  
Commercial Tribunal**

\_\_\_\_\_  
Melissa Merson )  
 )  
 )  
 Claimant )  
 )  
 v. )  
 )  
 USA Triathlon )  
 )  
 Respondent )  
\_\_\_\_\_ )

**AAA No. 01-14-0001-6464**

**Discovery Order**

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On November 17, 2014, Claimant Melissa Merson (“Merson”) filed a request that Respondent USA Triathlon (“USAT”) be ordered to permit the Secretary General of USAT, to provide testimony in this matter despite the apparent assertion by the SG that he is bound by a confidential settlement agreement which does not permit him to disclose information in this matter. The SG apparently was a member of the Board of Directors at the time of the events in 2012 and later which form the basis of the complaint by USAT against Merson, and was also at that time the Secretary General of USAT. The SG apparently remains a member of the Board of USAT.

The Arbitrator is not aware of any basis on which the SG could not be summoned to testify about his knowledge of and participation in the events surrounding the nomination of Merson to the International Triathlon Board, and the SG’s execution of a USAT nomination form on Merson’s behalf. It is that very act which appears to be at the heart of the matter to be arbitrated.

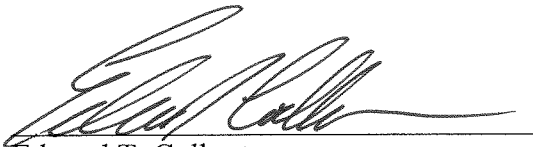
Indeed, USAT interposes no objection to the SG providing the requested testimony, but merely asks that the testimony be taken and maintained under some obligations of confidentiality. Consequently, the Arbitrator does not understand why this matter could not have been resolved by the Parties and their counsel through submission of an agreed form of protective order on confidentiality. Indeed, in the Case Management Order conference of January 9, 2015, the Parties represented that there were no identified disputes over production of information at that time, even though the request for the SG’s testimony had been made at least as early as November of 2014.

The Arbitrator notes that Merson has not actually served any discovery requests on USAT since January 26, 2015, the first day on which discovery requests were to be served. However, since USAT has not objected to the Motion to Compel Testimony, and has affirmatively stated that it would produce the Agreement between the SG and USAT, it is apparent that the Parties are treating Merson’s Discovery Request of November 17, 2014 as though they had been served on January 26<sup>th</sup>, and so they shall be treated here.

Therefore, the Arbitrator expects USAT to comply with the discovery requests of Merson and produce the requested information and documents. To the extent that USAT is concerned about voluntarily producing any documents or information regarding the agreement between USAT and the SG, it is hereby ORDERED, that USAT shall produce such documents and information. If USAT wishes any portion of that production to be treated as confidential, then USAT shall submit a proposed form of Protective Order for review and entry in this matter. USAT is to confer with and, if possible, obtain the consent of Merson to the language of any such Protective Order. Production of the requested information and documents is not to be held up awaiting submission of a form of such an order. If the Parties are unable to obtain agreement on the form of order by the time USAT is to produce confidential information, USAT should submit its own form of order and the Arbitrator promptly will enter an appropriate order based on that submission in order to avoid delay.

Similarly, since USAT has taken the position that it does not object to the testimony of the SG on the facts and circumstances of the issues likely to be of relevance in this matter, but is only

concerned about the confidential nature of that information. Therefore, the Arbitrator expects and hereby ORDERS that the Parties work out a schedule agreeable to the SG and both Parties, and to include such testimony within the framework of any Confidential Protective Order to be submitted. The deposition testimony of the SG is not to be held up awaiting submission of a form of such an order.



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Date: February 25, 2015