

On March 20, 2015, Claimant Melissa Merson filed a Motion to Compel USA Triathlon's Response to Discovery. (the "Motion") Respondent USA Triathlon opposed that motion. On March 25, 2015, the Parties held a telephone conference with the Arbitrator during which all issues were resolved, a reflected the Order following.

INTERROGATORIES

1. Interrogatory No. 1:

Respondent has provided the names of the members of the Board of Hearings and Appeal who were charged with investigating the actions of Claimant to determine whether or not a specify charges for a disciplinary proceeding but has not provided the present address or other contact information for those BHA investigative committee members, based on a claim it was protecting the "privacy rights" of the members. Respondent USAT has agreed to act as an intermediary to accommodate reasonable requests for access to those members, if any, from counsel for Claimant.

2 & 3. Interrogatories No. 4 & 5

Respondent has identified four individuals with whom the investigative panel did or is likely to have communicated, and Respondent further asserts that it has produced responsive documents, both previously and together with its response to the Motion to Compel. The relevant discovery requests are therefore satisfied.

4. Interrogatory No. 6:

The Respondent has stated that it is not aware of any ethics complaints filed against Claimant, and therefore the relevant discovery request is satisfied.

5. Interrogatory No. 7:

The Respondent has represented to Claimant that it possesses no documents reflecting any such "embarrassment" arising from the Claimant's actions other than a document already produced and identified as USAT000014, and that all evidence which may be offered will be through witnesses.

Respondent has agreed that it will provide a written explanation of the basis of its allegation that the Claimant's actions in submitting a nomination form to the ITU in 2012 caused "great embarrassment" to the Respondent. The explanation shall be declarative and with sufficient detail to enable the Claimant to understand and prepare her defenses to this claim, and shall name the sources of such testimonial evidence.

6 & 7. Interrogatories No. 12 and 13:

Claimant requests the identity of “all Directors, Officers, and Members of USAT that have been sanctioned” for violations of the USAT Ethics Code or ByLaws since 2008. Claimant makes no showing as to why Respondent should be compelled to respond to such a wide ranging, and apparently irrelevant inquiry.

Nevertheless, Respondent has answered the interrogatory and stated that there have been no such sanctions imposed following a disciplinary hearing during the last 7 years, but that sanctions have been imposed by virtue of settlements with such persons to resolve complaints. The Parties have agreed to confine the request and response to the subset of documents specified in Interrogatory No. 14.

8. Interrogatory No. 14:

Respondent has agreed with Claimant to produce documents responsive to Interrogatory No. 14, which involve more than one individual, but is concerned regarding confidentiality. Consequently, it is HEREBY ORDERED, that the documents responsive to this request shall be produced by Respondent, pursuant to a Stipulated Protective Agreement of March 12, 2015.

It was noted during the conference call that the Stipulated Agreement has not yet been presented to nor entered by the Arbitrator as an order.

DOCUMENT REQUESTS

9. Request for Production No. 3:

The Respondent has represented it has no responsive documents and, therefore, this request has been satisfied.

10. Request for Production No. 4:

Respondent has asserted that there are no responsive documents known to it other than USAT000014, and therefore this request has been satisfied.

11. Request for Production No. 7:

For the reasons set out hereinabove at paragraphs 12 & 13, the motion is moot with respect to the identified category of documents.

12. Request for Production No. 9:

For the reasons set out hereinabove at paragraph 14, Respondent is HEREBY ORDERED to produce the requested documents.

13. Request for Production No. 11:

Respondent has declined to produce the “report of the investigation into USAT conducted by the USOC that began in May 2014,” based on a claim that it does not have possession or custody of any such report, nor is such a report under its control. Moreover, Claimant has not alleged that she has unsuccessfully attempted to obtain a copy of any such report from the USOC. Given that Respondent cannot produce a document which it does not have, the request is denied.

14. Request for Production No. 13:

Respondent has stated that it will search for any responsive documents if the request is limited to communications among Respondent’s Board Members relating to the nomination of Claimant to the ITU Executive Committee, and Claimant has agreed that this will satisfy the request.

15. Request for Production No. 14:

The Parties discussed this request and Respondent elaborated that the request was based on her concern that documents which refer to Claimant solely as an “ex officio” member of the Board, but did not use her name, may not have been produced. Respondent stated that it was unaware of any such document, but agreed with counsel for Claimant that it would review the documents again and would produce any documents if any are found to exist. As a consequence, this portion of the motion to compel is moot.

16. Request for Production No. 16:

Claimant has requested information with respect to the nomination of Mr. Barry Siff to stand for election to the Executive Committee of the ITU. Respondent has objected on the grounds that the request appears on its face to call for information not relevant to the issue in this matter. It was discussed during the conference call that Mr. Siff apparently was selected by the ITU itself to fill a vacancy on the Executive Committee which occurred between elections. Therefore, this request is denied.

March 25, 2015



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