

**AMERICAN ARBITRATION ASSOCIATION
COMMERCIAL ARBITRATION TRIBUNAL**

Case No. 30 190 00797 07

In the Matter of Arbitration between:

NIA ABDALLAH,

Claimant,

and

USA TAEKWONDO, INC.

Respondent,

and

DIANA LOPEZ,

Affected Person.

AWARD OF ARBITRATOR

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the bylaws of the United States Olympic Committee and the Commercial Arbitration Rules of the American Arbitration Association, having been duly sworn, having received, reviewed and considered the pleadings, motions and arguments of the parties; and having heard and considered the proofs presented by Claimant and the cross examination by Respondent and Affected Person; and having duly heard the allegations and proofs of the parties, and having previously rendered an Interim Award dated September 24, 2007, do hereby AWARD as follows:

I. INTRODUCTION

A. This matter came on for consideration at the close of Claimant Nia Abdallah's ("Abdallah") evidentiary case in chief upon the renewed Motions of Respondent USA Taekwondo, Inc. ("USAT") and Affected Person Diana Lopez ("Lopez"). Specifically, these motions are:

1. Motion to Dismiss the Demand for Arbitration for lack of jurisdiction of the Arbitrator: The claims are of a type excluded from the scope of the bylaws of the USOC providing for arbitration, in that "Field of Play" decisions are the issues.

2. Motion in Limine to exclude any testimony with respect to Field of Play decisions.

3. Motion for a directed award of dismissal of Claimant's claim for relief on the ground that as a matter of law Claimant failed to prove a legally sufficient evidentiary basis for the Arbitrator to find for Claimant.

These Motions had been previously made and periodically renewed, and the undersigned reserved ruling until after Claimant Abdallah had presented her evidence.

B. An Interim Award granting Motions 1 and 3 was rendered by the undersigned on September 24, 2007, and is made final by this Award.

II. BACKGROUND

A. Claimant Nia Abdallah ("Abdallah") was a participant in competition through the USAT for a position on the United States Olympic Team for the sport of taekwondo. Affected Person Lopez was declared the winner of the bout held on August 24, 2007 between Claimant Abdallah and Lopez, and Abdallah was thereby eliminated from further competition for a berth on the United States Olympic Team in taekwondo.

1. The parties implicitly assumed that Respondent USAT is an amateur sports organization and a national governing organization as defined by United States Code, Chapter 2205, and is a member of the USOC as provided by Article X of the USOC bylaws. See also Exhibit 13, Competition Rules USA Taekwondo, Article 4. I therefore accept those facts.

2. The parties impliedly assumed that Claimant and Affected Party Lopez are members of USAT. I therefore accept such facts.

B. After an unsuccessful effort to obtain judicial intervention to avoid elimination from competition for an Olympic berth, on or about September 14, 2007, Claimant Abdallah commenced this arbitration with the American Arbitration Association alleging:

The referee's conduct in the matches between Nia Abdallah and Diana Lopez during the U.S. Olympic Team Trials violated the USAT bylaws and rules of competition as well as the mission of the USOC. We request that the arbitrator declare Nia Abdallah the winner of the second match and order a third match between Nia Abdallah and Diana Lopez to determine who will represent the United States in the upcoming Olympic World Qualification.

Thus, in the Demand, Claimant's claim asserted violations of USAT Bylaws, USAT Rules of Competition, and the Mission of USOC.

1. Thereafter, Claimant filed with the Arbitrator an untitled pleading wherein she “hereby demand[s] arbitration” followed by a “Statement of Facts” and a “Complaint,” apparently in response to Respondent’s Motion to Dismiss.

2. Claimant also at the Arbitrator’s request filed a Statement of Issues presented by her Demand:

- (1) Whether the center referee exhibited partiality while officiating the match;
- (2) Whether the referee failed to protect safety of Complainant;
- (3) Whether the referee violated referee Code of Conduct;
- (4) Whether USAT failed to properly enact its August 2004 amendment to Article 23.

No evidence was presented as to issues No. 4. No evidence directly pertaining to issue No. 3 was offered into evidence. It appears issue No. 3 was abandoned.

C. This arbitration is governed by the Ted Stevens Olympic and Amateur Sports Act, 36 U.S.C. §220501, *et seq.*

1. Section 220509 provides that the USOC shall establish and maintain provisions in its constitution and bylaws for the swift and equitable resolution of disputes involving its members and relating to the opportunity of an amateur athlete to participate in the Olympic games, world championship competition, and other protected competition.

2. Section 220522 provides that an amateur sports organization may be recognized as a national governing body, only if it, *inter alia*, agrees to submit to binding arbitration of any controversy involving the opportunity of an amateur athlete to participate in amateur athletic competition upon demand of any aggrieved amateur athlete. The arbitration shall be conducted in accordance with the Commercial Rules of the American Arbitration, subject to certain modifications and exemptions.

D. This arbitration was brought pursuant to Article IX Athletes Rights, of the bylaws of the United States Olympic Committee. Article IX, provides, *inter alia*,

1. Section 9.1. No member of the United States Olympic Committee (“USOC”) may deny or threaten to deny any amateur athlete the opportunity to participate in the Olympic games.

a. Claimant alleges, *inter alia*, that wrongful acts denied her right to continue her quest for a position on the United States Olympic team in taekwondo.

2. Section 9.2. Any amateur athlete who alleges that he/she has been denied by a corporate member of a right established by Section 9.1 may submit to any regional office of

the American Arbitration Association (“AAA”) for binding arbitration against such corporate member. The athlete may submit the claim to the AAA simultaneously with the athlete informing the CEO [of the USOC] of the claim and the athlete does not have to wait for the CEO’s investigation, but may pursue the claim immediately before the AAA.

3. Section 9.2 further provides that by maintaining membership in the USOC, each member agrees that any such controversy may be submitted to binding arbitration as provided in this Section and furthermore agrees to be bound by the arbitrator’s award as a result thereof.

4. Section 9.3 provides that in any arbitration brought pursuant to the article involving selection of an athlete to participate in a protected competition, the athlete submitting the controversy to the AAA must include with the initial submission a list of all persons that the athlete believes may be adversely affected by the arbitration. The member against which the arbitration has been filed must then promptly submit to the AAA a list of the persons it believes may be adversely affected by the arbitration, along with the relevant contact information for persons identified by the members and by the athlete. The arbitrator must then promptly determine which additional persons must receive notice of the arbitration. The athlete shall then be responsible for providing appropriate notice to these persons. Any person so notified then shall have the option to participate in the arbitration as a party; however, all persons so notified shall be bound by the results of the arbitration regardless of their decision to participate.

- a. Neither Claimant nor Respondent submitted any such lists to the AAA.
- b. However, after the Preliminary Conference on September 19, 2007 Claimant gave notice of the arbitration to Diana Lopez, the winning participant in the match with Claimant the result in which Claimant seeks to reverse. Claimant so advised the Arbitrator, and Lopez thereafter appeared by her counsel, although no proof of service was filed with the Arbitrator.
- c. Thereafter, Affected Person Diana Lopez joined the arbitration without objection (except as to lack of pleadings, timing, etc.), joined the Motions of Respondent, and participated through counsel in the hearing.
- d. No objection under Section 9.3 was made.

E. The Federal Arbitration Act, 9 U.S.C. § 1, *et seq.* is applicable to this proceeding. See Sections 2 and 3.

F. The Commercial Arbitration Rules of the AAA apply to this proceeding.

G. Claimant Abdallah presented her evidence, consisting of:

- (1) The testimony of:
 - A. Troy A. Garr
 - B. Stephen C. Dring

C. Nia Abdallah

being: (2) All exhibits offered by Claimant were received into evidence,

- Exhibit A. Three photographs from the bouts;
- Exhibit B. Competition Rules USA Taekwondo March 29, 2007;
- Exhibit C. Bylaws of the United States Olympic Committee;
- Exhibit D. Bylaws of USA Taekwondo, Inc. Approved August, 2006, Amended April 2006;
- Exhibit E. Photograph from the bouts;
- Exhibit F. Photograph from the bouts;
- Exhibit G. DVD of August 24, 2007 bout and preceding bout between Abdallah and Lopez;
- Exhibit H. DVD of August 24, 2007 bout between Abdallah and Lopez.

H. At the conclusion of Claimant's case in chief, Respondent and Lopez renewed their Motions, previously taken under advisement by the undersigned.

1. In determining these motions, I view the evidence in the light most favorable to Claimant: in the light that most favorable to the undersigned having jurisdiction over Claimant's claims, and in the light most favorable to Claimant having presented a *prima facie* case for relief.

III. THE HEARING, APPEARANCES AND APPOINTMENT OF THE ARBITRATOR

A. Appearance

1. Warren Fitzgerald, Jr., for Claimant Nia Abdallah.
2. John P. Collins for Respondent USA Taekwondo, Inc.
3. Jeffrey G. Benz, for Affected Person Diana Lopez.

B. The Hearing

1. The hearing was held on Monday, September 24, 2007 by telephone.
2. All parties participated through their respective counsel.

C. The Undersigned was appointed as the Arbitrator herein on September 19, 2007 by the AAA. After disclosures by the undersigned were distributed to the original parties, the AAA confirmed the appointment.

1. The undersigned executed the Arbitrator's Oath.

D. The United States Olympic Committee (“USOC”) was listed as a party in the Demand for Arbitration. However, the AAA advised the undersigned and counsel for Claimant and Respondent that USOC was not a party. No objection to that declaration was filed with the undersigned.

IV. MOTION TO DISMISS FOR LACK OF JURISDICTION OF THE ARBITRATOR OVER CLAIMS OF CLAIMANT

A. Respondent USAT and Affected Party Lopez moved to dismiss Claimant’s Demand for Arbitration for lack of jurisdiction of the Arbitrator.

B. More specifically, Section 9.5 of Article IX of the USOC Bylaws provides:

Notwithstanding any other provision of this Article, the final decision of a referee during a competition regarding a field of play decision (a matter set forth in the rules of the competition to be within the discretion of the referee) shall not be reviewable by an arbitrator or the subject of a demand for arbitration unless the decision is (1) outside the authority of the referee to make or (2) the product of fraud, corruption, partiality or other misconduct of the referee. For purposes of this Section, the term “referee” shall include any individual with discretion to make field of play decisions.

(Emphasis added.) See also Exhibit D, bylaws of USA Taekwondo, Inc., Section 15.7.

Thus, Respondent and Lopez assert (1) that Claimant’s claim seeks to review final decisions of the referee during the competition in issue regarding field of play decisions, *i.e.*, field of play decisions are the subject of the Demand for Arbitration, and (2) and the claims are not within the two exceptions of Section 9.5. Therefore, Claimant’s claims cannot be reviewed by this Arbitrator and cannot be the subject of the Demand for Arbitration.

1. Specifically, USAT and Lopez assert that this Arbitrator does not have jurisdiction over Claimant’s claims by reason of Section 9.5 prohibiting arbitration (Claimant’s claims are not within the scope of the arbitration provision) because the claims are based upon “field of play” decisions of the referee of the match in issue.

2. USAT and Lopez further assert that Claimant’s claims are not within either of the two exceptions to the field of play exclusion from arbitration. Specifically USAT and Lopez urge that the final decisions of the referee were (1) not outside the authority of the referee to make, and were not (2) the product of fraud, corruption, partiality, or other misconduct of the referee.

3. Claimant stipulated that her sole evidence in support of her claims were the acts and omissions (conduct) of the referee during the subject bout, and in the preceding bout between Lopez and Claimant.

C. Claimant's claims are based upon the field of play decision of the referee.

1. Field of play is defined by the USOC bylaws and USAT bylaws as "a matter set forth in the rules of the competition to be within the discretion of the referee."

2. The word "discretion" has multiple dictionary definitions, including judgment, freedom or authority to make decisions and choices, power to judge or act.

3. Claimant urges that the term "discretion" is limited to those rules where the referee has the right/power/authority under the rules to call or not make a call – it does not apply to acts the referee observes which the rules require the referee to make a call.

4. Respondent and Lopez, on the other hand, urge a much broader interpretation of "discretion."

5. "Discretion" as herein used does not mean solely those rules within the referees "discretion" as to whether to enforce, or to call a violation. Rather, the field of play decisions are those "calls" which the referee is empowered to make during the course of a match; calls concerning the rules which are entrusted to the referee under the bylaws and Rules of Competition of the USAT – if the subject matter is within the referee's control during the match, calls or non-calls in practically all instances field of play decisions. A call or non-call is a field of play decision, regardless of whether correct or incorrect.

6. Indeed, through the course of pleadings and evidence, Claimant appears to implicitly accept that the referees actions and inactions of which she complains are field of play decisions.

7. All of the acts and omissions of the referee which Claimant complained of were field of play decisions.

D. However, Claimant refers to the two exceptions to the allowing field of play decisions to be arbitrated.

1. The first exception to the field of play exclusion from arbitration is that the decisions were outside of the authority of the referee to make.

a. Claimant suggests that the rules require the referee to take certain steps when certain events occur. E.g., if one competitor commits a violation, the referee is required under the rules to call a violation. Claimant therefore reasons that if the referee makes an incorrect call, an incorrect call is outside the authority of the referee – the referee has "authority" to make only correct calls and non-calls; the referee has no "authority" to make incorrect calls.

b. All of the decisions of the referee in issue (actions and inactions) are within the scope of the referee's authority, although they may be wrong. The subject matter of the referee's decisions were within the scope of the referee's authority.

c. A wrong decision does not mean that the decision made was outside the referee's authority.

d. The calls and non-calls to which Claimant takes exception were within the authority of the referee.

2. The second exception to the field of play exclusion from arbitration (Arbitrator's jurisdiction) is if the referee's decision is the product of fraud, corruption, partiality or other misconduct of the referee.

a. Claimant stipulates that she does not assert the referee's decisions of which she complains are the product of fraud or corruption. Rather, Claimant contends that the referee's decisions were the product of partiality or other misconduct.

b. Claimant stipulates that the sole evidence of partiality or other misconduct of the referee upon which she relies is the acts and omissions of the referee during the bout in question, and the preceding bout of Claimant with Lopez. No evidence was introduced of partiality other than the actions of the referee on the mat of which Claimant complains.

E. Respondent and Lopez argue that referee partiality can be found only if evidence is presented of partiality other than acts or omissions of the referee during the competition – evidence outside the bout.

1. I reject this contention. While in most cases evidence only of the referees acts, omissions and conduct in the ring alone could not establish partiality, one's imagination can conceive of referees acts and omissions and conduct in the ring as alone that would justify an inference of partiality on the part of the referee.

2. Partiality is further discussed in the section hereon with respect to the Motion to Dismiss for lack of evidence, which is incorporated herein.

F. While Claimant asserts "other misconduct" of the referee as an exception to the nonarbitrability of field of play decisions, she has not defined what "other misconduct" she asserts. In hearing and considering the evidence, I have not perceived any other misconduct.

G. In sum, the evidence Claimant has offered in support of her claims are of the referee's final decisions during a competition regarding field of play decisions. In addition, these decisions were not outside the authority of the referee to make, and were not the product of partiality or other misconduct of the referee.

V. MOTION FOR DIRECTED AWARD DISMISSING CLAIMANT'S CLAIMS FOR RELIEF

A. As discussed *supra* under the Motion to Dismiss for lack of jurisdiction of the Arbitrator (which is incorporated herein), Claimant's claims are that the referee decisions in the subject bout was the product of partiality in favor of Lopez and against Claimant and other misconduct, and made rulings and non-rulings on the basis of partiality and other misconduct causing Claimant to lose the bout, which Claimant would otherwise have won.

1. In determining this Motion, I view the evidence presented in the light most favorable to Claimant. Claimant relies on certain calls, non-calls and conduct of the referee during the course of the bout. The evidence presented does not establish a prima facie cause of partiality.

B. The calls and non-calls of which Claimant complains.

1. Taken in the light most favorable to Claimant, the evidence may establish several incorrect calls or non-calls by the referee.

a. The undersigned has viewed the DVDs of the bouts, studied the still frames from the bouts, and listened to the testimony of the witnesses describing the incorrect calls upon which Claimant relies. However, the undersigned recognizes that the perspective of the camera do not necessarily capture the perspective from the referee's vantage point.

b. Thus this opinion should not be taken as critical of the referee, who was not a party, who was not called by Claimant and who had no opportunity to explain his refereeing of the bouts, and no opportunity to defend his calls and non-calls.

c. However, viewing this event in the context of the bouts as a whole, accepting that there were incorrect calls and non-calls, they cannot justify an inference of partiality of the referee.

d. Claimant did produce evidence which, on its face, suggests certain erroneous decisions were made.

2. By way of example, Claimant points to instances where the referee did not call a pushing violation. The Competition Rules USA Taekwondo Article 1.3 Prohibited Acts, including "grabbing, holding or pushing the opponent." "Pushing" is defined:

Pushing acts include pushing to displace the opponent's balance for the purpose of gaining an advantage in attacking, pushing to hinder the opponent's normal execution of technique and pushing with the palm, elbow, shoulder, trunk or head, etc.

Thus, it appears there may be "pushing" which may not be a violation, *e.g.*, it is not to displace the opponent's balance for the purpose of gaining advantage.

3. At what point do wrong calls or non-calls become proof of “partiality” of the referee? Only a very few of the referee decisions were asserted to be wrong. Such decisions could be simply wrong – without being wrong (motivated) because of the referee’s partiality.

4. One witness called by Claimant, having excellent credentials for observing taekwondo rule violations, testified that while he saw a pushing violation by Lopez, all players push, but referees have some discretion as to whether it violates the rules. He saw only a few calls and non-calls that he felt were errors by the referee, but it was typical for a coach to disagree with some calls. There were calls during each bout that should have been made, and these erroneous calls sometimes favoring Lopez and sometimes favoring Claimant. Referees miss calls generally, and without more, a limited number of missed calls it does indicate bias or prejudice.

5. Another qualified witness called by Claimant testified that there were several missed calls to the detriment of Claimant, but noted it does not mean the referee was biased or prejudiced. He observed the two bouts in evidence, but he had no knowledge of any partiality.

6. In sum, this arbitration is not an instant replay of portions of the bouts. The ultimate objective is not to determine the correctness of certain calls and non-calls of the referee — that is the function of the referee, and as may be provided by its bylaws, the Respondent.

a. The quantum or nature of missed calls of which Claimant complains does not approach the quantum to alone justify an inference of partiality.

7. Claimant failed to establish a prima facie case of partiality.

C. Claimant further asserts other misconduct of the referee. The “other misconduct” of which Claimant complains is the alleged failure of the referee to protect Claimant as required by the Rules of Competition, *e.g.*, when Claimant was down, protecting Claimant from kicking or other aggression.

1. At most, Claimant’s evidence establishes field of play decisions by the referee — many of which are judgment calls.

2. No actual harm is alleged or proven to have been caused to Claimant.

3. Protection is primarily an intervention issue on the part of the referee, and not a failure to act that necessarily would result in the match outcome.

4. I cannot infer from the evidence presented by Claimant of the referee’s failure to protect Claimant constitutes “misconduct” of the referee.

a. A failure to act — a failure to take steps to protect a participant may be a failure according to the interpretation of some and a correct conclusion of non-intervention by others.

Circumstances during the bouts were found to constitute a failure to protect, they are insufficient to justify an inference of partiality.

D. Lastly, it is unclear as to whether Claimant abandoned certain theories of her claims.

1. Based upon the submissions and argument of counsel, the alleged violation of USAT bylaws and Rules of Competition were the calls and non-calls discussed above.

2. No violation of the mission of the USOC was proven by Claimant. At most, Claimant's evidence may have proven missed calls or bad calls – nothing more.

3. The Referee Code of Conduct was produced by Claimant to the Arbitrator, but was not introduced into evidence. Similarly, there was no testimony specifically with respect thereto. I find Claimant failed to establish a *prima facie* case of violation of the Code of Conduct.

4. Claimant's Statement of Issues asserted that USAT failed to properly enact its August 2004 amendment to Article 23. However, Claimant did not introduce any evidence to support the claim, and it is therefore dismissed.

I THEREFORE AWARD as follows:

1. The Claims of Claimant Nia Abdallah are dismissed with prejudice.

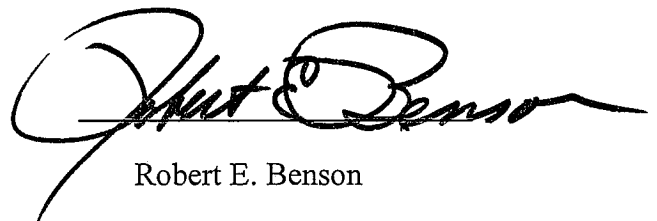
2. The administrative filing fees of the American Arbitration Association totaling \$750.00 and the compensation and expenses of the Arbitrator totaling \$7,336.00 shall be borne 60% by Claimant and 40% by Respondent. Therefore, Respondent shall reimburse Claimant the sum of \$300.00, representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by Claimant.

3. The above sums are to be paid on or before twenty (20) days from the date of this Award.

4. This Award is in full settlement of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby, denied.

5. Any motions with respect to this Award shall only be as allowed and within the time as provided by the Ted Stevens Olympic and Amateur Sports Act, Federal Arbitration Association and Bylaws of the United States Olympic Committee.

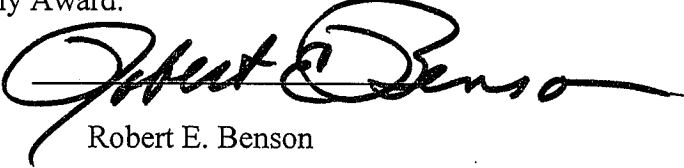
October 4, 2007



Robert E. Benson

I, Robert E. Benson, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument which is my Award.

October 4, 2007



Robert E. Benson

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