

USA TAEKWONDO, INC.

USA TAEKWONDO, INC.) Case Number 07.31.07
In re the Matter of:)
) DECISION OF JUDICIAL
DAVID PELHAM, USAT Member) PANEL
999015173,)
ON BEHALF OF)
DANIELLE PELHAM, USAT MEMBER)
999015172,)
)
Petitioner,)
)
and)
)
MARK COFFMAN, USAT Representative,)
LEON PRESTON, Referee)
Representative, RANDY CHAMBLISS,)
Coach Representative, LINDA BUELL,)
ACC Representative, CHRISTINA)
BAILEY, Athlete Representative,)
)
Respondents.)
_____)

The Administrative Grievance and Right to Compete matter of Danielle Pelham, through her Petitioner-Representative, David Pelham, regularly came on for hearing before a Panel of the Judicial Committee on August 13, 2007, at 5:00 p.m., Mountain Daylight Time, pursuant to the provisions of USA Taekwondo, Inc. ("USAT"), By-Laws Section 9.15(b)(3).

A Panel of the Judicial Committee, USAT, comprised of Oliver W. Wanger, Chair, Doug Lewis Committee Member and Troy Garr, Committee Member, having been duly selected, conducted and heard this Administrative Complaint.

Notice was duly given August 9, 2007, to the Petitioner and all Parties Respondent that the hearing would be held Monday, August 13, 2007, at 5:00 p.m., M.D.T. (7:00 p.m. E.D.T. and 4:00 p.m. P.D.T).

The Complaint, pursuant to USAT By-Law Section 15.12 includes a list of all other individuals, together with their contact information, who may be adversely affected by a decision in this matter.

PROCEDURAL BACKGROUND

This Administrative Complaint arises out of a match at the July 2007, National Senior Trials at San Jose, California, for the Fin Fly Women's Division. A field of play decision was made by a referee in the quarter final match between Danielle Pelham and Sun Jin Kim and overruled by an Arbitration Board. The Regional match was part of the National Trials to qualify for eligibility for the Olympic Trials to be held August 23-24, 2007.

A protest was presented by the Coach of Sun Jin Kim. The protest alleged that the Center Referee failed to give a "Kyongo" half-point deduction for an alleged low kick by Ms. Pelham, which

resulted in the match ending in a 3-3 tie, as opposed to a 3-2 win for Ms. Kim.

The match ended in regulation time in a 3-3 tie and went into a sudden-death overtime round.

No protest was presented prior to the overtime. Ms. Kim competed in the overtime round without a reservation of rights and was defeated in the overtime round by Danielle Pelham. Ms. Kim's protest followed.

An Arbitration Board heard the protest and overturned the result of the match and awarded the victory to Ms. Kim.

Ms. Kim was awarded a Bronze medal in the San Jose competition.

APPLICABLE RULES

USAT By-Law 15.7 specifies 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 through, or the subject of, these complaint procedures, unless the decision is: (i) outside the authority of the referee to make, or (ii) the product of fraud, corruption, partiality, or other misconduct of the referee.

USAT Competition Rules, Article 23, Arbitration and Sanctions, Deliberation Procedures, 6.3, page 38, Errors in

Factual Judgment, provide: "When the Board decides that there was a clear error in judging the facts, such as the impact of striking, severity of action or conduct, intention, timing of an act in relation to a declaration or area, the decision *shall not be changed* and the official(s) deemed to have made the error may be admonished or sanctioned."

USAT Competition Rule, Article 13.1, p. 20, provides: "Penalties shall be declared by the referee for any prohibited acts."

USAT Competition Rule, Article 19.2.1(b), p. 32, provides: "The Referee shall declare . . . deduction of points."

USAT Competition Rule, Article 19.2.1(c), p. 32, provides: "The Referee shall have the right to make decisions independently in accordance with the prescribed rule."

The petition requests the following relief:

1. That Danielle Pelham be included in the pool of eligible athletes to compete in the Final Olympic Trials August 23-24, 2007;

2. That USAT correct the official record, remove the Bronze medal from Ms. Kim and award the Bronze medal to Ms. Danielle Pelham;

3. That Danielle Pelham be included in the pool of eligible athletes for any and all future events which would have

resulted from her inclusion in the Olympic trials; and

4. That USAT review the actions that led to violation of the USAT By-Laws and Competition Rules and take any action deemed appropriate.

PARTY SUBMISSIONS

David Askinas, CEO, USAT, presented the statement and decision on the grievance for USAT. USAT has decided that the Kim protest should not have been heard nor should any decision of the Arbitration Board have been accepted to overturn a field of play decision which resulted in changing the winner and outcome of the match which violated both Article 15.7 of USAT By-Laws and Rules of Competition.

The following individuals presented testimony at the hearing of the grievance: Joe Aguilar, Jim Craig, Quin Fon Lee, Juan Martinez, and Eric Loren, Athlete Representative.

After hearing the presentation of David Askinas on behalf of USAT, and USAT's recommended decision; the statements of all participants; considering the applicable rules; and being fully informed in the premises, the Panel enters the following decision.

THE FACTS

No party has disputed the facts in this case.

1. In a July 2007, USAT Regional Qualifying Tournament in

San Jose, California, in a quarter-final match between Sun Jin Kim and Danielle Pelham, a protest was presented by the Coach of Ms. Kim alleging that the Center Referee failed to assess against Ms. Pelham, a "Kyongo," half-point deduction for an infraction for a low kick by Ms. Pelham. The match ended in a 3-3 tie. If the Kyongo, half-point deduction had been allowed, Ms. Kim would have won the match 3-2.

2. The match went into a sudden death, overtime round.

3. Ms. Kim's Coach did not protest prior to the overtime.

4. Ms. Kim competed in the over-time round without any reservation of rights.

5. Danielle Pelham defeated Ms. Kim in the overtime round.

6. An Arbitration Board heard Ms. Kim's protest and overturned the result of the match and awarded the victory to Ms. Kim.

7. Ms. Kim was awarded a Bronze medal in the San Jose competition.

8. One of the Arbitration Board members, Mr. Leon Preston, was a resident of the State of Washington, the same state of which Ms. Pelham is a resident.

7. Ms. Kim then fought in the San Jose Competition semi-finals and lost.

APPLICABLE USAT RULES

USAT By-Law 15.7 governing field of play decisions, makes the final decision of a Referee during a competition regarding a field of play decision, as is here at issue, not reviewable. There is no suggestion that the Referee did not have the authority to make the decision denying the Kyongo or that the Referee's decision was the product of fraud, corruption, partiality, or other misconduct of the Referee.

Rule of Competition, Article 13.1, p. 20, vests the Referee with discretion to declare any penalties for prohibited acts. Article 19.2.1(b), p. 20, vests the Referee with authority to declare deduction of points and Rule 19.2.1(c) grants the Referee the right to make decisions independently in accordance with the Rules of the USAT.

USAT Competition Rule 23.3.2, p. 37, excludes from any deliberation or reevaluation by any USAT member of the same state as that of either contestant. Here, a member of the Arbitration Board, Mr. Leon Preston, was a resident of the State of Washington, the state of residence of Danielle Pelham, one of the contestants.

DECISION

USAT has admitted and the Panel finds that the field of play decision in dispute was not reviewable, the Arbitration Board

should never have been convened. The Arbitration Board was improperly constituted in violation of USAT Competition Rules and By-Laws, as a member of the Board, Mr. Preston, was a resident of the same state as one of the contestants, Ms. Pelham.

The decision of the Arbitration Board must be vacated as that Board had no jurisdiction to review or reverse the Center Referee's field of play decision or to alter the outcome of the match. Ms. Pelham should have won the match based on her scoring more points in the sudden-death overtime round. The Panel finds that the Decision of the Arbitration Board is contrary to the By-Laws and Rules of USAT, is without jurisdictional authority, and is vacated. The Arbitration Board Decision on the Pelham-Kim match has no further force or effect.

REMEDY

Here, the mistake of the Arbitration Board has harmed not only the Petitioner, but all other Fin-Fly Female athletes who have competed, and adversely affected the pool of eligible athletes who will compete in the Olympic Trials on August 23-24, 2007. Various remedies have been suggested, including requiring Ms. Pelham to have an individual match with the winner of the San Jose Regional Competition, Cheryl Krause. It has also been proposed that Ms. Pelham be admitted to the pool of eligible athletes to compete in the Olympic Trials August 23-24, 2007. It

was further discussed where Ms. Pelham should be seeded for the Olympic Trials if she is added to the pool of eligible athletes.

Petitioner has also requested that the Bronze medal, for the San Jose Fin-Fly Female Division, be taken from Ms. Kim and be awarded to Ms. Pelham. Petitioner further requests she be included in the pool of eligible athletes for any and all future events which would have resulted from her inclusion in the Olympic Trials. For such other relief as appropriate.

CONCLUSIONS

The Panel unanimously determines that it is impossible to predict the outcome of the semi-final and final matches, had Ms. Pelham fought in those matches as the winning quarter-finalist. This means that there is no reasonable factual or other basis to determine where Ms. Pelham ranks in relation to other athletes who are presently seeded by USAT for the Olympic Trials in the Fin-Fly Female Division. This request is DENIED.

The Panel unanimously agrees and IT IS ORDERED that Ms. Pelham should have the opportunity to compete at the Olympic Trials and that she should be included in the pool of eligible athletes. Whether or not this means that she will be eligible for any and all future events which would have resulted from her inclusion in the Olympic Trials, cannot be determined by the

Panel on this record and that request is DENIED WITHOUT PREJUDICE.

Ms. Danielle Pelham will be added to the pool of eligible athletes to compete in the Fin-Fly Female Division in the Olympic Trials to be held August 23-24, 2007, by USAT.

Although Ms. Pelham was the rightful winner of the disputed match, it is impossible to predict the outcome of her matches if she had fought in the semi-finals and final matches. Ms. Kim was not given notice of this proceeding and is the party directly affected. There is no jurisdiction to award this relief. The official record shall not be corrected and the Bronze medal for the San Jose Regional Qualifying Competition shall not be removed from Ms. Kim.

Our decision in this case is unanimous.

DATED: August ____, 2007.

Oliver W. Wanger
Panel Chair

DATED: August ____, 2007.

Troy Garr
Panel Member

DATED: August ____, 2007.

Doug Lewis
Panel Member

(usa taekwondo - kim v. pelham decision)