

**AMERICAN ARBITRATION ASSOCIATION**  
**ARBITRATION TRIBUNAL**

In the Matter of the Arbitration Between:

MEGAN GUARNIER,

Claimant,

v.

USA CYCLING, INC.,

Respondent,

and

SHELLY OLDS

Affected Person.

American Arbitration No. 77 190 E 00198 JENF

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**FINAL AWARD OF ARBITRATOR**

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I, the undersigned Arbitrator, having been designated by the American Arbitration Association and in accordance with 36 U.S.C. §22051, the United States Olympic Committee Constitution and Bylaws, having been duly sworn, having heard, reviewed and considered the allegations, proof and argument of the parties and Affected Party herein, and having previously rendered an Interim Award dated July 6, 2012 do now hereby FIND, REASON, CONCLUDE and ENTER this FINAL AWARD as follows:

**I. APPEARANCES**

A. Claimant Megan Guarnier was present, and represented by counsel, Howard L. Jacobs.

B. Respondent USA Cycling ("USAC") was present by its representatives Jim Miller and Steve Johnson, and represented by counsel, Stephen A. Hess.

C. Affected Party Shelley Olds was in Italy participating in a cycling event but was available by phone. She was represented in the hearing by counsel, Kevin D. Evans.

D. Appearing as an observer in person was Sara Clark, USOC Athletic Ombudsman Specialist. Appearing as observers by phone were John W. Ruger, USOC Athletic Ombudsman, Gary Johnson, USOC and Brent Hirst, USOC

E. At the commencement of the hearing, others were also in attendance by phone, being or appearing in behalf of Affected Parties with respect to the complaint and demand of Ms. Cliff-Ryan. Upon the verbal order confirming withdrawal/dismissal of her claims, they withdrew from the hearing.

## **II. INTRODUCTION**

A. Claimant Guarnier commenced this proceeding against USA Cycling Inc. requesting "to be named to the 2012 United States Olympic team in the women's road cycling event, in place and instead of Shelley Olds." She named Shelley Olds as the sole Affected Party under Section 9 of the United States Olympic Committee ("USOC") bylaws.

B. USA Cycling denied the essential allegations, and named as additional Affected Parties Ms. Neben, Ms. Armstrong, and Ms. Cliff-Ryan (discussed supra.) I found, given the very narrow relief that Claimant sought, and that no other relief was desired, that the only Affected Party with respect to Ms. Guarnier's claim was Ms. Olds.

1. Section 9.8 of the USOC bylaws defines affected party as individuals who may be adversely affected by the arbitration.

## **III. PRIOR PROCEEDINGS**

A. Prior to the hearing, cycling candidate Theresa Cliff-Ryan filed a Complaint and Demand for Arbitration, also asserting that she should have been appointed to the 2012 Olympic USA Cycling team. The relief sought was not limited to replacing a specific athlete who had been selected for the team.

B. Various proceedings and discussions were held with respect to this Complaint, and orders and directions issued, which need not be reviewed, given the conclusion herein.

C. Shortly prior to the hearing herein, Claimant Theresa Cliff-Ryan filed with the undersigned and the AAA a pleading stated that she asserted her rights by submission of a demand for arbitration and Complaint, along with which was a request for consolidation of the cases. "We have been notified by ... of AAA that we are now

able to present our claims within the Guarnier matter, and have replied ... that we will do so. [For the reasons set forth] We therefore feel that it is in the best interests of all parties involved to withdraw and dismiss our complaint without prejudice.”

1. The request for withdrawal and dismissal as set forth in the request which is incorporated herein was and is granted, and all claims of Ms.Cliff Ryan within the jurisdiction of the undersigned are deemed withdrawn and are dismissed, without prejudice.

D. Prior to the hearing herein, the undersigned determined that given the very narrow scope of relief sought by Claimant Guarnier, the sole Affected Party under Section 9 of the USOC Bylaws were Ms. Olds and Ms. Cliff-Ryan. By reason of Ms. Cliff-Ryan’s dismissal/withdrawal of her complaint/demand and the limited relief sought by Claimant, she was also dismissed as an Affected Party.

#### **IV. JURISDICTION, RIPENESS, ETC.**

A. No objection was made as to the appointment of the undersigned as Arbitrator. The parties and represented Affected Athletes earlier stipulated to the undersigned’s jurisdiction over this dispute. The undersigned notes that his jurisdiction is based upon the United States Code, United States Olympic Committee Constitution and Bylaws, and the Commercial Arbitration Rules of the American Arbitration Association.

B. The parties further stipulated that the Claimant’s claim is ripe for determination. All parties agreed to the need for immediate determination of the issues and the deleterious effect upon the athletes of any delay, given, *inter alia*, the forthcoming Olympics.

#### **V. THE HEARING**

A. The hearing was held on July 6, 2012 at 555 Seventeenth Street, Denver, Colorado pursuant to notice. It was convened at approximately 9 a.m. and, after closing arguments, the record of evidence was closed at approximately 5:35 p.m.

1. No objections were made as to any aspect of notice or procedure. All present by phone or in person indicated at the conclusion of the hearing that they had no further evidence to produce.

2. Ms. Olds, denominated as an Affected Party, was accorded full rights of a party. She elected not to testify, although phone access was made available

3. Closing argument was held on July 6, 2012.

B. The following exhibits were admitted into evidence:

4. Claimant Guarnier’s Exhibits 1- 16. (Claimant did not physically submit exhibits 8 and 9.)

5. Respondent USA Cycling's Exhibits A-O.
6. All exhibits were admitted without objection.

## **VI. PARTIES, AFFECTED PARTIES, AND INVOLVED ENTITIES**

A. Claimant, Megan Guarnier is a cyclist. She was a competitor for a position on the 2012 United States Olympic Women's Cycling Team.

B. Respondent, USA Cycling ("USAC") is the National Governing Body recognized by the USOC for the sport of cycling as that term is defined in 36 U.S.C. § 220501(6), and § 220521-220529.

C. The United States Olympic Committee ("USOC") is a federally chartered corporation under 36 U.S.C. § 22051, *et seq.* It is not a party to these proceedings.

### **D. Affected Parties**

1. Claimant, Guarnier listed as an Affected Party:

a. Shelley Olds.

2. Respondent USAC listed as additional Affected Parties:

a. Carmen Small

b. Amber Neben

c. Kristin Armstrong

d. Theresa Cliff-Ryan

3. The undersigned Arbitrator determined, based upon the information received, that there were no additional persons that should receive notice of the arbitration.

a. The USOC was aware of the proceedings and has engaged in prehearing activities with the parties concerning the issues raised herein. Employees of USOC attended as observers.

4. Notice was given to the Affected Athlete as well as to persons designated as Affected Parties earlier in the proceedings, who appeared, without objection as to notice or the proceeding.

## **VII. STANDARD OF REVIEW**

1. A. I have considered Claimants claim de novo, although it is possible and perhaps probable that abuse of discretion might be the appropriate standard

as to some or all aspects of the claims. Given my conclusion, it is unnecessary to make that determination and I apply the standard most favorable to Claimant.

## VIII. THE CLAIM, ISSUES, FACTS AND DISCUSSION

A. The Complaint/Demand. The Complaint and Demand of Claimant defines the nature of the dispute as “in selecting Shelley Olds, USA Cycling . . . misapplied its own selection criteria; and that if the selection criteria had been properly applied, Claimant Megan Guarnier would have been selected in place of and instead of Shelley Olds.”

1. The relief sought is an order naming Claimant to the 2012 United States Olympic team in the women’s road cycling event, in place and instead of Shelley Olds.” (In essence, Claimant seeks an order directing USAC as the NGB to name Claimant to the United States Olympic team in place of Ms. Cox.).

2. In her Statement of the Dispute attached to her Complaint, Claimant alleged that Respondent USA Cycling promulgated and published its Olympic Selection Criteria (Athlete Selection Procedures) for the 2012 Olympic Games for Women’s Road Race and Time Trial. Pursuant thereto Evelyn Stevens was an automatic selection to the four member team. The three discretionary selections by the USAC Selection Committee (non paid volunteers) were Amber Neben, Kristin Armstrong, and Shelley Olds

B. The Athletic Selection Procedures define the criteria for the selection of discretionary team members:

### **Discretionary Criteria (in order of priority):**

1. **Medal Capable:** [The official explanation and details are omitted. “Our FIRST priority for the selection of athletes to any World Championships and Olympic Games event is the selection of athletes who by demonstrated that they are medal capable in OLYMPIC style events ...” See Claimant’s exhibit 10.]

### **2. Capable of Enhancing Team performance:**

**2.1. An athlete who can enhance team performance is one who, based on their international experience and current level of international performance, is expected to contribute substantially to the overall team performance or to the performance of a medal capable team member. In the case of our selection philosophy, this is deemed to be particularly important in the special case where a medal capable individual has been selected to the team and the athlete’s contribution may assist the medal capable athlete in a medal-winning performance. Obviously this effect can be of primary importance when nominating athletes for team-based events (Men’s Road Race and Women’s Road Race) where the synergy of the team members and/or the ability to play a strong support role is critical to the success of the team. For example, even though the Road Race event is scored individually, athletes who are capable of executing a team strategy for the designed**

**team leaders can have a profound impact on the ability of the medal capable team leaders to achieve a medal winning performance.** (Emphasis added. Claimant emphasizes the underlines sentence.)

3. **Future Medal Capability:** [explanation and details omitted]

4. **Other:** [explanation and details omitted]

1. Claimant does not take exception to the automatic selection of Ms. Stevens or the discretionary selection of Ms. Neben and Ms. Armstrong. She does take exception to the selection of Ms. Olds and urges that she ought to be selected instead of Ms. Olds. (In her request for relief, Claimant prayed specifically that Ms. Olds be removed from the team and that she be named to the team in place of Ms. Olds. Under specific questioning before and during the hearing, Claimant advised that she did not seek or want a remedy of replacement of any other team member.) Claimant asserted that Ms. Olds was not medal capable. Claimant does not contend that she was medal capable. However, she asserts that she ought to have been selection under the second priority – capable of enhancing team performance. (Generally, the parties appeared to acknowledge that criteria priority no. 2 refers to support riding/riders.)

2. Specifically, Claimant phrased the issue as whether USA Cycling followed its Athlete Selection Procedures in selecting Ms. Olds instead of Claimant.

3. As this matter has proceeded, Claimant's position has evolved somewhat. In Claimant's Statement of the Dispute, attached to her Complaint, Claimant asserted that she "should have been selected in place of and instead of Shelley Olds as a support rider[under criteria 2]."

4. Claimant further stated that "Claimant submits that the USAC could not reasonably have selected Shelley Olds as a support rider who is capable of enhancing team performance in the Women's Road race event, based upon past performance and the course profile of the Women's Road Race event." However, the evidence established that Ms. Olds was selected by the Selection Committee under criteria 1, i.e., that she was "medal capable." This decision was explained as recognizing that Ms. Olds is a top sprinter and that the Olympic race possibly/probably would turn into or involve a sprint. If so, Ms. Olds was medal capable. I so find.

5. Hence, the hearing did not become a comparison of Claimant and Ms. Cox as being capable of enhancing team performance, criteria no. 2. Rather, in the hearing and in closing argument, Claimant urged that if a candidate (Claimant) is found to be capable of enhancing team performance under priority criteria no. 2, that candidate becomes equal to the first priority "medal capable" candidate, at least to the extent of one such priority 2 qualified candidate, and that candidate must be selected over a fourth medal capable candidate.

6. USA Cycling denied the essential allegations, and named as additional Affected Parties Ms. Neben, Ms. Armstrong, and Ms. Cliff-Ryan. I found that given the very narrow relief that Claimant sought, and that no other relief was

desired, that the only Affected Athlete with respect to Ms Guarnier's claim was Ms. Olds, after the withdrawal/dismissal of Ms. Cliff-Ryan's claims.

7. Were I to hold that the standard of review were abuse of discretion, I would give weigh to the interpretation and application of USAC of its selection criteria. However, my decision is based on a de novo review of the issues raised by the Claimant.

8. It is not logical to me that a criteria defined as no. 2 could supersede a criteria defined as no. 1, at least absent language defining that circumstance. There is no such language.

a. Claimant relies upon the sentence in 2.1 of criteria 2 that states "Obviously this effect can be of *primary* importance when nominating athletes for team-based events (Men's Road Race and Women's Road Race) where the synergy of the team members and/or the ability to play a strong support role is critical to the success of the team." The importance of support riders and their contribution to team leaders was well established by the evidence. Claimant's qualities in this respect appear to be very high (although that is a question far better left to the Selection Committee). The evidence also established that in many instances with a small team, there may not be support riders who have no intention of attempting to place – whose intend from the beginning of the race is not to win or place but rather only to support. In any given race, which cyclist will be a leader (medal seeking) and which a support rider often depends upon the development of the race and the particular skills and abilities of the rider.

b. Claimant suggests that of a team of four, one, but not two, must be qualified under criteria no. 2. But there is nothing in the criteria to support this assertion.

B. Facts. In addition to the facts set forth throughout this Award, and implicit in the Award, I specifically find:

1. Claimant is an excellent athlete and has had a very successful career. She has performed admirably as a support rider, as well as medal seeking rider. She presently is not medal capable as that term is used in criteria 1 of the selection criteria for the 2012 Olympics.

2. Shelly Olds is medal capable as a sprinter. She is the only pure sprinter selected for the team by the Selection Committee, and is essential to the team in the event that the Olympic race possibility or probability becomes or involves a sprint.

3. All parties and the witnesses testifying on the subject agree and I so find that the selection criteria absolutely must be followed.

4. The Selection Committee selected Ms. Olds as its third (of four) medal capable cyclist (the first being the automatic selection, Ms. Stevens). She was

the only true sprinter selected, and there is no evidence that she was not the best available sprinter.

## **IX. OLYMPIC RULES**

### **A. Outline of Olympic Authority**

1. The United States Olympic Committee was created by the United States Congress 36 U.S.C. § 220501 for the purpose, *inter alia*, of its exercising exclusive jurisdiction directly or through constituent members of committees over all matters pertaining to United States participation in the Olympic Games.

2. The purposes of the USOC also include “to provide swift resolution of conflicts and disputes involving amateur athletes, national governing bodies. . . and protect the opportunity of any amateur athlete. . . to participate in amateur athletics.” 36 U.S.C. § 220503(8).

3. Pursuant to 36 U.S.C. § 220505, the USOC has adopted a Constitution and Bylaws and is authorized to recognize a national governing body (“NGB”) for each Olympic sport.

## **IX. CONCLUSIONS**

A. USAC properly applied the selection criteria for its women’s cycling team for the 2012 Olympics as set out in its Athlete Selection Procedures, including, specifically, the selection of Shelley Olds.

B. Claimant should not have been selected to the Olympic cycling team instead of Shelley Olds.

C. The selection criteria do not permit a candidate qualifying under criteria no.2, capable of enhancing team performance, to displace a candidate qualifying under

### **THEREFORE, I AWARD AS FOLLOWS:**

1. The Complaint, demand and claims of Claimant Megan Guarnier are denied and dismissed with prejudice.

2. The administrative filing fees of the AAA;, totaling \$850, shall be borne as follows: 75.00% by Megan Guarnier and 25.00% by USA Cycling.

a. The fees and expenses of the arbitrator totaling \$1,500.00 shall be borne as follows: 75.00% by Megan Guarnier and 25.00 by USA Cycling.



b. Therefore, USA Cycling shall reimburse Megan Guarnier the sum of \$212.50 representing that portion of fees and expenses in excess of the apportioned costs previously incurred by Megan Guarnier.

3. The above sums are to be paid on or before thirty (30) days from the date of this Award.

4. The complaint and all claims of Theresa Cliff-Ryan within the jurisdiction of the undersigned are deemed withdrawn and dismissed with prejudice.

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

This Final Award is dated and entered this 9th day of July, 2012.



Robert E. Benson, Arbitrator

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