BEFORE NEW ERA ADR

CASE NO. 24052901

In the Matter of the Arbitration Between:

ANDREW LAVRIK **("Mr. Lavrik"** or **"Claimant"**),
Claimant

v.

UNITED STATES FIGURE SKATING (**"USFSA"** or **"Respondent"**),
Respondent.

FINAL AWARD
(Decision on Motion to Dismiss, Challenging Jurisdiction)

Pursuant to the relevant rules, and agreement of the Parties (defined below), oral argument was held by Zoom on July 24, 2024, before the sole arbitrator Jeffrey Benz ("**Arbitrator**") on the motion to dismiss based on jurisdictional grounds filed by the Respondent.

Appearing at the hearing on behalf of Mr. Lavrik were Howard Jacobs, Esq., and Leah Burnhardt, Esq., of the Law Offices of Howard L. Jacobs, and on behalf of USFSA, Suzanne Crespo, Esq., of Bryan Cave Leighton Paisner. Also appearing on behalf of USFSA was John Anderson, Esq., its General Counsel (individually, Mr. Lavrik and USFSA shall be referred to herein as **"Party"** and collectively as **"Parties"**). The Arbitrator communicated the oper within days following the oral argument, and these reasons followed.

The Arbitrator determines and awards as follows:

1. <u>The Dispositive Motion Procedure</u>

    a. USFSA, the United States Olympic and Paralympic Committee ("USOPC") recognized National Governing Body ("NGB") for the sport of figure skating in the United States, and International Skating Union recognized member federation for the sport of figure skating in the United States, filed an application for leave to file a dispositive motion concerning Mr. Lavrik's claims under applicable law ("Motion"). Mr. Lavrik did not object to this procedure and agreed that the motion could be filed, though he opposed the motion.

    b. The Parties agreed that this issue should be resolved as a preliminary matter in this proceeding.

    c. The Parties filed their respective submissions on the Motion on the schedule

agreed and ordered.

2. The Dispositive Motion Positions

a. USFSA argued in the Motion, in pertinent part, and in summary, that:

-The Arbitrator lacks subject matter jurisdiction over the Demand under Section 9 ("Section 9") of the United States Olympic and Paralympic Committee ("USOPC") Bylaws because Claimant had no opportunity to participate in Protected Competition which has been denied.

-Claimant's challenge to the Decision Letter is moot. Even if the Arbitrator was to overturn the Board's decision, it would only apply to the 2023-2024 membership year, which ended as of June 30, 2024.

-In the alternative to the above two grounds for dismissal, the Demand should be dismissed for failure to exhaust administrative remedies. Jurisdiction, if any, must be under Section 220522(4)(B) of the Ted Stevens Olympic and Amateur Sports Act (the "Sports Act"), which provides for arbitration before New Era of "the opportunity of any amateur athlete, [or] coach, . . . to participate in amateur athletic competition, upon demand of the [USOPC] or any aggrieved amateur athlete, [or] coach . . .". Such an arbitration is not subject to the special treatment afforded Section 9 proceedings. Instead, Claimant must first exhaust his administrative remedies within USFSA before he may challenge USFSA's decisions, and Claimant has failed to do so.

b. USFSA asked that the Motion therefore be granted and the case dismissed.

c. Mr. Lavrik argued in his opposition to the Motion, in pertinent part, and in summary, that:

-The USFSA terminated Mr. Lavrik's membership and refuses to reinstate him, which therefore causes him to not have the credentials to support a Section 9 claim that USFSA now complains of as the basis for its motion to dismiss. USFSA should not be able to benefit from the unfair situation that it has caused.

-If the motion to dismiss is granted, the USFSA will never admit Mr. Lavrik as a member under its internal processes and will instead reject him every year on unclear bases, absent successful external legal action by Mr. Lavrik to cause them to change their position.

d. Mr. Lavrik asked that the Motion therefore be denied.

e. The relevant arbitration rules provide for the Arbitrator to be able to rule on his or her own jurisdiction and no party challenged that ability in this proceeding.

3. Analysis of Motion to Dismiss

a. The Arbitrator expressed his concerns at the oral argument about two

fundamental matters.

i. First, the Arbitrator expressed concern about the basis for Mr. Lavrik to bring a Section 9 arbitration given his current status. He is not able to coach and has no athletes under his tutelage who could qualify to compete in a protected competition.

ii. Second, the Arbitrator expressed concern about the effect of NGBs conducting their own proceedings concerning matters addressed by the US Centre for SafeSport and the many procedural steps required for someone situated like Mr. Lavrik to obtain final relief from a neutral, independent factfinder, as detailed in the case record that led to the filing of the Section 9 proceeding here.

iii. The first issue is squarely before the Arbitrator as an issue to be resolved on the Motion. The second issue may well be one outside the scope of the Motion or of the Arbitrator's authority, no matter the Arbitrator's views, but it is a matter of concern nonetheless.

b. Section 220509(a) of the Ted Stevens Act states in pertinent part that:

> "The [USOPC] shall establish and maintain provisions in its constitution and bylaws for the swift and equitable resolution of disputes involving any of its members and relating to complaints of retaliation or the opportunity of an amateur athlete, coach, trainer, manager, administrator, or official to participate in the Olympic Games, the Paralympic Games, the Pan-American Games, the Parapan American Games, world championship competition, or other protected competition as defined in the constitution and bylaws of the [USOPC]."

c. The USOPC has established such provisions in Section 9 of its Bylaws.

d. Section 9 of the USOPC Bylaws provides in pertinent part as follows:

> "Section 9.1 Opportunity to Participate. ***No member of the corporation may deny or threaten to deny any Amateur Athlete the opportunity to participate in an upcoming Protected Competi***tion . . . The corporation will, by all reasonable means, protect the opportunity of an Amateur Athlete to participate if selected (or to attempt to be selected to participate) in a Protected Competition. In determining reasonable means to protect an athlete's opportunity to participate, the ***corporation will consider its responsibilities to the individual athlete(s) involved or affected, to its mission, and to its membership***.
>
> ***Any reference to athlete*** in this Section 9 ***will also equally apply to any coach***, trainer, manager, administrator or other official.

> Section 9.2 Denial of Opportunity to Participate. ***Any athlete who alleges that they have been denied, or threatened denial***, by a corporation member ***an opportunity to participate as established by Section 9.1 of these Bylaws***, may seek to protect their opportunity to participate by filing a complaint with the corporation, and may make a subsequent demand for arbitration, all as set out in the USOPC Dispute Resolution Policy. An athlete competing in a team sport, where the team as a whole is affected, may bring a claim on behalf of the team." (emphasis added)

The capitalized terms found in section 9 are defined as follows:

> "l) 'Delegation Event' means, individually or collectively, as applicable, the Olympic Games, the Olympic Winter Games, the Paralympic Games, the Paralympic Winter Games, the Pan American Games, and the Parapan American Games;
>
> . . .
>
> x) 'Protected Competition' means:
> i. a Delegation Event
> ii. a Qualifying Competition
>
> . . .
>
> z) 'Qualifying Competition' means either of the following:
> i. 'NGB Qualifying Competition': Any competition or activity organized or approved by the NGB (e.g., team selection camp, tryout, national championship, Trials event) where the athlete's performance or results are considered in the published selection criteria to represent the United States in a Delegation Event.
> ii. 'International Qualifying Competition': Any international sport competition where (i) athletes represent the United States against athletes representing other nations, (ii) the NGB officially designates entrants, as required by the competition organizers, and (iii) athlete results or performance are included in the published criteria (i.e., International Federation qualification system or NGB selection criteria) to qualify, or be selected, to represent the United States in a Delegation Event; . . ."

e. Based on a plain reading of these provisions, for a Claimant coach to file a Section 9 arbitration demand, for which the NGB, here USFSA, would be bound to defend, the Claimant must have before him or her an "opportunity to participate in an upcoming Protected Competition".

f. An arbitration brought under Section 9 of the USOPC Bylaws is necessarily subject to limited jurisdiction, as it is not open to all or to every issue in dispute between a NGB and one of its members (e.g., Section 10 of the USOPC Bylaws permits bringing cases against a NGB arising from non-compliance with a NGB's obligations under the statute governing the Olympic family in the US, and Section 11 of the USOPC Bylaws governs arbitrations over replacing a NGB, so obviously those claims are not within the ambit of Section 9; elsewhere in the USOPC Bylaws and the governing statute there is a requirement for NGBs to provide for resolution of disputes with its members and to have some of those result in a final binding arbitration, so those disputes are not subject to Section 9). If the Arbitrator was to find otherwise, then the other dispute resolution provisions of the Act and the USOPC Bylaws would, in many respects, be rendered meaningless.

g. Here, Mr. Lavrik has stated an intention to coach at the 2025 World Figure Championships (early on in the case, he had stated an intention to coach at lesser competitions earlier in the calendar that may or may not have met Protected Competition status). It is undisputed that the World Figure Skating Championships is a Protected Competition under Section 9 of the USOPC Bylaws. The real question, however, is whether Mr. Lavrik falls within the scope of individuals eligible to file an arbitration demand under Section 9. In essence, therefore, the question is one of jurisdiction to arbitrate.

h. The following is a very abbreviated summary of operative facts that apply to this decision as the Arbitrator sees them:

   i. Mr. Lavrik is unable to coach athletes at this time because USFSA has refused him registration as a USFSA member or coach as a result of a notice it received from the US Center for Safesport.

   ii. The effect of that notice was to advise USFSA that Mr. Lavrik had been under investigation as a result of a criminal charge against him (to which charge he plead guilty and which was later expunged from his record), and that because Mr. Lavrik had been suspended for over 4.5 years during the US Center for Safesport investigation he had effectively served his punishment and was now free to participate in athletic activities.

   iii. When Mr. Lavrik was notified of this by the US Center for Safesport, he quickly filed an application for membership in USFSA as a coach.

   iv. His membership application was rejected by USFSA and he attempted various internal procedures to resolve that rejection, unsuccessfully.

   v. He then filed this Section 9 proceeding, grounded on his intention to coach at the 2025 World Championships (the pinnacle of figure skating accomplishment in a given year), though without any other supporting

facts other than his intention.

vi. There was no indication that he had coached any athlete at that level before his suspension and there were no facts to show that he was likely to be able to coach an athlete at that level if his suspension was lifted.

vii. His Section 9 claim was based purely on his statement of intention, that he wanted to coach someone, not yet identified, at the 2025 World Championships.

i. The Arbitrator finds that statements of intention to compete in a Protected Competition are simply insufficient to ground a Section 9 complaint. There must be some evidence of an actual opportunity to participate being at stake, which could be shown in any number of ways, including but not limited to by making a showing of an ability to do so or of having reasonably met the criteria otherwise for doing so. Simply wishing it to be so is insufficient, and, if permitted as a basis for grounding Section 9 jurisdiction, would potentially open Section 9 to every member of a NGB who wanted to avoid an internal NGB process and proceed to Section 9 arising from their inability to compete in a Protected Competition (whether based on NGB unreasonableness or unfairness, or based on their simply inability to participate in the sport at a high level). Section 9 jurisdiction has never been rendered so open and will not be here.

j. The case of *Mitchell v USATF*, AAA Case Number: 01-23-0002-1602 (Oct. 27, 2023, Johansen, G., Arbitrator) affords no relief because it is different than this case. In *Mitchell*, the basis for the motion to dismiss was apparently limited to the issue of whether the claim was time-barred. There was no other challenge to Mr. Mitchell's ability to bring his Section 9 claim. On the underlying issue of reinstatement of Mr. Mitchell, he had ample objective indicia in his record that before he was suspended by the USATF panel he had served in a variety of positions including ones similar to that for which he was seeking the opportunity to be considered and selected and the NGB did not dispute that jurisdiction was inappropriate aside from the time bar matter. Here, there are no such objective indicia of Mr. Lavrik having had experience or service in the position he seeks now as the coach of a World Championship Team figure skater or skaters, an entirely private matter that is not controlled by the NGB but by a World Championship Team qualified figure skater or skaters individually.

k. The decision taken by this Arbitrator does not preclude Mr. Lavrik from bringing claims through the NGB's internal process or through any process for reviewing those decisions external to the NGB. This decision does preclude Mr. Lavrik from proceeding under Section 9 absent some more concrete basis for jurisdiction than simply his own desire or intention.

l. Because the Arbitrator has ruled on a grounds asserted that is dispositive of the motion, there is no need for the Arbitrator to rule on the alternate grounds presented.

4. The procedural history of this dispute that was shown by Mr. Lavrik is indeed disturbing given that the US Center for Safesport has cleared him to participate fully

in sporting activities. It is difficult to understand how in light of that determination a NGB would be able or would want to conduct its affairs differently, but that decision is potentially for another day before another arbitrator. In any event, there are numerous cases from CAS and other sources that demonstrate that exhaustion of internal remedies, while desirable when administered reasonably does not require actual physical, mental, emotional, and financial exhaustion to get to the final neutral factfinder. Hopefully, the USFSA will be able to set that path clearly for Mr. Lavrik so his future in figure skating in the United States can become final and more certain; otherwise the USFSA will undoubtedly face further legal outcomes that may not be as generous to its side as this Arbitrator has been on the narrow issues presented herein.

AWARD

A. The motion to dismiss is granted and this matter is dismissed.

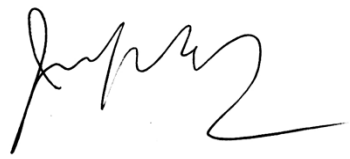
B. All Parties are to bear their own fees and costs.

C. The Arbitrator's and Arbitral Institutions fees shall be paid as provided for in the relevant rules.

D. This Award shall be in full and final resolution of all claims and counterclaims submitted in the demand for arbitration and the motion to dismiss. All claims and requests not expressly granted herein are hereby denied.

IT IS SO ORDERED, DECIDED AND AWARDED.

Dated: November 18, 2024



Jeffrey G. Benz, Arbitrator