

**AMERICAN ARBITRATION ASSOCIATION**  
**Commercial Arbitration Panel**

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AAA CASE NO. 77 190 E 00194 11 JENF

In the Matter of the Arbitration between

Adam Lopez and Marquice Weston, Claimants

and

USA Boxing, Inc. and 43 Affected Athletes, Respondents

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**AWARD AND STATEMENT OF REASONS OF ARBITRATOR**

I, THE UNDERSIGNED ARBITRATOR, having been duly designated by the American Arbitration Association, by agreement of the parties, and in accordance with the Ted Stevens Olympic Sports Act of 1978 and Section 9 of the United States Olympic Committee Bylaws, having been duly sworn, and having duly heard the proofs and allegations of the parties on an expedited basis, as permitted by the rules and agreed to by the parties, does hereby award as follows for the following reasons:

**1.0 THE PARTIES AND FACTUAL SUMMARY**

1.1 This complaint arises out of a decision of a the national governing body for the sport of Boxing, USA Boxing, Inc. ("USA Boxing") to fill only 7 spots in each weight class in the Olympic Trials in the selection process for US athletes to be nominated to the United States Olympic Committee ("USOC") to compete for the United States in the Olympic Games in 2012 in London.

1.2 The Claimants, Adam Lopez and Marquice Weston, are accomplished domestic and international athletes in the sport of Boxing in the United States, seeking the chance to qualify for the 2012 Olympic Games in the men's 114lbs. and 178lbs. weight classes, respectively. Claimants were represented by their counsel James Marquoit, Esq. of Law Offices of James Marquoit.

1.3 Respondent USA Boxing is the USOC-recognized National Governing Body (“NGB”) for the sport of Boxing in the United States. USA Boxing was represented by Brent Rychener, Esq. and Onye Ikwuakor, Esq. of Holme Roberts & Owen.

1.4 Certain affected athletes related to this proceeding were duly identified by USA Boxing as required under the relevant rules (there were at least 43 such athletes identified by USA Boxing and a large number of them actually participated in the hearing or were represented there by a party representative), and many of these affected athletes appeared individually or through personal representatives such as parents or coaches. Stephen Hess, Esq. of the law firm Sherman & Howard represented affected athlete Joe Perez.<sup>1</sup>

1.5 The facts are, for the most part, not in dispute here, but what is at issue is the legal interpretation of the selection procedures.

## 2.0 JURISDICTION

2.1 This arbitrator has jurisdiction over this dispute pursuant to the Ted Stevens Olympic and Amateur Sports Act (“Act”) 36 U.S.C. §220501, *et seq.*, because this is a controversy involving Respondent’s opportunity to participate in national and international competition representing the United States. The Act states that:

An amateur sports organization is eligible to be recognized, or to continue to be recognized, as a national governing body only if it . . . agrees to submit to binding arbitration in any controversy involving . . . the opportunity of any amateur athlete . . . to participate in amateur athletic competition, upon demand of . . . any aggrieved amateur athlete. . ., conducted in accordance with the Commercial Rules of the American Arbitration Association, as modified and provided for in the corporation’s constitution and bylaws. . .<sup>2</sup>

2.2 Section 9.1 of the USOC Bylaws provides as follows:

No member of the corporation may deny or threaten to deny any amateur athlete the opportunity to participate in the Olympic Games, the Pan American Games, the Paralympic Games, a World Championship competition, or other such protected competition as defined in Section 1.3 of these Bylaws nor may any member, subsequent to such competition, censure, or otherwise penalize, (i) any such athlete who participates in such competition, or (ii) any organization that the athlete represents. . . .

2.3 Under USOC Bylaws Section 1.3(u), “protected competition” means:

1) Any amateur athletic competition between any athlete or athletes officially designated by the appropriate NGB or PSO as representing the United States,

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<sup>1</sup> The arbitrator wishes to acknowledge the excellent briefing and arguments, and overall grasp and communication  
<sup>2</sup> 36 U.S.C. §220521.

either individually or as part of a team, and any athlete or athletes representing any foreign country where (i) the terms of such competition require that the entrants be teams or individuals representing their respective nations and (ii) the athlete or group of athletes representing the United States are organized and sponsored by the appropriate NGB or PSO in accordance with a defined selection or tryout procedure that is open to all and publicly announced in advance, except for domestic amateur athletic competition, which by its terms, requires that entrants be expressly restricted to members of a specific class or amateur athletes such as those referred to in Section 220526(a) of the Act; and

2) any domestic amateur athletic competition or event organized and conducted by an NGB [*sic*] or PSO in its selection procedure and publicly announced in advance as a competition or event directly qualifying each successful competitor as an athlete representing the United States in a protected competition as defined in 1) above.

2.4 USOC Bylaws Section 9.7 provides that, "If the complaint [under Section 9.1] is not settled to the athlete's satisfaction the athlete may file a claim with the AAA against the respondent for final and binding arbitration." Under both Sections 9.7 and 9.9 of the USOC Bylaws, the arbitration proceeding may be expedited at the request of the athlete.

### **3.0 PROCEDURE**

3.1 The parties agreed to expedite this matter.

3.2 On or about July 14, 2011, the parties jointly agreed to appoint the arbitrator as the single arbitrator in this case.

3.3 A preliminary hearing was held by telephone on July 15, 2011.

3.4 On July 17, 2011, the Arbitrator issued the following order:

"Dear Counsel and Parties:

I wanted to write a short summary of the outcome of our Preliminary Hearing conference call on Friday and to thank the parties for allowing me the opportunity to assist in resolving your dispute.

As a result of my travel schedule, absent further notice, the hearing will be held at 6am Beijing Time Saturday, which will be 3pm Pacific Time on Friday. The AAA will provide the dial in number, which should include an international access number.

The brief for the Claimants will be due at noon PT on Tuesday, July 19, 2011, with the responsive brief of the Respondent due at 5 pm PT on Wednesday, July 20, 2011. The Claimants will have an opportunity to deliver a responsive reply brief by up to one hour before the start of the hearing.

The parties shall include with their initial briefs their witness list with a one sentence summary of the nature of the witness' testimony along with any documents or other things. All exhibits should be serially lettered (the appearing parties should coordinate this), and the pages of each exhibit should be consecutively paginated or Bates-labeled unless some time or other exigency does not permit it.

The notice of affected athletes shall be the longer approximately 40 person list as suggested by the Respondent and the USOC ombudsman's office, and the notice shall include a copy of this email order attached. The notice to affected athletes should be delivered as soon as possible. The affected athletes shall be permitted to file any of their briefs or exhibits in accordance with this order until 5pm PT on Thursday.

All parties are directed to file their documents electronically by sending copies to those copied on this email list as well as to any other appropriate individuals and all affected athletes once those athletes have been notified. The arbitrator respectfully requests that the USOC provide a complete list of the affected athletes' email addresses in a word file to all parties and the arbitrator and the AAA to ensure this process proceeds as smoothly as possible.

If any party desires a change to this order, please make a brief request by email copying all of the relevant parties.

IT IS SO ORDERED.

Sincerely,

Jeff Benz, Arbitrator"

3.5 The hearing in this matter was held by telephone on July 22, 2011 at 3pm PT (which was July 23, 2011 at 6am in Beijing, China, where the Arbitrator was located).

3.6 On July 25, 2011, in accordance with the agreement of the parties, the Arbitrator issued a summary decision reading as follows:

“SUMMARY DECISION OF ARBITRATOR

TO THE PARTIES, COUNSEL, AND AFFECTED ATHLETES:

The arbitrator in the above-referenced case, having heard and considered all of the evidence presented by the parties and their expert and well-prepared counsel, and the numerous affected athletes, and their opening and closing statements and arguments, their pre-hearing and post-hearing briefs, exhibits, statements, and submissions, and the evidence and arguments presented in the case through multiple hours of hearing and on a preliminary hearing call, and in accordance with the agreement and request of the appearing parties and their counsel and the

affected athletes to render a summary decision immediately with a reasoned award to follow, hereby renders the arbitrator's summary decision in full and final resolution of all claims as follows:

The relief sought by the claimants is granted in part and denied in part. To be specific, USA Boxing is directed to hold a "box off" for the 114 lbs., 123 lbs., and 178 lbs. weight classes on the eve of the start of the Olympic trials. The individuals who will be invited by USA Boxing to participate in the "box off" for each weight class are as follows (each of these individuals came within one victory of qualifying for the Olympic Trials and responded in some form to the notice of hearing in this matter):

114 lbs.: Adam Lopez, Samuel Rodriguez

123 lbs.: Guy Jean-Baptiste, Dennis Galarza, Corey Hill, Edwin Sandoval

178 lbs.: Lanell Bellows, Tony Mack, Marquice Weston, Robert Brant

USA Boxing shall follow its own rules and practices in setting opponents, seeding, officials, final results, and in all other respects concerning the "box offs".

USA Boxing shall include the entire text of this order in its invitation to those designated above to participate in the "box offs".

The arbitrator finds this to be a very close case; while the specific scenario at issue here might have been better addressed in the Olympic selection procedures drafting and approval process, there does not appear to be any negligence or intentional bad conduct on the part of USA Boxing, the NGB, here and these criteria were approved by the USOC. As a result, the arbitrator is not inclined to award costs or legal fees in favor of or against any party. The arbitrator specifically orders that unless USA Boxing chooses to do otherwise in its sole discretion, the parties who will be invited to be at the box offs shall bear their own costs of attendance, unless they are the entry that qualifies for the Olympic Trials in which case that qualifying individual shall be reimbursed at the rate applicable for all other athletes entered in the Olympic Trials.

All claims or relief not specifically granted herein are denied. Though this decision is final, the arbitrator will retain jurisdiction specifically to resolve any claims that arise out of the implementation of this decision.

A reasoned award shall follow in short order.

The arbitrator received a number of private email messages following the hearing requesting that this award be sent to email addresses other than were on the original email string to which notice had been provided. While the arbitrator has endeavored to accommodate those requests, to the extent the arbitrator has not done so it is through inadvertence and no intentional effort to exclude anyone.

Sincerely,

Jeff Benz  
Arbitrator”

3.7 The parties agreed that this reasoned award would follow the above-referenced summary decision.

3.8 On July 26, 2011, in response to various requests, the Arbitrator held a further telephone conference hearing to clarify the earlier decision. On that same date, the Arbitrator issued a summary clarification as follows:

“Dear Parties, Counsel, and Affected Athletes:

Based on today's conference call, I write to clarify my summary decision.

Mr. Joe Perez is hereby added to the list of invited boxers for the box off for the 123 lbs. category.

Mr. Malcolm Jones had requested clarification of my prior decision to add him to the list, but after discussion with his representative on the conference call it was determined that he did not meet the criteria for inclusion, as set forth in my summary decision.

Sincerely,  
Jeff Benz  
Arbitrator”

3.9 On July 26, 2011, counsel for the parties stipulated that there was no need for a reasoned award to issue and made a request for the same from the Arbitrator, but USOC Associate General Counsel Gary Johansen wrote that, “A reasoned award is important to the USOC as we post these awards on the USOC website for future reference and precedent.” The drafting of this statement of reasons immediately followed.

#### **4.0 BURDEN OF PROOF**

4.1 It is well accepted that the standard of review for cases arising under Section 9 of the USOC Bylaws is *de novo*. Section 9 proceedings are not appeals of NGB decisions and there is no requirement for an arbitrator in these proceedings to give deference to any prior decision and in fact it would be incorrect to do so.

4.2 The burden of proof is not as clearly defined in the USOC Bylaws or the Act, although a line of cases has developed making the determination of the burden of proof in Section 9 cases turn on whether the case involves a disciplinary proceeding or a selection/eligibility issue. The parties' counsel agreed that because this case involves an athlete

selection issue, the burden of proof rests with the athlete Claimant to demonstrate that the NGB failed to appropriately apply its rules to the facts at issue. As a result, the athlete Claimant was required to present their case first and they were able to provide rebuttal evidence and argument in response to arguments presented by the Respondents.

## 5.0 ANALYSIS

5.1 Given the complexity and completeness of the parties' arguments here, it assists in the reader's understanding, and avoids the filter that comes from paraphrasing, to simply reproduce the parties' arguments verbatim here. To the extent there are errors in formatting or any deviations from the original, those are unintentional artefacts of the Arbitrators' efforts to reproduce the respective party's arguments herein, and the Arbitrator takes full credit and blame for such errors.

5.2 Claimants argued in pertinent part as follows:

"Although it will take a few pages, a discussion of the recent historical events leading up to the present dispute will demonstrate that everyone involved in USA Boxing, from its administration to its membership, has operated for almost an entire year under a particular understanding of the selection procedures. Specifically, the stated criteria was that the top four finishers from the US Championships would represent the US Championships team at the 2012 Olympic Trials for Boxing. It is only within the past couple of weeks that an in-artfully drafted provision of the Selection Procedures has created an ambiguity-at least under the current strict interpretation advanced by USA Boxing.

**1. Qualifying Events:**

**A. October 2-9, 2010, National PAL Tournament:**

At some point prior to the 2010 National PAL (Police Athletic League) Tournament, it was made known to the membership of USA Boxing that the winners of the 10 Men's weight classes at that tournament would qualify for a spot at the 2012 Olympic Trials. That fact was confirmed by USA Boxing in a letter dated October 1, 2010. (Exhibit C, p. 1 of 1).

The 2010 National PAL Tournament took place in San Antonio, Texas on October 2-9, 2010. Attached as **Exhibit D** is the first page of an announcement posted on the USA Boxing website, listing the names of the 10 men's winners at issue here (the remainder of the 14 page document merely lists the preliminary-round results).

**B. October 4, 2010 Announcement by USA Boxing:**

On October 4, 2010, USA Boxing circulated the document designated as **Exhibit E** titled "*Notice Regarding Men's 2012 Olympic Selection Procedures.*" In addition to designating the winners of the 2010 National PAL; 2011 Armed Forces Championships; 2011 Golden Gloves; and 2011 Last Chance Qualifier automatically qualify for the Olympic Trials, the document reads: "**The 2011 USA Boxing National Championships will qualify the top four from each of**

**the men's weight classes into the U.S. Olympic Team Trials.”** (Exhibit A, page 2, emphasis added).

At least as early as October 4, 2010, all members of USA Boxing were on formal notice that the top four boxers from the US Championships would advance to the Olympic Trials.

**C. February 8, 2011 Announcement by USA Boxing:**

On February 8, 2011, USA Boxing's Public Relations Director, Julie Goldsticker, circulated the document designated as **Exhibit F**, titled: "*Colorado Springs to Host the USA Boxing National Championships for the Second Straight Year.*" That document reads (in pertinent part): "**The event holds special importance in 2011 with the top four boxers in each of the 13 Olympic weight divisions claiming a berth in the U.S. Olympic Team Trials for Boxing.**" (Exhibit F, page 1, emphasis added).<sup>3</sup>

**D. February 13-19, 2011, Armed Forces Championships:**

Following the National PAL Tournament, the next qualifying tournament to occur was the 2011 Armed Forces Championships, held at Lackland Air Force Base, in Texas, on February 13-19, 2011. As is relevant here, the 114lb men's winner was John Franklin of the Army, who also ultimately won the US Championships at the same weight division.

**E. February 23, 2011 Announcement by USA Boxing:**

On February 23, 2011, USA Boxing's Public Relations Director, Julie Goldsticker circulated the document designated as **Exhibit G**, titled: "*USA Boxing to Hold the Historic Last Chance Qualifier, July 4-9, in Cincinnati, OH.*"

That document reads (in pertinent part):

U.S. Olympic Team Trials for Men's Boxing qualifying began at the 2010 National PAL Championships and will include victors from the Armed Forces Championships, National Golden Gloves Championships, **the top four finishers from the USA Boxing National Championships** as well as the Last Chance Qualifier champions.

(Exhibit G, page 2, emphasis added).

**F. April 20, 2011, Selection Procedures:**

Finally, on April 20, 2011, after two of the four qualifying tournaments had already been completed, USA Boxing finalized the Selection Procedures at issue here. (Exhibit B). Unknown to anyone other than the drafters, they suddenly chose the term "semi-finalists," rather than "top four" when referring to those who advance from the US Championships.

Even following the finalization of the Selection Procedures, USA Boxing continued to refer to "the top four finishers" from the US Championships as advancing to the Olympic Trials.

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<sup>3</sup> There are ten men's weight classes and three women's weight classes in the Olympic Games, thus the reference to thirteen weight classes advancing to the Olympic Trials.



On May 12, 2011, USA Boxing circulated a document titled: *Mobile, Alabama to Host the U.S. Olympic Team Trials for Men's Boxing, July 31-August 6* which read, in pertinent part:

**The U.S. Olympic Team Trials for Men's Boxing will be a double elimination tournament showcasing eight boxers in each of the 10 men's Olympic weight divisions.**

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Olympic Trials qualifying began at the 2010 National PAL Championships in October, and continued at the 2011 Armed Forces Championships and recent National Golden Gloves Championships. **The champions at those three events will be joined in Mobile by the top four finishers at the 2011 USA Boxing National Championships, June 20-25 in Colorado Springs, Colo., and the 10 champions from the Last Chance Qualifier, July 3-9 in Cincinnati, Ohio. (Exhibit H, p. 2-3, emphasis added)**

As recently as the eve of the US Championships, USA Boxing's announcement to its membership read (in pertinent part):

**As you all know the top four athletes from each of the 10 men's Olympic weight divisions and three women's Olympic weight divisions will qualify for their respective U.S. Olympic Team Trials.** (Exhibit I, page 1, emphasis added).

**Exhibits J & K** are also announcements made by USA Boxing, and circulated to its membership. Each refers to the US Championships, and states that the "top four" finishers would advance to the Olympic Trials. At no point in any communication made to USA Boxing's membership was the term "semi-finalists" used to refer to those individuals.

As acknowledged by USA Boxing even after it drafted the "semi-finalists" language, everyone already "knew" that the top four finishers at the US Championships would earn a berth in the Olympic Trials. At no time did USA Boxing do anything to dissuade its membership of that notion (at least until the present controversy arose).

## **II. Results at 114lbs and 178lbs at 2011 US Championships:**

Adam Lopez and Marquice Weston both placed 5<sup>th</sup> in their respective weight classes at the US Championships. Mr. Lopez competed at 114lbs, Mr. Weston at 178lbs. Both were eliminated in the quarter-finals by the eventual national champion, making them the fifth-place finisher, as conceded by USA Boxing at Exhibit A, p. 9.

### **A. 114lbs:**

At the US Championships, the champion of the 114lb weight class was John Franklin. That individual also won the 2011 US Armed Forces Championship, and earned a berth in the Olympic Trials via that qualifying route. Per the Selection Procedures, that individual would typically advance through the US Championships (as the national champion) and the runner-up at that weight in the Armed Forces Championships would advance to the Olympic Trials as the representative of the Armed Forces.

This year, there is no runner-up at 114lb at the Armed Forces Championships to advance to the Olympic Trials. USA Boxing has been formally notified that the only other boxer at that weight from the Armed Forces Championships has decided not to compete at the Olympic Trials.

Adam Lopez was informed (at the US Championships) that the champion at 114lbs would be representing the Armed Forces, and that each of the next four finishers would move up one spot, making the second through fifth place finishers at the US Championships the representatives of that tournament at the upcoming Olympic Trials. Mr. Lopez was specifically informed that he had qualified as the fourth finisher from the US Championships, and would compete in the Olympic Trials. Only recently did USA Boxing reverse its position, and express an intention to proceed with seven boxers at 114lbs at the Olympic Trials.

**B. 178lbs:**

The 2011 US Championships winner of the 178lb weight class already had qualified for the Olympic Trials also. However, that individual qualified through the 2011 National Golden Gloves at a different weight class, 165lbs. That individual has elected to compete at the Olympic Trials at 165lbs as the representative of the Golden Gloves, leaving a vacant spot from the US Championships at 178lbs.

As with Mr. Lopez, Mr. Weston was the fifth-place finisher at the US Championships, having lost in the quarter-finals to the eventual champion. As with Mr. Lopez, Mr. Weston (though his coach, Tom Mustin) was informed by USA Boxing, at the US Championships, that the second through fifth finishers would move up one spot, and represent the US Championships team at the Olympic Trials.

As with Mr. Lopez, Mr. Weston was also informed by USA Boxing, at the last minute, that he was no longer considered to have qualified to compete in the Olympic Trials.

**C. Team Managers Meeting:**

Prior to the finals of the US Championships, a regional team managers meeting was held, involving all of the regional team managers, and USA Boxing leadership.

At that meeting, a question was raised about what would happen if the 114lb Armed Forces Champion (John Franklin) also won his finals match at the US Championships. Because there were only two boxers at 114lbs in the Armed Forces Championships, and the runner-up had retired since the date of that tournament, there was no runner-up to fill the Armed Forces spot.

Mr. Lopez was informed by Anthony Bartkowski (through his coach) that, pending confirmation that the second-place finisher at the Armed Forces Championships would not compete at the Olympic Trials, he (Mr. Lopez) would move up, and represent the fourth-place spot from the US Championships at the Olympic Trials.

At that same meeting, Mr. Weston's coach inquired what would happen if Jesse Hart, the winner of the National Golden Gloves at 165lbs, also won the US

Championships at 178lbs (he had advanced to the finals by that time). Mr. Hart has declared an intention to participate in the Olympic Trials at 165lbs, leaving a vacant "top four" spot from the US Championships. As with Mr. Lopez, Mr Bartkowski confirmed that the remaining four finishers (ie: numbers two through five) would advance to the Olympic Trials at 178lbs.

It was only later, just a few days before the Last Chance Qualifying Tournament, that USA Boxing reversed its stated position 180 degrees. Its directors now take the position that, because they were not "semi-finalists," Mr. Lopez and Weston did not qualify for the Olympic Trials. (Exhibit A, p. 9) Nevertheless, in an apparent acknowledgement of the prior statements of its executive director, USA Boxing offered to pay the claimants' way to the Last Chance tournament, beginning a few days later, in Ohio.

**III. The language of the selection procedures is ambiguous.**

The drafters of the selection procedures attempted to foresee and address various contingencies that might arise, which might throw off the bracketing for the Olympic Trials.

The drafters foresaw a situation where a person might automatically qualify for the Olympic Trials through more than one avenue. For example, they included the following language, under the heading *Qualification to the 2012 U.S. Olympic Trials*:

**2010 National Police Athletic League Championships**

The champion of each of the 10 weight categories at the 2010 National Police Athletic League Championships will earn a spot in the 2012 U.S. Olympic Trials. *If an athlete wins his weight category at 2010 National Police Athletic League Championships and places in the Top 4 at the 2011 USA Boxing National Championships*, the next highest place finisher in the applicable weight category from the 2010 National Police Athletic League Championships will earn the qualification slot to the 2012 Olympic Trials. The 2010 National Police Athletic League Championships is an open tournament; all male boxers between the ages of 17 and 34 are eligible to compete in the 2010 National Police Athletic League Championships \*\*\*

**2011 Armed Forces Championships**

The champion of each of the 10 weight categories at the 2011 Armed Forces Championships will earn a spot in the 2012 U.S. Olympic Trials. If an athlete wins his weight category at the 2011 Armed Forces Championships but has already qualified for the 2012 U.S. Olympic Trials, the next highest place finisher in the applicable weight category from the 2011 Armed Forces Championships will earn the qualification slot to the 2012 Olympic Trials. *If an athlete wins his weight category at the 2011 Armed Forces Championships and places in the Top 4 at the 2011 USA Boxing National Championships* the next highest place finisher in the applicable weight category from the 2011 Armed Forces Championships will earn the qualification slot to the 2012 Olympic Trials. All male boxers between the ages of 17 and 34 earn the right to participate in the

U.S. Armed Forces Championships by winning their individual military championships \*\*\* (Exhibit B, p. 3, emphasis added)

Those two sections immediately precede the portion of the Selection Procedures that describe those who advance through the US Championships, yet the following section inexplicably uses the term “semi-finalists,” rather than “top four finishers.” (Exhibit B, p. 3-4)

Unfortunately, when choosing the wording it did to describe the top four finishers, the drafters unintentionally created an ambiguity in the remainder of the document, as it relates to the tournament’s format.

The Olympic Trials for Boxing format calls for a total of eight boxers in each of the ten Olympic weight classes. The four boxers advancing from the US Championships for Boxing are to be seeded numbers one through four. (Exhibit B, p. 6, 23) The bracket sheet attached to the Selection Procedures itself also calls for an eight-man field. (Exhibit B, p. 23).

The same paragraph of the Selection Procedures that dictates that the US Championships boxers be seeded 1-4 at the Olympic Trials, also contains the language:

*The top four semi-finalists of the 2011 USA Boxing National Championships* will be seeded No. 1-4, with the No. 1 seed going to the National Champion, and the No. 2 seed going to the Runner-up. The No. 3 seed will go to the athlete that was defeated by the National Champion in the semi-finals, and the No. 4 seed to the athlete that was defeated by the Runner-up in the semi-finals. (Exhibit B, p. 6, emphasis added).

The selection procedures use both the phrases “top four” and “semi-finalists” in the very same sentence! It is clear from the format of the Olympic Trials, and every other document produced by USA Boxing in connection with that tournament, that the intent was that four of the boxers advancing to the eight-man field be from the US Championships.

Although the drafters did foresee a situation where an automatic qualifier also advanced to the top four at the US Championships (as described above) they did not foresee a situation where there were not four “semi-finalists” advancing at a given weight from the US Championships.

The Selection Procedures would have required the double-qualifying boxer to represent the US Championships team at the Trials. In that situation, that boxer’s original qualifying slot would be filled by the runner-up of tournament he advanced-from. (Exhibit B, p. 3, above)

The drafters did not foresee a situation where one of the top four boxers in a given weight class chose not to represent the US Championships team at the Olympic Trials. The drafters did not make a provision for the vacant spot to be filled by any other qualifying tournament. They did not make a provision for a seven-man tournament. They merely failed to foresee the situation that ultimately arose.

An eight-man tournament at the Olympic Trials is not only the norm, but anything else would be unheard of. The claimants will present evidence from a

witness who has attended every US Championships and Olympic Trials since 1988. That individual has never seen, nor heard of an odd number of participants being entered in a weight class at the Olympic Trials.

The reasons are obvious. Boxing is a grueling sport. To field a tournament of seven boxers would require that one receive a bye, and require the other six to box at least one more time than the lucky recipient of the day off. With a double-elimination tournament, the situation would become even more problematic.

The verbage chosen by USA Boxing is ambiguous, and the result obtained by a strict reading of the language used would produce an absurd result. The only plausible interpretation of the language used by the drafters (that is consistent with the eight-man format) is to advance the top four remaining boxers at the US Championships to the Olympic Trials.

It is well settled law that an ambiguous provision must be interpreted against its drafter, as opposed to an innocent third party who relied upon the term.

Both Mr. Weston and Mr. Lopez will present testimony that they stopped training in order to give their bodies a brief respite after the US Championships. Both intended to rest for a couple of weeks, and then begin training in earnest for the Olympic Trials, set to begin on July 31<sup>st</sup>. Neither was ready to travel to Cincinnati and compete in an elite level tournament, with only a few days notice (the Last Chance Tournament). It made no difference that USA Boxing was suddenly willing to pay their travel expenses-their bodies were simply not ready to compete at such a high level without sufficient preparation. The claimants specifically relied upon USA Boxing's executive director's statement that they were in the Olympic Trials.

USA Boxing's belated, strict interpretation, of one sentence of its Selection Procedures, even when that sentence would produce a contradictory result from the format it set out for the tournament itself, is patently unreasonable."

5.3 The Respondent argued in pertinent part as follows:

**"B. The Claimants**

1. Adam Lopez is a USA Boxing member athlete, competing in the 114 lbs weight class. Lopez competed in the 2010 National Police Athletic League Boxing Championship (losing in the finals to Rau'shee Warren by a score of 20-2) and the 2011 National Golden Gloves (losing to Louie Byrd in the quarterfinals), before competing in the 2011 USA Boxing National Championships (losing to John Franklin in the quarterfinals). Lopez did not participate in the 2011 Armed Forces Championships or 2011 USA Boxing Last Chance Qualifier.

2. Marquice Weston is a USA Boxing member athlete, competing in the 178 lbs weight class. Weston competed in the 2010 National Police Athletic League

Boxing Championship (losing to Jerry Odom in the preliminaries, 17-9) and the 2011 National Golden Gloves (losing to Craig Duncan in the preliminaries), before competing in the 2011 USA Boxing National Championships (losing to Jesse Hart in the quarterfinal, 14-7). Weston did not participate in the 2011 Armed Forces Championships or 2011 USA Boxing Last Chance Qualifier.

### **C. USA Boxing 2012 Olympic Games Athlete Selection Procedures**

USA Boxing's Athlete Selection Procedures for the 2012 Olympic Games provide that up to eight athletes in each Olympic weight class will be selected to compete in the 2012 U.S. Olympic Trials ("Olympic Trials"). The winner of each weight class at the Olympic Trials earns an opportunity to qualify for a spot and represent the United States at the 2012 Olympic Games.

The Selection Procedures state that eligible USA Boxing athletes may qualify to participate in the Olympic Trials by, in order of occurrence, (i) winning his weight class at the 2010 PAL Championships; (ii) winning his weight class at the 2011 Armed Forces Championships; (iii) winning his weight class at the 2011 National Golden Gloves; (iv) advancing to the semi-finals of the 2011 USA Boxing National Championships; or (v) winning his weight class at the 2011 USA Boxing Last Chance Qualifier. (Exhibit L, page 2).

Recognizing that it was possible for an athlete to qualify more than once for the Olympic Trials by winning or placing high enough in various tournaments, USA Boxing included language in the Selection Procedures that specified who would be invited to participate in the Olympic Trials if an athlete qualified at multiple selection events. In section I.C.1, titled "Qualification to the 2012 U.S. Olympic Trials," the process for filling the spot of an athlete who has qualified for the Olympic Trials in multiple events is explained, in relevant part, in the following manner:

#### **2010 National Police Athletic League Championships**

The champion of each of the 10 weight categories at the 2010 National Police Athletic League Championships will earn a spot in the 2012 U.S. Olympic Trials. If an athlete wins his weight category at 2010 National Police Athletic League Championships and places in the Top 4 at the 2011 USA Boxing National Championships, the next highest place finisher in the applicable weight category from the 2010 National Police Athletic League Championships will earn the qualification slot to the 2012 Olympic Trials.

#### **2011 Armed Forces Championships**

The champion of each of the 10 weight categories at the 2011 Armed Forces Championships will earn a spot in the 2012 U.S. Olympic Trials. If an athlete wins his weight category at the 2011 Armed Forces Championships but has

already qualified for the 2012 U.S. Olympic Trials, the next highest place finisher in the applicable weight category from the 2011 Armed Forces Championships will earn the qualification slot to the 2012 Olympic Trials. If an athlete wins his weight category at the 2011 Armed Forces Championships and places in the Top 4 at the

2011 USA Boxing National Championships the next highest place finisher in the applicable weight category from the 2011 Armed Forces Championships will earn the qualification slot to the 2012 Olympic Trials.

### **2011 National Golden Gloves**

The champion of each of the 10 weight categories at the 2011 National Golden Gloves will earn a spot in the 2012 U.S. Olympic Trials. If an athlete wins his weight category at the 2011 National Golden Gloves but has already qualified for the 2012 U.S. Olympic Trials, the next highest place finisher in the applicable weight category from the 2011 National Golden Gloves will earn the qualification slot to the 2012 Olympic Trials....

Thus, for each of these qualifying events, the Selection Procedures specify the procedure to be followed if their original designee is unable to serve as its representative at the Olympic Trials.<sup>1</sup> The description for the 2011 USA Boxing National Championships, by contrast, does not include a provision detailing the process for dealing with a situation where a semi-finalist is unable or unwilling to participate in the Olympic Trials. Furthermore, the Selection Procedures make no mention of the athletes who are eliminated at the quarter-final stage of the tournament or how the final placing of those athletes, 5th through 8th, will or should be determined.

### **D. 2011 USA Boxing National Championships**

#### **1. 114 lbs**

The semi-finalists at the 2011 USA Boxing National Champion in the 114 lbs weight class were John Franklin, Oscar Cantu, Emilio Sanchez and Gabriel Montoya. By virtue of advancing to the semi-finals of Nationals, Messrs. Franklin, Cantu, Sanchez and Montoya all qualified to participate in the Olympic Trials as top-four seeds in the 114 lbs weight class. Mr. Franklin also qualified for the Olympic Trials by winning the 114 lbs weight class at the 2011 Armed Forces Championship. Accordingly, pursuant to the Selection Procedure guidelines, Mr. Franklin's qualification slot reverted to the next highest place finisher in the 114 lbs weight category from the 2011 Armed Forces Championship, Alex Diaz. Despite qualifying to compete in the Olympic Trials, Mr. Diaz has indicated that he does not wish to participate in the competition. (Exhibit M). Since no athletes other than Mr. Franklin and Mr. Diaz competed in the 114 lbs weight class at the 2011 Armed Forces Championships, there will be no Armed Forces representative

at the Olympic Trials. The Selection Procedures provide no indication that an eighth boxer should be invited to the Olympic Trials under these circumstances.

#### 2. 178 lbs

The semi-finalists at Nationals in the 178 lbs weight class were Jesse Hart, Jerry Odom, Sijuola Shabazz and Sean Bettencourt. By virtue of advancing to the semi-finals of Nationals, Messrs. Hart, Odom, Shabazz and Bettencourt all qualified to participate in the Olympic Trials as top-four seeds in the 178 lbs weight class. Mr. Hart also qualified to compete in the 165 lbs weight class at the Olympic Trials by winning the 165 lbs weight category at the National Golden Gloves. Because Mr. Hart qualified in two different weight classes, he was not obligated to accept the qualification slot he earned in the 178 lbs division by reaching the semi-finals of Nationals and will be permitted to participate in the Olympic Trials as the National Golden Gloves representative in the 165 lbs weight class. The Selection Procedures provide no indication that an eighth boxer should be invited to the Olympic Trials under these circumstances.

#### 3. 123 lbs

Abraham Lopez qualified to participate in the 123 lbs weight category of the Olympic Trials by finishing first in that weight class at the 2011 Armed Forces Championships. On June 28, 2011, Mr. Lopez informed USA Boxing that he was no longer boxing and would not participate in the Olympic Trials. (Exhibit N). The runner-up at the Armed Forces Championships, Guy Jean-Baptiste, did not assume Mr. Lopez' spot because the Selection Procedures do not provide for the replacement of a qualified athlete who voluntarily declines to participate in the Olympic Trials. Regardless, no claimant in this case has requested the eighth spot in this weight division.

#### 4. USA Boxing's representations to Lopez at Nationals

Nationals were held from June 19th through June 26th, 2011. At various times during the course of the tournament, Lopez's father and personal coach, Robert Lopez ("Coach Lopez"), asked Anthony Bartkowski, USA Boxing's Executive Director, whether the "fifth-place" finisher at 114 lbs at Nationals would qualify for the Olympic Trials if the Armed Forces qualifier at 114 lbs, John Franklin, advanced to the semi-finals of the tournament. Coach Lopez's inquiries started during the preliminaries and continued through the evening of the championship bouts. Each time Coach Lopez pressed Mr. Bartkowski for an definitive answer to his question, Mr. Bartkowski responded by explaining that he did not know or was unsure about the answer to Coach Lopez's question and would have to get back to him with the answer at a later time.

#### 5. USA Boxing's representations to Weston at Nationals



During Nationals, Mr. Bartkowski was asked by Weston's personal coach, Tom Mustin ("Coach Mustin"), what procedure would be used to fill a vacant Olympic Trials qualification slot at 178 lbs if one of the semi-finalist in that weight class at Nationals opted to compete at the Olympic Trials in a different weight class. Just as he had when questioned by Coach Lopez, Mr. Bartkowski qualified his response to Coach Mustin's question by explaining that he was unsure of the controlling procedure and would have to get back to him with a definitive answer at a later time.

#### 6. USA Boxing's representations to Lopez and Weston following

##### Nationals

Promptly after Nationals, Mr. Bartkowski reviewed the Selection Procedures in order to determine the proper procedure for filling the vacant Olympic Trials qualification slots. After both reviewing the Selection Procedures and consulting with representatives from the USOC, it was determined that the Selection Procedures did not contain a provision specifying a procedure by which USA Boxing could fill the vacant Olympic Trial slots and USA Boxing did not have the authority to unilaterally add athletes to the Olympic Trials who had failed to qualify under one of the methods expressly provided for in the Selection Procedures.

On June 29, 2011, three days after the conclusion of Nationals, Mr. Bartkowski advised the representatives for Lopez and Weston that the Selection Procedures did not provide a method for extending automatic qualification status to any of the quarter-finalists from Nationals and that USA Boxing did not have the authority to allow them to participate at the Olympic Trials if they had failed to qualify through one of the qualifying events. Mr. Bartkowski advised Lopez and Weston, through their representatives, that USA Boxing would stage the Olympic Trials with seven competitors in the 114 and 178 lbs weight divisions and that Lopez and Weston would have to qualify for the Olympic Trials through the Last Chance Qualifier, to be held in Ohio the following week. Recognizing that neither Lopez nor Weston had made arrangements to travel to Ohio while waiting for USA Boxing to get back to them with a definitive answer to their questions and that the cost of attending the Last Chance Qualifier might prove prohibitive, Mr. Bartkowski offered to have USA Boxing cover the travel expenses for the athletes and their coaches to attend the qualifier. Both Lopez and Weston declined the offer on two different occasions.

On June 30, 2011, USA Boxing sent letters to Lopez and Weston reiterating its position that the two athletes had not qualified to compete at the Olympic Trials because they had failed to advance to the semi-finals at Nationals. Once again, Lopez and Weston were advised that they would not qualify for the Olympic Trials unless they won their weight class at the Last Chance Qualifier, starting

four days from the date of the letter. Lopez and Weston responded through their attorney, demanding that USA Boxing grant them a spot in the Olympic Trials and threatening litigation if USA Boxing refused to comply with their demands. Neither Lopez nor

Weston participated in the Last Chance Qualifier. Following the qualification of the seventh athletes at 114 and 178 lbs through the Last Chance Qualifier, USA Boxing contacted the attorney for Lopez and Weston and proposed staging a box-off to fill the eighth spot at the Olympic Trials in those weight divisions. Claimants eventually declined this offer and proceeded to file this claim on July 11, 2011.

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#### **IV. ARGUMENT**

##### **A. USA Boxing's Selection Procedures are unambiguous and should not be reinterpreted in order to facilitate a result that is inconsistent with the plain language of the text.**

The crux of Claimants' argument rests on the flawed premise that USA Boxing's

Selection Procedures are ambiguous and must therefore be construed against the drafting party, USA Boxing, and in favor of the Claimants. According to Claimants, they are justified in requesting this extraordinary relief because "the result obtained by a strict reading of the language used would produce an absurd result." Claimants' Opening Brief, page 11. USA Boxing disagrees. Throughout their filings, Claimants place great emphasis on the various times that USA Boxing referred to the "top four" finishers/athletes from Nationals as opposed to "semi-finalists." According to Claimants, USA Boxing's use of the term "semi-finalists" in its Selection Procedures to refer to the "top four" finishers at Nationals "unintentionally created an ambiguity in the remainder of the document..." Id at 9. If their assertion was true, Claimants might have had a legitimate grievance; however, Claimants utterly fail to support their position with a rational explanation of why "semi-finalists" and "top four" should not be given their plain meaning and read interchangeably. Under any definition, Claimants neither reached the semifinals nor finished in the top four at Nationals.

In their submissions, Claimants concede that they lost in the quarter-finals at Nationals and failed to advance to the semi-final stage of the tournament. For the sake of argument, even if we accept Claimants' assertion that they finished fifth at Nationals by virtue of losing to the eventual champion, the fact remains that fifth place is squarely outside of the "top four." It is telling that Claimants fail to reference a single publication produced or disseminated by USA Boxing suggesting an athlete other than a semi-finalist could qualify to compete at the Olympic Trials on the basis of his performance at Nationals. Simply put, there is

no indication that USA Boxing intended to bestow automatic qualification status – and a top four seed – on any athlete who failed to advance to the semi-finals at Nationals.

**B. The Claimants are no more qualified to fill a vacancy at the Olympic**

**Trials than any of the other athletes who came up one victory short of earning automatic qualification status.**

Despite their different circumstances, Claimants make almost no effort to differentiate their arguments for being the most qualified individuals to fill the vacant spot at the Olympic Trials. In Claimants' view, the mere act of losing to the eventual champion at Nationals is enough to warrant preferential treatment, regardless of any attendant facts.

For instance, at 114 lbs, all four semi-finalists from Nationals are expected to compete in the Olympic Trials. There is no reasonable argument that Mr. Lopez is a "top four" finisher at Nationals. Still, as the "fifth place" finisher at Nationals, Lopez maintains that he has a "superior right" to participate in the Olympic Trials because a "vacancy" can be created in the top four at Nationals through the fiction of having Mr. Franklin compete at the Olympic Trials as the Armed Forces winner even though he was also the Nationals' champion. This is proposed by Lopez, apparently without any sense of irony, even though the Selection Procedures provide that Mr. Franklin is obligated to compete at the Olympic Trials as a Nationals representative and that failing to do so would cost him a top-four seed in the tournament. To borrow a phrase from Claimant, this interpretation of the Selection Procedures would produce an absurd result.

Just as Lopez claims that he has a superior right to participate in the Olympic Trials at 114 lbs, Weston maintains that he is the most qualified at 178 lbs to fill the vacancy created by Mr. Hart's decision to compete in the Olympic Trials at 165 lbs. Although Mr. Hart's departure results in fewer than four automatic qualifiers from Nationals competing at the Olympic Trials, Weston fails to articulate a compelling argument for why he is any more qualified to participate in the Olympic Trials than the other athletes who were one victory shy of automatic qualification.

The bottom line is that Claimants acknowledge the Selection Procedures do not contemplate how an eighth spot at the Olympic Trials would or should be filled in these circumstances. Rather than arbitrarily select a boxer to fill a vacant spot where the Selection Procedures provide no basis for doing so, USA Boxing has exercised its discretion to proceed with seven boxers in these weight classes at the Olympic Trials. USA Boxing's rational decision should be accorded deference.

5.4 The Arbitrator believes that the Claimants have the better of the arguments. Fundamentally, it is well-established in Section 9 cases, and in the practice of the US Olympic

movement, that a NGB is bound by the text and plain meaning of its published selection criteria. Any other rule would lead to inconsistencies, unnecessary disputes, and a host of issues relating to athlete and other input in the creation of selection criteria (which is guaranteed for athlete participation/input under the Act and the USOC Bylaws).

5.5 Here, as set forth above by the Claimants, the record was clear that USA Boxing repeatedly used the phrase “top 4 finishers” for each weight class in its selection procedures and other communications to describe who would be competing in the Olympic Trials. At other times, USA Boxing referred to “eight boxers” in each weight division. In addition, the selection procedures themselves referenced an “eight man” tournament in each weight class. There was also evidence presented that an odd-numbered tournament would itself be odd in boxing. Having said that, no provision was made in the selection procedures for what occurred here, where at least one boxer who had already qualified declined to participate in the Olympic Trials. So, it is in the view of the Arbitrator that the selection procedures and other documents that assist in interpreting the selection procedures require a field of 8 at the Olympic Trials.

5.6 Having established the need for USA Boxing to have 8 positions in each weight class at the Olympic Trials, the Arbitrator must next turn to choosing who should fill the vacant eighth positions, or at least determining the process and criteria for doing so. In this case, the Claimants could present no viable reason why they each alone deserved to fill the eighth spots in their weight classes at the Olympic Trials over several of the affected athletes who had similar records through the selection procedures’ qualifying process. As a result, the Arbitrator is unable to order the Claimants into the Olympic Trials directly, and the only proper remedy appears to be a box off in each of the affected weight classes among similarly situated boxers to determine who will fill the 8<sup>th</sup> position. Having considered the relevant provisions of the Act and the USOC Bylaws, as well as my general knowledge of prior Article IX or Section 9 cases where arbitrators were confronted with similar circumstances and opted for the field of play as the solution for deciding qualification issues among athletes, this remedy is well within the jurisdiction of the Arbitrator to make. Accordingly, the specific order is rendered in more detail below in Section 6.0.

5.7 The Arbitrator declines to award costs or fees to any party primarily because it appears that USA Boxing did not act in bad faith or negligently and the Claimants were not successful on all counts. It appears to the Arbitrator that USA Boxing was faced with a new circumstance that it had not contemplated, which resulted in an ambiguity and difficult situation for USA Boxing. From the evidence, it appears that USA Boxing acted with due regard for its selection procedures and its athlete pool, even though the Arbitrator disagrees with the outcome; in fact, it appears that it would have been difficult for USA Boxing to decide other than it did in the implementation of its selection procedures after their application was rendered more difficult as a result of the vacancies in the various Olympic Trials positions. Accordingly, each party shall bear its own fees and costs.

## 6.0 DECISION AND AWARD

6.1 On the basis of the foregoing facts and legal aspects, this arbitrator renders the following decision:

a. Claimant has demonstrated that the Respondent's application of its selection procedures was insufficient and the relief sought by the claimants is granted in part and denied in part. To be specific, USA Boxing is directed to hold a "box off" for the 114 lbs., 123 lbs., and 178 lbs. weight classes on the eve of the start of the Olympic trials. The individuals who will be invited by USA Boxing to participate in the "box off" for each weight class are as follows (each of these individuals came within one victory of qualifying for the Olympic Trials and responded in some form to the notice of hearing in this matter):

114 lbs.: Adam Lopez, Samuel Rodriguez

123 lbs.: Guy Jean-Baptiste, Dennis Galarza, Corey Hill, Edwin Sandoval, Joe Perez

178 lbs.: Lanell Bellows, Tony Mack, Marquice Weston, Robert Brant


USA Boxing shall follow its own rules and practices in setting opponents, seeding, officials, final results, and in all other respects concerning the "box offs". USA Boxing shall include the entire text of this order in its invitation to those designated above to participate in the "box offs". The Arbitrator retained jurisdiction to oversee implementation of the summary decision/order, but no requests to exercise that jurisdiction were made.

b. The parties shall bear their own attorney's fees and costs associated with this arbitration.

c. The Administrative fees and expenses of the American Arbitration Association and the compensation and expenses of the Arbitrator shall be borne equally by the Claimant and Respondent.

d. This Award is in full settlement of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby denied. For purposes of clarity, to the extent this reasoned award is inconsistent with the terms of the summary disposition, the terms of the summary disposition control.

Dated: August 25, 2011.



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Jeffrey G. Benz  
Arbitrator