

# American Arbitration Association

## COMMERCIAL ARBITRATION TRIBUNAL

*Legal*

In the Matter of the Arbitration between

Marie White

-and-

United States Olympic Committee

-and-

United States Synchronized Swimming, Inc.

CASE NUMBER: Re: 74-199-0199-84

### AWARD OF ARBITRATOR(S)

I, (WE) THE UNDERSIGNED ARBITRATOR(S), having been designated in accordance with the Arbitration Agreement entered into by the above-named Parties, ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~ and having been duly sworn and having duly heard the proofs and allegations of the Parties, AWARD, as follows:

1. Respondent USSS is denied relief on its counterclaim.
2. The following language is to be stricken from the report of the USOC Hearing Panel as adopted by the Executive Board in this matter:  


"The Panel in no way condones Marie's behavior at the National Sports Festival or her behavior which disrupted team unity, and recognizes that situations can and do arise where, for the good of the team, a member must be temporarily removed. The Panel also does not doubt that the national team coaches were capable of making such a decision, and did so in good faith and in the best interests of the team."
3. The matter of claimant's request for financial assistance is remanded to the USOC and the Executive Director of the USOC is directed to consider in light of this Award whether or not claimant should be reimbursed for any portion of her legal fees and expenses incurred in pursuing her complaint against USSS.
4. The administrative fees and expenses of the American Arbitration Association and the arbitrators' fees shall be borne by the Respondent USOC. Said fees and expenses shall be paid as directed by the Association.

This Award is in full settlement of all claims submitted to this arbitration.

DATED: February 14, 1986

  
\_\_\_\_\_  
Gerald D. Marcus

DATED: February 15, 1986

  
\_\_\_\_\_  
Barbara Buggert

DATED:

\_\_\_\_\_  
Timothy C. Clemons

FINDINGS OF FACT

1. In 1983 claimant Marie E. White ("claimant") was an amateur athlete member of respondent United States Synchronized Swimming, Inc. ("USSS").

2. In 1983 USSS was recognized by respondent United States Olympic Committee ("USOC") as the national governing body for the amateur sport of synchronized swimming.

3. In 1983 claimant was named to USSS's First National Team which would compete at the American Cup II meet at Los Angeles, California on August 5 to 7, 1983, and at the Pan-American Games at Caracas, Venezuela, on August 16 to 21, 1983.

4. These competitions were "protected competitions" within the meaning of Article IX, Section 1, of the USOC Constitution.

5. On July 10, 1983, claimant was suspended from the First National Team.

6. On July 14, 1983, USSS's Board of Review upheld claimant's suspension.

7. By letter dated August 11, 1983, claimant requested that the Executive Director of the USOC investigate her suspension from USSS's First National Team, resolve the controversy between her and USSS pursuant to Article IX of the USOC Constitution and provide financial assistance for legal action taken by claimant to protect her rights pursuant to the USOC Constitution.

8. By letter dated August 16, 1983 the Executive Director of the USOC advised claimant that "I have determined that the complaint filed on behalf of Marie White regarding her right to

compete on the U.S. Pan American Synchronized Swimming Team in Caracas, Venezuela, is moot and untimely . . . . I am, therefore, unable to act upon this part of the complaint filed on Marie White's behalf. With regard to the request that the actions of the U.S. Synchronized Swimming, Inc., regarding Ms. White were inappropriate, and that action should be taken against them by the USOC, I will be happy to review the issue upon my return from Caracas . . . . In order to facilitate this review I would request that you provide an appropriate complaint following the requirements of the United States Olympic Committee Constitution and By-Laws, Article VII (sic), Chapter IX."

9. On September 22, 1983, claimant submitted to the USOC a complaint under Article VIII of the USOC Constitution.

10. By letter dated September 22, 1983, claimant disagreed with the USOC Executive Director's position that claimant's Article IX complaint was moot and further requested the Executive Director to clarify the USOC refusal "to provide financial assistance for Marie for legal action taken by her to indicate her rights."

11. The USOC through its legal counsel, Ronald T. Rowan, made the following representations in telephone conversations to claimant's counsel: that while the complaint could not be considered under Article IX because it was moot, it could be considered under Article VIII although it is neither Article VIII exactly nor Article IX exactly; that the problem presented by the claimant had never arisen before, that the allegations were sufficiently serious and the USOC would listen to them and give the claimant appropriate relief if justified.

12. By letter dated November 22, 1983, the USOC Executive Director restated that claimant's Article IX complaint was moot and that it had not been possible to grant the relief sought under Article IX. The letter also stated: "Your question with regard to whether the USOC will provide financial assistance to Marie for legal action or whether it will authorize legal action on behalf of Marie must await the decision of the hearing panel."

13. Claimant and her counsel relied on these statements by the USOC Executive Director and its legal counsel that the issue of financial assistance was still open and that in the event that claimant prevailed in her Article VIII complaint, the Executive Director would exercise his discretion with respect to providing financial assistance to claimant. Claimant pursued the procedure suggested under Article VIII of the USOC Constitution.

14. Claimant did not submit the controversy set forth in her August 11, 1983, complaint to arbitration within six months of her suspension from the USSS First National Team.

15. Neither USOC nor USSSI represented to claimant or her counsel, either expressly or impliedly, that claimant could delay in submitting an arbitration demand under Article IX until after the six-month limitations period, or that claimant could disregard said limitations period.

16. By letter dated November 22, 1983, the USOC Executive Director notified claimant that a hearing would be held on her Article VIII Complaint on January 12, 1984, in New York City.

17. The agenda for the January 1984 meetings of the USOC, mailed to all members of the USOC Executive Board on or about

December 13, 1983, indicated that the Board would consider claimant's Article VIII complaint against USSSI on January 14, 1984.

18. By letter dated January 5, 1984, and received by the USOC Executive Director on January 9, 1984, claimant and her counsel requested that the hearing on her Article VIII complaint be continued to a later date. USOC granted the continuance so that claimant and her counsel would have sufficient time to prepare for the hearing.

19. On January 13, 1984, with the approval of the USOC Administrative Committee, William Simon, USOC's President, appointed a five-member Hearing Panel to hear evidence on claimant's Article VIII complaint.

20. The USOC Administrative Committee approved appointment of the Hearing Panel under the heading of "Other Business." Due to claimant's last minute request for a continuance, it was not possible for appointment of a Hearing Panel to be a separate item on the agenda of the January 13, 1984 Administrative Committee meeting.

21. At the January 14, 1984 meeting of the USOC Executive Board, the members of the Board were advised that the Hearing Panel had been appointed and would report at the next meeting of the Executive Board.

22. On April 5, 1984 a Hearing Panel of the USOC Executive Board held a hearing on claimant's Article VIII complaint.

23. The April 5, 1984 hearing began at approximately 9:15 a.m. and continued until approximately 9:09 p.m.

24. At the outset of and throughout the April 5, 1984 hearing, the USOC Hearing Panel Chairman declared that the purpose of the proceeding was to determine whether or not USSS was in compliance with the requirements of Article IV, Section 4, of the USOC Constitution with particular reference to the requirements that USSSI was not eligible to continue to be recognized as a national governing body unless it provided an amateur athlete fair notice and opportunity for a hearing before declaring such individual ineligible to participate, and unless it provided procedures for the prompt and equitable resolution of grievances of its members.

25. Although the USOC Hearing Panel did allow some testimony concerning the facts leading to USSS's suspension of claimant, evidence was adduced on the substantive issue only to place the procedural issue in context.

26. At the April 5, 1984 hearing, claimant's counsel confirmed that claimant was not seeking relief on the grounds that she had been denied her right to compete.

27. Neither at the outset of nor during the April 5, 1984 hearing did claimant's counsel object to the composition of the Hearing Panel or the procedures by which the Hearing Panel was appointed by the USOC Administrative Committee.

28. After the hearing, the Panel issued a report which concluded that: (a) USSS was not in compliance with Article IV, Section 4(b)(6), because it lacked procedures ensuring that athletes would not be suspended from protected competition without a prior hearing; and (b) because claimant was not pro-

vided fair notice and an opportunity to be heard by an impartial panel before she was suspended from the 1983 National Team, claimant was deprived of her right to due process under USOC requirements. The report recommended that USSS be placed on probation for 180 days and directed to revise its rules to comply with Article IV, Section 4(b)(6).

29. The Hearing Panel report also concluded the following:

"The Panel in no way condones Marie's behavior at the National Sports Festival or her behavior which disrupted team unity, and recognizes that situations can and do arise where, for the good of the team, a member must be temporarily removed. The Panel also does not doubt that the national team coaches were capable of making such a decision, and did so in good faith and in the best interests of the team."

30. Notwithstanding the fact that the Hearing Panel did not conduct a hearing on all of the issues raised by claimant in her August 11, 1983 letter and Article VIII complaint, it did summarize some of the evidence presented relating to the substantive issues and included comments which were neither a summary of the evidence nor recommendation, namely the paragraph set forth above in Finding 29.

31. On April 6, 1984, the USOC Hearing Panel Chairman presented the USOC Hearing Panel report at a scheduled meeting of the USOC Executive Board.

32. The USOC President and the USOC Executive Director never caused to be mailed to the members of the USOC Executive Board an agenda for the April 6, 1984 Executive Board meeting, nor a supplement to such an agenda, describing with sufficient particularity and accompanied with sufficient supporting materials to afford members of the Executive Board reasonable



notice that the Executive Board would consider Marie White's Article VIII Complaint at its April 6, 1984 meeting.

33. Two-thirds of the members of the USOC Executive Board present and voting at the April 6, 1984 meeting of the Executive Board never voted to consider Marie White's complaint pursuant to Article VIII of the USOC Constitution at the April 6, 1984 meeting of the Executive Board.

34. The USOC Hearing Panel report was not distributed to the USOC Executive Board at the commencement of its April 6, 1984 meeting, and was not provided to each of the Executive Board members until during the USOC Hearing Panel Chairman's oral summary of the report.

35. At the April 6, 1984 meeting of the USOC Executive Board, a member of the Executive Board objected to consideration of Marie White's Article VIII complaint on the basis that the matter was not on the agenda for the meeting and that the Executive Board should be given more opportunity to consider the USOC Hearing Panel report prior to taking action with respect to the complaint.

36. The Executive Board did not receive any further evidence in addition to the Panel's report.

37. Claimant's counsel requested an opportunity to be heard with respect to claimant's complaint at the April 6, 1984 meeting of the USOC Executive Board and no action was taken with respect to that request.

38. The USOC Executive Board unanimously voted (the member for USSS abstaining) to adopt the Hearing Panel's report in its

entirety and to place USSSI on probation for 180 days with the direction that it revise its rules to comply with Article IV, Section 4(b)(6).

39. Claimant is aggrieved by the last paragraph of the section entitled "Conclusions and Recommendations" of the Hearing Panel Report quoted in Finding 29 because these comments reflect unfavorably on her.

40. The USOC has never determined whether or not to provide financial assistance or reimbursement to claimant for the legal action she has taken to protect the rights of athletes guaranteed by the USOC Constitution.

41. On May 4, 1984, claimant submitted to the American Arbitration Association a demand for arbitration of two claims: (1) under Article IX of the USOC Constitution that USSS had denied her the right to compete in protected competition; and (2) under Article VIII of the USOC Constitution that USOC had aggrieved claimant in adopting the Hearing Panel Report in its entirety.

#### CONCLUSIONS OF LAW

1. Article IX, Section 2, of the USOC Constitution grants an amateur athlete who alleges denial of the right under Article IX, Section 1, to compete in protected competition the following remedies: (1) investigation by the Executive Director of the USOC of the athlete's complaint and steps by him to settle the controversy without delay and to the athlete's satisfaction; and (2) in the event the controversy is not resolved to the athlete's satisfaction, binding arbitration of the athlete's claim, said

arbitration demand to be filed not later than six months after the date of the alleged denial.

2. Claimant did not submit her arbitration demand under Article IX within six months of the date of the alleged denial of her right to compete in protected competition as required by Article IX.

3. Claimant has no legal justification for failing to submit her arbitration demand within the six-month limitations period and claimant's Article IX claims are barred by the six-month limitations period.

4. This panel has serious reservations about the USOC interpretation that Article IX can only be invoked if a claimant is seeking reinstatement; however, since the claimant's Article IX claims are time-barred, we do not reach this issue.

5. Insofar as the Hearing Panel Report as adopted by the Executive Board summarized the evidence and made recommendations with respect to claimant's complaint of lack of due process, the Hearing Panel complied with the USOC By-Laws.

6. Insofar as the Hearing Panel Report as adopted by the Executive Board included comments in the last paragraph of the section entitled "Conclusions and Recommendations" about claimant's suspension, these were not based on a full and complete noticed hearing concerning the complaint by claimant relating to the substantive facts of her suspension, and therefore the inclusion of these comments was unfair and constituted a denial of due process to the claimant.

7. The USOC Hearing Panel was appointed by the President with the approval of the Administrative Committee as required by the USOC By-Laws.

8. The USOC Executive Board improperly considered the USOC Hearing Panel Report at its April 6, 1984 meeting, because the USOC had not complied with the specific notice requirements of the USOC By-Laws. The verbal comments made at the January 13, 1984 Executive Board meeting did not constitute compliance with the notice requirements.

9. Since claimant prevailed on her Article VIII complaint against USSS with respect to the claim of lack of due process, claimant was not "aggrieved" within the meaning of Article VIII, Section 3(a) of the USOC Constitution and claimant's demands with respect to those complaints are moot.

10. Pursuant to Articles II and III of the USOC Constitution the USOC has the responsibility and power to "facilitate, through orderly and effective administrative procedures, the resolution of conflicts or disputes" involving an amateur athlete and a national governing body.

11. The USOC had the authority to pay in its discretion the legal expenses of the claimant for her efforts in enforcing the USOC Constitution and represented to claimant that, depending on the outcome of claimant's complaint pursuant to Article VIII of the USOC Constitution, the USOC would consider reimbursing Marie White for all or a portion of her legal fees in prosecuting the complaint.

12. While claimant's claim as to the substance of her Article IX complaint is time-barred, claimant relied to her detriment on representations regarding the availability of a decision on financial assistance after the Hearing Panel Report. The USOC is estopped from claiming that the claim for financial assistance is time-barred.

13. Despite the fact that claimant clearly prevailed on the Article VIII complaint to enforce the USOC Constitution, the USOC failed to exercise its discretion to consider reimbursing the claimant for all or a portion of her legal fees.

14. In the circumstances, the failure to exercise such discretion was a denial of the rights of the claimant pursuant to the USOC Constitution.



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Charles A. Cooper  
Regional Director

Jennifer McLaughlin  
Assistant Regional Director

February 19, 1986

Re: 74-199-0199-84

Marie White

-and-

United States Olympic Committee

-and-

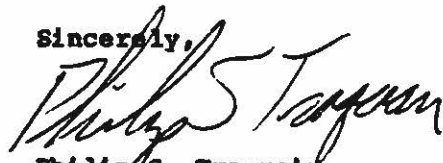
United States Synchronized Swimming, Inc.

Dear Parties:

By direction of the Arbitrators, Gerald Marcus, Barbara Buggert, and Timothy Clemons, we herewith transmit to you their Award in the above-captioned matter duly executed by Gerald Marcus and Barbara Buggert. We have been advised that the Award is a unanimous determination of the Arbitrators. We were, however, unable to obtain the signature of Timothy Clemons due to mail delays.

The Award, which has been executed by a majority of two Arbitrators, is valid in its present form.

Sincerely,



Philip S. Traquair  
Tribunal Administrator

PST/bis  
enclosure

cc: Timothy C. Clemons, Esq.  
Gerald D. Marcus, Esq.  
Barbara Buggert, Esq.