

AMERICAN ARBITRATION ASSOCIATION

In The Matter of the Arbitration

Between

PAUL SOTER and YEFIM LITVAN,

Claimants,

and

UNITED STATES FENCING ASSOCIATION,

Respondent.

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ARBITRATOR'S
DECISION & AWARD

BACKGROUND

The Parties

Claimants Paul Soter ("Claimant Soter") and Yefim Litvan ("Claimant Litvan") are highly regarded, nationally-recognized fencing coaches. Respondent United States Fencing Association ("the USFA") is the national governing body ("NGB") for the sport of fencing. The USFA is a member of the USOC and is charged with the selection of the athletes and cadre that will represent the USOC in fencing in the forthcoming 1996 Olympic Games to be held in Atlanta ("the Games").

The Relief Sought

An award designating Claimants as coaches of the fencing team representing the USOC in the Games. (Cf., the penultimate paragraph under "DECISION" below.)

The Prior Events

This matter had its genesis in the filing of a complaint by the Claimant Soter with the USOC pursuant to the 1996 United States Olympic Team Grievance Procedures For Conduct and Team Selection. Some of the pertinent events,

both preceding and subsequent to the filing of the protest, are as follows:

- * May 4-5, 1996 - The USFA's International Committee ("IC") (the group authorized by the USFA to select the athletes and cadre for the 1996 Olympic fencing team) makes its selections.
- * May 10, 1996 - Claimant Soter files a written protest (i.e., a "grievance") alleging that the selection process violated his rights in, essentially, the following three respects:
 1. The fairness of the process was compromised by the IC Chair due to a personal animus towards Mr. Soter, and a conflict of interest in that the Chair's wife was a candidate for a position in the weapon that Claimant Soter is the national coordinator.
 2. The IC Chair manipulated the process by delaying the selection until a date when Mr. Soter could not be present at the meeting.
 3. Misinformation was intentionally or recklessly provided to the IC by the Chair and the Respondent's Program Director.
- * June 21, 1996 - A Special Panel of the IC appointed by the USFA's Executive Committee ("the Special Panel") conducts a hearing, on Claimant Soter's protest, by teleconference call. The IC's selections are unanimously affirmed.
- * July 2, 1996 - The USOC's General Counsel informs Claimant Soter that the matter cannot be resolved informally, and the latter thereupon files a Demand for Arbitration with The American Arbitration Association ("the Association"). (As part of its obligations as a national governing body the USFA has agreed to submit to binding arbitration, conducted in accordance with the Commercial Arbitration Rules of the Association, any controversy involving the opportunity to participate in amateur athletic competition including the Olympics.) Thereafter, by agreement of the parties, Claimant Litvan's claims against the USFA were consolidated with those of Claimant Soter, and were incorporated in and made a part of these proceedings.

On July 3, 1996, the Association contacted the undersigned and: (a) advised him of the dispute, identified the parties and their counsel, and listed the potential witnesses; and (b) appointed him as Arbitrator herein.

Later that afternoon, the Association, the undersigned and counsel for the parties (Claimant Soter, an attorney appearing pro se) participated in a telephonic pre-hearing conference call in which it was determined (as a result of a prior Association "locale review") that the hearing would be conducted in New York City on July 5, 1996.

(The Arbitrator was told that the hearing must be concluded prior to 5:00 PM on that day so that the substance of the award could be communicated to the Assoc. for transmittal to the USOC, by no later than 5:00 PM EDST on that day. This pre-5:00 PM Friday, July 5th deadline for transmittal to the USOC was, in turn, necessitated by: (i) the USOC must submit its final cadre appointments to the International Olympic Committee by 5:00 PM on that day; (ii) the final team preparations are to commence on the next business day, i.e., tomorrow, July 8th; and (iii) the actual competition is scheduled to get underway less than two weeks thereafter.)

The Arbitration

The hearing was conducted on July 5, 1996 at 777 Third Avenue, New York, NY, 24th floor. The following persons were physically present at that place (in addition to the Arbitrator): Lewis W. Siegel and Stephen B. Sobel, Esqs.

Pursuant to Claimants' request, the Arbitrator permitted the following persons to participate in the hearing via telephone hook-up: Paul Soter, Esq. and Mr. Michael Marx, on behalf of Claimant Soter; John van der Tuin, Esq. and Mr. Yefim Litvan, on behalf of the latter; and Mr. Jeffrey Bukantz on behalf of the USFA.

The alleged wrongs sought to be remedied in this arbitration are, in significant respects, similar to those presented to the USOC and the NGB in the prior proceedings. Thus, Claimant Soter contends that the IC's May 4-5 decision was tainted in that: the IC improperly excluded voting members from its decision and athletes' representatives from its final discussions; the IC improperly held its meetings in secret; the IC was chaired by a person whose wife was a candidate for the team and who exercised a great deal of influence over its proceedings and the information that was

provided to the IC, both at that meeting and earlier; misinformation was provided to the IC and important information was not provided to the IC; and, the IC disregarded the athletes' rankings.

In addition, Claimant Soter now contends that the USFA "appeal procedure" was improper in that: the Special Panel convened "to rehear the selection decision" was composed of four members of the IC who had made the initial decision, plus one other person; the proceeding was held by telephone instead of in person; the panel was hostile and defensive; and the panel disregarded the facts and the selection criteria.

The USFA contends that the selection process and procedure adopted and implemented by it are fair, reasonable and rationally related to the purpose of fielding the most competitive fencing team possible at the Games.

The following persons were identified by the parties herein as third-parties whose rights or interests might be impacted by these proceedings and who, therefore were given notice of the pendency of these proceedings and the opportunity to be heard or otherwise participate herein: Messrs. Bucky Leach, Aladar Koglar, Zoran Tulum, Carl Oberg, Carl Borack and Ms. Sherry Posthumus.

None of the parties requested a stenographic reporter be present at the hearing and none was present. The hearing was conducted in accordance with the Commercial Arbitration Rules of the Association on an expedited basis as provided in the arbitration provisions of the USOC's Constitution and By-Laws.

Claimant Soter appeared pro se. Claimant Litvan was represented by John van der Tuin, Esq. The USFA was represented by Lewis W. Siegel and Stephen B. Sobel, Esqs.

The "live witnesses" who testified (i.e., the witnesses who testified orally and whose testimony and credibility were therefore subjected to the harsh glare of the cross-examination spotlight) were: Called by Claimants - Lewis W. Siegel, Michael Marx and Paul Soter. Called by the USFA - Stephen Sobel and Jeffrey Bukantz, a member of both the IC and the Special Panel.

DECISION

Claimants have complied with all of the necessary procedural requirements for pursuing this challenge to the NGB's selection process. The controversy is ripe for review and given the importance of the issues, the deadlines previously referred to and the imminence of the Games, an immediate resolution is essential.

The designation of coaches requires selecting a blend of persons, personalities and talents to attempt to achieve the best results for the U.S. It is not the function of the Arbitrator, nor is it appropriate for him, to substitute his judgment for that of the NGB in the selection process. His mandate does not normally comprehend being anointed as a one man selection committee. Thus, unless it can be clearly demonstrated that the process and/or the prior proceedings were manifestly unfair, or in significant violation of the NGB's (or the USOC's, as may be applicable) declared purposes, policies and/or procedures, or were otherwise fraught with significant error, the Arbitrator must affirm the results and effects of the prior proceedings.

The only live disinterested witness, (i.e., neither a party nor counsel to a party herein) who was in a position to describe what actually happened in Atlanta on May 4-5 and at the teleconference meeting on June 21, was Mr. Jeffrey Bukantz, a member of both the IC and the Special Panel. Mr. Bukantz was the only such witness called who could give clear, credible and consistent testimony as to the events which led up to and which occurred at each of these crucial sessions and, indeed, as to such issues as: what was the perspective of the IC (or, at least, some of its component members) as to the subjectivity vs. objectivity of the criteria which they were being called upon to apply. In a close case, such as this -- which was thoroughly, and professionally marshalled, documented and presented by able counsel for each party -- this compelling testimony was enough to tip the scales.

Therefore, while Claimants were quite persuasive in casting serious doubts on the integrity of the selection process as it was applied here, on the totality of the record before me I do not find that the selection process was so endemically flawed or that there was error or unfairness of such magnitude in the prior proceedings as to warrant or justify their nullification at this late point in time (i.e., virtually on the eve of the Games).

Indeed, were I to conclude that the Claimants are entitled to relief, it would not be structured in the form of substituting my non-expert fencing judgment for that of the NGB and mandating placing Claimants' names on the list of coaches in place of two of the currently-designated cadre members. Instead, I would require that the IC return to the pre-May 4, 1996 drawing board and, employing "the criteria" and a process for the implementation thereof approved by me to insure fairness, reasonableness and maintenance of a level playing field, come to a decision de novo on the cadre. (The resulting list would most certainly include the name of Bucky Leach, and it might or might not contain the name(s) of one or both of the other two coaches selected by the IC on May 4-5 and unanimously affirmed by the Special Panel on June 21.)

Obviously, this was not within the realm of possibility given the July 5th 5:00 PM deadline for transmitting the final cadre appointments to the USOC. Furthermore, it is my strong belief that to require such a dramatic upheaval on the virtual eve of the Games would almost certainly inhibit (if not seriously jeopardize) the fencing team's chances for success at the Games.

Finally, while I believe that the proposal urged by Claimant Litvan to the effect that: this matter could best (and, certainly, most amicably) be resolved by simply adding Claimants' names to the present cadre, is an excellent one, I do not regard myself as having the jurisdiction, authority or power necessary to implement it. Suffice it to say: I would, if I could.

Accordingly, while I may have proceeded in a very different manner and might have arrived at a significantly different result if I had been a voting member of the IC or the Special Panel, I am constrained to dismiss the claims asserted against the USFA in these proceedings.

Jack Friedman, Esq.,
ARBITRATOR

New York, NY
July 7, 1996

