

**AMERICAN ARBITRATION ASSOCIATION**  
**Commercial Arbitration Tribunal**

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In the Matter of the Arbitration between

AAA Case Number: 51 190 00775 12 JENF

Joel Mertes, Claimant

and

United States Gymnastics, Respondent.

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**AWARD AND REASONED DECISION OF ARBITRATOR**

I, THE UNDERSIGNED ARBITRATOR, having been designated by the American Arbitration Association (“AAA”), and in accordance with the Ted Stevens Olympic and Amateur Sports Act (“ASA”) and Section 9 of the United States Olympic Committee (“USOC”) Bylaws, having been duly sworn, and having fully considered the briefs and accompanying exhibits submitted by the Claimant and Respondent as well as their respective oral arguments during a July 2, 2014 telephonic hearing,<sup>1</sup> do hereby, AWARD, as follows:

**THE PARTIES AND THEIR RESPECTIVE CONTENTIONS**

Claimant Joel Mertes is a gymnastics coach who formerly was an individual member of USA Gymnastics. He filed this arbitration proceeding to challenge USA Gymnastics’ denial of his January 2012 application for reinstatement as a member. He was represented by Gregory E. Kulis and Joshua Patrick, Gregory E. Kulis & Associates, Ltd., Chicago, Illinois. Mr. Mertes contends that then-current Article 10 of USA Gymnastics’ Bylaws, which was applicable when the parties’ dispute arose, provides him with the right to arbitrate his claim that USA Gymnastics improperly rejected his application for reinstatement as a member. More specifically, he claims that Article 10.01(b), 10.02, and 10.17, when read together, provide a former member such as himself with the right to bring this arbitration proceeding because USA Gymnastics’ decision effectively has denied him the opportunity to participate as a coach in its sanctioned competitions, and that the Arbitrator has jurisdiction to resolve the merits of his claims.

Respondent USA Gymnastics is the national governing body (“NGB”) for the sport of gymnastics in the United States, which is recognized by the United States Olympic Committee. It

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<sup>1</sup> The Arbitrator expresses his appreciation for the helpful briefs and focused oral advocacy of the parties’ counsel, which facilitated his understanding of the jurisdictional issue raised by their respective contentions.

was represented by Scott D. Himsel and Anne K. Ricchiuto, Faegre Baker Daniels, Indianapolis, Indiana. USA Gymnastics rejected Mr. Mertes' application for reinstatement as a member because its investigation determined he had engaged in sexual misconduct with minor athletes he coached while a former member. It has filed a motion to dismiss this arbitration proceeding, asserting that the Arbitrator lacks jurisdiction because the Ted Stevens Olympic and Amateur Sports Act ("ASA"), 36 U.S.C. §§220501 et seq., and Article 10 of its bylaws do not provide for arbitration of membership disputes. (USA Gymnastics' Brief in Support of its Motion to Dismiss for Lack of Jurisdiction at 1). USA Gymnastics contends the foregoing provisions of Article 10 do not constitute its agreement to permit a former coach who does not satisfy its membership requirements to arbitrate the rejection of a membership application.

### **FACTUAL BACKGROUND**

In 2007, when he was an individual professional member of USA Gymnastics and a coach at a gymnastics academy in San Antonio, Texas, Mr. Mertes was accused of sexual misconduct by the family of one of his former students. A civil lawsuit based on these allegations was voluntarily dismissed before any discovery was conducted. He was indicted for sexual misconduct with a child, but was found not guilty of any criminal charges in January 2010. In 2011, he began coaching at a gymnastics academy in Ottawa, Illinois.

In January 2012, he applied for reinstatement of his USA Gymnastics membership, which lapsed sometime between 2007 and 2010. USA Gymnastics has a zero tolerance policy for sexual misconduct because athlete safety and welfare are a top priority, and it has adopted a Code of Ethics and Participant Welfare Policy. Because it had received information concerning Mr. Mertes' alleged sexual misconduct towards other young athletes from 2007-2010, USA Gymnastics hired a private investigator to conduct an investigation after he applied for reinstatement as a member. This investigation consisted of interviews with thirteen individuals, including Mr. Mertes, who was represented by counsel during this investigation and his interview. After reviewing the findings of this investigation, Steve Penny, President/CEO of USA Gymnastics, informed Mr. Mertes in a December 20, 2012 letter that he would not be allowed "to pursue membership within our organization." This letter stated: "You may appeal this decision to a hearing panel under the provisions of Article 10.10, et seq., of the USA Gymnastics Bylaws."

On March 13, 2013, after conducting an evidentiary hearing during which both live and affidavit testimony was presented and Mr. Mertes was represented by counsel, a three-person USA Gymnastics Ethics, Grievance, and Safe Sport Committee Hearing Panel unanimously concluded Mr. Mertes "violated the USA Gymnastics Code of Ethics and Participant Welfare Policy. . . by engaging in sexual misconduct while he was a USA Gymnastics Professional Member and that such conduct was inconsistent with the best interest of the sport of gymnastics and of the athletes USA Gymnastics serves." Its decision states: "§9.01 of the Bylaws provides: 'Where the conduct of any member is determined to violate the rules or policies of the

Corporation or to be inconsistent with the best interest of the sport of gymnastics and of the athletes the Corporation serves, that member may be disciplined in accordance with the procedures outlined below,' §10.07(c) of the Bylaws provides that one form of discipline that may be imposed is expulsion.” The panel upheld the December 20, 2012 decision “to deny professional membership to Mertes” and directed that he “be listed as ‘permanently ineligible’ for membership in USA Gymnastics.”

In July 2013, Mr. Mertes filed a Demand for Arbitration with the AAA, which describes the nature of the dispute as follows: “Joel Mertes was a member of USA Gymnastics. His membership was revoked<sup>2</sup> based on false charges of which he was acquitted. He applied for resubmission and reinstatement which was denied. His appeal was denied and he now seeks review under the By Laws which allow arbitration.”

On September 13, 2013, apparently at the direction of an AAA administrator who advised that he must comply with the requirements of the United States Olympic Committee (“USOC”) Bylaws before demanding arbitration, Mr. Mertes filed a Section 9 Complaint with the USOC. His complaint states he “is seeking to be reinstated as a member of USA Gymnastics so he may coach, attend and compete” and “a lift of any ban on him,” but he does not allege denial of his opportunity to participate in any protected competition under Section 9.1. The disposition of this complaint is unclear, although he asserts “after denial thereof, the Demand for Arbitration that initiated these proceedings” was filed. (Claimant’s Response to Respondent’s Motion to Dismiss for Lack of Jurisdiction at 1-2).

On March 13, 2014, the Arbitrator was appointed by the AAA.

### LEGAL ANALYSIS

Mr. Mertes acknowledges he “has not invoked the [ASA] as grounds for arbitration.” (Claimant’s Response to Respondent’s Motion to Dismiss for Lack of Jurisdiction at 2). Despite his filing of a Section 9 Complaint, he is not requesting that the Arbitrator resolve a Section 9 complaint not settled to his satisfaction because he is not alleging the denial of his opportunity to participate in a protected competition under Section 9.1.<sup>3</sup> (Id. at 4). However, he claims that Article 10.17 of USA Gymnastics’ Bylaws provides him with a contractual right to arbitrate the

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<sup>2</sup> He did not make this specific assertion in any of his briefs or during oral argument regarding the issue of the Arbitrator’s jurisdiction in this arbitration proceeding.

<sup>3</sup> Section 9.1 provides that “No member [NGB] of the corporation [USOC] 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 . . . Any reference to athlete in this Section 9 shall also equally apply to any coach, trainer, manager, administrator or other official.” A coach who alleges an NGB has denied him an opportunity to participate in a protected competition may file a complaint with the USOC. USOC Bylaw 9.2. If this complaint “is not settled to [his] satisfaction,” he “may file a claim with the AAA against [the NGB] for final and binding arbitration.” USOC Bylaw 9.7.

denial of his application for membership in USA Gymnastics because this action effectively denies him an opportunity to participate in its sanctioned competitions. (Id. at 4-5). Thus, the Arbitrator's only potential basis of jurisdiction is Article 10.17. *Int'l Brotherhood of Teamsters, Local 249 v. Western Pa. Motor Carriers Ass'n*, 574 F.2d 783, 787 (3d Cir. 1978) ("Since the jurisdiction of the arbitrator is contractually granted by the parties, the question as to whether a particular dispute is arbitrable necessarily depends on 'whether the parties agreed to submit the dispute to arbitration.'").

There is no dispute that the relevant then-current provisions of USA Gymnastics' Bylaws<sup>4</sup> for the purpose of determining whether the Arbitrator has jurisdiction are as follows:

ARTICLE 1  
NAME AND OFFICES

1.01 Name. The name of the Corporation is USA Gymnastics.

ARTICLE 10  
DISCIPLINARY PROCEEDINGS AND GRIEVANCES

10.01 Designation of Complaints. The following kinds of grievances may be filed by the Corporation or with the Corporation under this Article (a "Complaint"):

- (a) Administrative. An "Administrative Complaint" is one pertaining to any matter within the cognizance of the Corporation, including, but not limited to, any alleged violation of or grievance concerning: (i) any of the Corporation's rules, regulations or policies; or (ii) any provision of the Certificate of Formation or these Bylaws.
- (b) Opportunity to Participate. An "Opportunity to Participate Complaint" is one pertaining to any alleged denial, or alleged threat to deny, any athlete, coach, trainer, manager, administrator or official, the opportunity to compete or participate in a Corporation sanctioned competition or a competition protected by the provisions of the Sports Act or the bylaws of the USOC; or
- (c) Misconduct. A "Misconduct Complaint" is one pertaining to Misconduct other than one of the Special Categories of Misconduct described in Article 9.

10.02 Filing a Complaint. Any current or former athlete, professional member, or organizational member of the Corporation (the "Complainant") who believes himself/herself/itself to be aggrieved by any action of the Corporation or by one of its members, may file a Complaint with

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<sup>4</sup> The provisions in its December 3, 2011 and December 7, 2012 Bylaws, which collectively encompass the time period during which this dispute arose, are identical. (USA Gymnastics' Submission and Summary of Applicable Bylaws at 1.)

the Corporation. If the Complainant is a minor, the Complaint may be initiated by such minor's parent or legal guardian. To be considered for resolution through these procedures, the Complaint must:

- (a) Be submitted in writing to the President at the Corporation's principal place of business;
- (b) Be signed by the Complainant; and
- (c) Include a concise statement of the nature of the Complaint, the individual and/or organization believed to be responsible for the acts or omissions described in the Complaint and the relief requested.

A complaint that is not filed in accordance with this Section shall render the filing ineffective.

10.17 Arbitration. The Corporation agrees to submit to binding arbitration conducted under the commercial rules of the American Arbitration Association, any controversy involving (i) an Opportunity to Participate Complaint or (ii) its recognition as a National Governing Body, as is provided in the Sports Act.

Rule R-1(a) of the AAA's "Commercial Arbitration Rules and Mediation Procedures" (June 1, 2009) provides that its commercial arbitration rules "in effect at the time the administrative requirements are met for a demand for arbitration" are a part of the parties' arbitration agreement. Rule R-7(a) provides the arbitrator with "the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement."<sup>5</sup>

USA Gymnastics asserts that Article 10.17 constitutes its agreement to submit to binding AAA arbitration only those controversies that the ASA and Section 9 of the USOC Bylaws require to be submitted to arbitration based on the following reasoning. The ASA requires an NBG "to submit to binding arbitration in any controversy involving . . . the opportunity of any amateur athlete, coach, trainer, manager, administrator, or official to participate in amateur athletic competition . . . conducted in accordance with the Commercial Rules of the American Arbitration Association, as modified and provided for in the corporation's [USOC's] constitution and bylaws." 36 U.S.C. §§220522(a)(4)(B). The ASA defines "amateur athlete" as an individual "who meets the eligibility standards established by the [NGB] . . . for the sport in which the athlete competes." 36 U.S.C. §220501(b)(1). Section 9.1 provides that a coach has the same arbitration rights as an athlete and that only the alleged denial of the opportunity to participate in

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<sup>5</sup> Because Mr. Mertes filed his Demand for Arbitration in July 2013 and his Section 9 Complaint on September 13, 2013, the AAA's June 1, 2009 commercial arbitration rules are applicable to this proceeding. Amended rules became effective on October 1, 2013, and R-7(a) of the new rules also provides an arbitrator with the power to determine jurisdiction as well as the "arbitrability of any claim."

only a certain “amateur athletic competition(s)” (i.e., Olympic Games, the Pan American Games, the Paralympic Games, a World Championship competition, or other “protected competition(s)”<sup>6</sup>) may be challenged in AAA arbitration. Although the ASA requires an NGB to demonstrate that “its membership is open to any individual who is an amateur athlete, coach, trainer, manager, administrator, or official active in the sport for which recognition is sought” (36 U.S.C. §220522(a) (7)), it does not provide any of these individuals with the right to submit an unresolved membership dispute with an NGB to AAA arbitration, or require the NGB to submit to arbitration as a condition of being recognized as the national governing body for a sport.

The Arbitrator observes that, at least in part, an “Opportunity to Participate Complaint” for purposes of Article 10.17 is broader than the definition in Section 9 of the USOC Bylaws. Article 10.01(b) defines an “Opportunity to Participate Complaint” more broadly to include “any alleged denial, or alleged threat to deny . . . the opportunity to compete or participate *in a Corporation sanctioned competition* or a competition protected by the provisions of the [ASA] or the bylaws of the USOC. . .” (emphasis added). Although the then-current Article 10.01(b) includes USA Gymnastics’ sanctioned athletic competitions in addition to “protected competitions,” it is unclear whether the individual asserting an “Opportunity to Participate Complaint” must be a “member” of USA Gymnastics.<sup>7</sup> This gives rise to the parties’ dispute regarding whether the Arbitrator has jurisdiction under Article 10.17 when read together with Articles 10.01(b) and 10.2.

Contending that the Arbitrator has jurisdiction, Mr. Mertes relies on Article 10.02, which states that “[a]ny current or former athlete, professional member or organizational member of [USA Gymnastics] who believes himself/herself/itself to be aggrieved by any action of [USA Gymnastics] or by one of its members, may file a Complaint with [USA Gymnastics].”<sup>8</sup>

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<sup>6</sup> USOC Bylaw 1.3 (w) defines “protected competition” as: 1) any amateur athletic competition between any athlete or athletes officially designated by the appropriate NGB or PSO as representing the United States, 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 of 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 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.

<sup>7</sup> Based on his own research, the Arbitrator notes that the current version of Article 10.01(b), which was revised and became effective in December 2013, states: Opportunity to Participate. An “Opportunity to Participate Complaint” is one pertaining to any alleged denial, or alleged threat to deny, *any member, who is* an athlete, coach, trainer, manager, administrator or official, the opportunity to compete or participate in a Corporation sanctioned competition or a competition protected by the provisions of the Sports Act or the bylaws of the USOC.” (emphasis added).

<sup>8</sup> Article 10.02 of USA Gymnastics’ December 2013 Bylaws states: “*Any current member, current or former athlete member, or the Corporation (the "Complainant")* who believes himself/herself/itself to be aggrieved by any action of the Corporation or by one of its members, may file a Complaint with the Corporation. (emphasis added).

(emphasis added). As a “former . . . professional member” (i.e., a former coach) of USA Gymnastics, he asserts the right to file an “Opportunity to Participate Complaint” under Article 10.01(b) because the rejection of his membership application denies him the opportunity to compete or participate in USA Gymnastics-sanctioned competitions.

Contending that the Arbitrator does not have jurisdiction, USA Gymnastics asserts that Mr. Mertes never filed an “Opportunity to Participate Complaint” pursuant to Article 10.01(b) or any other complaint with USA Gymnastics. Even if he had done so, only a current member of USA Gymnastics has standing to do so because the language defining the class of individuals permitted to bring an Article 10.01(b) “Opportunity to Participate Complaint” (“any athlete, coach, trainer, manager, administrator or official”) is exactly the same as the corresponding language of 36 U.S.C. §§220522(a)(4)(B) of the ASA. Because the ASA requires all of these individuals to satisfy “the eligibility standards established by the [NGB] . . . for the sport in which the athlete competes” (36 U.S.C. §220501(b)(1)) in order to bring an AAA arbitration proceeding, a former coach has no right to AAA arbitration under Article 10.17. The word “former” in Article 10.02 modifies only “athlete” to enable a former athlete whose USA Gymnastics membership has expired to file an Article 10.01(c) “Misconduct Complaint” against a coach with USA Gymnastics.

Although USA Gymnastics’ decision that Mr. Mertes is permanently ineligible for membership effectively denies him the opportunity to coach in any of its sanctioned competitions, the Arbitrator determines that Article 10.17 does not require USA Gymnastics to submit a membership dispute to binding arbitration. Then-current Article 10.01(b) does not expressly permit a former coach to file an “Opportunity to Participate Complaint,” which is subject to arbitration pursuant to Article 10.17 (i). It is undisputed that Mr. Mertes did not file an Article 10.01(b) “Opportunity to Participate Complaint” in accordance with the requirements of Article 10.02, which is necessary for a “controversy involving . . . an Opportunity to Participate Complaint” to arise under Article 10.17, which requires USA Gymnastics to submit to binding AAA arbitration for its resolution. Even though USA Gymnastics voluntarily provided Mr. Mertes with an evidentiary hearing pursuant to Article 10.10 to appeal the rejection of his membership application, which was upheld because the Hearing Panel found he engaged “in sexual misconduct while he was a USA Gymnastics Professional Member,” this does not constitute a decision concerning an Article 10.01(b) “Opportunity to Participate Complaint,” which gives rise to his claimed right to arbitration under Article 10.17.

When Articles 10.01, 10.02, and 10.17 are read together and considering their relationship to the only two narrow mandatory categories of binding AAA arbitration to which an NGB is required to submit under the ASA and the USOC Bylaws, the Arbitrator concludes that only a current “professional member” of USA Gymnastics (e.g., a coach) has the right to

bring an “Opportunity to Participate Complaint,” which USA Gymnastics agreed would be resolved by binding AAA arbitration. The Arbitrator rejects Mr. Mertes’ contention that he has jurisdiction to resolve his membership dispute with USA Gymnastics because inclusion of the word “former” in Article 10.02 provides a former coach with the right to arbitration proceeding if the effect of the denial of his membership application prevents him from coaching in its sanctioned competitions. Considering the first sentence of Article 10.02 in its entirety, it appears more likely that the word “former” in Article 10.02 modifies only “athlete” (to enable a former athlete whose USA Gymnastics membership has expired to file an Article 10.01(c) “Misconduct Complaint” against a coach with USA Gymnastics. It does not also modify “professional member or organizational member.”

The Arbitrator’s interpretation of Article 10 of USA Gymnastics’ Bylaws is not inconsistent with two federal district court decisions holding that a court lacks jurisdiction to hear a coach’s claims challenging his ineligibility to coach athletes in Olympic sports competitions if they are required to be resolved by arbitration.<sup>9</sup> Neither case considered whether a former coach may challenge the rejection of his membership application by an NGB in AAA arbitration. In *Lee v. United States Taekwondo Union*, 331 F. Supp.2d 1252 (D. Haw. 2004), the court ruled that the ASA preempted state law claims against an NGB by a coach who alleged he was removed as coach of the 2004 United States Olympic taekwondo team because of his Korean ancestry, thereby depriving it of jurisdiction over these claims. Because the coach was alleging denial of his opportunity to participate in the Olympic Games, the court determined that the ASA and USOC Bylaws required him to submit his claim seeking reinstatement as coach of the 2004 United States Olympic taekwondo team to binding AAA arbitration. The NGB also was required to submit to binding arbitration pursuant to its bylaws.<sup>10</sup> Similarly, in *Graham v. United States Anti-doping Agency*, 2011 WL 1261321 (E.D.N.C.), the court ruled that it lacked jurisdiction to resolve a coach’s claims against the United States Anti-doping Agency (USADA) arising out of his lifetime ban from coaching athletes in all Olympic sports competitions because the “United States Olympic Committee has delegated the investigation of alleged doping violations to USADA, which calls for arbitration as its main vehicle for determining these violations.” *Id.* at \*5, n.6.

Contrary to Mr. Mertes’ assertion, “a fair reading of the rationale inherent in these two cases” does not “suggest that the remedy available to the Claimant would be the instant

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<sup>9</sup> Although *Lee v. United States Taekwondo Union*, 331 F. Supp.2d 1252 (D. Haw. 2004) and *Graham v. United States Anti-doping Agency*, 2011 WL 1261321 (E.D.N.C.) were not cited in the parties’ respective initial briefs, the Arbitrator requested supplemental briefs discussing the relevance of these cases for jurisdictional purposes, which the parties’ counsel provided.

<sup>10</sup> The court noted: “The Bylaws of the USTU similarly provide that ‘USTU agrees to submit to binding arbitration conducted in accordance with the commercial rules of the American Arbitration Association ... involving the opportunity of any ... coach ... to participate in amateur athletic competition.’ USTU Bylaws, Article XXVII, § 2.” *Id.* at 1259.

arbitration proceedings that he has initiated.” (Claimant’s Supplemental Brief in Response to Respondent’s Motion to Dismiss for Lack of Jurisdiction at 2). Although both *Lee* (331 F. Supp.2d at 1256-1257) and *Graham* (2011 WL 1261321 at \*3 and \*5) characterize the coaches’ respective claims as raising an “eligibility” dispute specifically required to be resolved by arbitration in accordance with the ASA, USOC Bylaws, or USADA doping protocol, neither case holds that disputes between a former coach and an NGB are subject to arbitration even without statutory mandate or agreement of the parties.<sup>11</sup> In context and based on the specific ASA provision (36 U.S.C. § 220505(b) (9)) and precedent these cases cite as authority for this conclusion (*Slaney v. Int’l Amateur Ath. Fed’n*, 244 F.3d 580, 596 (7th Cir.2001); *Michels v. U.S. Olympic Comm.*, 741 F.2d 155, 157 (7th Cir.1984); *Oldfield v. Athletic Congress*, 119 F.2d 505 (9th Cir.1985)), an “eligibility” dispute refers to denial of an individual’s “opportunity to participate” in protected athletic competitions, which must be arbitrated and for which there is no private right of action in a judicial forum. Unlike the provisions of the ASA, USOC Bylaws, or USADA doping protocol, which expressly provide for mandatory arbitration of disputes concerning “opportunity to participate” in protected athletic competitions or doping violations, Article 10.17 does not provide a former coach whose membership application has been denied to require USA Gymnastics to submit to binding arbitration to resolve the parties’ dispute.

Although the Arbitrator does not have jurisdiction over Mr. Mertes’ claim that USA Gymnastics wrongfully denied his application for membership as a coach, this determination only precludes him from seeking *de novo* review of this decision under the commercial rules of the AAA. Because this is not a “controversy involving . . . an Opportunity to Participate Complaint” under Article 10.17 of the USA Gymnastics Bylaws or a dispute that the ASA or Section 9 of the USOC Bylaws requires to be submitted to binding arbitration, legal redress in a judicial forum may be available under applicable laws governing disputes between a former member and a private association such as an NGB.

## DECISION AND AWARD

Based on the foregoing facts and legal analysis, the Arbitrator decides and awards as follows:

The Arbitrator does not have jurisdiction under the ASA, Section 9 of the USOC Bylaws, or Article 10 of USA Gymnastics’ Bylaws to arbitrate Mr. Mertes’ claim that USA Gymnastics improperly rejected his application for reinstatement as a member of USA Gymnastics.

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<sup>11</sup> *Graham* concluded that the plaintiff coach was required to submit his doping violation dispute to arbitration despite his contention that the court has jurisdiction over his claims because “he is not a member of any national governing body in the purview of the Amateur Sports Act as he has ‘never paid dues or completed an application to become a member of [United States Track and Field Association] or any other [national governing body].’” 2011 WL 1261321 at \*4. The court held that its assumption of jurisdiction over plaintiff’s claims arising out of a doping violation dispute would violate the ASA, but it did not rule that all disputes between an NGB and a non-member must be submitted to arbitration.

The administrative fees of the American Arbitration Association totaling \$750.00 and the compensation of the arbitrator totaling \$1,500.00 shall be borne equally. Therefore, Respondent shall reimburse Claimant the sum of \$375.00, representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by Claimant.

Each party shall bear its own attorney's fees and other costs related to this arbitration.

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

A handwritten signature in black ink, appearing to read "Matt J. Mitten", is written over a horizontal line.

Matthew J. Mitten, Arbitrator

July 15, 2014