

**AMERICAN ARBITRATION ASSOCIATION  
Commercial Arbitration Tribunal**

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In the Matter of the Arbitration between

UNITED STATES ANTI-DOPING AGENCY,

Claimant

and

ROBERT DOSTERSCHILL,

Respondent

Re: AAA Case No. 01-16-0004-4862

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**PARTIAL FINAL AWARD ON JURISDICTION**

We, the undersigned Arbitrators (the "Panel"), having been designated by the above-named parties and having been duly seated and having duly considered the submissions, exhibits and arguments of the parties and, after a hearing held via teleconference on February 16, 2017, in accordance with the American Arbitration Association's Supplementary Procedures for the Arbitration of Olympic Sport Doping Disputes (the "Supplemental Procedures") do hereby find and issue this Partial Final Award on Jurisdiction (the "Award"), as follows:

**I. Introduction**

1. As a result of the parties' agreement to bifurcate the proceedings, the issue before the Panel at this time is whether USADA has the authority to manage the results of testing conducted on a urine sample collected from Respondent at the 2016 Arnold Weightlifting Championships in Columbus, Ohio.

2. Respondent is a member of USA Weightlifting (“USAW”), which is the National Governing Body (“NGB”) for the sport of weightlifting in the United States, and is recognized as such by the United States Olympic Committee (“USOC”). The event where Respondent’s sample was collected, the 2016 Arnold Weightlifting Championships, was sanctioned by USAW and was listed on the calendar of the International Weightlifting Federation (the “IWF”), the international federation for the sport of weightlifting recognized as such by the International Olympic Committee (“IOC”).

3. While Article 3 of the USADA Protocol for Olympic and Paralympic Movement Testing (the “USADA Protocol”) specifies that its terms apply to athletes who are members of NGBs and also to athletes who participate in events sanctioned by NGBs, athletes must be provided notice that they are subject to and bound by the terms of the USADA Protocol. The Panel finds that USAW failed to provide adequate notice to Respondent in the “USA Weightlifting Membership Waiver and Code of Conduct” form (the “USAW Membership Form”) that Respondent completed when he became a member of USAW.

4. However, the online registration form that Respondent completed prior to competing in the 2016 Arnold Weightlifting Championships (the “Registration Form”) (basically, the entry form) informed Respondent that he would be subject to drug testing and that the meet organizers would be using the “United States Anti-Doping Agency’s In-Competition Program.” Although USAW delegated the responsibility for sample collection to a third party, it initiated and directed the collection process, was ultimately responsible for managing the drug testing process and, as set forth in detail below, had the right to delegate results management authority to USADA.

5. The Panel finds that USADA has results management authority in this case, and therefore denies Respondent’s request to dismiss USADA’s claim against him.

6. The Panel also finds that Respondent is not responsible for any costs or expenses related to the testing or analysis of his sample that was collected at the 2016 Arnold Weightlifting Championships.

## **II. Power of the Panel to Rule on Jurisdiction**

4. The Panel notes that, pursuant to R-7 (Jurisdiction) of the Supplemental Procedures, it has “the power to rule on [its] own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement” and that it “may rule on such objections as a preliminary matter or as part of the final award.” This provision is consistent with the AAA Commercial Arbitration Rules, generally accepted practice, and the principle of *kompetenz kompetenz* in international commercial arbitration.

## **III. The Parties**

5. The United States Anti-Doping Agency (“USADA” or “Claimant”) is the independent anti-doping agency for Olympic and Paralympic sports in the United States recognized as such by the USOC and conducts drug testing, investigates anti-doping rule violations, manages results, and adjudicates anti-doping rule violation disputes. Claimant was represented at the telephonic hearing, which was more of an oral argument rather than the presentation of evidence at a merits hearing, by Jeffrey T. Cook, Esq., Director of Legal Affairs of USADA.

6. The Respondent, Robert “Kyle” Dosterschill is an athlete in the sport of weightlifting. He was represented at the hearing by Howard L. Jacobs, Esq. of the Law Offices of Howard L. Jacobs.

## **IV. Rules Applicable to this Dispute**

7. The Respondent is a member of USAW, the NGB for the sport of weightlifting in the United States, recognized as such by the USOC.

8. When Respondent became a member of USAW, he signed the USAW Membership Form, pursuant to which he agreed to “[a]bide by all USA Weightlifting and International Weightlifting Federation rules, selection procedures and safety guidelines.” (Ex. 3, USAW Code of Conduct).

9. Relevant sections from USAW's "rules," the International Weightlifting Federation ("IWF") Anti-Doping Policy ("IWF Anti-Doping Policy"), the USOC National Anti-Doping Policy ("USOC Policy"), the World Anti-Doping Code (the "Code") and the World Anti-Doping Agency ("WADA") International Standard for Testing and Investigations ("ISTI") are set forth below.

**A. USA Weightlifting**

10. As discussed in more detail below, while the USAW Membership Form refers to USAW's "rules," the NBG has no rules that address anti-doping. Although the USAW website at <http://www.teamusa.org/USA-Weightlifting> includes a number of pages related to anti-doping and USADA, there is no set of stand-alone rules that are applicable in this matter.

**B. International Weightlifting Federation**

11. The relevant provisions of the IWF Anti-Doping Rules are as follows:

**SCOPE OF THESE ANTI-DOPING RULES**

*"These Anti-Doping Rules shall apply to IWF and to each of its Member Federations. They also apply to the following Athletes, Athlete Support Personnel and other Persons, each of whom is deemed, as a condition of his/her membership, accreditation and/or participation in the sport, to have agreed to be bound by these Anti-Doping Rules, and to have submitted to the authority of IWF to enforce these Anti-Doping Rules and to the jurisdiction of the hearing panels specified in Article 8, Article 7.10 and Article 13 to hear and determine cases and appeals brought under these Anti-Doping Rules:*

*a. all Athletes and Athlete Support Personnel who are members of any Member Federation, or of any member or affiliate organization of any Member Federation (including any clubs, teams, associations or leagues);*

*b. all Athletes and Athlete Support Personnel participating in such capacity in Events, Competitions and other activities organized, convened, authorized or recognized by IWF, or any Member Federation, or any member or affiliate organization of any Member Federation (including any clubs, teams, associations or leagues), wherever held . . . ?*

**Article 5.3 Event Testing**

*"5.3.5 The overall costs of Testing and Sample analysis is the responsibility of the organizing committee and/or the Member Federation of the country in which the Competition or Event is taking place. IWF may at its own discretion decide to take responsibility for those costs."*

## **Article 7.1 Responsibility for Conducting Results Management**

*“7.1.1 The circumstances in which IWF shall take responsibility for conducting results management in respect of anti-doping rule violations involving Athletes and other Persons under its jurisdiction shall be determined by reference to and in accordance with Article 7 of the Code.”*

### **C. United States Anti-Doping Policy**

12. Section 14.1 of the USOC Policy acknowledges that:

*“The Code requires that each Signatory [must] establish rules and procedures to ensure that all Athletes . . . under the authority of the Signatory and its member organizations are informed of, and agree to be bound by, anti-doping rules in force of the relevant anti-doping organizations. To implement this requirement, each NGB . . . shall be responsible for informing Athletes . . . in its sport of this USOC National Anti-Doping Policy and of the USADA Protocol.”*

### **D. World Anti-Doping Code**

13. Article 7.1 of the Code (Responsibility for Conducting Results Management) states as follows:

*“Except as provided in Articles 7.1.1 and 7.1.2 below, results management and hearings shall be the responsibility of, and shall be governed by, the procedural rules of the Anti-Doping Organization that initiated and directed Sample collection . . .”*

### **E. International Standard for Testing and Investigations**

14. Relevant sections of the ISTI are as follows:

*“**Sample Collection Authority:** The organisation that is responsible for the collection of Samples in compliance with the requirements of the International Standard for Testing and Investigations, whether (1) the Testing Authority itself; or (2) another organization (for example, a third party contractor) to whom the Testing Authority has delegated or subcontracted such responsibility (provided that the Testing Authority always remains ultimately responsible under the Code for compliance with the requirements of the International Standard for Testing and Investigations relating to collection of Samples).”*

*“**Testing Authority:** The organization that has authorized a particular Sample collection, whether (1) an Anti-Doping Organization (for example, the International Olympic Committee or other Major Event Organization, WADA, an International Federation, or a National Anti-Doping Organization); or (2) another organization conducting Testing pursuant to the authority of and in accordance with the rules of the Anti-Doping Organization (for example, a National Federation that is a member of an International Federation).”*

## V. Burden and Standard of Proof

15. Respondent asserts that USADA bears the burden of establishing that USADA has the authority to manage the results of the testing of Respondent's sample. Since USADA did not dispute that it bears this burden, the Panel accepts that this is the appropriate burden of proof in this matter.

16. With respect to the standard of proof, Article 3 of the USADA Protocol (Burden and Standards of Proof) specifies:

*"The Anti-Doping Organization shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the Anti-Doping Organization has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt."*

17. The Panel is of the view that, while the issue before it is jurisdictional rather than a consideration of the merits, the applicable standard in this situation is "the comfortable satisfaction of the hearing panel." This view is informed by the absence of any guidance in the Code save for the language in Article 3.1, which is identical to the language in the USADA Protocol set forth in paragraph 16, *supra*.

18. Given the lack of any carve out or exception for jurisdictional matters, and the general rule just referenced, the Panel is of the view that "whether the Anti-Doping Organization has established an anti-doping rule violation" includes whether the Anti-Doping Organization has established jurisdiction. As such, no lesser standard than comfortable satisfaction would be appropriate under the Code when considering whether an Anti-Doping Organization has established jurisdiction.

## VI. Proceedings in this Matter

19. On March 5, 2016, Respondent competed in the 2016 Arnold Weightlifting Championships, where he was selected for drug testing.

20. In a letter dated April 27, 2016, USADA notified Respondent that his sample “collected at the Arnold Weightlifting Championships on March 5, 2016 by USA Powerlifting,” had tested positive for several banned substances. USADA’s letter explained to Respondent that “USA Powerlifting referred this matter to USA Weightlifting who is referring this matter to the U.S. Anti-Doping Agency (“USADA”) to handle the results management.”

21. On June 2, 2016, USADA notified Respondent that the matter was being referred to its Anti- Doping Review Board (“ADRB”). On June 13, 2016, Respondent made his written submissions to the ADRB, contesting USADA’s jurisdiction.

22. On July 29, 2016, USADA submitted a response to the ADRB, and offered Respondent an opportunity to submit a reply. Respondent submitted his reply to the ADRB on August 8, 2016.

23. On August 26, 2016, USADA made an additional submission to the ADRB, and offered Respondent an opportunity to submit a reply. Respondent submitted his Sur-Reply on September 14, 2016.

24. On September 23, 2016, the ADRB issued its finding that there was “sufficient evidence of a doping violation to proceed with the adjudication process.”

25. On October 3, 2016, USADA formally charged Mr. Dosterschill with an anti-doping rule violation. On October 13, 2016, Respondent requested a hearing and this arbitration process was initiated with the American Arbitration Association (“AAA”) on October 14, 2016 pursuant to the Supplemental Procedures.

26. A preliminary hearing was held on December 12, 2016 before Arbitrators Jeffrey G. Benz, Esq., Cameron Myler, Esq. (Chair), and Hon. John Charles Thomas. Appearing at the hearing were Howard Jacobs, Esq. on behalf of Respondent, and Jeff Cook, Esq. and William Bock, Esq. on behalf of Claimant.

27. On December 13, 2016, the Panel issued its procedural Order, bifurcating the case to hear and decide Respondent's challenge to USADA's results management authority prior to any consideration of the merits of the case.

28. On January 19, 2017, Respondent filed his Submission Regarding Lack of Jurisdiction to the Panel and on February 9, 2017, USADA filed its Pre-Hearing Brief on Jurisdiction in opposition to Respondent's submission.

29. On February 16, 2017, the Panel conducted a hearing via teleconference to hear arguments from both parties on Respondent's challenge to USADA's result management authority.

30. On April 7, 2017, the Panel invited the Parties to make an additional submission with respect to "the applicability or inapplicability of the *USADA v. Bruyneel* AAA and CAS decisions . . . on the question of jurisdiction presented here."

31. Both parties submitted their supplemental briefs on Friday, April 14, 2017, and the Panel proceeded to deliberate and render this decision within the time required by the relevant rules.

## **VII. CONTENTIONS OF THE PARTIES AND THE EVIDENCE**

32. References to additional facts and allegations found in the parties' written and oral submissions, pleadings, and evidence will be made, where relevant, in connection with the legal analysis that follows. While the Panel has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it deems necessary to explain its reasoning.

## A. Respondent's Contentions

33. Respondent contends, in his pre-hearing submission, at the hearing, and in his supplemental submission that USADA does not have the authority to manage the results of the testing conducted on Respondent's sample, which was collected on March 5, 2016 at the Arnold Weightlifting Championships. Therefore, Respondent argues, the Panel should dismiss the case.

34. First, Respondent argues that the Arnold Weightlifting Championships was an international event, and therefore the IWF was responsible for testing at the event. USA Weightlifting sent an email to Respondent on July 22, 2016, which stated:

Since your test was an international test under WADA regulation rather than USADA funded, the funding burden for testing falls on the federation and therefore in turn the athlete, as the offending athlete you are fully liable for the costs of said drug positive. The testing agency is irrelevant if the test is done internationally rather than nationally this remains the case. (Ex. M).

35. Second, Respondent argues that in any event, he did not agree to the process that was used here, namely, USAW delegating their alleged testing authority to USA Powerlifting ("USAPL"), who in turn delegated responsibility for sample collection to a third party called Sportcheque.

36. When he registered for the Arnold Weightlifting Championships, Respondent was required to acknowledge a "Drug Testing Agreement," which provided that: "Columbus Weightlifting will be using the United States Anti-Doping Agency's (USADA's) In-Competition Drug Testing Program at the 2016 Arnold Weightlifting Championships." (Ex. B).

37. The "Drug Testing Agreement" also informed competitors that:

ALL ATHLETES ARE REQUIRED TO REMAIN IN THE WARM UP AREA UNTIL THE END OF THEIR SESSION, INCLUDING THE AWARDS PRESENTATION, UNLESS DISMISSED BY A UNITED STATES ANTI-DOPING AGENCY (USADA) REPRESENTATIVE. (Ex. 6).

38. However, when Respondent was selected for drug testing on March 5, the doping control form used in connection with the collection of his sample was USA Powerlifting's, not the IWF's or USADA's (or even USAW's). The letters "USAWL" were handwritten toward the upper right corner of the doping control form. (Ex. C).

39. Additionally, after Respondent's sample was tested by the WADA-accredited laboratory in Köln, Germany, the Analytical Reports on both Respondent's A Sample and B Sample were sent to Dr. Lawrence Maile, President of USA Powerlifting, at the National Office of USA Powerlifting in Anchorage, Alaska. (Exs. 4, 5). Both of those Analytical Reports list the "International Powerlifting Federation" as the Collection authority. The Analytical Report for the A Sample lists both the sport and discipline of Respondent as "powerlifting" and the Analytical Report for the B Sample lists the sport as "powerlifting" and in the attached "B-sample analysis Verification of sample identity," USAPL is listed as the Federation. *Id.*

40. Respondent argues that because his urine sample was collected by USAPL, and not by USADA, the applicable rules in this matter should be the USAPL Technical Rules, not those of the IWF. (Respondent's Brief, ¶ 4.1).

41. Respondent contends that while USADA claims USAW contracted with USAPL (which then subcontracted with the company Sportcheque) to collect the samples for testing at its event under USAW's authority, there are no written contracts to demonstrate the existence of that alleged arrangement.

42. Respondent also argues:

- If USADA claims that this is a USA Weightlifting sample, and not a USA Powerlifting sample, then the rules of the IWF apply, since the IWF is the International Federation for the sport of Weightlifting. (Respondent's Brief, ¶ 5.3.1).
- The IWF Anti-Doping Policy provides that the IWF, and not USAW (and by designation USADA) have results management authority over international tests. (IWF Anti-Doping Policy, Art. 7.2.)
- In contrast, USADA (through delegation from USAW) would only have results management authority over domestic tests conducted by USAW.

- In its July 22, 2016 letter to Respondent, USAW confirmed that this was an international test, not a domestic test. (Ex. M).

43. With respect to the Panel's request for briefing on the applicability of the *USADA v. Bruyneel* case, Respondent takes the position that in that matter, the AAA panel found USADA had jurisdiction over Johan Bruyneel, who was not a member of USA Cycling, based on two very specific UCI Anti-Doping Rules ("UCI ADR"), under circumstances that simply do not exist in this case. (Respondent's Supplemental Brief, ¶ 1.1).

44. First, Respondent notes, the *Bruyneel* case did not arise from a sample collection, as did this matter. There, the National Anti-Doping Organization ("NADO") that first discovered the alleged anti-doping violation had jurisdiction to initiate and prosecute that violation.

45. Respondent contends that neither the applicable rules of the IWF nor the USADA Protocol provide jurisdiction to USADA based merely on the fact that they were allegedly "the first to discover" the alleged violation. And, in fact, USAPL was the first organization to "discover" the alleged violation in this matter.

46. Second, Respondent argues that the reasoning in *USADA v. Bruyneel* is not applicable because the AAA panel in that case found jurisdiction under another provision of the UCI ADR that gave results management authority to the NADO that discovered the alleged violation *where the alleged offender was not a member of that NADO's federation* (emphasis in original). (Respondent's Supplemental Brief, ¶ 1.3).

47. Respondent confirms that he is in fact "a license holder of USA Weightlifting," and as such, the conclusions of the panel in *USADA v. Bruyneel* regarding Bruyneel are not applicable here, nor is the analysis with respect to the finding of jurisdiction over Dr. Ceyla and Mr. Marti. Unlike Respondent in this case, those individuals were not license holders, and the AAA panel found jurisdiction based on their participation in an event sanctioned by the UCI.

## B. USADA's Contentions

48. USADA contends that Respondent has subjected himself to the authority of USADA - and consented to USADA managing the results of his test - by virtue of his membership in USAW and because the sample at issue was collected at an event sanctioned by USAW. As such, USAW has the authority to conduct results management over the sample, and that having referred that authority to USADA, USADA now has results management authority.

49. USADA contends that as a member of USAW, Respondent agreed in USAW's Code of Conduct to "not commit a doping violation as defined by the IOC, WADA, USADA, the USOC or the IWF." (Ex. 3). Additionally, USADA contends that Respondent was notified via the USAW membership website that "[a]ll USAW members are subject to drug testing pursuant to all applicable bylaws, rules, and regulations as well as all United States Anti-Doping Association [sic] guidelines." *Id.*

50. Furthermore, USADA argues that through the language in the "Drug Testing Agreement" ("Columbus Weightlifting will be using the United States Anti-Doping Agency's (USADA's) In-Competition Drug Testing Program at the 2016 Arnold Weightlifting Championships") (Ex. 6), Respondent was notified that he would be subject to drug testing at the event, that he "may call the USADA Hotline at 1-800-233-0393 for any questions about medications and banned substances or practices," and that "[n]ames of athletes who test positive, the name of the substance, and the length of the suspension will be listed on the USA Weightlifting website and on the USADA website." *Id.*

51. Additionally, the "2016 Arnold Weightlifting Championships – Event Information" document (the "Event Information Document") states:

Drug Testing: It will be announced at the end of your session and you will need to stay in the warm-up area immediately after you are done competing. If you are not announced, you will be free to leave.

If you are selected, you need to go with the drug testing chaperone for drug testing immediately after you are done competing.

If you are not available for drug testing or leave the drug testing area for any reason if you are announced, you will forfeit your placement and all awards at our competition. In addition, you will be banned at our event if you don't follow the drug chaperone's instructions. (Ex. 7).

52. USADA points out that drug testing procedures were discussed at the meet's technical conference held on March 3. USADA's exhibit in support of this point is a memo written by Marc Cannella and dated April 19, 2016, in which Mr. Cannella explains that "[i]n this meeting [he] announced many topics including drug testing procedures and that WADA would be testing at this event." (Ex. 8).

53. Additionally, the doping control form that Respondent signed includes the following statement: "I declare that I am satisfied with the manner in which sample-taking procedure was carried out," (Ex. 9). Thus, USADA argues, Respondent was notified of USADA's results management authority, he consented to it, and raising no objection to how or who was conducting doping control until after testing positive for multiple prohibited substances.

54. USADA also contends that the IWF is not the proper results management authority. Article 7.2 of the IWF Anti-Doping Policy states that the IWF maintains results management authority over tests that it initiates. (Ex. 10). An August 15, 2016 email sent to USADA by Dr. Magdolna Trombitas, IWF Legal Counsel, states, "[t]he Arnold International was not an[] IWF Event. The IWF Anti-Doping Commission was not in charge of the testing in line with the relevant IWF Rules and Regulations and did not initiate[] or direct[] the doping control at the Event concerned." (Ex. 11).

55. During the hearing, Mr. Cook explained that when providing drug testing services to NGBs and other sports organizations, generally USADA provides all services including selecting athletes for testing, collecting samples (using DCOs who have undergone training provided by USADA), sending samples to the laboratory, and managing the results of any positive tests.

56. Mr. Cook stated that sometimes USADA contracts with third parties to collect samples, but in those instances, USADA always has a written agreement with the third parties. USADA did not provide the Panel with any written contract between USAW and USAPL or between USAPL and Sportcheque with respect to the delegation of responsibility to collect samples at the Arnold Weightlifting Championship.

57. Mr. Cook admitted that this situation, where USAW asked USADA to manage the results of a test only after it received the Analytical Reports from the laboratory, was unusual. USAW's request for USADA to manage the results of the test on Respondent's sample was made via an undated letter from Phil Andrews (Interim Chief Executive Office of USAW) to Jeff Cook. (Ex. 18). That letter stated in pertinent part that:

*"USA Weightlifting has become aware of the finding of the WADA accredited laboratory in Koln, Germany of an adverse finding [sic]*

*USA Powerlifting conducted this test at a USA Weightlifting sanctioned competition and has formally request [sic] results management to be passed to USA Weightlifting.*

*In turn, USA Weightlifting formally requests that USADA become the results management agency for this Olympic sport athlete, Mr. Kyle Dosterschill."*

58. In its supplemental brief, USADA noted that in *USADA v. Bruyneel*, the AAA panel concluded that it had jurisdiction over Bruyneel, who was a license holder during the relevant period, because the UCI ADR were applicable and the UCI ADR itself stated that it applied to all license holders. In addition, the UCI ADR applied because Bruyneel expressly agreed to be bound by the UCI ADR through the terms of his license agreement and the USADA Protocol applied because the UCI ADR allowed the anti-doping organization that discovered a non-analytical rule violation to apply their own rules.

59. With respect to Dr. Celaya and Mr. Marti, who did not hold UCI licenses, the AAA panel concluded that under the terms of the UCI ADR, their involvement in UCI-sanctioned events was a sufficient basis for the UCI ADR to apply. And because the UCI ADR applied, it followed that the USADA Protocol would also apply for the same reasons that they applied to Bruyneel.

60. As such, USADA contends that in this case the IWF Anti-Doping Policy and the USADA Protocol apply to Respondent. It is uncontested that Respondent was a USA Weightlifting member on March 5, 2016, when his sample, which is the subject of this case, was collected at the Arnold Weightlifting Championships. Under the terms of the IWF Anti-Doping Policy, any athlete who is “a member of any Member Federation” is subject to the IWF Anti-Doping Policy. (Ex. 15 at 6). (USADA’s Supplemental Brief, p. 2). USADA argues that Respondent expressly agreed to the IWF Anti-Doping Policy applying because his license agreement states that he agreed not to commit a doping violation as defined by the IWF. (Ex. 3).

61. USADA also argues that the IWF Anti-Doping Policy, similar to the UCI ADR, states that its rules apply to athletes who “participat[e] in such capacity in Events, Competitions and other activities organized, convened, authorized or recognized by IWF, or any Member Federation . . .” (Ex. 15 at 6). It is undisputed that the competition at which Respondent competed was sanctioned by USA Weightlifting, which is a “Member Federation” under the IWF Anti-Doping Policy. Accordingly, for this reason alone Respondent is subject to the IWF Anti-Doping Policy. (USADA’s Supplemental Brief, p. 3).

62. Next, USADA contends that the applicability of the USADA Protocol was implied through the Drug Testing Agreement Respondent consented to as part of the Arnold Weightlifting Championships registration materials. The Drug Testing Agreement advised Respondent to obtain information about the doping control process from USADA and to check medications with USADA. (Ex. 6). The agreement also stated that if Respondent were to test positive, the “name[] of the athlete[] who test[s] positive, the name of the substance, and the length of the suspension will be listed on the USA Weightlifting website and on the USADA website.” *Id.* USADA concludes that based on this information which points to USADA handling anti-doping efforts for USAW, Respondent consented to the application of the USADA Protocol.

63. USADA bases this conclusion on a similar application of the principle of implied consent recognized by the panel in the AAA Decision, which concluded that by participating in UCI sanctioned events in Europe, Dr. Celaya and Mr. Marti consented not only to the UCI ADR but also to the USADA Protocol, which was not contained in or directly referenced by the UCI ADR. *Id.* (quoting PO #2 ¶¶ 40, 46 (“It can also be assumed that a participant in a sport acknowledges the regulations of an association known to him if he requests a general starting or playing permit from the association.” *Swiss Fed. Ct. Roberts v. FIBA*, Feb. 7, 2001)).

64. Furthermore, USADA submits that the IWF is not the appropriate entity to manage the results of the tests conducted on Respondent’s sample. Article 7 of the IWF Anti-Doping Policy addresses the results management authority (“RMA”) of the IWF and states that its authority “shall be determined by reference to and in accordance with Article 7 of the Code.” (Ex. 10). In turn, Article 7 of the Code states that the applicable rules are those of “the Anti-Doping Organization that initiated and directed Sample collection.” (Ex. 16). Because USA Weightlifting initiated and directed the test (Ex. 1), and USAW referred results management to USADA (Ex. 18), it is the USADA Protocol that should apply.

65. Finally, USADA argues that under Article 7 of the Code, the international federation is “the Anti-Doping Organization of last resort” “where the rules of a [NADO] do not give the [NADO] authority over an Athlete or other Person who is not a national, resident, license holder, or member of a sport organization of that country . . . .” (Ex. 16, Art. 7.1.1 and Comment to Art. 7.1.1). Here, it would not make sense for the IWF to have RMA because Respondent falls squarely within the authority of the USADA Protocol, is a U.S. athlete, does not compete at the international level, the event at which he was tested was not an international event and not sanctioned by the IWF, and the IWF did not initiate or direct the test. Under these circumstances, Article 7 of the IWF Anti-Doping Policy only vests RMA with the IWF for tests it initiates, (Ex. 10), and as stated in USADA’s Pre-Hearing Brief, the IWF has rejected results management authority because it did not initiate the test and because Respondent is not an international-level athlete. (Ex. 11).

## VIII. Analysis

66. At its heart, the basis of arbitral jurisdiction is consent; this is black letter law. In sport, consent is not necessarily obtained through the negotiated back and forth between parties that are found in commercial proceedings. There are several well-recognized methods by which athletes are deemed to consent to the arbitration of their doping disputes. Athletes can agree expressly on their membership applications or entry forms to the process to resolve disputes with the governing body(ies) of their sport. In addition, athletes can also be subject to arbitral jurisdiction by their act of affirmative participation in an event or under the auspices of a sporting organization, where the relevant rules say that athletes are subject to anti-doping procedures with attendant arbitration mechanisms; basic rules of private associations mandate this result.

67. Important to the analysis of this issue is, to paraphrase a well-known line related to the investigation of a famous public figure: “What did he know and when did he know it?” The fundamental question here is whether Respondent has agreed, through one of the mechanisms just mentioned, to subject himself to arbitrate any alleged violations of the anti-doping rules. We find that on one basis the answer is no, but that on another basis the answer is yes, but just barely yes.

### A. Respondent’s Membership in USAW

68. The first question considered by the Panel was whether Respondent subjected himself to the results management authority of USADA in this situation as a result of having signed the USAW Membership Form and becoming a member of USAW.

69. USADA provided as Exhibit 3 a screenshot of the USAW Membership Form, which Respondent completed on February 27, 2016. Respondent also confirmed in his written submissions that he “*is* a license holder of USA Weightlifting.” (Respondent’s Supplemental Brief, ¶ 1.3.1) (emphasis in original).

70. Article 3 of the USADA Protocol (Athletes Subject to Testing by USADA and the USADA Protocol) provides that

The USOC, NGBs, other sports organizations and the Code authorize USADA to test, investigate and conduct other anti-doping activities concerning . . . ***[a]ny Athlete who is a member or license holder of a NGB*** . . . (Ex. 19) (emphasis added).

71. By signing the USAW Membership Form, Respondent agreed that he would: “[a]bide by all USA Weightlifting & International Weightlifting Federation rules, selection procedures and safety guidelines.”

**i. Agreement to Abide by USAW’s Rules**

72. The “rules” listed on the USAW website include the following: Bylaws, Board Member Guidelines, Potential Conflict of Interest Disclosure, Statement of Principles and Conflict of Interest, International Weightlifting Federation Technical Rules, the USA Weightlifting Addendum to International Weightlifting Federation ethical Rules, and the USA Weightlifting Code of Ethics. (See <http://www.teamusa.org/USA-Weightlifting/About-Us/Governance-and-Financial/Bylaws-Technical-Rules-and-Policies>).

73. There is no language in any of these rules that informs Respondent that he is subject to the terms of USADA Protocol, the USOC Policy, or even that any dispute relating to an alleged anti-doping rule violation would be adjudicated through arbitration.

74. Furthermore, USADA’s argument that language on the pages of the USAW website relating to anti-doping also constitutes “rules” that bind Respondent is unpersuasive.

75. The Panel acknowledges that there are pages on the USAW website that set forth USAW's commitment to anti-doping ("USA Weightlifting is opposed to the practice of doping in sport and fully supports and complies with the policies, protocols, and rules set forth by the U.S. Anti-Doping Agency (USADA) as the independent, non-profit anti-doping organization in the U.S." (<http://www.teamusa.org/usa-weightlifting/weightlifting101/no-drugs>)), that describe USAW's new "Lift Clean" program that commenced on January 1, 2017 (<http://www.teamusa.org/USA-Weightlifting/Weightlifting101/No-Drugs/Lift-Clean>), and that provide information about which entities are responsible for conducting drug testing at International, National and Local events (<http://www.teamusa.org/USA-Weightlifting/Weightlifting101/No-Drugs/Who-Gets-Tested>). There are also links to USADA's website: "Anti-Doping 101" (<http://www.usada.org/athletes/antidoping101>) and "Supplement 411" (<http://www.usada.org/substances/supplement-411>).

76. However, these pages are accessible to anyone who visits the USAW website, are for informational purposes, are not part of the process by which an athlete becomes a member of USAW on the NGB's website, and do not constitute part of the USAW Membership Form that Respondent signed. See *Croatian Golf Federation v. Croatian Olympic Committee*, CAS 2012/A/2813 (finding that the publication of information about arbitration on the website of the Croatian Olympic Committee ("COC") "was intended for general information purposes" and "that no express declaration of intent to arbitrate at CAS in any and all disputes could be inferred from the content of the website, which should be interpreted as to generally inform the reader of the website about the COC's Sports Arbitration and not as an offer in good faith to conclude a binding arbitration agreement.")

77. In order for Respondent to even locate the language that states “USADA is able to test and adjudicate anti-doping rule violations for any athlete who . . . is a member or a license holder of a [USOC] recognized sport [NGB]” or “is participating at an event or competition sanctioned by the USOC or a USOC-recognized sport NGB,” Respondent would need to know that he had to go to the USAW website, click on the “Athlete” link on the menu, select the “Anti-Doping” link on the submenu, and then click on “Anti-Doping 101,” which would direct him to USADA’s website. Such an attenuated connection cannot be deemed to subject Respondent to the results management authority of USADA in this case. There is simply no way to demonstrate that any modicum of consent to arbitration under the USADA Protocol is given by these frankly insufficient statements of generality.

78. The Panel also rejects USADA’s argument that Respondent should be subject to USADA’s results management authority as a result of language on the “Membership” page of the USAW website (<http://www.teamusa.org/usa-weightlifting/membership>) that states:

NOTICE: All USAW members are subject to drug testing pursuant to all applicable USAW bylaws, rules, and regulations as well as all United States Anti-Doping Agency guidelines. All members are expected to abide by the Member Code of Conduct. (Ex. 3)

79. This “notice” is accessible through one of many pages under the “Membership” link on the USAW website. Again, it is not necessary to click through this page when becoming a member of USAW and cannot not be deemed part of the “USAW rules” that Respondent agreed to abide by when he completed the USAW Membership Form. NGBs must do a better job in this area than was done by USAW here; athletes should not have to divine from general statements and polemics that they are subject to arbitration when the rules and membership application could and should simply and easily state as much.

80. The current case is distinguishable from *USADA v. Bruyneel, et al* (AAA Case Nos. 77 190 00225/00226/00229 12). There, the AAA panel found that through the language in the UCI license application and the language on the license granted to Mr. Bruyneel by his national federation in Belgium confirmed his “express consent to the rules and regulations of the UCI, including the UCI ADR.” (*USADA v. Bruyneel*, ¶ 18).

81. Language on the license issued by Mr. Bruyneel’s national federation informed him that as a condition of participation in cycling, he agreed not only to anti-doping rules, but also to arbitrate disputes arising from alleged violations of those rules:

The holder is subject to the regulations of the UCI and the national and regional federations, and accepts the anti-doping controls and blood tests specified therein and the exclusive jurisdiction of the [Court of Arbitration for Sport.] *USADA v. Bruyneel* (*Id. at* ¶ 16).

82. Here, no such language exists in the USAW Registration Form and Respondent has not agreed – by virtue of signing that form – to be subject to the USADA Protocol or to resolve any alleged anti-doping rule violations by means of arbitration.

ii. **Agreement to Abide by the IWF’s Rules**

83. Additionally, by signing the USAW Membership Form, Respondent agreed to be bound by the rules of the IWF, which include its Anti-Doping Policy. The section called the “Scope of These Anti-Doping Rules” specifies that:

These Anti-Doping Rules shall apply to IWF and to each of its Member Federations. They also apply to the following Athletes, Athlete Support Personnel and other Persons, each of whom is deemed, as a condition of his/her membership, accreditation and/or participation in the sport, ***to have agreed to be bound by these Anti-Doping Rules, and to have submitted to the authority of IWF to enforce these Anti-Doping Rules and to the jurisdiction of the hearing panels specified in Article 8, Article 7.10 and Article 13 to hear and determine cases and appeals brought under these Anti-Doping Rules:***

- a. all Athletes and Athlete Support Personnel who are members of any Member Federation, or of any member or affiliate organization of any Member Federation (including any clubs, teams, associations or leagues);
- b. all Athletes and Athlete Support Personnel participating in such capacity in Events, Competitions and other activities organized, convened, authorized or recognized by IWF, or any Member Federation, or any member or affiliate organization of any Member Federation (including any clubs, teams, associations or leagues), wherever held . . . (emphasis added).

84. While Respondent agreed to “be bound by [the IWF’s] Anti-Doping Rules,” those rules do not subject him to the results management authority of USADA. Pursuant to the “Scope of [the IWF’s] Anti-Doping Rules,” Respondent agreed to “submit[] to the authority of the IWF” to enforce its rules and to “the jurisdiction of panels specified in Article 8, Article 7.20 and Article 13.” Article 7.10 (Resolution Without a Hearing) addresses circumstances under which an athlete and the IWF may agree on a sanction, and the athlete’s right to waive a hearing. Article 8 (Right to a Fair Hearing) addressed the requirements of a hearing when a case is referred to the IWF Doping Hearing Panel for adjudication. Finally, Article 13 sets forth the rules relating to appeals. None of these Articles of the IWF Anti-Doping Policy subject Respondent to the results management authority of USADA.

**iii. Agreement not to Engage in Other Conduct**

85. When Respondent signed the USAW Membership Form, he also agreed that he would *not*:

- “sell or distribute any substance on the World Anti-Doping Agency (WADA) list of banned substances . . . ;
- use illegal drugs in the presence of teammates, athletes, coaches, officials, volunteers, spectators, sponsors and staff of USA Weightlifting and/or at any USA Weightlifting event or activity . . . ;[or]
- commit a doping violation as defined by the International Olympic Committee (IOC), World Anti-Doping Agency (WADA), the United States Anti-Doping Agency (USADA), the United States Olympic Committee (USOC) or the International Weightlifting Federation (IWF).” (Ex. 3)

86. However, none of this language in the USAW Membership Form subjects Respondent to the results management authority of USADA in this case. There is no reference to the USADA Protocol or the USOC Policy. These rules are not incorporated by reference in the USAW Membership Form and it cannot be assumed that Respondent is able to intuit his obligations from this incomplete and poorly drafted document.

87. The Panel notes that Section 14.2 of the USOC Policy states that “[a]ll Athletes . . . by virtue of their membership in an NGB” or by “participation in an Event or Competition organized or sanctioned by an NGB . . . agree to be bound by this Policy and by the USADA Protocol.”

88. However, in order to be bound by the USOC Policy, athletes must actually be informed of the requirement. Section 14.1 of the USOC Policy acknowledges that:

[t]he Code requires that each Signatory [must] establish rules and procedures to ensure that all Athletes . . . under the authority of the Signatory and its member organizations are informed of, and agree to be bound by, anti-doping rules in force of the relevant anti-doping organizations. **To implement this requirement, each NGB . . . shall be responsible for informing Athletes . . . in its sport of this USOC National Anti-Doping Policy and of the USADA Protocol.** (emphasis added).

89. Here, the USOC is a signatory to the Code (see USOC Policy, Section 3; see also <https://www.wada-ama.org/en/code-signatories>) and USAW, as the NGB for the sport of weightlifting in the United States, is a member organization of the USOC. The USOC was required to establish rules and procedures to ensure that *all athletes* under its and USAW’s authority were informed of and agreed to be bound by the USOC Policy and the USADA Protocol. In order to implement this requirement, USAW, as the NGB for weightlifting, “shall be responsible for informing [a]thletes” about the USOC Policy and the USADA Protocol. USAW failed to meet this obligation.

90. Accordingly, the Panel finds that the membership argument does not assist USADA and in fact, after undertaking an in-depth review, the Panel is of the view that the USAW Membership Form is devoid of any language that would indicate Respondent’s acceptance of arbitral jurisdiction. The Panel is hopeful that the USOC and USAW will undertake a review of their relevant rules and membership application forms to ensure that all athletes in the USAW system are clearly on notice that by becoming a member of USAW they are subject to the USADA Protocol and to arbitral jurisdiction.

91. In summary, the Panel finds that Respondent was not adequately informed by USAW about the USOC Policy or the USADA Protocol in the USAW Membership Form and is not subject to the results management authority of USADA in this case by virtue of signing that document.

**B. Respondent's Participation in the Arnold Weightlifting Championship**

92. The Panel next considers whether Respondent is subject to USADA's results management authority by virtue of competing in the Arnold Weightlifting Championships, an event sanctioned by USAW, the NGB for the sport of weightlifting in the United States.

93. Article 3 of the USADA Protocol (Athletes Subject to Testing by USADA and the USADA Protocol) provides that:

The USOC, NGBs, other sports organizations and the Code authorize USADA to test, investigate and conduct other anti-doping activities concerning . . . : [a]ny Athlete ***by virtue of participation in (including registration for) an Event or Competition in the United States or which is organized or sanctioned by the USOC or NGB.*** (Ex. 19) (emphasis added).

**i. Respondent Agreed to be Drug Tested**

94. The parties do not dispute that the Registration Form Respondent signed when registering for the Arnold Weightlifting Championships included a section called "Drug Testing Agreement," which included the following language:

***Columbus Weightlifting will be using the United States Anti-Doping Agency's (USADA's) In-Competition Drug Testing Program*** at the 2016 Arnold Weightlifting Championships. A positive result for an IOC-prohibited substance will be cause for disqualification from this event and loss of eligibility. . . . (emphasis added).

By registering to compete at this occasion, ***you are consenting to be subject to drug testing on your urine*** and accept the penalties if found positive for a prohibited substance. All athletes are subject to drug testing and, if chosen for drug testing, are required to provide an acceptable specimen. Cooperation is mandatory; noncompliance, including but not limited to the failure to appear for drug testing, will be cause for the same penalties as a positive drug test (emphasis added).

***I understand that drug testing will be conducted on a formal basis for athletes weighed-in for this event*** or program and that the detection of use of banned drugs would make me subject to suspension by my sport's National Governing Body and USOC. ***By registering for this event. I agree to be subject to a drug test*** and its penalties is declared positive for a banned substance (emphasis added).

I also understand that if for some reason I elect not to continue in the competition to the completion of an official total, or so not total, that ***I will still be eligible for drug testing***, and I will report to the Doping Control Officer and advise him/her that I am making myself available for drug testing. I will not leave the warm up area until excused by the Doping Control Officer. (Ex. 7) (emphasis added).

95. Additionally, the Event Information Document stated:

**Drug Testing: It will be announced at the end of your session and you will need to stay in the warm-up area immediately after you are done competing. . . . If you are selected, you need to go with the drug testing chaperone for drug testing immediately after you are done competing** (bold in original).(Ex. 7).

96. The Event Information Document also informed participants that:

Any changes to the Arnold Weightlifting Championships information will be addressed at the Technical Conference. Anyone who does not attend the Technical Conference agrees to accept all decisions made therein. . . *Id.*

97. In a memorandum dated "4/19/16" and titled "Technical Conference at the Arnold 2016." [*sic*], Mr. Cannella stated that "[i]n this meeting [he] announced many topics including drug testing procedures and that WADA would be testing at this event." (Ex. 8).

98. Respondent was informed in the Registration Form for the Arnold Weightlifting Championships and in the Event Information Document that he would be subject to drug testing at the event. It was also announced at the Technical Conference that athletes would be subject to drug testing.

99. There can be no dispute that Respondent agreed to subject himself to drug testing at the Arnold Weightlifting Championships.

ii. **Notice to Respondent About USADA**

100. The only remaining question for the Panel is whether, by virtue of registering for and competing in the Arnold Weightlifting Championships, Respondent agreed to have the results of the testing on his sample managed by USADA.

101. There is no explicit reference to the USADA Protocol in the Registration Form. However, USAW expressly informed Respondent that USADA would be involved in the testing process by stating on the form that: "Columbus Weightlifting will be using the United States Anti-Doping Agency's (USADA's) In-Competition Drug Testing Program at the 2016 Arnold Weightlifting Championships." (Ex. 6).

102. Respondent was also informed via an announcement at the Technical Conference that "WADA would be testing at this event." (Ex. 8).

103. The consequences of an anti-doping rule violation were communicated to Respondent in the Registration Form and Event Information Document as follows:

- "A positive result for an IOC-prohibited substance will be cause for disqualification from this event and loss of eligibility. . . ." (Ex. 6);
- "[T]he detection of use of banned drugs would make me subject to suspension by my sport's National Governing Body and USOC." *Id.*;
- "[T]he practice of blood doping is banned by the [*sic*] USA Weightlifting, the USOC, the IWF and the IOC and that to do so would make me subject to punitive action within existing policies." *Id.*;
- "Names of athletes who test positive, the name of the substance, and the length of suspension will be listed on the USA Weightlifting website and on the USADA website." *Id.*;
- "If you are not available for drug testing or leave the area for any reason if you are announced, you will forfeit your placement and all awards at our competition. In addition, you will be banned at our event if you don't follow the drug chaperone's instructions." (Ex. 7).

104. While USADA was listed as an entity that Respondent could contact with questions, it was not the only one. Respondent received a variety of conflicting instructions at the event via the Registration Form and the Event Information Document. He could contact:

- “[T]he U.S. Anti-Doping Agency and its Drug Reference Line (1-800-233-0393)” about “the doping control process, the protection of [his] rights, and the status of specific medications” (Ex. 6);
- “[T]he USADA Hotline at 1-800-233-0393 for any questions about medications and named substances or practices” *Id.*;
- The “National Weightlifting Office at 1-719-866-4508 for specific suspension policies” *Id.*; or
- “Marc Canella by email or phone at (614) 832-2757” for “. . . drug-testing [*sic*] and related items.” (Ex. 7).

105. There were also conflicting instructions with respect to what was required of Respondent after he was finished competing:

- He should stay in the warm-up area until dismissed by a USADA representative (“ALL ATHLETES ARE REQUIRED TO REMAIN IN THE WARM UP AREA UNTIL THE END OF THEIR SESSION, INCLUDING THE AWARDS PRESENTATION, UNLESS DISMISSED BY A UNITED STATES ANTI-DOPING AGENCY (USADA) REPRESENTATIVE” (Ex. 6));
- That he should stay in the warm-up area until dismissed by a DCO (“I will not leave the warm up area until excused by the Doping Control Officer.”) *Id.*;
- Or that he was free to leave the area if his name wasn’t called (“**Drug Testing: It will be announced at the end of your session and you will need to stay in the warm-up area immediately after you are done competing. If you are not announced, you will be free to leave**” (Ex. 7).)(bold in original).

106. There is no question that the Registration Form for the 2016 Arnold Weightlifting Championships could have been – but was not – drafted in a manner that clearly communicated to athletes participating in this event that they were subject to the USADA Protocol and the USOC Policy, and that any alleged anti-doping rule violations would be adjudicated through arbitration. Again, the Panel urges USAW to examine event registration forms used in USAW-sanctioned events so as to ensure that all athletes in the USAW system are clearly on notice that by participating in USAW-sanctioned events they are subject to the USADA Protocol, the USOC Policy, and arbitral jurisdiction.

107. While the terms relating to doping control in the Registration Form and the Event Information Document were unartful, incomplete, and often conflicting, the multitude of these notifications and statements made clear, or should have made clear, to the Respondent that he was subject to anti-doping controls, which included arbitration as the procedural remedy and outcome. It is simply beyond belief that an elite athlete in any sport – but particularly one in a strength sport – could be unaware of the anti-doping obligations that arise from participating in events sanctioned by the NGB of the athlete’s sport, or not know that they would be subject to testing and adjudication in connection with the relevant standards.

**iii. USAW Initiated and Directed the Doping Control Process**

108. Mark Cannella, the Event Director of the 2016 Arnold Weightlifting Championships, stated in his affidavit that “[i]n 2016, the Arnold Weightlifting Championships was a USA Weightlifting sanctioned [*sic*] event” and that as the sole Event Director he was “in charge of, among other things, . . . setting up doping control.” (Ex. 1, ¶17).

109. Mr. Canella, pursuant to the authority of USAW, selected Respondent for drug testing based on Respondent’s second place finish in the 94 kg class at the competition. He then delegated the remainder of the anti-doping control process to USA Powerlifting, which was also holding a competition at the Arnold Sports Festival.

110. Mr. Canella explained that because [he had] good working relationships with the individuals who [ran] the USA Powerlifting event, and in an effort to be cost-efficient [he] arranged for USA Powerlifting to handle the doping control for the Arnold Weightlifting Championship. USA Powerlifting informed [him] that they would contract with Sportcheque, which is run by DCO Jack Marcus, to collect the samples for testing. (Ex. 1, ¶ 9).

111. While USADA produced no written agreements between USAW and USAPL or between USAPL and Sportcheque, the ISTI does not require a written agreement when delegating the authority to collect samples.

112. The ISTI defines “Testing Authority” and “Sample Collection Authority” as follows:

**Testing Authority:** The organisation that has authorized a particular Sample collection, whether (1) an Anti-Doping Organization (for example, the International Olympic Committee or other Major Event Organization, WADA, an International Federation, or a National Anti-Doping Organization); or (2) ***another organization conducting Testing pursuant to the authority of and in accordance with the rules of the Anti-Doping Organization (for example, a National Federation that is a member of an International Federation)***. (emphasis added).

**Sample Collection Authority:** The organisation that is responsible for the collection of Samples in compliance with the requirements of the International Standard for Testing and Investigations, whether (1) the Testing Authority itself; or (2) ***another organization (for example, a third party contractor) to whom the Testing Authority has delegated or subcontracted such responsibility (provided that the Testing Authority always remains ultimately responsible under the Code for compliance with the requirements of the International Standard for Testing and Investigations relating to collection of Samples)***. (emphasis added).

113. In this case, USAW, as the “Testing Authority,” delegated the responsibility to USAPL (as the “Sample Collection Authority”), which then used a third-party DCO to collect the sample from Respondent at the Arnold Weightlifting Championships.

114. Jack Marcus, the owner of Sportcheque, collected Respondent’s sample and explained that “either [he] or one of his chaperones marked ‘USAWL’ on the doping control form to make clear that USA[W] provided him with the authority to collect the sample.” (Ex. 2). Mr. Marcus stated in his affidavit that “[a]t the end of the event, [he] sent the sample collection kits [he] had collected by overnight mail to the WADA-accredited laboratory in Cologne, Germany.” *Id.*

115. The laboratory sent the Analytical Reports to the President of USAPL, at the organization’s National Office in Anchorage, Alaska. (Exs. 4, 5). USAPL then notified USAW of the results of the testing performed on Respondent’s sample.

116. Subsequently, Phil Andrews (Interim Chief Executive Office of USAW) sent a letter to Jeff Cook at USADA, informing USADA that:

USA Weightlifting has become aware of the finding of the WADA accredited laboratory in Koln, Germany of an adverse finding [sic]

USA Powerlifting conducted this test at a USA Weightlifting sanctioned competition and has formally request [sic] results management to be passed to USA Weightlifting.

In turn, USA Weightlifting formally requests that USADA become the results management agency for this Olympic sport athlete, Mr. Kyle Dosterschill. (Ex. 18)

117. Article 7.1 (Responsibility for Conducting Results Management) of the IWF's Anti-Doping Policy only addresses the circumstances under which the IWF shall take responsibility for results management:

7.1.1 The circumstances in which IWF shall take responsibility for conducting results management in respect of anti-doping rule violations involving Athletes and other Persons under its jurisdiction shall be determined by reference to and in accordance with Article 7 of the Code.

118. However, Article 7.1 of the Code (Responsibility for Conducting Results Management) provides that:

Except as provided in Articles 7.1.1 and 7.1.2 below, ***results management and hearings shall be the responsibility of, and shall be governed by, the procedural rules of the Anti-Doping Organization that initiated and directed Sample collection.*** (emphasis added).

119. Here, USAW was the organization that initiated the drug testing process, delegated sample collection to USAPL, and, when it received the results of the testing on Respondent's sample, asked USADA to manage the results of such testing.

120. Although the Panel finds that USADA has results management authority in this instance, we note that USADA has barely met its burden of proof of doing so to the Panel's comfortable satisfaction in this regard. While this sentence and its following progeny is *obiter dicta*, the Panel is of the view that United States athletes would be better served by having clear documentation implemented at each event sanctioned by an NGB and in the NGB membership application process that informs all athletes of the legal obligations they have and their rights to resolve any disputes arising thereunder; whether this responsibility lies with WADA, the IWF, the USOC, USAW, or USADA is something that is outside of this Panel's purview.

121. However, whichever organizations are ultimately responsible, something needs to be done to ensure that athletes are put on fair and open notice of their obligations without the need to engage in the variation of legal gymnastics that had to occur here because of frankly completely unnecessary and easily curable documentary flaws.

**C. Cost of the Testing on Respondent's Sample**

122. The Panel's finding that USADA has results management authority with respect to Respondent's sample raises an issue that was briefly addressed by the parties in their submissions on jurisdiction, and that the Panel deems appropriate to address in the context of this Award: responsibility for the costs of the testing conducted on Respondent's sample.

123. In an email dated July 19, 2016, the Finance Manager at USAW, Sandra Bowen, requested that Respondent pay USAW \$6,245.82, for costs presumably related to the testing and analysis of Respondent's sample, though USAW's Invoice No. 1072 provided no details with respect to how that amount was calculated. (Respondent's Brief at ¶ 5.3.4; Ex. M). Respondent asked Ms. Bowen:

*"Can you please explain why I am responsible for this testing cost? Is it because this test was not conducted by USADA and was not conducted pursuant to the USADA Protocol?"* (Ex. M).

124. Ms. Bowen asked Phil Andrews, the Chief Executive Officer of USAW, if he could answer Respondent's question. In an email to Respondent dated July 22, 2016, Mr. Andrews responded as follows:

*"Since your test was an international test under WADA regulations rather than USADA funded, the funding burden for testing falls on the federation and therefore in turn the athlete, as the offending athlete [sic] you are fully liable for the costs of said drug positive.*

*The testing agency is irrelevant if the test is done internationally rather than nationally [sic] this remains the case.*

*Should after the legal process is complete you be found [sic] that there was no doping rule violation then the charges will be waived at that stage." Id.*

125. Although Respondent consented to be drug tested at the Arnold Weightlifting Championships, he did not consent to pay for the costs associated with the testing and analysis of his sample. There is nothing in the Registration Form that informed Respondent that, if selected for drug testing, he would be responsible for any such costs. Nor did Respondent consent to pay for such costs as a result of completing the USAW Membership Form.

126. Additionally, as set forth in Article 5.3.5 of the IWF Anti-Doping Policy:

***The overall costs of Testing and Sample analysis is the responsibility of the organizing committee and/or the Member Federation of the country in which the Competition or Event is taking place.*** IWF may at its own discretion decide to take responsibility for those costs. (emphasis added)

127. Pursuant to R-40 (Scope of Award) of the Supplemental Procedures:

The [Panel] may grant any remedy or relief that [it] deems just and equitable and within the scope of the World Anti-Doping Code, International Federation Rules, the USADA Protocol or the USOC Anti-Doping Policies.

128. Here, the IWF Anti-Doping Policy (rules of the international federation of weightlifting) clearly states that the “Member Federation” (USAW, as the NGB for weightlifting in the United States) is responsible for “[t]he overall costs of Testing and Sample analysis.” As defined by the Code, Testing is “[t]he parts of the Doping Control process involving test distribution planning, Sample collection, Sample handling, and Sample transport to the laboratory” and “Sample analysis,” though not defined in the Code, surely encompasses any testing conducted by the laboratory on Respondent’s sample.

129. Since the USAW is not a party to this proceeding, the Panel’s ruling on this issue relates solely to Respondent’s obligations: Respondent has no responsibility to pay for costs arising from any testing or analysis on his sample that was collected at the 2016 Arnold Weightlifting Championships.

130. Furthermore, to the extent any portion of the amount in USAW's Invoice No. 1072 (\$6245.82) is related to the "administrative costs" associated with the "Testing or management" of Respondent's sample, all such costs shall be borne by USADA, as required by paragraph 17(c) of the USADA Protocol:

***"All administrative costs of USADA relating to the Testing and management of Athletes' Samples prior to a determination of Ineligibility will be borne by USADA. Administrative costs of the USADA adjudication process (AAA filing fee, AAA administrative costs, AAA arbitrator fees and costs) will be borne by the USOC."***  
(emphasis added).

**IX. Decision**

131. For all of the foregoing reasons, the Panel hereby rules that USADA has the authority to manage the results of the testing conducted on Respondent's sample that was collected at the 2016 Arnold Weightlifting Championships. Accordingly, arbitral jurisdiction is proper here.

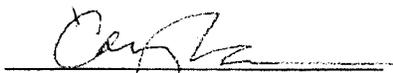
132. The Panel also rules that Respondent shall not be responsible for any costs related to the testing or analysis conducted on his sample (USAW Invoice No. 1072 for \$6245.82), and that USADA shall bear any administrative costs related to the testing or management of Respondent's sample.

133. As a result of this ruling, the Panel orders the parties to proceed to share their dates of availability over the next 30 days for the Panel to conduct a proper preliminary hearing to set a hearing date and the procedural order for the case.

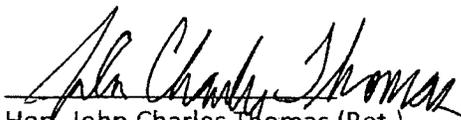
Dated: May 10, 2017



Jeffrey Benz  
Arbitrator



Cameron Myler  
Chair



Hon. John Charles Thomas (Ret.)  
Arbitrator