

# USA SWIMMING

## FLORIDA GOLD COAST BOARD OF REVIEW

FLORIDA GOLD COAST,  
EXECUTIVE BOARD OF DIRECTORS,

Petitioner,

Case No.: FGC 2013-001

vs.

DAVIE SWIMMING AND DIVING, INC.,  
DAVIE SWIMMING, INC.  
a/k/a DAVIE NADADORES SWIM TEAM,  
all of its coaches, officers, agents,  
and employees,

Respondent.

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### FINAL DECISION<sup>1</sup>

This matter arises from a protest filed by the Florida Gold Coast Executive Board of Directors (“Petitioner” or “Protestors”) against DAVIE SWIMMING AND DIVING, INC., DAVIE SWIMMING, INC. a/k/a DAVIE NADADORES SWIM TEAM, all of its coaches, officers, agents, and employees (“Respondent”)<sup>2</sup>. The protest alleges that Respondent willfully and intentionally violated registration and eligibility rules. Petitioner contends that the Respondent has, with intent to conceal and defraud, knowingly used ineligible athletes to change the team outcome of local LSC Senior

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<sup>1</sup> Final Decision issued in accordance with remand instructions on rehearing from the Full Florida Gold Coast Board of Review.

<sup>2</sup> Although the Protest is lodged against Davie Swimming and Diving, Inc. and Davie Swimming, Inc. and “all of its coaches, officers, agents, and employees” the Decision here is only against its coaches, Tomas Victoria and Alex Pussieldi.

Championship meets, Sectional meets, and even National Grand Prix meets, all of which is more fully described in the Protest delivered to the respondent July 16, 2013.

This matter was heard upon proper notice, at 17189 Sheridan Street, Pembroke Pines, Florida 33331, at 7:00 PM (DST) on October 1, 2013, pursuant to USA Swimming Rules and Regulations, Article 406.2 and 406.4.

The Florida Gold Coast Review Board Panel (the "Panel") consisted of Gordon Andrews, Presiding Officer, John Turnipseed, member, and Hannah Kling, athlete member.

Also present were the Chairman of the Florida Gold Coast, the Protestors and the Respondent and Respondent's witnesses.

**On remand from the full seven member FGC Board of Review, the Panel now renders its corrected Final Decision consistent with the full seven member FGC Board of Review Order on Remand and pursuant to USA Swimming Rules and Regulations, Article 406.4 E.**

## **BACKGROUND**

Protestors make a lengthy charge against Respondent, which constitutes the entire Protest. Briefly summarized, Protestor complains that Respondent has, with intent to conceal and defraud, knowingly used ineligible athletes to change the team outcome of various meets. Protestor makes these allegations and proffered testimony and documentary evidence about these separate and discrete matters alleged to be violations of USA Swimming Rules & Regulations, including Article 301, 302 & 303 as well as:

**Article 304.1.14** “Any act of fraud, deception, or dishonesty in connection with any USA Swimming-related activity”;

**Article 304.1.17** “Violation of any team misconduct rule as established by the USOC, USA Swimming, any Zone or LSC team authority”; and

**Article 304.18** “Any other material and intentional act, conduct or omission not provided for above, which is detrimental to the image or reputation of USA Swimming, a LSC or the sport of swimming”.

### **RULING: FINDING OF FACTS & CONCLUSIONS**

**After due consideration of the evidence**, the Panel finds the following facts:

1. The Panel has jurisdiction to hear this matter pursuant to the USA Swimming Rules and Regulations, Article 403.1 and 404.1.
2. The hearing was conducted in accordance with USA Swimming Rules and Regulations, Article 406.4 and other applicable rules.
3. Petitioner and Respondent received proper notice of the hearing in this matter, proper notice of Respondent’s request for a continuance, which was granted, and were present at the properly and duly noticed hearing.

4. Respondent received the Protest and supporting materials that comprise the entire Protest sufficiently in advance of the hearing, and did not seek a more definite statement of the Protest. Petitioners received Respondent's Response/Answer and supporting Exhibits albeit after the date due, nonetheless the Panel accepted Respondent's late filed Answer finding that in the Answer Respondent admitted liability and hence no prejudice befell Protestor as a result of the late filing; Petitioner did not file a written Reply in rebuttal to Respondent's Answer although Petitioner did argue rebuttal points at the hearing.

5. All parties were provided a full and ample opportunity to present evidence and witnesses, to cross-examine witnesses and to argue their respective cases.

6. Since the Respondent in its Answer admitted liability on the claims asserted in the Protest (e.g., 2588 violations - illegal swims, in 13 swim meets), the Protestor presented no live testimony on its case in chief and instead proffered the Protest and supporting documentation.

7. From what could be gleaned from the Respondent's case in chief it defends its actions based on their opinion that they were unfairly targeted, the result of a personal vendetta(s), that there is a disproportionate enforcement of rules with the Davie Nadadores being focused on more than other clubs/coaches in our LSC, that the allegations happen throughout the FGC and USA Swimming, no reasonable 'calling to the carpet' happened early on in the year 2011 in other words why wasn't The Davie Nadadores notified and fined immediately in order for their claimed ignorance, naiveté, and administrative errors be rectified.

8. Respondent called 4 witnesses and rested on its papers.

9. Protestor announced in closing argument that the remedy or sanction being sought against the Protestor must include, among other things,

a) Revoking permanently Respondent's USA Swimming club membership.

b) Fining Respondent in the maximum of \$100.00 per event for every proven violation, and doubling the fine as a form of punitive damages.

c) Striking the illegal swims from the results so that the performances are not eligible for any past or future purpose as it relates to USA Swimming or LSC's; in SWIMS, LSC records, meet scoring and team championships, etc.

d) Disgorging LSC travel fund reimbursements made for each athlete involved.

e) Awarding all remedies the BOR deems proper and just.

10. Respondent in closing argued that sanctions were not fair based on their viewpoint that they were unfairly targeted, the result of personal vendettas, that the allegations happen throughout the FGC and USA Swimming, no reasonable 'calling to the carpet' happened early on in the year 2011.

**IT IS, THEREFORE,** the conclusion of the Panel of the Board of Review, after considering the Protest and Answer and Respondent's admission of liability and after giving proper weight to the evidence, considering the source and other common sense factors, and making its findings, the Panel unanimously concludes that Petitioner

established by a preponderance of the evidence the claimed violations lodged in the Protest.

**IT IS FURTHERMORE** the conclusion of the Panel of the Board of Review after due consideration and deliberation that the following sanctions be imposed on the Respondent: [SEE USA SWIMMING ARTICLE 404.1.1 & .3]

1. **A fine of \$17,750 based on \$50 per swim for 355 violations in the month of January 2011.** It is the Board of Review's opinion that the former Davie Nadadores swim club should have been duly notified, brought before the Board of Review in February 2011 for those violations that occurred in January of 2011.
2. **As set forth in this Decision, the USA Swimming credentials of Coach Tomas Victoria and Coach Alex Pussieldi are suspended indefinitely based on their admission of gross administrative errors in the year 2011, in many LSC and outside LSC competitions.** It is the opinion of the Board of Review that many of the administrative errors done in substituting questionable athletes in relays in major competitions violates Article 304.14 and Article 304.18.
  - 2a. **Respondents, the Nadadores, Tomas Victoria and Alex Pussieldi are suspended indefinitely, effective immediately.**

If the Nadadores, Tomas Victoria and Alex Pussieldi: (i) pay in full the \$17,750 fine set forth in paragraph 1 above; and (2) re-pay in full the fees the FGC paid the Nadadores for "travel" that would not otherwise have been paid if the swimmers had not been listed as "attached" to Davie Nadadores, then the indefinite suspensions of the Nadadores, Tomas Victoria and Alex Pussieldi will end one year after the final payment in full is received by the FGC of (1) the fine set forth in paragraph 1 above; and (2) the fees the FGC paid for "travel" identified in paragraph 5 below.

The FGC is responsible for determining the dollar amount of the fees identified in paragraph 5 below for the month of January 2011 that the FGC paid for travel and will provide that total figure in writing to Respondents within seven (7) business days of the entry of this Final Decision. The FGC's failure to provide the amount within the 7 days shall be deemed a waiver of the claim to such fees and shall relieve the Nadadores, Tomas Victoria and Alex Pussieldi from the obligation to

repay the fees in paragraph 5 below, but not of the obligation to repay, in full, the \$17,750 fine set forth in paragraph 1 above

2b. Any further violations of the kind Respondents admitted in this proceeding or any other recidivist behavior is subject to additional sanctions and permanent suspension, upon notice and an opportunity to be heard. If either Victoria or Pussieldi violates the terms of this Decision or engages in any conduct that constitutes a contempt of this Panel and this Decision such conduct may subject the violator to additional sanctions including permanent suspension, upon notice and an opportunity to be heard.

3. All other of the former Davie Nadadores coaches, officers, agents, and employees outside of Tomas Victoria and Alex Pussieldi shall not undergo any sanctions.
4. That all records, FGC or other, that were set using swimmers that would not be considered legal should be removed.
5. That any fees ,paid by the FGC for "Travel" that would not have been paid if the swimmers were not listed as "attached" to Davie Nadadores, be repaid to the FGC.

**IT IS FURTHERMORE the Panel's view that a policy of immediately rendering foreign athletes as an UNATTACHED status take place by the FGC registrar/meet hosts until the proper paperwork is submitted to the FGC registrar that gives that athlete permission to swim attached to a team in our LSC in accordance with the Notification of Membership in USA Swimming form.**

**PLEASE NOTE: A COPY OF THIS DECISION WILL BE PROVIDED TO USA SWIMMING, NATIONAL HEADQUARTERS.**

### **REHEARING AND APPEAL RIGHTS**

#### ***(1) Right to Rehearing.***

Pursuant to USA Swimming Rules & Regulations, Article 406.3, either party or a real party in interest may as a matter of right request a rehearing by the full Board of Review. A request for rehearing by the full board of Review must be made within fourteen (14) days of the date of receipt of this initial written decision.

**(2) *Right to Appeal.***

Pursuant to Article 408 of the Rules and Regulations of USA Swimming and in accordance with 406.3.4, a person may not appeal a decision of a LSC Board of Review panel which consisted of fewer than seven (7) members without first making a timely request for a rehearing by the full LSC Board of Review.

Every appeal to the National Board of Review shall be instituted by a Petition served upon the Executive Director, as well as the other party(ies) to the LSC Board of Review proceeding, and shall be accompanied by a \$250 non-refundable filing fee payable to USA Swimming.

Any appeal must be filed within thirty (30) days from the postmark date of the written Decision of the LSC Board of Review.

The Petition on appeal shall set forth the grounds for appeal, citing factual and legal issues in as much detail as possible.

An appeal to the National Board of Review shall be on the basis of the record and written briefs filed with it, unless the National Board of Review shall in its discretion order a de novo hearing. In the event the National Board of Review orders a de novo hearing, the hearing procedure shall be as set forth in Article 407.

**IT IS SO ORDERED this 28th day of December, 2013.**

FOR THE PANEL

s/Gordon Andrews

Presiding Officer  
Gordon Andrews

Cc: Chairman, FGC  
FGC Board of Review Members  
USA Swimming