

This matter was heard by a full panel of the Minnesota Swimming, Inc. (MSI) Board of Review (BOR) on January 21, 2002.

A. **Persons in Attendance**

The individuals in attendance during the evidentiary hearings were:

1. **BOR Panel**

John Witzel, Presiding Officer and Chair

Tom Norgel, Vice-Chair

Individual Members appointed pursuant to MSI Bylaws Article 610.3.10:

Rick Biggs

Matt Brown

Paul Colbert

David Goble

Mary Jo Malchow

Cathy Thwing

Paul Windrath, Secretary of the MSI BOR, having been recused, appeared solely to keep the record, and did not otherwise participate or deliberate.

2. **Petitioners**

Steven S. Fuller, attorney for Petitioners, Bartusch et al.

Petitioner Dr. William Shaughnessy was present throughout and other petitioners were present intermittently

3. **Respondents**

Robert M. Stahl of Wendlund and Utz, Ltd., attorneys for Respondents

Teresa Ayling of Mansfield, Tanick and Cohen, P.A., attorneys for Respondents

Respondent John Sfire, Head Coach, Rochester Swim Club Orcas, Inc.
(RSCO)

Respondent Ellen Youngers, President, RSCO

B. Written Evidence

The written evidence consists of:

1. All written documents forwarded by John Morse, Chair of the National Board of Review (NBR). These documents contained the pleadings, all attachments and evidentiary exhibits submitted to the NBR.
2. Exhibits introduced at the hearing:
 - a. Letter from Mitchell Gordon, dated September 21, 2000.
 - b. E-mail from Cassy Shapley, dated February 12, 2001.
 - c. Rochester Swim Club: Registration and Annual Report Deficiencies.
 - d. Pre-registration form for the 1999 Fall ORCA Program (2pages)
 - e. Letter from Dorothy Stewart: University of Detroit Mercy, November 26, 2001.
 - f. Letter from Paul Robinson: University of Michigan, December 11, 2001.
 - g. MSI Club Registrar Information and Job Description
 - h. Rochester Swim Club, Inc. Account QuickReport, August 15, 2001.
 - i. Letter from Ellen Youngers and John Sfire, dated June 27, 2000.

C. **Witnesses**

Each party presented live testimony during the hearing. Each witness was sworn to tell the truth prior to giving testimony. Each witness was examined by Counsel for Petitioner, Counsel of Respondent and by BOR members. The proceedings were recorded and took in excess of nine hours. The tape recording is the official record of the testimony and the testimony is not summarized in this Statement of Decision.

The witnesses were:

Judi Rae

Tim Mann

Dave Knodel

Joel Cyganiewicz

John Sfire

Ellen Youngers

Marla Eagen

Dr. William Shaughnessy

D. **Closing Argument**

Both parties submitted oral closing arguments following all testimony.

E. **Statement of Issue**

Have John Sfire and Ellen Youngers violated the provisions of USA Swimming Code of Conduct Article 304.3 of the Rules and Regulations of USA Swimming?

F. **Finding of Fact**

1. This matter was begun by a letter of complaint submitted to Bob Pearson, General Chair of MSI in 2000. That complaint alleged that John Sfire, the program director of the Rochester Swim Club (RSC) had violated the USA Swimming Rules and Regulations found in Article 304 (Code of Conduct), specifically Sections 304.3.11 and 304.3.15.
2. The matter has a long procedural history. It eventually came before a panel of the NBR for a hearing on December 5, 2001, with Ellen Youngers, President of the RSC and the RSCO and Jim Stewart, Vice-President of RSC and RSCO added as Respondents.
3. By NBR decision, dated December 6, 2001, the NBR returned the matter to the MSI BOR for a hearing, the matter never having been heard by the MSI BOR. The NBR decision directed that the pleadings of the parties submitted to the NBR would serve as the pleadings and reply of the Petitioners and Respondents for the purpose of the MSI BOR hearing. The MSI BOR was ordered to hear the matter on or before January 30, 2002.
4. At the hearing on January 21, 2002, Petitioners dismissed their claims as related to respondent Jim Stewart with the provision that the dismissal was without prejudice should the remaining respondents claim at the hearing that Mr. Stewart was to blame and they were not.
5. The relevant events upon which the Petitioners claims are based were also the subject of a petition entitled Steve Knight v. Rochester Swim Club

Orcas, Inc. Evidentiary hearings were conducted by the NBR on April 24 and 26, 2001, and a Statement of Decision was dated May 10, 2001 (Knight Decision).

6. The Knight Decision was appealed to the USA Swimming Board of Directors (BOD), which by decision of September 11, 2001 confirmed the Knight Decision except as to the sanction ordered. The Knight Decision is final.
7. The Knight Decision facts are the same facts in this matter. Although the respondent was the RSCO in the Knight Decision, the Respondents, Sfire and Youngers, were and are the Program Director and President of the RSC and RSCO, respectively. It was Sfire and Youngers who took the same actions complained of in each case and they who defended in each case.
8. Both Respondents Sfire and Youngers appeared and testified in the Knight case.
9. MSI Bylaws Section 610.8 provides that a final decision of the NBR be recognized and fully enforced by MSI. The Knight Decision is attached to and incorporated in this Decision. The Knight Decision findings, being incorporated in this Decision, are not repeated here.
10. A document from the Birmingham Swim League provided to the RSC at the time John Sfire was hired by RSC stated that he graduated from Oakland University in Rochester, Michigan with a B.A. in Biology and a B.S. in Physiology. Another document printed from the RSCO website

purported that John Sfire had earned Masters' degrees in Physiology and Kinesiology.

11. By his admission during testimony, John Sfire has never earned a college degree.
12. Ellen Youngers, in a unique position of power within RSC, aided John Sfire in the creation and concealment of the incorporation of the RSCO in February, 2000. This concealment continued until Youngers called the emergency BOD meeting of RSC on June 26, 2000, where Sfire and Youngers carefully orchestrated a plan to dissolve RSC and transfer all assets to RSCO.
13. On June 27, 2000, Ellen Youngers and John Sfire sent a letter, on printed letterhead with RSC Board members Shaughnessy, Schiebel and Kuromoto deleted, to the MSI Registration Chair, Cassy Shapley, requesting removal of swimmers from registration lists designating them as members. This was for the purpose of preventing those swimmers from returning to the club.
14. John Sfire stated in gloating E-mails to Carla Bartusch in July, 2001, that: "The old program was eventually dissolved for one reason and one reason only. People got involved in hurting other people for their own interests."

G. **Conclusions**

John Sfire and Ellen Youngers have violated the provisions of USA Swimming Rules and Regulations Article 304 (Code of Conduct), specifically Section 304.3.11. They have initiated and pursued serious acts of fraud, deception and

manipulation. The purpose of their manipulations was to force particular members out of RSC and to eliminate certain Board Members of RSC who had questioned the conduct and methods of John Sfire and suggested greater oversight by the RSC Board of Directors. Fundamental RSC club member voting rights were eliminated by manipulating a contrived emergency.

The Respondents' testimony that they had no intent to deceive or manipulate is not credible. The deception and manipulation is clear from the record and their testimony, as is their improper purpose.

THEREFORE, IT IS ORDERED THAT:

- John Sfire and Ellen Youngers shall be suspended from MSI and USA Swimming membership.
- The suspension shall be for a period of one year commencing March 1, 2002.
- John Sfire, during his suspension, shall not associate with, administer or organize any events or activities associated with MSI or USA Swimming.
- John Sfire and Ellen Youngers shall be together and equally responsible for the costs of the MSI BOR for the January 21, 2002 hearing. The costs shall be paid to MSI by July 1, 2002.

H. **Appeal**

If you are dissatisfied with this Decision, an appeal may be made to the NBR. The appeal must be filed with the USA Swimming Executive Director, along with

an appellate filing fee of \$50.00 within thirty (30) business days after the postmark date of written notice of the decision of the BOR (MSI Bylaws Section 610.9). The address the USA Swimming Executive Director is USA Swimming, Inc., One Olympic Plaza, Colorado Springs, CO 80909-5770.

Dated: January 31, 2002

Signing on behalf of the UNANIMOUS DECISION issued by the Board of Review Panel for Minnesota Swimming, Inc. in the matter of Bartusch et al v. Sfire and Youngers

Presiding Officer and Chair, John Witzel

cc: Carla and Mark Bartusch
Rick Biggs
Matt Brown
Paul Colbert
Marla and Troy Eagen
Steve Fuller
Dave Goble
Sue Griffin, General Chair of MSI
Kathy and John Harris
Kim and Dave Klocke
Allison and Steve Knight
Natalie and Stan Kuramoto
MaryJo Malchow
Tim Mann, Secretary of MSI
John Morse, Chair of National Board of Review
Gayle and Steve Noetzel
Tom Norgel
Wells O'Brien, General Counsel of USA Swimming
Victoria and Rick Robinson
Julie and Harold Rodakowski
John Sfire
Heidi and Bill Shaughnessy
Nikki and Conrad Schiebel
Roger Stahl
Cathy Thwing
John Witzel
Ellen Youngers