

TEXAS LAWYER

A Matter of Seconds

*Lawyer Races to Win
Runner a Spot
In Olympic Games*

by MARK DONALD

When she crossed the finish line, she made it look easy, effortless, as though she had just finished a brisk walk rather than a grueling marathon. The November 2003 victory marked the third time that Liza Hunter-Galvan, a New Zealand native living in San Antonio, had won her adopted city's marathon. But this win had special significance: At age 34, she had proven to herself and others that she had the resilience to rebound from her fourth pregnancy — and the talent to make a run at the Olympics.

Bert Richardson, full-time judge of the 379th District Court in Bexar County and sometime sports photographer, captured her victory on film with a series of photos he shot of her outrunning the other women, none of whom were close. The marathon (26.2 miles) was all Hunter-Galvan: a solid performance, a consistent pace, a hell of a time — 2 hours, 42 minutes, 4 seconds.

JOEL SAICIDO

Bill Nash and Liza Hunter-Galvan

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“At the end of the race, the other runners were collapsing from exhaustion,” recalls Richardson, whose photos were published in *Runner Triathlete News*. “But Liza hugged her husband, grabbed her children and looked like she was ready to run again.”

On a cold day last February, she did run again, this time in the Motorola Austin Marathon, one of the premier marathons in the country, where she clocked 2:36:13 — her personal best. Against stiff competition from several Russian women, she placed fourth. More importantly, she bested the International Association of Athletics Federations (IAAF) and the International Olympic Committee (IOC) selection standards, which had been revised in late November for the Athens 2004 Olympic Games.

To meet the stated goal of having more athletes participating in the games (some 2,000) and more athletes participating in the marathon (which was indigenous to ancient Greece), the IOC loosened its selection standards for 25 events. In the marathon, the women’s target times were dropped from 2:32 to 2:37 for the A-standard, which provides for automatic selection (unless more than three athletes better the standard), and then other factors weigh into making a selection. The B-standard, a discretionary selection of a single athlete primarily utilized by smaller countries, also was dropped from 2:36 to 2:42.

Hunter-Galvan, who teaches middle school in San Antonio, had beaten the A-standard by 47 seconds and felt certain her time was good enough to represent New Zealand at the Olympic Games. “It’s definitely always been something that was in the back of my mind, like a dream,” she says. “Then I came to realize that I had it in me.”

The problem was, each country can require a stricter standard than the IAAF/IOC minimums, and in early April, the New Zealand Olympic Committee (NZOC) decided to do just that. The selecting body would only choose women marathon runners who met an A-standard time of 2:32:30 or a B-standard time of 2:36. Under the NZOC’s standards, Hunter-Galvan was 13 seconds too slow.



Liza Hunter-Galvan holds her children after winning the San Antonio Marathon in November 2003.

Most world-class marathon runners only race two to three times a year, Richardson says, giving themselves ample time to recover after the ravages of a race. To shave 13 seconds off her time, Hunter-Galvan had to find a certified race before May 4, the closing date for marathon qualification set by the NZOC.

In April, she entered the Olympus Marathon Hamburg, flying to Germany only eight weeks after the Austin marathon. On pace to run 2:34, she says, jet lag and only having a brief recovery period did her in. “In the last two kilometers, my body couldn’t go anymore. It was my mind that got me to the finish line.”

Her time was 2:36:24 — a fifth-place finish but still 24 seconds off the mark.

Nevertheless, Athletics New Zealand, the governing body for athletes in her country and a member of the IAAF, nominated Hunter-Galvan to the NZOC for selection to the Olympics in Athens. She had the best marathon time of any woman from New Zealand — at least 6 minutes ahead of her closest competition. If she wasn’t selected, no woman would be.

On June 23, her 35th birthday, she received word of her status. The NZOC rejected her nomination.

Searching for a lawyer who might help her overturn the decision, she turned to Richardson, who wanted to represent her but felt constrained by his judicial position. “I called the Judicial Conduct Committee and asked them what they thought,” he says. “They thought it might look like I was using my office

to gain an advantage in New Zealand. . . . They didn’t think it was a good idea.”

What seemed like a better idea was for Richardson to contact his law school friend, Bill Nash, a partner in the San Antonio office of Jackson Walker who specializes in intellectual property law and has some experience representing sports figures. “Liza has four kids, no money and a worthy cause,” Richardson explains. “She needed someone to work pro bono, and I knew that Bill had a big heart.”

Hunter-Galvan was pleased to learn that Nash had run a marathon at age 43 (3:44:20), figuring he could better empathize with a runner’s mind-set. When Nash met her in his office on July 2, only six weeks before the Olympics, Nash was impressed with what he says was her “engaging personality” and “enthusiasm for her sport.”

“That was one of my early points with the NZOC,” he says. “It told them ‘Liza is a quality individual who is going to bring honor to your country and has exceeded the IOC standard. Why wouldn’t you want her?’ ”

A Sprint, Not a Marathon

Bill Nash had no time to waste. The opening day ceremony for the Olympics was scheduled for Aug. 13, and the marathon event was slated for Aug. 22. He had less than a month to convince the New Zealand Olympic Committee to reverse itself, or appeal the adverse ruling to the Sports Disputes Tribunal of New Zealand, a nonbinding arbitration panel.

There remained the additional remedy of pursuing litigation in the civil courts of New Zealand, but with Olympic athletes reporting to training camp in Athens by early August, Nash doubted there would be enough time to prosecute a claim.

Nash got to work, convincing his firm to dispense with his billable rate of \$385 an hour and to allow him to take the case pro bono. Assisted from time to time by several attorneys and paralegals at Jackson Walker, Nash developed several legal theories. "It wasn't so much a question of sports law or New Zealand law," he says. "It was more a question of what was fundamentally fair."

First, he would contend that the NZOC had not afforded Hunter-Galvan "a reasonable opportunity to satisfy its selection criterion." Despite the IOC loosening its standards in November 2003, the NZOC equivocated on adopting its selection criteria until April 5, 2004. "They had trouble reaching an agreement with Athletics New Zealand, which was advocating for the looser standards," Nash says.

IOC entry standards also stated that all marathon racers had until Aug. 9 to qualify. But the NZOC limited its marathon runners to a qualification period ending on May 4. That put Hunter-Galvan in the untenable position of having to run a marathon in Hamburg to meet the tougher standards before she had fully recovered from a previous race. "Not only were the NZOC standards stricter, but there was less opportunity to meet them," Nash says.

What's more, Nash would claim that the selection decision was "affected by gender bias" as well as a "bias against the marathon."

"The NZOC marathon time for the men's B-standard was three minutes, 10 seconds faster than the B-standard set by the IOC," Nash argues. "But the B-standard set by the NZOC for women requires them to run six minutes faster than the IOC's B-standard. We felt that established clear numerical gender bias." The NZOC adjustments actually helped two New Zealand men, Nash claims, whereas they harmed the women (Hunter-Galvan).

Of the 25 events whose times were revised by the IOC in November, only in the marathon did the NZOC adopt a stricter standard. "Everyone [New Zealand athletes] thought that when the IOC modified its targets, the NZOC would just rubberstamp the revised standards," Nash says. "It was frustrating because they adopted the revised standards in every event but the marathon."

On July 8, Nash held a videoconference with the NZOC to present his arguments why the committee should reverse its decision to reject the Hunter-Galvan nomination. With their images streaming over the Internet, Nash, Hunter-Galvan and Richardson sat in San Antonio while

NZOC Secretary General Barry Maister and attorney Nigel Stirling sat in New Zealand, which, with the time change, was 17 hours ahead.

"We stated our position, we presented our logic. We basically beat heads," Nash says.

Four days later, the NZOC decided "to stand by its earlier decision, to not accept the nomination of Liza into the NZ team." Contending the NZOC had sole discretion to set its own standards, Maister wrote that the "selectors" rejected the notion that the committee standards were in any way biased. On the contrary, he considered them "realistic and appropriate." "The fact that there are some 200 women runners in the world today running faster than 2 hr 37 min suggests that the standard we have set is not unrealistic." (Stirling did not respond to an interview request for before presstime on Aug. 5.)

"Basically their position was, 'we are doing this because we can,' " Nash says. "I felt they were being arbitrary and capricious."

Nash learned that the NZOC had shown greater flexibility in the past regarding athletes whose times were as marginally close as Hunter-Galvan's. So there was precedent for exercising discretion in her favor. What's more, the IOC was seeking to expand the marathon field to pay homage to the event's historic roots and the IOC and the NZOC were dedicated to expanding the role of women in sports. So why shouldn't Hunter-Galvan — who would run well in Athens because its hot, hilly, humid conditions were similar to her training terrain in San Antonio — be given a chance?

Failing to persuade, Nash figured he had no choice but to appeal. And fast.

Going for the Gold

There was only one way for Hunter-Galvan to deal with the setback: keep running. Ten miles in the morning, 6 miles at night, the running kept her "fired up and aggressive," she says. "It gave me the feeling that I was fighting them."

Nash brought that fight to the Sports Disputes Tribunal of New Zealand, filing his appeal brief on July 12, in anticipation of an expedited hearing on July 29. "It was a kick-ass appeal document," Hunter-Galvan claims.

Part of its strength came from the letters of support she received from former New Zealand athletes, legends of track and field who had taken up her cause. Nash had sent an e-mail to attorneys at Jackson Walker asking for help on "how to best present the case," he says. "One attorney knew about Peter Snell, who was like the Michael Jordan of New Zealand, and four other attorneys took several hours of their time to find him."

Turns out, Snell was working as a sports physiologist at the University of Texas Southwestern Medical School in Dallas. Incorporated in the appeal brief was a letter Snell wrote to the NZOC, stating that he had never felt compelled to intervene on behalf of an athlete — until now.

In Hunter-Galvan's case, he considered it "a travesty that a woman who has run 2hr and 36 and then within 8 weeks runs a similar time to satisfy your organization's

arbitrary standard, is not considered good enough to be in Athens, where the historical implications for this event are obvious.” Had that same “rigidity been the case” when he was ranked 25th in the world in the 800 meters in 1960, Snell argued, “a gold medal would have been lost.”

The grounds for an appeal to the Sports Disputes Tribunal of New Zealand were limited to questions of selection bias, being afforded a reasonable opportunity to meet selection criteria and the denial of something called “natural justice” — a moral rather than legal concept of what is “fair, right and equitable,” Nash says. With the equities on his side, as well as several track and field icons, Nash felt confident about the hearing, which was again set up as a videoconference.

Apparently, his confidence was not misplaced. On July 23, six days before the hearing, Nash received an e-mail from NZOC attorney Stirling titled “Without Prejudice.” After reading it, he immediately phoned his client, and told her that if she was sitting down, she had better stand up so she could scream.

“NZOC maintains its position that it has the sole right to determine the selection criteria and to ultimately select its team in its discretion,” wrote Stirling in his e-mail. “The NZOC has, however, considered the material presented and has considered various other factors which it deems relevant, and has now determined that, subject to your urgent confirmation that you withdraw the appeal and not seek costs, it will select Liza to the Athens team.”

Rather than scream, Hunter-Galvan began to sob, thanking “wonderful Bill” repeatedly for his hard work on her behalf. “The running had saved me through the process,” she says. “But now that I had actually won, I crashed emotionally. It was several days before I could begin to train again.”

Nash figures the committee felt it was going to lose

and didn’t want a published opinion from a sports tribunal that could be cited as precedent by other athletes. For a Texas patent lawyer, New Zealand case law on natural justice was of little consequence. What mattered was that his client was going to the Olympics and he had helped get her there.

“Rarely is legal work so satisfying,” he says.

On Aug. 22, Hunter-Galvan will represent New Zealand at the 2004 Olympic Games, running the marathon in what easily could be the roughest terrain she ever has encountered. She has no delusions about her chances. Even if she runs “the race of her life,” she says, there will be world-class athletes in the competition who have clocked times considerably better than her best. “I don’t expect to win,” she says. “To be honest, I feel like I already have a gold medal just because I am going.”

Nash and Richardson say the case has inspired them to return to running. In compensation for their efforts, Hunter-Galvan has agreed to let them beat her in a marathon. In lieu of a fee, she has also arranged for Fila (who sponsors her) to give Nash a new pair of running shoes.

“If I would have paid him lots of money, he might have gone out to fancy dinners, bought rich food and stressed over the weight he had gained,” she says. “By getting him a new pair of running shoes, I can be as life-changing for him as he was for me.” ■■■

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