

UNITED STATES OLYMPIC & PARALYMPIC COMMITTEE

TERESSA KANDIANIS and)	
LESLIE BERNDL,)	
)	
Complainants)	
)	
v.)	DECISION
)	ON
US EQUESTRIAN FEDERATION)	MOTION TO DISMISS
)	
Respondent.)	August 7, 2019

I. THE PARTIES

1. Teresa Kandianis and Leslie Berndl (collectively, “Complainants”) are members¹ of US Equestrian Federation (“USEF” or “Respondent”).

2. USEF is the National Governing Body (“NGB”) for the sport of equestrian in the United States, as recognized by the United States Olympic & Paralympic Committee (“USOPC”) pursuant to the Ted Stevens Olympic and Amateur Sports Act (36 USC §§ 220501-220529) (the “Act”) and Section 8 of the USOPC Bylaws.

3. Complainant and USEF are collectively referred to as the “Parties”.

II. COMMENCEMENT OF PROCEEDING

4. On March 28, 2019, Complainant filed a Complaint with the USOPC against USEF pursuant to Section 220527 of the Act and Section 10 of the USOPC Bylaws.

¹ Leslie Berndl (“Berndl”) is an athlete member who competes in combined driving with the pony Sweetwater Zorah Belle (the equine athlete) and Teresa Kandianis is the owner of Sweetwater Zorah Belle.

5. Section 220527 of the Act and Section 10 of the USOPC Bylaws collectively provide that a person who belongs to an NGB may seek to compel the NGB to comply with the requirements of Sections 220522 - 220525 of the Act and Section 8 of the USOPC Bylaws. Those provisions set forth the obligations and requirements of an NGB.

III. HEARING PANEL COMPOSITION

6. In accordance with Section 220527(a)(2) of the Act and Section 10.6 of the USOPC Bylaws, USOPC Chief Executive Officer, Sarah Hirshland, appointed an initial Hearing Panel of three members for the purpose of hearing this matter, consisting of:

- Brad Snyder, Hearing Panel Chair and USOPC Board Member;
- Phil Andrews, Chief Executive Officer of USA Weightlifting and member of the National Governing Bodies Council; and
- Allysa Seely, Paratriathlete and Athletes' Advisory Council representative.

7. The Parties were provided with a list of Hearing Panel members by letter from Ms. Hirshland on April 24, 2019.

8. On May 14, 2019, Phil Andrews provided the Parties with disclosures that he sat on various committees with USEF General Counsel, Sonja Keating, along with utilizing Bryan Cave Leighton Paisner as USA Weightlifting's outside counsel.

9. On May 14, 2019, the Complainants objected to the appointment of Phil Andrews.

10. Although Phil Andrews communicated that he would remain fair and impartial and without bias in favor of or against any party in this proceeding, he

voluntarily recused himself to remove any possible perception of impartiality on May 28, 2019.

11. On June 4, 2019, Sarah Hirshland appointed Chris Ramsey, CEO of USA Water Polo and member of the National Governing Bodies Council to the Hearing Panel.

12. No Party objected to the newly constituted Hearing Panel. Accordingly, the Hearing Panel was seated without objection.

IV. LEGAL COUNSEL

13. Complainant is represented by Rachel Kosmal McCart of Equine Legal Solutions. USEF is represented by Brent Rychener and Suzanne Crespo of Bryan Cave Leighton Paisner, LLP.

V. COMPLAINT

14. The underlying controversy that gives rise to the Complaint stems from a selection dispute in which Berndl was not selected to compete in the 2017 FEI World Driving Championships.

15. On August 9, 2017, Berndl filed a complaint with USEF challenging the selection. In that same complaint, Berndl alleged that USEF does not provide a prompt and equitable grievance process to hear selection disputes for international competition.

16. In the current Section 10 Complaint, Complainants allege that USEF, through deliberate delays, does not provide an athlete with enough time between the selection and the start of a competition to challenge a selection decision and thus, the grievance process is neither prompt nor equitable.

17. Consequently, Complainants contend that USEF is in violation of the following NGB requirements:

- a. Section 220522(a)(13) of the Act that requires NGBs to “provide procedures for the prompt and equitable resolution of grievances of its members.”
 - b. Section 8.7(a) of the USOPC Bylaws that requires NGBs to “fulfill its responsibilities as an NGB... as set forth in the Act.”
18. Complainants request the following relief:
- a. A determination that USEF is not in compliance with Section 220522(a)(13) of the Act and Section 8.7(a) of the USOPC Bylaws;
 - b. That USEF be placed on probation for 180 days;
 - c. That USEF be directed to institute a grievance process that is designed to allow a fair opportunity for athletes to have their grievance heard in appropriate time frames;
 - d. That USEF publish any revisions to its grievance process within the 180-day probation period; and
 - e. Award of attorney costs and fees.

VI. MOTION TO DISMISS

19. On April 26, 2019, USEF filed a Motion to Dismiss. The Motion is based on two grounds. Briefly stated, they are (a) the Complaint fails to state a claim, and (b) that Complainants have failed to exhaust their administrative remedies.

20. In its May 15, 2019, Scheduling Order, the Hearing Panel set a briefing schedule and hearing date for oral argument on the Motion to Dismiss.

21. Complainants filed an Opposition to the Motion to Dismiss on May 16, 2019.

22. USEF filed a Reply in Support of its Motion to Dismiss on May 23, 2019.

23. After postponing the original oral argument due to delays associated with replacing a panel member, the Hearing Panel held oral argument on the Motion to Dismiss by telephone conference call on July 25, 2019.

24. Counsel for the Parties presented oral argument on the Motion to Dismiss. Sonja Keating, USEF General Counsel, also participated in the hearing. Additionally,

Sara Pflipsen, USOPC Senior Counsel and legal counsel to the Hearing Panel, and Lucy Denley, USOPC Senior Paralegal and liaison to the Hearing Panel participated in the hearing on the Motion to Dismiss.

25. In its consideration of the Motion to Dismiss, the Hearing Panel reviewed the Complaint and all the papers filed in support of and in opposition to the Motion to Dismiss. The Hearing Panel also considered the oral argument presented by the Parties.

VII. ANALYSIS

A. Basis for Motion

26. As previously stated, the Motion to Dismiss is based on two grounds.

27. First, USEF contends that the Complaint should be dismissed pursuant to Section 10.12 of the USOPC Bylaws, which provides that a complaint be dismissed if it fails to state a claim upon which relief can be granted.

28. Second, USEF asserts that Complainants failed to exhaust their administrative remedies with USEF as required by Section 220527(b) of the Act and Section 10.11 of the USOPC Bylaws or show by clear and convincing evidence that it would result in unnecessary delay.

29. The Hearing Panel analyzed each basis, in turn.

B. Failure to State a Claim

30. A Section 10 Complaint must allege sufficient facts, which if taken as true, asserts NGB non-compliance and that the relief sought is within the purview of Section 10.

31. USEF contends that the Complaint fails to state a claim within the purview of Section 10 of the USOPC Bylaws and thus, the Panel does not have jurisdiction to consider the matter.

32. USEF reasons that because the underlying issue and entire set of facts surrounds a single selection proceeding, it is better suited as a Section 9-type complaint.²

33. USEF argues that Section 10 is not the avenue to appeal an NGB's selection decision because Section 10 complaints must allege broader non-compliance issues. For this, USEF relies on *Lee v U.S. Speedskating*, Decision on Motion to Dismiss, page 12 (Sept. 1, 2016) (Anita DeFrantz, Jim Leahy and Brian Olsen, Pnl. Mbrs.) which determined that Section 10 proceedings must relate to compliance issues and are "not designed to provide a duplicative avenue of appeal" for individual actions.

34. Complainants respond that while it is true that they filed a grievance related to a selection dispute, they are not seeking to appeal that selection decision. As set forth in their Complaint, they only seek to compel USEF to provide grievance procedures that are prompt and equitable in accordance with Section 220522(a)(13) of the Act which is within the purview of Section 10.

35. Further, USEF's written decision on Complainant's August 9, 2017, internal grievance, USEF specifically addressed the non-compliance issue and provided guidance that it was better suited in Section 10. Thus, through USEF's written acknowledgment that Complainants raised a non-compliance issue, Complainants contend that the USOPC clearly has jurisdiction within Section 10.

² Section 9 of the USOPC Bylaws provides that an NGB cannot deny an athlete the opportunity to participate in protected competition and outlines a process by which an athlete can challenge selection disputes.

36. The Hearing Panel considered the various arguments and hereby determines that Complainants have alleged a non-compliance issue and thus, Section 10 is the proper forum to hear this issue.

37. In making this determination, the Hearing Panel distinguishes this case from *Lee v U.S. Speedskating* wherein the sole relief sought in that case was reinstatement of membership. Here, Complainants acknowledge that while it is unfortunate that the athlete did not get to compete, they are no longer challenging that single determination. Instead, they seek a remedy to compel USEF to come into compliance with the Act and adopt grievance process that would benefit all equestrian athletes, not just the Complainants.

38. It is clear to the Hearing Panel that the focus of this Complaint surrounds allegations of non-compliance relating to how USEF handles grievances related to selection. The particular selection dispute may be used as an example of such, but available remedies relate only to whether USEF is in compliance with Section 220522(a)(13) of the Act.

39. The Hearing Panel finds that the Complaint properly alleges USEF's non-compliance as it relates to its grievance process, which is within the purview of Section 10.

40. Accordingly, the Hearing Panel determines that USEF has not met its burden to show that Complainants have failed to state a claim under Section 10.

C. Failure to Exhaust Administrative Remedies

41. Section 220527(b) of the Act states that a complainant may file a complaint for correcting deficiencies under the Act "only after exhausting available

remedies within the national governing body...unless it can be shown by clear and convincing evidence that those remedies would have resulted in unnecessary delay.” Likewise, Section 10.11 of the USOPC Bylaws states that a complainant may file a Section 10 complaint “only after exhausting all available remedies with the NGB...for correcting deficiencies, unless it can be show by clear and convincing evidence that those remedies would have resulted in unnecessary delay.”

42. USEF contends that Complainants have failed to exhaust their available remedies within USEF and that Complainants must utilize USEF’s process prior to proceeding with the Section 10 Complaint.

43. USEF explains that it has an established grievance process to hear complaints of non-compliance under USEF Bylaw 704 and USEF General Rule GR602(8). USEF argues that Complainants’ internal grievance, which was titled “Grievance Regarding Selection of Single Athlete/Pony Combinations for 2017 FEI World Pony Driving Championships” does not suffice as satisfying the exhaustion requirement because it was postured primarily as a right to compete complaint.

44. USEF argues that in accordance with *Glefke v. U.S. Equestrian Federation*, pg. 9 Decision on Motion to Dismiss (April 1, 2017) (Jim Benson, Rich Bender and Emily Azevado, Pnl. Mbrs), a complainant must file a “separate complaint with an NGB alleging noncompliance” in order to exhaust administrative remedies. USEF contends that Complainants have not done so.

45. Complainants respond that that they have consistently raised the issue of USEF’s non-compliance with USEF. In their internal grievance, despite the fact that the internal grievance also included a selection dispute, Complainants specifically alleged

non-compliance of Section 220522(a)(13) within that grievance, which is the subject of the current Complaint.

46. Complainants also express that even after the selection part was dismissed as moot, Complainants continued to have discussions with USEF to seek to have the issue of non-compliance heard. In fact, USEF's written decision acknowledged the non-compliance issue. Considering the decision referred to the non-compliance piece, Complainants contend that there is no denying that USEF was aware that a complaint on this issue was properly raised. Thus, they adequately exhausted their administrative remedies.

47. Further, Complainants argue that even if the Hearing Panel determines they have not exhausted the administrative remedies, filing another grievance with USEF would be futile and cause unnecessary delay.

48. In support of this, Complainants refer to USEF's written decision that dismissed the non-compliance issue because it would "be more properly handled" in a Section 10 complaint. Complainants argue that filing a second complaint with USEF would almost certainly be futile considering the first grievance culminated in a dismissal directing the Complainants to this very process.

49. Additionally, Complainants assert that restarting the grievance process again would result in unnecessary delay and unfairly prejudice all equestrian athletes who seek a grievance process that is prompt and fair.

50. The Hearing Panel determines that when Complainants filed a grievance specifically citing allegations of non-compliance with Section 220522(a)(13) of the Act, they satisfied the exhaustion requirement.

51. The exhaustion requirement is intended to put an NGB on notice of allegations of non-compliance in order to provide the NGB with the opportunity to correct any deficiencies before going straight to Section 10. *See Leach v. USA Track & Field, Inc.*, Decision on Motion to Dismiss, pg. 9 (Sept. 20, 2016) (Bob Wood, Darrin Steel and Kerry McCoy, Pnl. Mbrs.) (determining that the importance of the exhaustion requirement allows the NGB to have “proper notification of the allegations alleged”). Here, USEF had sufficient notice of the allegations of non-compliance as they were specifically raised within the internal grievance, then through subsequent conversations, and were even included in the written decision. There is no doubt in the Hearing Panel’s view that USEF was aware of the allegations.

52. Further, the Hearing Panel believes that USEF mis-characterizes the similarities in the present case to *Glefke v. U.S. Equestrian Federation*. In *Glefke*, the complainants never filed a complaint with the NGB alleging non-compliance and only filed a grievance related to an anti-doping matter. When the panel in that case determined that a “separate” grievance alleging non-compliance must be filed, this indicated that a grievance which only relates to the underlying issue would not suffice.

53. Here, Complainants filed a single grievance that contained two issues: (1) a selection dispute and (2) non-compliance allegations related to USEF’s grievance process. The Complainants did not file two separate complaints for each issue, but rather combined the selection dispute and the non-compliance allegations into one grievance. The Hearing Panel makes the determination that an individual is not required to separate out different types of allegations into different grievances. If a non-compliance

allegation is clearly articulated within a properly filed grievance with the NGB, that is enough to satisfy the exhaustion requirement.

54. Within their internal grievance, Complainants specifically cited Section 220522(a)(13) of the Act and noted that it was being filed pursuant to GR602(8), which is the provision of USEF's grievance procedures that outlines the process to hear non-compliance matters. Simply because the grievance also included a selection dispute component does not automatically invalidate this secondary piece of their grievance.

55. Additionally, USEF's rules do not overtly prohibit filing two types of issues within one grievance. USEF made no any indication that doing so was improper, especially in light of including reference to the non-compliance allegations in its written decision.

56. Further, the Hearing Panel questions USEF's dismissal of the non-compliance piece of Complainants' internal grievance where USEF reasoned that it did not have jurisdiction over those matters and stated that such is better suited for Section 10. Pursuant to its own rules, USEF unmistakably has jurisdiction over those types of complaints and should have provided Complainants with a hearing on the non-compliance matter irrespective of the selection dispute.

57. Due to concerns on how the initial internal grievance was handled and that a hearing was not provided on the non-compliance piece of the grievance, the Hearing Panel agrees with Complainants that it would be futile for them to go through the process again.

58. Therefore, the Hearing Panel determines that Complainants satisfied the exhaustion requirement and finds that USEF did not meet its burden to show any failure to exhaust administrative remedies.

VIII. RULING

59. It is the determination of the Hearing Panel that USEF's Motion to Dismiss is denied. In making this determination, the Hearing Panel finds that Complainants have stated a claim under Section 10 because they seek a determination related to compliance and not the underlying selection issue. Additionally, Complainants satisfied the exhaustion requirement when they filed an internal grievance with USEF specifically citing allegations of Section 220522(a)(13) of the Act, which is also the subject of the current Complaint.

60. All members of the Hearing Panel have reviewed and approved this written Decision.

IX. ORDER

61. USEF's Motion to Dismiss is denied.

62. USEF has thirty (30) days to submit an Answer to the Complaint, due by 5pm MT on September 6, 2019.

Dated this 7th day of August, 2019.



Brad Snyder, Chair
Chris Ramsey, Panel Member
Allysa Seely, Panel Member