

UNITED STATES OLYMPIC COMMITTEE

HIGHTOWER, et al.,)	
)	
Complainants)	
)	ORDER
v.)	
)	
US BOWLING CONGRESS,)	
)	
Respondent.)	March 8, 2016

I. THE PARTIES

1. Wayne Hightower, Donna Hall and Lawrence Digsby (“Complainants”) are members of US Bowling Congress (“USBC”).

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

II. COMMENCEMENT OF PROCEEDING

3. On October 29, 2015, Complainants filed a Complaint with the USOC against USBC pursuant to Section 220527 of the Act and Section 10 of the USOC Bylaws.

III. HEARING PANEL APPOINTMENT

4. In accordance with Section 220527(a)(2) of the Act and Section 10 of the USOC Bylaws, USOC Chief Executive Officer, Scott Blackmun, appointed a Hearing

Panel of three members for the purpose of hearing this matter. The Panel members are:

Bill Marolt, Chair
USOC Board Member,
Glen Schorr, Executive Director of Orienteering USA and
Member of the Multisport Organization Council (“MSOC”),
Han Xiao, Table Tennis and Vice Leadership of the Athletes’ Advisory
Council (“AAC”).

5. The Parties were provided with a list of Hearing Panel members by letter from Mr. Blackmun on November 18, 2015. No Party objected to the appointment of the Hearing Panel members.

6. Accordingly, the Hearing Panel is seated without objection.

IV. COUNSEL

7. Complainants are represented by Edward G. Williams, of the firm Stewart Occhipinti LLP.

8. USBC is represented by Ted A. Wisnefski, Scott C. Beightol and Thomas A. Janczewski of the firm Michael Best & Friedrich LLP.

V. COMPLAINT

9. The Complaint contains five counts, briefly described as follows:

- Count I – USBC is not in compliance with certain requirements of the Act.
- Count II – USBC is not in compliance with certain requirements of the USOC Bylaws.
- Count III – USBC has failed to comply with the USOC’s Good Governance Guidelines.
- Count IV – USBC has failed to follow its own Bylaws.
- Count V – USBC has failed to set forth certain provisions in its Bylaws or otherwise substantiate compliance with certain NGB obligations or USOC policies.

VI. MOTION TO DISMISS

10. USBC filed a Motion to Dismiss on December 18, 2015, pursuant to Section 10.12 of the USOC Bylaws.

11. A briefing schedule and hearing date for argument on the Motion was set by the Hearing Panel after conferring with the Parties. Complainants filed a brief in Opposition to the Motion on January 29, 2016. USBC filed a Reply on February 19, 2016. Oral argument on the Motion was heard on March 1, 2016.

12. USBC in its Motion to Dismiss requests dismissal of all five Counts of the Complaint.

13. USBC asserts that Counts I and II should be dismissed as they do not set forth a valid claim upon which relief can be granted. In further support of this argument USBC alleges that as plead, the Counts are conclusory in nature and set forth no factual basis to support alleged grounds of noncompliance.

14. As to Counts III and IV, USBC asserts that the Hearing Panel does not have jurisdiction over those Counts. USBC alleges that Complainants claims fall outside the jurisdictional scope of Section 220527 of the Act and Section 10 of the USOC Bylaws.

15. Regarding Count V, USBC asserts that this Count should also be dismissed as it does not set forth a claim upon which relief can be granted. USBC states that there is no requirement that USBC set forth the matters complained of in USBC's Bylaws. Further, USBC alleges that Complainants provide no factual basis for their assertions.

16. Additionally, USBC spends considerable time outlining a prior dispute involving Complainants' Local Bowling Club, the Strike Merchants, and USBC. This matter was heard pursuant to USBC's complaint procedure and eventually resolved in USBC's favor in the New Jersey courts.

17. Complainants oppose USBC's Motion. Complainants contend that the issues raised in the Complaint fall within the jurisdiction of Section 220527 of the Act and Section 10 of the USOC Bylaws. Complainants also contend that the Complaint sets forth a factual underpinning upon which each Count is based. They assert that USBC's Motion is, in reality, an answer denying those allegations, and thus it is an ill-fated effort to have this matter decided without a hearing on the merits. Complainants request an opportunity to present their evidence.

18. At the close of argument on the Motion to Dismiss, the Hearing Panel asked the Parties if they would be willing to attempt mediation as a way to resolve their differences. The Complainants responded that they were willing to enter into mediation. USBC responded that it was not interested in mediation as it had already spent considerable time and effort defending itself in the New Jersey litigation.

19. After the hearing had ended, Complainants again reiterated by email that they were amenable to mediation. USBC also responded by email and repeated its view that it did not support mediation. USBC again asked that the Complaint be dismissed.

20. The Hearing Panel believes that neither USBC nor the Complainants appreciate the other's arguments on the Motion to Dismiss. Although USBC raises some valid points, so do the Complainants. Generally speaking, in order for a complaint to be dismissed because it fails to state a claim upon which relief can be granted, the

hearing body must find, taking all of the allegations of the complaint as being true, that the complainant is not entitled to a remedy. This is a difficult burden. However, the complainant should set forth with some specificity the allegations upon which it relies. Making bold assertions of wrongdoing does not satisfy this requirement. Cases must be properly plead. As to jurisdiction, USBC would like for the Hearing Panel to take a narrow approach and the Complainants would have the Hearing Panel take a broad approach. Matters of jurisdiction can cut both ways, and are not always as distinct as parties believe.

21. Also, the Hearing Panel wishes to make one thing clear. This proceeding is not an appeal of the New Jersey litigation. This proceeding is an action brought pursuant to Section 220527 of the Act and Section 10 of the USOC Bylaws. The issue before this Hearing Panel is whether USBC is in compliance with its obligations as an NGB under the Act and the USOC Bylaws.

22. If necessary, the Hearing Panel will rule on the Motion to Dismiss and all of the other legal issues that may or may not come before it. However, it is often better for parties, especially for organizations and members of an organization that have a relationship, and will continue to have a relationship, to resolve their differences internally without having an external decision maker force a decision on them. This puts the parties in control and allows them to have a say in the outcome. Mediation offers an opportunity for all parties to gain a better understanding of the challenges and the opportunities within the organization. It provides the unique ability to empower the parties to design their own pathway to a positive result, and address concerns that a hearing panel may not be able to address. It prevents further polarization often brought

about by an adversarial process that designates a winner and a loser. Rather than cutting off the opportunity to address the underlying issues of disagreement, mediation enables productive discussion and a possible resolution independent of legal parameters, resulting in more durable agreements and relationships, with greater satisfaction among all parties.

VII. MEDIATION

23. Section 10.8 of the USOC Bylaws provides that the Hearing Panel may order mediation upon the request of a party. As stated previously, Complainants have requested that this matter be mediated. Further, as explained above, the Hearing Panel believes that mediation, done in good faith, can be productive in resolving the differences that exist between the Parties.

24. Accordingly, the Hearing Panel orders the following:

- a) USBC and Complainants shall enter into mediation. Section 10.8 of the USOC Bylaws provides that the USOC CEO shall appoint a mediator to assist the Parties in their mediation efforts.
- b) The Parties shall conduct their first mediation session by April 1, 2016, unless the mediator otherwise requests an extension of that date.
- c) The Parties shall conclude their mediation efforts by June 15, 2016.
- d) The mediator has full authority to set mediation dates within the parameters set forth above and to confer with the Parties as he or she considers appropriate. The mediator also has full authority to request that the Parties provide him or her with documents and other materials that may assist him or her in conducting the mediation. The Parties shall fully cooperate with the mediator.
- e) The Parties shall report to the Hearing Panel on whether or not mediation has been successful by June 17, 2016. In making such report, the Parties shall not disclose to the Hearing Panel any information concerning mediation discussions or negotiations, including the actions of the Parties, positions taken in mediation, issues considered during the mediation, or any other matter that should remain confidential to the mediation efforts.

- f) If the Parties believe that further mediation efforts after June 15 would be productive, they may request in their June 17 report that mediation be continued.
- g) The costs of mediation shall be borne equally by both Parties.

25. The Hearing Panel encourages the Parties to make every effort to resolve their differences through the mediation process.

VIII. ORDER

26. It is so ordered.

Dated this 8th day of March, 2016.



Bill Marolt, Chair

Glen Schorr, Panel Member
Han Xiao, Panel Member