

UNITED STATES OLYMPIC COMMITTEE

BARBARA WALLY)	
)	
Complainant)	
)	ORDER
v.)	
)	
USA DANCE)	
)	
Respondent.)	September 4, 2015

I. THE PARTIES

1. Barbara Wally (“Wally”) is a member of USA Dance (“USAD”).

2. USAD has been accepted by the United States Olympic Committee (“USOC”) as a Recognized Sport Organization (“RSO”) member of the USOC pursuant to the Ted Stevens Olympic and Amateur Sports Act (36 USC §§ 220501-220529) (the “Act”) and Section 8 of the USOC Bylaws. USAD oversees and conducts programs and competitions in the sport of DanceSport. USAD is recognized by and is a member of the International Federation for DanceSport, the World DanceSport Federation.

II. THE COMPLAINT

3. On June 16, 2015, Wally filed a Complaint with the USOC pursuant to Section 10 of the USOC Bylaws and Section 220527 of the Act. The Complaint alleges that USAD “is in violation of Section 220522” of the Act. The Complaint more specifically alleges that USAD “has not provided [Wally] with a prompt and equitable resolution of [her] grievance” in violation of Section 220522(a)(13) of the Act.

4. However, notwithstanding the above, it is clear from the Complaint that the controversy giving rise to the controversy between Wally and USAD is Wally's allegation that she was improperly removed from her position on the Governing Council of USAD.¹ In response to her no longer being a member of the Governing Council, Wally filed a grievance with USAD, which Wally alleges was never heard.

5. The Complaint was accompanied by numerous exhibits. Also submitted with the Complaint was a \$250.00 filing fee as required by Section 10.3 of the USOC Bylaws.

III. HEARING PANEL APPOINTMENT

6. In accordance with Section 10.6 of the USOC Bylaws and Section 220527(a)(2) of the Act, 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 MSOC,
Katie Holloway, Paralympic Volleyball and
Vice Leadership of the AAC.

7. The Parties were provided with a list of the Hearing Panel members. Panel members also made disclosures of conflicts, if any. The Parties were invited to voice any objections to the composition of the Hearing Panel by July 29, 2015.

8. Neither USAD nor Wally responded.

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

¹ The Governing Council serves as the board for USAD.

IV. MOTION TO DISMISS

A. Background

10. On July 17, 2015, USAD filed a Motion to Dismiss. The Motion is based on two grounds. First that Wally did not comply with the filing requirements of Section 10.2 of the USOC Bylaws. Second, that Wally's Complaint fails to state a claim upon which relief can be granted.

11. Wally filed an opposition to the Motion on August 14, 2015.

12. The Hearing Panel heard oral argument on the Motion on August 21, 2015.

B. Non-Compliance with Section 10.2

13. USAD's assertion that the Complaint does not comply with Section 10.2 of the USOC Bylaws is based on four grounds: 1) the Complaint was not signed, 2) the Complaint was not served on USAD, 3) the allegations of the Complaint were not set forth in numbered paragraphs and 4) the Complaint did not include a statement of jurisdiction.

14. Concerning USAD's contention that the Complaint is lacking as it was not signed, Wally counters that the Complaint included "a typed signature block" that listed her name and address and thus identified her as the Complainant. Further, she points out that a prior complaint filed with USAD dated April 28, 2014, raising the same issues as the June 16 Complaint was signed and notarized. Wally states that the April 28 complaint was attached as an exhibit to the June 16 Complaint and therefore is to be considered as part of the June 16, Complaint.

15. As to service, USAD admits that the Complaint was served on Yang Chen, USAD's National President. However, USAD contends that the Complaint was not served on its "designated agent for service of process." Wally states that Article I.B. of USAD's Bylaws provides that the "seat of [USAD] shall be the address of the incumbent President unless otherwise directed by the Governing Council." Wally also affirms that the Complaint was served on Yang Chen by a process server on March 28, 2015, as evidenced by an affidavit of service submitted by LW Nelson of SIG Investigation.

16. As to USAD's contention that the entire Complaint is not set out in numbered paragraphs, Wally counters that the Complaint lists five allegations of wrongdoing enumerated in separate paragraphs.

17. Finally, concerning USAD's claim that the Complaint does not include a statement of jurisdiction, Wally asserts the Complaint is filed pursuant to the Act. She also points out that she alleges in the Complaint that she has exhausted all means to have the matter heard by USAD, this exhausting her administrative remedies.

18. Upon review of the Complaint the Hearing Panel notes that Wally could have been more attentive to the requirements of Section 10.2. The Complaint is lacking in legal form and structure. However, the Hearing Panel notes that Wally is not represented by legal counsel, but filed her Complaint pro se.² Thus, some leeway is to be given to her so that the matter is not dismissed on a technicality. Also, the Complaint provides USAD with the basis of Wally's allegations. Further, Wally fulfilled the filing fee requirement, having submitted \$250 with her Complaint. Accordingly, the Hearing Panel accepts the Complaint as properly filed.

² Further discussion of representation of the Parties follows.

C. Failure to State a Claim upon which Relief Can be Granted

19. USAD's second ground for dismissal is that the Complaint fails to state a claim upon which relief can be granted. In its Motion USAD asserts that it "provides procedures for prompt and equitable resolution of grievances" but that Wally does not "allege any basis for a hearing under the facts and circumstances of her case." In support of this proposition USAD recites a number of alleged facts pertaining to Wally's non-appointment to the Governing Council and the application of USAD's grievance process to Wally. USAD also states that it is entitled to a presumption that at all times it acts in good faith and in the best interests of the organization.

20. Wally counters that just because USAD may have a grievance process in its Bylaws does not mean that it complies with the standards set forth in Section 220522(a)(13) of the Act. Further, Wally contends that regardless of USAD's Bylaws, USAD did not provide her with a prompt and impartial hearing.

21. After reviewing the Complaint and considering the arguments the Hearing Panel finds that the Complaint does set forth a claim upon which relief can be granted. The Complaint sets forth grounds upon which the Hearing Panel could find USAD in violation of Section 220522(a)(13) of the Act. Thus, dismissal is not proper.

V. REPRESENTATION

22. As stated previously, Wally is not represented by an attorney, but filed her Complaint pro se. On August 20, 2015, on the eve of the Motion to Dismiss, Mark Scardina informed the Hearing Panel that he was going to represent Wally at the hearing on the Motion.

23. USAD filed an opposition to Scardina's involvement.

24. Scardina filed a reply.

25. Scardina's involvement was of concern to the Hearing Panel for three reasons. First, the lateness of Scardina's request. Second, Scardina is not an attorney. Third, Scardina may have a conflict of interest, as he is the spouse of the immediate past National President of USAD. The immediate past National President is the person who, in 2010, appointed Wally to the Governing Council.

26. After considering the matter, the Hearing Panel determined to allow Scardina to represent Wally for the limited purpose of arguing the Motion to Dismiss. However, it advised Wally that Scardina's involvement going forward would be revisited.

27. USAD is represented by Yang Chen. Chen is an attorney. He also is the National President of USAD. Likewise, this is of concern to the Hearing Panel as Chen may be the primary witness in a hearing on the merits. Serving as both an attorney and as a witness in a proceeding is generally objectionable in that it may cause confusion and possibly be prejudicial to the opposing party.

28. Although not issuing a ruling at this time, the Hearing Panel recommends that Wally consider obtaining legal counsel. Further, the Hearing Panel recommends that USAD consider obtaining legal counsel who will not serve as a witness.

29. Both Wally and USAD should report back to the Hearing Panel on the matter of legal counsel by September 14, 2015.

VI. MEDIATION

30. Section 10.8 of the USOC Bylaws provides that the Hearing Panel may order mediation upon the request of a party.

31. Wally repeatedly states that what she wants is to be afforded a hearing by an impartial USAD panel on whether or not she should be seated on the Governing Council. As previously stated, Wally contends that she was improperly removed. USAD contends that it followed its procedures in her non-appointment. Whether or not Wally should be seated on USAD's Governing Council is not before the Hearing Panel. The only issue before the Hearing Panel is whether or not USAD is in compliance with the Act and USOC Bylaws in the operation of its responsibilities as a RSO. Considering this, the Hearing Panel suggests that if the Parties wish to deal with the underlying issue between them, this matter might be better resolved through mediation. One possibility is that USAD would afford Wally a USAD in-person hearing as to her non-appointment to the Governing Council, provided that Wally would abide by the decision of the hearing panel. There may also be other possibilities for resolution.

32. Accordingly, the Parties shall respond back to the Hearing Panel by September 14, 2015, as to whether or not they would be inclined to mediate their dispute.

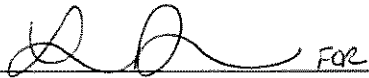
VII. ORDER

33. USAD's Motion to Dismiss is denied.

34. The Parties shall report back to the Hearing Panel by September 14, 2015, as to representation by legal counsel.

35. The Parties shall report back to the Hearing Panel by September 14, 2015,
as to whether or not they would be amenable to mediation.

Dated: September 4, 2015.

 For

Bill Marolt, Chair

Glen Schorr, Panel Member
Katie Holloway, Panel Member