

UNITED STATES OLYMPIC & PARALYMPIC COMMITTEE

JAMES GIORGIO ET AL.,)	
)	
Complainants,)	
)	
v.)	DECISION
)	ON
UNITED STATES EQUESTRIAN)	MOTION TO DISMISS
FEDERATION,)	
)	
Respondent.)	October 23, 2020

I. THE PARTIES

1. James Giorgio, N.D., Mitchell Steege, Eduardo Zavala Sanchez, Dylan Harries, Thomas Navarro, the Estate of Robert Gage, and Tommy Serio ("Complainants") are current or former members of the United States 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 (the "Ted Stevens Act") and Section 8 of the USOPC Bylaws¹.

3. Complainants and USEF are collectively referred to as the "Parties".

¹ Any references to the USOPC Bylaws within this decision refer to the newly adopted USOPC Bylaws dated October 8, 2020.

II. COMMENCEMENT OF PROCEEDING

4. On June 30, 2020, Complainants² filed a Complaint with the USOPC against USEF pursuant to Section 220527 of the Act and Section 10 of the USOPC Bylaws.

5. Section 220527 of the Ted Stevens 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 8.4 of the USOPC Bylaws. Those provisions set forth the obligations and requirements of an NGB.

6. In accordance with Section 220527(a)(2) of the Act and Section 10.6 of the USOPC Bylaws, USOPC Chair, Susanne Lyons, appointed a Hearing Panel of three members for the purpose of hearing this matter. The Panel members are: David Haggerty, Hearing Panel Chair and USOPC Board member; Pat Kelleher, Executive Director of USA Hockey and member of the National Governing Bodies Council; and Natalie McCarthy, Para athlete and Athletes' Advisory Council, General Paralympic representative.

III. THE COMPLAINT

A. Allegations

7. The underlying controversy that gives rise to the Complaint involves the ban, suspension, limitation or restriction of Complainants (either temporarily or permanently) from participation in sport by the U.S. Center for SafeSport ("USCSS") and

² Tommy Serio was added as a Complainant on July 21, 2020.

the implementation and enforcement of such ban, suspension, limitation or restriction by USEF.

8. Complainants state that USCSS issued temporary measures and/or final decisions that banned, suspended, limited or restricted the opportunity of Complainants to participate prior to holding a hearing (referred to by Complainants as a pre-deprivation hearing).³

9. Complainants assert that USEF implemented “the determinations of ineligibility” made by USCSS and that USEF continued to “enforce the suspensions and/or bans” issued by USCSS also without providing Complainants with a pre-deprivation hearing.

10. Accordingly, Complainants allege that USEF is not in compliance with the requirements of Section 220522(a)(8) of the Ted Stevens Act in that it does not provide “an opportunity for a hearing... before declaring an individual ineligible to participate.”

B. Exhaustion of Remedies

11. Complainants filed internal grievances with USEF alleging that USEF does not comply with its obligations under Section 220522(a)(8) for the same reasons as set forth in this Complaint.

12. USEF dismissed Complainants’ internal grievances.

³ Pursuant to the USCSS’s procedures, a hearing is only provided after the USCSS’s determination to implement a temporary measure or after the USCSS’s decision that a violation of the SafeSport Code for U.S. Olympic and Paralympic Movement has occurred and sanctions issued.

13. Accordingly, Complainants have satisfied the requirement of Section 220527(b)(1) of the Act and Section 10.11 of the USOPC Bylaws that they exhaust all available remedies with USEF prior to proceeding under Section 10.

C. Requested Remedy

14. Complainants request the following remedies:

- a. that Complainants membership in USEF be immediately reinstated;⁴ and,
- b. that USEF be stripped of its status as the NGB for the sport of equestrian.

IV. MOTION TO DISMISS

15. On July 30, 2020, USEF filed a Motion to Dismiss. The Motion is based on the following four grounds:

- a. the Hearing Panel lacks subject matter jurisdiction over the Complaint;
- b. the Complaint fails to state a claim upon which relief can be granted;
- c. Complainants are each individually barred from bringing their claims based on various legal reasons specific to each Complainant; and,
- d. Complainants are precluded from alleging USEF's non-compliance relating to its handling of and dismissal of Complainants' internal grievance, since Complainants "do not allege with specificity any provision of the [Ted Stevens] Act or the USOPC Bylaws" that USEF's procedures would violate.

16. In its August 17, 2020, Scheduling Order, the Hearing Panel set a briefing schedule and hearing date for oral argument on the Motion to Dismiss.

17. On August 21, 2020, Complainants filed a Response to the Motion to Dismiss.

18. On August 28, 2020, USEF filed a Reply in Support of the Motion to Dismiss.

⁴ It is difficult to envision how this type of request for relief is contemplated under a Section 10 proceeding, the purpose of which is to compel an NGB to comply with its obligations under the Ted Stevens Act and USOPC Bylaws or to revoke an NGB's recognition as an NGB.

19. The Hearing Panel held oral argument on the Motion to Dismiss by videoconference on September 4, 2020.

20. Counsel for the Parties presented oral argument on the Motion to Dismiss. In attendance were Tamera Tucker, Bonnie Navin, and Michael Romm co-counsel for Complainants. Additionally, the following Complainants were in attendance, James Giorgio and Lauren Craft for the Estate of Robert Gage. Steve Smith and Suzanne Crespo appeared on behalf of USEF along with Sonja Keating, General Counsel for USEF.

21. Additionally, Sara Pflipsen, USOPC Senior Counsel and counsel to the Hearing Panel, Gary L. Johansen, USOPC Advisory Counsel and counsel to the Hearing Panel, and Lucy Denley, USOPC Manager of Dispute Resolution, participated in the hearing on the Motion to Dismiss.

22. 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.

V. RULING

23. It is the determination of the Hearing Panel that USEF's Motion to Dismiss is granted. In making this determination, the Hearing Panel finds that it does not have jurisdiction over the subject matter of the Complaint and that the Complaint does not state a claim upon which the Hearing Panel could provide relief.

24. As the ruling is based on those two grounds, the Hearing Panel does not make a determination on whether each Complainant is individually barred from bringing forth his or her claim.

25. Further, the Hearing Panel need not consider USEF's contention that Complainants did not allege with specificity any provision of the Ted Stevens Act or the USOPC Bylaws relating to USEF's handling and dismissal of Complainants' internal grievances, since that issue was not made a part of Complainants' Section 10 Complaint (although Complainants referred to USEF's procedures in dismissing their internal grievances, they did not include allegations of non-compliance on those grounds in this Section 10 proceeding).

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

VI. ANALYSIS

A. Background

27. In order to more fully understand the issues raised in this proceeding, it is useful to recite some of the background that serves as the basis for the allegations of USEF's non-compliance as set forth in the Complaint. Since USCSS is linked to Complainant's allegations of USEF's non-compliance, a brief overview of USCSS and its procedures is also helpful.

28. USCSS was established in 2017 by the USOPC and was subsequently recognized by Congress under the Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017 ("Safe Sport Act"), which added to and amended the Ted Stevens Act. As stated by the Senate Committee on Commerce, Science, and Transportation, the purpose of the Safe Sport Act was:

to clarify that a central purpose of the [USOPC] is to promote a safe environment in sports that is free from abuse, including emotional, physical, and sexual abuse, of any amateur athlete. This legislation also designates the [USCSS] as the

independent organization to investigate and adjudicate abuse allegations in the Olympic [and Paralympic] movement.

S. Rep. No. 115-443, at 1 (2018).

29. In furtherance of that purpose, the Safe Sport Act recognized the USCSS as “the independent national safe sport organization for the United States,” 36 U.S.C. § 220541(a)(1), to “exercise jurisdiction over the [USOPC], [and] each national governing body, . . . with regard to safeguarding amateur athletes against abuse, including emotional, physical, and sexual abuse, in sports.” 36 U.S.C. § 220541(a)(2).

30. Pursuant to its obligations under the Safe Sport Act, USCSS adopted and maintains detailed investigation, response, and resolution procedures for matters under its jurisdiction in the form of the SafeSport Code for U.S. Olympic and Paralympic Movement (the “SafeSport Code”)⁵.

31. Pursuant to the SafeSport Code USCSS utilizes the following procedures in conducting an investigation and entering a decision.

- a. When USCSS receives “a report of allegations that fall within its exclusive authority, or accepts jurisdiction over allegations within its discretionary authority, it will . . . conduct a preliminary inquiry, and, if appropriate, undertake an investigation to determine whether “the Respondent has violated the Code. SafeSport Code, Article XI.
- b. A final Investigation Report is “prepared that sets forth the investigator’s findings of fact and may make a recommendation as to whether the Code has been violated.” SafeSport Code, Article XI.N.
- c. USCSS then “determine[s] whether there is sufficient information, by a preponderance of the evidence, to support a finding that Respondent violated the Code.” If USCSS finds “that the Respondent violated the Code, the Decision will note the violation and identify an appropriate sanction(s).” SafeSport Code, Article XI.O.
- d. “Upon issuance of a Decision, a Respondent has ten days to request a hearing before an arbitrator” conducted pursuant to the arbitration rules set out in the SafeSport Code, Article XIV.

⁵ Any references to the SafeSport Code within this decision refer to the SafeSport Code dated April 1, 2020.

32. Also, pursuant to the Code, USCSS utilizes the following procedures in implementing temporary measures to protect the immediate safety of those involved in Olympic and Paralympic sports.

- a. USCSS may “implement Temporary Measures at any time” which are “effective immediately.” SafeSport Code, Article XII.A.1.and 3.
- b. Where “a Temporary Measure materially affects the opportunity to participate (e.g., suspension), the [Respondent] may challenge the measure by requesting an arbitration” conducted pursuant to the arbitration rules set out in the USCSS Code, Article XIV.40.

33. In the case of each of the Complainants, a report was made to USCSS of allegations that fell within the USCSS’s exclusive jurisdiction.

34. USCSS issued temporary suspensions for five of the eight Complainants, which banned, suspended, limited or restricted their participation in sport, while it investigated the allegations. Pursuant to its procedures, the temporary suspensions were imposed upon Complainants by USCSS without first affording Complainants a hearing.

35. USEF enforced the temporary suspensions against Complainants immediately upon the temporary suspensions being issued by USCSS.

36. Pursuant to USCSS procedures, a respondent can request a hearing/appeal of a temporary suspension after it has been issued.

37. Four of the five Complainants requested a hearing/appealed their temporary suspensions. Each hearing/appeal was heard before a JAMS arbitrator.⁶

38. After concluding its investigations, USCSS issued a final decision for each of the Complainants. Pursuant to its procedures, the final decisions, ranging from

⁶ JAMS is the arbitral body selected by USCSS to hear its safe sport cases.

suspensions to permanent bans, were imposed upon Complainants by USCSS without first affording Complainants a hearing.

39. USEF enforced the final decisions against Complainants immediately upon the final decisions being issued by USCSS.

40. Pursuant to USCSS procedures, a respondent can request a hearing/appeal of a final decision after it has been issued.

41. All eight Complainants requested a hearing/appealed their final decisions before JAMS arbitrators. All of the appeals have either been resolved or are pending resolution.

B. Argument

42. Complainants' contention is that by implementing and enforcing USCSS's temporary measures and decisions that ban, suspend, limit or restrict an individual's opportunity to participate in sport without first providing a hearing, USEF has violated its obligation under Section 220522(a)(8) of the Sports Act, which requires an NGB to provide certain individuals with an "opportunity for a hearing . . . before declaring the individual ineligible to participate" in amateur athletic competition. 36 U.S.C. § 220522(a)(8).

43. The Complaint is premised on the claim that USEF cannot implement a sanction imposed by USCSS against an individual, such as it did with Complainants, without USEF first providing the individual with a hearing.

44. Complainants further argue that USCSS’s resolution procedures, and the subsequent enforcement by USEF of sanctions imposed by USCSS under those procedures, violated their due process rights.⁷

45. USEF in its Motion to Dismiss maintains that USCSS has exclusive jurisdiction over investigating and resolving allegations of sexual misconduct within the Olympic and Paralympic Movement. As such, USEF points out that it is bound to recognize the USCSS’s temporary measures and decisions and enforce any resulting ban, suspension, limitation or restriction of an individual’s opportunity to participate in sport. USEF maintains that it cannot re-try or otherwise interfere with those suspensions. USEF’s position is that to conclude otherwise would cause it to be in breach of the Safe Sport Act, the SafeSport Code, the Ted Stevens Act and the USOPC Bylaws. See, e.g., Code, Article IV.A, Article XI.P; 36 U.S.C. §§ 220541(b), 220524; USOPC Bylaws, §§ 8.7.1(a)(i), (c)(i)-(ii).

46. Accordingly, USEF maintains that it cannot be found in violation of its duties under the Ted Stevens Act, specifically Section 220522(a)(8), for enforcing a sanction implemented by USCSS.

⁷ The Hearing Panel makes no ruling on the sufficiency of USCSS’s procedures in providing due process protections. That issue is not before the Hearing Panel, nor would the Panel have authority to hear such an issue if presented to the Hearing Panel. Challenges to USCSS’s resolution procedures must be made in a forum different from a Section 10 proceeding. The Hearing Panel notes that in *Callaghan v. US Ctr. for SafeSport*, 2018 WL 4107951 (M.D. Fla. Aug. 29, 2018), the plaintiff raised claims that the USCSS was “subverting his due process rights to notice and a fair hearing” and breached its own rules and procedures. *Id.* at 2. The court dismissed the complaint, concluding that such challenges must be raised in arbitration as provided for by USCSS’s SafeSport Code. *Id.* at 5-6.

47. Further, USEF argues that as a result of the structure created by the Safe Sport Act, jurisdiction over Complainants' claims do not lie with the Hearing Panel, nor can the Hearing Panel grant the relief requested.

48. Complainants in response to the Motion to Dismiss do not dispute that Congress created a system where NGBs are presumptively statutorily bound to afford reciprocity to and enforce the rulings of USCSS. But Complainants contend that Congress also imposed on NGBs an independent requirement, under Section 36 U.S.C. § 220522(a)(8) of Ted Stevens Act, that each NGB afford an individual a hearing prior to banning, suspending, limiting or restricting the individual's opportunity to participate in sport.

49. Complainants assert that this requirement is unconditional and independent of USEF's other obligations under the Safe Sport Act, the Code and the USOPC Bylaws. It is Complainants' position that USEF must provide a "pre-deprivation" hearing before it enforces USCSS's sanctions.

50. Complainants further contend that the procedures implemented by USCSS do not comply with administrative standards of due process and the right to be heard, "that Congress expected [USCSS] to adopt a hearing process substantially identical to that currently afforded by USEF, all other NGBs, and the US Anti-Doping Agency." Complainants state that it "is by design, and not by coincidence, that these agencies (to the exclusion of SafeSport) have a substantially identical process."

51. Complainants assert that they have set forth a valid claim under Section 220527 of the Ted Stevens Act and Section 10 of the USOPC Bylaws and that this Hearing Panel has jurisdiction to hear the matter.

52. Further, Complainants state that if the Hearing Panel finds that it has no jurisdiction or that the Complaint fails to state a claim upon which relief can be granted, then they are left without recourse to challenge an NGB’s implementation of a sanction where no pre-deprivation hearing was ever provided by either USCSS or the NGB.

C. Ruling

53. Section 10.12 of the USOPC Bylaws provide in part that a Section 10 Complaint may be dismissed if the “jurisdiction of the complaint is improper . . . there is some other procedural or jurisdictional defect that would preclude a hearing on the merits, or that the complaint fails to state a claim upon which relief can be granted.”

54. Congress has mandated that USCSS has “jurisdiction” over NGBs “with regard to safeguarding amateur athletes against abuse, including emotional, physical, and sexual abuse, in sports.” 36 U.S.C. § 220541(a)(2).

55. The Safe Sport Act charges USCSS with:

develop[ing] training, oversight practices, policies, and procedures to prevent the abuse, including emotional, physical, and sexual abuse, of amateur athletes participating in amateur athletic activities through national governing bodies and paralympic sports organizations,

36 U.S.C. 220541(a)(3).

56. Further, the Safe Sport Act provides that USCSS shall “establish mechanisms that allow for the reporting, investigation, and resolution . . . of alleged sexual abuse,” 36 U.S.C. § 220541(a)(4). In establishing those mechanisms:

[USCSS] may, in its discretion . . . develop policies and procedures to resolve allegations of sexual abuse within its jurisdiction to determine the opportunity of any amateur athlete, coach, trainer, manager, administrator, or official, who is the subject of such an allegation, to participate in amateur athletic competition.

36 U.S.C. § 220541(c)(1).

57. It is clear from the Safe Sport Act that USCSS has exclusive jurisdiction over Olympic and Paralympic safe sport matters, including those matters relating to Complainants.

58. It is also clear from the Safe Sport Act that NGBs, including USEF as the NGB for the sport of equestrian, are bound to abide by temporary measures and final decisions made by USCSS and to enforce sanctions imposed by USCSS.

59. When a disciplinary (safe sport) matter falls under the jurisdiction of USCSS, the matter is subject to USCSS's procedures. When a disciplinary matter falls under the jurisdiction of an NGB and not USCSS, it is subject to the NGB's procedures, which are governed in part by Section 220522(a)(8) of the Ted Stevens Act.

60. Moreover, an NGB's obligation to comply with USCSS's policies and procedures, including enforcing USCSS's temporary measures and decisions, are set forth in the USOPC's Bylaws. As provided in Section 8.7.1(c)(i) and (ii), an NGB must "comply with all applicable athlete safety and child protection laws" and "comply with the policies and requirements of the USCSS."

61. Further, the USOPC recognizes USCSS's jurisdiction over safe sport matters relating to an individual's opportunity to participate. Section 9.12 of the USOPC Bylaws states that "[a] decision concerning a SafeSport rule violation adjudicated by USCSS is not reviewable through, or the subject of, these [Section 9] complaint procedures." Thus, it is clear that an NGB, by abiding by USCSS's temporary measures and final decisions, and enforcing resulting sanctions imposed by USCSS, cannot be found in violation of the otherwise applicable Section 9 obligation to provide a hearing before denying the opportunity to participate.

62. For the same reason, an NGB's enforcement of USCSS's decisions cannot be the basis for a claim under Section 10 that the NGB failed to hold a pre-deprivation hearing.

63. Additionally, the SafeSport Code expressly states that NGBs "are responsible for enforcing sanctions and Temporary Measures imposed by the [USCSS]" (Section VII of the SafeSport Code) and further reiterates that "[t]he sanction imposed by the [USCSS] shall be enforced by . . . NGBs" (Section XI.P of the SafeSport Code).

64. Further, from a practical standpoint, accepting Complainants' position that an NGB must hold a hearing, even though the matter is before USCSS, could result in contrary and conflicting determinations as to safe sport violations, including resulting sanctions. It would further cloud and put into question USCSS's authority to handle safe sport matters.

65. As a result of the structure created by the Safe Sport Act, jurisdiction over Complainants' claims do not lie with the Hearing Panel, nor can the Hearing Panel grant the relief requested. Although Complainants attempt to frame their claims as a matter of NGB non-compliance, they are in effect attempting to challenge the procedures employed by USCSS, which the Hearing Panel has no authority to review.

VII. ORDER

66. USEF's Motion to Dismiss is granted

67. The Section 10 Complaint is hereby dismissed.

Dated this 23rd day of October, 2020.

A handwritten signature in black ink, appearing to be 'D. Haggerty', written in a cursive style.

for

David Haggerty, Chair

Pat Kelleher, Panel member

Natalie McCarthy, Panel member