

UNITED STATES OLYMPIC COMMITTEE

HOPE SOLO,	)	
	)	
Complainant,	)	
	)	
v.	)	DECISION
	)	ON
US SOCCER FEDERATION,	)	MOTION TO DISMISS
	)	
Respondent.	)	July 24, 2018

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I. THE PARTIES

1. Hope Solo (“Solo” or “Complainant”) is a member of the United States Soccer Federation, Inc. (“USSF” or “Respondent”).

2. USSF is the National Governing Body (“NGB”) for the sport of soccer 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 §§ 220501-220531) (the “Act”) and Section 8 of the USOC Bylaws.

3. Solo and USSF are individually referred to as a “Party” and collectively referred to as the “Parties.”

II. COMMENCEMENT OF PROCEEDING

4. Solo submitted a Complaint dated January 29, 2018, and received on January 31, 2018, against USSF pursuant to Section 220527 of the Act and Section 10 of the USOC Bylaws.

5. Section 220527 of the Act and Section 10 of the USOC Bylaws collectively provide that a member of an NGB may seek to compel the NGB to comply

with Sections 220522 – 220525 of the Act and Section 8 of the USOC Bylaws. Those Sections set forth the obligations and requirements of an NGB.

### III. HEARING PANEL COMPOSITION

6. Larry Probst, Chair of the USOC Board of Directors, notified the Parties on February 19, 2018, pursuant to Section 10.6 of the USOC Bylaws, of the appointment of Hearing Panel members.

7. The following Panel members were appointed:

- Jim Benson, Hearing Panel Chair and USOC Board Member;
- Alex Natt, Chief Legal Officer of US Ski and Snowboard and Member of the USOC National Governing Body Council; and
- Nicholas LaCava, Rowing Athlete and Member of the USOC Athletes' Advisory Council.

8. In an Order dated March 12, 2018, the Hearing Panel gave the Parties until March 16, 2018, to object to their appointment.

9. On April 23, 2018, Solo raised a question regarding a possible conflict of interest concerning Nicholas LaCava. LaCava responded that he did not believe that he had a conflict, that he did not hold any preconceived position regarding the proceeding, that he would be fair and impartial and that he did not have any bias in favor of or against any party to the proceeding. However, he also indicated that he did not want there to be any possible perception of partiality, and so, he withdrew as a member of the Hearing Panel.

10. By letter of May 4, 2018, Susanne Lyons, USOC Acting CEO, notified the Parties that she was appointing Mark Ladwig to replace Mr. LaCava.

11. Neither Party objected to the appointment of Mr. Ladwig.

12. Accordingly, the Hearing Panel was appointed and seated as follows:

- Jim Benson, Hearing Panel Chair and USOC Board Member;
- Alex Natt, Chief Legal Officer of US Ski and Snowboard and Member of the USOC National Governing Body Council; and
- Mark Ladwig, Figure Skating Athlete and Member of the USOC Athletes' Advisory Council.

#### IV. LEGAL COUNSEL

13. Solo is represented by Michael Calhoon, Andrew M. Behrman, Lee D. Charles and Brian Kerr of the firm Baker Botts. USSF is represented by Russell F. Sauer, Jr. and Sarah F. Mitchell of Latham & Watkins.

#### V. VERIFICATION OF COMPLAINT

14. In its order of March 12, 2018, the Hearing Panel noted that Solo had not signed the Complaint, as is required by Section 10.2 of the USOC Bylaws. Solo was given until March 23, 2018, to sign and submit a declaration to the Hearing Panel confirming that she had reviewed the Complaint and was filing it as her own.

15. On March 16, 2018, Solo submitted a signed declaration as requested.

#### VI. MOTION TO DISMISS

16. On March 1, 2018, USSF filed a Motion to Dismiss the Complaint. The Motion was based on two grounds.

17. The first ground was that the Complaint is procedurally defective because Solo did not exhaust her administrative remedies as is required by Section 220527(b)(1) of the Act and Section 10.11 of the USOC Bylaws.<sup>1</sup>

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<sup>1</sup> USSF also asserted that that the Complaint was defective since Solo had not signed the Complaint as required by Section 10.2 of the USOC Bylaws. However, as Solo submitted a declaration as requested by the Hearing Panel verifying the Complaint, this issue is now moot.

18. The second ground was that the Complaint did not state a claim as required by Section 10.2 of the USOC Bylaws, which provides that a Section 10 complaint “shall ... set forth ... factual allegations” and “shall contain ... supporting evidence or documentation forming the basis of the complaint.”

19. The Parties requested that the Hearing Panel bifurcate the Motion to Dismiss, with the Hearing Panel first considering USSF’s assertion that Solo has not exhausted her administrative remedies. The Parties agreed that USSF’s assertion that the Complaint did not state a claim for relief would only be considered, if necessary, after the Hearing Panel’s ruling on the exhaustion issue.

20. The Hearing Panel, in its March 12, 2018, Order, ordered that the Motion to Dismiss be bifurcated. Thus, the only issue before the Hearing Panel is whether Solo exhausted her administrative remedies or was exempt from doing so.

21. In accordance with the briefing schedule set by the Hearing Panel, Solo filed an Opposition to the Motion to Dismiss on April 2, 2018. USSF filed its Reply to Solo’s Opposition on April 23, 2018.

22. The Hearing Panel held oral argument on the Motion to Dismiss on July 9, 2018. Argument was held via conference call. Russell F. Sauer, Jr. and Sarah F. Mitchell appeared and argued the Motion on behalf of USSF. Michael Calhoon and Brian Kerr appeared and argued the Motion on behalf of Solo. In addition to the Hearing Panel, present on the call were Gary L. Johansen, USOC Associate General Counsel and legal counsel to the Hearing Panel, Lucy Denley, USOC Senior Paralegal and liaison to the Hearing Panel, Silke Hynes, USOC Legal Intern, Sara Pflipsen, USOC Associate Ombudsperson and Emily Azevedo, USOC Ombudsperson Legal Intern.

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

VII. RULING

24. It is the determination of the Hearing Panel that USSF's Motion to Dismiss is granted. In making this determination, the Hearing Panel finds that Solo failed to exhaust her administrative remedies with USSF and failed to prove through clear and convincing evidence that exhaustion of those remedies would cause unnecessary delay.

25. All members of the Hearing Panel reviewed and approved this written decision and agreed with the finding.

VIII. ANALYSIS

26. 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 USOC 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."

27. In its Motion to Dismiss, USSF states that Solo never pursued her alleged claims through USSF's grievance process and that she "admits" to this.

28. USSF states that it has a robust and detailed grievance process, set forth in Section 703 of its Bylaws, for addressing claims filed by members alleging that it is not

in compliance with its obligations as an NGB. This process includes timelines for responding to the grievance and hearing the Complaint. Under the USSF process, grievances are administered by the American Arbitration Association (AAA) and are heard and decided by arbitrators certified by the AAA or Court of Arbitration for Sport (CAS). Section 703 also provides that no individual involved in the grievance or having a direct interest in the outcome of the grievance, whether personally or by virtue of organizational affiliation, may serve as an arbitrator in such grievance.

29. USSF points out that “exhaustion of an NGB’s internal grievance process is not optional, it is required” by both Section 220527(b) of the Act and Section 10.11 of the USOC Bylaws.

30. Additionally, USSF asserts that Solo has not identified, nor are there any, grounds for asserting that exhausting her administrative remedies would result in unnecessary delay.

31. Accordingly, USSF contends that its Motion to Dismiss should be granted.

32. Solo responds that USSF’s exhaustion defense fails on three separate grounds. First, Solo states that the Act requires exhaustion of remedies “within” the relevant NGB and here USSF has delegated responsibility to an outside organization, the AAA. Solo’s argument is that when an NGB “delegates all control and responsibility for the resolution of a grievance to another outside body” there is no proper remedy available to the complainant and therefore no need to exhaust it.

33. Second, Solo contends that in accordance with Section 8.8.1 of the USOC Bylaws, grievance panels must have at least 20 percent athlete representation. Solo states that since USSF’s hearing panels are composed entirely of arbitrators, the 20 percent athlete requirement is not met. Solo contends that as USSF’s grievance process violates

the athlete representation requirement, it is invalid. Solo argues that the Act only requires exhausting one's administrative remedies if there is a valid grievance process available. Solo contends that since that is not the case here, she may proceed directly to having her grievance heard via the USOC Section 10 complaint process, without exhausting her administrative remedies.

34. Third, Solo contends that she should be excused from exhausting her administrative remedies because following USSF's internal grievance process would "force her to endure duplicative and unnecessary proceedings, over an extended period of time" resulting in unnecessary delay. This argument is based on Solo's assertion that "compelling her to go through the entire USSF procedure would ultimately end up requiring her to submit to duplicative arbitration procedures." Solo explains that initially she would have her case heard by an AAA or CAS arbitrator pursuant to USSF's internal grievance process. After exhausting her administrative remedies, she then could have her case heard by a USOC Section 10 hearing panel pursuant to the USOC's Section 10 procedures. Finally, if aggrieved by the USOC's determination, she could obtain review by the AAA pursuant to Section 220529 of the Act.

35. USSF responds to Solo's arguments in turn. First, USSF states that "there is nothing in the Act or USOC Bylaws which prohibits a dispute between an NGB and a member from being directed to, and decided by, a neutral third party as part of an NGB's internal dispute resolution process." USSF states that its process of having the matter heard and decided a AAA or CAS arbitrator complies with the requirement, as well as the spirit, of the Act and USOC Bylaws. Furthermore, USSF states that just because an arbitrator is utilized to hear the grievance, that does not convert the process into one that is not "within" USSF. Additionally, USSF maintains that use of a AAA or CAS

arbitrator ensures neutrality and impartiality in those situations where a grievance is made against USSF.

36. Second, USSF responds that Section 8.8.1 only requires 20 percent athlete representation on hearing panels appointed by an NGB, not when the matter is heard by an AAA or CAS arbitrator. Again, USSF contends that having the matter heard by an independent person, not associated with USSF as an athlete or associated with USSF in any other capacity, ensures a fair and impartial process as required by Section 220522(a)(13) of the Act.

37. Third, USSF responds that a “process designed to provide parties due process of law, the opportunity to develop and present evidence, and appellate rights will always take some time”. The fact that USSF’s grievance process may result in a complaint being submitted to an arbitration conducted by the AAA twice, first pursuant to USSF’s grievance process and then pursuant to the Section 10 appeal process set out in the Act, is not a reason to create an exception to the statutory exhaustion requirement.

38. In analyzing the positions put forth by the Parties, the Hearing Panel focused on three primary points.

39. First, it is undisputed that Solo did not pursue her complaint through USSF’s grievance procedures, nor attempted to do so and the Hearing Panel emphasizes the importance of this requirement.

40. There is good reason that the Act and USOC Bylaws require that a complainant exhaust his or her administrative remedies in Section 10 proceedings. The exhaustion requirement (1) “grants an NGB proper notice of the relevant allegations”, (2) provides “an important forum to have the allegations fleshed out and heard”, and (3) “affords an NGB the opportunity to properly review its actions and resolve or address



those actions as needed”. *Glefke v. U.S. Equestrian Federation*, Decision on Motion to Dismiss, para.43 (April 1, 2017) (Jim Benson, Rich Bender and Emily Azevedo, Pnl. Mbrs.); *accord Leach v. U.S.A. Track & Field*, Decision on Motion to Dismiss, para. 47-48 (Sept 20, 2016) (Bob Wood, Darrin Steele and Kerry McCoy, Pnl. Mbrs.); *Brown v. U.S. Tennis Assoc.*, Decision on Motion to Dismiss, para. 34 (April 18, 2013) (Robert Bach, Jim Tooley and Jessica Galli, Pnl. Mbrs.); *Farry v. U.S. Rowing Assn.*, Decision, page 18 (June 29, 2007) (James McCarthy, Ron Radigonda, Virginia Jasontek, Robert Latham and Courtney Johnson, Pnl. Mbrs.). Further, it may minimize the necessity for intervention by the USOC. *Farry* at page 18.

41. Consistently, hearing panels have dismissed cases where complainants have failed to exhaust their administrative remedies, ordering that the exhaustion requirement must be met. *Salisbury v. U.S. Bowling Congress*, Decision on Motion to Dismiss (June 12, 2018) (Bill Marolt, Keith Bryant and Han Xiao, Pnl. Mbrs.); *Glefke v. U.S. Equestrian Federation*, Decision on Motion to Dismiss (April 1, 2017) (Jim Benson, Rich Bender and Emily Azevedo, Pnl. Mbrs.); *Lee v. U.S. Speedskating*, Decision on Motion to Dismiss (Sept. 1, 2016) (Anita DeFrantz, Jim Leahy and Brian Olsen, Pnl. Mbrs.); *Leach v. U.S.A. Track & Field*, Decision on Motion to Dismiss (Sept 20, 2016) (Bob Wood, Darrin Steele and Kerry McCoy, Pnl. Mbrs.); *Brown v. U.S. Tennis Assoc.*, Decision on Motion to Dismiss (April 18, 2013) (Robert Bach, Jim Tooley and Jessica Galli, Pnl. Mbrs.); *Farry v. U.S. Rowing Assn.*, Decision (June 29, 2007) (James McCarthy, Ron Radigonda, Virginia Jasontek, Robert Latham and Courtney Johnson, Pnl. Mbrs.) (*Fogarty v. U.S.A. Badminton*, Decision (Oct 1, 2004) (James McCarthy, Bret Bernard, Tom Osborne, Reyne Quackenbush and Lisa Voight, Pnl. Mbrs.), *Gagliano v. U.S. Speedskating*, Decision (Dec. 11, 2003) (James McCarthy, Chuck Milam, Robert

Mitchell, Bonny Warner and Nancy Wightman, Pnl. Mbrs.); *Smith v. USA National Karate-Do Federation*, Decision (Nov. 10, 2003) (James McCarthy, Chuck Milam, Robert Mitchell, Bonny Warner and Nancy Wightman, Pnl. Mbrs.); *Torres v. U.S. Taekwondo Union*, Decision (Jan.26, 2001) (Marty Mankamyer, Brian Derwin, Brig. Gen. James R. Joy, Peter Westbrook and Nancy Wightman, Pnl. Mbrs.); *Yang v. U.S. Taekwondo Union*, Decision on Motion to Dismiss of Respondents (Dec. 3, 2001) (Marty Mankamyer, Courtney Stacey Johnson, Brig. Gen. James R. Joy and James McCarthy, Pnl. Mbrs.); *Sternberg v. U.S.A. National Karate-Do Federation*, Decision (Nov. 30, 2000) (Sandra Baldwin, Brian Derwin, Brig. Gen. James R. Joy, Herb Perez and Nancy Wightman, Pnl. Mbrs.).

42. Second, the Hearing Panel does not believe that USSF's internal grievance process, which provides an avenue for the AAA, an independent body, to administer the grievance and to have the complaints heard by AAA and CAS arbitrators, is deficient as Solo contends. In reviewing USSF's internal grievance process, the Hearing Panel finds that it is fair and impartial, time driven with deadlines that must be met and not overly complicated. Although Solo voiced concerns with USSF's grievance process, those concerns were focused on excusing her from exhausting her administrative remedies. She made no claim that USSF's grievance process was unfair, biased or prejudiced against her. Nor did she claim that the process was bureaucratic or fraught with administrative pitfalls.

43. Further, the Hearing Panel recognizes the important role that the arbitration process and arbitrators play in Olympic/Paralympic sport disputes in the

United States.<sup>2</sup> USSF should not be faulted for utilizing the AAA to administer, or having AAA and CAS arbitrators hear and decide, claims against it. The Hearing Panel recognizes the concerted and purposeful effort USSF made to utilize the AAA to administer claims of noncompliance and to have AAA and CAS arbitrators hear and render a ruling on such claims. This was done to ensure a fair and impartial process.

44. The Hearing Panel is confident that the internal grievance process set out in Section 703 of USSF's Bylaws, which relies on the AAA to administer the grievance, and AAA or CAS arbitrators to hear and decide the grievance, will provide Solo with a prompt and equitable hearing on the merits of her claims.

45. Third, the Hearing Panel agrees with USSF that Solo did not meet her burden to show by "clear and convincing evidence" that USSF's process would cause unnecessary delay. In fact, USSF points out that if Solo had followed USSF's process, the complaint would have already been heard. The unnecessary delay exception should only be granted in rare cases where a substantial level of urgency is raised such that the passage of time would harm the complainant. Solo has not identified any urgency nor any harm from the passage of time to hear the complaint.

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<sup>2</sup> Numerous provisions in the Act, USOC Bylaws, the IOC Olympic Charter, the IPC Paralympic Handbook, the World Anti-Doping Code and the SafeSport Code allow for matters to be heard and decided by arbitrators. For example, participation cases brought by athletes, coaches, trainers, managers, administrators and officials under Section 9 of the USOC Bylaws are administered by the AAA and heard by AAA arbitrators. Appeals of NGB compliance and challenge cases initially heard by USOC hearing panels are administered by the AAA and heard by AAA arbitrators pursuant to Section 220529 of the Act. Olympic and Paralympic matters that arise during or in connection with the Olympic and Paralympic Games are administered by CAS and heard by CAS arbitrators. Anti-doping cases brought by the US Anti-Doping Agency (USADA) are administered by the AAA and heard by AAA/CAS arbitrators. SafeSport cases brought by the US Center for SafeSport are administered by JAMS and heard by JAMS arbitrators.

46. Additionally, Solo's premise that USSF's process necessities duplicative proceedings before the AAA, which would be a waste of time and delay, relies on the misperceived notion that Solo would be dissatisfied with any ruling rendered by the arbitration panel. There is no evidence that she would receive an unfavorable decision. Further, all Section 10 complaints provide for multiple hearings. First, there is the internal NGB hearing, then a Section 10 hearing and finally an appeal to the AAA. The Hearing Panel does not agree with Solo that the AAA's involvement would delay the grievance process.

47. The Panel finds that Solo did not exhaust her administrative remedies, that she has no justifiable reason for not exhausting them and that requiring her to exhaust them will not result in an unnecessary delay.

48. Accordingly, USSF's Motion to Dismiss is granted.

#### IX. COSTS AND ATTORNEY FEES

49. USSF, as part of its Motion to Dismiss, requests that the Hearing Panel award it costs and attorney fees for having to respond to Solo's Complaint. In justifying this request, USSF states that "Solo's arguments that she is not required to exhaust her remedies with USSF are 'frivolous' and 'spurious' at best".

50. USOC Hearing Panels in previous Section 10 cases have found that they have the authority to make an award of costs and attorney fees in appropriate circumstances. *Glefke* at para. 27 (although not awarding costs and attorney fees, confirming that USOC hearing panels have the inherent authority to do so where the actions of a party are "so egregious as to constitute bad faith"), *Fogarty v. USA Badminton*, Award (July 14, 2008) (finding that it had the authority to award costs and attorney fees and making such an award in the amount of \$10,000 where the complaint

was brought in bad faith and supported by arguments that were “frivolous or illogical”), and *Farry* at pages 20-21 (although not awarding costs and attorney fees, indicating that USOC hearing panel would do so where such an assessment is justified, such as when the complaint process is used for purpose of harassment).

51. Although the Hearing Panel confirms that it has the authority to award costs and attorney fees, it declines to do so in this case, finding that Solo’s actions do not warrant such an award.

52. Therefore, USSF’s request for costs and attorney fees is denied.

X. ORDER

53. USSF’s Motion to Dismiss is granted for Solo’s failure to exhaust her administrative remedies as required by Section 220527(b) of the Act and Section 10.11 of the USOC Bylaws.

54. USSF’s request for costs and attorney fees is denied, as such fees are not warranted in this case.

Dated this 24th day of July 2018.



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Jim Benson, Chair

Alex Natt, Panel Member  
Mark Ladwig, Panel Member