

UNITED STATES OLYMPIC & PARALYMPIC COMMITTEE

CHESTER WEBER,)	
)	
Complainant,)	
)	DECISION
v.)	ON
)	MOTION TO DISMISS
UNITED STATES EQUESTRIAN)	
FEDERATION,)	December 29, 2020
)	
Respondent.)	

I. PARTIES

1. Chester Weber (“Weber” or “Complainant”) is a member of 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 Section 220521 of the Ted Stevens Olympic and Amateur Sports Act (the “Act”) and Section 8 of the USOPC Bylaws.¹

II. COMMENCEMENT OF PROCEEDING

3. On August 7, 2020, Weber filed a Complaint with the USOPC against USEF pursuant to Section 220527 of the Act and Section 10 of the USOPC Bylaws.

4. 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 8.4

¹ References to the Act refer to the Act as amended by Public Law 116-189 on October 30, 2020. References to the USOPC Bylaws refer to the newly adopted Bylaws dated October 8, 2020.

of the USOPC Bylaws. Those provisions set forth the obligations and requirements of an NGB.

5. 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: Vivek Murthy, Hearing Panel Chair and USOPC Board member; Marc Norman, Chief Executive Officer of USA Climbing and member of the National Governing Bodies Council; and Adam Watson, Fencing athlete and member of the Athletes' Advisory Council ("AAC").²

III. COMPLAINT

6. The underlying controversy that gives rise to the Complaint involves USEF's alleged demotion of Weber as Chair of USEF's Driving Sport Committee and USEF's ultimate removal of Weber from the Driving Sport Committee.

7. Based on (i) the circumstances surrounding Weber's alleged demotion as Chair and ultimate removal from Driving Sport Committee and (ii) the subsequent USEF hearings that followed, Weber contends that USEF:

- a. prevents member disputes from being fairly heard;
- b. acts beyond the scope of the U.S. Center for SafeSport Code (the "SafeSport Code");
- c. acts beyond the scope of its own rules, which are indecipherable; and
- d. does not possess a functioning independent judicial body.

² Two AAC members were appointed prior to the appointment of Adam Watson. The first appointment was objected to by USEF and the succeeding appointment was objected to by Weber. Each appointee responded. Each indicated that they felt the objection had no merit, that if they remained on the Hearing Panel, they would be fair and impartial and that they did not have any bias in favor of or against any party in the proceeding. However, both indicated that they did not want there to be any question as to the Hearing Panel's neutrality, and so, each withdrew as a member of the Hearing Panel.

8. Consequently, Weber alleges in his Complaint that USEF is not in compliance with the following NGB requirements:

- a. Section 220522(a)(13) of the Act and 8.4.1(e)(iv) of USOPC Bylaws – USEF fails to provide procedures for the prompt and equitable resolution of grievances of its members;
- b. 8.4.1(c)(ii) of USOPC Bylaws – USEF fails to comply with the policies and requirements of the U.S. Center for SafeSport;
- c. 8.4.1(a)(iv) of USOPC Bylaws – USEF fails to adopt and maintain appropriate good governance practices;
- d. 8.4.1(a)(vii) of USOPC Bylaws – USEF fails to adopt and enforce ethics policies and procedures; and
- e. 8.4.1(a)(i) of USOPC Bylaws – USEF fails to fulfill its responsibilities as an NGB.

9. Weber requests the following relief in his Complaint:

- a. USEF’s status as NGB be revoked;
- b. that a new NGB be recognized;
- c. that USEF pay all costs related to bringing this action;
- d. that USEF be required to make a significant contribution to legal fees; and
- e. any other further relief deemed just and equitable.

10. Alternatively, Weber requests:

- a. USEF be placed on probation;
- b. that USEF pay all costs related to bringing this action;
- c. that USEF be required to make a significant contribution to legal fees; and
- d. any other further relief deemed just and equitable.

IV. MOTION TO DISMISS

11. On September 8, 2020, USEF filed a Motion to Dismiss the Complaint pursuant to Section 10.12 of the USOPC Bylaws.

12. On September 23, 2020, Weber filed a Response to the Motion to Dismiss.

13. On October 2, 2020, USEF filed a Reply in Support of the Motion to Dismiss.

14. The Parties were advised by e-mail on September 21, 2020, of the date for oral argument on the Motion to Dismiss.

15. However, because of the objections to two of the Hearing Panel appointments, their subsequent withdrawal and the appointment of a third AAC Hearing Panel member, the date for oral argument on the Motion to Dismiss had to be rescheduled.

16. A Scheduling Order was issued on November 30, 2020, setting the date for oral argument as December 9, 2020.

17. The Hearing Panel held oral argument on the Motion to Dismiss by videoconference on December 9, 2020.

18. Counsel for the Parties presented oral argument on the Motion to Dismiss and responded to numerous questions related to the Motion posed by the Hearing Panel. In attendance for USEF were Steve Smith and Suzanne Crespo of Bryan Cave Leighton Paisner, LLP. Also, in attendance for USEF was Sonja Keating, USEF Senior Vice President and General Counsel. In attendance for Weber were Howard L. Jacobs and Katy Freeman of the Law Offices of Howard L. Jacobs and Lisa Lazarus of Morgan Sports Law.

19. Additionally, Gary L. Johansen, USOPC Advisory Counsel and counsel to the Hearing Panel, Sara Pflipsen, USOPC Senior Counsel and counsel to the Hearing Panel, and Lucy Denley, USOPC Manager of Dispute Resolution and liaison to the Hearing Panel, were present during oral argument on the Motion to Dismiss.

20. In its consideration of the Motion to Dismiss, the Hearing Panel reviewed the Complaint and all briefs 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

21. It is the determination of the Hearing Panel that USEF's Motion to Dismiss is denied.

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

VI. ANALYSIS

A. Background

23. In order to understand the arguments presented by the Parties relating to USEF's Motion to Dismiss, it is helpful to recite some of the background, as set out in the Complaint and the various briefs filed in support of and in opposition to the Motion to Dismiss, pertaining to (i) Weber's alleged demotion as Chair of USEF's Driving Sport Committee and his ultimate removal from the Committee by USEF and (ii) Weber's protests and complaints filed with USEF as a result of his alleged demotion and removal.

24. On September 11, 2019, Weber attended the FEI World Pair Driving Championships in Drebkau, Germany, at which he served as Chef d'Equipe for the U.S. team. That evening he was involved in an altercation with another member of the Driving Sport Committee, in which Weber indicates he was injured.

25. Soon after the altercation, Weber notified both USEF and the Fédération Equestre Internationale ("FEI") of the incident.

26. In September of 2019, the wife of the person involved in the altercation with Weber filed a complaint against Weber with the U.S. Center for SafeSport (“USCSS”). Weber contends that the complaint is unfounded.

27. In October of 2019, USCSS took jurisdiction over the SafeSport complaint and issued a “No Contact Directive” restricting interactions between (i) Weber and (ii) the other person involved in the September 11 altercation and his wife. Weber states that upon clarification by USCSS, this “Directive” did not preclude him from attending Driving Sport Committee meetings and having communications during the meetings with the other person involved in the altercation.

28. On January 9, 2020, USEF allegedly stripped Weber of his position as Chair of the Driving Sport Committee. On January 22, 2020, USEF removed Weber from the Committee.

29. On January 17, 2020, prior to Weber’s removal from the Committee, Weber filed a Protest with USEF raising issues with regard to USEF’s actions in demoting him from his position as Chair. On January 29, 2020, Weber expanded his Protest to encompass his removal from the Committee. USEF filed a motion to dismiss the Protest. On March 4, 2020, the USEF hearing panel assigned to hear the Protest dismissed it on the ground that Weber had cited no rule violation that would provide a basis for providing the relief requested.

30. On March 18, 2020, Weber filed a Request for Review and a Request for Procedural Review, both related to the March 4 dismissal of his January 17 Protest. The USEF hearing panel that heard Weber’s January 17 Protest also heard his Request for Review and Request for Procedural Review. The hearing panel determined to consider

Weber's Review Requests. On April 13, 2020, the hearing panel rejected Weber's Review Requests and upheld the hearing panel's March 4 ruling.

31. On March 18, 2020, Weber filed a Second Protest with USEF alleging that he was demoted as Chair of the Driving Sport Committee and removed from the Committee because of the SafeSport complaint filed against him. A hearing was held on the Second Protest on May 20, 2020. On May 28, 2020, the USEF hearing panel ruled against Weber finding that Weber was not demoted and that he was properly removed from the Committee for various reasons, including breach of confidentiality.

32. On April 23, 2020, Weber filed a Third Protest with USEF, in which he raised a number of issues alleging that USEF had failed to comply with its obligations as an NGB stemming from his alleged demotion as Chair of the Driving Sport Committee, his removal from the Committee and USEF's handling of his various Protests and Review Requests. A hearing was held on the Third Protest on June 2, 2020. On June 26, 2020, the USEF hearing panel assigned to hear the Protest issued its decision. The hearing panel ruled that Weber "did not meet his burden of establishing that USEF failed to uphold its obligations as NGB with regard to Mr. Weber." *Weber v. USEF*, Findings and Decision of USEF Hearing Committee, File No. 2020-52, page 24 (June 26, 2020).

B. Discussion

33. Section 220527 of the Act and Section 10 of the USOPC Bylaws 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 by filing a complaint with the USOPC. Sections 220522 – 220525 of the Act and

Section 8.4 of the USOPC Bylaws set forth the obligations and requirements that an NGB must fulfill in order to continue to be recognized as an NGB.

34. However, an NGB may challenge a Section 10 complaint by filing a motion to dismiss, upon certain grounds set out in Section 10.12 of the USOPC Bylaws. A complainant, to withstand a motion to dismiss, must meet certain filing and pleading requirements. Section 10.12 of the USOPC Bylaws provides that:

If the respondent contends that jurisdiction of the complaint is improper, that the complainant has failed to exhaust available remedies, that 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, it may move to dismiss the complaint.³

35. USEF's Motion to Dismiss is based on two of these grounds. Those grounds are (i) the Hearing Panel lacks subject matter jurisdiction over the Complaint and (ii) the Complaint fails to state a claim upon which relief can be granted.

36. Although, USEF relies on both of these grounds, they are based on the same assertion. That the Complaint fails as a matter of law because Weber is merely attempting to appeal the rulings by USEF's hearing panels. USEF asserts that Weber in actuality is attempting to have this Section 10 Hearing Panel retry and reverse Weber's alleged demotion as Chair and removal as a member of the Driving Sport Committee. USEF states that those issues are not within the purview of this Section 10 Complaint. USEF states that the purpose of a Section 10 proceeding is not to appeal an NGB's ruling on an underlying controversy or dispute between a member and his/her NGB. USEF

³ Public Law 116-189 signed into law on October 30, 2020, eliminates the exhaustion of remedies requirement. The USOPC is in the process of amending its Bylaws accordingly.

contends that Weber's use of a Section 10 Complaint for this purpose is improper and as a result the Complaint should be dismissed.

37. Specifically, USEF contends that Section 10 does not provide the Hearing Panel with subject matter jurisdiction to retry Weber's claims that he was wrongly dismissed as Chair of the Driving Sport Committee and removed as a Committee member.

38. Furthermore, USEF states that because the Complaint depends entirely on having the Hearing Panel rehear the demotion and removal issue and reverse the decisions of the USEF hearing panels (by finding in favor of Weber), the Complaint fails to state a claim upon which relief can be granted under Section 10.

39. As USEF asserts in its Motion to Dismiss:

Claimant's lengthy, fact-based Complaint treats this [Section 10] proceeding as a *de novo* hearing on his alleged demotion as Chair of USEF's Driving Sport Committee and his ultimate removal from the Driving Sport Committee. But those factual matters have been litigated to death in prior [USEF] hearings and decided in USEF's favor. A Section 10 proceeding is an improper forum for a full-blown trial to challenge factual findings made by a National Governing Body's ("NGB's") adjudicatory body in an individual member's grievance.

USEF's Motion to Dismiss, page 1 (Sept. 8, 2020).

40. Simply put, USEF's position is that the Complaint and ultimate result sought by Weber have nothing to do with whether USEF violated its obligations under the Act or USOPC Bylaws but instead seeks to have Weber reinstated to his position with the Driving Sport Committee.

41. Weber counters that he is not seeking a retrial of his demotion as Chair or his removal from the Driving Sport Committee. Weber's position is that he is seeking to

compel USEF to comply with its requirements as an NGB under the Act and USOPC Bylaws.

42. Weber asserts that USEF, by arguing that he is seeking another bite at the apple, is conflating the underlying issues of its actions pertaining to him with the actual subject of Weber's Section 10 Complaint, which is to disclose USEF's noncompliance with the Act and USOPC Bylaws and compel compliance.

43. Weber states that he sets out the facts relating to his demotion as Chair and removal from the Committee, and the details of his subsequent hearings, in order to provide necessary background and context to his Complaint. He asserts that he would be unable to explain how USEF has failed to abide by its NGB obligations without including this context.

44. Weber reiterates that he does not seek to appeal the USEF decision that demoted him as Chair or removed him from the Driving Sport Committee. He is not asking the Hearing Panel to order USEF to reinstate him as Chair or to restore him to the Driving Sport Committee, or to order USEF to change any of his circumstances as a USEF member. He seeks only to compel USEF to conduct itself in accordance with its obligations under the Act and USOPC Bylaws.

45. Weber points to his requests for relief as verification of the purpose of his Complaint. The Complaint asks the Hearing Panel to revoke USEF's status as an NGB or place USEF on probation allowing it to correct its deficiencies. It does not request that the Hearing Panel restore Weber to his position on the Driving Sport Committee.

46. It is evident to the Hearing Panel that there is an extensive history between USEF and Weber pertaining to Weber's position as Chair of and membership on the

Driving Sport Committee. However, whether or not Weber was demoted as Chair and dismissed from the Driving Sport Committee is not subject to a Section 10 Complaint. The purpose of a Section 10 Complaint is to determine if an NGB is fulfilling its responsibilities as an NGB as set forth in the Act and the USOPC Bylaws.

47. The issue raised in the Motion to Dismiss is whether the purpose of the Complaint, and the facts alleged, is (i) to reinstate Weber to his position with the Driving Sport Committee or (ii) to substantiate USEF's non-compliance with its requirements as an NGB.

48. True, as USEF asserts, the factual allegations set out in the Complaint pertain entirely to Weber's alleged demotion as Chair and removal from the Driving Sport Committee and to the resulting hearings that followed. Also true, the Complaint seems to focus on Weber's perceived mistreatment of him by USEF. However, that in and of itself does not compel dismissal of the Complaint as USEF contends. One must look at the totality of the Complaint and determine its intent and purpose.

49. The Complaint states up front that its purpose is to show that USEF is not in compliance with its requirements as an NGB. The Complaint alleges specific sections of the Act and USOPC Bylaws that USEF is violating. The request for relief is specific to having USEF's status as an NGB revoked or placing USEF on probation.

50. The issue presented in this Section 10 proceeding is similar to the issue raised and decided in *Kandianis v. US Equestrian Federation*, Decision on Motion to Dismiss, pages 5-7 (Aug. 7, 2019) (Brad Snyder, Chris Ramsey and Allysa Seely Pnl. Mbrs.). In *Kandianis*, USEF alleged that because the underlying dispute and entire set of facts in the complaint surrounded complainants' selection to the 2017 FEI World Driving

Championships, complainants were merely seeking to appeal USEF's selection decision. USEF argued that a Section 10 proceeding is not the avenue to appeal such matters. Accordingly, USEF asserted that the hearing panel did not have subject matter jurisdiction to hear the complaint.

51. The complainants in *Kandianis* responded that while it was true that they filed a grievance related to a selection dispute involving the 2017 FEI World Driving Championships, they were not seeking to appeal that selection decision. They explained that the purpose of their complaint was to compel USEF to provide grievance procedures in selection disputes that were prompt and equitable as required by the Act and USOPC Bylaws.

52. In its decision, the *Kandianis* hearing panel found that the focus of the Complaint surrounded allegations of non-compliance relating to how USEF handles grievances related to selection of athletes.

53. The hearing panel noted that the remedies requested by the complainants only related to whether USEF was in compliance with its NGB requirements. Complainants did not request that they be selected to participate in the 2017 FEI World Driving Championships.

54. The hearing panel stated that a "particular selection issue may be used as an example" of non-compliance as the basis for a Section 10 Complaint. *Kandianis* at page 7.

55. Compare the ruling in *Kandianis* with *Lee v. U.S. Speedskating*, Decision on Motion to Dismiss, pages 10-12 (Sept. 1, 2016) (Anita DeFrantz, Jim Leahy and Brian Olsen Pnl. Mbrs.), where the Section 10 hearing panel dismissed the complaint for failure

to state a claim. The hearing panel found that the complaint did not seek NGB compliance but was an attempt to challenge the underlying proceeding that resulted in a loss of Lee's membership. The remedy Lee sought was to be reinstated as a member of USS. The Lee complaint did not meet the necessary requirements to be heard under Section 10.

56. It is established that a complainant may use an event involving an NGB as evidence that the NGB is non-compliant with its duties as an NGB. *Leach v. USA Track & Field, Inc.*, Decision on Motion to Dismiss, page 9 (Sep. 20, 2016) (Bob Wood, Darrin Steele and Kerry McCoy, Pnl. Mbrs.) ([t]he conduct of an NGB in a disciplinary hearing may be used as evidence the NGB is not in compliance with the Act or [USOPC] Bylaws); *Richards v. USA Dance*, Decision on Motion to Dismiss, page 12 (Apr. 23, 2019) (Kikkan Randall, Christopher Parker and Sarah Gascon, Pnl. Mbrs.) (complainant can use the underlying issue relating to his reprimand as evidence of non-compliance); *Hall v. US Sailing Inc.*, Decision, pages 2-3 (Feb. 20, 2009) (Nina Kemppel, Scott Fortune, Robert Mitchell, Jeanne Picariello and Ron Van Pool, Pnl. Mbrs.) (Section 10 complaint arises from events surrounding US Sailing's selection of an athlete for the 2008 Summer Olympic Games Team). But a Section 10 complaint cannot be used to merely have a membership or team selection dispute reheard and overturned.

57. Additionally, the Hearing Panel wishes to address one other argument put forth by USEF. USEF states that since the Weber matter arose, it has revised its Bylaws relating to its grievance procedures and therefore any deficiencies alleged by Weber have been corrected. That may or may not be the case. The Hearing Panel does not have enough information at this juncture of the proceeding to make that determination. Also,

that is an issue that goes to USEF's compliance or non-compliance and is to be decided at a hearing on the merits if raised by USEF at that time. Further, Weber's Section 10 Complaint goes beyond the single allegation relating to USEF's grievance procedures.

58. Accordingly, USEF's Motion to Dismiss is denied. In making its determination, the Hearing Panel finds that it has subject matter jurisdiction over the Section 10 Complaint and that Weber has stated a claim upon which relief can be granted as he seeks a determination related to USEF's compliance.

59. Finally, the Hearing Panel wishes to remind the Parties of the following. Much of the Complaint, and the various exhibits submitted with the Complaint relate to Weber's position with the Driving Sport Committee and his resulting dispute with USEF. The Hearing Panel wishes to make clear that the hearing on this matter needs to focus on USEF's alleged non-compliance with its requirements as an NGB. That is the issue before the Hearing Panel. The Hearing Panel will have little patience with an attempt by Weber to merely complain about his treatment by USEF or an attempt by USEF to focus on Weber's wrongdoings. Weber must provide concrete evidence relating to specific sections of the Act and USOPC Bylaws as to USEF's failure to meet its obligations as an NGB. The burden will be on Weber to make his case. USEF can make its case that the burden has not been met. The Hearing Panel will not allow the hearing to digress into a retrial of Weber's alleged demotion as Chair and removal from the Driving Sport Committee.

VII. ORDER

60. USEF's Motion to Dismiss is denied.

61. USEF has thirty (30) days to submit an Answer to the Complaint, due by 5pm MST on January 28, 2021.

Dated this 29th day of December, 2020.



for
Vivek Murthy, Chair

Marc Norman, Panel member
Adam Watson, Panel member