

UNITED STATES OLYMPIC COMMITTEE

MICHAEL HOLMES)	
AND TEN UNNAMED INDIVIDUALS)	
)	
Complainant,)	
)	
v.)	DECISION
)	
USA HOCKEY, INC.)	
)	
Respondent.)	October 25, 2000

I. BACKGROUND

The National Governing Body ("NGB") for the Sport of Ice Hockey in the United States is USA Hockey, Inc. ("USAH"). The USAH is recognized by the United States Olympic Committee ("USOC") as the NGB for the Sport of Ice Hockey pursuant to the Ted Stevens Olympic and Amateur Sports Act (36 USC § 220501 *et seq.*), ("ASA").

On August 4, 2000, Michael Holmes and Ten Unnamed Individuals ("Complainant") filed a Complaint against USAH pursuant to Article VIII of the USOC Constitution and Chapter VIII of the USOC Bylaws.¹ Complainant essentially alleged that USAH denied due process to Utah Amateur Hockey Association, Inc. ("UAHA") by requiring that UAHA comply with certain membership directives through coercion, manipulation, intimidation, and extortion.²

¹ Hereinafter any reference to "Article" refers to the USOC Constitution and any reference to "Chapter" refers to the USOC Bylaws.

² UAHA is a member of USAH and is recognized by USAH as its affiliate hockey organization for the State of Utah.

In accordance with Chapter VIII, Section 3, USOC President, William J. Hybl, appointed a Panel of five voting members of the USOC Board of Directors for the purpose of hearing this matter. After appointment, Gene Keluche resigned from the Panel. Subsequently, President Hybl appointed Tom Osborne as Mr. Keluche's replacement. The Panel members who were appointed and who heard this matter are:

Herman Frazier, Chair
USOC Vice President and USOC Board of Directors
Lynn Cannon
USOC Board of Directors, USA Track & Field
Brain Derwin
USOC Board of Directors, USA Weightlifting
Mary McCagg
USOC Board of Directors, AAC Representative - Rowing
Tom Osborne
USOC Board of Directors, National Congress of State Games

On August 24, 2000, pursuant to Chapter VIII, Section 2, USAH filed a Motion to Dismiss. A copy of the Motion was sent to Complainant by USAH by mail. Complainant filed a Rebuttal to the Motion to Dismiss on September 5, 2000. Although Article VIII and Chapter VIII require the Panel to render a decision on the Motion to Dismiss within 30 days after the filing of the Complaint, the parties agreed to an extension of that deadline in order to allow the Panel adequate time to fully review this matter, especially since several of the Panel members were involved in preparing for and traveling to Australia for the 2000 Sydney Olympic Games. As neither party requested oral argument, the Hearing Panel met, via conference calls, on September 18, 2000 and again on October 19, 2000 to consider the Motion to Dismiss.

II. DECISION

In its Motion to Dismiss, USAH states three grounds for dismissal: 1) Complainant brought the Complaint *ultra vires* in that UAHA is not a party to this action; 2) the Complaint was procedurally defective as it does not state the names of the ten unnamed individuals and further fails to set forth the jurisdictional basis for the Complaint; and 3) Complainant failed to exhaust administrative remedies before USAH. In its consideration of this matter, the Hearing Panel reviewed the Complaint filed by Complainant, the Motion to Dismiss filed by USAH, and the Rebuttal to the Motion to Dismiss filed by Complainant. After such review and discussion by teleconference calls, the Hearing Panel, by unanimous decision, determined to grant USAH's Motion to Dismiss for the reason that Complainant has failed to exhaust his administrative remedies or to show why such exhaustion would result in unnecessary delay.

Chapter VIII, Section 1 requires that a complainant may file a complaint with the USOC only after having exhausted all remedies available under the organic documents of the NGB unless it can be shown by clear and convincing evidence that those remedies would result in unnecessary delay. Chapter VIII, Section 1(C) sets forth the requirement that the complaint filed by the complainant must set forth "factual allegations" showing (i) the efforts made by the complainant to exhaust administrative remedies, or (ii) the grounds on which the complainant alleges that exhaustion would result in unnecessary delay.

Complainant alleges that USAH's administrative remedies would result in unnecessary delay, but fails to set forth factual allegations detailing either (i) the efforts

Complainant has made towards exhausting administrative remedies or (ii) the grounds on which unnecessary delay would result.

The Complaint and the Rebuttal to the Motion to Dismiss lack specific details upon which the Hearing Panel can find that Complainant exhausted the administrative remedies available to Complainant under the organic documents of USAH. Further, the Complaint and the Rebuttal to the Motion to dismiss fail to set forth specific details to support Complainant's statement that such administrative remedies would result in unnecessary delay. Accordingly, the Panel finds that the Complainant has not exhausted available administrative remedies and this matter is not ripe for adjudication under Article VIII and Chapter VIII.³

III. AWARD

The Hearing Panel grants USAH's Motion to Dismiss for the reason that Complainant has not exhausted his administrative remedies. Accordingly, the Complaint filed by Complainant is hereby dismissed, without prejudice.


Herman Frazier, Chair

Lynn Cannon, Panel Member
Brain Derwin, Panel Member
Mary McCagg, Panel Member
Tom Osborne, Panel Member

Dated this _____ day of October, 2000.

³ Since the Panel finds that the Complaint is deficient as the Complainant has not exhausted his administrative remedies, there is no need to address USAH's other grounds to dismiss. However, the Panel takes note of the issue raised by USAH, that the Complaint is defective on its face as being *ultra vires*. Complainant brings this Complaint in an attempt to correct wrongs by USAH against UAHA. But, UAHA is not a party to this action nor has it endorsed the Complaint. So, the question raised by USAH, and unanswered by Complainant, is, what legal basis does Complainant have to bring an action on behalf of a non-party, in this case UAHA.