

numbered paragraphs as grounds for non-compliance. Complainants sought as relief that “the USOC should revoke its recognition of U.S.T.U., Inc. as NGB for Taekwondo.”

In accordance with Chapter VIII, Section 3, on October 11, 2001, USOC President, Sandra Baldwin, appointed a Panel of five voting members of the USOC Board of Directors for the purpose of hearing this matter. The Panel members who were appointed and who heard this matter are :

Marty Mankamyer, Chair
USOC Vice President and USOC Board of Directors
Courtney Johnson
USOC Board of Directors, AAC Representative – Water Polo
Stacey Johnson
USOC Board of Directors, U.S. Fencing Association
Brig. Gen. James R. Joy
USOC Board of Directors, U.S. Armed Forces - Marine Corps
James McCarthy
USOC Board of Directors, U.S. Ski and Snowboard Association

On October 8, 2001, pursuant to Chapter VIII, Section 2, Respondents filed a Motion to Dismiss Complaint for Failure to Exhaust Available Remedies (“Motion to Dismiss”). Complainants filed a Response to Respondents Motion to Dismiss Complaint for Failure to Exhaust Administrative Remedies on October 30, 2001. Respondents filed a Reply Brief in Support of Motion to Dismiss Complaint for failure to Exhaust Available Remedies on November 8, 2001. 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, as well as an extension of the deadline to file briefs on the Motion to Dismiss, as Complainants retained counsel after the filing of the complaint. The parties also agreed that the Respondents could file a reply brief in support of their motion to dismiss.

The Hearing Panel met via conference call on November 28, 2001, to hear oral argument on the Motion to Dismiss. Neither the Respondents nor the Complainants requested that oral argument be stenographically recorded, and both sides waived their rights in any such recordation, so the oral argument was not recorded. All Hearing Panel members were present on the call. Counsel for Respondents, Richard Young, Steven Smith, and Eric Bentley, were present on the call and presented argument on behalf of Respondents. Counsel for Complainants, John Collins, was present on the call and presented argument on behalf of Complainants. Jeff Benz, USOC General Counsel and Managing Director of Legal Affairs, Gary L. Johansen, USOC Associate General Counsel, and Jennifer Gabrius, USOC Staff Attorney, were also present on the call. Since the parties were represented by counsel, they were given the opportunity to listen to the oral arguments, but not to participate in them.

On November 28, 2001, after conclusion of the oral argument, the Hearing Panel convened by conference call to deliberate and consider the Motion to Dismiss. All members of the Hearing Panel reviewed and approved this written Decision.

II. DECISION

The applicable standard for review for a motion to dismiss is set forth in Chapter VIII, Section 3(B), which states that,

With respect to a challenge to a complaint on the grounds that the complainant has failed to exhaust administrative remedies, the panel shall dismiss the complaint (without prejudice to renew the complaint at a future date) if it determines that the complainant has failed to exhaust all available remedies under the organic documents of the Olympic or Pan American Sport Organizations member, unless it is shown by clear and convincing evidence that those remedies would have resulted in unnecessary delay.

After considering all of the pleadings and briefs served by the parties in this matter, all admissible evidence presented by the parties, all arguments raised at the oral argument on the Motion to Dismiss, and the applicable standard of review, the Hearing Panel, by unanimous decision, hereby GRANTS the Respondents' Motion to Dismiss (without prejudice to renew the complaint at a future date) for the reasons that the Complainants 1) failed to demonstrate that Complainants exhausted all available remedies under USTU's organic documents; and 2) failed to demonstrate by clear and convincing evidence that those remedies would have resulted in unnecessary delay.²



Marty Markamyer, Chair

Courtney Johnson, Panel Member
Stacey Johnson, Panel Member
Brig. Gen. James R. Joy, Panel Member
James McCarthy, Panel Member

Dated this 3rd day of December, 2001.

² A complaint under Article VIII may also be dismissed for other procedural or jurisdictional defects. Chapter VIII, Section 3(A). This argument was raised by the Respondents in their moving papers as an additional basis for dismissal. While the Panel was concerned that many, if not most, of Complainants' allegations, even if accepted as true for purposes of the motion, may not have been sufficient to constitute a claim under USOC Constitution Article VIII, the Panel's decision was based entirely on the grounds stated above.