

UNITED STATES OLYMPIC COMMITTEE

STEVE WAPLES)	
)	
Petitioner,)	
)	
v.)	D E C I S I O N
)	
USA GYMNASTICS)	
)	
Respondent.)	February 28, 2003

I. BACKGROUND

USA Gymnastics ("USAG") is the National Governing Body ("NGB") for the sport of gymnastics in the United States, recognized by the United States Olympic Committee ("USOC") pursuant to Article IV and Article VI of the USOC Constitution¹ and pursuant to the Ted Stevens Olympic and Amateur Sports Act (36 USC § 220501 *et seq.*), (the "Act").

On about September 12, 2002, Steve Waples ("Waples") filed a Complaint against USAG pursuant to Article VIII, Section 1 and Chapter VIII of the USOC Bylaws,² and Section 220527 of the Act, seeking, among other relief, to be reinstated as a full member of USAG with full coaching rights at all USAG sponsored and sanctioned events. On October 7, 2002, pursuant to Chapter VIII, Section 2, USAG filed a Motion to Dismiss the Complaint. On October 11, 2002, Waples sent a letter to USOC Chief Executive Officer Lloyd D. Ward in opposition to USAG's Motion to Dismiss. Neither party requested oral argument on the Motion to Dismiss. Further, in order to allow the Hearing Panel ample time to consider this

¹ Hereinafter any reference to "Article" refers to the USOC Constitution.
² Hereinafter any reference to "Chapter" refers to the USOC Bylaws.

motion, neither party objected to an extension of the time set forth in Chapter VIII, Section 3, for the Hearing Panel to hear and decide the Motion to Dismiss.

In accordance with Chapter VIII, Section 3, then USOC President Marty Mankamyer appointed a Hearing Panel of five voting members of the USOC Board of Directors, which were approved by the USOC Executive Committee.

The Hearing Panel members appointed for the purposes of hearing the Challenge, as well as to hear any ancillary matters, are:

Jim McCarthy, Chair
Member, USOC Executive Committee
Jenepher Shillingford
USOC Board of Directors, Olympic Sports Organization
Representative
Robert Mitchell
USOC Board of Directors, Olympic Sports Organization
Representative
James R. Joy
USOC Board of Directors, Armed Forces Organization Representative
Cameron Myler
USOC Board of Directors, Athletes' Advisory Committee
Representative

On February 5, 2003, the Hearing Panel met by conference call to consider the Motion to Dismiss. All Hearing Panel members were present on the call. Gary L. Johansen, USOC Deputy General Counsel, and Jennifer Gabrius, USOC Counsel were also present on the call. 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 2(A), which states that a respondent may move to dismiss a complaint on the basis that the jurisdiction of the challenge is improper, or that the complainant has failed to exhaust

available remedies, or that there is some other procedural or jurisdictional defect that would preclude a hearing on the merits.

After considering all of the pleadings and briefs filed by the parties in this matter, and after due deliberation, the Hearing Panel, by unanimous decision, hereby GRANTS the Motion to Dismiss for the reason that there is a procedural and jurisdictional defect in the complaint. The Hearing Panel found that Waples is precluded from bringing this action as he previously executed a release that released USAG from all claims that had accrued or may ever accrue to Waples arising out of the termination of his membership with USAG.³

This matter has long history. In early 1993 three individuals contacted USAG regarding alleged inappropriate behavior by Waples. After an investigation, USAG, in December 1993, notified Waples that it was terminating his professional membership in USAG because it found that he had sexual relations with a minor. Waples appealed this decision to USAG's Executive Committee. The Executive Committee conducted a hearing and on September 2, 1994 confirmed the termination of Waples membership. Pursuant to Article IX, Waples had six months from the date of USAG's September letter to file a claim with the American Arbitration Association (AAA) regarding USAG's action.

Subsequently on May 8, 1995 Waples filed a demand for arbitration with the AAA on seeking to overturn USAG's termination of his membership.⁴ USAG responded by filing an

³ The Hearing Panel also considered other reasons for dismissing the Complaint on jurisdictional grounds. Article VIII Complaints may only be filed by individuals who belong or who are eligible to belong to a National Governing Body. Waples was not a member of nor was he eligible to be a member of USAG. Further, the USAG hearing procedures about which Waples complains were changed in 1999. So, even if there was a compliance issue in 1999, entirely new hearing procedures are in effect today. Since the Hearing Panel reached its decision based on the release that Waples had executed, it was not necessary to rule on the other grounds for dismissal.

⁴ Waples also filed an Article IX Complaint with the USOC in December 1994. The USOC notified Mr. Waples by letter in April 1995 that the "USOC is not in a position to resolve the dispute and we cannot support your Complaint."

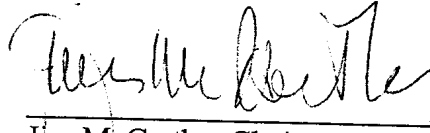
action in United States District Court for the Southern District of Indiana seeking an injunction restraining Waples from pursuing the arbitration before the AAA. The Court granted a permanent injunction in January 1996 on the grounds that Waples did not file his demand for arbitration within the six month time period.

In August 1998 Waples then filed a lawsuit against USAG in the District Court of Bexar County, Texas asserting a number of common law claims challenging USAG's termination of his membership in USAG. Subsequently in July 1999 Waples and USAG entered into a Settlement Agreement that provided that USAG and Waples would submit the matter to arbitration before the AAA. In conjunction with the Settlement Agreement, Waples executed a Release and Indemnity Agreement, attached hereto as Exhibit A, by which he released USAG from "All Claims" that had accrued or may ever accrue to him arising out of his Termination, as that term is defined in the Release and Indemnity Agreement. After a hearing on the matter, the arbitrator in a decision dated November 2, 1999 ruled against Waples, upholding the termination of membership.

The basis for the Article VIII Complaint, which Waples has now filed with the USOC, falls within the terms of the Release and Indemnity Agreement that Waples signed in 1999. Although Waples attempts to style his complaint so it would appear to be seeking to compel USAG to comply with the requirements for recognition as a National Governing Body, it is little more than an attempt to revisit his prior effort to have his membership in USAG reinstated. Therefore, since Waples has signed a legally binding release that precludes him from filing this complaint, it is dismissed on that basis.

Accordingly, USAG's Motion to Dismiss is GRANTED and the complaint is DISMISSED.

Dated this 28th day of February, 2003.



Jim McCarthy, Chair

Jenepher Shillingford, Panel Member
Robert Mitchell, Panel Member
James R. Joy, Panel Member
Cammy Myler, Panel Member