

UNITED STATES OLYMPIC COMMITTEE

Vincent Gagliano and Hanne Michell,)	
in their individual capacities)	
and as officers of the East Coast Speedskating Club,)	
)	
Complainants,)	
)	
v.)	D E C I S I O N
)	
U. S. Speedskating, Inc.,)	
)	
Respondent.)	December 11, 2003

I. BACKGROUND

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

On June 9, 2003, Vincent Gagliano and Hanne Michell, in their individual capacities and as officers of the East Coast Speedskating Club ("ECSC") ("Complainants") filed a Complaint against USS ("Respondent")¹ pursuant to Article VIII, Section 1, of the USOC Constitution, Chapter VIII of the USOC Bylaws and Section 220526 of the Act ("Article VIII proceeding"). In accordance with Chapter VIII,

¹ Complainants also named the Middle Atlantic Speedskating Association ("MASA") as a respondent. However, Article VIII, Section 1 of the USOC Constitution, Chapter VIII, Section 3 of the Bylaws and Section 220526 of the Act refer to compelling compliance of an NGB. Complainants do not cite any jurisdictional authorization for making a member of an NGB a respondent in an Article VIII proceeding. Considering the facts of this proceeding and the lack of any compelling argument otherwise, the Hearing Panel rejects Complainants' attempt to make MASA a party respondent in this proceeding.

Section 3 of the Bylaws, Acting USOC President, William Martin, appointed, and the USOC Executive Committee approved, a Panel of five voting members of the USOC Board of Directors for the purpose of hearing this matter. The Panel members are:

James McCarthy, Chair
USOC Executive Committee, USOC Board of Directors, U.S. Ski and
Snowboard Association
Chuck Milam
USOC Board of Directors, United States Air Force
Robert Mitchell
USOC Board of Directors, USA Shooting
Bonny Warner
USOC Board of Directors, USOC Athletes Advisory Committee, Bobsled
Representative
Nancy Wightman
USOC Board of Directors, U.S. Synchronized Swimming

Pursuant to Chapter VIII, Section 2 of the Bylaws, Respondent USS filed a Motion to Dismiss on August 1, 2003. Complainants filed a response opposing the Motion to Dismiss on September 2, 2003. Respondent filed a reply to Complainants' response on September 17, 2003. Additionally, MASA filed a response to the Complaint seeking its dismissal on August 5, 2003. On October 30, 2003, the Hearing Panel heard oral argument on the Motion to Dismiss. At oral argument, Respondent was represented by Steven B. Smith of Holme Roberts & Owen, and Complainants were represented by Neil I. Jacobs of Neil I. Jacobs and Associates. Garrison R. Corwin, Jr., Attorney at Law, also appeared at oral argument representing MASA. As Mr. Corwin had to leave the call early, Daniel van Benthuyzen, President of MASA, also was on the call. Gary L. Johansen, USOC Deputy General Counsel, and Jennifer Gabrius, USOC Assistant General Counsel, were also present on the call.

Both Complainant and Respondent agreed to waive the requirement of Article VIII, Section 1(B) of the Constitution, Chapter VIII, Section 3(B) of the Bylaws and

Section 220527(b) of the Act, which require that a motion to dismiss be heard and decided within thirty days of the filing of a complaint.²

In its consideration of this matter, the Hearing Panel reviewed the Complaint and all of the papers filed in support of and in opposition to the Motion to Dismiss. The Hearing Panel also considered the arguments presented by the parties.

All members of the Hearing Panel reviewed and approved this written Decision. It is the determination of the Hearing Panel that the Motion to Dismiss should be granted.

II. DECISION

A. The Facts

Complainants Vincent Gagliano and Hanne Mitchell are members of USS. Complainant ECSA is not a member of USS, although it is eligible for USS membership as an Organizational Member. MASA is a member of USS.

In the spring of 2002 ECSA filed an application for membership in MASA. MASA rejected the application. In response to MASA's rejection, ECSA filed a grievance with USS in September 2002. The grievance requested that USS hear, under USS's grievance procedures, MASA's rejection of ECSA's membership application and compel MASA to accept ECSA as a member. The grievance filed by ECSA did not allege any wrongdoing by USS, nor did it allege that USS had violated any provision of its own bylaws, or any provision of the USOC Constitution and Bylaws or any provision of the Act.

In response to the grievance, USS informed ECSA that the grievance was defective under its rules since no violation was alleged against USS. Further, USS

² After the Complaint was filed, Complainants and Respondent attempted to resolve this matter outside of this proceeding, which resulted in a rescheduling of the time deadlines.

informed ECSA that the hearing panel member requested by ECSA in its grievance could not hear the matter because of a conflict of interest, as that individual was a member of USS's Board of Directors. USS attempted to informally resolve the purported deficiencies in the grievance with ECSA, to no avail. USS finally informed ECSA that it would move forward with the grievance, even though the grievance would most likely be dismissed because of the defect. ECSA was also informed that the individual it had named to serve on the hearing panel had declined to serve. USS requested that ECSA submit the name of a new hearing panel member in order to proceed with the grievance. ECSA never responded to this request.

Understanding a possible deficiency in its grievance process, which was identified as a result of ECSA's complaint, USS amended its grievance procedure in April 2003 to eliminate the requirement that a grievance is valid only if it alleges a wrongdoing or violation against USS. The new procedure allowed for one member of USS to bring a grievance against another member of USS. USS informed ECSA of the new grievance procedure and suggested that ECSA re-file its grievance, which would have allowed ECSA to present its case and obtain a ruling by a hearing panel in its allegations that MASA had improperly rejected ECSA as a member. ECSA did not re-file its grievance, but instead brought this proceeding against USS.

B. The Complaint

The Complainants allege that Respondent has failed 1) to intercede and 2) to accept the grievance of the Complainants in violation of USS's Bylaws, Article IX, Section 9.2 et seq. The Complainants do not specifically cite any provision of the USOC Constitution or Bylaws of the Act that the Respondent has violated. However, the

Hearing Panel deduces from the arguments presented that the basis of the Complaint against USS is that USS's actions are in violation of Article IV, Section 4(C)(11) of the USOC Constitution, which provides that an NGB must provide procedures for the prompt and equitable resolution of grievances of its members.

However, the Hearing Panel understands that the real dispute here is MASA's rejection of ECSA's membership application, and resultingly, USS's failure to direct MASA to accept ECSA as a member. Complainants' entire Complaint is directed toward this issue. Complainants request in their Complaint that the Hearing Panel issue "an order directing USS and or MASA to direct the admission of ECSC as a full-fledged member of MASA forthwith." Complainants reiterate this request in their opposition to the Motion to Dismiss.

C. Motion to Dismiss

In its Motion to Dismiss, Respondent states three grounds for dismissal. The first is that Complainants have failed to exhaust their internal remedies as is required under the USOC Constitution and Bylaws and the Act. Respondent asserts that Complainants failed to proceed with the original grievance because they never cured the defect in the original grievance and they never submitted the name of an individual for the hearing panel who would be willing to hear the grievance. Further, Respondent asserts that Complainants opted not to re-file their file a grievance under the new procedures passed in April 2003. The second ground for dismissal put forward by Respondent is that the allegations in this proceeding relate to MASA's allegedly improper rejection of ECSC's membership application, and not to any wrongdoing or violation of the USOC Constitution and Bylaws of the Act by Respondent. Third, Respondent asserts that the

Complaint should be dismissed because the remedy requested by Complainants, which is to direct MASA to accept ECSC as a member, is not an appropriate remedy pursuant to an Article VIII proceeding against USS.

Complainants respond to the Motion to Dismiss as follows. First they state that they have attempted to exhaust their administrative remedies, but to no avail, because they never received notification that the person they chose to hear the grievance had declined to sit on the hearing panel. They further state that to re-file their grievance under the new procedures adopted in April 2003 would have further extended the delay in resolving the dispute concerning their membership application with MASA. Second, they assert that since USS is obliged to uphold the principles that include promotion of the sport, USS is compelled to promptly intervene and investigate the conflict between ECSC and MASA, and presumably order MASA to accept ECSC as a member organization. Third, they contend that the mission of the USOC of helping athletes achieve sustained competitive excellence and the purposes of USOC as set forth in the Act allow for intervention by the USOC and permits the USOC to grant the relief requested by the Complainants.

1. Failure to Exhaust Administrative Remedy

Section 220527 of the Act, Article VIII, Section 1 of the USOC Constitution and Chapter VIII, Section 1(C) of the USOC Bylaws provide 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.

The first question before the Hearing Panel is whether Complainants exhausted their administrative remedies. ECSC filed a grievance with USS, but the grievance was never heard. Complainants and Respondent have differing positions as to why the grievance process did not move forward. Upon review, the Hearing Panel concludes that USS did not prevent ECSC from proceeding with the grievance and exhausting its administrative remedies. ECSC was provided with every opportunity to cure defects in the original grievance or to re-file the grievance under the new April 2003 grievance procedures. For whatever reason, ECSC chose not to do either. Also, considering the extensive communications that occurred between the Complainants and the Respondent concerning this matter, the Hearing Panel is skeptical that ECSC did not know that the individual it chose to hear the grievance had declined to sit on the hearing panel. In any event, Complainants should have inquired of Respondent as to the composition of the hearing panel and whether or not the individual Complainants put forward had accepted.

The second question that the Hearing Panel considered is whether by utilizing Respondent's grievance procedure unreasonable delay would have occurred. The Hearing Panel is not convinced that correcting the deficiencies in the grievance or re-filing the grievance under the new April 2003 grievance procedures³ would have caused unreasonable delay. Respondent was prepared to proceed immediately under these grievance procedures, but it was ECSC that delayed moving forward.

The Hearing Panel is cognizant of the frustration expressed by Complainants in not having the issue regarding their membership request with MASA resolved by USS. However, the Hearing Panel believes that this frustration is caused, at least in part, by

Complainants' own doing. Rather than correcting deficiencies in the grievance or re-filing the grievance under the new April 2003 grievance procedures Complainants instead advocated their membership rights. Complainants' position seems to be that ECSC as a matter of right should be granted membership in MASA and that USS has failed in its responsibilities as an NGB by not directing MASA to accept ECSC as a member. This position is also evident from the Complaint in this proceeding, from the remedy requested, and from the papers submitted in opposition to the Motion to Dismiss, whereby Complainants request that this Hearing Panel issue an order compelling MASA to accept ECSC as a member. Instead of demanding a hearing, Complainants' focus has been on demanding that USS compel MASA to accept ECSC as a member, without the need for a hearing.

2. Other Grounds for Dismissal

In light of the Hearing Panel's determination to grant Respondent's Motion to Dismiss on the grounds that Complainants have not exhausted their administrative remedies, it is not necessary for the Hearing Panel to address the other grounds for dismissal.

D. The Merits

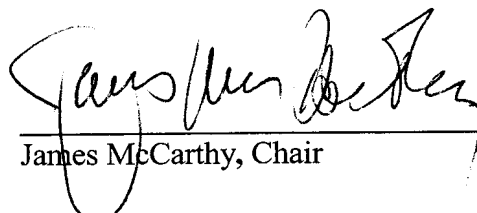
This Hearing Panel takes no position on whether or not MASA's rejection of ECSC's membership application is justified or not. That issue is not before this Hearing Panel. Respondent has a grievance procedure whereby a hearing panel will be convened to take evidence and to hear the arguments from both MASA and ECSC on that issue. If

³ The Hearing Panel commends USS for acknowledging that its grievance procedures were possibly deficient and for taking steps to amend those procedures so that they would apply to a grievance brought by one member against another member of USS.

Complainants wish that issue to be heard and decided, it is suggested that they re-file their grievance pursuant to the new April 2003 grievance procedures and comply with the time frames as set forth by USS in administering that procedure.

III. CONCLUSION

In conclusion, the Hearing Panel grants USS's Motion to Dismiss for the reason that Complainants have not exhausted their administrative remedies. Accordingly, the Complaint filed by Complainants is hereby dismissed.



James McCarthy, Chair

Chuck Milam, Panel Member/s
Robert Mitchell, Panel Member/s
Bonny Warner, Panel Member/s
Nancy Wightman, Panel Member /s

Dated this 11th day of December, 2003.