

UNITED STATES OLYMPIC COMMITTEE

Ronald B. Smith	)	
	)	
Complainant,	)	
	)	
v.	)	DECISION
	)	
USA National Karate-Do Federation, Inc.	)	
	)	
Respondent.	)	November 10, 2003

---

I. BACKGROUND

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

On June 18, 2003, Ronald B. Smith ("Complainant") filed a Complaint against USANKF ("Respondent") pursuant to Article VIII, Section 1, of the USOC Constitution and Chapter VIII of the USOC Bylaws. In accordance with Chapter VIII, 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, Luge  
Representative  
Nancy Wightman  
USOC Board of Directors, U.S. Synchronized Swimming

Pursuant to Chapter VIII, Section 2 of the Bylaws, in a letter dated July 2, 2003, Respondent USANKF filed a Motion to Dismiss. In addition, Respondent filed supplements to its Motion to Dismiss by letters dated August 15, 2003, and August 20, 2003. Complainant Smith filed a response to the Motion to Dismiss by letter dated August 18, 2003, and a supplemental response by letter dated September 5, 2003. On September 16, 2003, the Hearing Panel heard oral argument on the Motion to Dismiss. At oral argument, Respondent was represented by Randolph Gordon, and Complainant was represented by Kellam T. Parks. 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.

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 Complaint

Complainant Smith alleges in his Complaint that Respondent USANKF has failed to communicate with its members, to the detriment of the Complainant and other similarly situated persons. Complainant specifically alleges that Respondent did not keep its members informed of proposed bylaw amendments that were to be considered at Respondent's July 18, 2002 meeting or notify its members of purported changes to its bylaws that occurred at Respondent's July 18, 2002 meeting. As a result, Complainant charges that Respondent is not in compliance with Article VII, Section 1(D) of the USOC Constitution and Section 220524(4) of the Act, which states that an NGB shall disseminate and distribute to amateur athletes, coaches, trainers, managers, administrators, and officials in a timely manner the applicable rules and any changes to such rules of the NGB, the USOC, the appropriate international sports federation, the International Olympic Committee and the Pan American Sport Organization.

However, the Hearing Panel understands that the real dispute at issue here is Complainant's objection to certain bylaw amendments that were purportedly passed at Complainant's July 18, 2002 meeting and the resulting elections that took place after the passage of those amendments. Complainant alleges: 1) that the amendments were not properly before USANKF membership at the July 18, 2002 meeting because notice of the amendments was not sent prior to the meeting, 2) that no formal vote was taken on the amendments at the meeting. Complainant requests in his remedy, among other things, that the purported changes to Respondent's bylaws be declared null and void and that all

elections be conducted pursuant to the bylaws that were in place prior to the July 18, 2002 meeting.

B. Motion to Dismiss

In its Motion to Dismiss, Respondent USANKF states two grounds for dismissal. The first is that Complainant Smith has failed to exhaust his internal remedies as required under the Act, the USOC Constitution and the USOC Bylaws. Second, Respondent asserts that the merits underlying the case justify dismissal of the Complaint. As verification that the case fails on the merits Respondent states that: 1) the declarations and contemporaneous notes of various individuals who attended the July 18, 2002 meeting indicate passage of the bylaw amendments; 2) the 2002 meeting minutes, which indicated passage of the bylaw amendments, were approved at the July 18, 2002 USANKF annual meeting without objection; and 3) Complainant filed an action for injunctive relief in federal district court requesting that USANKF be enjoined from “presenting for vote or taking any vote concerning new members” of the Board of Directors and after hearing the matter the court denied the request to enjoin USANK and further dismissed the action as moot.

Complainant Smith counters as follows. First, Complainant states that he exhausted his administrative remedies when he filed a grievance with Respondent and in issuing a decision on that grievance Respondent truncated further action by Complainant. Second, and alternately, Complainant asserts that pursuant to the USOC Constitution and Bylaws and applicable case law he is not required to exhaust his administrative remedies. Complainant asserts that to do so a) would cause unreasonable delay and b) would be futile since USANKF is biased or has otherwise predetermined the issue raised in

Complainant's grievance. Third, Complainant states that the merits are not before the Hearing Panel on a motion to dismiss, but that if the Panel determined to consider the merits it would conclude that USTU has failed to fulfill its responsibilities as an NGB.

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 Complainant exhausted his administrative remedies.

Pursuant to Respondent's procedures a grievance is referred to the Chair of the Legislation Committee who is directed to make a report and recommend whether further investigation or hearing is required. If the complainant does not agree with the recommendation of the Chair of the Legislation Committee the matter may be appealed to the National Board of Review and from the National Board of Review to the Board of Directors.

Complainant Smith filed a grievance with Respondent on April 22, 2003. The matter was referred to the Chair of the Legislation Committee and the Chair issued a written report. The Complainant made no appeal from that report to the National Board of Review. Thus, Respondent contends that Complainant has failed to exhaust his administrative remedies.

Complainant argues, however, that the report and recommendations of the Chair of the Legislation Committee terminated any further review rights that the Complainant

may have had. In support of his position Complainant cites the language of the report, which states that Complainant's grievance "is hereby dismissed on the merits, with prejudice" and that "[n]o convening of a National Board of Review or further hearing is warranted.

Further, Complainant argues that Respondent's bylaws are ambiguous and difficult to understand and that a reading of them would not lead one to believe that an appeal was available to the Complainant after the report and recommendation of the Chair of the Legislation Committee.

The Hearing Panel is sympathetic to Complainant's arguments on both of these points. First, the report of the Chair of the Legislation Committee should have been clear as to Complainant's appeal rights. Second, Complainant's bylaws are difficult to follow and should be reviewed with an eye towards making them clearer. That being said, Complainant did have a right to appeal the recommendation of the Chair of the Legislation Committee. Complainant did not make an appeal. Further, as was admitted during the hearing on the Motion to Dismiss, Complainant did not even inquire about his appeal rights once the report and recommendation were entered. Instead, Complainant filed a complaint with the USOC.

The second question before the Hearing Panel is whether Complainant can proceed with his Complaint because to do so would cause unreasonable delay or because doing so would be futile. Complainant has not convinced the Hearing Panel that by utilizing Respondent's grievance procedure unreasonable delay would occur. Further, the Hearing Panel is cognizant that Complainant is not without some responsibility for the

length of time in moving this matter towards resolution, as Complainant did not file his grievance until almost one year after the July 2002 meeting.

Further, the Hearing Panel does not find that proceeding with the grievance would be futile. No evidence has been presented that, once empanelled, the National Board of Review is biased or has predetermined the issue raised by Complainant.

## 2. Merits

In light of the Hearing Panel's determination to grant Complainant's Motion to Dismiss, the Hearing Panel declines to consider Complainant's other arguments that focus on the merit of the case. However, the Hearing Panel did discuss whether a complaint filed pursuant to Article VIII of the Constitution is the proper forum for resolving this matter. As previously mentioned, the crux of Complainant's dispute with Respondent centers on the passage of certain bylaws. If Complainant objects to the legality of those bylaws, perhaps a more appropriate forum would be for Complainant to file an action in the State court where Respondent is incorporated.

III. CONCLUSION

In conclusion, the Hearing Panel grants USANKF's Motion to Dismiss for the reason that Complainant has not exhausted his administrative remedies. Accordingly, the Complaint filed by Complainant 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 10<sup>th</sup> day of November, 2003.