

UNITED STATES OLYMPIC COMMITTEE

MATTHEW FOGARTY)	
)	
Complainant,)	
)	
v.)	ORDER
)	PERTAINING TO
USA BADMINTON)	ARGUMENT ON
)	MOTION TO DISMISS
)	
Respondent.)	July 13, 2004

I. DISCUSSION/ORDER

The Hearing Panel has determined to hold oral argument on the Motion to Dismiss filed by USA Badminton (“USAB”). Oral argument will be conducted in accordance with procedures applicable to Article VIII complaints. A time will be set for the oral argument depending on the availability of the Panel members and the parties. However, it is the Panel’s intention to hold the argument within the next two weeks. Oral argument will be conducted telephonically. The parties will be given a call in number prior to the argument.

The following procedures will be followed. USAB, as the moving party, will be given 10 minutes to present its argument. Following USAB’s argument, Mr. Fogarty will be given 12 minutes to respond. USAB will then be given 2 minutes for any rebuttal argument. The parties should be prepared to respond to questions posed by the Panel members. After oral argument is completed, the Panel will adjourn to consider its decision. The parties will be notified of the Panel's decision by a written Order circulated electronically and by ordinary mail.

The Panel wishes to inform the parties that argument is on the Motion to Dismiss only. The sole issue raised in the Motion to Dismiss and to be considered by the Panel is whether or

not Mr. Fogarty has exhausted all administrative remedies available under the organic documents of USAB, and if not, whether he can show by clear and convincing evidence that those remedies would have resulted in unnecessary delay. See Article VIII Section 1 of the USOC Constitution and Section 220527(b) of the Ted Stevens Amateur and Olympic Sports Act. The Panel will not consider issues related to the general allegations of Mr. Fogarty's Article VIII Complaint or to the compliance review of the USOC Membership and Credentials Committee.

Generally, the Panel understands that USAB's internal grievance process, as contained in its Bylaws, is as follows:

- (1) Grievance filed by Complainant;
- (2) USAB Grievance Committee investigates and issues written report and recommendations;
- (3) USAB Grievance Committee forwards written report and recommendations to USAB Executive Committee and to Complainant by certified mail, return receipt requested;
- (4) Upon written reply by Complainant, USAB Executive Committee determines whether to adopt recommendation; and
- (5) If Complainant is dissatisfied with USAB Executive Committee's determination, Complainant can appeal the Executive Committee determination to the full USAB Board of Directors.

The Panel would specifically like to know if the above recitation accurately reflects USAB's grievance process. Further, the Panel would like to know if this process was followed. If not, in what respect was the process not followed? Additionally, the Panel would like to know if there was any circumstance that prevented the grievance process from being followed. Also, the Panel would like to know if USAB's grievance process, as it relates to the internal USAB complaint filed by Mr. Fogarty, would have caused unnecessary delay that would excuse exhaustion of administrative remedies and allow Mr. Fogarty to proceed at this time under Article VIII of the USOC Constitution.

More specifically, the Panel would like Mr. Fogarty to respond to whether or not the USAB Grievance Committee's report and recommendation was sent to Mr. Fogarty's correct address. If it

was, why did Mr. Fogarty refuse delivery? Also, Mr. Fogarty should indicate whether or not he was aware of the delivery attempts. Further, if the report and recommendations were not sent to the correct address, did Mr. Fogarty provide his correct address to USAB. If the correct address was not provided, why not? Finally, the Panel would like to know if Mr. Fogarty ever inquired of USAB as to when he would receive the Grievance Committee's report and recommendations. If no inquiry was made, why not?

Also, more specifically, the Panel would like USAB to respond regarding how it obtained Mr. Fogarty's address. Also, when the report and recommendations of USAB's Grievance Committee was returned, did USAB make a subsequent attempt to deliver the report and recommendation to Mr. Fogarty? If not, why not? Further, since Mr. Fogarty is a competing athlete and also has been involved in USAB's governance, why was USAB not able to obtain a correct address for Mr. Fogarty when the report and recommendations were returned?

Finally, the Panel would like USAB to be prepared to respond to how long it would take to complete the grievance process relating to Mr. Fogarty's internal grievance with USAB. USAB should be prepared to set out a specific timeline. USAB should also be prepared to set forth in detail the process that would be followed in completing Mr. Fogarty's internal grievance.


Jim McCarthy, Chair *ask for his direction*

Bret Bernard, Panel Member
Tom Osborne, Panel Member
Reyne Quackenbush, Panel Member
Lisa Voight, Panel Member

Dated this 13th day of July, 2004.