

UNITED STATES OLYMPIC COMMITTEE

MATTHEW FOGARTY)	
)	
Complainant,)	
)	
v.)	ORDER
)	
USA BADMINTON)	
)	
Respondent.)	June 17, 2004

I. BACKGROUND/DISCUSSION

This matter involves a Complaint filed pursuant to Article VIII Section 1 of the USOC Constitution and Chapter VIII of the USOC Bylaws by Matthew Fogarty (“Fogarty”) against USA Badminton (“USAB”). See also Section 220527 of the Ted Stevens Olympic and Amateur Sports Act (the “Act”). The Hearing Panel held a meeting on June 4, 2004 to discuss administrative and procedural issues regarding this proceeding.

The Hearing Panel had before it the Complaint filed by Fogarty, the Letter/Motion to Dismiss filed by USA Badminton and the Response filed by Fogarty. Additionally, Fogarty requested that the Hearing Panel consider a letter sent by the USOC Membership and Credentials Committee to USAB dated May 18, 2004.¹

Article VIII Section 1 of the USOC Constitution provides that a person may only file a complaint against an NGB “after having exhausted all administrative remedies

¹ The Hearing Panel declines to consider the May 18, 2004 Membership Committee letter at this juncture of the proceeding as there is no showing that the letter has any bearing on the procedural issue currently being considered by the Panel. However, the Panel retains the right to decide at a later date to consider the Membership Committee letter.

available under the organic documents” of the NGB, unless it can be shown by clear and convincing evidence that those remedies would have resulted in unnecessary delay. See also Section 220527(b) of the Act.

Although USAB in its Letter/Motion to Dismiss did not raise the issue of exhaustion of remedies, the Hearing Panel raises it under its own prerogative, as a complainant must exhaust administrative remedies or show why exhaustion would cause unnecessary delay as a prerequisite to bringing a complaint under Article VIII Section 1. Fogarty, in his Complaint, states that “all efforts have been made to exhaust available remedies,” but he provides no factual underpinning to support this statement.

So that the Hearing Panel can determine whether this issue is dispositive of the Complaint filed by Fogarty, the Panel directs that both Fogarty and USAB provide written briefs on this issue by June 30, 2004.² The briefs should set forth facts and provide a legal analysis of the issue based on those facts. Conclusory statements are not adequate.

Additionally, the Hearing Panel wishes to emphasize that an Article VIII Section 1 proceeding is to be viewed seriously.³ Submissions that are not well thought out, that contain conclusory statements with no factual basis, that are not to the point, but use a “shotgun” approach, are not helpful and make consideration of the issues difficult. Chapter VIII of the USOC Bylaws states that a complaint shall set forth “factual allegations.” An answer must be specific to the issues raised. A motion to dismiss should be based on

² Failure to set forth a factual basis for the relief sought may also be grounds for dismissal of a complaint. However, at this juncture of the proceeding, the Hearing Panel directs that the briefs address the exhaustion issue only.

³ Neither party to this proceeding is represented by legal counsel; both appear pro se. Although representation by legal counsel is not a requirement in an Article VIII proceeding, the Hearing Panel believes that legal representation is an important consideration to any party when filing and when responding to an Article VIII proceeding because of the seriousness of the charge and the possible consequences flowing from a finding of noncompliance.

procedural or jurisdictional grounds, and not just be a general denial of the allegations of the complaint or a litany of grievances against the complainant.

II. ORDER

Therefore, it is so ordered that Fogarty and USAB provide briefs to the Hearing Panel on the issue of exhaustion of remedies by June 30, 2004.



Jim McCarthy, Chair

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

Dated this 17th day of June, 2004.