

UNITED STATES OLYMPIC COMMITTEE

Matthew Fogarty)	
)	
Complainant,)	
)	
v.)	ORDER
)	
USA Badminton)	
)	
Respondent.)	February 15, 2008

I. BACKGROUND

On November 20, 2007 the Hearing Panel issued an Order scheduling a hearing on this matter for December 6, 2007. The Order also ruled on a number of motions filed by Matthew Fogarty (“Fogarty”), provided that no new motion would be considered unless the Hearing Panel granted permission for the filing of the motion, set forth hearing procedures, and required that certain documents be provided by the Parties.

At the request of Fogarty the December 6 hearing was postponed. A hearing has now been scheduled for March 17, 2008 commencing at 10:00 AM Mountain Standard Time. Both Fogarty and USA Badminton (“USAB”) have agreed to the hearing date and time.

II. HEARING PROCEDURES

Both Fogarty and USAB should be prepared to present their cases in full on March 17. The following procedures will apply and must be followed:

1. Fogarty shall submit on or before March 22, 2008 a succinct statement, not exceeding one (1) page in length, double spaced, on 8.5x11 size paper, of (i) his claim and (ii) his proposed remedy.
2. The Hearing Panel shall hear argument and receive evidence concerning Fogarty's June 22 re-filed Complaint dealing with USAB's 2007 Pan American Games Selection Procedures and their alleged violation of Section 220522(a)(14) of the Act. Since the issues raised in the June 22 re-filed Complaint are similar to or are the same as the issues raised by Fogarty in his withdrawn Complaint, filed on May 21, 2007 dealing with the 2008 Olympic Games, the Hearing Panel will hear argument and receive evidence relative to USAB's Selection Procedures for the 2008 Olympic Games and their alleged violation of Section 220522(a)(14) of the Act.
3. At the hearing Fogarty should be prepared to specifically explain how USAB's selection procedures are more restrictive than what the Badminton World Federation's ("BWF") rules and regulations allow in providing for the selection of athletes to the Pan American and Olympic Games. USAB should be prepared to defend the validity of its selection procedures.
4. USAB filed a Motion to Dismiss on June 27, 2007. That Motion is considered to encompass all of the grounds USAB also set forth in its Motion to Dismiss filed on June 6, 2007. The Hearing Panel reserved its ruling on USAB's Motion to Dismiss. USAB may make any argument it wishes with regard to its Motion to Dismiss at the hearing.

5. The hearing shall occur by conference call. The Parties shall be notified prior to the hearing of the conference call number.
6. The Parties shall have until March 7, 2008 to submit any documentary evidence that they wish the Hearing Panel to consider. Any documentary evidence submitted shall also be served on the opposing Party on March 7. Each piece of documentary evidence shall be identified by an exhibit number. Fogarty's exhibits shall be numbered F-1, F-2, etc. USAB's exhibits shall be numbered USAB-1, USAB-2, etc.
7. The Parties shall have until March 7, 2008 to submit any testimony that they wish the Hearing Panel to consider in the form of a sworn affidavit. Any testimony by affidavit submitted shall also be served on the opposing Party on March 7.
8. Any person who submits testimony by affidavit shall be available on March 17, 2008 for cross-examination by the other Party.
9. If either Party desires that the hearing be stenographically recorded, the Party making such request shall notify the Hearing Panel by March 7, 2008. The Party requesting that the hearing be recorded shall arrange for a stenographer. The Party requesting that the hearing be recorded shall pay for the cost of the stenographer, unless both Parties want the hearing recorded, then the cost of the stenographer shall be equally divided. A Party requesting a transcript of the hearing shall pay for the cost of the transcript.
10. The hearing shall be open to the public. Notification of the hearing shall be placed on the USOC website. The Hearing Panel shall make arrangements for

interested individuals to join the conference call as observers only. Each Party shall provide the Hearing Panel, by March 7, 2008, with an estimate of the number of individuals who will be on the conference call as observers.

11. Each Party shall submit a pre-hearing brief to the Hearing Panel by March 7, 2008 setting forth their respective positions regarding USAB's selection procedures and whether or not they are more restrictive than what is allowed under BWF's rules and regulations for the selection of athletes to the Pan American and Olympic Games and why the procedures are valid or not valid. The pre-hearing brief should set forth the Parties respective reasoning with regard to this issue. The pre-hearing brief should not exceed ten (10) pages in length, double spaced, on 8.5x11 size paper. A copy of the pre-hearing brief shall be served on the opposing Party.
12. Each Party shall have one hour to present their case. The Parties may reserve whatever time they feel is necessary to provide concluding remarks to the Hearing Panel at the end of the hearing. Fogarty shall present his case first. USAB shall present its case after conclusion of Fogarty's case.
13. All communications to the Hearing Panel, all documentary evidence and all affidavit testimony shall be sent to the UOSC Office of General Counsel, addressed to Ruby Haddock (ruby.haddock@usoc.org), with a copy to (gary.johansen@usoc.org). All communications should be sent electronically, unless not possible. The Office of General Counsel shall distribute all such communications, documentary evidence and affidavit testimony to the Hearing Panel.

III. LEGAL COUNSEL

USAB has notified the Hearing Panel that going forward it will be represented by Steve Smith and Sarah Horvitz of the law firm of Holme Roberts & Owen. All future filings made by Fogarty in this matter should be served on Mr. Smith and Ms. Horvitz.

If Fogarty obtains the representation of legal counsel, he shall notify the Hearing Panel and USAB as soon as is possible. In any event, any such legal counsel who will appear on Fogarty's behalf must be disclosed to the Hearing Panel and to USAB prior to commencement of the hearing.

IV. MOTIONS

The Hearing Panel in its November 20 Order stated that "Neither Party shall file a further motion with the Hearing Panel, unless first making a request to the Hearing Panel and second being granted permission to file such motion by the Hearing Panel." Fogarty has made a number of submissions, by email, to the Hearing Panel requesting to file motions. In some instances these submissions could be read to be motions, rather than requests. In any event, the Hearing Panel will consider all of Fogarty's submissions as requests. A number of these requests have previously been ruled on by the Hearing Panel in its November 20 Order. The Hearing Panel rules that Fogarty's requests to file motions are not granted.

Further, the Hearing Panel's reiterates its November 20 directive, prohibiting the filing of motions unless permission is granted by the Hearing Panel.

VI. DOCUMENTS TO BE PRODUCED TO THE HEARING PANEL

In its November 20, 2007 Order, the Hearing Panel requested that the Parties provide certain documents to the Hearing Panel. The Hearing Panel reminds the Parties that the following documents are to be provided as is set forth below:

A. Documents to be Produced by Fogarty

1. Fogarty shall produce to the Hearing Panel and to USAB on February 22, 2008 those specific BWF rules and regulations upon which he relies in asserting that USAB has promulgated selection procedures that are more restrictive than those allowed by BWF.
2. Since it appears that Fogarty has filed claims with CAS concerning issues similar to or the same as those that he has raised in this proceeding, Fogarty shall produce to the Hearing Panel and to USAB on February 22, 2008: a) all filings by the parties, and all Orders and Decisions rendered by the CAS Hearing Panel relating to Fogarty's 2003 CAS proceeding (CAS 2003/A/489 - Fogarty v. the International Badminton Federation, the Pan American Badminton Confederation and USA Badminton and the Pan American Sports Organization) (referenced in the Hearing Panel's ruling on Fogarty's Motion relating to a June 2003 letter to CAS from the USOC General Counsel's Office), and b) all filings by the parties, and all Orders and Decisions rendered by the CAS Hearing Panel relating to Fogarty's 2007 CAS proceeding (Re: CAS 2007/A/1317 - Fogarty and Schoppe v. the Badminton World Federation).

B. Documents to be Produced by USAB

1. USAB shall produce to the Hearing Panel and to Fogarty on February 22, 2008 its Selection Procedures for the 2007 Pan American Games (referenced in the Hearing Panel's ruling on Fogarty's Motion relating to production of USAB's 2007 Pan American Selection Procedures).
2. USAB shall produce to the Hearing Panel and to Fogarty on February 22, 2008 its Selection Procedures for the 2008 Olympic Games.


Mary McCagg, Chair

Robert P. Latham, Panel Member
Max Cobb, Panel Member
Debbie Hesse, Panel Member
Courtney Johnson, Panel Member

Dated this 15th day of February, 2008