

UNITED STATES OLYMPIC COMMITTEE

Matthew Fogarty)	
)	
Complainant,)	
)	
v.)	DECISION
)	
USA Badminton)	
)	
Respondent.)	June 22, 2007

I. BACKGROUND

On May 21, 2007, Matthew Fogarty (“Fogarty”) filed four Complaints against USA Badminton (“USAB”) pursuant to Article VIII, Section 8.1 of the USOC Bylaws and Section 220527 of the Ted Stevens Olympic and Amateur Sports Act (36 USC § 220501-220529) (the “Act”).¹ USAB is the National Governing Body (“NGB”) for badminton in the United States, as recognized by the United States Olympic Committee (“USOC”) pursuant to the Act.

In accordance with Article VIII, Section 8.1 of the Bylaws, USOC Chair, Peter Ueberroth, appointed a Hearing Panel of five members for the purpose of hearing this matter. The Panel members are:

Mary McCagg, Chair
USOC Board of Directors
Max Cobb
USOC National Governing Body Council, U.S. Biathlon Association
Debbie Hesse
USOC National Governing Body Council, USA Diving

¹ For administrative purposes the four Complaints were consolidated into one proceeding.

Courtney Johnson
USOC Athletes' Advisory Committee, US Water Polo
Robert P. Latham
USOC Multisport Organizations Council, USA Rugby

Fogarty's four Complaints, as best can be summarized, are as follows:

Complaint 1. Fogarty challenges the provision in Article 12 of USAB's Bylaws, which requires that a grievant pay a \$100 filing fee when filing an internal grievance. Fogarty contends that this provision in Article 12 violates Section 220522(a)(13) of the Act, which requires an NGB to have procedures for the prompt and equitable resolution of disputes.

Complaint 2. Fogarty contests USAB's International Tournament Entry Procedure, which requires that an athlete who wishes to participate in an international competition notify USAB five days prior to the entry date for the international competition so that USAB can administratively process the athlete's entry. Fogarty contends that this procedure violates Section 220522(a)(14) of the Act, which limits an NGB from having eligibility criteria that are more restrictive than its international federation.

Complaint 3. Fogarty challenges USAB's 2007 Pan American Selection Procedures. Fogarty further challenges USAB's actions stating 1) that "USA Badminton refuses to require the WBF and WBF Continental Confederation to follow the WBF Competition Regulations which state that entry into the men's doubles draw is determined by WBF World Ranking," and 2) that "USAB has refused to submit Dean Schoppe and Matt Fogarty's entry in Men's Doubles to

the Pan Am Games.”² Fogarty states that USAB’s 2007 Pan American Selection Procedures, and USAB’s actions, do not conform to Badminton World Federation (“BWF”) rules. Fogarty contends that BWF rules require that “entry into the men’s doubles draw [for the 2007 Pan American Games] is determined by WBF³ World Ranking.” Fogarty asserts that USAB’s 2007 Selection Procedures, and its actions, violate Section 220522(a)(14) of the Act, which limits an NGB from having eligibility criteria that are more restrictive than its international federation.

Complaint 4. Fogarty challenges USAB’s 2008 Olympic Selection Procedures. Fogarty further challenges USAB’s actions stating 1) that “USA Badminton refuses to require the BWF to fulfill its obligation to comply with the WBF Competition Regulations which state that entry into the men’s doubles draw is determined by WBF World Ranking,” and 2) that “USAB has refused to submit Dean Schoppe and Matt Fogarty’s entry in Men’s Doubles to the 2007 World Championships.” Fogarty also contends that “USA Badminton refuses to require the BWF to acknowledge [Fogarty and Shoppe’s] entry into the 2007 World Championships.” Fogarty asserts that USAB’s 2008 Olympic Selection Procedures, and its actions, violate Section 220522(a)(14) of the Act, which limits an NGB from having eligibility criteria that are more restrictive than its international federation.

² On June 19, 2007 Fogarty filed a Motion to Amend Complaint 3 by adding the following claim, “USA Badminton refuses to require the WBF and WBF Continental Confederation to follow the WBF Competition Regulations which specifies no limit on the number entries per country in Men’s Doubles for all BWF events including the 2007 Pan Am Games.”

³ Fogarty at times refers to the “BWF” as the ‘WBF.’

On June 6, 2007 USAB filed a Motion to Dismiss on three grounds. Regarding all four Complaints, USAB asserts that Fogarty has failed to exhaust his administrative remedies as is required by Section 8.1 E of the USOC Bylaws and Section 220527(b) of the Act. As to Complaints 3 and 4, USAB further asserts that those Complaints are improperly filed as Article VIII Complaints. USAB states that since Fogarty's allegations pertain to his claims that he has been denied an opportunity to compete in the 2007 Pan American Games and the 2008 Olympic Games, Complaints 3 and 4 should be filed pursuant to Article IX of the USOC Bylaws, which allows for resolution before the American Arbitration Association ("AAA"). As to Complaint 3, USAB further asserts that the issue raised by Fogarty, "that the selection process must be based solely on the world ranking list of the Badminton World Federation," has already been decided against Fogarty by an AAA arbitrator in January 2006 in an Article IX proceeding initiated by Fogarty.⁴

On June 12, 2007 Fogarty filed a Motion to Withdraw Complaints 1, 2 and 4, asserting that "[t]he time necessary to resolve each of the complaints prior to the 2007 Pan Am Games would deny proponent of proponent's rights to compete in the 2007 Pan Am Games."

Also, on June 12, 2007 with regard to Complaint 3, Fogarty filed a Motion for Default Judgment. Fogarty asserts that "USA Badminton filed a motion to dismiss on no basis in the applicable Statutes of the Olympic Charter, the Act, USOC Bylaws, USA Badminton Bylaws, Badminton World Federation Constitution nor Badminton World Federation Competition Regulations."

⁴ Fogarty v. USAB; AAA Case No. 30 190 01374 05, decided January 27, 2006.

Further, between June 14 and June 20, 2007 Fogarty filed numerous other motions with the Hearing Panel dealing with various procedural aspects of his Complaints.⁵

The Hearing Panel set argument on USAB's Motion to Dismiss, Fogarty's Motion to Withdraw, and Fogarty's Motion for Default Judgment for June 20, 2007.

The Hearing Panel held oral argument on USAB's Motion to Dismiss, Fogarty's Motion to Withdraw, and Fogarty's Motion for Default Judgment by telephone conference call on June 20, 2007. Fogarty was on the call representing himself. Peter Alkalay also participated on the call as Fogarty's legal counsel. James D. Cloppas, Executive Director of USAB, appeared on the call as a representative of the USAB. G. Dudley Welch was on the call representing the USAB as its legal counsel. Also on the call as representatives from USAB were Gus Chew, Montri Chew and Howard Bach.

During oral argument on June 20, 2007, Fogarty filed a Motion for Summary Judgment with regard to Complaint 3 requesting that the Hearing Panel find on his behalf as to the merits of his case.

In its consideration of this matter, the Hearing Panel reviewed the Complaints and all of the papers filed in support of and in opposition to the various motions. The Hearing Panel also considered the oral arguments presented by the parties.

⁵ Those motions are: Motion for Production of Documents, filed on June 14, 2007; Motion in Limine to Exclude Documents not Admitted as Evidence through an Evidentiary Hearing, filed on June 20, 2007; Writ of Habeas Corpus, filed on June 20, 2007; and Motion that USAB be Ordered to Provide All Applicable Olympic Statutes Prior to the Hearing on USAB's Motion to Dismiss, filed on June 20, 2007.

II. DECISION

A. Fogarty's Motion to Withdraw.

USAB did not object to Fogarty's Motion to Withdraw Complaints 1, 2 and 4, except that USAB stated that if the Hearing Panel were to decide that Fogarty had not exhausted his administrative remedies pursuant to Section 8.1 E of the USOC Bylaws and Section 220527(b) of the Act, then USAB requested that the determination as to failure to exhaust apply to all four Complaints, not just to Complaint 3.

Putting aside for the moment discussion of the exhaustion issue, the Hearing Panel grants Fogarty's Motion to Withdraw Complaints 1, 2 and 4.

B. Fogarty's Motion for Default Judgment.

Sections 8.1 F. and G. provide that a respondent shall file an answer or a motion to dismiss within twenty (20) days of the filing of an Article VIII Complaint. Fogarty's Complaints were filed on May 21, 2007. USAB filed a Motion to Dismiss on June 6, 2007, within the twenty day period. Further, USAB fully participated in the argument held on June 20, 2007 and provided a defense to Fogarty's claims. Therefore, Fogarty's Motion for Default Judgment is denied.

C. USAB's Motion to Dismiss.

As stated previously, USAB requests dismissal of this proceeding on three grounds. All three grounds pertain to Complaint 3, the remaining Complaint before the Hearing Panel. The Hearing Panel will first consider USAB's contention that Complaint 3 is improperly filed, in that it is essentially an Article IX Complaint, filed under the guise of an Article VIII proceeding.

Section 220527 of the Act and Section 8.4 of the Bylaws set forth the remedies pertaining to Article VIII proceedings. Those remedies are limited to placing an NGB on probation or revoking the recognition of an NGB. Fogarty, in his Complaint 3, requests as his remedy that the Hearing Panel “[r]equire USAB to immediately enter Dean Schoppe and Matt Fogarty into the Men’s Doubles Event at the Pan Am Games.” Further, Fogarty in his Motion for Default Judgment requests that the Hearing Panel issue a judgment in his favor “for entry into and acceptance of entries of Dean Schoppe and Matt Fogarty into the 2007 Pan American Games in the sport of badminton, and take all necessary steps to protect Dean Schoppe and Matt Fogarty, MD rights to compete in the 2007 Pan American Games.”

The Hearing Panel does not have the authority to provide Fogarty with the relief that he requests.

Fogarty, in effect, is using this Article VIII proceeding as a mechanism to pursue his Article IX claims.⁶ Article IX provides that if an athlete believes that he or she has been denied or will be denied his or her opportunity to participate in the Olympic Games, the Pan American Games, a World Championship or other such protected competition, the athlete may file a complaint with the USOC. If the matter can not be resolved by the USOC, then the athlete may have his or her complaint heard by an AAA arbitrator, whose decision is final. There is no requirement that an athlete exhaust his or her

⁶ Fogarty filed an Article IX Complaint with the USOC on October 27, 2006 in which he alleged that his opportunity to compete in the 2007 Pan American Games was being denied as “USA Badminton’s trial process is more restrictive than the IF and is in violation of USOC Bylaws.” Further, he demanded that USA Badminton “follow the IF regulations for qualification for the Pan Am Games.” However, Fogarty never pursued his Article IX Complaint by filing a claim with the AAA.

administrative remedies in order to proceed to arbitration before the AAA. Further, Article IX Complaints can be heard on an expedited basis, allowing an athlete to have his or her case heard prior to an impending competition.

Fogarty's efforts to circumvent the procedures afforded to him pursuant to Article IX are misguided. This Hearing Panel, even if it wanted to, can not name Fogarty to the 2007 Pan American Team.⁷ Accordingly, USAB's Motion to Dismiss is granted.

In light of the Hearing Panel's decision as stated above, it is not necessary to rule on USAB's other two grounds for dismissal or on the other motions filed by Fogarty. However, the Hearing Panel wishes to comment on USAB's assertion that Fogarty has not exhausted his administrative remedies as is required in Article VIII proceedings.

Fogarty contends that he filed a complaint with USAB in March of 2006. However, Fogarty did not provide the Hearing Panel with a copy of that complaint, nor did he provide information as to the basis of that complaint. Also, he did not provide the Hearing Panel with any evidence that USAB either refused to hear the complaint, or that a decision was rendered on the complaint, which Fogarty is appealing from. USAB

⁷ The Hearing Panel makes no decision on the merits of Fogarty's claim that USAB is not following BWF rules in selecting its team to the 2007 Pan American Games. However, upon cursory reflection, it appears that Fogarty's complaint is more accurately aimed at the Pan American Badminton Confederation ("PABC"), which developed the Badminton Technical Manual for the 2007 Pan American Games in conjunction with the Organizing Committee of the XV Pan American Games Rio 2007 ("CO-RIO"), or at the BWF, which has tacitly agreed to the Technical Manual by voicing no objection to it. Fogarty makes no claim that USAB has not complied with the Technical Manual. In fact, his complaint is that USAB has complied with the Technical Manual. The Technical Manual states that each country may enter up to four men and four women to participate in the 2007 Pan American badminton events, with a maximum of 44 men and 44 women competitors from all countries. The Technical Manual also states that "[e]ach NOC [National Olympic Committee] may develop its own procedure to select its competitor(s) to participate in the Badminton competition."

contests Fogarty's assertion that Fogarty filed and pursued a complaint pursuant to its internal grievance procedures involving any issue presented in this proceeding.

If Fogarty determines to pursue his claims, he should be cognizant of the requirement that he must exhaust his administrative remedies before commencing an Article VIII proceeding. The burden is on Fogarty to show that he has complied with this requirement. Otherwise, his claims will be subject to dismissal. Further, if Fogarty files a complaint with USAB, it has an obligation to provide Fogarty, as it has with all of its members, a fair and prompt resolution.

III. CONCLUSION

In conclusion, the Hearing Panel:

- 1) grants Fogarty's Motion to Withdraw Complaints 1, 2 and 4;
- 2) denies Fogarty's Motion for Default Judgment; and
- 3) grants USAB's Motion to Dismiss Complaint 3.


Mary McCagg, Chair

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

Dated this 22nd day of June, 2007