

UNITED STATES OLYMPIC COMMITTEE

Matthew Fogarty)	
)	
Complainant,)	
)	
v.)	ORDER
)	
USA Badminton)	
)	
Respondent.)	September 11, 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

On June 12, 2007 Fogarty filed a Motion to Withdraw Complaints 1, 2 and 4. Fogarty in the remaining Complaint, referred to as Complaint 3, challenged USAB’s 2007 Pan American Selection Procedures. Fogarty further challenged USAB’s actions stating 1) that “USA Badminton refuses to require the WBF² 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,” 2) that “USAB has refused to submit Dean Schoppe³ and Matt Fogarty’s entry in Men’s Doubles to the Pan Am

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

² Fogarty at times refers to the Badminton World Federation “BWF” as the “WBF.”

³ Dean Schoppe is Fogarty’s doubles partner.

Games,” and 3) that “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.”⁴ Fogarty stated that USAB’s 2007 Pan American Selection Procedures, and USAB’s actions, do not conform to Badminton World Federation (“BWF”) rules. Fogarty contended that BWF rules require that “entry into the men’s doubles draw [for the 2007 Pan American Games] is determined by WBF World Ranking.” Fogarty asserted 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.

The Hearing Panel granted Fogarty’s Motion to Withdraw Complaints 1, 2 and 4.

USAB filed a Motion to Dismiss on June 6, 2007, setting forth three grounds for dismissal. All three grounds for dismissal applied to Complaint 3. As to the first ground for dismissal, USAB asserted that Complaint 3 was improperly filed as an Article VIII Complaint. USAB stated that since Fogarty alleged that he had been denied an opportunity to compete in the 2007 Pan American Games and the 2008 Olympic Games, Complaint 3 should have been filed pursuant to Article IX of the USOC Bylaws, which allows for resolution before the American Arbitration Association (“AAA”).⁵

⁴ Fogarty added this third count by amendment on June 19, 2007.

⁵ 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 and ultimately have that complaint heard by an AAA arbitrator, whose decision is final.

Second, USAB claimed that Fogarty had 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, since Fogarty had not brought an internal grievance claiming that USAB's selection procedures were more restrictive than the BWF.

Third, USAB asserted 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.⁶

The Hearing Panel granted USAB's Motion to Dismiss by Decision dated June 22, 2007. The Panel stated that Fogarty, in effect, was using an Article VIII proceeding as a mechanism to pursue his Article IX claim. In its analyses, the Hearing Panel noted that 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 Complaint 3, requested 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." The Hearing Panel concluded that it did not have the authority to provide Fogarty with the relief that he requested, which was to be named to the 2007 Pan American Games Team.⁷

⁶ Fogarty v. USAB; AAA Case No. 30 190 01374 05, decided January 27, 2006.

⁷ The Hearing Panel, in light of its decision, did not rule on USAB's other two grounds for dismissal. However, the Hearing Panel commented on USAB's assertion that Fogarty had not exhausted his administrative remedies as is required in Article VIII proceedings. The Hearing Panel remarked that if Fogarty determines to pursue his claim, he should be cognizant of the requirement that he must exhaust his administrative remedies before commencing an Article VIII proceeding. Otherwise, his claim would be subject to dismissal.

On June 22, 2007, in response to the Hearing Panel's Decision dismissing the Complaint, Fogarty re-filed his Complaint 3. The re-filed Complaint 3 is essentially the same as his May 21 filing, except that Fogarty amended that section of the Complaint entitled "the relief sought," setting forth two additional claims for relief. Those two new requests for relief are: 1) that the Hearing Panel place USAB on probation or revoke USAB's membership in the USOC and 2) that the Hearing Panel "continue to evaluate and determine all USA Badminton Athletes whom may have been damaged by USAB & USOC actions which violated."⁸

Further, Fogarty in the re-filed Complaint 3 attached a March 21, 2006 letter from USAB's Legal Grievance Committee in which the Committee stated that nothing in Fogarty's February 4, 2006 "'filing' raises to the level of being a properly filed grievance, neither alleging that which is required in a grievance filing nor setting forth, with documentation, the specifics regarding the violations and transgressions alleged."

On June 27, 2007 USAB filed a Motion to Dismiss the re-filed Complaint 3 asserting 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.

II. QUESTIONS TO BE ANSWERED BY THE PARTIES

Because of the various issues raised in this matter, and on account of USAB's Motion to Dismiss, the Hearing Panel requires that the Parties provide additional information to the Panel. This information will help the Hearing Panel clarify the issues before it and will serve to more fully inform the Hearing Panel as to certain matters that

⁸ This second claim for relief appears to be incomplete and needs to be clarified.

may be of relevance to the Panel in rendering a decision on the re-filed Complaint 3 and on the Motion to Dismiss.

The specific questions of the Panel are included in Attachment A to this Order. The Parties should respond to each question by providing an answer after each question. The Attachment is a word document, so the Parties can create as much space as is necessary to answer each question. Documents that are submitted in response to a question should be submitted as a separate attachment, but the Parties should indicate which question those documents are in response to.

Each Party shall submit its responses to the questions contained in the Attachment by September 25, 2007.

The responses should be submitted to the Hearing Panel, addressed to Ruby Haddock. Ms. Haddock will distribute the Parties' responses to the Hearing Panel. All information should be submitted by email if possible. If that is not possible, then an original and six copies should be submitted to Ms. Haddock. Ms. Haddock's email address is ruby.haddock@usoc.org. Her address is Ruby Haddock, Administrative Assistant, Office of General Counsel, 1 Olympic Plaza, Colorado Springs, CO 80909. Her telephone number, in case anyone needs to reach her by phone, is (719) 866-4563.

Further, each Party should provide a copy of its response and documents to the other Party.

~~Mary McCagg~~
Mary McCagg, Chair

*Ruby
Staddock*

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

Dated this 11th day of September, 2007