

UNITED STATES OLYMPIC COMMITTEE

Matthew Fogarty,)	
)	
Complainant,)	
)	DECISION
vs.)	
)	
USA Badminton,)	July 14, 2008
)	
Respondent.)	
)	

I. THE PARTIES

1. Matthew Fogarty (“Fogarty”) is a member of USA Badminton (“USAB”). He is also a badminton player, having represented the United States in various international events, primarily as a doubles player.

2. 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 Ted Stevens Olympic and Amateur Sports Act (36 USC §§ 220501-220529) (the “Act”). USAB is also a member of the Badminton World Federation (“BWF”), which is the international federation for badminton as recognized by the International Olympic Committee.

II. COMMENCEMENT OF PROCEEDING AND ALLEGATION OF COMPLAINT

3. On April 3, 2008, Fogarty filed a Complaint against USAB pursuant to Article VIII, Section 8.1 of the USOC Bylaws and Section 220527 of the Act contesting

USAB's requirement that athletes wishing to participate in BWF sanctioned events notify USAB five days prior to the entry deadline (the "five-day rule").¹

4. Specifically, Fogarty in his Complaint alleges that USAB's International Tournament Entry Procedure, which requires that all competitors notify USAB of their intent to enter BWF sanctioned events five days prior to the close of the entry deadline (so that USAB can administratively process the athlete's entry), violates §220522 (a)(14) of the Act because it imposes an eligibility criteria that is more restrictive than the BWF's eligibility criteria.

III. PANEL COMPOSITION

5. 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
Courtney Johnson
USOC Athletes' Advisory Committee, US Water Polo
Robert P. Latham
USOC Multisport Organizations Council, USA Rugby

IV. MOTION TO DISMISS

6. On May 13, 2008 USAB filed a Motion to Dismiss Fogarty's Complaint.

The Motion is based on four grounds:

a) Fogarty has not exhausted his administrative remedies with USAB.

¹ Fogarty's April 3, 2008 Article VIII Complaint is a re-filing of a Complaint that Fogarty originally filed on May 21, 2007. Fogarty withdrew the May 21 Complaint on June 12, 2007.

- b) Fogarty's Complaint should be dismissed for lack of jurisdiction, as the Hearing Panel is not empowered to hear Article IX Complaints.
- c) Fogarty's Article VIII Complaint should be dismissed for failing to state a claim on which relief can be granted as it is improperly filed pursuant to Article IX.
- d) Fogarty's Complaint should be dismissed as moot.

7. On June 4, 2008 the Panel issued an Order requesting that Fogarty respond to the Motion to Dismiss by June 18, 2008.

8. Fogarty submitted a response on June 17, 2008.

V. ANALYSIS

9. As stated previously, USAB filed a Motion to Dismiss based on four grounds.

10. First, USAB asserts that Fogarty has not exhausted his administrative remedies prior to commencing this Article VIII proceeding, as is required by Article VIII, Section 8.1E of the USOC Bylaws and Section 220527(b) of the Act. Further, it is USAB's position that Fogarty has not shown that exhaustion of USAB's internal remedies would have caused unnecessary delay.

11. Fogarty responds that he filed a complaint with USAB on February 14, 2007, in which he raised his objections to the five-day rule.

12. Fogarty offers as evidence of his exhaustion of administrative remedies, a series of e-mails between himself and Dan Cloppas regarding his complaint.

13. Fogarty asserts that USAB denied his complaint on February 16, 2007.

14. USAB replies that although Fogarty made a filing with USAB on February 14, 2007, it was rejected by USAB's Legal Committee in that the filing was not properly filed. USAB's motion to dismiss states that its February 16, 2007 response merely informed Fogarty of the improper filing and advised Fogarty that he should "file any future complaints in proper form in accordance with [Article 12 of] USAB[s] Bylaws."

15. Article 12 of USAB's Bylaws requires that a grievance a) shall be submitted in the form of a written report or complaint to the Executive Director of USAB, b) shall specifically state the nature of the grievance, and c) shall be accompanied by a check payable to USAB in the amount of \$100.00 to cover administrative costs.²

16. Thus, USAB's position is that the Legal Committee made no ruling on the merits of the February 14, 2007 complaint; it merely informed Fogarty on February 16, 2007 that he had not complied with the administrative requirements for filing a complaint pursuant to Article 12 of USAB's Bylaws.

17. Additionally, USAB points out that Fogarty's April 3, 2008 Article VIII Complaint is a re-filing of an Article VII Complaint that Fogarty originally filed on May 21, 2007. Thus, USAB asserts that no argument can be made by Fogarty that there would be any unnecessary delay by having him exhaust his internal remedies, as he has already caused nearly a one year delay by his filing, withdrawing and then re-filing the Article VIII Complaint.

18. Finally, USAB points out that Fogarty filed a series of complaints with USAB on February 4, 2006, which were also rejected by USAB's Legal Committee for not being properly filed. USAB states that in its March 21, 2006 letter to Fogarty,

² The filing fee may be waived for good cause by the Board of Directors.

rejecting the February 4, 2006 complaints, the Legal Committee advised Fogarty of the filing inadequacies pertaining to those complaints. Thus, USAB points out that Fogarty was fully aware of the filing requirements under Article 12 of USAB's Bylaws and as such, Fogarty has no excuse for not meeting those requirements when he filed his February 14, 2007 complaint.

19. Article VIII, Section 8.1E of the USOC Bylaws and Section 220527 of the Act provide that a complainant may file an Article VIII complaint with the USOC only after having exhausted all remedies available under the organic documents of the NGB, unless it can be shown by clear and convincing evidence that those remedies would result in unnecessary delay.³

20. The Hearing Panel makes no ruling on whether or not Fogarty's February 14 filing was adequate or not, as it is not necessary. The only issue before the Panel is whether Fogarty has exhausted his administrative remedies.

21. Fogarty was provided with an opportunity by USAB to re-file his complaint and correct those deficiencies raised by USAB's Legal Committee. At a minimum Fogarty had an obligation to inquire of USAB as to what he had to do to perfect his filing. Fogarty did not make any inquiry with USAB. Nor did he re-file his complaint based on his knowledge of USAB's filing procedures.

22. Had Fogarty addressed the concerns of USAB's Legal Committee and re-filed his complaint, there is no indication that his complaint would not have been heard on the merits by a USAB hearing panel.

³ Fogarty is familiar with this requirement, as he previously filed an Article VIII Complaint against USAB that was dismissed for his failure to exhaust his administrative remedies. *Fogarty v. USAB*, USOC Article VIII (Decision dated October 1, 2004).

23. Thus, it is the conclusion of the Panel that Fogarty has not exhausted his administrative remedies as is required by Article VIII, Section 8.1E of the USOC Bylaws and Section 220527(b) of the Act.

24. Insofar as the Panel has ruled that Fogarty has not exhausted his administrative remedies, it is unnecessary for the Panel to consider USAB's other grounds for dismissal and the Panel makes no ruling on those grounds.

25. ORDER

26. The Panel finds that Fogarty has failed to exhaust his administrative remedies as is required by Article VIII, Section 8.1E of the USOC Bylaws and Section 220527(b) of the Act.

27. Accordingly, the Panel grants USAB's Motion to Dismiss.


Mary McCagg, Chair

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



Signed this 14th day of July, 2008