

UNITED STATES OLYMPIC COMMITTEE

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| BERNARD ROBINSON |) | |
| |) | |
| Complainant, and |) | |
| |) | |
| BRUCE C.K.W. HARRIS, BARBARA |) | |
| WAKEFIELD, VALERIE LONG, ANNE G. |) | |
| CHASE, LEON PRESTON AND |) | |
| JEANNETTE WOODARD |) | |
| |) | |
| Complainants |) | ORDER |
| v. |) | |
| |) | |
| USA TAEKWONDO |) | |
| |) | |
| Respondent. |) | December 20, 2011 |



I. MOTIONS FILED BY USAT

A. Background

1. On December 15, 2011 USA Taekwondo (“USAT”) filed two motions for the Hearing Panel’s consideration. The first is a Motion for Agreed Resolution, in which USAT asks the Hearing Panel to adopt its settlement proposal offered during mediation and ensuing settlement discussions, even though this proposal was rejected by Complainants Bernard Robinson, Bruce D.K.W. Harris, Barbara Wakefield, Valerie Long, Anne G. Chase, Leon Preston and Jeannette Woodard. The second is a Motion for Joinder to Add Herb Perez as a party to this proceeding.

2. In both motions USAT refers to and makes statements concerning the mediation and ongoing efforts of the parties to settle this matter. USAT requests that the Hearing Panel promptly consider the motions.

3. Complainants have not had an opportunity to make a formal response to the motions. However, they have commented informally via email communications. They oppose both motions. Also, they deny USAT's characterizations concerning the mediation process and settlement discussions. Further, they assert that by putting these motions before the Hearing Panel, USAT was attempting to prejudice the Hearing Panel in its review of the issues in this proceeding.

B. Discussion and Ruling

4. The Hearing Panel is quite concerned with USAT's actions in filing these motions. Positions taken in mediation and in settlement discussions and the actions of parties to the mediation and settlement process are not normally disclosed. There are good reasons for this.

5. First, the aim of mediation and settlement discussions is to bring resolution to the dispute. Disclosure restrains the settlement process. Parties must feel that they can have candid conversations about the dispute, without fear that those conversations will be disclosed at a later time.

6. Second, parties often make factual admissions and legal concessions that they would not otherwise make. They also propose solutions aimed at resolution or compromise, which could be prejudicial to their stated positions. Parties must be confident that if settlement is not reached, such admissions and proposals will not be used against them at a hearing on the merits of the case.

7. Third, posturing often occurs during settlement discussions. Parties may make statements and take positions that they do not necessarily subscribe to, merely for the purpose of enhancing their position at the bargaining table. What is stated during

negotiations may not necessarily be true. Use of such statements would be highly misleading if used as evidence when the matter is heard.

8. Fourth, disclosure of such information may bias the hearing tribunal. This would be unfortunate and unacceptable. It is also one of the reasons why Section 10 of the USOC Bylaws prohibits a member of the Hearing Panel from serving as mediator. The hearing tribunal must render a decision on the facts presented at the hearing and on the law as applied to the dispute, not on some statement made or position taken during settlement discussions.

9. USAT contends, however, that in this case disclosure is warranted because the mediation confidentiality agreement did not preclude the Parties from submitting settlement discussions to the Hearing Panel.

10. USAT misses the point. The Hearing Panel has the ultimate authority to rule on evidence that it will consider in deciding this matter. The Hearing Panel is not interested in learning of statements made or positions taken during mediation and settlement discussions.

11. Also, USAT could have sought the Hearing Panel's permission before making the Parties' settlement negotiations the basis for its motions. However, it did not do so. It filed its motions and demanded that the Hearing Panel consider them.

12. Further, the Hearing Panel is at a loss as to why statements made or positions taken at the mediation are of any relevance to the issues in this proceeding. The Hearing Panel is not going to allow a debate over what was said or done at the mediation to become the focus of this proceeding. Those may be matters of interest to the mediator, but they serve no purpose to the Hearing Panel. What is of concern to the Hearing Panel,

and the purpose of this proceeding, is whether or not USAT is in compliance with the Ted Stevens Olympic and Amateur Sports and USOC Bylaws.

13. Assertions as to positions taken and statements made by the Parties during mediation, and challenges to the motives of the Complainants in settlement discussions, provide no basis upon which to grant USAT's motions. Accordingly, the Motions are denied.

II. ALTERNATE PROCESS

A. Resolution of Compliance Issues

14. This matter is set for hearing January 5 – 6, 2012. Section 10 provides that the Hearing Panel may 1) find USAT in compliance with the Act and Bylaws or 2) find that USAT is not in compliance with the Act and Bylaws. If the Panel finds that the USAT is not in compliance, it may issue a recommendation to the USOC Board i) to revoke USAT's NGB status or ii) to place USAT on probation to allow USAT to rectify its non-compliance issues.¹

15. However, this process may be shortened. If an NGB wishes to admit its non-compliance, and instead focus the hearing on an appropriate remedy, it could do so.

16. If USAT wished to proceed along this route, then the January 5-6 hearing would not be about alleged wrongdoings that occurred in the past, but would be about steps for moving forward. Complainants could present their positions as to an adequate remedy, and USAT could address how it would meet its obligations as an NGB.

¹ A third option is also available, if the Hearing Panel finds that the non-compliance can easily be rectified, it may allow the NGB an opportunity to correct the deficiency and if such deficiency is corrected, make a finding of compliance.

17. Further, since many individuals are involved in the sport of taekwondo and have an interest in USAT, they also would be afforded an opportunity to comment in writing on a proper remedy. They would not, however, be participants in the January 5-6 hearing.

18. Assumed in this process is that the Hearing Panel will make a recommendation to the USOC Board based on the information presented and on its judgment of the proper remedy to be imposed.

19. By setting forth the possibility of proceeding in this manner, the Hearing Panel makes no judgment and has no opinion as to whether or not USAT is in compliance with the Act and USOC Bylaws.

B. Response and Hearing Date

20. USAT shall inform the Hearing Panel by 1:00 PM MST December 22, 2011, if it wishes to proceed as outlined above.

21. Complainants may also comment as they consider necessary. Such comments shall also be submitted by 1:00 PM MST December 22, 2011.

22. Finally, whether or not the alternate process is implemented, the Parties should be prepared to proceed on January 5-6, 2011.

Dated this 20th day of December, 2011.



Susanne Lyons, Chair

Sarah Konrad, Panel Member
Glenn Merry, Panel Member