

UNITED STATES OLYMPIC COMMITTEE

RAY BROWN)	
)	
Complainant,)	
)	DECISION
v.)	ON
)	MOTION TO DISMISS
UNITED STATES TENNIS ASSOCIATION)	
)	
Respondent.)	April 18, 2013

I. THE PARTIES

1. Ray Brown (“Brown”) is an individual who has numerous objections to the manner in which US Tennis Association (“USTA”) conducts its affairs as the National Governing Body (“NGB”) for the sport of Tennis. Brown brings this complaint in order to “place a magnifying glass” on USTA and to address “issues of concern in the conduct and responsiveness of the USTA to its members.”

2. USTA is the NGB for the sport of Tennis 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”) and Section 8 of the USOC Bylaws.

II. COMMENCEMENT OF PROCEEDING

3. On February 13, 2013, Brown filed a Complaint against USTA pursuant to Section 220527 of the Act and Section 10 of the USOC Bylaws. An Amended Complaint was filed on February 19, 2013.

4. The Amended Complaint alleges twenty seven (27) “violations” by USTA of the Act and USOC Bylaws. These twenty-seven (27) violations stem primarily from Brown’s disagreement with USTA over its Ten and Under Tennis (“TAUT”) program,¹ which Brown contends “is a very high risk action that can reduce competition and even cost parents significant amounts of money in lessons, [cost] clubs significant amounts of money for...equipment and cost players significant development time during which they may fall far behind those who learn tennis using standard equipment.”

III. PANEL COMPOSITION

5. In accordance with Section 220527(a)(2) of the Act and Section 10.6 of the USOC Bylaws, USOC Chief Executive Officer, Scott Blackmun, appointed a Hearing Panel of three members for the purpose of hearing this matter. The Panel members are:

Robert Bach, Chair
USOC Board of Directors
Jim Tooley, Panel Member
USOC National Governing Bodies Council, USA Basketball
Jessica Galli, Panel Member
USOC Athletes’ Advisory Council, Paralympic Track and Field Athlete

6. Neither Brown nor USTA voiced an objection to the composition of the Hearing Panel. Accordingly, the Hearing Panel is seated and confirmed to hear this matter.

¹ The TAUT program is designed to introduce children ten (10) and under to tennis. It is tailored to the age and size of youth players by utilizing a modified scoring system, allowing for specialized equipment (smaller racquets and less lively balls), and employing shorter court dimensions. Its goal is to teach children how to play the game as well as to enhance their playing enjoyment. <http://www.10andundertennis.com>

IV. FILING OF MOTION TO DISMISS

A. Motion

7. On March 21, 2013, USTA filed a Motion to Dismiss. The Motion is based on two grounds: (i) Brown failed to exhaust his administrative remedies with USTA, and (ii) Brown's Amended Complaint fails to state a claim upon which relief can be granted.

B. Preliminary Matters

8. The Hearing Panel allowed Brown until April 4, 2013, to respond to the Motion to Dismiss. Brown filed an Opposition to the Motion on April 2, 2013.

9. The Hearing Panel held oral argument on the Motion to Dismiss by telephone conference call on April 11, 2013. Brown represented himself. Howard L. Jacobs of the Law Offices of Howard L. Jacobs represented USTA. Andrea Hirsch, USTA Chief Administrative Officer, General Counsel and Chief Legal Officer and Staciellen Stevenson Mischel, USTA Associate General Counsel and Deputy Chief Legal Officer participated as representatives of USTA. Also on the call were Gary L. Johansen, USOC Associate General Counsel and legal counsel to the Hearing Panel, Lucy Denley, USOC Senior Legal Assistant and liaison to the Hearing Panel and Ryan Lake, USOC Legal Extern.

10. On April 11 and 12, 2013, Brown made two additional submissions opposing the Motion to Dismiss, which were accepted by the Hearing Panel.

11. In its consideration of the Motion to Dismiss, the Hearing Panel reviewed the Amended Complaint and all of the papers filed in support of and in opposition to the

Motion to Dismiss. The Hearing Panel also considered the oral arguments presented by the Parties.

12. All members of the Hearing Panel reviewed and approved this written Decision.

V. RULING

13. For the reasons set forth below, it is the determination of the Hearing Panel that the Motion to Dismiss is granted.

VI. ANALYSIS

A. Basis for Motion

14. As stated previously, the Motion to Dismiss is based on two grounds. First, USTA asserts that Brown failed to exhaust his administrative remedies with USTA, as is required by Section 220527(b) of the Act and Section 10.11 of the USOC Bylaws.

15. Second, USTA contends that Brown's Amended Complaint should be dismissed pursuant to Section 10.12 of the USOC Bylaws, which provides that a complaint can be dismissed if it fails to state a claim upon which relief can be granted. USTA states that a motion to dismiss based on Section 10.12 of the USOC Bylaws is similar to a motion filed pursuant to Fed.R.Civ.P. 12(b)(6). USTA urges the Hearing Panel to look to court cases interpreting Fed.R..Civ.P. 12(b)(6) for guidance on the legal standard to be utilized in analyzing its Motion to Dismiss based on Section 10.12 of the USOC Bylaws.

B. Failure to Exhaust Administrative Remedies

16. The Hearing Panel will first consider USTA's contention that Brown failed to comply with Section 220527(b) of the Act and Section 10.11 of the USOC Bylaws. Those Sections provide that a complainant may file a complaint with the USOC only a) after having exhausted all remedies available under the procedures of the NGB, or b) by showing through clear and convincing evidence that those remedies would have resulted in unnecessary delay.

17. The first question before the Hearing Panel is whether Brown exhausted his administrative remedies with USTA.

18. Brown contends in his Amended Complaint that he exhausted his administrative remedies by making "repeated efforts to obtain resolution of this Complaint through direct e-mail communications with four individuals [at USTA] having fiduciary responsibility and involvement with the subject of these issues...." He also states that these "efforts at resolution have taken place over several months with no success in establishing any meaningful discussion of the issues."

19. Email correspondence complaining about an NGB's actions does not constitute filing a grievance. Nor does it substitute for actually pursuing the grievance process pursuant to an NGB's procedures.

20. The Hearing Panel finds that Brown did not file an internal grievance with USTA.

21. As an alternative to having exhausted his internal remedies through email correspondence, Brown contends that he should be allowed to bypass the exhaustion requirement altogether. Brown's contention is based on two arguments.

22. First, Brown laments that USTA will refuse to process his grievance. In his April 11 additional submission opposing the Motion to Dismiss Brown states that “USTA will not entertain a grievance contrary to their opinion.” Other than this assertion, Brown offers no evidence that would verify this claim.

23. USTA denies this assertion. It responds that its grievance committee members are independent and that its grievance process provides a fair and unbiased mechanism for hearing and rendering decisions on complaints.

24. Second, Brown asserts in his April 2 Opposition to the Motion to Dismiss that USTA will not act in “good faith” in handling his complaint, and thus he should be excused from the process. His position is that the executives of USTA will crush “each and every recommendation” made by him, and therefore utilizing USTA’s grievance process is futile. Brown refers to a case in which he alleges that an official was sanctioned by USTA. He claims that USTA’s defense of its action in that ruling is an example of USTA’s attempt to crush any opposition to its actions and not handle complaints fairly.

25. USTA denies this contention. It states that its internal grievance process is set forth in Section 43 of its Bylaws. USTA asserts that if Brown wishes to avail himself of that process, then his grievance will be heard and decided pursuant to the procedures set forth in Section 43 of its Bylaws.

26. The Hearing Panel finds that Brown is not excused from exhausting his administrative remedies with USTA. He has not proven that USTA would fail to process his grievance. Nor has he shown that USTA’s grievance process is biased against

complainants or would result in a finding against him, no matter the validity of his claim. The case referred to by Brown is not persuasive.

27. The second question before the Hearing Panel is whether utilizing USTA's grievance process would result in unnecessary delay.

28. Brown contends in his April 2 Opposition to the Motion to Dismiss that this matter should be heard by the Hearing Panel as:

There is the matter of urgency in that every day and week that goes by during which this grievance is not addresses [sic] and resolved, American youth are deprived of their right to pursue a better life through their accomplishments in the arena of sports as argued in the [Amended] Complaint.

29. Brown further states in his April 11 additional submission opposing the Motion to Dismiss that "there is clear urgency for the USOC to act because parents are outraged at the irrational actions of the USTA with regard to 10U tennis."

30. USTA responds that Brown has not demonstrated any emergency in this matter that would require the Hearing Panel to immediately hear Brown's complaint. USTA states that the mere fact that Brown disagrees with USTA's TAUT program does not give Brown cause to bypass USTA's administrative grievance process.

31. Further, upon direct inquiry from the Hearing Panel, USTA indicated that it could process an internal grievance within six weeks, depending of course on the complexity of the claim and negating any delay on the part of the complainant.

32. The Hearing Panel finds that Brown has not shown that his claims are so urgent that USTA's grievance process should be bypassed. Nor has Brown proven that proceeding with USTA's grievance process would be of such length and so drawn out that he could not have his claims heard within a reasonable amount of time.

33. Therefore, the Hearing Panel finds that Brown has not shown by clear and convincing evidence that exhausting administrative remedies with USTA would unnecessary delay having his claims heard.

34. Finally, there are good reasons for requiring individuals to pursue their complaints through an administrative proceeding. As stated in *Farry v. United States Rowing Assn., Decision (Jun. 29, 2007) (James McCarthy, Stacey Johnson, Robert Mitchell, Lee Todd & Mark Henderson, Pnl. Mbrs.):*

The exhaustion requirement enables an NGB to make an initial determination on matters within its control and expertise. It also affords an NGB the opportunity to review its actions, and thereby, if the complaint is valid, to either resolve or correct its mistakes. Further, it minimizes the necessity for intervention by a subsequent hearing body, in this case the USOC, or the AAA. Finally, it preserves the administrative process and discourages disregard of the NGB's grievance procedures.

Farry at page 18.

35. Accordingly, USTA's Motion to Dismiss is granted for Brown's failure to exhaust his administrative remedies as is required by Section 220527(b) of the Act and Section 10.11 of the USOC Bylaws.

C. Failure to State a Claim

36. In light of the Hearing Panel's determination to grant USTA's Motion to Dismiss for Brown's failure to exhaust his administrative remedies, it is not necessary for the Hearing Panel to address USTA's contention that Brown's Amended Complaint fails to state a claim upon which relief can be granted.

VII. ORDER

37. USTA's Motion to Dismiss is granted for the reason that Brown has not exhausted his administrative remedies.

38. Brown's Amended Complaint is hereby dismissed.

Dated this 18th day of April, 2013.

A handwritten signature in black ink, appearing to read 'Robert Bach', with a horizontal line underneath it. To the right of the signature, the letters 'For' are written in a smaller, cursive hand.

Robert Bach, Chair

Jim Tooley, Panel Member
Jessica Galli, Panel Member