

UNITED STATES EQUESTRIAN TEAM, INC.
Petitioner

v.

AMERICAN HORSE SHOWS ASSOCIATION, INC.
(now known as USA EQUESTRIAN, INC.)
Respondent.

ARTICLE VIII, SECTION 3 CHALLENGE
UNITED STATES OLYMPIC COMMITTEE CONSTITUTION AND BYLAWS

USOC HEARING PANEL REPORT AND RECOMMENDATION

United States Olympic Committee Hearing Panel

William Stapleton, Chair

Steve Locke

Mary McCagg

Tom Osborne

Barbara Smith

I. INTRODUCTION AND SUMMARY RECOMMENDATION

The American Horse Shows Association, Inc., now known as USA Equestrian, Inc., ("USAE") is formally recognized as the National Governing Body ("NGB") for the sport of equestrian in the United States. During its tenure as NGB, the USAE has delegated many, if not most, of its responsibilities, first to the United States Calvary Association, and second, since 1950, to the United States Equestrian Team ("USET"). Thus, while USAE has been the NGB in name, it has not served the function of an NGB as required by the Ted Stevens Olympic and Amateur Sports Act (36 USC § 220501 *et seq.*), (the "Act") and as required by Article IV and Article VI of the USOC Constitution.¹

In effect, the sport of equestrian has been governed under an anomalous structure, where both the USAE and the USET, together, with separate and different functions, serve as the NGB. Under this arrangement, the USAE is primarily responsible for regulating "grassroots" programs in the United States for equestrian sports, including the seven disciplines recognized by the international federation for equestrian. The USET, on the other hand, is primarily responsible for governing the "elite" programs in the United States, including fielding teams to the Olympics, Pan American Games and World Championships.

Thus, the Hearing Panel finds that neither the USAE nor the USET meets the criteria for recognition as an NGB and recommends to the Board that the formal recognition now held by the USAE be revoked. However, the Panel believes that creating a void in the sport would not only be harmful to equestrian programs in the United States, but would cause serious hardship to the many athletes who compete at the international level. Further, the Panel is cognizant of the many contributions of both organizations and believes that it is time for those individuals who side with

¹ Hereinafter any reference to "Article" refers to the USOC Constitution and any reference to "Chapter" refers to the USOC Bylaws.

one organization over the other to lay aside their differences and come together for the common good and to strengthen the governance of equestrian in the United States. Thus, recognizing that in fact the two organizations acting together have functioned as the NGB, the Hearing Panel places both the USAE and USET on probation and directs that if the two organizations wish to continue serving the interests of the sport of equestrian in the United States as NGB, they must either merge their organizations into one or reform themselves so as to bring all interests under the governance of a single organization. If such steps are not taken within the 180 day probationary period, as is provided for in the Act and the USOC Constitution and Bylaws, then the Panel recommends that a vacancy be declared in the sport of equestrian.

II. BACKGROUND

On February 26, 2001, United States Equestrian Team, Inc. ("USET") filed a Challenge against USAE pursuant to Article VIII, Section 3, of the USOC Constitution and Chapter VII of the USOC Bylaws, and Section 220528 of the Act, seeking to replace USAE as the NGB for the sport of equestrian.²

In accordance with Chapter VII, Sections 3 and 5(B), USOC President, Sandra Baldwin, appointed a Hearing Panel (the "Panel") of five voting members of the USOC Board of Directors for the purpose of hearing this matter. After appointment, Herb Perez resigned from the Panel. Subsequently, President Baldwin appointed Mary McCagg to the Panel as Mr. Perez' replacement. Prior to the hearing on this matter, Lisa Voight resigned from the Panel. Subsequently, President Baldwin appointed Barbara Smith to the Panel as Ms. Voight's replacement. The parties waived

² As explained below, the Panel determined that it had the authority and that it was appropriate to also consider this matter as a Complaint under Article VIII, Section 1.

any objections to Ms. McCagg and Ms. Smith's service on the Panel. The Panel members who were appointed and heard this matter are:

William Stapleton, Chair
USOC Vice President and USOC Board of Directors
Steve Locke
USOC Board of Directors, USA Triathlon
Mary McCagg
USOC Board of Directors, AAC Vice Chair
Tom Osborne
USOC Board of Directors, National Congress of State Games
Barbara Smith
USOC Board of Directors, US Tennis Association.

On March 20, 2001, pursuant to Chapter VII, Section 2, USAE filed a Motion to Dismiss the Challenge ("Motion to Dismiss"). Instead of responding to the Motion to Dismiss, USET filed an Amended Challenge on April 12, 2001.

On May 2, 2001, USAE filed a Motion to Dismiss the Amended Challenge ("Second Motion to Dismiss"). On May 16, 2001, USET filed a Memorandum in Opposition to the Second Motion to Dismiss. On May 31, 2001, after hearing oral argument, the Panel denied USAE's Second Motion to Dismiss. A copy of the Panel's May 31, 2001 decision is attached hereto as Appendix A.

The USAE filed an Answer to the Amended Challenge on June 21, 2001. The USAE asserted the following affirmative defenses: (1) the USET lacked standing to bring the Amended Challenge; (2) there was no jurisdiction to hear the Amended Challenge; (3) the Amended Challenge was procedurally defective; and (4) the USET failed to state a claim on which the USOC might grant the relief requested by USET. On October 4, 2001, the USAE filed an amendment to its Answer adding another affirmative defense that no properly authorized or valid challenge was filed by USET within the period prescribed by the Act and the Constitution.

On September 6, 2001, USAE filed a Motion for Reconsideration of its Motion to Dismiss the Challenge Proceeding ("Motion for Reconsideration"). USET filed a Response to the Motion for Reconsideration on September 11, 2001. On September 17, 2001, USAE filed a Reply in Support of its Motion for Reconsideration. On October 5, 2001, the Panel, after hearing oral argument, denied the Motion for Reconsideration. A copy of the Panel's October 5, 2001 decision is attached hereto as Appendix B.

On June 8, 2001, the USET requested that the Hearing Panel require the USAE complete and submit a USOC Membership Application and Compliance Report. The Panel denied USET's request without prejudice on June 20, 2001. A copy of the Hearing Panel decision is attached hereto as Appendix C.³

On June 6, 2001, the parties by stipulation agreed, among other things, to waive the requirement found in Article VIII, Section 3(C) of the Constitution, Chapter VII, Section 5(A) of the Bylaws and Section 220528 of the Act that the Board of Directors hold a formal hearing within 180 days of receipt of a Challenge. The parties also agreed to waive the requirement of Chapter VII, Section 5(E) that the Panel prepare and submit a written report to the Board of Directors not later than 150 days after the filing of the Challenge. The parties made further stipulations regarding the notice to the public required under the Constitution and Bylaws. Further, the parties agreed to waive the requirements found in Chapter VII, Section 6(A) of the Bylaws, that the Hearing Panel's report on this matter be provided to the Board of Directors fifteen days in advance of the Board Meeting at which this matter will be considered. The parties agreed that they would not raise any objections in any form to any of these matters. The parties also agreed that they would not assert any arguments based on the subjects covered by the waivers.

³ Of its own accord, the USAE later filed a membership application.

The hearing before the Panel on this matter was originally scheduled for September 24, 25 and 26 in New York City. The hearing was postponed and relocated due to the difficulties in travel resulting from the events of September 11, 2001.

Prior to the hearing, both the USAE and USET filed Pre-Hearing Memoranda. Also, both the USAE and the USET filed Pre-Hearing Reply Memoranda. Further, at the request of the Panel, the parties submitted those documents that they intended to introduce as evidence at the hearing. At the hearing, each party requested permission to submit further documents, and as neither party objected, the requests were accommodated by the Panel.

On October 13-15, the parties appeared before the Panel at the hearing in Austin, Texas. At the hearing, the Hearing Panel heard evidence from the parties in accordance with the hearing procedures set forth in Chapter VI of the Bylaws. Both parties were allowed opening statements. The parties were given a reasonable opportunity to present oral and written evidence, to cross-examine witnesses and to present factual or legal claims as desired. The parties were each given 11.5 hours to present their cases. The parties presented in total the testimony of 18 witnesses and 108 exhibits. The Presidents of both the USAE and the USET made presentations summarizing their respective cases at the close of the hearing. The rules of evidence were not strictly enforced and rules of evidence generally accepted in administrative proceedings were applied. The hearing was open to the public and was stenographically recorded. The hearing commenced at 7:30 a.m. on October 13, 2001, and concluded at 4:25 p.m. on October 15, 2001. A copy of the transcript is attached hereto as Appendix D.

During the hearing, the parties entered into mediation to attempt to resolve the issue of how the sport of equestrian should be governed, including what organization should be recognized as the National Governing Body. At the close of the hearing, the parties determined to continue their efforts to resolve their differences prior to a final determination by the USOC Board of Directors on

the Challenge. In connection with their continuing efforts, the parties entered into a stipulation (which is attached hereto as Appendix E), pursuant to which they requested that the Panel not submit its report to the Board prior to the Board meeting held on October 27-28, 2001. They also requested that the Board not hold a hearing on the matter at that meeting.

Further, the parties waived any rights that they might have had under Article VIII, Section 3(C) and Chapter VII, Section 6(A) and Section 220528(d) of the Act to have a hearing at a USOC Board of Directors meeting. In their stipulation, the parties agreed that if mediation efforts failed, the USOC Board could hear the challenge solely on the report and recommendation of the Panel, and that no hearing before the Board would take place. The parties agreed that the hearing before the USOC Board and its vote on the matter could then be conducted in accordance with Article XVII of the Constitution, which provides for the transaction of business by mail, e-mail or facsimile.

At the beginning of April 2002, the parties notified the Hearing Panel that the mediation efforts had come to an impasse. On April 8, 2002, USAE submitted a Motion to Reopen the Hearing. USET objected to the Motion. The Hearing Panel denied the Motion.

Accordingly, pursuant to Chapter VII, Section 5(E), the Hearing Panel has prepared this report and recommendation for the Board of Director's consideration and action.

III. BURDEN OF PROOF

Under Chapter VI, Section 2, the challenger or complainant has the burden of proof and the burden of going forward with the evidence.

IV. SUMMARY OF EVIDENCE

A. WITNESSES

The list of the witnesses presented by each party is attached hereto as Appendix F.

B. TRANSCRIPT

The transcript of the proceeding before the Hearing Panel is attached hereto as Appendix D.

C. FINDINGS OF THE PANEL

The Panel, based upon the written submissions of the parties, the evidence presented at the hearing and the oral arguments presented at the hearing, finds as follows:

- (1) The Panel finds that together, the USAE and USET have been acting as the NGB for the sport of equestrian.
- (2) The Panel finds that as a result of the unique situation involved in this dispute, it is appropriate for the Panel to consider this matter under Article VIII, Section 1, as well as under Article VIII, Section 3.
- (3) The Panel determines that as provided in Article VIII, Section 1(A), USAE and USET have exhausted internal remedies to resolve their differences, or that the exhaustion of those remedies would have resulted in delay beyond that which has already occurred, which is unnecessary.
- (4) The Panel denies all of the affirmative defenses raised by USAE.
- (5) The Panel determines that neither the USAE nor USET is in compliance with certain of the requirements of Article IV, Section 4(C), and that their non-compliance is not merely a minor deficiency.
- (6) The Panel finds that neither the USAE nor the USET meets the requirements of Article IV, Section 4(C)(1), in that they currently do not have the managerial capability to plan and

execute all obligations as a NGB. Those obligations relating to the international aspects of the sport have been performed by the USET, while those obligations relating to grassroots aspects have been performed by the USAE.

- (7) The Panel finds that neither organization meets the requirements of Article IV, Section 4(C)(1), in that they currently do not have the financial capability to plan and execute all of the obligations of an NGB.
- (8) The Panel finds that neither organization meets the requirements of Article IV, Section 4(C)(4), in that neither is autonomous in the governance of the sport, neither independently determines and controls all matters central to such governance, and each delegates such determination and control to the other, and neither is free from outside restraint.⁴
- (9) The Panel finds that the USAE has delegated certain functions central to the governance of the sport of equestrian, especially those relating to the elite aspects of the sport, to the USET in violation of Article IV, Section 4(C)(4). The Panel further finds that the USET has relinquished certain responsibilities central to the governance of the sport of equestrian, especially those relating to the grassroots aspects of the sport, to the USAE in violation of Article IV, Section 4 (C)(4).
- (10) The Panel finds that the Operating Agreement entered into by the parties dated August 1, 1997, violated Article IV, Section 4(C)(4) of the Constitution.
- (11) The Panel finds that neither the USET nor the USAE has met the burden under Article VIII, Section 3 of establishing by a preponderance of the evidence that it meets the criteria for recognition as a NGB under Article IV, Section 4(C).

⁴ See the letter from the USOC Membership and Credentials Committee dated November 22, 2000, admitted into evidence at the Hearing as USET Exhibit 19, which indicated that the Membership and Credentials Committee would recommend such a finding to the USOC Board of Directors.

C. AVAILABLE REMEDIES

Under Article VIII, Section 3(D), the USOC Board of Directors may determine to (1) uphold the right of USAE to continue as the NGB for the sport of equestrian, (2) revoke the recognition of USAE as the NGB and declare a vacancy in the NGB for the sport of equestrian, (3) revoke the recognition of USAE as the NGB and recognize USET as the NGB, or (4) decide to place USAE on probation not to exceed 180 days, pending the compliance of the USAE, if USAE would have retained recognition except for minor deficiency in one of the requirements of Article IV, Section 4(C) or Article VII, Section 1, and notify USAE of such probation and of the actions needed to comply with such requirements.

However, as already mentioned, because of the unusual circumstances surrounding the governance of equestrian, where both the USAE and USET were jointly serving as NGB, and where to dislodge one organization in place of the other would not resolve the underlying compliance issues, the Hearing Panel determined that it had authority to also consider this matter as a complaint under Article VIII, Section 1. This would allow the Hearing Panel the latitude to review the compliance of both organizations and to fashion a remedy that would promote a lasting solution and which would be in the best interest of the sport. In effect, what was before the Hearing Panel was a complaint involving both organizations and their joint governance of equestrian. Further, as previously stated, the Hearing Panel's finding of non-compliance was not one of a mere minor deficiency.

Under Article VIII, Section 1(D)(2), the USOC may, if it determines that an NGB is not in compliance with the requirements of Article IV, Section 4(C) and Article VII, Sections 1 and 2, place the NGB on probation for a specified period of time not to exceed 180 days, or revoke the recognition of the NGB.

VI. RECOMMENDATION

Both parties to this proceeding have a long, successful, and valued history in governing the sport of equestrian and both have performed a good and valuable service to the sport and to the Olympic Movement. However, the sport of equestrian has operated under an anomalous structure. Unfortunately, this structure is not in compliance with either the Act or the Constitution and Bylaws of the USOC. Further, it has resulted in disharmony in the sport with both the USAE and USET working at cross purposes, while trying to divide up the responsibilities of NGB. Ill feelings abound. This situation has not only been harmful to the present governance of equestrian, but does not bode well for the future of the sport or the athlete.

Therefore, the Panel recommends to the Board of Directors that, in recognition that the USAE and USET have acted together as the NGB in violation of the Constitution and the Act, and that neither are in compliance with the requirements of Article IV, Section 4(C), and that neither acting alone could currently satisfy the obligations of an NGB, that both the USAE and USET be placed on probation in accordance with Article VIII, Section 1(D)(2)(a) and Section 220527(d)(2)(A) of the Act.

The Panel further recommends that the USOC Board of Directors require the USAE and the USET to take the following actions in the next 180 days [or shorter] to comply with the requirements of Article IV, Sections 4(C)(1) and 4(C)(4):

- (1) Based upon the evidence presented to the Panel, which indicated that a great deal of the trouble in this sport has arisen from the relationships among the leadership of the two organizations, as well as from the violations of the requirements of the Constitution and Bylaws, the Panel recommends that for the good of the sport of equestrian, the current officers of each organization step aside. Specifically, the Panel recommends that Alan Balch, and Armand Leone and Frank Lloyd step aside from their roles at their respective

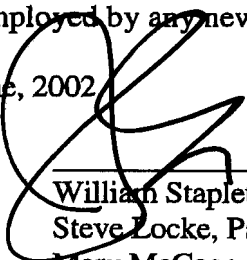
organizations and that those individuals not be permitted to take part in the governance of the sport of equestrian for a minimum of six (6) years.⁵ This will allow new leadership to forge a new unified organization.

- (2) The USAE and the USET either merge their two organizations into one or reform themselves so as to bring all interests under the governance of a single organization, which shall act as the NGB for the sport of equestrian. To that end, the new organization must establish an internal division to govern the international aspects of the sport and the international disciplines as well as domestic division to govern those disciplines that are not recognized by equestrian's international federation and to foster the continued development of grassroots programs in the United States. The division handling international aspects must be staffed by employees with equivalent experience to those of the USET in the areas relating to the international aspects of the sport, including the international disciplines. (This division will be referred to herein for convenience as the "International Operating Division.") (The division handling domestic disciplines will be referred to herein for convenience as the "National Operating Division.")
- (3) The new organization must establish a Board of Directors/Executive Committee voting structure that sufficiently protects the International Operating Division, while at the same time provides for input and representation by the National Operating Division.
- (4) The new organization must provide the International Operating Division and the international disciplines with equivalent or greater resources and support than they have received from the USET.

⁵ In his testimony given at the Hearing, Alan Balch, the President of the USAE, stated that "...I became a lightning rod. So I bear a great deal of responsibility, of blame, if you will, for us not being able to work this out. And I consider it one of the greatest failures of my professional life that trying everything we have, we have not been able to get this very logical consolidation established." It became evident to the Panel that both sides were to blame.

- (5) The new organization must make good faith efforts to support and maintain the existing training and competition facilities of the two parties.
- (6) The USAE and the USET must report on their progress towards these goals to the USOC Membership and Credentials Committee at the Committee's meeting scheduled for September 28 and 30, 2002 in Colorado Springs, Colorado and at other meetings of the Committee as the Committee requests, and the new organization must pass the review of the Membership and Credentials Committee before the probation will be lifted.
- (7) In the event that at the end of the 180-day probationary period, the two organizations have not caused these requirements to be met, a vacancy shall be declared in the sport of equestrian.
- (8) The Panel recommends that the governing board of the new organization reflect equal representation of each of the parties for an initial period. Each party must be in fact and in spirit an equal partner in the new venture; in order to accomplish that, each party must enter into the new venture with an equal voice.
- (9) Further, the Panel recommends that both organizations waive any non-compete clauses found in the employment agreements of certain of their employees, which might prevent those employees from becoming employed by any new organization formed by the two entities.

Dated this 7th day of June, 2002



William Stapleton, Chair
Steve Locke, Panel Member
Mary McCagg, Panel Member
Tom Osborne, Panel Member
Barbara Smith, Panel Member