

UNITED STATES OLYMPIC COMMITTEE

LIONEL LEACH, ET AL.	)	
	)	
Complainants	)	
	)	
v.	)	DECISION
	)	ON
USA TRACK & FIELD, INC. (USATF)	)	MOTION TO DISMISS
	)	
Respondent.	)	September 20, 2016

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I. THE PARTIES

1. Lionel Leach, Mary Elizabeth Aude, Dorothy Dawson, Linda Ellis, Kenneth Ferguson, Inez Finch, Marc Jones, Ronald Mascareñas, Henry McCallum, Jr., Linda Phelps, David Reinhardt, Norine Richardson and Jacqueline White (“Complainants”) are members of USA Track & Field (“USATF”). They are also members of USATF’s Youth Executive Committee.<sup>1</sup>

2. USATF is the National Governing Body (“NGB”) for the sport of track and field 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 May 26, 2016, Complainants filed a Complaint with the USOC against USATF pursuant to Section 220527 of the Act and Section 10 of the USOC Bylaws.

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<sup>1</sup> The Youth Executive Committee is the executive committee of USATF’s Youth Athletics Committee.

### III. HEARING PANEL APPOINTMENT

4. 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:

Bob Wood, Chair, USOC Board Member;  
Darrin Steele, Executive Director of USA Bobsled and Skeleton and NGBC Member; and  
Kerry McCoy, Wrestling athlete and At-Large Leadership Member of the AAC.

5. The parties were provided a list of hearing panel members by letter from Mr. Blackmun dated June 7, 2016. Neither Complainants nor USATF voiced an objection to the composition of the Hearing Panel.

6. Accordingly, the Hearing Panel was seated without objection.

### IV. COMPLAINT

7. The underlying controversy that gives rise to the Complaint stems from a dispute concerning who has authority, USATF or the Youth Executive Committee, to select and contract for vendor services for online registration for youth athletes.

8. The Complaint alleges that USATF suspended Complainants' membership on the Youth Executive Committee because of the dispute.

9. The Complaint further alleges that Complainants "were not given an opportunity to be heard, to present evidence, to call witnesses, or to cross examine adverse witnesses" before being suspended from the Youth Executive Committee.

10. As a result, Complainants contend that USATF is in violation of the following NGB requirements. First, that USATF is in violation of Section 220522(a)(8) of the Act, which requires that an NGB provide "fair notice and an opportunity for a hearing to any amateur

athlete, coach, trainer, manager, administrator, or official before declaring the individual ineligible to participate.”

11. Second, that USATF is in violation of Section 220502(a)(13) of the Act, which requires that an NGB provide “procedures for the prompt and equitable resolution of the grievances of its members.”

12. Third, that USATF is in violation of Section 8.7(a) of the USOC Bylaws, which provides that an NGB “fulfill its responsibilities as an NGB ... as set forth in the Act.”

#### V. MOTION TO DISMISS

13. On June 30, 2016, USATF filed a Motion to Dismiss. The Motion is based on two grounds. Briefly stated, they are that (a) the Complainants have failed to exhaust their administrative remedies with USATF and (b) the Complaint fails to state a claim upon which relief can be granted.

14. After conferring with the parties, the Hearing Panel set a briefing schedule and hearing date for argument on the Motion to Dismiss.

15. The Hearing Panel allowed Complainants until July 15, 2016, to respond to the Motion to Dismiss. Complainants filed an Opposition to the Motion to Dismiss on July 15, 2016.

16. The Hearing Panel allowed USATF until July 22, 2016, to reply to Complainants’ Opposition to the Motion to Dismiss. USATF filed a Reply to the Opposition to the Motion to Dismiss on July 21, 2016.

17. The Hearing Panel held oral argument on the Motion to Dismiss by telephone conference call on July 27, 2016.

18. Complainants were represented by David Greifinger of the Law Offices of David R. Greifinger. Paul Greene of Global Sports Advocates, LLC, and Norman Wain, USATF General Counsel and Chief of Business Affairs, represented USATF. Also on the call were Gary L. Johansen, USOC Associate General Counsel and legal counsel to the Hearing Panel, Lucy Denley, USOC Senior Paralegal and liaison to the Hearing Panel and Leah Cameron, USOC Legal Intern.

19. On August 3, 2016, USATF submitted a timeline of events surrounding the controversy between Complainants and USATF. Complainants did not object to the submission and so it was accepted.

20. In its consideration of the Motion to Dismiss, the Hearing Panel reviewed the 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.

## VI. RULING

21. It is the determination of the Hearing Panel that USATF's Motion to Dismiss is granted. In making this determination, the Hearing Panel finds that Complainants have failed to exhaust their administrative remedies with USATF. Since dismissal is based on this ground, the Hearing Panel makes no ruling on USATF's argument that Complainants have failed to state a claim upon which relief can be granted.

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

## VII. BACKGROUND

23. The Hearing Panel makes no finding on the merits of the underlying controversy, but believes it is helpful to provide some context by way of a brief summary of events giving rise to this dispute.

24. Complainants are volunteer members of USATF's Youth Executive Committee. A disagreement arose between Complainants and USATF about which online registration vendor to use for online registration for youth athletes. USATF entered into a contract with an online registration vendor in January 2016, while Complainants decided to use an alternate online registration vendor.

25. As a result of this disagreement, USATF filed a Grievance with the USATF National Athletics Board of Review ("NABR") on February 2, 2016, against Complainant Leach. The Grievance alleged that Leach exceeded his authority by not utilizing USATF's online vendor, and that independent of USATF and without authority he moved forward with a different online registration vendor for certain youth competitions. The Grievance also alleged that Leach had no authority to "directly negotiate or enter into an agreement with any registration company on behalf of the Youth Athletics Committee."

26. Subsequently, as alleged by USATF, Complainants undertook a number of activities defying USATF's online registration vendor selection, including circulation of a petition and passage of a resolution to move forward with a different online registration vendor.

27. USATF alleged these activities undermined its contractual relationship with its online registration vendor, placed thousands of kids at risk of not being able to participate in national championships, subjected USATF to litigation, and harmed the integrity of the sport. As a result, USATF on May 24, 2016, suspended Complainants from their positions on the Youth Executive Committee.

28. In response to USATF's decision to suspend them, Complainants filed the present Section 10 case with the USOC on May 27, 2016, alleging that they were not provided with a

hearing or an opportunity to present their case prior to suspension from the Youth Executive Committee.

29. On June 3, 2016, USATF filed a Disciplinary Complaint with USATF's NABR seeking the revocation of Complainants' memberships and permanent expulsion from USATF. The Disciplinary Complaint was similar to, and recited many of the same allegations, as the February 2, 2016, Grievance filed against Leach.

30. Also, on June 3, 2016, USATF filed a lawsuit against Complainants in Indiana state court.

31. The NABR held a pre-hearing conference on June 13, 2016, at which time both USATF's Grievance and Disciplinary Complaint were merged. After hearing from the parties, the NABR also scheduled a hearing on the merits for November 14, 2016.

## VIII. ANALYSIS

### A. Basis for Motion

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

33. Second, USATF contends that the Complaint should be dismissed pursuant to Section 10.12 of the USOC Bylaws, which provides that a complaint be dismissed if it fails to state a claim upon which relief can be granted.

### B. Failure to Exhaust Administrative Remedies

34. The Hearing Panel will first consider USATF's contention that Complainants 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 after (a)

having exhausted all administrative 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.

(a) Failure to File Administrative Complaint

35. The first question before the Hearing Panel is whether Complainants filed an administrative complaint with USATF.

36. USATF argues there were two internal remedies available to the Complainants, neither of which were satisfied prior to filing the present Section 10 case.

37. First, USATF claims “Complainants could have filed a grievance against USATF under USATF Regulation 21 before the independent NABR challenging USATF’s decision to immediately suspend them.” Second, USATF claims “Complainants could have sought reinstatement under USATF Regulation 22 and failed to do so.”

38. Complainants do not challenge that they failed to file a grievance under USATF Regulations 21 or 22. Rather, they contend that the February 2, 2016, Grievance against Complainant Leach and the June 3, 2016, USATF Disciplinary Complaint against Complainants, which were merged and are being heard by USATF’s NABR, satisfy the exhaustion requirement. Complainants state that filing “yet another grievance complaint challenging USATF’s suspensions...would be wasteful and duplicative of the internal grievances already in place.”

39. Complainants also disagree that seeking reinstatement under USATF Regulation 22 is a viable option because it requires a person to “make a reinstatement request only after all USATF appeals have been exhausted or waived.” Complainants argue that pursuing this avenue would require them to “waive their hearing rights on the dispute, which would effectively constitute an admission of culpability.”

40. Based on the arguments set forth by the parties, it appears to the Hearing Panel that there is some misconception surrounding the exhaustion requirement.

41. Both USATF and Complainants' arguments focus (a) on the ongoing Regulation 21 disciplinary action relating to the Complainants' suspension from the Youth Executive Committee and possible revocation of USATF membership or (b) on a possible Regulation 22 proceeding concerning reinstatement of Complainants' USATF membership.

42. Those are both matters dealing with the underlying dispute. A Section 10 proceeding deals with whether an NGB is in compliance with the requirements of Sections 220522 - 220525 of the Act and Section 8 of the USOC Bylaws.

43. As stated in *Lee v. U.S. Speedskating*, Decision p. 12 (Anita DeFrantz, Jim Leahy and Brian Olsen, Pnl. Mbrs.) (Sept. 1, 2016), "a Section 10 Complaint...is not designed to provide a duplicate venue of appeal on an individual disciplinary action, and [it] does not provide a Hearing Panel with the authority to determine eligibility of individual members."

44. The conduct of an NGB in a disciplinary hearing may be used as evidence the NGB is not in compliance with the Act or USOC Bylaws, but a complainant cannot use the disciplinary proceeding itself to satisfy the administrative remedy requirement for a Section 10 complaint.

45. Put another way, a complainant may point to an NGB's conduct in a specific disciplinary proceeding as evidence in the Section 10 proceeding, but such disciplinary proceeding cannot be used as a substitute for an administrative complaint with the NGB.

46. A disciplinary hearing against a member and a Section 10 proceeding seeking to correct an NGB's deficiencies are two different actions with two different purposes. *See Lee v.*



*U.S. Speedskating*, (finding the Complainant's previously filed grievance requesting his reinstatement did not satisfy the Section 10 administrative remedy requirement).

47. The importance of the exhaustion requirement is well established. Only by filing a complaint with the NGB alleging that the NGB is not fulfilling its responsibilities can an NGB have proper notification of the allegations alleged, have the matter heard by an administrative tribunal, and have an opportunity to take corrective action, if necessary.

48. As stated in *Farry v. United States Rowing Assn.*, Decision (James McCarthy, Stacey Johnson, Robert Mitchell, Lee Todd & Mark Henderson, Pnl. Mbrs.) (Jun. 29, 2007):

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 p. 18.

49. Complainants did not file a complaint with USATF. Instead, they merely tried to utilize the disciplinary proceeding against themselves as proof of the exhaustion requirement. The Hearing Panel rejects this argument. Thus, Complainants have not exhausted their administrative remedies.

(b) Justification for not Filing Administrative Complaint

50. The second question before the Hearing Panel is whether Complainants can show by clear and convincing evidence that exhausting their administrative remedies would result in unnecessary delay.

51. Complainants assert two arguments, which would excuse them from exhausting their administrative remedies. First, they state that proceeding through an administrative

grievance process would result in unnecessary delay. Second, they state that USATF has corrupted the internal grievance process and so any attempt to utilize that process is futile, thus excusing their non-filing.

52. In support of the first argument, Complainants point to the pending disciplinary hearing in which the NABR, “which has complete control over scheduling matters, set the hearing for November 14, 2016, with a decision further down the road.”

53. USATF argues that the date for the disciplinary hearing was jointly decided by USATF and Complainants’ counsel during the June 13, 2016, preliminary hearing. In addition, USATF argues that Complainants have not, to date, filed any protest with the NABR alleging the November 14, 2016, hearing date is not acceptable and would deny them due process.

54. Once again, both parties’ arguments regarding unnecessary delay focus on the timeline of the ongoing disciplinary proceeding. In any event, the timing of the disciplinary hearing is a matter of contention.

55. Other than the allegation, there is no indication that a complaint filed with USATF pursuant to its procedures and alleging that it is not in compliance with the Act or USOC Bylaws would not be heard in a timely manner.

56. Thus, the Hearing Panel does not find that an administrative complaint filed with USATF would not be heard within an acceptable timeframe.

57. Second, Complainants argue that USATF’s administrative hearing process is corrupted and thus the exhaustion requirement is not applicable. Complainants support this argument by stating that their suspension by USATF’s Board is proof that they would not get a fair hearing.

58. USATF denies this claim. USATF contends that its hearing panels are independent and that any hearing relating to its obligations as an NGB would be conducted in a fair and impartial manner.

59. The Hearing Panel is not persuaded by Complainants' argument. Other than the mere allegation, there is no verification that Complainants would not get a fair and impartial hearing before USATF's administrative hearing board.

(c) Conclusion

60. In conclusion, the Hearing Panel finds that Complainants have not exhausted their administrative remedies, nor have they shown by clear and convincing evidence that doing so would have resulted in unnecessary delay or would have been futile because of prejudice to Complainants.

C. Failure to State a Claim

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

IX. ORDER

62. USATF's Motion to Dismiss is granted because Complainants have not exhausted their internal remedies.

63. The Complaint is hereby dismissed.

Dated this 20th day of September, 2016.



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Bob Wood, Chair

Darrin Steele, Panel Member

Kerry McCoy, Panel Member