

UNITED STATES OLYMPIC & PARALYMPIC COMMITTEE

TERESSA KANDIANIS and)	
LESLIE BERNDL,)	
)	
Complainants)	
)	
v.)	
)	
UNITED STATES EQUESTRIAN)	PRE-HEARING ORDER
FEDERATION)	
)	
Respondent.)	December 12, 2019

I. BACKGROUND

1. On March 29, 2019, Teresa Kandianis and Leslie Berndl (“Complainants”) filed a Complaint with the United States Olympic & Paralympic Committee (“USOPC”) against the United States Equestrian Federation (“USEF” or “Respondents”)(hereinafter to as “Parties”) pursuant to Section 220527 of the Ted Steven Olympic and Amateur Sports Act (36 USC §§ 220501-220529) (the “Act”) and Section 10 of the USOPC Bylaws.

II. MOTION TO DISMISS

2. On April 26, 2019, USEF submitted a Motion to Dismiss based on two grounds: (i) the Complaint failed to state a claim under Section 10, and (ii) the Complainants failed to exhaust their administrative remedies. On July 25, 2019, the Parties presented oral argument on the Motion to Dismiss. The Hearing Panel denied the Motion to Dismiss in its August 7, 2019, Decision.

III. PRELIMINARY HEARING

3. After consulting with the Parties, the Hearing Panel set a preliminary hearing for October 11, 2019, at 10:00am MT. Unfortunately, Complainants did not appear

for that call due to unforeseen circumstances limiting their availability. Consequently, the preliminary hearing was rescheduled to November 21, 2019, at 3:30pm MT.

4. Details surrounding the hearing process and additional Party requests were discussed during the November 21, 2019, preliminary hearing and will be addressed below.

IV. COMPLAINANTS' DISCOVERY REQUEST

5. Pursuant to Section 10.15 of the USOPC, a party to a Section 10 proceeding may request the production of documents or exchange of information. On November 21, 2019, shortly before the start of the preliminary hearing, Complainants submitted the following four requests to the Hearing Panel for its consideration:

REQUEST NO. 1. Please produce all DOCUMENTS that refer or relate to the timing of RESPONDENT'S announcement of its formal selections for the WORLD CHAMPIONSHIPS. The response should include, but not be limited to, emails and other communications, audio recordings of telephone calls, and notes.

REQUEST NO. 2. Please produce all DOCUMENTS not produced in response to the preceding request that refer or relate to the GRIEVANCE. The response should include, but not be limited to, emails and other communications, audio recordings of telephone calls, and notes.

REQUEST NO. 3. Please produce all DOCUMENTS not produced in response to the preceding requests that refer or relate to the scheduling of, attempted scheduling of and/or failure to schedule, any hearing regarding the GRIEVANCE. The response should include, but not be limited to, emails and other communications, audio recordings of telephone calls, and notes.

REQUEST NO. 4. Please produce all DOCUMENTS not produced in response to the preceding requests that evidence, refer or relate to RESPONDENT'S dismissal of the GRIEVANCE. The response should include, but not be limited to, emails and other communications, audio recordings of telephone calls, and notes.

6. During the preliminary hearing, the Hearing Panel provided the Parties with an opportunity to address this request.

7. As to Request No. 1, Complainants expressed that information related to the announcement of the selection for World Championships may show if USEF deliberately delayed in making those selections. USEF responded that it believed it had already produced this information, but had no objection to looking for this additional information.

8. The crux of the Section 10 Complaint rests on whether USEF has a process to promptly address athlete selection disputes. Considering there was no strong objection from USEF as to this request, along with the probative value the information could provide related to a prompt grievance process, the Hearing Panel believes this request could shed additional light on the issue.

9. Accordingly, the Hearing Panel grants Complainants' Request No. 1.

10. USEF shall respond to Complainants' Request No. 1 by December 27, 2019, 5pm MT.

11. Complainants' Requests No. 2, 3, and 4 relate to the internal grievance filed with USEF on August 9, 2017. Complainants believe that any additional information may show if the grievance was handled appropriately. USEF responds that the requests are overbroad and not relevant.

12. As to those requests, the Hearing Panel notes that extensive exhibits have already been provided with previous filings. The Hearing Panel believes that any further documents produced under this request will not provide any further relevance to the issues at hand.

13. Accordingly, the Hearing Panel denies Complainants' Requests No. 2, 3, and 4.

V. MEDIATION

14. During the November 21, 2019, preliminary hearing, USEF requested that the Hearing Panel direct mediation in accordance with Section 10.8 of the USOPC Bylaws.

15. The Hearing Panel provided Complainants with the opportunity to respond to this request and Complainants voiced their discomfort with any mediation efforts.

16. Complainants also requested that if the Hearing Panel ordered mediation, they would prefer that it be held telephonically.

17. The Hearing Panel welcomed the request of mediation, but ultimately has concerns with Complainants' hesitations to engage in mediation. Although the Hearing Panel believes that mediation can be a very effective resolution mechanism, the Hearing Panel questions its usefulness if both Parties do not agree and if there is discomfort voiced. Considering that Complainants' requested the mediation be held telephonically, the Hearing Panel worries that a lack of openness to the process might hinder the mediation efforts.

18. The Hearing Panel also recognizes how long this dispute has taken and believes that mediation may delay the process even further. Additionally, the Hearing Panel doesn't want to add any additional expenses on the Parties.

19. Accordingly, the Hearing Panel denies USEF's request for mediation.

20. However, the Hearing Panel believes that due to the narrow scope of the issues presented in the Section 10 Complaint, along with the value of party-agreement, it would be beneficial for the Parties to continue to try to informally resolve the dispute and come to an agreement.

21. Accordingly, the Hearing Panel requests that the Parties informally meet and confer prior to the hearing and report back to the Hearing Panel on those efforts by January 3, 2020, 5pm MT.

22. If those resolution efforts prove unsuccessful, a hearing on the merits will be held in accordance with the below Hearing Schedule and Procedures.

VI. HEARING SCHEDULE AND PROCEDURES

A. Date, Time and Location of Hearing

23. The hearing will be a one-day hearing that will commence on January 22, 2020, at 9:00am MT and end no later than 5pm MT.

24. The hearing will be in-person and held in Colorado Springs, Colorado at the United States Olympic & Paralympic Committee Headquarters located at 27 South Tejon Street.

B. Presentation of Case

25. The Parties should be prepared to present their cases in full at the hearing.

26. The Parties each have fifteen (15) minutes for opening statements. The Parties have a total of three (3) hours to present their case, including opening statements. Witness cross-examination shall be allotted to the time of the Party conducting the cross-examination.

27. The Parties and their counsel should be cordial to each other at all times during the hearing.

C. Pre-hearing Briefs

28. The Parties will simultaneously provide pre-hearing briefs to the Hearing Panel by January 8, 2020, 5pm MT. Pre-hearing briefs will be served on the other Party when submitted to the Hearing Panel.

29. Pre-hearing briefs will be no more than eight (8) pages in length double spaced.

30. The Parties will set forth their positions as to the allegations contained in the Complaint in a precise and straightforward manner that will enable the Hearing Panel to have a focused understanding of the issues to be decided and the evidence that will be presented.

D. Submission of Exhibits

31. The Parties will have until January 8, 2020, 5pm MT to submit any exhibits they wish the Hearing Panel to consider as evidence. All exhibits will also be served on the other Party when submitted to the Hearing Panel.

32. On the day of the hearing, the Parties shall provide four (4) hard copies of the exhibits in appropriately marked binders for use at the hearing.

33. Exhibits shall be marked in such a way as to differentiate between Complainants' exhibits and USEF's exhibits. The parties shall confer prior to submission of the exhibits to ensure that such a system is utilized.

34. Prior to the hearing, each party shall determine if there is an objection to an exhibited submitted by the other party. If there are no objections to an exhibit, then it will be admitted at the commencement of the hearing to save time and provide an orderly flow

of evidence. If a Party has an objection to an exhibit, the Party will notify the Hearing Panel by January 15, 2020, 5:00pm MT.

35. The Hearing Panel may request documents for consideration not submitted as exhibits by the Parties, as it considers appropriate.

E. Witnesses

36. Each Party will submit a list of its witnesses to the Hearing Panel by January 8, 2020, 5pm MT. Witness list will also be served on the other Party when submitted to the Hearing Panel.

37. Witness testimony will be submitted through live testimony, either in-person or telephonically.

38. The Hearing Panel may call witnesses not identified or called by the Parties, as it considers appropriate.

F. Transcript of Hearing

39. If a Party desires the hearing to be recorded by a stenographer, the Party making such request will notify the Hearing Panel by January 15, 2020, 5pm MT.

40. The Party requesting the recording will arrange and pay for the cost of the stenographer. If both Parties request a recording, the Parties will equally divide the cost.

41. A party requesting a transcript of the hearing will pay for the cost of the transcript. A transcript ordered by a Party, will also be made available to the Hearing Panel.

G. Submission of Materials

42. All communications to the Hearing Panel, including prehearing briefs and all exhibits and witness lists will be sent to the USOPC Dispute Resolution Unit, addressed to Lucy Denley: lucy.denley@usopc.org.

43. All communications, including prehearing briefs and all exhibits and witness lists will be sent electronically and will be in a read-accessible format.

VII. ORDER

44. Complainants' Discovery Request No. 1 is granted. USEF is ordered to produce those communications simultaneously to the Hearing Panel and Complainants by December 27, 2019, 5pm MT.

45. Complainants' Discovery Requests No. 2, 3, and 4 are denied.

46. USEF's request for mediation is denied.


47. The Hearing Panel orders the Parties to meet and confer and report to the Hearing Panel on those efforts by January 3, 2020, 5pm MT.

48. If those efforts are unsuccessful, a hearing will be held on January 22, 2020, in accordance with the above schedule and procedures. Submissions for the hearing are due by 5pm MT as follows:

- a. January 8, 2020 - Pre-hearing Briefs, Exhibits, and Witnesses List
- b. January 15, 2020 - Objections to Exhibits and Request for Stenographer

49. It is so ordered.

Dated this 12th day of December, 2019.



Brad Snyder, Chair

Chris Ramsey, Panel Member
Allysa Seely, Panel Member