

**UNITED STATES OLYMPIC COMMITTEE**

Matthew Fogarty,	)	
	)	
Complainant,	)	
	)	
vs.	)	AWARD
	)	OF
USA Badminton,	)	COSTS AND ATTORNEY FEES
	)	
Respondent.	)	July 14, 2008
	)	

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I. THE PARTIES

1. Matthew Fogarty (“Fogarty”) is a member of USA Badminton (“USAB”).

2. USAB is the National Governing Body (“NGB”) for badminton 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”).

II. BACKGROUND

3. On April 28, 2008 the Hearing Panel issued its Decision relating to an Article VIII Complaint filed by Fogarty on May 21, 2007.<sup>1</sup> In its Decision, the Panel found no merit to Fogarty’s claims and denied Fogarty’s Complaint in its entirety.

4. The Panel’s Decision is incorporated by reference into this Award.

5. In its Pre-Hearing Brief USAB requested that the Panel order that Fogarty pay all of USAB’s costs and attorney fees associated with this Article VIII proceeding.

6. The Panel made no determination on USAB’s request when it issued its Decision. Rather, it sought additional information from the parties as to the authority and

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<sup>1</sup> Fogarty filed two Article VIII Complaints on May 21, 2007 that for administrative purposes were combined into one Complaint. Together, the two Complaints are referred to as the May 21, 2007 Complaint.

justification for awarding costs and attorney fees in an Article VIII proceeding. Specifically the Panel requested that the parties respond to a number of questions, set out below:

- a) Each party shall provide to the Hearing Panel its position on the authority of an Article VIII Hearing Panel to make an award of costs and attorney fees associated with an Article VIII proceeding.
- b) Further, assuming that such authority exists, each party should discuss the basis or reasons for granting, or not granting, an award of costs and attorney fees in this matter. The parties should comment on the relevance of the outcome of this proceeding, as well as on the conduct and the financial resources of the parties.
- c) Further, USAB has raised the issue of Fogarty's "persistent, duplicative, and manipulative legal filings." USAB should provide in its response information pertaining to the actions Fogarty has filed relating to Olympic/amateur sport matters, the validity of those filings and whether the number and validity of filings should have any bearing on an award of costs and attorney fees against Fogarty in this proceeding.
- d) If an award of costs and attorney fees were to be granted, USAB should indicate how such an award would be collected upon or otherwise enforced and the authority for such collection or enforcement. Fogarty may also provide a response on his position on this issue.
- e) USAB shall provide to the Hearing Panel the amount of costs and attorney fees it is requesting with regard to this proceeding. The request should be accompanied by a statement documenting those costs and fees (the statement shall not be in such detail so as to disclose any attorney client privilege or work product of USAB's attorneys).

7. USAB was given until May 13, 2008 to submit its response to the Panel's request. Fogarty was given until May 23, 2008 to reply to USAB's response and to submit his response to the Panel's request.

8. USAB responded by a brief, together with a number of Exhibits, to the Panel's request on May 13, 2008. Fogarty did not respond to the Panel's request.

9. In its response USAB requested \$441.95 in costs and \$20,427.50 in attorney fees.

### III. DISCUSSION

10. The Panel has considered USAB's response in detail. Rather than reiterate each and every point made by USAB in its response, the Panel incorporates USAB's brief into this Award by reference. A copy of USAB's brief is attached to and made a part of this Award.

11. The Panel finds that the Panel has the authority to make an award of costs and attorney fees associated with an Article VIII proceeding.<sup>2</sup>

12. Further, the Panel finds that this is a case that calls for the award of costs and attorney fees.

13. Fogarty's actions in this proceeding seemed to demonstrate a calculated plan of harassment and bad faith. He has made derogatory references to individuals associated with USAB, calling them "gangsters," he has filed duplicative and nonsensical motions, his arguments at times were frivolous or illogical, and many of his claims were duplicative of claims that he has made in the past and which were decided against him.

14. Fogarty's disregard of this Article VIII process is verified by his failure or refusal to respond to the Panel's request for information pertaining to the award of costs and attorney fees.

15. Fogarty's habitual and recurring pattern of filing harassing and vexatious complaints and grievances against USAB is evidenced by USAB's following account:

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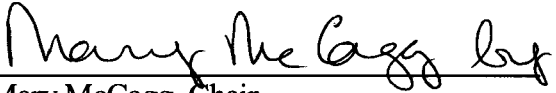
<sup>2</sup> This finding is consistent with the admonition rendered in *Farry v. USRowing*, USOC Article VIII (Decision dated June 29, 2007) in which the Hearing Panel indicated that it would "assess costs" against the claimant if justified.

- a) since 2004 Fogarty has filed seven Article VIII Complaints against USAB;
- b) since 2000 Fogarty has filed 29 Article IX Complaints against USAB;
- c) since 2000 Fogarty has filed four AAA claims against USAB;
- d) since 2003 Fogarty has filed three Court of Arbitration claims against USAB; and,
- e) since 2004, Fogarty has filed approximately 175 internal grievances of one nature or another against USAB, or individuals associated with USAB.

III. AWARD

16. The Panel orders an award of costs and attorney fees in the amount of Ten Thousand Dollars (\$10,000.00) in favor of USAB and against Fogarty.

17. Fogarty shall make such payment to USAB on or before August 15, 2008.

  
Mary McCagg, Chair

Robert P. Latham, Panel Member  
Max Cobb, Panel Member  
Debbie Hesse, Panel Member  
Courtney Johnson, Panel Member

Signed this 14th day of July, 2008

**BEFORE THE UNITED STATES OLYMPIC COMMITTEE**

<hr/>	)
<b>Matthew Fogarty,</b>	)
	)
<b>Complainant,</b>	)
	)
<b>v.</b>	)
	)
<b>USA Badminton</b>	)
	)
<b>Respondent.</b>	)
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**USA BADMINTON’S RESPONSE TO PANEL’S REQUEST FOR INFORMATION  
REGARDING THE AWARDING OF COSTS**

**I. Introduction**

The Panel has asked the parties in the above captioned matter to provide a more complete statement regarding USA Badminton’s (“USAB”) request for costs. The following responds to the enumerated requests of the Panel in the Decision issued April 28, 2008.

**II. USOC Panel’s Authority to Award Costs and Fees**

**A. The Hearing Panel’s Powers Under the Bylaws and the Sports Act**

The hearing in this matter was held pursuant to Article VIII of the USOC Bylaws (the “Bylaws”). Article VIII does not expressly address the awarding of costs and fees. However, no provision of Article VIII prevents a USOC Panel from awarding costs and fees to either side in a hearing before a USOC Panel pursuant to Article VIII. Following a USOC Panel determination in an Article VIII hearing, any party may appeal to a panel of American Arbitration Association (“AAA”) arbitrators. See USOC Bylaws Section 8.6. Appeal is available to “any party that considers itself aggrieved by a decision of the hearing panel on the merits of the complaint or by a remedy imposed by the USOC Board.” See USOC Bylaws

Section 8.6(A). Should a party choose to appeal to the AAA, an award of costs and fees may be made if the arbitrator deems it appropriate. See AAA Commercial Arbitration Rules and Mediation Procedures Rule R-43(c).

Given this broad right to appeal, the undeniable ability of the AAA to award costs and fees as it determines appropriate, and the silence of the Bylaws regarding costs and fees, the USOC Panel must be empowered to award costs and fees. If it were not, the body reviewing its decision, similar to an appellate court, would have broader powers to issue an award than the hearing panel. No instance in the United States justice system recognizes such an inverse power structure. Appellate courts, in some instances, have powers coterminous with the court of original jurisdiction, but never broader. The rules of the AAA, the arbitral body named in the Bylaws and the Ted Stevens Olympic and Amateur Sports Act (“Sports Act”), were specifically chosen by the drafters of those documents. It would be illogical to assume that the intent in selecting the AAA, and referencing the Commercial Rules in the Sports Act, was to choose a body that would have broader powers to issue an award than that of the USOC itself.

Any award issued by the AAA in an arbitration brought under Article VIII must be consistent with the Bylaws, Sports Act and the rules of the International Olympic Committee (“IOC”). See USOC Bylaws Section 8.6(D). The Sports Act specifically states that all National Governing Bodies (“NGB”) are eligible to be recognized as such only if they abide certain requirements listed in Section 220522. Two of these requirements are that the NGB agree “to submit to binding arbitration . . . conducted in accordance with the Commercial Rules of the American Arbitration Association” regarding an NGB’s recognition as the NGB for that sport (Article VIII claims) and the opportunity of an athlete, coach, trainer, manager, administrator or

official to participate in international competition (Article IX claims). See Sports Act, § 220522(a)(4)(A)-(B).

The USOC Panel can look to the Commercial Rules of the AAA, specifically mentioned in the Sports Act, in ordering fees in this matter. The AAA rule provides for awards of costs and fees in the discretion of the arbitrator. The USOC Panel may do the same. In fact, in a prior Article VIII arbitration between a rowing athlete and an NGB, the USOC Panel seemed to assume that it could award costs. It was noted that:

[t]he Hearing Panel is inclined to assess [athlete] with those costs and fees incurred by [NGB] in preparing for and appearing at the May 15 argument on the Motion to Dismiss. Although the Hearing Panel has decided that it will not do so, [athlete] is put on notice that if there are further proceedings associated with this matter, the Hearing Panel may assess costs if it determines that such assessment is justified.

The USOC Panel in the above quoted matter assumed that they could assess costs. USAB asserts that the USOC Panel has the power to use its discretion to assess costs and fees in light of the express adoption of the AAA Commercial Rules in the Sports Act and broad right of appeal from the USOC Panel's decision.

B. The Hearing Panel's Authority Under the American Rule

Even if the USOC Panel finds that the Sports Act, Bylaws and AAA Commercial Rules do not give it the power to award costs and fees, the USOC Panel may award costs and fees under the exception to the so-called American Rule. The American Rule provides that absent a specific rule, arbitrations and other alternative dispute resolution parties bear their own costs for legal actions. There is a well recognized exception to this rule in instances where bad faith is shown. The Ninth Circuit, for example, in Todd Shipyards Corp. v. Cunard Line, 943

F.2d 1056, 1064 (9th Cir. 1991), said “[i]n light of the broad power of arbitrators to fashion appropriate remedies and the accepted 'bad-faith conduct' exception to the American Rule, we hold that it was within the power of the arbitration panel in this case to award attorneys' fees.” The Eleventh Circuit held similarly in Marshall v. Duke, 114 F.3d 188, 190 (11th Cir. 1997), where it said, “In any event, the arbitrators have the power to award attorney's fees pursuant to the "bad faith" exception to the American Rule that each party bears its own attorney's fees.” USAB asserts that the American Rule is applicable here and the bad faith exception applies, empowering the USOC Panel to award costs and fees to USAB.

Bad faith has been explored by many courts. The most oft-cited definition was reiterated by the Supreme Court in Alyeska Pipeline Serv. Co. v. Wilderness Soc’y, 421 U.S. 240, 258-259 (1975) (rev’d on other grounds), where Justice White speaking for a majority of the court stated that fees could be awarded as an exception to the American Rule “ when the losing party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons.” (internal citations omitted). The Court went on to note that attorney’s fees may be awarded in such bad faith situations, provided that such an award has not been forbidden by Congress. See id. at 259.

Fogarty has filed and prosecuted this Article VIII action in bad faith. The USOC Panel’s decision in this matter notes as much in explaining the myriad reasons why Fogarty’s complaint could have been dismissed at an earlier time and in noting the number of prior complaints filed by Fogarty. Fogarty himself sought multiple delays and withdrew some complaints while pursuing others, only to re-file at least one of his original complaints at a later date, forcing more work onto USAB, its counsel and the USOC Panel.

As more fully explained below, Fogarty has sought the same interpretation of the USAB and BWF rules from numerous adjudicative bodies in numerous ways and been consistently informed that his interpretation is not correct. USAB does not have to choose athletes based solely on world ranking for the Thomas Cup, the Pan-American Games, or other major international competition. This USOC Panel confirmed that fact, as have prior AAA Panels and executives at the BWF. The Decision in this matter noted as such at ¶¶ 62-63 (noting that “it is Fogarty’s intent to litigate this matter endlessly until he gets a ruling in his favor”). Furthermore, as noted in the USOC Panel’s decision in this matter, that USAB chooses Thomas Cup athletes on the basis of a trial and not world rankings does not make the Olympic Games selection process for USAB improper in any way. The determination, once again, that Fogarty’s claims are without merit should come as no surprise to Fogarty. Furthermore, as found by the USOC Panel, Fogarty refused to follow the requisite procedures under Article VIII. He then failed to respond to requests of the USOC Panel to clarify his statements and provide additional information. He later sought a re-hearing based on his own failure to request a stenographic record of the hearing. Fogarty also made other nonsensical post-hearing motions, such as seeking to cross-examine a witness who was made available during the hearing.

In numerous filings to the USOC, in previous filings to the AAA and in communications to USAB’s counsel, Fogarty has both suggested and outright accused USAB of being an organization full of “‘evil’ Gangsters.” See Email from M. Fogarty to R. Dershowitz (cc recipients omitted) received March 8, 2008, 8:20 a.m., attach as Exhibit C. As the USOC Panel recognized, Fogarty has filed a claim seeking an opportunity to participate under Article VIII, a claim which is properly governed by Article IX of the Bylaws. He sought to disband USAB through his arbitration, in order to fulfill his personal vendetta against the organization

and reinterpret rules in a manner that would allow him to continue to compete regardless of his actual successes on the badminton court.

The information below, the documents previously provided to the USOC Panel and the known long and repetitive history that Fogarty has of filing litigations provide ample evidence of the vexatiousness and oppressive reasoning behind Fogarty's claims, in particular this pending claim.

**III. Basis for Award of Costs and Fees by USOC Panel**

Much like the power the AAA would have, the USOC Panel can decide to award costs and fees as it deems appropriate. In this case, USAB strongly urges the Panel to consider the many factors that suggest it would be appropriate to require Dr. Fogarty to bear the costs and fees associated with this action. Fogarty's actions in this particular case amount to bad faith, and his litigious history with USAB demonstrates even further that his behavior in this action is not an aberration, but rather a calculated plan of harassment that demonstrates bad faith on his part.

First, Fogarty has been pursuing virtually the same claim against USAB and the BWF, unsuccessfully, for at least eight years. The following section will have more specific details of each filed claim, its allegation, and that each was rejected by the body from whom Fogarty sought relief. Despite having been ruled against by AAA arbitrators, CAS arbitrators, BWF officials and now a hearing panel of the USOC, Fogarty has been undeterred in his quest to dismantle USAB so that, presumably, he may re-write the rules in the manner most amenable to his ability to be given starts in international competition regardless of the state of his game or his ability to compete head-to-head against other American badminton competitors.

The mere fact that that Fogarty has sought re-hearing on identical claims numerous times and in numerous forums should be basis enough for the USOC Panel to find bad faith and award costs and fees in this action to USAB. While this USOC Panel cannot make USAB whole for the thousands and thousands spent in each of the claims filed by Fogarty against USAB that required the time and energy of USAB and its counsel, the USOC Panel can make USAB whole for this matter and send a strong message to Fogarty at the same time. The Sports Act and Bylaws were drafted to protect athletes and ensure that NGBs fulfill their obligation. Unfortunately, no act of legislation is perfect or without loopholes and Fogarty has discovered that he can file claims, virtually with impunity, forcing USAB to respond.

Second, there is evidence that Fogarty withdrew some of his claims originally filed with this USOC Panel solely to allow himself another bite at the apple by re-filing those complaints at a later date and forcing USAB to continue to litigate related claims separately, thereby costing both USAB and the USOC more time and money. The complaint recently filed by Fogarty with the USOC is identical to one he voluntarily withdrew last year. No additional events have occurred since Fogarty initially filed and withdrew his claims. USAB has moved to dismiss that claim. The re-filing is further evidence of Fogarty's vexatious intent. If Fogarty were truly aggrieved by the rule he is challenging in his newly filed complaint, it seems prudent that he would have wanted a resolution to that grievance in a prompt manner. The delay tactics suggest no reason for the delay other than harassment of USAB and by extension, the USOC Panel.

Third, Fogarty has filed duplicative and/or nonsensical motions in this matter, as well as in previous matters litigating the same claim. As noted in the Decision, Fogarty filed thirteen (13) motions between October 23 and November 4, 2007. While some of the motions

sought documents, most sought testimony from USOC lawyers, the USOC Ombudsman and the USOC CEO. Notably, Fogarty's motions sought to question USOC employee Kelly Skinner regarding aspects of USAB's selection procedures. However, when given the opportunity to examine Mr. Skinner at the hearing, Fogarty failed to inquire regarding any topics on which he had previously sought to compel testimony. Another of Fogarty's motions suggested that the USOC Panel was prejudiced ("Motion the USOC Hearing Panel review and determine if they have been prejudiced by USOC employees and if any member of the Hearing Panel has been prejudiced by USOC employees to declare a mistrial"). Setting aside the threshold issue of whether testimony from certain of these individuals would have been proper, Fogarty did not make any effort to call these individuals. It seems he filed these motions solely to create more work for the USOC Panel and USAB.

As previously noted, after the hearing, Fogarty filed motions seeking more time, cross examination of a witness who was available during the hearing, and either a new hearing or a continuation. Significantly, the hearing in this case was originally scheduled for December 6, 2007 but had been postponed until March of 2008 at Fogarty's request for more time to prepare. After a multi-hour hearing, during which Fogarty's presentation focused greatly on a field of play decision at the 1979 Pan-American Games in a match between Japan and Canada, Fogarty asked for more time and resources be devoted to a complaint regarding a previously decided interpretation of the BWF rules.

Fourth, Fogarty has demonstrated a habitual and recurring pattern of filing harassing and vexatious litigation, complaints and grievances against many badminton-affiliated parties. Attached, as Section IV, is a list of legal actions of which USAB had record that were filed by Fogarty. Although the list stretches on for seven pages it is certainly incomplete. As

noted, Fogarty has filed at least 175 internal grievances with USAB since 2004. **This averages almost four grievances per month or one per week for four years.** Counting these grievances proves challenging as Fogarty's allegations are often unclear, multiple documents are often filed at the time same time and there is often little follow up from Fogarty when the Legal/Grievance Committee of USAB seeks clarification and further assistance in efforts to resolve Fogarty's claims. Fogarty has also filed the exact same claim asserting that BWF rules require athletes to be chosen for all competitions on the basis of world rankings with USAB, the USOC, the AAA and the Court of Arbitrations for Sport. Each time he has been unsuccessful, but in the absence of an award of costs against him, there are few ramifications for his decision to file a claim. The best, and potentially only, way to stop his bad faith claims is for this USOC Panel to find bad faith and award costs and fees to USAB.

Fifth, Fogarty's actions know no bounds. USAB is aware that Fogarty has filed an ethics complaint with the International Olympic Committee ("IOC") against Jim Scherr, CEO of the USOC. USAB is also aware of an ethics complaint filed against the USOC General Counsel with respect to this particular matter. Ethics complaints are severe allegations. While the complaints may be, and are very likely, groundless, the mere existence of a complaint at the IOC level against the highest officer within the USOC reflects poorly on the USOC and could have ramifications for the USOC in the international community. Fogarty proceeds single-mindedly and wholly selfishly, seemingly unconcerned with the damage he may cause. Similarly, his internal claims with the USOC claiming ethical violations in the General Counsel's office suggest impropriety where none exists. As seen in the attached email detailing the ethics complaint, Exhibit B, Fogarty's concerns relate directly to actions he failed to take when ordered by this Panel. It was made very clear by this USOC Panel that should either party request a

stenographic method, one would be made. Fogarty did not respond and instead seeks to impugn the ethics of members of the USOC General Counsel's office rather than own up to his own failure.

Finally, while a fuller, but far from exhaustive, review of the numerous claims Fogarty has filed against USAB is contained with this brief, it is also notable that Fogarty has spurred responses from officials at the highest levels of badminton. In February of 2004 Fogarty sent a letter to USA Badminton, a copy of which is attached as pages 4-5 of Exhibit A, excoriating the officiating at a Thomas Cup event. This letter was sent on by Paisan Rangsitkitho of USA Badminton to Jean-Guy Poitras, the official lambasted by Fogarty's letter, for a response. He responded that most of the facts in Fogarty's letter were incorrect and stressed that when false statements are published in this manner, there needs to be accountability. See Exhibit A at 2. In light of this, Mr. Rangsitkitho sent both letters on to the BWF (at that time known as the International Badminton federation or IBF). The response from Vanessa Freeman, Director of Events at BWF, is telling of the impact that Fogarty's antics have had on the international badminton community for years. She notes that she believes Mr. Poitras is correct in insinuating that "Matt Fogarty is just trying to provoke." See Exhibit A at 1. Freeman goes on to note that Fogarty's behavior in sending the letter to USAB is "very unprofessional" and wonders "if it [sic] worth just ignoring because is anyone interest [sic] in what he says?". See id. It is very telling that even as early as 2004 officials at the highest level of badminton were exasperated by Fogarty's baseless and relentless filings that amount to little more than unsubstantiated attacks on well-respected individuals within the sport of badminton. Little has changed in four years as the attacks and filings continue at a steady, if not occasionally oppressive, pace.

It is within the discretion of the USOC Panel, as fully explained above, to award costs. Alternatively, a finding of bad faith empowers the panel to award costs and fees. The actions of Dr. Fogarty in filing and re-filing duplicative claims, filing an excessive number of baseless or needless motions, constantly seeking extensions, and failing to follow through on his own request or to adequately respond to the request of this USOC Panel demonstrate bad faith on his part.

USAB recognizes that USOC hearing panels convened pursuant to Article VIII have not previously addressed their power to award costs and fees in a comprehensive manner. Further, USAB recognizes that no USOC Article VIII hearing panel, to its knowledge, has ever awarded costs and fees against an athlete. This should not and cannot prevent this USOC Panel from so ordering. There is ample legal support for the power of an Article VIII hearing panel to issue such an award. Fogarty's actions are egregious, and show no sign of relenting. There have been no financial repercussions to Fogarty in his eight years of continual litigation other than the time he spends to draft and email his countless complaints. Since many are identical and he attaches the same, largely irrelevant, documents and statutes to each he saves himself the time of thinking through his claims and reframing them in any way after a loss. This USOC Panel has the power to award costs and fees. This particular case is a prime example of a situation where an athlete's litigation against an NGB has gotten completely out of control to the detriment of the NGB and the athletes it serves. Badminton is a small sport in the United States and USAB, much like all other NGBs and non-profits, cannot afford to allocate a substantial portion of its budget to defending its rules and procedures, which have already been approved by the USOC and the BWF. While that approval alone does not guarantee that the rules are without fault, the detailed and repeated analysis of these rules in light of Fogarty's claims have so demonstrated.

Without repercussions for his actions, there is no reason for Fogarty to stop bringing these claims. Even if he loses, he is capable of distracting USAB from its primary purpose and depleting its coffers.

**IV. Fogarty's Past Legal Filings**

As the number of filings has been so extensive, all of Fogarty's past filings have been compiled into a list attached to this brief.

**V. Collection of Award of Costs and Fees**

USAB will have a number of avenues to pursue to collect the award of costs and fees, should the USOC Panel determine that such an award is merited.

USAB will initially attempt to collect fees by billing Fogarty for the costs awarded on his regular USAB statement. To remain in good standing with USAB, Fogarty will be required to settle his account with USAB, much like he is required to pay annual dues to remain in good standing.

If Fogarty fails to pay his USAB dues and monies owed, USAB will have a number of options. USAB will first employ a collection agency to seek to collect the amounts due. However, there given Fogarty's lack of respect for prior rulings of the USOC, the AAA and the CAS, USAB does not expect that Fogarty will abide the decision against him.

USAB may then seek relief from the AAA. Section 8.6 of the Bylaws provides that any party who is aggrieved in any manner following a decision of the USOC Panel may seek a hearing before the AAA. Using all documentation from this hearing and the decisions of this USOC Panel, USAB would seek an Award from the AAA confirming USAB's interpretation of

the USAB and BWF rules and awarding costs and fees for all amounts expended in this action on the same basis that USAB seeks such costs and fees here. While there are risks associated with, in essence, re-litigating this claim before a AAA Panel, much as the USOC Panel decisively determined this matter in favor of USAB on numerous grounds, there will be numerous grounds on which a AAA Panel may determine the same outcome. Once an award is issued by the AAA it may be confirmed by a court of competent jurisdiction. Confirmation of an arbitral award by a court is a rubber-stamp type action in circumstances where no fraud or abuse of power has occurred. Once the award has been confirmed, USAB will seek judicial enforcement procedures to collect on the award of costs and fees. Unlike the collection techniques available following the USOC Panel's award, once confirmed by a court, USAB will be able to obtain liens against Fogarty's property and garnish wages if he refuses to satisfy the judgment against him.

USAB would hope not to have to extend these proceedings through the course of a AAA and state or federal court hearing. However, USAB feels strongly both about the propriety of an award of costs and fees in this matter and the necessity of affirming that there are repercussions to those who abuse the system under the Sports Act and Bylaws. There are mechanisms in place that will allow USAB to judicially enforce the award of this USOC Panel and if necessary, USAB will use all the options available to it.

**VI. Amount of Costs and Fees Sought by USA Badminton**

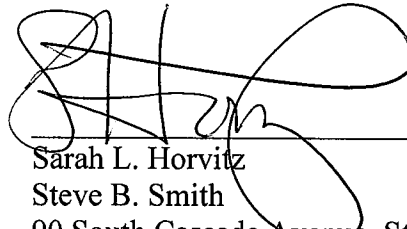
For costs and fees associated with the pending matter, see attached Exhibit VI: Amount of Costs and Fees Sought by USA Badminton representing a statement of costs and fees incurred by the Holme, Roberts & Owens, LLP attorneys assisting on this matter. The fee total is \$15,468.95. This does not include any time and efforts expended by Dan Cloppas working

solely on this issue or the time and efforts of the USAB Legal/Grievance Committee who provide their services to USAB gratis.

Over time through the numerous claims enumerated in this brief and attachments, Fogarty has caused USAB to incur in excess of \$75,000 in legal fees. Once again, this figure does not represent the innumerable hours expended by Dan Cloppas and the members of the Legal/Grievance Committee who work tirelessly to resolve or dismiss Fogarty's claims without incurring more legal fees for USAB.

Respectfully submitted this 13th day of May, 2008.

HOLME ROBERTS & OWEN LLP



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Sarah L. Horvitz  
Steve B. Smith  
90 South Cascade Avenue, Ste. 1300  
Colorado Springs, CO 80903-1615  
Telephone: (719) 473.3800

Counsel for Respondent USA Badminton

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 13th day of May, 2008, a true and correct copy of the foregoing **USA BADMINTON'S RESPONSE TO PANEL'S REQUEST FOR INFORMATION REGARDING THE AWARDING OF COSTS** was served by email as follows:

Matthew Fogarty mfogartymd@hotmail.com	Gary Johansen Assistant General Counsel, USOC gary.johansen@usoc.org
Susan Riggs Division of Legal Affairs, USOC susan.riggs@usoc.org	

  
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# **EXHIBIT “A”**

**peggy savoslk**

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**From:** "Vanessa Freeman" <vanessaf@intbadfed.org>  
**To:** <PaisanR@aol.com>  
**Cc:** <tinaj@intbadfed.org>; <punch\_gunalan@hotmail.com>; <erajw@bartleet.com>; <cdcl@netvigator.com>; <gordonm@bnoel.com>; <usab@usabadminton.org>; <jgpoitras@umce.ca>; <charoen@ji-net.com>  
**Sent:** Tuesday, February 24, 2004 4:03 AM  
**Subject:** Re: Fwd: Matt's ramblings from Barbados...

Dear All

I have read all the mails and can understand how frustrating it is when Matt Fogarty is going around with these type of accusations. However, I think that Jean Guy Poitras is correct in his assumption that actually Matt Fogarty is just trying to provoke. We see this time and again with him I think.

Although his behavior is very unprofessional I wonder if it worth just ignoring because is anyone interested in what he says? Sorry about that, but we all have many other important issues to deal with.

If you do want to take any action I do think that in the first instance it should really be Panamerican Badminton Confederation who should take such action as it is their event. Of course it can be referred to IBF Disciplinary Committee with all the facts if you wish. Let me know if you want us to take it further.

I don't wish to interfere, but hope you don't mind me putting my two pennies worth in again.

Best regards  
Vanessa

At 15:36 23/02/04 -0500, PaisanR@aol.com wrote:

Dear Charoen

Jean Guy Poitras (CAN) is a senior Certificated IBF Umpires, he had officiated all major important IBF events including Olympic Games, World Championships, Thomas and Uber Cup finals etc.

Matt Forgarty publicly accusation of IBF officials should not be tolerate. I would like IBF to take action against Matt Forgarty.

Thanks and regards,

Paisan

In a message dated 2/23/2004 10:26:38 AM Pacific Standard Time, jgpoitras@umce.ca writes:

Hi Paisan,

2/24/2004

A personal comment to what I read from Mathew Fogarty's memo regarding his record of time on the fault I have given him for delay of the game.

There is some comments that are totally wrong in the memo that Matt Fogarty wrote down.

First, for delay of game, it was more than five seconds after both players had taken their ready position. As umpire, I waited as long as I could before calling delay of game to Mathew Fogarty for delay of the game (by delaying to deliver his service); I must add that there was no problem with his serve after that initial call and must add that he was taking about 2 seconds to deliver all his other serves after he was called for delay of the game which was normal time. His services (two or three) before I called the one for delay the game were more around five seconds to be delivered and I am positive that the one I called for delay of the game was over 5 seconds after both receiver and served were in their respective ready position. His record of 2.14 is just not right for the one I called. His other serves after the call were more of the time frame he is referring too and I did not call any of them.

Second, I personally never met or heard about Mathew Fogarty before I step on the court to umpire his match. Paisan from USA never mention anything about him to me neither before the match or any time before at all. I am maybe not listening enough to comments that are sometimes made by other players before matches, and this is why I treated that match exactly as I have umpired matches in the past and will do in the future. Impartially. After I finished that particular match, I did however ask who were the US players coming from and that I had never seen before. I even added that both Dean Shoppe and Mathew Fogarty had good shots and many were well executed. His message seems to insist that Paisan informed officials of his presence; this wasn't the case with me for SURE.

For me this match was over and I just go on to another match.

If a person wants to writes other informations about the game rather than the facts as they happened on the court, it is his or her choice and he or she has to be accountable for.

However, when someone accused another person by listing his or her name on anywhere (internet or letter, etc.), that person must be accountable for what he or she writes and if this is detrimental to the sport or to the game or to another person, I believe that

action can be taken to correct the situation.

In this case, I am not sure if it is needed to pursue unless other written memos are exposed on the same event and issue. It can be referred as on the spur of the moment right after his match that Mathew Fogarty was frustrated and has written down on paper part of his emotions. If after a few days he insists on , then he has to face the truth and not his interpretations of what he thought had happened.

I have seen many cases in education like this one and there pleasure is to stress others by writing up any memo to disturb them. Every time on a different issue so that they can refered it to an emotional moment after the fact if they are brought to court or in front of a committee, etc. But you can't argue that if the same issue is done with repetitions and it is then that a person will be found guilty or given disciplinary measures.

In this case, I believe that Mathew Fogarty is hoping that someone will respond and then he will try to show that the person was wrong which could happen if he can prove that this is just emotional responses after a match and that you can't find any follow-up on the issue anywhere else. He is trying hard that someone will react and in turn he will try to reduce the credibility of the person who took action.

So if is not repetitive on the same issue, wait for him to attack. If more consistant and serious, disciplinary actions must be undertaken.

Have a long delay before answering; then, usually they are the ones who commit errors by writing up non-sense notes.

Jean-Guy

Dear All,

FYI: Your comment please.

Paisan

In a message dated 2/19/2004 12:55:55 PM Pacific Standard Time,

2/24/2004

montri@kdgpp.com writes:  
So Matt wants to take on the IBF and PABC too...

MathewFogarty  
(stranger)  
02/19/04 05:52 AM

Uber/Thomas Cup

Dear USA Badminton,

Uber Cup defeated Guatamala and Barbados with recent defeat by Canada. The team played well but was unable to overcome the experience of the Canadian team. This will definately change for the future.

Thomas Cup has USA winning against Trinidad & Tobago first round, Mexico in second round of pool play with the final pool play against Brazil tonight.

One of the more interesting points is the second doubles against Mexico. The Officials were well schooled by the IBF Representatives. On the third serve of the match the Umpire called me for a fault for delay of game. The offical then proceed to allow our opponents to delay the game more than 10 times as

I changed my pattern of the serve and adapted to the clearly biased official. All of this is recorded on tape and will be the source of an amusing article how PABC officials want to be a part of the competition rather than officiating in them.

In the third game the same official called me for a fault when he thought I had touched the shuttle clearly he was looking through the prejudiced glasses of some of the IBF officials. It was clear they were well schooled and had a game plan to "approach" my match.

As always these half-baked attempts to create obstacles to compete have always inspired us to our greatest badminton. We honestly should be thanking those who attempt to create obstacles for inspiring us to compete and succeed at the very highest levels.

Our hats are off to all of you.

2/24/2004

Matt

P.S. Dean says hi!!!!!!!!!!!!!!

Vanessa Freeman  
Director of Events, International Badminton Federation

[www.worldbadminton.net](http://www.worldbadminton.net) - access it now!

**EXHIBIT "B"**

## Sarah Horvitz

---

**From:** Rana Dershowitz [rana.dershowitz@usoc.org]  
**Sent:** Monday, March 24, 2008 1:07 PM  
**To:** MD; Jim Scherr; Sarah Horvitz; Dcloppas@aol.com; John Ruger; Gary Johansen; Ruby Haddock  
**Cc:** bill@stanfordbadminton.com; cheryl maroney; scostello13@comcast.net; Robyn Leonard; Troy Bolden; Linda French; PETER ALKALAY; palkalay@aol.com; victoria durkee; cobblest@bellsouth.net; Eric Parthen; Steve Roush; Kelly Skinner; Jim Scherr; John Ruger; Mike Fogarty; Alfred M. Fogarty; Kathy Zimmerman; Lina Taft; hlcorp7@hotmail.com; suniljinadasa@hotmail.com; sunil.j.jinadasa@boeing.com; sammij12@hotmail.com; Nick Jinadasa; mfogartyumd@gmail.com  
**Subject:** RE: Ethics Complaint - Fogarty vs. USOC General Counsel's Office

I will advise the Ethics Committee. This complaint can be discussed at the same time as the other matter I have forwarded on to the Ethics Committee at your request.

Rana Dershowitz • General Counsel, Chief of Legal and Government Affairs  
United States Olympic Committee  
719.866.4117 (o) • 719.866.4694 (f)  
[Rana.Dershowitz@USOC.org](mailto:Rana.Dershowitz@USOC.org)

1 Olympic Plaza, Colorado Springs, CO 80904-5760  
[www.usolympicteam.com](http://www.usolympicteam.com)  
[www.amazingawaits.org](http://www.amazingawaits.org)

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**From:** MD [mailto:mfogartyumd@hotmail.com]  
**Sent:** Sunday, March 23, 2008 12:57 PM  
**To:** MD; Rana Dershowitz; Jim Scherr; Sarah Horvitz; Dcloppas@aol.com; John Ruger; Gary Johansen; Ruby Haddock  
**Cc:** bill@stanfordbadminton.com; cheryl maroney; scostello13@comcast.net; Robyn Leonard; Troy Bolden; Linda French; PETER ALKALAY; palkalay@aol.com; victoria durkee; cobblest@bellsouth.net; Eric Parthen; Steve Roush; Kelly Skinner; Jim Scherr; John Ruger; Mike Fogarty; Alfred M. Fogarty; Kathy Zimmerman; Lina Taft; hlcorp7@hotmail.com; suniljinadasa@hotmail.com; sunil.j.jinadasa@boeing.com; sammij12@hotmail.com; Nick Jinadasa; mfogartyumd@gmail.com  
**Subject:** Ethics Complaint - Fogarty vs. USOC General Counsel's Office

Rana,

I want to file an ethics complaint against the USOC General Counsel's office.

The USOC General Counsel's office failed to inform the USOC Hearing Panel in Fogarty vs. USAB that a stenographic record is required as established in the USOC Statutes.

Fogarty informed both the General Counsels office, the Hearing Panel, and all USOC Employees involved in the administration of the hearing prior to the hearing that a stenographic record is required.

The USOC Hearing panel has violated Fogarty's rights by presuming the hearing panel had the authority

5/13/2008

not granted to the Hearing Panel by the USOC Bylaws. The USOC Hearing Panel had no right and had no authority to order the parties to first identify if they wanted a stenographer, and the assess cost and provide payment prior to the hearing.

The purpose of the stenographic record is to ensure due process and to ensure that the Hearing Panels findings are based on facts.

Appeal rights are granted on procedural errors by all courts which provide due process(Except as in the example of the Supreme Court, and other Legal Systems as we have in the United States).

However USOC Bylaws, and I feel which are in error, do not grant the right of appeal based on procedural error by the USOC.

I have been denied due process as the result of the General Counsel's office failure to perform its duties.

I respectfully request an ethics investigation to determine:

1) Has Fogarty's rights to due process been denied by a procedural error resulting from the USOC General Counsels Office failure to perform its Duties in accordance with USOC Bylaws Section 8.3.C Hearing "In addition the proceedings shall be stenographically recorded"?

Sincerely,

Matt Fogarty,MD

----- Original Message -----

**From:** MD

**To:** MD ; Rana Dershowitz ; jim.scherr@usoc.org ; Sarah Horvitz ; Dcloppas@aol.com ; john.ruger@usoc.org ; Gary.Johansen@usoc.org ; Ruby Haddock

**Cc:** bill@stanfordbadminton.com ; cheryl.maroney ; scostello13@comcast.net ; Robyn Leonard ; Troy Bolden ; Linda French ; PETER ALKALAY ; palkalay@aol.com ; victoria.durkee ; cobblest@bellsouth.net ; Eric Parthen ; Steve Roush ; Kelly Skinner ; Jim Scherr ; John Ruger ; Mike Fogarty ; Alfred M. Fogarty ; Kathy Zimmerman ; Lina Taft ; hlcorp7@hotmail.com ; suniljinadasa@hotmail.com ; sunil.j.jinadasa@boeing.com ; sammij12@hotmail.com ; Nick Jinadasa ; mfogartymd@gmail.com

**Sent:** Sunday, March 16, 2008 11:53 AM

**Subject:** Re: USOC Article VIII Hearing Fogarty vs USAB - Rebuttal Documents - R19, R20

Attached please find a list of rebuttle documents.

Thank you.

Sincerely,

Matt Fogarty, MD

Fogarty vs. USAB - Rebuttal Documents

- R1 Declaration of independence
- R2 US Constitution
- R3 United States Bill of Rights
- R4 Emancipation Proclamation
- R5 Civil Rights Act 1964
- R6 Whistleblower Protection Act of 1989
- R7 Wikipedia - Res Judicata
- R8 Wikipedia - Actus Reus

- R9 IBF - Rules
- R10 BWF - Constitution - Applicable Governance, Judicial Proceedings, Checks & Balances
- R11 CAS - Canada vs IBF - Discrimination Case
- R12 CAS - Russian Badminton Federation vs IBF - Deputy President violates Natural Justice
- R13 USOC Interim General Counsel - Rewrites USOC Bylaws
- R14 USOC Ethics Compliance Officer Communication - Unethical Behavior is not Unethical
- R15 USOC Associate General Counsel - Letter - CAS - July 2003
- R16 USAB Intern - Communication Thread - 1
- R17 USAB Intern - Communication Thread - 2
- R18 PABC - Board
- R19 USAB - Board
- R20 USAB - Committees

**EXHIBIT "C"**

## Sarah Horvitz

---

**From:** AMF [amf123456@hotmail.com]  
**Sent:** Saturday, March 08, 2008 8:20 AM  
**To:** MD; Rana Dershowitz  
**Cc:** bill@stanfordbadminton.com; Gary Johansen; Ruby Haddock; Sarah Horvitz; Dcloppas@aol.com; Steven B. Smith; cheryl maroney; scostello13@comcast.net; Robyn Leonard; Troy Bolden; Linda French; PETER ALKALAY; palkalay@aol.com; victoria durkee; cobblest@bellsouth.net; Eric Parthen; Steve Roush; Kelly Skinner; Jim Scherr; John Ruger; Mike Fogarty; Alfred M. Fogarty; Kathy Zimmerman; Lina Taft; hlcorp7@hotmail.com; suniljinadasa@hotmail.com; sunil.j.jinadasa@boeing.com  
**Subject:** Re: USOC Code of Conduct

Dear Olympic Family,

Wonderful news has arrived.

USAB's representatives make no new arguments regarding the allegation that USAB create Selection Procedures which are more restrictive than the Badminton World Federation in violation of the Ted Stevens Olympic and Amateur Sports Act.

All that is left for us to do is to demonstrate to the USOC Hearing Panel is that USAB has perpetrated a fraud on USAB's representatives and attempted to perpetrate a fraud on the USOC Hearing Panel.

All though I must humbly admit that my legal skills are in infancy, that USAB's representatives are highly skilled by the most formidable opponent I have yet faced, and USAB is exceptional at the "Art of Deception", I may not have to bring the three remaining Article VIII's to the USOC.

If Providence, and good fortune are on our side, we may win this battle outright and forever put to rest the "evil" Gangsters which exist within USA Badminton, and preserve the ordained and established right of athletes to compete.

Victory is in the air. "I love the smell of naplam in the morning!....."

God Speed.

Matt Fogarty, MD

**BEFORE THE UNITED STATES OLYMPIC COMMITTEE**

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**Matthew Fogarty,**

**Complainant,**

**v.**

**USA Badminton**

**Respondent.**

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**SECTION IV: FOGARTY'S PREVIOUS LEGAL FILINGS**

**I. Article IX Complaints**

1. January 14, 2000 – Complaint filed regarding opportunity to participate in the 2000 Thomas Cup in Sophia, Bulgaria. Claim filed with AAA based on seven (7) grievances. Fogarty withdrew complaint the night before the hearing.

2. April 11, 2003 – Complaint filed regarding opportunity to participate in the 2004 Olympic Games and the 2003 Pan American Games. Fogarty asserts that “USA Badminton is attempting to force a one time ‘Trial procedure’ as a method of selection for the Pan Am Games, which is in contradiction to the accepted standard of the International Badminton Federation (IBF<sup>1</sup>) Statutes which regulate all competitions throughout the United States and the world. The IBF statutes clearly state that entries into an IBF sanctioned event are based on a players performance over a one year period as measured by the IBF World Ranking.” Claim filed with AAA and ruling against Fogarty April 30, 2003.

3. August 16, 2003 – Complaint filed regarding opportunity to participate in the 2004 Olympics and 2003 World Championships. By “not publishing criteria to receive USA Funding and/or by not making funding available to me to participate in the World Championships and to qualify for the 2004 Olympic Games.” Dean Schoppe filed similar complaint on August 20, 2003. To USAB’s knowledge, Complaint was not pursued with AAA.

4. November 21, 2003 – Complaint filed regarding opportunity to participate in the Dave Freeman tournament and the 2004 Olympic Games. “USAB has and continues to permit non-US citizens, who are ineligible to compete in the Olympics,

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<sup>1</sup> The IBF has since changed its name to the Badminton World Federation or BWF. The entities are the same, but for the name change.

to compete in the Dave Freeman Tournament.” “USA Badminton’s attempt to rely on qualifications other than IBF World Ranking to determine an athlete’s qualification for the Dave Freeman Tournament violates the United States Olympic Committee Constitution.” To USAB’s knowledge, Complaint was not pursued with AAA.

5. January 12, 2004 – Complaint filed regarding right to participate in the 2004 Thomas Cup tournament. Article IX settled with USAB, Fogarty and Schoppe were allowed to participate in Zonal Qualifier but could not go to finals, if they paid their own way.

6. February 14, 2004 – Complaint filed regarding right to participate in the 2004 Olympics and 2005 World Championships. Fogarty asserted that “USA Badminton has not produced regulations for qualifying for the 2005 World Badminton Championships.” “The diversions of 2003 funds, and delay of distributing 2004 funds, has resulted in denying or threatening to deny myself and all similarly situated athletes the right to compete in the 2004 Olympics and the 2005 World Badminton Championships.” To USAB’s knowledge, Complaint was not pursued with AAA.

7. February 16, 2005 – Complaint filed regarding right to participate in the 2005 Pan American Championships. Fogarty stated: “I am filing an Article IX complaint against USA Badminton for not publishing the date time location and Grand Prix Rating for the 2005 Pan American Championships. This event is a world ranking tournament providing World Ranking points to qualify or attempt to qualify for the 2005 World Championships.” To USAB’s knowledge, Complaint was not pursued with AAA.

8. February 18, 2005 – Complaint filed regarding right to participate in the 2005 World Championships. “USAB in participating to limit athletes to four men and four women violates the IBF World Ranking System and processing of entries into IBF Sanctioned events.” To USAB’s knowledge, Complaint was not pursued with AAA.

9. April 20, 2005 – Complaint filed regarding denial of entry into the 2005 Peru International Badminton Championships, a qualifying event providing essential world ranking points for the World Badminton Championships. To USAB’s knowledge, Complaint was not pursued with AAA.

10. November 29, 2005 – Complaint filed regarding right to participate in the 2006 World Championships, the 2007 Pan American Games and the 2008 Olympic Games. USAB created a trials process for qualifying for US Teams, including the Thomas Cup, Pan American Championships, Sudirman Cup and 2007 Pan American Games. Fogarty claimed this is in violation of IF rules that require entrance to those competition based only on IF ranking. To USAB’s knowledge, Complaint was not pursued with AAA.

11. September 7, 2006 – Complaint filed regarding right to participate in the 2006 World Badminton Championships as Fogarty wants his own coach. Not carried forward.

12. October 27, 2006 - Complaint filed regarding right to qualify for the 2007 Pan Am Games. IBF requires entry into all IBF sanctioned events to be governed by IBF Competition rules. Fogarty claimed that USAB's process is more restrictive than that of the IBF and is in violation of USOC Bylaws. Fogarty wants to require that USOC require USAB to follow IF regulations for qualification to the Pan Am Games and expand the team size and order of play so that as many athletes as possible who are attempting to qualify for the Pan Am Games can participate. To USAB's knowledge, Complaint was not pursued with AAA.

13. October 28, 2006 – Complaint filed regarding right to attend the Pan American Championships. Confusing as to what the allegations are, but it seems to center on trials and who gets to go. Not carried forward.

14. November 6, 2006 – Complaint filed regarding right to qualify for the 2007 Sudirman Cup Team and in turn the Pan American Games. USAB has a trials process. Sudirman Cup provides individual ranking points for the Pan Am Games. Same basic argument as in October 27, 2006 complaint. To USAB's knowledge, Complaint was not pursued with AAA.

15. November 6, 2006 – Complaint filed regarding right to qualify for the 2008 Olympics. Fogarty asserts that USAB as a member association is required to ensure that the IBF follows appropriate procedures when changing the Competition Regulation and the Olympic Qualification Regulations. To USAB's knowledge, Complaint was not pursued with AAA.

16. March 29, 2007 – Complaint filed regarding denial of opportunity “to qualify for USOC health insurance in the USOC protected event of the in the 2007 USA Badminton National Championships.” USAB “has manipulated the Men's Doubles draw by allowing an athlete to enter the Men's Doubles Draw after the deadline and without an official entry in an effort to favor” an athlete affiliated with another training group run by a former president of USAB. To USAB's knowledge, Complaint was not pursued with AAA.

17. April 9, 2007 – Fogarty alleges that USAB did not obtain “approval from the United States Olympic Committee for selection of team members to the 2007 Pan Am Championships Team event . . . The 2007 Pan Am Championships Team event provide crucial World Ranking Points used to determine the selection/entry of athletes to all IBF events including USOC protected events . . .Solution is to name everyone to the team Event who attends the Individual Event.” Also, complaint is about the selection of an impartial coach. To USAB's knowledge, Complaint was not pursued with AAA.

18. April 29, 2007 – Fogarty alleges that USAB has “procedures for qualifying for USOC competitions which do not ensure . . . [your] rights and the rights of similarly situated athletes to qualify or attempt to qualify for USOC protected events including the World Championships, the Pan American Games, and the Olympics.”

Alleges that USAB manipulated the draws for the Pan American Championships. To USAB's knowledge, Complaint was not pursued with AAA.

19. May 1, 2007 – Fogarty alleges that USAB is attempting to deny Fogarty's "right to qualify or attempt to qualify for the 2007 World Badminton Championships." Amendment to complaint, also alleges the USAB is denying Fogarty's right to qualify or attempt to qualify for "the 2008 Olympics." "The denial is based on USA Badminton and the WBF persistent reluctance to list Tony Gunawan and Halim Haryonto from Indonesia and instead list them as a Mens Doubles pair from the US." To USAB's knowledge, Complaint was not pursued with AAA.

20. May 22, 2007 – Complaint filed regarding USAB's new grievance procedures that now require a fee (\$100) when a grievance is filed. To USAB's knowledge, Complaint was not pursued with AAA.

21. August 27, 2007 – Alleges that the draw for the 2007 Yonex/OCBC US Open Grand Prix Championship was not conducted pursuant to the BWF Grand Prix Regulation 7.11. To USAB's knowledge, Complaint was not pursued with AAA.

22. October 26, 2007 – Complaint filed regarding the right to qualify for the 2008 Olympic Games. 2008 Olympic Procedures provide for selection to the 2008 Olympic Games through BWF World Ranking Points. USAB is selecting its team for the 2008 Thomas Cup based on a trials event. Thomas Cup participants can only be selected through BWF Ranking Points. By having a trials, and not naming Fogarty to the team, USAB is precluding Fogarty from possibly accumulating BWF Ranking Points, which would go towards assisting Fogarty in qualifying for the Olympics. This complaint was rejected by the USOC Hearing Panel on April 28, 2008.

23. January 16, 2008 – Denial of right to compete in the Rio International Challenge, because that event was cancelled by the organizer. To USAB's knowledge, Complaint was not pursued with AAA.

24. January 19, 2008 – Denial of right to be the Team Leader of the 2008 Olympic Team. To USAB's knowledge, Complaint was not pursued with AAA.

25. January 22, 2008 # 1 – Denial of right to be the Coach of the 2008 Olympic Team. To USAB's knowledge, Complaint was not pursued with AAA.

26. January 22, 2008 #2 – Denial of right to be the Team Leader of the 2008 Uber Cup Team. To USAB's knowledge, Complaint was not pursued with AAA.

27. January 22, 2008 #3 – Denial of right to be the Coach of the 2008 Uber Cup Team. To USAB's knowledge, Complaint was not pursued with AAA.

28. January 22, 2008 #4 – Denial of right to be the Team Leader of the 2008 Thomas Cup Team. To USAB's knowledge, Complaint was not pursued with AAA.

29. January 22, 2008 #5 – Denial of right to be the Coach of the 2008 Thomas Cup Team. To USAB’s knowledge, Complaint was not pursued with AAA.

## **II. Article VIII Complaints**

1. March 7, 2004 – Complaint is far reaching containing many conclusory statements with little factual substantiation and so is difficult to summarize with any precision. However, it appears that at the heart of the Complaint is the change made by USAB to its Bylaws that dislodged Fogarty from his position on USAB’s Board of Directors. Further, it appears that there has been a long standing dispute between Fogarty and individuals with leadership positions in USAB regarding the operation of USAB in fulfilling its responsibilities as an NGB. Complaint dismissed on October 1, 2004 for failure to exhaust administrative remedies.

2. May 21, 2007 #1 – Complaint challenges USAB’s Bylaw Article 12, which requires that a grievant pay a \$100 filing fee. Withdrawn.

3. May 21, 2007 #2 – Complaint objects to five day advance registration for international events. Withdrawn and re-filed on April 9, 2008.

4. May 21, 2007 #3 – Complaint challenges USAB’s 2007 Pan American Selection Procedures. Decision against Fogarty rendered on April 28, 2008.

5. May 21, 2007 #4 – Complaint challenges USAB’s 2008 Olympic Games Selection Procedures. Decision against Fogarty rendered on April 28, 2008.

6. April 3, 2008 – Re-Complaint filed, originally filed on May 21, 2007. Fogarty objects to five day advance registration for international events.

7. April 9, 2008 – Complaint alleges that: “The 2007 World Badminton Championships is a qualifying event for the 2008 Olympics. USAB created selection procedures for the 2007 World Championships and 2008 Olympics which are more restrictive than the IF’s.” “All facts referenced are in the applicable Olympic Statutes, of the IOC, BWF, USOC, and USAB and not the technical manuals which violate the statutes. All deception by USAB is embodied in the technical manuals created and approved by Dan Cloppas USAB Executive Director and Paisan Rangsitpho, USAB President, USAB BWF Representative, BWF Events Chair responsible for the promulgation and production of BWF Technical Manuals for the Olympic s, Pan Am Games and World Championships.” Fogarty asked by USOC General Counsel’s Office to clarify how this complaint is different from his complaint filed on May 21, 2007, which was decided against Fogarty on April 28, 2008. Fogarty has not yet responded.

## **III. Fogarty AAA Claims**

1. January 14, 2000 –Demand for Arbitration filed with the AAA re: January 11, 2000 Article IX complaint. Fogarty withdrew complaint on day of Arbitration hearing, January 19, 2000.

2. April 18, 2003 – Demand for Arbitration filed with the AAA re: April 11, 2003 Article IX Complaint. Decision against Fogarty rendered on April 30, 2003.

3. December 9, 2005 - Demand for Arbitration filed with the AAA re: November 29, 2005 Article IX Complaint. USAB submitted letters from Pan American Badminton Confederation and IBF stating that world ranking is not being used to qualify players for the Pan American games. Decision against Fogarty rendered on January 27, 2006. Claims denied by Arbitrator in their entirety.

4. USAB records are unclear, but suggest that complaints on unknown matters were also filed by Fogarty May 29, 2003, August 27, 2003 and April 24, 2004

#### **IV. Fogarty's CAS Claims**

1. July 15, 2003 – Fogarty brought a claim to CAS against the BWF, the Pan American Sports Organization (“PASO”), the Pan American Badminton Confederation (“PABC”) and USAB. In this proceeding, Fogarty alleged that he should be entered into the 2003 Pan American Games because BWF rules require that available badminton positions to the Pan American Games be filled based on the BWF World Ranking list. CAS held that it lacked jurisdiction as to the BWF, PABC and USAB. As to PASO, CAS dismissed Fogarty’s request for interim measures on the grounds that Fogarty had not shown that “PASO has breached any particular rule related to the implementation of the Technical Manual for badminton or more generally to his non-selection for the 2003 Pan American Games.” *Fogarty v. International Badminton Federation, et al.*, Case No. CAS 2003/O/489, page 4 (Order dated July 31, 2003).

2. July 19, 2004—Fogarty filed a complaint with CAS to participate in the 2005 World Championships hosted in the United States. USAB conducted a trials event to award additional “wild card” entries given to the US for hosting the event. Fogarty attempted to require the IBF and Pan American Badminton Confederation to use world ranking for these entries. The arbitration was dismissed due to lack of jurisdiction.

3. July 3, 2007 – Fogarty and Schoppe filed a complaint with CAS against the BWF relating to Fogarty and Schoppe’s participation in the 2007 Pan American Games and their assertion that entry into the Games should be based on the BWF World Ranking list. Fogarty requested that CAS direct the BWF, the PABC, and the Host Member Association Brazilian Badminton Confederation to accept the entry of Fogarty and Schoppe as the number two doubles entry from the US in the 2007 Pan American Games. Further, Fogarty requested that the CAS panel (i) direct the BWF, USAB and the USOC to provide travel to Rio de Janeiro (the site of the 2007 Pan American Games) and (ii) direct the BWF, the Pan American Badminton Confederation, and the Host Member Association Brazilian Badminton Confederation to provide housing and training facilities in Rio de Janeiro for Schoppe and Fogarty. CAS denied Fogarty and Schoppe’s application for provisional and conservatory measures stating in part: “The Pan American Sports Organization (PASO) states in its Regulation for the Pan

American Games, art. 9 that ‘only the National Olympic Committees have the sole right to enter athletes and officials for the Pan American Games.’ Therefore, based on the documents filed by the Appellants thus far, the Panel cannot consider that the Appellants are likely to succeed on the merits of the appeal.” *Fogarty v. Badminton World Federation*, Case No. CAS 2007/A/1317, paragraph 22 (Order dated July 12, 2007). The CAS panel has not made a final decision on the ultimate outcome of the case.

**V. Fogarty Grievances**

1. January 11, 2000—USA Badminton published official selection criteria for the Thomas Cup in November 1999. At the time of receipt there were no events listed for me to participate in to meet the criteria for selection. USA Badminton has not kept me informed of the procedures and policy for selection to the 2000 Thomas Cup Team which provides World Ranking points for the 2000 Olympics. Filed Art. IX complaint on January 11, 2002.

2. January 11, 2000-- USA Badminton did not review the multiple requests I submitted to be named to the 2000 Thomas Cup Team nor did they make an effort to determine by clear and convincing evidence that by making me a member of the team I would be a detriment to the best interest of the sport of badminton. Filed Art. IX complaint on January 11, 2002.

3. January 11, 2000---When USA Badminton did not name me to the 2000 Thomas Cup Team, USA Badminton denied me the opportunity in an international amateur athletic event, which provides world-ranking points for qualification for the Olympics. Filed Art. IX complaint on January 11, 2002.

4. January 11, 2000---USA Badminton delayed in providing me with USA Badminton Grievance Procedures. Filed Art. IX complaint on January 11, 2002.

5. January 11, 2000---USA Badminton created selection criteria for the 2000 Thomas Cup as to make it impossible to resolve the grievance through USA Badminton Grievance Procedures. Filed Art. IX complaint on January 11, 2002.

6. January 11, 2000---USA Badminton National Coach Ardi Wirinata told my partner Ryan Miglin that I was too old for Ryan to play with as a partner despite Ryan and I defeating USA Badminton’s #1 Men’s Doubles Team on the 2000 USA Thomas Cup Team. The National Coach did not include my name when submitting players to be considered for selection to the team. USA Badminton has discriminated against me due to my age. Filed Art. IX complaint on January 11, 2002.

7. January 11, 2000---USA Badminton is under a duty to be responsible to me as a member of USA Badminton. USA Badminton has failed to be responsible. Filed Art. IX complaint on January 11, 2002.

8. December 20, 2003—USA Badminton Board removal of Fogarty as a Board member (3 items). Investigated and denied by USAB Legal/Grievance Committee, January 30, 2004. Appealed to USAB Executive Committee on October 3,

2004. Reviewed by USAB Executive Committee on November 2, 2004 and recommendations of USAB Legal/Grievance Committee upheld. Filed with USOC as Article VIII complaint on March 7, 2004.

9. October 28, 2004—Request for USAB minutes, proxy votes, PABC minutes, Yonex contract, names of all people who received Yonex equipment, any people who received money from USAB, independent audit of USOC funds to USAB, statements from athletes who received USOC funds, AGM notices, contracts negotiated by any member of the board of directors, resignation by board of directors. USAB legal/grievance committee review and reply on November 11, 2004 denying grievance.

10. Since 2004 Fogarty has filed in excess of 175 grievances with USAB. Each cannot be catalogued here as deconstructing the basis of many of the complaints would take hours and efforts far beyond the time frame permitted by this Panel for USAB's response.



## FEES

<u>Date</u>	<u>Hours</u>	<u>Amount</u>
12/6/2007	2.5	\$625.00
12/17/2007	0.75	\$187.50
12/20/2007	0.25	\$78.75
2/6/2008	0.25	\$78.75
2/7/2008	0.25	\$78.75
2/7/2008	0.25	\$51.25
2/8/2008	0.5	\$157.50
2/11/2008	1.5	\$307.50
2/12/2008	0.25	\$78.75
2/12/2008	0.5	\$102.50
2/17/2008	2.5	\$512.50
2/18/2008	1.75	\$358.75
2/19/2008	2.75	\$563.75
2/26/2008	0.5	\$102.50
2/28/2008	1.75	\$358.75
2/29/2008	1.75	\$358.75
3/1/2008	1.5	\$375.00
3/2/2008	0.5	\$125.00
3/3/2008	2.25	\$562.50
3/4/2008	4	\$1,000.00
3/5/2008	0.25	\$77.50
3/5/2008	3.75	\$937.50
3/6/2008	0.5	\$155.00
3/6/2008	1.25	\$312.50
3/7/2008	1.75	\$437.50
3/10/2008	2.5	\$512.50
3/10/2008	0.5	\$157.50
3/11/2008	1	\$205.00
3/12/2008	3.5	\$717.50
3/13/2008	1	\$205.00
3/14/2008	4.5	\$922.50
3/16/2008	2	\$410.00
3/17/2008	3.75	\$768.75
3/17/2008	2	\$630.00
3/18/2008	1	\$205.00
3/24/2008	0.25	\$51.25
3/25/2008	0.5	\$102.50
3/30/2008	0.25	\$51.25
4/3/2008	0.75	\$153.75
4/28/2008	0.5	\$157.50
4/28/2008	2.5	\$512.50
4/30/2008	4.5	\$922.50
5/2/2008	1.75	\$358.75
<b>TOTAL</b>	<b>66.5</b>	<b>\$15,027.50</b>

**BEFORE THE UNITED STATES OLYMPIC COMMITTEE**

<hr/>	)
<b>Matthew Fogarty,</b>	)
	)
<b>Complainant,</b>	)
	)
<b>v.</b>	)
	)
<b>USA Badminton</b>	)
	)
<b>Respondent.</b>	)
<hr/>	)

**SECTION VI: COSTS AND FEES (SUPPLEMENT)**

**FEES**

<b>Date</b>	<b>Hours</b>	<b>Amount</b>
5/5/08	.25	\$51.25
5/7/08	6.5	\$1332.50
5/8/08	3.5	\$717.50
5/9/08	1.75	\$358.75
5/10/08	.5	\$157.50
5/11/08	2.5	\$512.50
5/12/08	.25	\$78.75
5/13/08	1.75	\$551.25
5/13/08	6.5	\$1332.50
5/13/08	1.5	\$307.50
<b>Total</b>	<b>24.75</b>	<b>\$5,400.00</b>

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 21<sup>st</sup> day of May, 2008, a true and correct copy of the foregoing **SECTION VI: COSTS AND FEES (SUPPLEMENT)** was served by email as follows:

Matthew Fogarty mfogartymd@hotmail.com	Gary Johansen Assistant General Counsel, USOC gary.johansen@usoc.org
Sue Riggs Division of Legal Affairs, USOC sue.riggs@usoc.org	

