

**UNITED STATES OLYMPIC COMMITTEE**

In the matter of:	)	
	)	
FARRAH HALL,	)	HEARING PANEL'S DECISION
Complainant,	)	ON US SAILING'S MOTION TO
	)	DISMISS
vs.	)	
	)	MAY 23, 2008
US SAILING ASSOCIATION,	)	
Respondent.	)	

I. BACKGROUND

Farrah Hall ("Hall") is a competitive windsurfer having competed at a national level over the past several years. She is also a member of the US Sailing Association ("US Sailing"). US Sailing is the recognized National Governing Body ("NGB") for the sport of sailing 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"). US Sailing is a member of the International Sailing Federation ("ISAF") which is the international federation for the sport of sailing as recognized by the International Olympic Committee ("IOC"). Even though the present Motion in front of the Hearing Panel is procedural in nature, due to the large number of documents filed by the parties, the Panel finds it necessary to provide a short recitation of the alleged facts.

Hall competed in US Sailing's trial competitions to determine who would be nominated to the 2008 US Olympic Team for the RS:X Windsurfer Class. After conclusion of the final trials competition held on October 14, 2007, a controversy arose regarding whether Hall, or one of Hall's competitors, Nancy Rios ("Rios"), would be

nominated to the US Olympic Team. Arising out of that controversy was an allegation by Hall that US Sailing's grievance procedures do not adequately satisfy the requirements of the Act.

On February 7, 2008, Hall filed a Complaint with the USOC pursuant to Article VIII, Section 8.1 of the USOC Bylaws and Section 220527 of the Act. Her Complaint claimed that:

The United States Sailing Association has violated the standards set forth in Section 220522 of the Ted Stevens Act and Section 10.5 of the USOC Bylaws, which require a National Governing Body ("NGB") to provide "fair notice and opportunity for a hearing to any amateur athlete. . .before declaring the individual ineligible to participate," and the more general obligation to provide for "the prompt and equitable resolution of grievances of its members." Ted Stevens Olympic and Amateur Sports Act § 220522(a)(8), (13).

Hall Complaint, Summary of Claims, Page 1.

On February 27, 2008, US Sailing filed a Motion to Dismiss claiming that Hall failed to exhaust her administrative remedies. Following Hall's filing, Rios filed a Request to Intervene in the Article VIII proceeding.<sup>1</sup>

In accordance with Article VIII, Section 8.1 of the Bylaws, USOC Chair, Peter Ueberroth, appointed a five (5) member Hearing Panel to hear this matter. The Panel members are: (1) Nina Kemppel, Chair, AAC member; (2) Scott Fortune, USA Volleyball; (3) Bob Mitchell, USA Shooting; (3) Ron Van Pool, USA Swimming; and (5) Jeanne Picariello, Multi-Sport Organizations Council.

A hearing was held on the Motion to Dismiss on April 17, 2008. The Panel requested certain documents and answers to specific questions prior to the hearing. The Parties responded accordingly. The Parties had roughly twenty (20) minutes to present

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<sup>1</sup> In front of the Panel is Rios' Request to Intervene, which the Panel will rule upon in a separate Decision.

their oral arguments and to answer questions from the Panel. The parties were represented by counsel. Following the hearing, the Panel submitted additional questions to the Parties. The Parties submitted their responses to the questions on May 13, 2008.

In its consideration of this matter, the Hearing Panel reviewed the allegations in the Complaint and the filings and oral arguments in support of and in opposition to the Motion to Dismiss.

## II. DECISION

### A. Ruling

For the reasons set forth below, it is the determination of the Hearing Panel that US Sailing's Motion to Dismiss is denied.

### B. Discussion

Article VIII, Section 8.1 of the USOC Bylaws and Section 220527 of the Act provide that a complainant may file an Article VIII complaint with the USOC only after having exhausted all remedies available under the organic documents of the NGB, unless it can be shown by clear and convincing evidence that those remedies would result in unnecessary delay.

According to Rule 15 of US Sailing's Regulations, an administrative proceeding occurs when "a complaint filed by a member of the Association, or an individual or organization eligible to be a member of the Association, [alleges] a deficiency, seeking to compel the Association as a National Governing Body to comply with the requirements prescribed in the Act and the USOC [Bylaws]." A complaint filed pursuant to Rule 15 shall: 1) be filed within sixty days of the occurrence of the alleged deficiency or within 15 days of exhausting all remedies, whichever is later, 2) describe efforts made to exhaust

USOC [Bylaws] in which the Association is alleged to be deficient. A complaint filed pursuant to Rule 15, shall be referred directly to US Sailing's Review Board. The Review Board shall promptly investigate the complaint, and, within thirty days of receipt of the filing, decide: 1) whether the filing complies with the requirements for filing, 2) whether the person or organization filing the complaint has exhausted all remedies, and 3) whether any reasonable grounds exist for the complaint. Further, Rule 15 provides that the Review Board shall promptly render its decision in writing on the above issues.

On November 1, 2007, Hall filed an administrating proceeding against US Sailing pursuant to Rule 15. Hall alleged that US Sailing does not comply with Sections 220522(a)(8) and (13) of the Act. Specifically, Hall alleged that US Sailing in resolving complaints relating to its Olympic trials competitions fails to provide due process, consisting of proper notice, the ability to be heard and the assistance of legal counsel. Generally she complains that US Sailing's proceedings are not fair and equitable. Additionally, Hall alleged that US Sailing does not comply with USOC Bylaw Article XVII, Section 17.7 which requires 20 percent athlete representation on hearing panels.

The Review Board rendered a decision on Hall's Complaint on December 17, 2008. The decision rejected and dismissed all of Hall's claims. According to the record before the Panel the Review Board did not hold a hearing and made its decision on Hall's filing. The Review Board decision stated in pertinent part that "the case as presented alleges that Hall was denied an opportunity to pursue her due process and appeal rights as required in the Act." The Review Board further stated that "US Sailing has fulfilled its

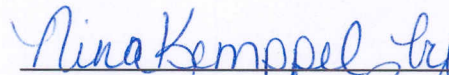
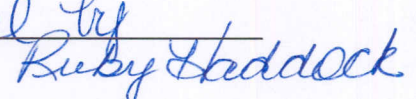
obligations as an NBG following accurately the rules of its sport and providing for a hearing of complaints and grievances from its members.”<sup>2</sup>

After consideration of this Motion, the Hearing Panel concludes, based on the documentation and argument in front of it, that Hall has in fact exhausted all of her administrative remedies with US Sailing. Hall has successfully demonstrated that she has pursued those avenues available to her based on US Sailing’s Regulations. There is no showing by US Sailing that Hall has another avenue to pursue with regard to her Article VIII Complaint within the rules of US Sailing. Accordingly, Hall has done all that she can do to exhaust her administrative claims.

### III. CONCLUSION

In conclusion, the Hearing Panel denies US Sailing’s Motion to Dismiss due to the fact that Hall has exhausted her administrative remedies with regard to her Article VIII Complaint. Accordingly, Hall’s Article VIII complaint is ripe for a full hearing on the merits.

Dated this 23<sup>rd</sup> day of May 2008.

  
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Nina Kemppe, Chair 

Scott Fortune, Panel Member  
Bob Mitchell, Panel Member  
Jeanne Picariello, Panel Member  
Ron Van Pool, Panel Member

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<sup>2</sup> Attached for reference is US Sailing Review Board’s December 17, 2007 Decision.

15 Maritime Drive  
Post Office Box 1260  
Portsmouth, RI 02871

401 683-0800 Fax 401 683-0840  
info@ussailing.org  
www.ussailing.org



December 17, 2007

Douglas Smith, Esq.  
Gibson, Dunn & Crutcher LLP  
One Montgomery Street  
San Francisco CA 94104-4505

Re: Farrah Hall US SAILING Review Board Case #07-15-04

Dear Mr. Smith:

The Review Board has carefully considered the petition of Farrah Hall and has done a careful review of the *Racing Rules of Sailing 2005-2008* (RRS), US SAILING Bylaw 701, Regulation 15, and the USOC Bylaws plus 36 USC Subsection 220501 *et seq.* which created the United States Olympic Committee, and is characterized as SUBCHAPTER I - Corporation, Subsection 220501 *Title and Definitions* also cited as "*Ted Stevens Olympic and Amateur Sports Act*" (The Act), as pertains to this case and has concluded that no reasonable grounds exist for the complaint.

The case as presented alleges that Farrah Hall was denied an opportunity to pursue her due process and appeal rights as required in the The Act. Ms. Hall, also asks that US SAILING change its rules to allow Farrah the due process and appeal rights she was allegedly denied.

We find:

1. The section of The Act that deals with this issue is "Subsection 220522 Eligibility requirements (a) GENERAL – An amateur sports organization is eligible to be recognized, or to continue to be recognized, as a national governing body only if it ... (8) provides an equal opportunity to amateur athletes...to participate in amateur athletic competition, without discrimination...., and with fair notice and opportunity for a hearing to any amateur athlete.... before declaring the individual ineligible to participate... (13) provides procedures for a prompt and equitable resolution of grievances of its members."
2. The RRS was followed with the Notice of Race and the Sailing Instructions declaring that there would be no appeal from the decisions of the protest committee as permitted in rule 70.4 Note that RRS rule 70.4(b) permits a national authority to approve the denial of the right of appeal for a particular event open only to entrants under its own jurisdiction as was done at this event. Also note Miss Hall was not a *Party* to the redress hearing which gave rise to her petitions and therefore would not have been able –by rule- to appeal that decision.
3. The Protest committee held a hearing on a request for redress as required in rule 63.1. The protest committee found as a fact that the boat that broke a rule of Part 2 took a one turn penalty for that infraction and had left the venue when the hearing on redress was held. Several members of the protest committee were witnesses to the incident on the water.
4. The rule under which the request for redress was filed, rule 62.1 (b) allows redress if "... injury or physical damage because of the action of a boat that was breaking a rule of Part 2...". The protest committee's un-appealable decision was to grant redress and awarded the requestor points for second place (2 points).

5. The Sailing Instructions also provided that the time for filing a request for redress or a request for reopening a case decided by the protest committee be shortened. These changes in rules 62.2 and 66 are allowed by rule 86.1(b) and were done to set a definite time for determination of the competitors to represent the USA in the 2008 Olympic Games – Yachting.
6. The US SAILING Bylaw 701 states that, “The Board of Directors shall provide in its Code of Regulations the procedure for the filing and settlement or for a fair hearing of grievances and disciplinary matters, together with an appeal, so that due process will be provided and completed.”
7. The Code of Regulations SECTION 15 ADMINISTRATIVE, DISCIPLINARY AND GRIEVANCE PROCEEDINGS, SECTION 15.01 AUTHORITY states, “This Regulation 15 constitutes the ‘Code of Regulations of the US SAILING Review Board described in Bylaw 526, which shall have jurisdiction over the following matters.’ Subsection 15.01 A.1 – Administrative Proceedings - “Proceedings based on a complaint filed by a member of the Association..., alleging a deficiency, seeking to compel the Association as a National Governing Body to comply with the requirements prescribed in the Sports Act and the USOC Constitution.” (“Constitution” refers to the USOC Bylaws)

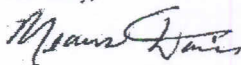
For all of the above reasons the Review Board believes US SAILING has fulfilled its obligations as an NGB following accurately the rules of its sport and providing for a hearing of complaints and grievances from its members.

There is one further element of this case. US SAILING has followed the rules of its sport and has within its Regulations a provision – specifically 15.01 B. – which says: “The Board, Review Board, Hearing Panel, arbitrator or mediator shall not have the authority to alter the standing of any boat in an event as determined by the Race Committee or Protest Committee for the event or the appropriate Appeals Committee, nor have the authority to otherwise alter the decisions of Race, Protest, or Appeals Committees properly constituted under the RRS and any applicable US SAILING prescriptions thereto.”

This leads to the final issue raised by the complaint which is that the Protest Committee was not constituted as required by the USOC Bylaw 17.7 because it did not have at least one athlete representative on the protest committee hearing the request for redress. Bylaw 17.7 says, “Athlete representatives shall equal at least 20% of all NGB boards of directors, executive boards and other governing boards, as well as those committees that are “Designated Committees” within the meaning of these Bylaws. For the purpose of these Bylaws, the phrase “Designated Committees” means nominating and budget committees, panels empowered to resolve grievances and committees which prepare, approve or implement programs ...” (Underlining added).

The Review Board believes the changing of IFAF rules (the RRS) or those of US SAILING would not be in the best interest of the sport. However, that issue is beyond the purview of this Review Board.

Sincerely,



Means Davis  
For the Review Board

cc: Thomas O. Ingram, Esq. (via email)  
Charles A. Cook, Esq. (via email)  
US SAILING Review Board (via email)  
US SAILING Board of Directors (via email)

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