

UNITED STATES OLYMPIC COMMITTEE

BERNARD ROBINSON)	
)	
Complainant, and)	
)	
BRUCE D.K.W. HARRIS, BARBARA)	
WAKEFIELD, VALERIE LONG, ANNE G.)	
CHASE, LEON PRESTON AND)	
JEANNETTE WOODARD)	
)	
Complainants)	DECISION AND ORDER
v.)	
)	
USA TAEKWONDO)	
)	
Respondent.)	September 16, 2011

I. BACKGROUND

1. On September 1, 2011, the Hearing Panel issued Orders in two separate Section 10 Complaints filed against USA Taekwondo (“USAT”). One Complaint was filed by Bernard Robinson (referred to as the “Robinson Complaint” or “Robinson matter”) and one complaint was filed by Bruce D.K.W. Harris, Barbara Wakefield, Valerie Long, Anne G. Chase, Leon Preston and Jeannette Woodard (referred to as the “Harris Complaint” or “Harris matter”).

2. The September 1 Orders dealt with five preliminary issues identical to both Complaints. They are: 1) whether there was any objection to the appointment of the Hearing Panel,¹ 2) the Parties’ position on consolidation of the two Complaints, 3) the Parties position on whether Robinson and the Complainants in the Harris matter have

¹ The same hearing panel members were appointed to hear both Complaints.

exhausted their administrative remedies, 4) the Parties' position regarding mediation, and 5) the Parties' position on USAT's announcement that it intended to hold elections for USAT Board seats.

3. The Hearing Panel requested that the Parties respond to appointment of the Hearing Panel by September 6, 2011, and to the other four issues by September 7, 2011. All Parties responded timely.

4. Also, the Hearing Panel provided that USAT would have until September 7 to file a Motion to Dismiss, which USAT did. USAT's Motion to Dismiss included both the exhaustion issue and other reasons for dismissal.

5. Additionally, Robinson filed a Document Request on September 2, 2011, and a Second Document Request on September 12, 2011.

6. These issues will be dealt with in the sequence set out above.

II. HEARING PANEL APPOINTMENT

7. In its Order of September 1 the Hearing Panel inquired as to whether any Party objected to the appointment of any member of the Hearing Panel. As is customary, Hearing Panel members had made disclosures of possible conflicts.

8. USAT responded "that it has no objection to the composition of the Hearing Panel."

9. Robinson responded that he "has no objection to the composition of the Hearing Panel named by the CEO of the USOC."

10. The Complainants in the Harris matter responded that "we see no cause to seek exclusion of any member of the USOC Hearing Panel."

11. Accordingly, the Hearing Panel is seated without objection.

III. CONSOLIDATION

12. In their responses all Parties agreed that the two Section 10 Complaints should be consolidated.

13. Accordingly, the Robinson and Harris Complaints are consolidated and will be considered as one going forward.

IV. MOTION TO DISMISS

14. In the Hearing Panel's September 1 Order it inquired as to whether or not the Complainants had exhausted their administrative remedies. Further, it ordered that if USAT had other grounds for filing a Motion to Dismiss, it should do so.

15. In its Motion to Dismiss filed on September 7, 2011, USAT responded similarly with regard to both the Robinson and Harris Complaints on the exhaustion issue. Its other grounds for dismissal were also similar for both the Robinson and Harris Complaints.

16. Both Robinson and Harris responded to the exhaustion issue.

A. Failure to Exhaust Administrative Remedies

17. Section 220527(b)(1) of the Ted Stevens Olympic and Amateur Sports Act (the "Act") provides that:

An organization or person may file a complaint under subsection (a) of this section only after exhausting all available remedies within the national governing body for correcting deficiencies, unless it can be shown by clear and convincing evidence that those remedies would have resulted in unnecessary delay.

18. Section 10.11 of the USOC Bylaws states:

The complainant may file a complaint under this Section 10 only after exhausting all available remedies with the NGB or PSO for correcting

deficiencies, unless it can be shown by clear and convincing evidence that those remedies would have resulted in unnecessary delay.

19. Section 15.10 of USAT's Bylaws provide that "[u]nless a delay has been agreed upon by all parties involved, all complaints should be resolved within 180 days of receipt of a valid complaint."

20. USAT points out in its Motion to Dismiss that although Robinson and the Complainants in the Harris matter both filed administrative grievances with the USAT, those grievances have not yet been ruled upon by USAT's Judicial Committee.²

21. Further, USAT states that on September 6, 2011, the Judicial Committee scheduled a conference for September 8, 2011, to set a hearing date.

22. On September 12, 2011, USAT supplemented its Motion to Dismiss by indicating that the Judicial Committee had set hearing dates i) for the Robinson grievance for either October 29, 2011, or November 5, 2011, (depending on the availability of Robinson) and ii) for the Harris grievance for either September 24, 2011, or October 22, 2011, (depending on the availability of the Complainants in the Harris matter).

23. In conclusion USAT asserts that "[t]here is no basis for the ... assertion that allowing the USAT Judicial Committee to hear [the administrative grievances] would result in unnecessary delay."

² USAT refers to the hearing panel appointed to hear the Robinson and Harris administrative grievances as the "Judicial Committee." Thus, the same designation is used in this Decision and Order. However, use of that designation is somewhat confusing. Pursuant to Section 15.8 of USAT's Bylaws the Judicial Committee "generally administer[s] and oversee[s] grievances." The Committee is also responsible for appointing "a hearing panel consisting of three (3) individuals to hear" the grievance. Both "Judicial Committee members" and "[o]ther disinterested individuals identified by the Judicial Committee" may be appointed to serve on a hearing panel. Thus, reference to the "Judicial Committee" is somewhat of a misnomer.

24. Robinson states that he filed his administrative grievance on February 8, 2011. On February 18, 2011, Robinson received an email from the Judicial Committee advising Robinson of its appointment and also enclosing a show cause order inquiring why his grievance should not be combined with administrative grievances filed by four other Complainants.

25. Robinson responded by emails dated February 22 and 23 requesting copies of the other grievances (Robinson did not know what other administrative grievances the Judicial Committee was referring to) and requesting that the Judicial Committee identify which of its members was appointed to serve as the athlete representative (since it appeared to Robinson that there was no athlete representative).

26. On March 2 the Judicial Committee informed Robinson of a new Committee member who would serve as the athlete representative. Robinson responded to the show cause order on March 23, 2011, consenting to consolidation of the election issues, but objecting to consolidation of other compliance issues. Robinson states that “no acknowledgment/response/Order was ever received from the Judicial Committee...in response to this filing.”

27. On September 6, 2011, the Judicial Committee ordered a scheduling conference for September 8, 2011, to be held at the same time as a scheduling conference for the Complainants in the Harris matter.

28. Robinson asserts that the Judicial Committee is only now acting as a result of and in response to the Section 10 Complaints filed by Robinson and the Complainants in the Harris matter.

29. In conclusion Robinson states that:

[M]easured by any standard, including those set forth in the USAT's own Bylaws, the failure of the USAT, through its Judicial Committee, to hear and determine Mr. Robinson's Grievance for seven months, and indeed its failure to even attempt to schedule a hearing to resolve the matter until just now (and apparently only after having been advised of the filing by Mr. Robinson of his Section 10 Compliant with the USOC) satisfies any "exhaustion of remedies" required before the filing a "Section 10 Complaint" with the USOC.³

30. The Complainants in the Harris matter respond that they filed their administrative grievance on January 18, 2011. On February 22, 2011, they inquired as to the status of their grievance filing.

31. USAT responded on February 23, 2011, that "there may have been an oversight" and that the Judicial Committee has been asked "to attend to your matter."

32. After hearing nothing further, the Complainants in the Harris matter again inquired on March 9, 2011, as follows:

We still have not received any notification about our complaint going forward, nor have we received contact from the Judicial Committee regarding our grievance. The \$1500 in fees for our Grievance has been accepted by USAT. Please advise us of any progress in this matter.⁴

33. USAT responded on March 9, 2011, that the Judicial Committee has again been asked "to correct this oversight" and gave assurances "that it will be taken care of soon."

³ Robinson also makes the point that only the grievances filed by Robinson and the Harris Complainants have been ordered to attend a scheduling conference while "[t]he many other Grievances filed with USAT...remain unscheduled for a hearing."

⁴ Initially Complainants in the Harris matter submitted a \$500 filing fee with their administrative grievance, which, pursuant to Section 15.4 of USAT's Bylaws is the filing fee required of an organization. The Complainants were informed on January 24, 2011, however, that "to the extent that you file as an individual grievant the filing fee is \$250.00" and "[t]he filing fee for 6 individuals is \$250.00 per individual." Accordingly, on January 26, 2011, Complainants submitted a check for the filing fee in the amount of \$1,500. The Complainants contend that since they jointly filed one grievance they should only be required to pay a filing fee of \$250.00.

34. On March 17, 2011, the Complainants in the Harris matter received notice that the Judicial Committee had been appointed and were given a show cause order as to whether or not the matter should be consolidated with four other grievances.

35. The Complainants in the Harris matter responded to the show cause order on March 28, 2011, objecting to consolidation.

36. After that they heard nothing from the Judicial Committee until being notified on September 6, 2011, of a scheduling conference for September 8, 2011, to be held at the same time as a scheduling conference for Robinson.

37. In conclusion the Complainants in the Harris matter state that “they waited beyond the 180-day period for [their] Grievance to be heard by a USAT Judicial Panel, and that [their] Grievance was never heard, even though [their] filing fee was accepted and deposited by USAT.”

38. After considering the responses submitted by the Parties, the Hearing Panel rules that Robinson and the Claimants in the Harris matter have satisfied their exhaustion requirement. Requiring Robinson and the Complainants in the Harris matter to proceed with their administrative remedies at this juncture would result in a further and unnecessary delay.

39. Robinson and the Complainants in the Harris matter filed their administrative grievances with the USAT in January and February 2011 respectively. The only action taken by the Judicial Committee, until setting a September scheduling conference, was in March when it requested that Robinson and the Complainants in the Harris matter respond to show cause orders concerning consolidation. The Judicial Committee never issued a ruling with respect to the show cause orders nor were there

further communications with Harris or Robinson afterwards. Action on the grievances stopped.

40. Additionally, there was never a request by USAT that the Robinson and Harris grievances should be delayed. Nor did Robinson or the Complainants in the Harris matter ever consent to a delay in having their grievances heard.

41. Further, Section 15.10 of USAT's Bylaws provide that grievances should be resolved within 180 days. Section 220522(a)(13) of the Act states that national governing bodies must provide for the prompt and equitable resolution of grievances. Regarding the Robinson and Harris grievances, USAT failed to meet these standards.

42. There may be instances where administrative grievances, because of their complexity or because of scheduling circumstances, require a lengthy period for resolution. However, that does not appear to be the reason for delay in this instance. Rather, the Harris and Robinson grievances seemed to have remained dormant because of inaction, inattention, or both.

43. A national governing body should not be allowed to defeat a Section 10 Complaint by not taking action on an administrative grievance and then advancing the argument that the complainant has not exhausted his or her administrative remedies.

44. Accordingly, USAT's request that the Robinson and Harris Section 10 Complaints be dismissed for failure of the Complainants to exhaust their administrative remedies is denied.

B. Other Grounds for Dismissal

45. USAT puts forward a number of other arguments as to why the Section 10 Complaints should be dismissed. They are discussed below.

46. First, USAT states that Robinson and the Complainants in the Harris matter make allegations against and name individuals associated with USAT in their Complaints. Further, USAT states that Section 220527(a) of the Act and Section 10 of the USOC Bylaws do not contemplate that individuals shall be named as parties to Section 10 proceedings. There is nothing that prohibits a Complainant from alleging that individuals associated with a national governing body are responsible or partly responsible for the actions of the national governing body. However, such allegations do not make the individuals parties to the complaint. Insofar as the Robinson and Harris Complaints could be viewed as naming individuals, the Hearing Panel rules that those individuals are not parties to this proceeding and that the only respondent in this proceeding is the USAT.

47. Second, USAT alleges that Robinson and the Complainants in the Harris matter are not candidates for election to the USAT Board and therefore have no standing to raise issues concerning the election. Additionally, USAT asserts that the Complainants do “not allege a factual basis that would provide the Hearing Panel with jurisdiction over any election related issues.” The actions taken by USAT concerning the nomination process, the inability of USAT to resolve this issue and to determine which candidates are entitled to run, and the fact that elections have been postponed for nearly a year is a matter relevant to an national governing body’s ability to fulfill its responsibilities as a national governing body. Accordingly, the Hearing Panel rules that this issue is properly before it.

48. Third, USAT objects to Robinson’s citation of Colorado law, states that the Hearing Panel has no authority to “rule on” nor is it “qualified to opine on Colorado

law” and argues that “those portions of the Complaint must be dismissed.” A complainant is entitled to put forward evidence and to cite legal authority as he or she considers relevant to his or her case. If USAT wishes to object to certain evidence, based on evidentiary grounds, or argue that legal authority is not applicable, it may do so at the hearing on the Complaint. Accordingly, the Hearing Panel denies USAT’s request to dismiss those portions of Robinson’s Complaint citing Colorado law.

49. Fourth, USAT asserts that the “Hearing Panel lacks the authority to grant the relief requested by the Complainants.” USAT states that the “Hearing Panel is limited solely to those remedies expressly provided in Section 10 of the USOC Bylaws” and that “all extra-jurisdictionally requested remedies must be dismissed.” The Hearing Panel will consider what remedies are available to it and what remedies it wishes to impose, if any, after a hearing on the Complaint. USAT may make its arguments regarding remedies at that time. Accordingly, the Hearing Panel denies USAT’s request to dismiss those portions of the Complaints seeking certain remedies.

C. Answer

50. Sections 10.12 and 10.13 allow a respondent to file either an answer or a motion to dismiss within thirty (30) days from receipt of the complaint by the respondent.

51. Section 10.13 provides that if a motion to dismiss is filed and denied, “the respondent shall an answer to the complaint within thirty (30) days after the hearing panel issues its decision on the motion to dismiss.” Section 10.13 further states that “[i]f no answer is filed within the stated time, the respondent shall be deemed to have denied the claim.”

52. Since USAT filed a motion to dismiss, which was denied, USAT shall file an answer within thirty (30) days of this Decision and Order. If no answer is filed, the claims in the Robinson and Harris Complaints shall be deemed denied.

V. MEDIATION

53. Section 10.8 of the USOC Bylaws provides that the Hearing Panel may order mediation upon the request of a party.

54. In a communication dated August 30, 2011, USAT requested that the Hearing Panel order the Parties to attempt mediation.

55. In response, the Hearing Panel in its September 1 Order requested that the Parties respond to a number of issues raised by the mediation request. Primary among those issues was whether or not Robinson and the Complainants in the Harris matter felt that mediation would be worthwhile.

56. In response to the Order, USAT reaffirms its request to mediate. USAT further requests that the mediation include, in addition to USAT, Robinson and the Complainants in the Harris matter “all candidates for the USAT Board of Directors.” USAT suggests that the Hearing Panel “should invite these candidates to participate in the mediation with the express statement that a candidate’s decision not to participate shall constitute an affirmative waiver of that candidate’s right to file any grievance with USAT or the USOC related to the elections.”

57. Additionally, USAT suggests that “the USOC cover the costs of the mediator and any meeting costs, exclusive of attendance costs for the parties.”

58. In response to the Order Robinson consents to mediation “with every person or organization who filed a Grievance being invited to attend.”⁵ However, Robinson suggests that in order to participate in the mediation, “each participant must be required to pay, in advance, his or her share of the anticipated costs of mediation, including mediator fees.”

59. Robinson also requests that “all issues (compliance and election) be made part of the mediation.”

60. Finally, Robinson requests that “mediation proceed only after USAT has fully complied with [his] Request for Production of Documents” in that it would be monumentally unfair (and unproductive) for mediation to proceed without the parties and the [mediator] being in possession of the same relevant facts.”⁶

61. The Complainants in the Harris matter state “we agree to Mediation regarding the issue of the imminent Election” to USAT’s Board of Directors. However, the Harris Complainants further state that we “would like for the Hearing Process to continue forward with regard to the issue of USA Taekwondo’s being found not in compliance with the Amateur Sports Act.”

62. The Complainants in the Harris matter also indicate that they “are not in favor of adding any additional parties to the Mediation process.”

⁵ In Robinson’s filing he indicated that, in addition to the administrative grievances filed by the Complainants in the Harris matter and himself, he knows of five other grievances filed with USAT concerning USAT’s Board election. Those grievances were filed by: Marco Mack, Angel and Dena Aranzamendi, Herbert Perez, Brandon Meek and John Holloway.

⁶ As mentioned previously, Robinson filed a Document Request and a Second Document Request addressed to USAT on September 2, and September 12, 2011 respectively. These Requests will be dealt with later in this Decision and Order by the Hearing Panel.

63. After considering the responses of the Parties the Hearing Panel believes that mediation of the election issue would be beneficial. Further, it encourages the Parties to attempt mediation in good faith and make every effort to resolve their differences. Accordingly, the Hearing Panel orders the following:

a) The Parties shall enter into mediation. Additionally, all other individuals who have filed administrative grievances with USAT and all candidates for the USAT Board of Directors⁷ shall be invited to participate in the mediation process. The Parties shall agree on a notice to be sent to potential participants for review of the Hearing Panel. Such notice shall be submitted to the Hearing Panel by September 21, 2011.

b) The mediator shall be appointed by the CEO of the USOC as is set forth in Section 10.8 of the USOC Bylaws.

c) The mediation shall pertain to the issues surrounding conducting an election for USAT's Board of Directors, including the nomination process and the candidates entitled to run, the Board seats to be filled, the procedures to be utilized in the election, and the time for the election.

d) While mediation on the election issues is taking place, the Hearing Panel will proceed with those aspects of the Section 10 Complaints dealing with compliance issues.⁸

e) The mediation shall occur in person and the first session shall be scheduled for at least a full day. A participant must be present in order to participate in the mediation process. This does not preclude the mediator from discussing preliminary matters with the participants or from having follow-up discussions after conclusion of the first day's session. The mediation shall occur in Colorado Springs unless the mediator determines that another location is more practical or beneficial after hearing from the participants.

f) In order to participate in the mediation process each participant shall pay prior to commencement of the mediation an

⁷ By including these candidates in the mediation process the Hearing Panel makes no comment on whether or not their candidacy is proper or should be allowed in an election for seats to the Board of Directors. The Hearing Panel is fully aware that there are issues relating to the nomination process, to changes to USAT's Bylaws affecting the election, and to whether candidates have complied with the eligibility requirements for election.

⁸ If the Parties wish to also attempt to mediate the compliance issues raised in the Complaints, they may do so, but their first priority should be the election issue.

estimated amount to cover its, his or her pro rata share of the mediator's fees and any associated costs.⁹ Participants shall be responsible for paying their own costs of representation and attendance.

g) The participants shall have thirty (30) days from the date the mediator is appointed in which to conclude their mediation efforts. At the end of thirty (30) days the Parties shall report back to the Hearing Panel on whether or not mediation has been successful.

VI. ELECTIONS

64. In its Order of September 1 the Hearing Panel inquired as to whether or not USAT intended to proceed with elections to its Board.¹⁰

65. This issue was raised as Robinson in his Amended Request for Relief and Request for Interim Relief requests that “[n]o action be taken with respect to USAT’s recently proposed election for Board positions during the pendency of this Section 10 Complaint or until such time as elections for a new Board of Directors can be agreed upon....” Robinson states that the “*status quo*” should be preserved since one of the issues raised in Robinson’s Complaint was USAT’s non-compliance with its Bylaws and state law concerning the election process. As such, Robinson contends that an election for USAT Board seats should not take place until this issue has been heard and decided or until there is agreement as to the election process.¹¹

⁹ Where a group of individuals have joined together in filing a Section 10 Complaint or in filing an administrative grievance with USAT, they shall be considered as one individual for purposes of the mediation and of paying their pro rata share of mediation fees and costs.

¹⁰ In a communication from USAT dated August 19, 2011, it announced that it intended to conduct elections from August 29, 2009, to September 9, 2011.

¹¹ An issue raised by Robinson in his Complaint concerns the refusal of the USAT Board to accept the Nominating and Governance Committees’ slate of nominees and the subsequent Board’s action dissolving the Nominating and Governance Committee.

66. Further, in their Amended Request for Relief the Complainants in the Harris matter request that the Hearing Panel “require USA Taekwondo to stay its announced Board of Directors elections until after the findings of this USOC Hearing Panel have been announced, or until complete resolution of this USOC Section 10 Complaint.”¹²

67. In its September 7 submission USAT responded that “[i]f the Hearing Panel orders mediation with all parties, including the candidates, then USAT will not conduct the elections until that mediation is concluded.”

68. Accordingly, the Hearing Panel orders that USAT’s election for Board seats is stayed until such time as the Hearing Panel orders otherwise.¹³

VII. PRODUCTION OF DOCUMENTS

69. Section 10.15 of the USOC Bylaws provide that “[e]ither on its own directive or at the request of a party, the hearing panel may direct the production of documents and other information.”

¹² An issue raised by the Complainants in the Harris matter in their Complaint concerns the decision of the USAT Board to change eligibility requirements for referee directors seeking to run for a board seat by purportedly amending its Bylaws.

¹³ The Hearing Panel is mindful that a number of USAT Board vacancies exist. The Hearing Panel also understands that these vacancies have been an issue regarding USAT’s Board composition and USAT’s ability to carry on its business. As Robinson states in his Amended Request for Relief and Request for Interim Relief, the actions of USAT’s Board have been challenged based on its “inability...to validly act on account of its diminished state” and on account of the “multiple pending challenges to [the Board’s] composition and its inability to muster a quorum.” Although the Hearing Panel takes no position on these issues at this time, the Hearing Panel is cognizant that unless the USAT Board continues to act it will be rendered incapable of addressing any issues raised in this Section 10 proceeding or concerning its function as an NGB. This would seem to be not in the best interest of the sport of taekwondo and would not allow USAT to address many of the compliance issues that have been complained of by Robinson and the Complainants in the Harris matter.

70. On September 2, 2011, Robinson filed a Document Request with USAT. On September 12, 2011, Robinson filed a Second Document Request. As is mentioned above, Robinson indicated that his need for documents was, in part, necessitated in order to prepare for mediation.

71. USAT responded on September 12, 2011, indicating that certain documents were contained on USAT's website and further that no production would be made as "discovery is governed...by Section 10.15 of the USOC Bylaws" and "the USOC Hearing Panel [has not] directed any discovery at this time."

72. The Hearing Panel is intent on keeping this matter moving forward. Further, Robinson makes a valid point that certain documents may be beneficial in preparing for mediation. Therefore, USAT is ordered to respond to Robinson's Document Request and Second Document Request by September 21, 2011. In its response it shall indicate those documents USAT intends to produce and those documents it objects to producing. Any documents produced shall be provided to both Robinson and the Complainants in the Harris matter, as well as to the Hearing Panel.

73. Further, there are certain documents that the Hearing Panel wishes to review pertaining to the issues that have been raised in this proceeding. They are:

a) Copies of all USAT Bylaws that have been in effect since January 1, 2009. If changes have been made since January 1, 2009, USAT should indicate those sections in which changes have been made in redline format and specify when the changes were made.

b) The most recent USAT Audit Report prepared by the USOC.

c) USAT's response to the Audit Report identified above, including any response made by any officer, director, employee or representative of the USAT.

d) USAT's 2010 audited financial statements and management letter, including financial reports by department, if available.

e) USAT's 2011 forecast of financials, including forecasts by department, if available.

f) USAT's 2011 budget.

g) Copies of all USAT financial policies and procedures that have been in effect since January 1, 2009. If changes have been made since January 1, 2009, USAT should indicate those sections in which changes have been made in redline format and specify when the changes were made.

h) Copies of all administrative grievances filed with USAT concerning USAT's 2010 Board election.

i) The number and designation of seats on USAT's Board of Directors, which seats are currently filled and by whom, which seats are not filled, which seats are up for election and the term for each seat.

j) Any document concerning who has authority or has had authority since January 1, 2011 to act on behalf of the Board of Directors and/or on behalf of USAT.

74. USAT shall provide copies of the above listed documents to the USOC Hearing Panel by September 21, 2011. Unless USAT raises an objection to producing a document, these documents shall also be provided to Robinson and the Complainants in the Harris matter.

VIII. ORDER

75. It is so ordered.

Dated this 16th day of September, 2011.



Susanne Lyons, Chair

Sarah Konrad, Panel Member
Glenn Merry, Panel Member