

UNITED STATES OLYMPIC & PARALYMPIC COMMITTEE

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|--------------------------|---|-------------------|
| TERESSA KANDIANIS and |) | |
| LESLIE BERNDL |) | |
| |) | |
| Complainants, |) | |
| |) | PRE-HEARING ORDER |
| v. |) | |
| |) | |
| UNITED STATES EQUESTRIAN |) | |
| FEDERATION |) | February 5, 2020 |
| |) | |
| Respondent. |) | |

I. BACKGROUND

1. This matter was commenced on March 29, 2019, when Teressa Kandianis and Leslie Berndl ("Complainants") filed a Section 10 Complaint against the United States Equestrian Federation ("USEF" or "Respondent")(hereinafter to as "Parties").

2. USEF's submitted a Motion to Dismiss on April 26, 2019. After hearing oral argument and considering all briefs submitted, the Hearing Panel denied the Motion to Dismiss on August 7, 2019.

3. A preliminary hearing was held on November 21, 2019¹.

4. In accordance with the December 12, 2019, Pre-Hearing Order, an in-person one-day hearing was scheduled for January 22, 2020, to commence at 9:00am MT.

¹ The preliminary hearing was original scheduled for October 11, 2019, but had to be rescheduled due to Complainants counsel not appearing.

II. DETAILS ABOUT THE JANUARY 22, 2020, HEARING DATE

5. After normal business hours on January 21, 2020, the athlete representative Hearing Panel member, Allysa Seely, informed the USOPC and the other Hearing Panel members that a serious health condition required an emergency surgery the following morning, January 22, 2020. This meant she would be unable to attend the hearing.

6. The Hearing Panel, including Ms. Seely, immediately conferred to discuss options for the upcoming hearing.

7. Due to this last-minute emergency, a substitute hearing panel member for Ms. Seely would not be possible by the next morning. In fact, Ms. Seely expressed her commitment to serving on the Hearing Panel and she had no desire to be replaced.

8. The Hearing Panel considered (i) all of the Parties time, effort, and resources to prepare for and travel out to the hearing, (ii) the ability of the Hearing Panel to proceed impartially and deliver a fair and equitable hearing to the Parties, and (iii) any prejudice that the Parties may face in light of Ms. Seely's absence.

9. First, the Hearing Panel respected the efforts made by everyone, including themselves, to arrive for the in-person hearing. A number of individuals had to fly from all across the country, expending resources and valuable time to make themselves available. Additionally, since the nexus of this Complaint stems from a dispute back in 2017, the Hearing Panel has a strong desire to move the hearing along as expeditiously as possible to bring resolution to the Parties. Lastly, the Hearing Panel was conscious that rescheduling the hearing could prove logistically problematic.

10. With that in mind, the Hearing Panel collaborated on a proposal that they believed would still provide the Parties with a fair and equitable hearing the following day without being prejudicial to the Parties. The proposal included the following points:

- a. The hearing would continue with the other two Hearing Panel members present and Ms. Seely would read the hearing transcript and listen to and/or watch the hearing at a later date, but very close in time to the hearing, so that she would have a full grasp of all the evidence presented at the hearing.
- b. Since a court reporter was already scheduled to record the hearing, the USOPC offered to cover part of the cost of the recording. Additionally, the USOPC would use all efforts to videotape the hearing².
- c. Ms. Seely would participate in all Hearing Panel deliberations.
- d. The Parties would be permitted to file post-hearing briefs.
- e. Closing statements would be reserved for a later date, to be held telephonically, so the Parties could present their last arguments in front of the full Hearing Panel in real-time. This would give the ability for all Hearing Panel members to interact and ask questions of the Parties.

11. In good faith and to provide advance notice, the Hearing Panel, through the USOPC, explained the unfortunate circumstance and outlined the above proposal to the Parties late night on January 21, 2020. Since the USOPC has no role in decision-making, the USOPC communicated several times to the Parties that this would be the first matter of business to discuss at the hearing the next day and the Hearing Panel would be responsible for making the final determination on how to proceed after affording the

² The USOPC was in fact able to secure resources to videotape the hearing.

Parties the opportunity to express their views on the proposal and/or offer other suggestions.

12. USEF expressed its understanding of the unforeseen circumstance, sent its best wishes to Ms. Seely, and indicated that it would be willing to work with the Hearing Panel's proposal and/or offer other thoughts in the morning to move forward with the hearing.

13. Complainants counsel immediately objected to the proposal, but due to the late hour, stated that she would have to talk with Complainants in the morning.

14. At 8:43am MT on January 22, 2020, only minutes before the scheduled hearing, Complainants counsel sent an email to the Hearing Panel again objecting to moving forward with only two Hearing Panel members at the hearing.

15. In the email, Complainants expressed that they believed it was essential to have all three Hearing Panel members at the hearing in real-time and a vacancy would be prejudicial to their case.

16. Immediately after that email was sent, the Hearing Panel conferred. The Hearing Panel considered Complainants objection and discussed whether to move forward with the hearing on that day. However, the Hearing Panel wanted to reserve any final determination on how to proceed until affording both Complainants and USEF the opportunity to express their views on the matter when the 9am MT hearing was scheduled to commence.

17. Complainants and Complainants counsel never appeared in-person at the hearing to discuss. Additionally, their 8:43am MT email did not indicate they would not appear. Further, the court reporter arrived at 8:40am MT, but by 8:45am MT

communicated that her client (the Complainants) cancelled her service and she would be leaving.

18. At that time, several calls and texts were sent to Complainants counsel to inquire whether Complainants or counsel would appear and discuss the proposal, alternate options, or the potential for rescheduling the hearing. Complainants counsel responded with one simple text stating that she had sent an email. Complainants counsel disregarded the other attempts made to get in touch directly.

19. The Hearing Panel makes note that counsel for USEF was willing and able to move forward with the hearing on January 22, 2020.

20. The Hearing Panel waited for nearly an hour before they deliberated.

III. PROFESSIONAL CONDUCT

21. The Hearing Panel wishes to remind Complainants and Complainants counsel, to adhere to all deadlines set by the Hearing Panel and act with respect for the Section 10 process, the Hearing Panel and opposing counsel.

22. Complainants counsel, Ms. McCart missed the initial preliminary hearing, missed the deadline for a stenographer request, and then did not appear for the in-person hearing. In all of these instances, advance notice was not sent to the Hearing Panel to account for any excuse, delay or absence.

23. Hearing Panel orders are mandatory, will be strictly enforced, and cannot be disregarded. It was imperative that Ms. McCart appear before the Hearing Panel on the morning of the hearing as the previous communications the night before were through the USOPC. USOPC representatives advised Ms. McCart several times to attend the hearing the next morning to discuss these issues with the Hearing Panel directly.

24. Ms. McCart's unprofessional behavior in not showing up in-person to the hearing to discuss options on how to proceed will not be tolerated. The Hearing Panel and Parties should be respectful of each other's time and investment in the case. Ms. McCart could have provided advance notice or a form of an apology to the Hearing Panel and opposing counsel in disregarding the deadlines ordered by the Hearing Panel.

IV. DETERMINATION

25. Although the Hearing Panel communicated that it was dedicated to providing a fair, equitable and impartial hearing in line with its proposal, in light of Complainants email objection and then the alarming absence from Complainants appearing in-person to discuss further, the Hearing Panel determined that the best course of action was to postpone the hearing.

26. In order to conserve resources and to provide a hearing within a reasonable amount of time, the Hearing Panel has determined to reschedule the hearing telephonically or by videoconference.

V. HEARING SCHEDULE AND PROCEDURES

27. The Hearing Panel sets the following schedule for a telephonic/videoconference hearing:

- a. The telephonic/videoconference hearing is set for February 10, 2020, to commence at 9:00am MT.
- b. The USOPC will provide call-in numbers to the Parties.
- c. The Parties should be prepared to present their case in full at the hearing.
- d. The Parties each have fifteen (15) minutes for opening statements. The Parties have a total of three (3) hours to present their case, including opening


statements. Witness cross-examination shall be allotted to the time of the Party conducting the cross-examination.

- e. The Parties and their counsel should be cordial to each other at all times during the hearing.
- f. Existing exhibits, exhibit lists and witness lists previously submitted by the Parties in anticipation of the January 22, 2020, hearing date shall remain in effect.
- g. Witnesses will be subject to the exclusionary rule.
- h. Parties shall notify the Hearing Panel if they wish to have the hearing recorded by a stenographer no later than February 7, 2020, 2pm MT.
- i. Any Party that requests a stenographer shall be responsible to pay for the stenographer and any cost associated with obtaining a transcript.
- j. The Parties shall make sure that witnesses have easy and readily available access to the exhibits.
- k. All deadlines herein will be strictly enforced.

VI. ORDER

28. It is so ordered.

Dated this 5 day of February, 2020.



Brad Snyder, Chair

Chris Ramsey, Panel Member
Allysa Seely, Panel Member