
BEFORE A US OLYMPIC COMMITTEE HEARING PANEL

SECTION 10

Edward V. Arrighi et. al vs. USA Shooting

COMPLAINANTS' REPLY TO USAS ANSWER AND COUNTERCLAIMS

and

REQUEST FOR PRELIMINARY CONFERENCE

INTRODUCTION

A duly authorized "Section 10 Complaint" against USA Shooting was filed and served by the undersigned on behalf of a number of USA Shooting athletes and other members of USA Shooting with the USOC on August 13, 2015. On September 10, 2015, the Section 10 Complaint was amended to add additional Complainants, now totaling 44. On September 14, 2015, USA Shooting, by its attorney, Thomas M. James. Esq. filed and served an Answer and Counterclaims.

This pleading is respectfully filed and served as the Complainants' Reply to USA Shootings' Answer and Counterclaims.

POINT I

(Lack of Authorization and Payment of Legal Fees)

1. USA Shooting (hereinafter, "USAS") is a Colorado Not-for-Profit Corporation. According to its Bylaws, it is governed by its Board of Directors and, between meetings of the Board, its Executive Committee.
2. Upon information and belief, there has been no meeting of, or vote by, the USAS Board of Directors or of its Executive Committee, authorizing the retention of anyone, including

the law office of Thomas M. James, Esq., to represent USA Shooting in connection with the filing of the Section 10 Complaint.

3. Upon information and belief, there has been no meeting of, or vote by, the USAS Board of Directors or of its Executive Committee, whereby any individual or individuals on the Board of Directors or on its Executive Committee was designated by the USAS Board or Executive Committee to speak on behalf of USAS and / or to consult with counsel to prepare and / or approve the Answer and Counterclaims filed by counsel in the name of "USA Shooting."
4. Upon information and belief, the Answer and Counterclaims is the product of Mr. James working in consultation with Dr. James Lally (President of USAS) and Robert Mitchell (Executive Director / CEO of USAS), each acting in their individual capacity and for their own benefit, without authorization of the USAS Board of Directors or Executive Committee.
5. Upon information and belief, the Answer and Counterclaims filed in the name of USA Shooting" is in fact and reality the Answer and Counterclaim of James Lally and Robert Mitchell (and perhaps also Gary Anderson), acting without authorization of the USAS Board or Executive Committee.
6. The legal fees, costs and expenses paid or to be paid to the law office of Thomas M. James, are the personal obligation of James M. Lally and Robert M. Mitchell, and any other individual who authorized the filing of the Answer and Counterclaims, acting in their individual capacity and without authorization of the UAS Board of Directors or Executive Committee.
7. Accordingly, the legal fees, costs and expenses already billed, or to be billed, by the law office of Thomas M. James are not the obligation of USA Shooting, but rather are the personal obligation of James M. Lally and Robert Mitchell (and any other individual who may have authorized the filing of the Answer and Counterclaim without the authorization of the Board or Executive Committee for USA Shooting to retain the Law office of Thomas M. James)

POINT II

(USA Shooting's General Denial and Admissions)

8. Complainants, in their Section 10 Complaint, set forth allegations of USA Shooting's non-compliance in separately numbered paragraphs, for ease of USA Shooting to answer / respond to the allegations of non-compliance.
9. An Answer and Counterclaims was filed by the law offices of Thomas M. James in the name of USA Shooting on September 14, 2015.
10. USA Shooting did not respond, in its Answer and Counterclaims, to the separately numbered allegations of non-compliance.

11. Rather, USA Shooting asserted a General Denial (“denies all allegations asserted by Complainants”) followed by the following admission:

“certain provisions of its Bylaws, including those which pertain to processing of grievances and complaints, may be in need of review and improvement.”
12. USAS’s above response constitutes an admission to the Complainants’ allegations in its Section 10 Complaint pertaining to USAS’s non-compliance with:
 - a) Sections 220522(a)(13) and 2220522(a) 2(a) of the Sports Act;
 - b) Section 8.7(a) of the USOC’s Bylaws; and
 - c) Article XXV, Section “L” of USAS’s own bylaws,as specified at pages 7, 9 and 16 of the Section 10 Complaint.
13. USAS failed, in its Answer and Counterclaims to the Section 10 Complaint, to specify / identify what other and additional “certain provisions” of its bylaws, or what wrongful practices and procedures alleged in the Section 10 Complaint, are in violation of the separately numbered allegations of non-compliance as set forth in the Section 10 Complaint.
14. Having elected to file and serve an Answer (and Counterclaims) to the Section 10 Complaint, USAS should have filed separately numbered responses to each of the separately numbered allegations of non-compliance set forth in the Section 10 Complaint.
15. USAS’s failure and neglect, in filing its Answer and Counterclaims, to respond to the separately enumerated and numbered allegations of non-compliance in Complainants’ Section 10 Complaint, leaves the Hearing Panel (and the Complainants) without knowledge of which unspecified “certain provisions” (other than those pertaining to grievance and complaint procedures) USAS admits “may be in need of review and improvement.”
16. USAS, at “Pont II, 2.a” of its Answer and Counterclaims (see page 2), “reserves the right to revise, supplement and amend [its] Answer.”
17. Complainants respectfully request that USAS “revise, supplement and amend [its] Answer” so as to include a response to each of the separately enumerated and numbered allegations of non-compliance set forth by Complainants in their Section 10 Complaint.
18. Only by doing so, will the Hearing Panel (and the Complainants) know what issues are in actual dispute and which allegations are admitted by USAA, thereby narrowing the

issues that will need to be mediated or are to be the subject of an evidentiary hearing before the 3 - person USOC Hearing Panel.

POINT III

(Denial of Point III ,1 of USAS's Affirmative Defenses and Counterclaims)

19. The 44 Complainants admit that they criticize (a) the governance of USA Shooting, the responsibility of which rests with the USA Shooting Board of Directors, and (b) the management of USA Shooting, the oversight of which rests with the USA Board of Directors, but deny that USA Shooting is "Board – governed and Staff-managed" NGB, as required by USOC Board policies, in that the responsibilities of the Board have been usurped by the USAS Executive Committee, and more specifically by three members of the Executive Committee, who control the agenda of the Board of Directors, and who wrongfully deny the Board one of its most important duties and responsibilities, which is to hire, evaluate and fire the Executive Director-CEO who sits as voting member of the USAS Board of Directors.

POINT IV

(Denial of Point III ,2 of USAS's Affirmative Defenses and Counterclaims)

20. Complainants respectfully deny Point III, 2 of USAS's "Affirmative Defenses and Counterclaims" which alleges that "Complainants have considerable experience as members of USA Shooting's Board of Directors

21. USAS was advised of the amendment the Section 10 Complaint to include additional Complainants on September 10, 2015.

22. There are forty four (44) Complainants in this Section 10 Complaint.

23. USAS served its Answer and Counterclaims four days later, on September 14, 2015.

24. The vast majority of the 44 Complainants to the Section 10 Complaint do not "have considerable experience as members USA Shooting's Board of Directors"

25. USAS' allegation in Point III, 2 is false and was known to be false by whoever in USA Shooting reviewed and authorized the service and filing of this allegation.

POINT V

(Denial of Point III .3 of USAS's Affirmative Defenses and Counterclaims)

26. Complaints respectfully deny Point III, 3 of USAS's "Affirmative Defenses and Counterclaims" which alleges that the "Complainants made no effort in the past to raise their allegations at the Board of Director's level..."

27. While most of the Complaints are currently competing or recently retired athletes, and are not and never were members of the USAS Board or Executive Committee, and therefore had no opportunity to speak directly to the members of the Board or Executive Committee at their meetings, the allegation of Point III,2 is false and was known to be false by whoever authorized the filing of this allegation, as evidenced by the following:

a) First of all, there are 44 Complainants to the Section 10 Complaint. Almost all are not on the Board of Directors, they had no opportunity to complain directly to the Board, except through Grievances (which they, including the 6 Board members within the group of Complainants, filed on April 3 and again on April 25)

b) When Janet Raab, an athlete rep and Complainant herein, joined the Board, she was met with the chilling welcoming statement by Bob Mitchell, Executive Director / CEO of USAS (as alleged in Part I, A, 1 of the Section 10 Complaint, page 6) that the athletes' votes "do not count" because the others on the Board and Executive Committee outnumber and can out vote them.

c) Attempts by some of the Board member Complainants herein to have the full Board address some of the managerial shortcomings now alleged in the Section 10 Complaint under the violations of Section 220522(a)(2) of the Act, were forcefully shut down by President James Lally at the March 16, 2015 meeting of the Board of Directors.

d) On April 3, 2015, some 39 or so athletes and other members of USAS signed (or authorized the signing on their behalf) a Grievance filed with USAS, which Grievance was never the subject of a Hearing and is now subsumed in the Section 10 Complaint as a violations of Sections 220522(a)(2)(a) and 220522(a)(13) of the Sports Act; Section 8.7 of the USOC Bylaws; and Article XXX.L of USAS's own bylaws.

e) On April 25, 2015, a similar number of athletes and other members of USAS signed (or authorized the signing on their behalf) a Grievance filed with USAS, alleging specific violations of the Sports Act, USOC Bylaws and policies applicable to NGBs and USOC's Bylaws which constitute a violation of the Sports Act and USOC Bylaws. This April 25 Grievance, like the April 3 Grievance, was never the subject of a Hearing. Furthermore, USAS President James Lally, upon receipt of the April 25 Grievance, wrote to the full Board on April 28, 2015, advising that "we will contest these allegations and believe that almost all of them will prove to be unfounded." Dr. Lally did not identify who constituted the "we" he referred to. Since Dr. Lally, as President of USAS, and under USAS Bylaws, gets to appoint the members of any USAS Grievance Hearing Panel and, in any event, the Complainants were never offered or provided a hearing on the merits of their Grievance, the athletes and others filed a Section 10 Complaint with the USOC on August 13, 2015, with respect to the allegations of non-compliance contained in the April 25 Grievance.

f) A special meeting of the Board of Directors, duly authorized and called for by the 6 members of the Board who are among the Complainants herein to be held on Wednesday, May 13, 2015, to address the issue which is now alleged as one of the violations of Section 220522(a)(2) in the instant Section 10 Complaint, was purposefully boycotted by President James Lally, Executive Director-CEO Bob Mitchell and Board member Gary Anderson, and who together wrongfully persuaded other board members not to attend, thereby thwarting the efforts of the 6 Board members who are among the 44 Complainants herein to deal forthrightly with the alleged non-compliance of USAS, and now a part of the Section 10 Complaint.

28. In view of the foregoing, the allegation in Point III, 3, that “Complainants made no effort in the past to raise their allegations at the Board of Directors level” is false, and was known to be false by whoever wrote or authorized the making of this allegation in Point III,3 of USAS’s Answer and Counterclaims.

POINT VI

(Point III .4 of USAS’s Affirmative Defenses and Counterclaims)

29. Point III, 4 of USAS’s Answer and Counterclaims contains argument as opposed to facts and, as such, requires no response; except to the extent a response is required, the allegations are denied.

POINT VII

(Point III .5 of USAS’s Affirmative Defenses and Counterclaims)

30. Point III, 5 of USAS’s Answer and Counterclaims contains argument as opposed to facts and, as such, requires no response; except to the extent a response is required, the allegations are denied.

POINT VIII

(Point III .6 of USAS’s Affirmative Defenses and Counterclaims)

31. Complainants deny each and every of the factual allegations of Point III, 6 of USAS’s Answer and Counterclaims; and affirmatively allege that they are acting in good faith and with the purpose of attempting to have USA Shooting comply with the statutory requirements of the Ted Stevens Olympic and Amateur Sports Act, USOC Bylaws / policies, and such USAS Bylaws which are in conformity with the foregoing.

POINT IX

(Point III .7 of USAS’s Affirmative Defenses and Counterclaims)

32. Complainants deny each and every of the factual allegations of Point III,7 of USAS’s Answer and Counterclaims, except admits that 6 of the 44 Complainants are (or were)

members of the USAS Board of Directors; and affirmatively aver, as set forth in paragraph 27 above, that they attempted to raise their concerns with the Board of Directors, both at meetings of the Board; at a duly authorized and called for meeting of the Board which was deliberately boycotted by the present USAS leadership; and by way of Grievances filed with USAS which were never considered in a substantive way by USAS, except that the President of USAS, Dr. James Lally, acknowledged receipt of the April 25, 2015 Grievance to the full Board of Directors and declared, in writing, on April 28, 2015, that “we will contest these allegations and believe that almost all of them will prove to be unfounded.”

POINT X

(Point III .8 of USAS’s Affirmative Defenses and Counterclaims)

33. Point III, 8 of USAS’s Answer and Counterclaims contains argument, and no factual allegations and, as such, requires no response; but to the extent a response may be required, each and every allegation is denied.

34. Complainants further affirmatively allege, in response to Point III,8 of USAS’s Answer and Counterclaims, that the USOC Bylaws do not provide for the imposition of “sanctions” or the award of “attorney’s fees, and costs,” but if they did, those individuals who have usurped the authority of the USAS Board of Directors, and who authorized the filing of the false allegations contained in the September 14, 2015 Answer and Counterclaims filed in the name of USA Shooting should be sanctioned, and made to pay for Complainants’ attorney fees, expenses and costs incurred in connection with the previously filed Grievances, and now the Section 10 Compliant and the papers prepared and proceedings had in connection therewith.

REQUEST FOR PRELIMINARY CONFERENCE

Pursuant to the USOC Bylaws governing the procedures for the administration of Section 10 Complaints, and more specifically Section 10.14 thereof, the Complainants, by their undersigned attorneys, respectfully request that a telephonic Preliminary Conference be scheduled and had among counsel for the parties and the members of the Hearing Panel and its counsel.

In view of the facts that:

(1) a lawsuit has been initiated by Dr. James Lally (the President of USAS), Bob Mitchell (Executive Director – CEO of USAS) and Gary Anderson (long term USAS Board member), in the name of USA Shooting, in Colorado State Court on matters already at issue in the previously - filed Section 10 Complaint;

(2) allegations made by some or all of these same above referenced individuals lodged with the U.S. Army has recently (Friday, September 18, 2015) resulted in the Army ordering all

/each military personnel from the U.S. Army Marksmanship Unit at Fort Benning, Georgia to step down from their positions on the USAS Board of Directors (including the athlete rep elected by his fellow athletes) and for them to have no (or very limited) contact with USAS personnel;

(3) the leadership of USAS has scheduled a meeting of the USAS Board of Directors to be had on October 3 which will only, even in the best of circumstances, lead to no good, with additional charges and countercharges, by members of the now completely dysfunctional Board of Directors and others;

(4) this NGB cannot self – correct; the forceful intervention of the USOC by the USOC Hearing Panel is required and respectfully requested.

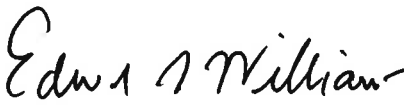
WHEREFORE, it is respectfully requested that a Section 10.14 Preliminary Conference be scheduled and had as soon as practicable, at the early convenience of the Hearing Panel, so that the Hearing Panel can issue such directives and orders which will put an end to the senseless infighting which has been so destructive to the NGB, the sport of shooting, and the athletes' preparation for Rio; and so that this matter can move forward to prompt resolution.

Dated: New York, New York,

September 21, 2015

Respectfully submitted,

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Attorneys for Complainant

CERTIFICATE OF SERVICE

I hereby certify, pursuant to Title 28 United States Code, Section 1746 that I have caused a copy of the foregoing REPLY to USAS's ANSWER and COUNTRCLEIMS to be served by e-mail and by First Class Mail on this 21st day of September, 2015 to the following individuals:

Gary L. Johansen, Esq
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With a courtesy copy by email to each of the following:

Kacie Wallace, Esq
Ombudsman for Athletes
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Email: Kacie.wallace@usoc.org

Ms. Sarah Konrad
Chair, USOC Athletes' Advisory Council
Email: skonrad2@yahoo.com

I certify under penalty of perjury that the foregoing is true and correct. Executed in New York, New York on this 21st day of September 2015.



Edward G. Williams