

UNITED STATES OLYMPIC COMMITTEE

In the matter of:)	
)	
FARRAH HALL,)	DECISION
)	
Complainant,)	FEBRUARY 20, 2009
)	
vs.)	
)	
US SAILING ASSOCIATION,)	
)	
Respondent.)	
)	

I. THE PARTIES

1. 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”).

2. US Sailing is the 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”).

II. COMMENCEMENT OF PROCEEDING AND CLAIM

3. On February 4, 2008, Hall filed this Complaint against US Sailing pursuant to Article VIII, Section 8.1 of the USOC Bylaws¹ and Section 220527 of the Act.

¹ The USOC Bylaws were amended on July 1, 2008. References to the USOC Bylaws are as they were prior to the July 1, 2008 amendments, unless specifically noted.

4. Hall alleges in her Complaint 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).²

III. PANEL COMPOSITION

5. In accordance with Article VIII, Section 8.1 of the Bylaws, USOC Chair, Peter Ueberroth, appointed a Hearing Panel of five members for the purpose of hearing this matter.

The Panel members are:

Nina Kempel, Chair
USOC Athletes’ Advisory Council, US Ski and Snowboard Association
Scott Fortune
USOC Athletes’ Advisory Council, USA Volleyball
Bob Mitchell
USOC National Governing Body Council, USA Shooting
Jeanne Picariello
USOC Multisport Organizations Council, Chair
Ron Van Pool
USOC National Governing Body Council, USA Swimming

IV. JURISDICTION

6. The Hearing Panel has authority to hear this Complaint pursuant to Section 220527 of the Act and Article VIII, Section 8.1 of the USOC Bylaws.

V. BACKGROUND

7. This Complaint arises from events surrounding US Sailing’s selection of an athlete for the 2008 Summer Olympic Games Team (the “Team”) in the Women’s Windsurfing RS-X Class. Although selection to the Team is not the subject of this Article VIII proceeding, it is

² Hall’s Complaint, page 1.

helpful for an understanding of this matter to recite some of the background pertaining to US Sailing's Selection Trials for the RS-X Class ("Trials") and the various redress proceedings that resulted from those Trials. It is US Sailing's procedures relating to redress proceedings that are the cause of Hall's Article VIII Complaint.³

A. Women's Windsurfing RS-X Trials

8. Pursuant to US Sailing's Athlete Selection Procedures, US Sailing held Trials from October 3 through October 14, 2007 to determine whom US Sailing would nominate to participate in the 2008 Summer Olympic Games in the Women's RS-X Windsurfing event. The Trials consisted of sixteen races. Races were scored in accordance with the Racing Rules of Sailing as specified in the Notice of Race and the Sailing Instructions.⁴ The Sailing Instructions provided that "when at least eight (8), and fewer than seventeen (17) races have been completed" a "boat's series score will be the total of her race scores...excluding her worst excludable race score." The Selection Procedures provided that the top finisher in the Trials would be nominated to participate in the 2008 Summer Olympic Games.

9. The sixteenth and final race ("Race 16") was conducted on October 14, 2007. Hall crossed the finish line first among the six competitors in the race. Nancy Rios ("Rios") crossed the finish line fourth among the six competitors. However, the race was marred by an

³ The Racing Rules of Sailing allow for three different kinds of proceedings: a protest, a request for redress and a Rule 69 action (which is an action by a Protest Committee for gross misconduct). The differences among the three proceedings lie mainly in the remedy to be invoked. In a protest, if the Protest Committee determines that a boat has broken a rule, then a penalty may be applied against that boat, including disqualification. In a request for redress, if the Protest Committee decides that a boat is entitled to redress, then it shall make as fair an arrangement as possible, including adjusting the scoring or finishing times of boats, abandoning the race, letting the results stand, or making some other arrangement. In a Rule 69 action, if the Protest Committee determines that misconduct has occurred, then it shall either warn the competitor or impose a penalty by excluding the competitor from the race or races, disqualifying the boat from the race or races, or taking such other action within its jurisdiction.

⁴ The Racing Rules of Sailing are promulgated by the ISAF. The Notice of Race and the Sailing Instructions were promulgated by US Sailing.

alleged near collision between Hall and a competitor and an alleged collision between Rios and the same competitor.

10. After the race Hall was provided with the written results of the Trials, which showed her as the top finisher. Further, the Chairman of the Olympic Sailing Committee gave Hall his congratulations on her winning the Trials. Accordingly, Hall assumed that she would be nominated to the 2008 Summer Olympic Games.

B. Rios' Request for Redress

11. Shortly after the conclusion of Race 16 Rios filed a request for redress with US Sailing's Protest Committee pursuant to Rule 62 of the Racing Rules of Sailing. Rios' request for redress was based on her alleged collision with the other competitor, which purportedly caused Rios' sail to tear thereby preventing her from sailing properly.

12. US Sailing immediately convened a Protest Committee that heard Rios' request for relief.

13. Hall was not notified of Rios' request for redress, or invited to participate in the hearing.

14. After hearing Rios' request for redress, the Protest Committee determined to grant Rios' request for redress and adjusted her score for Race 16. Whereas Rios originally scored 2 points in Race 16, the Protest Committee granted her 6 points. This increase in points catapulted Rios to the top place finish in the Trials.

15. After conclusion of Rios' request for redress, Hall was invited into the hearing room and notified of the Protest Committee's determination regarding Rios' request for redress. She was also informed that the Protest Committee's determination was final. As explained by the Chairman of the Olympic Sailing Committee in an email sent to Hall on

October 22, 2007 summarizing what occurred when Hall was notified of the Protest Committee's determination:

When I invited you into the room that night to hear the results of the redress, I was trying to give you the opportunity to seek your own redress. It would not have been appropriate for me to tell you that explicitly because I must remain unbiased. But inviting you into the room was a courtesy since you were not a party to that hearing in any way. I was willing to offer that courtesy because of the sensitivity of the situation. And, you may also recall that I asked you several times at the end of the hearing if "there was anything else you wanted to do or ask." I was trying to prompt you to request your own hearing, right then and there, before the Trials concluded. You didn't make that request in the room, or even afterwards when we were still at ABYC [Alamitos Bay Yacht Club]. We did not hear from you until a minimum of 24 hours later.

16. As a result of Rios' request for redress and the determination of the Protest Committee, US Sailing informed Rios shortly after conclusion of the redress hearing that she would be nominated to participate in the 2008 Summer Olympic Games. Likewise, Hall was informed that she would not be nominated to participate in the 2008 Summer Olympic Games.

17. All of the above events relating to Rios' request for redress, the Protest Committee's determination, Hall's notification of the Protest Committee's determination and Rios' nomination occurred on October 14, 2007, the final day of the Trials.

C. Hall's Request for Redress

18. After speaking with an advisor, Hall then attempted to file her own request for redress. As a first step, on October 15, 2007 she filed a request for an extension of time⁵ in which: a) to file a request for redress based on her own near collision with the same competitor that allegedly collided with Rios or b) to file a request for redress from the decision of the Protest Committee, stating that the Protest Committee had made numerous errors in its decision to grant redress to Rios.

⁵ Pursuant to Rule 62.2 of the Racing Rules of Sailing (2008), a request for redress had to be filed: a) within the time limit provided in Rule 61.3 (which deals with the time limit for filing a protest) or b) within two hours of the relevant incident, whichever is later.

19. On October 22, 2007, the Chairman of the Protest Committee informed Hall that the Protest Committee determined there was insufficient justification to grant Hall's request for an extension of time, and that this decision was final.

D. Reopening of Redress Proceedings

20. Possibly in response to a parallel Article IX Complaint filed by Hall pertaining to US Sailing's decision to nominate Rios, which was heading to arbitration before the American Arbitration Association,⁶ US Sailing reopened Rios's redress proceeding and allowed Hall to file her own request for redress. This was a reversal of its previous pronouncements.

21. On March 13, 2008 the Protest Committee,⁷ in a Notice of Hearing sent to Rios and Hall, stated: 1) that it had "decided to reopen the hearing in Nancy Rios' Request for Redress in Race 16 because it believes there may be significant new evidence," 2) that it had "decided to call a hearing to consider redress for Farah Hall in Race 16," and 3) that the "two hearings will be combined into a single proceeding."

22. The March 13 Notice provided that the Protest Committee had allotted two days for hearings, April 8 and 9, 2008.

23. On March 21, 2008 the Protest Committee issued a further Notice of Hearing. That Notice stated:

This notice is provided to both Ms. Hall and Ms. Rios in the event one of them chooses to submit a request to reopen or a request for redress based upon the [Protest Committee's] decision in the matter of Nancy Rios' request for redress.

⁶ On November 12, 2007 Hall filed an Article IX Complaint with the USOC against US Sailing alleging that she had been denied her opportunity to participate in the 2008 Olympic Games because of US Sailing's determination to nominate Rios. Pursuant to the procedures set forth in Article IX of the USOC Bylaws, the matter subsequently proceeded to arbitration. Rios was included in the arbitration as an affected party. On May 22, 2008 the arbitrator rendered an award, which was confirmed in writing on May 27, 2008, confirming Rios' nomination to the Team.

⁷ US Sailing refers to the Protest Committee in all of its Notices related to this matter as the "jury," however since the Racing Rules of Sailing specifically refer to this body as the Protest Committee, that terminology will be used in this Decision.

24. On March 24, 2008 the Protest Committee in an Amended Notice of Hearing rescinded its March 13 Notice, stating:

Since the redress proceeding for Ms. Rios has not been concluded, it is unclear whether or not consideration of redress for Ms. Hall will be necessary. Should Ms. Hall be dissatisfied with the [Protest Committee's] decision in the redress proceeding for Ms. Rios, Ms. Hall may submit a timely request for redress....

25. In its March 24 Notice, the Protest Committee further stated:

By the same token, the [Racing Rules of Sailing] permit Ms. Rios to submit a timely request for redress or a request to reopen. The [Protest Committee] has issued a separate Notice of Hearing [dated March 21, 2008] that will be applied in the event either athlete chooses to do so.

26. All three Notices set forth various procedural rules that Rios and Hall were to follow in the course of the hearing or hearings.⁸

27. At the end of the hearing on the reopened Rios' request for redress, held on April 8, the Protest Committee upheld Rios' request for redress and confirmed its earlier decision to grant Rios additional points for Race 16.

28. Hall, pursuant to the March 21 and March 24 Notices, then submitted her own request for redress. Hall's request for redress was held on April 9 before the same Protest Committee that heard Rios' reopened request for redress. After conclusion of the hearing, the Protest Committee denied Hall's request for redress.

VI. PROCEDURAL HISTORY

29. As stated previously, Hall filed this Article VIII Complaint with the USOC on February 4, 2008.

⁸ These procedural rules will be discussed later.

30. On February 27, 2008 US Sailing responded by filing a motion to dismiss Hall's Complaint, alleging that Hall had not exhausted her administrative remedies as is required by Article VIII, Section 8.1 of the USOC Bylaws and Section 220527 of the Act.

31. After being briefed and holding a hearing, the Panel denied US Sailing's motion, stating:

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.⁹

32. On June 26, 2008, the Hearing Panel held a hearing on Hall's Article VIII claim. Both Parties submitted pre-hearing briefs, along with numerous exhibits, in support of their positions. Hall presented witness declarations from herself and from Douglas D. Smith. US Sailing presented witness declarations from J. Theodore Everingham, Kathryn R. Kelly and Thomas H. Farquhar. Each Party had the opportunity to cross-examine any individual who submitted a declaration and both parties did so.

33. Both parties have been ably represented by legal counsel throughout this proceeding, Hall being represented by Douglas D. Smith and Jamie Dodge Byrnes of the law firm of Gibson, Dunn & Crutcher LLP, and US Sailing being represented by Charles A. Cook and Sarah A. Smegal of the law firm of Morrison Mahoney LLP.

⁹ In making this finding the Hearing Panel noted that Hall had filed a complaint with US Sailing on November 6, 2007, pursuant to Regulation 15 of US Sailing's Code of Regulations. In her complaint, Hall alleged a "violation of her due process rights" under Section 220522(8) and (13) of the Act and Section 17.7 of the USOC Bylaws and sought "to compel US Sailing to comply with those provisions." US Sailing's Review Board, which heard Hall's complaint, rendered a decision on December 17, 2007: a) stating 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," and b) finding that "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."

VII. HALL'S COMPLAINT

34. The crux of Hall's Complaint can be set forth as follows:

a) US Sailing's hearing rules and procedures relating to redress proceedings, and its implementation of those rules and procedures, do not provide parties with due process or with an equitable hearing as is required by Sections 220522(a)(8) and (13) of the Act and Article X, Section 10.5.C of the USOC Bylaws.

b) US Sailing's Protest Committees do not have twenty percent athlete representation as is required by Section 220522 of the Act and Article XVII, Section 17.7 of the USOC Bylaws.

VIII. US SAILING'S RESPONSE

35. US Sailing response to Hall's Complaint can be summarized as follows:¹⁰

a) Section 220522(a)(8) of the Act only applies to matters where an athlete has been declared ineligible. As Hall was never declared ineligible, she was just not nominated to the Olympic Team, no violation of Section 220522(a)(8) occurred.

b) Sections 220522(a)(8) and (13) of the Act do not apply to requests for redress, which are heard by Protest Committees, since a Protest Committee is equivalent to a referee or official making a field of play decision.

¹⁰ In addition to the defenses listed, US Sailing also renewed its procedural argument that Hall had failed to exhaust her administrative remedies as is required by Article VIII, Section 8.1 of the USOC Bylaws and Section 220527 of the Act. However, as that issue had previously been decided by the Hearing Panel, holding that Hall had exhausted her administrative remedies, the Panel did not consider it further.

c) Section 220522 of the Act and Article XVII, Section 17.7 of the USOC Bylaws do not apply to Protest Committees, as a Protest Committee is no different from, and stands in the same place as, a referee or umpire, and there is no requirement that referees or umpires be comprised of twenty percent athlete representation.

d) US Sailing is merely applying the rules of the ISAF, its international federation, relating to redress proceedings.

IX. NGB REQUIREMENTS

36. Section 220522(a)(8) of the Act requires that an NGB “provide fair notice and opportunity for a hearing to any amateur athlete, coach, trainer, manager, administrator, or official before declaring the individual ineligible to participate.”

37. Section 220522(a)(13) of the Act requires that an NGB “provide procedures for the prompt and equitable resolution of grievances of its members.”

38. To provide guidance on the requirements of Sections 220522(a)(8) and (13) the USOC has adopted a Due Process Checklist. This Checklist recommends that an athlete or other person subject to an eligibility hearing be afforded the following:

- notice of the specific charges or alleged violations in writing, and possible consequences if the charges are found to be true;
- reasonable time between receipt of the notice of charges and the hearing within which to prepare a defense;
- the right to have the hearing conducted at such a time and place so as to make it practicable for the person charged to attend;
- a hearing before a disinterested and impartial body of fact finders;
- the right to be assisted in the presentation of one's case at the hearing, including the assistance of legal council, if desired;
- the right to call witnesses and present oral and written evidence and argument;
- the right to confront and cross-examine adverse witnesses;
- the right to have a record made of the hearing if desired;

- the burden of proof shall be on the proponent of the charge, which burden shall be at least a "preponderance of the evidence" unless the NGB requires or provides for a higher burden of proof;
- a written decision, with reasons therefore, based solely on the evidence of record, handed down in a timely fashion; and
- written notice of appeal procedures, if the decision is adverse to the person charged, and prompt and fair adjudication of the appeal.

39. Also, Section 220522(a)(10) requires that NGBs have 20 percent athlete representation on certain governing boards. The USOC has further defined this requirement by providing in Article XVII, Section 17.7 of its Bylaws that there shall be 20 percent athlete representation on panels empowered to hear grievances.

X. LEGAL ANALYSIS

40. In analyzing the issue before it, the Hearing Panel considered the following: a) whether Hall was declared ineligible to compete, b) whether Sections 220522(a)(8) and 220522(a)(13) of the Act apply to Protest Committee proceedings, c) whether Section 220522 of the Act and Article XVII, Section 17.7 of the USOC Bylaws require 20 percent athlete representation on Protest Committees, and d) whether the rules of ISAF take precedence over the Act and USOC Bylaws.

A. Ineligibility

41. As a first defense, US Sailing argues that Section 220522(a)(8) of the Act only applies to cases where an athlete is declared ineligible to compete. Thus, if an athlete is not found to be ineligible, there is no requirement to provide for a "hearing." US Sailing asserts that neither it nor the Protest Committee found Hall to be ineligible and that Hall can continue to compete in sailing competitions. Pursuant to US Sailing's reasoning, Section 220522(a)(8) does not apply to those situations where an athlete is not selected to compete in an upcoming competition, as long as that athlete can compete in other competitions. Hall could not compete

in the 2008 Summer Olympic Games because she was not nominated by US Sailing, but US Sailing does not equate this with loss of ineligibility. Thus, US Sailing contends that since Section 220522(a)(8) does not apply, US Sailing cannot be in non-compliance with the requirements of Section 220522(a)(8).

42. Hall counters that although she could continue to compete in other sailing competitions, she was denied her opportunity to participate in, and declared ineligible for, the 2008 Olympic Games, and thus Section 220522(a)(8) of the Act applies.

43. US Sailing presents a hyper-technical reading of Section 220522(a)(8) of the Act. The Hearing Panel knows of no other instance where this argument has been made. The Hearing Panel finds that US Sailing's contention has no merit. If an athlete is not chosen to compete in an upcoming competition, he or she is ineligible to compete in that competition. Thus, Section 220522(a)(8) does apply and an NGB is obligated to comply with its requirements.

44. Also, a cursory review of Article IX Complaints and resulting arbitrations evidences that many if not most of these proceedings involve athlete selection issues. One of the basic tenets of the Act is that an athlete has a right to be heard when there is a controversy regarding that athlete's selection to an upcoming competition. Denying an athlete the right to a hearing in those situations, on some basis that the athlete had not been declared ineligible to compete, would fly in the face of the Act and the USOC Bylaws.¹¹

¹¹ The Hearing Panel also notes that Section 220509 of the Act provides that the USOC "shall establish and maintain provisions in its ... bylaws for the swift and equitable resolution of disputes involving any of its members and relating to the opportunity of an amateur athlete, coach, trainer, manager, administrator, or official to participate in the Olympic Games, the Paralympic Games, the Pan-American Games, world championship competition, or other protected competition as defined in the ... bylaws of the [USOC]." The USOC has complied with this mandate as set forth in Section 9 of its Bylaws. Section 220522(a)(8) of the Act needs to be read in conjunction with Section 220509 of the Act and Section 9 of the USOC Bylaws.

B. Right to a Hearing and Due Process

45. Second, US Sailing would have the Hearing Panel find that Sections 220522(a)(8) and 220522(a)(13) of the Act do not apply to Protest Committee proceedings. US Sailing argues that a Protest Committee is nothing more than a referee or umpire making a field of play decision and that there are no hearing or due process requirements in referee or umpire rulings.

46. Hall takes the opposite view, asserting that a Protest Committee functions like a grievance or hearing panel, with ultimate power to determine athlete selection, and therefore it must abide by the hearing and due process requirements of the Act.

47. US Sailing cites two arbitration awards as authority for its proposition. The first is *Hellenic Olympic Committee and Kaklamanakis v. International Sailing Federation*, CAS OG 04/009 (24 August 2004) (McClaren, Richard H & van Zyl, Justice Deon H. & Rao, Sharad, Arbs.). The second is *Papathanasiou v International Sailing Federation*, CAS 2006/A/1142 (4 May 2007) (Byrne-Sutton, Quentin, Georghiades, D. Chris, Leaver, Peter, Arbs.). In these cases the complainant requested that the CAS arbitration panel overturn a decision of a Protest Committee. In both cases, the Protest Committee's ruling was left standing, as the panel found that it did not have jurisdiction to hear the merits of the case because of a rule in the Racing Rules of Sailing that did not allow review of Protest Committee determinations.

48. The Hearing Panel finds that the *Hellenic Olympic Committee* and *Papathanasiou* awards are not controlling. First, the CAS arbitration panels never found that rulings of Protest Committees are equivalent to those of referees or umpires making field of play

decisions.¹² Rather, they ruled that they did not have jurisdiction to hear the merits of the cases, because jurisdiction was not conferred on them by the Racing Rules of Sailing.

49. Second, the CAS arbitration panels found that hearing and due process considerations could be applied to Protest Committees. As the CAS arbitration panel noted in the *Hellenic Olympic Committee* case at Paragraph 24, “CAS will always have jurisdiction to overrule the Rules of any sport federation if its decision making bodies [such as Protest Committees] conduct themselves with a lack of good faith or not in accordance with due process.” Likewise, the CAS arbitration panel in the *Papathanasiou* case at Paragraph 87 stated that their findings “should not be understood to be suggesting that international juries acting under the [Racing Rules of Sailing] can be operated in such manner that competitors are left with no recourse in cases of grossly unfair, arbitrary or illegal decisions under those rules.”

50. Third, the *Hellenic Olympic Committee* and *Papathanasiou* cases involved a different issue than what has been presented in this case. In the *Hellenic Olympic Committee* and *Papathanasiou* cases, the complainants were attempting to overturn the ruling of a Protest Committee. That is not the issue before this Hearing Panel. The issue in this matter is whether or not US Sailing complies with the requirements of the Act and the USOC Bylaws as they apply to request for redress proceedings.

51. Hall makes several specific claims relating to US Sailing’s redress proceedings, which she asserts indicate non-compliance with Sections 220522(a)(8) and 220522(a)(13) of the Act.

52. Hall states that she should have been notified of, and made a party to the October 14 Rios redress hearing, so that she could have participated and been heard. It is Hall’s

¹² Even if they had, the doctrine accorded field of play decisions is that they are to have finality and not be appealed. That does not mean that certain hearing and due process requirements cannot be applied to decisions made by referees and umpires.

position that the Protest Committee's decision determined who would be nominated to the Olympic Games, and she was excluded from that process. Hall states that US Sailing "cannot be permitted to evade the Act's [due process] requirements by vesting the ultimate power to determine athlete selection with the Protest Committee," and then claim that Committee is not subject to the Act's hearing and due process requirements.¹³

53. Hall claims that she was further precluded from participating as a party in the reopened Rios request hearing held on April 8.

54. Hall claims that when she was finally granted a redress hearing on April 9, the Protest Committee had made its determination regarding the Rios request, giving Rios extra points in Race 16, which gave her the 2008 Summer Games Olympic nomination. Thus, Hall was put in the position of appealing the Protest Committee's determination and in effect having to convince the Protest Committee to overrule itself. Hall likens this to making the Protest Committee "both judge and defendant in the same action."¹⁴

55. Hall also questions several rulings by the Protest Committee that she claims interfered with her opportunity to be heard. Among those where a) that the April 8 and 9 hearings were held in Rhode Island at US Sailing's convenience, without deference to the considerations of the athletes involved, b) that she had to pay for the attendance of witnesses to appear at the April 8 Rios hearing, even though she was not a party to that hearing, c) that witnesses were precluded from submitting witness statements or testifying by telephone, d) that since she was a witness at the April 8 Rios hearing, she could not sit in on that hearing, e) that as she designated her attorney as an observer at the April 8 Rios hearing, and as witnesses were precluded from speaking with observers, she was precluded from speaking with her attorney

¹³ Hall's Pre-Hearing Brief, Page 2.

¹⁴ Hall's Pre-Hearing Brief, Page 6.

during the April 8 Rios hearing or afterwards in preparation for her own hearing on April 9, f) that as she was represented by legal counsel at her April 9 hearing and was to give testimony, she was precluded from attending the hearing; g) that members of the Protest Committee testified as witnesses in the request for redress hearings, and h) that US Sailing's attorney served both as an attorney for the Protest Committee and as an attorney representing a party, US Sailing, in the April 9 hearing.

56. In analyzing Hall's claim, it is helpful to first look at the Racing Rules of Sailing, which US Sailing applies in its redress proceedings.

a) Racing Rules of Sailing

- A request shall be made in writing. Rule 62.2.
- A decision on a redress shall not be made without a hearing. Rule 63.1.
- All parties to a hearing shall be notified of the time and place of the hearing. Rule 63.2.
- Redress information shall be made available to the parties. Rule 63.2.
- The parties shall be allowed reasonable time to prepare for the hearing. Rule 63.2
- The parties to the hearing, or a representative of each, have the right to be present throughout the hearing of all the evidence. Rule 63.3.
- A party to the hearing may object to a member of the Protest Committee, if the party believes that the member has an interest in the proceeding. Rule 63.4.
- At the beginning of the hearing the Protest Committee shall take any evidence it considers necessary to decide whether all requirements for request for redress have been met. Rule 63.5.
- The Protest Committee shall take the evidence of the parties to the hearing and of their witnesses and other evidence it considers necessary. Rule 63.6.
- A party to the hearing may question any person who gives evidence. Rule 63.6
- The Protest Committee shall base its decision on the facts presented. Rule 63.6.
- The Protest Committee shall promptly inform the parties to the hearing of the facts found, of the applicable rules, of the decision and the reasons for the decision and of any redress given. If requested, a party to the hearing is entitled to receive this information in writing. Rules 65.1 and 65.2.
- A party to a hearing may appeal a Protest Committee's decision, provided the right to appeal has not been denied pursuant to Rule 70.5 of the Racing Rules of Sailing. Rule 70.1.

57. Further, it is helpful to look at the facts surrounding the Rios/Hall matters and at US Sailing's administration of and the procedural rules employed in the Rios/Hall matters.

a) October 14 Rios' Request for Redress

- The request for redress was heard on the day of the Trials, October 14, 2008, in Long Beach, California, which was where the Trials were held.
- Rios submitted her request for redress in writing.
- The Protest Committee did not convene for the redress hearing until after the competitors were off the water and had retired from the competition.
- The Protest Committee empanelled to hear the Rios request for redress consisted of three individuals, none of whom were athletes.
- Two of the Protest Committee members were on the water on the day of the Trials.
- Rios was a party to the proceeding, but Hall was not a party. Hall was not informed by US Sailing of the Rios request for redress and did not know about the Rios request for redress until after conclusion of the hearing.¹⁵
- The Protest Committee heard evidence from Rios, but not from Hall or any other competitor who may have had information concerning the alleged collision. Further, the Protest Committee did not take evidence from members of the Race Committee, who purportedly viewed the alleged collision.
- Two of the Protest Committee members (apparently the two that were on the water) testified at the October 14 Rios redress hearing.
- The Protest Committee issued a written decision on Rios' request for redress.

b) April 8 Reopened Rios' Request for Redress

- The reopened request for redress was heard on April 8, 2008, at Providence, Long Island, near the location of US Sailing's offices in Portsmouth, Rhode Island.
- The Protest Committee empanelled to hear the reopened request for redress consisted of five individuals. Three of the five sat on the October 14 Rios redress hearing and two were new. One of the two new members was an athlete.
- Rios was the sole party to the reopened request for redress. Hall was not allowed to participate as a party.

¹⁵ It appears that Hall was taking a shower during the time of the redress hearing.

- Hall was allowed to attend the hearing, provided she did not testify as a witness, or she was allowed to have an observer attend on her behalf.
- Hall designated her attorney, Douglas Smith, as her observer in the hearing. Mr. Smith was not allowed to question witnesses or otherwise participate as legal counsel on behalf of Hall in the reopened request for redress.
- US Sailing's attorney attended the reopened request for redress hearing, although it is unclear if he did so as the attorney for the Protest Committee or as an observer for US Sailing.
- Observers were not allowed to communicate with witnesses. The Protest Committee provided a detailed set of requirements pertaining to observers.
- Rios was allowed to call witnesses identified by her. Hall was allowed to identify witnesses who could, at the Protest Committee's discretion, be called by the Protest Committee. Rios was required to pay for the attendance of any witness called by her. Hall was required to pay for the attendance of any witness identified by her and called by the Protest Committee.
- Witnesses were not allowed to appear and present testimony by video or telephone, but had to appear in person. Further, witness statements were not allowed.
- Members of the Protest Committee testified at the reopened redress hearing.
- No person could record the hearing. However, the Protest Committee indicated that it would have the hearing recorded and Rios and Hall could arrange to purchase a copy of the recording at the actual cost of reproduction.¹⁶

c) April 9 Hall's Request for Redress

- The request for redress was heard on April 9, 2008, at Providence, Long Island, near the location of US Sailing's offices in Portsmouth, Rhode Island.
- Hall submitted her request for redress in writing.
- The Protest Committee empanelled to hear the request for redress consisted of the same five individuals who heard the April 8 Rios reopened request for redress.
- Hall was a party to the request for redress. However, as she was going to testify and was represented by legal counsel, she was precluded from attending the hearing, except when called as a witness to testify. Hall chose to have her attorney serve as her representative and be present throughout the hearing.

¹⁶ Although Hall requested a copy of the recording, it was never provided, presumably because of a malfunction that occurred during the recording.

- Rios was not a party, but was allowed to attend, provided she did not testify, or she was allowed to have an observer attend on her behalf. Rios was called as a witness.
- US Sailing was allowed to participate as a party.¹⁷ US Sailing's legal counsel examined and cross-examined witnesses, and made arguments in opposition to Hall's request for redress.
- Hall was allowed to call witnesses identified by her. Rios was allowed to identify witnesses who could, at the Protest Committee's discretion, be called by the Protest Committee. Hall was required to pay for the attendance of any witness called by her. Rios was required to pay for the attendance of any witness identified by her and called by the Protest Committee.
- Observers were not allowed to communicate with witnesses. The Protest Committee provided a detailed set of requirements pertaining to observers.
- Witnesses were not allowed to appear and present testimony by video or telephone, but had to appear in person. Further, witness statements were not allowed.
- No person could record the hearing. However, the Protest Committee indicated that it would have the hearing recorded and Rios and Hall could arrange to purchase a copy of the recording at the actual cost of reproduction.

58. The Hearing Panel makes the following observations.

59. Requests for redress are governed by formal rules and procedures.¹⁸

60. These rules provide for a hearing.

61. They also provide for many due process considerations in the hearing

process and in the rendering of a decision on the request for redress.

62. For US Sailing to contend that the Act's hearing and due process

requirements do not apply to redress proceedings is counter to what actually occurs in these proceedings.

¹⁷ Hall named US Sailing, and the Protest Committee, as parties in her request for redress. Thus, the Protest Committee allowed US Sailing to be represented by legal counsel and to take part in the hearing. If US Sailing had not been named as a party, then presumably US Sailing would have only been allowed to participate as an observer.

¹⁸ In addition to the Racing Rules of Sailing, three Notices were issued by the Protest Committee setting forth the procedural requirements for the reopened Rios request for redress and the Hall request for redress. Each contained a myriad number of procedural rules to be followed by the parties. Further the Protest Committee made rulings on procedural issue raised by the Parties.

63. Further, it is no small thing that the determination of the Protest Committee, in effect, decided who would be nominated to the 2008 Summer Olympic Games, a protected competition as defined in Article I, Section 1.3P. of the USOC Bylaws and referred to in Section 220509 of the Act.

64. Finally, this controversy could have been avoided if US Sailing had notified Hall of Rios' October 14 request for redress, allowed her to participate as a party, and made its determination on evidence submitted by both parties.¹⁹ Instead, US Sailing seemed to have gotten wrapped around its own rules, and the Racing Rules of Sailing, and created a situation in which neither Hall nor Rios was ably served. This is most evident in the procedural nightmare that resulted from the April 8 and 9 hearings.

65. Some of the procedural rules implemented by US Sailing that are of concern to the Hearing Panel are:

- Rules that require all hearing and grievance proceedings to take place in Rhode Island, regardless of: a) where the event occurred, b) the location of witnesses, and c) the relative costs to the parties, in particular the cost to the athletes involved.
- Rules that allow members of the Protest Committee, who sit in judgment of the request for redress, to also testify as witnesses.
- Rules prohibiting an athlete who is a party to a request for redress proceeding and is represented by legal counsel from attending the hearing, if the athlete testifies at the hearing.
- Rules not allowing witnesses to provide witness statements (even if they would make themselves available for cross-examination).
- Rules precluding witnesses from testifying via telephone or video conferencing.

66. Accordingly, the Hearing Panel finds that redress proceedings are subject to the requirements of Sections 220522(a)(8) and 220522(a)(13) of the Act.

¹⁹ The Hearing Panel notes that in protest hearings and in Rule 69 hearings, any individual who may be affected by the determination of the Protest Committee is named as a party to the proceeding. It is only in redress proceedings that an individual's final result may be affected, but that person is not named as a party.

C. Athlete Representation

67. Third, US Sailing contends that Section 220522 of the Act and Article XVII, Section 17.7 of the USOC Bylaws do not apply to Protest Committees.

68. Hall responds that Protest Committees are empowered to hear evidence and make determinations as to who will participate in the Olympic Games, and accordingly they are required to have twenty percent athlete representation, as is required of all other such hearing and grievance committees identified in Article XV, Section 17.7 of the USOC Bylaws.

69. Further, Hall asserts that athletes provide an important perspective and value to Protest Committees.

70. The Committee agrees with Hall and finds that Protest Committees must comply with Section 220522 of the Act and Article XVII, Section 17.7 of the USOC Bylaws apply. With regard to protected competitions,²⁰ athletes who sit on Protest Committees should meet the standards of Section 17.7B, commonly referred to as athletes meeting the ten-year rule.

D. ISAF Rules

71. US Sailing contends that it should be excused from the requirements of the Act and the USOC Bylaws because it is merely applying the rules of the ISAF, its international federation. US Sailing points out that under the Racing Rules of Sailing, there is no requirement that athletes who may be affected by a decision of a Protest Committee in a redress proceeding have to be notified of the request for redress and be allowed to participate as a party.

72. Hall counters that US Sailing, as an NGB, must comply with the Act and USOC Bylaws. Further, Hall asserts that the international rules, specifically Rule 86 of the Racing Rules of Sailing, expressly permit US Sailing to modify its rules through prescription to accommodate U.S. law.

²⁰ Protected Competitions are defined in Article I, Section 1.3P. of the USOC Bylaws.

73. The Hearing Panel finds that an international federation's rules do not take precedence over the Act and USOC Bylaws, which govern the recognition and activities of NGBs in the United States.

74. Further, there is no irreconcilable conflict between the ISAF rules and those required by the Act and USOC Bylaws. Although the Racing Rules of Sailing do not require that athletes who may be affected by a decision of a Protest Committee in a redress proceeding be notified and allowed to participate as a party, there is no prohibition of this in the Racing Rules. The same is true of the requirement that athletes comprise twenty percent of the members of Protest Committees.

75. Therefore, the Hearing Panel rejects US Sailing's argument that it does not have to comply with the Act and USOC Bylaws.

XI. COMPLIANCE

76. Thus, as set out above, the Hearing Panel finds that US Sailing is not in compliance a) with Sections 220522(a)(8) and (13) of the Act and Article X, Section 10.5.C of the USOC Bylaws and b) with Section 220522 of the Act and Article XVII, Section 17.7 of the USOC Bylaws.

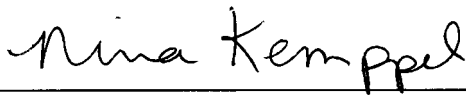
77. Pursuant to the Article VIII, Section 8.4 of the USOC Bylaws (and Section 10 of the USOC Bylaws as amended on July 1, 2008), if the Hearing Panel finds that an NGB is not in compliance with the Act or Bylaws it shall so notify the USOC Board of Directors and make a recommendation to either place the NGB on probation or revoke the recognition of the NGB. However, Section 10 of the USOC Bylaws as amended on July 1, 2008 also provides that if a hearing panel finds that an NGB's non-compliance can readily be rectified, then prior to making a recommendation to the Board, the hearing panel may issue an order directing that the

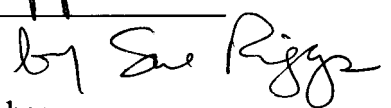
NGB take such action as is appropriate to correct the deficiency. If the NGB corrects the deficiency, then the hearing panel may make a finding of compliance.

78. Accordingly, the Hearing Panel finds that US Sailing can readily rectify its non-compliance a) with Sections 220522(a)(8) and (13) of the Act and Article X, Section 10.5.C of the USOC Bylaws and b) with Section 220522 of the Act and Article XVII, Section 17.7 of the USOC Bylaws.

79. Further, the Hearing Panel orders that US Sailing shall have until September 1, 2009 to correct its non-compliance. US Sailing should report to the Hearing Panel by July 1, 2009 as to how it intends to come into compliance. Additionally, US Sailing should provide a copy of its compliance report to Hall. Hall may respond to US Sailing's compliance report, but she is not obligated to do so.

Dated this 20th day of February 2009.



Nina Kempfel, Chair 

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