

UNITED STATES SOCCER FEDERATION
Grievance Proceeding

In the Matter of the Grievance between

Cosmopolitan Junior Soccer League and New York Club Soccer League,

Grievants,

and

Eastern New York Youth Soccer Association,

Respondent.

DECISION

An evidentiary hearing was held virtually on September 20, 2022, after notice was duly given to all parties, before the duly appointed Hearing Officer, Jeffrey G. Benz (“the Hearing Officer”), and before the duly appointed Athlete Representative, Lori Lindsey (collectively, the Hearing Officer and Ms. Lindsey shall be referred to as the “Hearing Panel”). The Hearing Panel, having been duly sworn, and having duly heard the proofs, arguments, witness testimony, and allegations of the Grievants and Respondent (collectively, “the Parties” and singularly “the Party”) herein, do hereby render this Decision pursuant to the undertaking to do so within the time required under the relevant rules, as follows:

I. INTRODUCTION/PARTIES

1.1 This case involves a dispute between various grassroots soccer organizations in the greater New York City area concerning the sanctioning and conduct of youth soccer leagues and events in New York City.

1.2 Grievants Cosmopolitan Junior Soccer League (“Cosmo” or “CJSL”) and New York Club Soccer League (“NYCSL”) (collectively, Cosmo and NYCSL shall be referred to as “Respondents”) were represented in this proceeding by Thomas Elcock, Esq., of Prince Lobel Tye LLP, based in Boston, Massachusetts.

1.3 Respondent Eastern New York Youth Soccer Association (“ENYSA” or “Eastern New York” or “Respondent”) was represented in this proceeding by Brian Sullivan, Esq., based in New York City, NY.

1.4 Grievants and Respondents shall be referred to herein singularly as “Party” or collectively as “Parties”.

1.5 Grievants and Respondent are, and were, at all relevant times herein, member organizations of United States Soccer Federation (“USSF”), the US Olympic and Paralympic Committee recognized national governing body, and FIFA recognized member federation, for the United States. USSF’s Bylaws and related governance documents provide the process for recognition of its various members and procedures for disputing decisions made by its various members concerning recognition by state associations, under which this grievance was brought.

II. STATEMENT OF FACTS

2.1 Below is a summary of the relevant facts and allegations based on the Parties’ written submissions, pleadings and evidence adduced and at the hearing. Additional facts and allegations found in the parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Hearing Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in this Decision only to the submissions and evidence it considers necessary to explain its reasoning. The facts are generally not in dispute, though the legal effect of them might be.

2.2 In June 2020, ENYYSA issued a media release announcing that: “NYCSL will be joining ENYYSA starting immediately for the 2020/2021 soccer year.” The release stated that to accomplish this result: “NYCSL’s players and teams will register as a new division of CJSL.” The release included supporting quotes from Richard Christiano (President, ENYYSA), Ron Restrepo (President, CJSL), and Gary Grossman (President, NYCSL).

2.3 Prior to the media release being issued, leaders from ENYYSA, CJSL, NYCSL, and EDP Soccer, which manages the USYS National League Conferences in the East Region, engaged in discussions to ensure that the transition of the over 20,000 players participating in NYCSL, previously through US Club Soccer, would be accepted into ENYYSA, as a division of CJSL, in compliance with the ENYYSA Constitution and Bylaws. Mr. Christiano was involved in these discussions, approved the transition, stated that the transition complied with the ENYYSA Constitution and Bylaws, and shared this information with the Board of Directors of ENYYSA.

2.4 Throughout the 2020/2021 soccer year, NYCSL operated as a division of CJSL. The players, parents, coaches, referees, teams, and clubs participating in NYCSL soccer activities, as a division of CJSL, were satisfied with their experiences. There were no complaints from these participants recorded or presented by ENYYSA to NYCSL or CJSL. However, Mr. Christiano did express concern during three ENYYSA Executive Board meetings – September 1, 2020, June 8, 2021, and July 13, 2021 – about an event associated with NYCSL.

2.5 The first reference (September 1, 2020) had to do with the addition of programming as NYCSL, as a division of CJSL, transitioned into ENYYSA. This was a natural consequence of the unprecedented migration of over 20,000 players into ENYYSA and the obligation of CJSL and NYCSL to meet the needs of those amateur athletes.

2.6 The second reference (June 8, 2021) had to do with NYCSL supposedly “running tournaments and events without going through CJSL.” This allegation appears to have been untrue.

2.7 The third reference (July 13, 2021) --- “He (Gary Grossman/President NYCSL) continues to break ENY bylaws. He runs tournament [sic] that are not sanctioned and as a club under Cosmopolitan League (CJSL), that is considered a violation”. This accusation also appears to be untrue.

2.8 Throughout the 2020/2021 soccer year, until ENYYSA banned NYCSL and its youth players in mid-July 2021, NYCSL operated as a division of CJSL. The only recorded concerns per the minutes of the meetings of the ENYYSA Executive Board as noted above related to a competition administered by NYCSL, as a division of CJSL. This competition was originally planned as a tournament sanctioned by ENYYSA until COVID-19 made that unfeasible. The competition was then changed to a divisional league activity, which did not require the sanctioning of ENYYSA and which complied with State of New York COVID-19 guidelines. Also, throughout the 2020/2021 soccer year, Mr. Restrepo (President of CJSL) and Mr. Grossman (President of NYCSL) made themselves available to communicate with, and address suggestions or concerns raised by, Mr. Christiano (ENYYSA/President). In fact, as the minutes the ENYYSA Executive Board meeting apparently held on July 13, 2021, state: “Mr. Grossman has requested a meeting with the ENY Board.” Rather than meet with Mr. Grossman, the ENYYSA Executive Board took its action.

2.9 On either July 13 or July 14, 2021, the ENYYSA Executive Board decided that, “Effective immediately, ENYYSA will no longer sanction any NYCSL (New York Club Soccer League) soccer programming (leagues, tournaments, competitions, clinics, etc.). US Youth Soccer Association player passes issued by ENYYSA are not valid for any NYCSL competitions.”

2.10 There is no dispute that neither Ron Restrepo (President of CJSL), Gary Grossman (President of NYCSL), nor any of the players, parents, coaches, trainers, managers, officials, teams, and clubs of NYCSL, all negatively impacted by the decision, were:

- Notified in advance that banning NYCSL and disenfranchising over 20,000 players participating in NYCSL soccer activities were being considered by some members of the ENYYSA Board of Directors acting as an unauthorized “Executive Board”;
- Notified in advance of any alleged specific violations of the ENYYSA’s Constitution, Bylaws or rules; or
- Invited to attend the meeting being held by the ENYYSA Board of Directors to address the allegations being considered.

2.11 At the end of the relevant section of the minutes of the July 13, 2021, Executive Board meeting, the following is recorded: “▪ All in agreement – A letter will be drafted by R. Christiano, Seabury, T. Frament and sent to Ron Restrepo, CJSL President.”

2.12 During July and August of 2021, representatives of ENYYSA stated multiple times that the decision to ban NYCSL and disenfranchise its players was made during the July 13, 2021, Executive Board meeting.

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III. PARTIES' SUBMISSIONS

3.1 The Grievants' position in its written grievance can be summarized succinctly as follows:

The ENYYSA has violated the Bylaws and Policies of USSF by:

- Failing to comply with the Bylaws and Policies of USSF intended to promote the growth and development of soccer in the United States (specifically, the Grievants allege that ENYYSA has violated USSF Bylaws 212.1(a), 212.3(a)(1), and 212.3(a)(6), and USSF Policies 212-1.3, 212-1.4, and 701-1);
- Failing to cause its membership to be open to individuals who are amateur athletes, coaches, trainers, managers, administrators and officials, and to the contrary discriminating against such individuals who are members or otherwise affiliated with NYCSL;
- Failing to cause its membership to be open to NYCSL;
- Failing to provide prompt and equitable procedures for resolution of complaints of CJSL and NYCSL and by failing to provide fair notice and hearing opportunities with respect to such complaints;
- Failing to provide reasonable non-discriminating policies, rules, regulations and requirements; and
- Failing to provide equitable and prompt hearing and appeal procedures to guarantee the rights of individuals to participate and compete.

Grievants claim that these failures have been intentional and are designed to stifle competition and to entrench the existing officers and directors of ENYYSA, and have had the effect of discriminating against over 20,000 youth players from participation in the activities and competitions of the ENYYSA for which they registered as members of NYCSL, as a division of CJSL, which is a member league of ENYYSA.

3.2 The Grievants sought the following relief in their written grievance:

“1. Reversal of the decision made by some members of the ENYYSA Executive Board that: ‘Effective immediately, ENYYSA will no longer sanction any NYCSL . . . soccer programming (leagues, tournaments, competitions, clinics, etc.). US Youth Soccer Association player passes issued by ENYYSA are not valid for any NYCSL competitions.’

2. Admission of NYCSL as a member league of ENYYSA.

3. Public notice and notice to all ENYYSA members of the [USSF]’s decision after reviewing this complaint.

4. ENYYSA to rewrite its Constitution, Bylaws, Rules, and Regulations as well as policies to be in full compliance with the [USSF]’s Bylaws and Policies.

5. ENYYSA to adopt its rewritten Constitution, Bylaws, Rules, and Regulations as well as policies to be in full compliance with the [USSF]’s Bylaws and Policies.

6. Penalties and deterrents as deemed appropriate by the Federation, including dismissal and suspension of those eight members of the ENYYSA Executive Board who voted to prevent over 20,000 players from using their USYS player passes issued by ENYYSA for soccer activities provided by NYCSL and who subsequently permitted repeat violations of the ENYYSA Constitution and [USSF] Bylaws as shown in this complaint.”

3.3 The Respondent’s position in its written response can be summarized succinctly as follows:

- Respondent initially challenged whether the grievance was properly filed and whether it had met the requirements for being filed under the relevant USSF rules governing such filings (these challenges appear to have been withdrawn later).
- Respondent refutes and denies each allegation of violations made by Grievants.
- Respondent challenges the appropriateness under its own governing documents and those of USSF of the Grievants’ requests for relief.

3.4 The Respondent sought the following relief in its response:

“ENYYSA requests that panel [*sic*] dismiss this grievance.”

IV. PROCEDURAL HISTORY

4.1 The Grievants filed their grievance on April 18, 2022.

4.2 The Respondent filed its response to the grievance on June 9, 2022.

4.3 The Parties were advised by USSF on August 10, 2022, that the Hearing Officer was appointed. No Party raised any objection to the appointment of the Hearing Officer.

4.4 Working with the Parties’ availability and his own, the Hearing Officer endeavored to set a virtual preliminary hearing and case management conference with the parties and was able to do so on August 15, 2022.

4.5 Following the virtual preliminary hearing and case management call, on August 22, 2022, the Hearing Officer issued Procedural Order No. 1, determining that a hearing is required (with agreement of the Parties), and providing in pertinent part as follows:

“1. Regarding Further Submissions

a. The Grievants shall have *seven (7) days from the date of this Order* to make any additional submissions they would like the Panel to consider in this dispute.

b. The Respondent shall *have until September 9, 2022*, to respond thereto with any additional submissions they would like the Panel to consider in this dispute.

c. The Parties shall submit their exhibits to be used at the hearing, electronically to the Panel and the other party on the dates their respective additional submissions are due. The Parties also shall include with their respective submissions an index to the exhibits. All briefs, and any witness statements, should

be transmitted electronically in Word versions to the Panel.

d. Grievants shall use letters and Respondent shall use numbers to mark their exhibits. To the extent that one Party has submitted an exhibit that another Party also intends to use, the other Party should not include a second copy of that document in its own exhibits.

2. Regarding Witnesses

a. Grievants shall serve and file a disclosure of all witnesses reasonably expected to be called by Grievants on or before the due date of its additional submissions filing.

b. Respondent shall serve and file a disclosure of all witnesses reasonably expected to be called on or before the due date of its additional submissions filings.

c. The disclosure of witnesses shall include the full name of each witness, a short summary of anticipated testimony sufficient to give notice to the other side of the general areas in which testimony shall be given, copies of experts' reports and a written C.V. of any experts. If certain required information is not available, the disclosures shall so state. Each Party shall be responsible for updating its disclosures as such information becomes available. The duty to update the information continues up to and including the date that hearing(s) in this matter terminate.

d. The Parties shall make arrangements to schedule the attendance of witnesses at the Hearing (defined below) so that the case can proceed with all due expedition and without any unnecessary delay.

3. All documents due to be submitted hereunder shall be submitted by email to the Hearing Examiner at jeffreybenz@gmail.com, and to the athlete hearing examiner by email when identified, with a copy to Leah Holt, Esq., at US Soccer, and the other Party. The Parties shall not communicate with the Panel directly and alone; all communications with the Panel are to be copied to the other side, and US Soccer, at the same time as the communications are made to the Panel and in the same form.

4. The Parties shall submit any brief statements of objections or other issues that might affect the presentation of evidence or the conduct of the hearing on or before September 12, 2022, preferably after the Parties meet and confer about the subject of those objections or issues.

5. The evidentiary hearing shall commence at 9am ET on September 14, 2022 ("Hearing"), virtually, using the Zoom platform, with a Zoom link to be circulated by US Soccer by September 12, 2022. Any Party without experience with using the Zoom platform shall so inform US Soccer by September 1, 2022, and US Soccer, before the Hearing, shall assist them in understanding how the Zoom system works so that they may fully participate in the Hearing.

6. The Hearing Examiner has a strict cancellation policy that requires notice of no less than seven (7) calendar days advance written notice to cancel the Hearing. Failing to meet that notice period will result in the Hearing Examiner retaining his compensation for the cancelled estimated Hearing day of eight (8) hours in addition to compensation for any work performed to that point.

7. The Hearing Examiner will communicate his hourly rate and budget estimate separately to the Parties through US Soccer. The Hearing Examiner has agreed to use the Court of Arbitration for Sport hourly rate, which is a fraction of his usual commercial rate for presiding in arbitration proceedings. The Parties shall ensure that payment is made in full to US Soccer for their respective shares of the full estimated amount no later than August 29, 2022. US Soccer shall pay 50% of the

full estimated amount to the Hearing Examiner shortly thereafter.

8. To the extent any dispute arises between the Parties beyond what has been stated already, any Party wishing to bring that dispute to the attention of the Panel shall do so by sending a brief email to the Panel, copied to the other side and US Soccer, outlining in basic, brief, general terms the nature of the dispute, their position thereon, and the relief being requested with relation thereto. The other side shall file a response, distributed to the same email list and in line with the original email shortly thereafter briefly outlining in basic, general terms the nature of the dispute and their position thereon. There shall be no response to that email. The Panel will, based on these two emails, determine the next steps with respect to the dispute.

9. All deadlines stated herein will be strictly enforced. Any deviation requires the permission of the Panel based on a showing of good cause by the Party seeking an extension of time.

10. This order shall continue in effect unless and until amended by subsequent order of the Hearing Examiner (until the Panel is appointed) or the Panel.

11. Unless specified otherwise herein, for all deadlines for any Party to take any action under this Order, the time by which such action shall be due for each such designated action shall be *midnight Eastern Time* on the date given.

12. The Parties' attention is drawn to the relevant provisions of the procedural rules of the American Arbitration Association's ("AAA") Commercial Arbitration Rules that limit the liability of the Panel in these proceedings. The Panel agrees to participate in these proceedings on the basis that those provisions apply. Specifically, the Parties agree by continuing that the following excerpts of Rule 52 of the current AAA Commercial Arbitration Rules shall specifically apply in this proceeding:

"R-52. Applications to Court and Exclusion of Liability

...

(d) Parties to an arbitration under these rules shall be deemed to have consented that neither the AAA nor any Hearing Officer shall be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any arbitration under these rules.

(e) Parties to an arbitration under these rules may not call the Hearing Officer, the AAA, or AAA employees as a witness in litigation or any other proceeding relating to the arbitration. The Hearing Officer, the AAA and AAA employees are not competent to testify as witnesses in any such proceeding."

If any Party disagrees that those provisions apply here, they must notify the Hearing Examiner *within seven (7) days of the date of this order* in writing.

13. Because the Parties are or have been proceeding *pro se* (without counsel), the Parties' attention is directed to the following statement of the Hearing Examiner, the position of which was referenced generally on the Parties' telephone conference call and in prior emails:

As the Hearing Examiner, my ultimate responsibility is to make a decision that will settle all claims between you. You have granted me the authority to act in this capacity by agreeing to arbitrate under the rules of US Soccer. It is my desire to hear all the evidence that may be relevant, reliable, necessary and of value in resolving the issues

between you. In order for me to make a just decision, I will do my best to provide both parties an impartial hearing. To the extent ethically permissible, I will provide you with whatever guidance and direction I deem necessary to ensure that both parties receive a fair hearing. I will not and cannot be an advocate for either party, nor can I offer legal advice or recommend a specific course of action. The US Soccer Rules say that I can grant any remedy or relief that I deem just and equitable within the scope of your arbitration agreement. I can only decide the issues that you have brought before me. I cannot decide any other issues. My decision will be in the form of a written award. The terms of the award will be clear and definite, leaving no doubt as to the rights and responsibilities of each party. Also, once my decision has been issued, my authority ceases. I play no role in the enforcement of the award and I am not to be involved in any post-award activity unless directed to do so by either US Soccer or the courts. Also, as noted above, to the extent you communicate with me, you must copy all other parties to this case as well as US Soccer so there are no impermissible ex parte contacts.”

4.6 The Parties were notified on August 26, 2022, that Lori Lindsey had been appointed as the Athlete Representative. There were no objections to her appointment.

4.7 On August 27, 2022, the Hearing Officer issued Procedural Order No. 2 providing in pertinent part as follows:

“1. Subsequent to the issuance of Procedural Order No. 1, US Soccer athlete representative Lori Lindsey was appointed to sit with the below-signing Hearing Examiner in this case. She has a pre-set scheduling conflict that prevents her from being present at the Hearing set for September 13, 2022. Accordingly, the undersigned inquired of alternate dates of the Parties and US Soccer, when both the undersigned and Ms. Lindsey would be available, and as a result everyone has agreed that the Hearing shall now occur on September 20, 2022.

2. As a result, all deadlines set in Procedural Order No. 1 shall be extended by one week, except for the obligation of the Parties to make payment to US Soccer of the budgeted fees for this dispute by August 29, 2022, which deadline shall remain unchanged.

3. All dates or other requirements set forth in Procedural Order No. 1 not otherwise specifically changed by this Order shall remain with full force and effect. All capitalized terms in this Order shall have the same meaning as defined in Procedural Order No. 1.”

4.8 An entity named EDP Soccer, not a party hereto, appears to have drafted and filed the additional submissions with exhibits on behalf of Grievants on August 29, 2022. Respondent did not make any additional submissions filing.

4.9 On September 19, 2022, in response to an invitation by the Hearing Officer, the Parties sent an email in which they confirmed that they had met and conferred on the hearing schedule and agreed that each side has three hours to present their case, not including opening and closings. The three hours will include each side’s presentation of evidence and rebuttal

evidence. Each side will be given 10 minutes for opening and 10 minutes for closing statements.

4.10 On the same date, in separate emails, the Parties advised that they intended to call the following witnesses (who were actually called during the evidentiary hearing, in the order indicated below:

For Grievants: Ron Restrepo, President, Cosmo
Warren Mersereau, Head of Strategic Direction, EDP Soccer
Burt Wilkes, Life Member, Cosmo
Jim Svendsen, Treasurer, Cosmo & Treasurer, ENYYSA
Gary Grossman, CEO, NYCSL

For Respondent: Rich Christiano, President, ENYYSA
Tim Frament, 2nd Vice President, ENYYSA

The Parties agreed that their party representatives who are also witnesses should not be sequestered until the time of their testimony.

4.11 On September 20, 2022, the evidentiary hearing was held virtually. The following individuals, in addition to the undersigned and the designated witnesses, attended in the capacity indicated:

For Grievants: Thomas Elcock, Esq., Prince Lobel Tye LLP
Steven Gans, Esq., Prince Lobel Tye LLP
Warren Mersereau

For Respondent:: Brian Sullivan, Esq.
Tim Frament

4.12 The Hearing Examiner determined to permit the Party's counsel to cross-examine the opposing Party's witnesses directly.

4.13 At the conclusion of the hearing, all Parties confirmed that they believed they had been given a full and fair opportunity to present their case.

4.14 At the conclusion of the evidentiary hearing, the Hearing Officer discussed the date for issuance of the Decision with the Parties and all agreed that any usual deadlines would be modified and extended to accommodate the schedule of the Hearing Panel, and that December 1, 2022, was the likely and realistic first opportunity for the Hearing Panel to render a Decision. Subsequently, the Parties did not object to further extensions requested by the Hearing Panel, and this Decision issued within the time agreed.

V. JURISDICTION/CHOICE OF LAW/APPLICABLE PROCEDURAL RULES

5.1 This grievance was filed by Grievants on April 18, 2022, pursuant to USSF Bylaw 213, Sections 1 and 2. Respondent filed its response on June 9, 2022, and did not raise any objection to jurisdiction therein.

5.2 No Party disputed the jurisdiction of the Hearing Officer, the Athlete

Representative, or the Hearing Panel to hear this grievance under the applicable USSF rules and regulations, and all Parties participated willingly in the hearing process and the evidentiary hearing, without objection.

5.3 Accordingly, the Hearing Panel finds that jurisdiction was proper here.

5.4 The Parties were requested by the Hearing Officer at the evidentiary hearing to identify any aspect of substantive law that applied to these proceedings and the Parties identified none other than the rules and regulations of USSF and their own rules and regulations. Accordingly, the Hearing Panel will apply said rules and regulations.

5.5 The Parties identified that the USSF procedural rules found in USSF Bylaws 701 and 703, and USSF Policies 701-1 and 703-1 applied to the proceedings here and the Hearing Panel sought to apply those procedural rules.

VI. ANALYSIS

6.1 The Grievants have alleged that the ENYYSA has violated the Bylaws and Policies of USSF by:

- Failing to comply with the Bylaws and Policies of USSF intended to promote the growth and development of soccer in the United States;
- Failing to cause its membership to be open to individuals who are amateur athletes, coaches, trainers, managers, administrators and officials, and to the contrary discriminating against such individuals who are members or otherwise affiliated with NYCSL;
- Failing to cause its membership to be open to NYCSL;
- Failing to provide prompt and equitable procedures for resolution of complaints of CJSL and NYCSL and by failing to provide fair notice and hearing opportunities with respect to such complaints;
- Failing to provide reasonable non-discriminating policies, rules, regulations and requirements; and
- Failing to provide equitable and prompt hearing and appeal procedures to guarantee the rights of individuals to participate and compete.

6.2 The Hearing Panel will take up each allegation of the Grievants and analyze them in turn, before turning to the requests for relief (if such an analysis is necessary after considering the alleged violations).

6.3 The Grievants have alleged specific violations of various USSF Bylaws and Policies. At times the numbering provided by the Grievants did not line up with the relevant USSF Bylaws or Policies, but having reviewed the Parties' various submissions, it appears that the Grievants are asserting claims under the USSF Bylaws and Policies listed in the immediately following numbered paragraphs.

6.4 USSF Bylaw 201.3(a)(6) provides as follows:

“(6) Membership in the Federation is open to all soccer organizations and all soccer players, coaches, trainers, managers, administrators and officials without discrimination on the basis of race, color, religion, national origin, citizenship, disability, age, sex, sexual orientation, gender identity, or veteran status.”

6.5 USSF Bylaws 212.1(1) provides as follows:

“Section 1. As a condition for obtaining and maintaining membership in the Federation, each Organization Member shall satisfy all of the following requirements:

- (1) except as otherwise required by applicable law, comply with all Bylaws, policies and requirements of the Federation, and all statutes, regulations, directives and decisions of FIFA and Concacaf, each as they may be amended or modified from time-to-time to the extent applicable to that classification of Organization Member.”

6.6 USSF Bylaws 212.3(a)(1) provides as follows:

“(a) Except as otherwise specifically provided in this Section 3, the organizational documents and governing documents of each Organization Member shall include the following:

- (1) Except with respect to a Professional League, the membership of the Organization Member and its member organizations shall be open to any individual who is an amateur athlete, coach, trainer, manager, administrator, or official active in the sport of soccer who is not subject to suspension under Section 4 of Bylaw 241 or pursuant to the disciplinary or risk management action of any amateur soccer organization in its territory; and except for a National Association, the membership of the Organization Member and its member organizations shall be open to any amateur soccer organization in its territory.”

6.7 USSF Bylaws 212.3(a)(6) provides as follows:

“(6) The Organization Member shall provide prompt and equitable procedures for resolution of complaints of its members and procedures for fair notice and an opportunity for a hearing with respect to any complaint of any Athlete, coach, trainer, manager, administrator or official who is a member of the Organization Member, or a member organization thereof, concerning a proposed declaration that any such individual is ineligible to participate in the programs or other activities of such Organization Member or a member organization thereof and such procedures shall conform, as applicable, to the provisions of Part VII of these Bylaws.”

6.8 USSF Bylaw 213 raises no substantive rights, only procedural rights for this proceeding.

6.9 USSF Bylaw 701 provides in pertinent part as follows:

“Section 1. In all hearings conducted by the [USSF] and its Organization Members under these Bylaws, the parties shall be accorded:

- (1) notice of the specific charges, claims, or alleged violations in writing and possible consequences if the charges, claims, or allegations are found to be true.
- (2) reasonable time between receipt of the notice of charges and the hearing within which to prepare a defense.
- (3) . . .
- (4) a hearing before a disinterested and impartial panel.
- (5) the right to be assisted (including by counsel) in the presentation of one’s case at the hearing.
- (6) the right to call witnesses and present oral and written evidence and argument.
- (7) the right to confront witnesses, including the right to be provided the identity of witnesses in advance of the hearing.
- (8) the right to have a record made of the hearing if desired.
- (9) a timely written decision containing findings of fact and with reasons for the decision, based solely on the record.”

6.10 USSF Bylaw 703 raises no substantive rights, only procedural rights for this proceeding.

6.11 USSF Policy 212-1(3) provides as follows:

“Section 3. If an Organization that is not an Affiliated Organization wishes to become a member of an Organization Member, that Organization Member must require that the Organization comply with section 2 of this policy, either by registering every Participant in that Organization with that Organization Member or by providing reasonable proof (including, for instance, a verification letter from another Organization Member of the number of players registered from that Organization) upon request that every Participant that it does not register with that Organization Member is registered with another Organization Member.

Example: A club with 5,500 players wishes to join an Organization Member (OM-USA). The club is not currently affiliated with any Organization Member. If the club wants to register only a portion (for instance, 1,000) of its players with OM-USA, OM-USA must reject the request unless the club either agrees to register the other 4,500 members with OM-USA as well, or agrees to register these 4,500 players with another Organization Member. If, however, the club is affiliated with another Organization Member already, and wishes to register only 1,000 players with OM-USA, the club must provide reasonable proof if requested to OM-USA of registration of the other players with the other Organization Member, and then OM-USA must allow the club to register only those 1,000 members (subject to Section 4 of this policy).”

6.12 USSF Policy 212-1(4) provides as follows

“Section 4. An Organization Member must allow Participants from any Affiliated Organization to participate in its programs if those Participants register and comply with all of the reasonable policies, rules, regulations, and requirements of the Organization Member.

(a) Each Participant (and only those Participants) that actually participates in the programs of the Organization Member must register with the Organization Member and pay any applicable registration fees.

(b) An Organization Member must allow a group of Participants from any Affiliated Organization to participate in its programs if that group of Participants complies with all reasonable policies, rules, regulations, and requirements of the Organization Member. For purposes of this section, “reasonable policies, rules, regulations, and requirements” may include but are not limited to the following:

(i) A requirement that the group of Participants be of a minimum size (such as having a minimum number of players, teams, or age groups);

(ii) A requirement that the group of Participants includes a minimum percentage or number of recreational players, unless the group of Participants are already registered with another Organization Member and are directly affiliated with a group of recreational players who could satisfy this minimum requirement;

(iii) A requirement that the group of Participants follows all team formation rules;

(iv) A requirement that the group of Participants follows all competition rules (such as numbers of players per team, game rules, and team selection rules);

(v) A requirement that the group of Participants follows all licensing and certification rules (such as rules relating to referee certifications and coaching licenses);

(vi) A requirement that the group of Participants observes rationally supportable geographic rules of the Organization Member;

(vii) A requirement that the group of Participants be subject to all disciplinary rules of the Organization Member;

(viii) A requirement that the group of Participants identifies a board or governing body that will handle administrative issues and be responsible for compliance with applicable Organization Member rules (but the Organization Member may not mandate that the group of Participants form a new corporation or entity, or identify a different board or governing body than the one already running the Affiliated Organization); and

(ix) A requirement that the group of Participants meets standards of financial accountability and transparency as well as any insurance and risk management standards.

(c) For purposes of this Section 4, an Organization Member must apply its requirements consistently.”

6.13 USSF Policy 701-1 provides as follows:

“This policy provides the minimum rights that each party would have at a hearing with respect to the right to assistance in presenting one’s case at a hearing, as must be allowed under [USFF] Bylaw 701(5). These minimum rights apply to hearings conducted by Organization Members and their members or other hearing body. A

copy of these minimum rights should be delivered to the parties with the notice of the hearing.

(A) Each party at a hearing shall have the right to have an individual present at the hearing to assist the party in presenting the party's case. Such individual may, but shall not be required to be, an attorney.

(B) If the Organization Member or member of the Organization Member ("Complainant") is represented by another individual at any hearing and the hearing panel allows that individual to speak, question the parties and/or witnesses, or grants that individual any other rights, then it shall afford all other parties, or the individual representing the party, including an attorney, the same rights during the course of the hearing as is allowed to the individual representing the Complainant.

(C) If an attorney is present at a hearing to assist a party in presenting the party's case, it shall be made clear at the commencement of any such hearing that the hearing shall proceed in accordance with the Organization Member's hearing rules and procedures. All Federal, State or local Rules of Evidence or Civil Procedure shall not be applicable.

(D) An Organization Member may provide, as part of its hearing rules and procedures, that an individual assisting a party may be allowed to speak on behalf of the party, make requests or ask questions at the hearing.

(E) Regardless of whether the Organization Member allows the individual assisting the party the rights to speak, make requests or ask questions, as noted in Paragraph D above, an individual assisting the party in presenting the party's case shall have the right to be physically present in the hearing room, and so as not to interfere with the hearing procedure, it is also recommended that the individual be seated close to the party (either behind or next to the party) so that the party may seek assistance when desired during the course of the hearing.

(F) During the course of the hearing, the party may confer briefly with the individual who is assisting before making a statement or request or prior to responding to a question. The panel conducting the hearing may limit the frequency and duration of the conferences so as not to unduly interfere with the proceeding.

(G) If there is confusion or concern, the party may request a recess to confer with the individual assisting the party. Such a request should be granted unless the number of requests by a party becomes unreasonable or the length of a requested recess is deemed by the hearing panel to be unreasonable.

(H) An individual assisting a party may prepare written materials for the party and collect documents for the party. However, the party must submit or present the materials and documents as materials and documents of the party, and not of the individual assisting. The party has complete responsibility for those materials and documents and is subject to questioning about them.

(I) Nothing contained in this policy shall prevent an Organization Member from allowing greater rights to assistance than those set forth in Paragraphs A-H above. For example, an Organization Member may, but shall not be obligated to, allow more than one individual to assist a party at any given time.

(J) The rights, either mandatory or permissible under this policy, shall be consistently applied, and the Organization Member should not arbitrarily allow or disallow the rights set forth above to those individuals assisting a party in the presentation or defense of the party's case."

6.14 USSF Policy 703-1 appears to provide only procedural rights related to this proceeding and does not raise substantive issues.

A. The Substantive Allegations

- i. *Failing to comply with the Bylaws and Policies of USSF intended to promote the growth and development of soccer in the United States.*

6.15 It is not clear from the allegations of the Grievants exactly which provisions of the USSF Bylaws or Policy Manual are being asserted in the grievance to support this claim. It is not the role of the Hearing Panel to divine or imply these elements.

6.16 In their Rebuttal, the Grievants only make very general allegations, not citing to any specific USSF Bylaw or Policy to support this assertion and this assertion appears to be completely redundant and derivative of the other claims related to discrimination against NYCSL.

6.17 Accordingly, the Hearing Panel will consider it as such and consider each specific allegation in turn, while denying this general claim.

6.18 The Hearing Panel wishes to make clear that grievances must clearly state the relevant USSF Bylaw or Policy violated and the factual basis therefor. Supposition, innuendo, partisan statements implying intention of others, and other such non-factual and non-legal assertions cannot form the basis for a proper grievance to which the other side can be expected to respond, or which a hearing panel may properly analyze. In fact, it may itself constitute a denial of due process.

- ii. *Failing to cause its membership to be open to individuals who are amateur athletes, coaches, trainers, managers, administrators and officials, and to the contrary discriminating against such individuals who are members or otherwise affiliated with NYCSL.*

6.19 The USSF Bylaws require member organizations to “be open to any individual who is an amateur athlete, coach, trainer, manager, administrator, or official active in the sport of soccer who is not subject to suspension under Section 4 of Bylaw 241 or pursuant to the disciplinary or risk management action of any amateur soccer organization in its territory . . .”

6.20 There is no evidence that any athlete, coach, trainer, manager, administrator, or official of NYCSL was subject to suspension or risk management action, yet as a result of the actions of ENYYSA those affiliated with NYCSL were, overnight, suddenly not able to affiliate with NYCSL or CJLS in a manner that had previously, at least on its face, been approved by ENYYSA.

6.21 The ENYYSA decision was clearly directed at NYCSL’s affiliated athletes, and others, without providing any basis, let alone any due process before the decision was rendered.

6.22 Accordingly, on this basis the Hearing Panel finds that a violation by ENYYSA has occurred.

- iii. *Failing to cause its membership to be open to NYCSL.*

6.23 From the record, it appears that NYCSL has not applied to be a member of

ENYYSA, even though ENYYSA has provision to allow membership for leagues. From a strictly legal reading of the record, this may appear to end the inquiry, but there has to be more to it than that.

6.24 The strictly legal analysis does not end there. The USSF Bylaws require member organizations to “be open to any individual who is an amateur athlete, coach, trainer, manager, administrator, or official active in the sport of soccer who is not subject to suspension under Section 4 of Bylaw 241 or pursuant to the disciplinary or risk management action of any amateur soccer organization in its territory . . .” There is no evidence that any athlete, coach, trainer, manager, administrator, or official of NYCSL was subject to suspension or risk management action, yet as a result of the actions of ENYYSA those affiliated with NYCSL were not able to affiliate with NYCSL or CJLS in a manner that had previously, at least on its face, been approved by ENYYSA.

6.25 The Hearing Panel also takes a contextual view in addition to a strictly legalistic view of this issue, choosing to look at the effect of the actions taken by ENYYSA in addition to looking at the text of ENYYSA’s bylaws and rules.

6.26 The effect of the action of ENYYSA was to exclude the affiliation of NYCSL members from affiliation with or participation in ENYYSA events, and with ENYYSA member CJSL and its events, which is where NYCSL sought to be affiliated and the arrangement that had been approved by officers of ENYYSA and operated for a season without incident.

6.27 Soccer is now among the top 4 participation sports in the United States, with millions of participants. It is critical to the development of the sport that barriers to entry are lowered and not raised. Though there was no data presented showing where the 20,000 players went to obtain licenses or registration to participate after ENYYSA took its unfortunate action, it appears that the actions of ENYYSA had the clear effect of making it more difficult for players to participate if it did not have the outright effect of limiting participation of soccer players in the greater New York City area.

6.28 There did not appear to be any single action by the Grievants that precipitated the action taken by ENYYSA other than some perception by ENYYSA of incorrect procedure taken by the Grievants after the agreed process had proceeded for at least one season.

6.29 Accordingly, the Hearing Panel finds that a violation has occurred here as a result of the action of ENYYSA to exclude members of NYCSL through its previous arrangement with CJSL, especially doing so in a press release without providing those members with any other alternative to participate in soccer in the territory governed by ENYYSA.

- iv. *Failing to provide prompt and equitable procedures for resolution of complaints of CJSL and NYCSL and by failing to provide fair notice and hearing opportunities with respect to such complaints.*

6.30 There is no question that, on the record provided, ENYYSA did not provide a timely procedure to resolve the complaints of the Grievants, forcing them to have to bring this Grievance.

6.31 The record is abundantly clear, and replete with objective, contemporaneous records, with respect to the lack of due process provided here.

6.32 On July 15, 2021, Ron Restrepo (CJSL President) sent an email to Andrew Seabury (the Secretary of ENYYSA and President of LIJSL) asking basic questions about how the decision was made so he could better understand the bases for that decision and the relevant rights and procedures for appeal.

6.33 On July 15, 2021, Mr. Seabury responded to Mr. Restrepo but did not answer his questions.

6.34 On July 15, 2021, instead of replying to Mr. Restrepo with the information he requested or giving him an opportunity to address the “decision”, ENYYSA distributed a letter to ENYYSA’s entire membership.

6.35 On July 16, 2021, Mr. Restrepo sent an email to the ENYYSA Board of Directors:

- Stating the ENYYSA Executive Board had violated the ENYYSA Constitution in making its decision to ban NYCSL, as a division of CJSL, and to disenfranchise over 20,000 youth players;
- Reiterating the questions he had posed to Mr. Seabury and that had not been answered;
- Formally requesting an “equitable and prompt” hearing per the ENYYSA Constitution; and
- Refuting point by point the allegations made in the letter signed by Mr. Seabury.

6.36 On July 16, 2021, rather than respond to Mr. Restrepo’s requests or take into consideration the refutations he had provided, ENYYSA issued a media release publicly announcing the decision to disenfranchise over 20,000 players.

6.37 On July 30, 2021, Mr. Restrepo sent an email to Tim Frament, a member of the ENYYSA Board, once again asking for answers to his previously submitted questions about the “decision” and also asking Mr. Frament for information related to the appeals hearing requested by Mr. Restrepo.

6.38 On August 2, 2021, Mr. Christiano (President of ENYYSA) sent Mr. Restrepo an email stating that the full ENYYSA Board of Directors would hold a hearing related to the “decision.” This was a hearing apparently resulting from the flaws in the decision made by the Executive Board, and not the hearing of an appeal as Mr. Restrepo requested. No date was provided for the hearing. There was no recognition that Mr. Restrepo had already refuted the allegations made against NYCSL, as a division of CJSL.

6.39 On August 24, 2021, Mr. Restrepo sent an email to Mr. Christiano and the ENYYSA Board of Directors reminding them that he had previously on July 16, 2021, “requested an immediate hearing to appeal the decision made by some leaders of ENYYSA” and that a hearing date for the appeal had not yet been set. In addition, to prepare for the appeal hearing whenever it was set, Mr. Restrepo asked that additional questions be addressed.

6.40 At this point in time, it was nearly six weeks after the ENYYSA made the decision in mid-July to ban NYCSL, as a division of CJSL, and to disenfranchise over 20,000 players. No appeal hearing date had yet been set by ENYYSA. Mr. Restrepo's questions, to which he needed answers in order to prepare for an appeal hearing, particularly since the minutes of the July 13, 2021, Executive Board meeting would not be approved and, therefore, not released, until after the September 2021 Executive Board meeting (there was no August 2021 Executive Board meeting), had not been answered by ENYYSA.

6.41 On August 25, 2021, Mr. Christiano sent Mr. Restrepo an email stating that on August 30, 2021, the hearing before the full Board of ENYYSA (not an appeals hearing of the initial "decision") was scheduled to address "charges." The first charge alleged "CJSL violated the ENYYSA membership rules"; however, no specific ENYYSA membership rules were cited. The second and third charges did not identify who or what entity was being charged, nor did they cite any specific section(s) of the ENYYSA Constitution or Bylaws as being violated. In addition, Mr. Christiano's notice of the hearing did not provide Mr. Restrepo with any of the information that Mr. Restrepo would reasonably need to prepare for the hearing, including who or what entity was conducting the hearing, the type of hearing being conducted, the agenda for the hearing, the rules and procedures under which the hearing would be conducted, how information was to be presented during the hearing, and how a decision would be made following the hearing. Notification of the hearing was provided by Mr. Christiano to Mr. Restrepo only five days prior to the hearing being held.

6.42 On August 26, 2021, Mr. Restrepo sent Mr. Christiano and the ENYYSA Executive Board an email with another request to answer the questions Mr. Restrepo had previously submitted, explaining that without answers the upcoming hearing would not be "equitable" and, therefore, would violate the ENYYSA Constitution. No answers were provided.

6.43 On August 27, 2021, Mr. Restrepo sent Mr. Christiano and the ENYYSA Executive Board an email with another request to answer the questions Mr. Restrepo had previously submitted so that he prepare for the hearing scheduled for August 30, 2021, only three days away. Please see Exhibit 28. Again, no answers were provided.

6.44 In continuing to refuse to provide answers to Mr. Restrepo's repeated requests, which began on July 15, 2021, and continued as described above for seven weeks, Mr. Christiano and ENYYSA made it impossible for Mr. Restrepo to adequately prepare for the hearing scheduled for August 30, 2021, and, consequently, made it impossible for Mr. Restrepo, representing CJSL, and Mr. Grossman, representing NYCSL, as a division of CJSL, to receive an equitable hearing. Once again Mr. Christiano and ENYYSA violated the ENYYSA Constitution, Article II, Section One, E. which states that ENYYSA has the responsibility to "provide equitable and prompt hearing and appeal procedures to guarantee the rights of individuals to participate and compete."

6.45 On August 27, 2021, Mr. Frament (Secretary of ENYYSA) sent Mr. Restrepo an email seeking to explain Mr. Christiano's conclusion that a hearing had to occur before the ENYYSA Board before an appeals hearing could take place. The Appeals Committee would not hold an appeal hearing without the occurrence of this hearing. In other words, Mr. Frament's email demonstrated that the initial decision was flawed and invalid.

6.46 On August 27, 2021, Mr. Restrepo responded to Mr. Frament's email noting Mr. Frament's admission that the ENYYSA Executive Board action was invalid and that the ENYYSA Board must reconsider the action. Mr. Restrepo offered to meet to discuss the matter. Neither Mr. Frament nor any ENYYSA Executive Board member responded to Mr. Restrepo.

6.47 On August 30, 2021, Mr. Restrepo and Mr. Grossman participated in the hearing conducted via Zoom. Mr. Restrepo read a statement into the record of the hearing explaining in detail that Mr. Christiano and the ENYYSA Executive Board had violated due process and the ENYYSA Constitution and Bylaws. Consequently, and in conclusion, Mr. Restrepo requested that either the initial "decision" be reversed or Mr. Christiano and the Executive Board provide answers to the questions Mr. Restrepo had previously submitted so that an appeal, which had thus far been denied by ENYYSA, could be filed. Neither of Mr. Restrepo's requests were granted. As explained in the statement Mr. Restrepo read into the record of the hearing, he and Mr. Grossman were going to leave the hearing after Mr. Restrepo read the statement into the record because questions repeatedly asked prior to the hearing by Mr. Restrepo had not been answered and no explanation of how the hearing would be conducted had been provided in advance. Therefore, it was impossible for Mr. Restrepo and Mr. Grossman to prepare properly and for the organizations and players represented by them to be provided with an equitable hearing as required by the USSF's Bylaws and Policies and by the ENYYSA Constitution.

6.48 On September 2, 2021, Mr. Restrepo received the "revised hearing decision" signed by James Eleftherion (ENYYSA Supervisory Committee/Chair). The fallacies and inaccuracies stated, confusion apparent, and the due process flaws reflected in the "revised hearing decision" were abundant. Mr. Eleftherion, writing for the Supervisory Committee hearing panel, stated: "At the hearing CJSL merely read a statement but refused to take part in the hearing. After being asked several times if they would participate, the CJSL and NYCSL representatives refused and left the Zoom Virtual Hearing without answering any questions or producing any evidence to oppose the ENYYSA decision of July 14, 2021."

6.49 Rather than include the entire submissions of the Grievants with the record of the decision, Mr. Eleftherion chose to only attach documents supplied by the ENYYSA Executive Committee. This exclusionary approach to recording evidence and arguments creates an unfairly prejudiced record of the hearing which could negatively impact an appeal of the "revised hearing decision."

6.50 On September 7, 2021, Mr. Restrepo followed up on the "revised hearing decision" requesting information about filing an appeal. On September 7, 2021, Mr. Michael Finnegan (Appeals Chairman, ENYYSA Appeals Committee) responded to Mr. Restrepo's request by quoting sections of the ENYYSA Bylaws. On September 11, 2021, Mr. Restrepo sent a detailed response to Mr. Finnegan requesting clarity on three relevant topics related to the appeal process, wherein he stated as follows:

"I know Article VI, Section One of the ENYYSA Constitution. It clearly states that the 'following process shall be used to handle appeals brought to this Association from a decision of an affiliated organization.'

The case at hand, which features the decision by ENYYSA to prevent players from using their player passes to participate in soccer activities offered by NYCSL, a

division of CJSL, is not about a ‘decision of an affiliated organization.’ It is about a decision of the Association itself. Please provide clarity.”

In addition, Mr. Restrepo requested that pertinent materials be provided related to both the “revised hearing decision” and Mr. Restrepo’s ability to prepare for an appeal because, in his words, “Without such information, due process will not be provided, and a fair and just hearing of an appeal will be impossible.”

6.51 Mr. Finnegan did not respond to Mr. Restrepo. Nor did Mr. Finnegan or ENYYSA provide the pertinent information requested by Mr. Restrepo so that he could prepare for an appeal. By withholding critical information, Mr. Finnegan and ENYYSA were making it impossible for CJSL and NYCSL to receive due process and a fair and objective appeal hearing.

6.52 On September 30, 2021, despite not responding to Mr. Restrepo’s September 7, 2021, request for information related to an appeals hearing, Mr. Finnegan emailed Mr. Restrepo that ENYYSA was returning the \$500 check that CJSL had filed for its appeal. On October 5, 2021, Mr. Restrepo responded to Mr. Finnegan, again, in detail, affirming that CJSL on behalf of CJSL and NYCSL, as a division of CJSL, had filed an appeal according to the ENYYSA Constitution and Bylaws. In this email Mr. Restrepo reiterated the critical facts and principles that he had been presenting to the leadership of ENYYSA since the mid July “decision”:

“It is clear from a significant number of emails shared with the Board of ENYYSA as well as through a written document read into the record of the Supervisory Hearing that CJSL and NYCSL, a division of CJSL, have been and are appealing the decision taken by the ‘Executive Board’ of ENYYSA on July 13, 2021, to prevent players from using their player passes for soccer activities offered by NYCSL, as a division of CJSL. . . .”

Mr. Restrepo also emphasized to Mr. Finnegan his view that the leadership of ENYYSA, including Mr. Finnegan as Chairman of the ENYYSA Appeals Committee, were violating the ENYYSA Constitution and Bylaws by stating:

“Repeatedly, the leadership of ENYYSA, including Board members and members of the Supervisory Hearing Committee and members of the Appeals Committee, have refused to provide due process to CJSL and NYCSL, as a division of CJSL, by violating the Constitution and Bylaws of ENYYSA, withholding relevant information, and making arbitrary decisions.”

6.53 On October 12, 2021, Mr. Finnegan abruptly notified Mr. Restrepo: “The appeal was denied on 10/2/21.”

6.54 No appeal hearing had occurred. The rights of CJSL, NYCSL and over 20,000 youth players appear to have been simply extinguished by fiat.

6.55 In the view of the Hearing Panel, it appears that a shell game was being played with conducting a hearing, creating an appeal right, and otherwise trying to find a way to justify *ex post facto* a decision taken without any input from the affected party, CJSL, the member of ENYYSA. The efforts of ENYYSA in this proceeding to try to overcome this

objective and contemporaneous effort do nothing to dissuade the Hearing Panel of its view that there was no commitment to providing fair and equitable hearing procedures to address the complaint of CJSL. Before any outsider reviewing the ultimate decision could even consider whether that decision was correct, the affected party had to receive notice and a hearing, with an opportunity to present its case, in advance of any action being taken that affected the rights of the affected party. That did not occur here.

6.56 At the hearing, the President of ENYYSA, Mr. Christiano, tried to distance himself from the effect of his participation, and quote, in the initial press release announcing the tie up between CJSL and NYCSL, claiming that he had no authority to bind ENYYSA as its President and everyone knew or should have known that. The Hearing Panel does not accept that as a defense. The common law accepts a notion of apparent agency whereby someone with apparent portfolio with another entity can act on that entity's behalf and bind it as its agent. It was clear on the record that the reason Mr. Restrepo and Mr. Goldman were communicating with Mr. Christiano was to endeavor to obtain the approval of ENYYSA to the arrangement that was being proposed between CJSL and NYCSL; they otherwise had no reason to speak with Mr. Restrepo on this issue. Similarly, they sought and obtained Mr. Christiano's approval to appear in a press release about the arrangement, in his official capacity as President of ENYYSA, and ENYYSA issued the press release itself announcing the arranging, stating among other things that NYCSL would be "joining ENYYSA". It would simply ignore logic, or the facts, to find that somehow Mr. Christiano's open and obvious imprimatur on the arrangement did not bind the organization he openly led; there was no evidence that he ever told anyone to the contrary.

6.57 Accordingly, the Hearing Panel finds that ENYYSA violated this fundamental due process principle embodied in the USSF Bylaws and Policies and in the ENYYSA's own governing documents.

- v. *Failing to provide reasonable non-discriminating policies, rules, regulations and requirements.*

6.58 This allegation appears to be entirely derivative of the prior allegation that the membership of ENYYSA was not open to members of NYCSL.

6.59 Accordingly, as the Hearing Panel has already determined, ENYYSA committed acts that impermissibly discriminated against those affiliated with NYCSL, through its affiliation with CJSL.

- vi. *Failing to provide equitable and prompt hearing and appeal procedures to guarantee the rights of individuals to participate and compete.*

6.60 This allegation appears to be identical to the allegation in section iv above. Accordingly, the Hearing Panel disposes of this allegation in the same manner as it addressed in section iv.

B. The Requests for Relief

6.61 Having determined that there is substantive merit to the claims of the Grievants, the Hearing Panel must now address the relief to be awarded as a result.

6.62 The Grievants requested the following relief verbatim:

- “1. Reversal of the decision made by some members of the ENYYSA Executive Board that: ‘Effective immediately, ENYYSA will no longer sanction any NYCSL . . . soccer programming (leagues, tournaments, competitions, clinics, etc.). US Youth Soccer Association player passes issued by ENYYSA are not valid for any NYCSL competitions.’
2. Admission of NYCSL as a member league of ENYYSA.
3. Public notice and notice to all ENYYSA members of the [USSF]’s decision after reviewing this complaint.
4. ENYYSA to rewrite its Constitution, Bylaws, Rules, and Regulations as well as policies to be in full compliance with the [USSF]’s Bylaws and Policies.
5. ENYYSA to adopt its rewritten Constitution, Bylaws, Rules, and Regulations as well as policies to be in full compliance with the [USSF]’s Bylaws and Policies.
6. Penalties and deterrents as deemed appropriate by the Federation, including dismissal and suspension of those eight members of the ENYYSA Executive Board who voted to prevent over 20,000 players from using their USYS player passes issued by ENYYSA for soccer activities provided by NYCSL and who subsequently permitted repeat violations of the ENYYSA Constitution and [USSF] Bylaws as shown in this complaint.”

The Hearing Panel will take up each of the Grievants’ requests for relief in turn.

6.63 As a fundamental principle, the requests for relief have to bear some relationship to the matters that form the substance of any complaint or grievance. They cannot be divorced from or unrelated to the substantive violations. Similarly, the relief requested should be narrowly tailored to accomplish the aim of correcting the wrong asserted. In simple terms, the remedy must fit the findings.

- i. Reversal of the decision made by some members of the ENYYSA Executive Board that: “Effective immediately, ENYYSA will no longer sanction any NYCSL . . . soccer programming (leagues, tournaments, competitions, clinics, etc.). US Youth Soccer Association player passes issued by ENYYSA are not valid for any NYCSL competitions.”*

6.64 It follows naturally from the determination of the Hearing Panel above, that the action of ENYYSA was wrongful for failing to follow certain procedural tests when the decision was taken, and that the most basic, and narrowly tailored, relief that the Hearing Panel could provide is the reversal of the action taken by ENYYSA. This has to be the starting point for providing relief to the Grievants.

6.65 Accordingly, the Hearing Panel hereby reverses the decision of ENYYSA with immediate effect as of the date of this Decision set forth below.

- ii. Admission of NYCSL as a member league of ENYYSA.*

6.66 There was no evidence provided that NYCSL has sought to be a member of ENYYSA and been unlawfully refused. In fact, the evidence shows that NYCSL did not try to become a member of ENYYSA but instead wanted to affiliate as a division of CJSJ. It

does not flow from the factual allegations made and the substantive allegations made by the Grievants that this form of relief requested is appropriate or related to the actions of the ENYYSA complained of. This issue is simply not ripe, in addition to the request being overbroad.

6.67 In addition, controlling those with whom a private association and its members associates is a fundamental right of a private association and its members. This right is clearly circumscribed by certain requirements prescribed by USSF if the relevant soccer-related association wishes to be recognized as a member by USSF (just as USSF does not have unfettered discretion in determining its membership if wishes to continue to be recognized by FIFA and the US Olympic and Paralympic Committee). ENYYSA has the right to determine who shall be its members, provided the applicants meet the relevant criteria for membership that apply to all other members, the decision to accept or deny an application is taken reasonably, and the decision process and criteria meet any requirements of USSF.

6.68 As a result, the Hearing Panel views the scope of its powers as more limited than is being requested, and the Hearing Panel is only inclined to order that should the NYCSL apply to be a league member of ENYYSA then ENYYSA shall consider their application in accordance with the current ENYYSA rules, shall do so fairly and without discrimination or prejudice against the NYCSL vis a vis current members or any applicants, and shall do so in a manner consistent with relevant provisions of the USSF Bylaws and Policies.

6.69 Accordingly, this request for relief is granted on the narrow basis stated above. Of course, if NYCSL applies for membership in ENYYSA and is refused on an impermissible basis, then ENYYSA may face another grievance and review of its actions, at which point it may be advisable for USSF to step in to review and if necessary oversee the process.

iii. Public notice and notice to all ENYYSA members of the [USSF]'s decision after reviewing this complaint.

6.70 Given the decision taken on the merits above by the Hearing Panel and its effect on competitions in grassroots soccer in the greater New York City area, the Hearing Panel determines that publication of its decision is not only reasonable, but that it a) occurs in the usual course of USSF's operations after decisions are rendered in grievances, b) is the only way to communicate clearly the outcome, and c) affords the only way for the Grievants to obtain comparable relief from the press release previously issued by the Respondent impermissibly revoking the validity of player passes issued by ENYYSA for NYCSL competitions and revoking the sanction for NYCSL events.

6.71 Accordingly, ENYYSA is hereby ordered to send a copy of this Decision and a very brief summary of its effect, to the ENYYSA membership using the following language (it should say no more and no less):

“In June 2020, Eastern New York Youth Soccer Association (‘ENYYSA’) issued a media release announcing that, ‘NYCSL [New York Club Soccer League] will be joining ENYYSA starting immediately for the 2020/2021 soccer year.’ The release stated that to accomplish this result: ‘NYCSL’s players and teams will register as a new division of CJSJL [Cosmopolitan Junior Soccer League].’

In July 2021, ENYYSA issued a press release stating in relevant part that:

‘Effective immediately, ENYYSA will no longer sanction any NYCSL (New York Club Soccer League) soccer programming (leagues, tournaments, competitions, clinics, etc.). US Youth Soccer Association player passes issued by ENYYSA are not valid for any NYCSL competitions.’

As a result, CJSJ and NYCSL filed a grievance against the July 2021 decision of ENYYSA with US Soccer. The impartial and independent Hearing Panel hearing that grievance determined that the decision of ENYYSA should be and is reversed with immediate effect. As a result, the parties are put back in the position they were in before the above quoted announcement of ENYYSA was made, and NYCSL is an affiliate of CJSJ with all the rights for itself and its athletes and other affiliated participants as existed before the July 2021 press release was issued by ENYYSA. A copy of the decision on the grievance is attached.”

iv. *ENYYSA to rewrite its Constitution, Bylaws, Rules, and Regulations as well as policies to be in full compliance with the [USSF]’s Bylaws and Policies.*

6.72 There is no authority cited for the proposition that this Hearing Panel, even if sitting in the stead of USSF, could award this relief. In other words, there is no legal basis asserted for this relief.

6.73 This is a broad request for relief, and the Claimants provide no precision with respect to 1) identifying provisions of the ENYYSA Constitution, Bylaws, Rules and Regulations that are not in “full compliance” with the USSF Bylaws and Policies, 2) suggesting the procedure by which this process would occur or any timeline for doing so, 3) providing any guidance on how it would be determined if the rewritten regulatory documents are in “full compliance”, and 4) many other logistical details. In other words, no practical approach to providing this relief is provided.

6.74 There is also no showing that the current ENYYSA regulatory documents, as currently drafted, had any impact on the decision taken by the ENYYSA. In other words, there is no demonstration of causation between the regulatory documents that allegedly have to be rewritten and the unfortunate decision taken by ENYYSA; the relief does not fit the findings and is overbroad. Presumably, if ENYYSA takes action under its bylaws that are inconsistent with its membership requirements in USSF, as expressed in the USSF Bylaws and Policies, those actions would be null and void *per se*, no matter what the ENYYSA documents have to say about it.

6.75 Accordingly, the Hearing Panel denies this request for relief.

v. *ENYYSA to adopt its rewritten Constitution, Bylaws, Rules, and Regulations as well as policies to be in full compliance with the [USSF]’s Bylaws and Policies.*

6.76 This request for relief is a bit of the proverbial “belts and suspenders” approach to the prior request for relief, and is entirely derivative of it.

6.77 The Hearing Panel is of the view that this request for relief should be treated like the prior one.

- vi. *Penalties and deterrents as deemed appropriate by the Federation, including dismissal and suspension of those eight members of the ENYYSA Executive Board who voted to prevent over 20,000 players from using their USYS player passes issued by ENYYSA for soccer activities provided by NYCSL and who subsequently permitted repeat violations of the ENYYSA Constitution and [USSF] Bylaws as shown in this complaint.*

6.78 When asked by the Hearing Officer at the evidentiary hearing for citations to authority for the relief requested of “dismissal and suspension of those eight members of the ENYYSA Executive Board who voted to prevent over 20,000 players from using their USYS player passes issued by ENYYSA for soccer activities provided by NYCSL and who subsequently permitted repeat violations of the ENYYSA Constitution and [USSF] Bylaws as shown in this complaint”, none was provided. The Hearing Panel is of the view that in the absence of any express authority to interfere in this manner in the internal affairs of a New York corporation and a member association of USSF, it should be reluctant to entertain this frankly extreme form of specific relief.

6.79 While some conjecture and opinion was offered, there was no evidence to support any contention that the actions of the ENYYSA individual Executive Board members were intentionally designed to limit competition or access in New York for soccer players or that their action was taken with any malice or other bad intention. The Hearing Panel is of the view that to remove individual directors, and thereby interfere in the internal workings, and election outcomes, of a separate entity or organization, there should have to be some basic threshold showing, with objective, preferably contemporaneous, evidence, of some form of bad intent by the individuals in taking whatever action they are alleged to have taken to justify the granting of such extreme relief.

6.80 With respect to the more general relief requested of ordering “[p]enalties and deterrents as deemed appropriate by the Federation”, without providing any specificity as to what those penalties or deterrents should be or how they should be determined, and without any citation to authority, or production of such authority when asked at the evidentiary hearing, would be tantamount to granting relief on the basis of a complete lack of notice to the Respondent as to what is being sought. The Hearing Panel is reluctant to engage in such an exercise violative of basic due process requirements.

6.81 Accordingly, this request for relief is denied.

C. Conclusion/Summary

6.82 It is clear that the individual party representatives and witnesses that appeared in this proceeding on both sides are committed to running grassroots soccer programs in an important market in the US. They each have different approaches at times, but lowering barriers to participation in the sport for athletes, coaches, and the like must be an important if not paramount consideration. This appears to have been the impetus behind the original agreement, embodied in the first press release, between CJSJ, NYCSL, and ENYYSA. Unfortunately, that changed later when ENYYSA unilaterally undid the prior decision to work with the other two Parties. ENYYSA, as an umbrella organization, clearly needs to take a hard look going forward at how it conducts its procedures, particularly its dispute resolution process, and how it considers in an equitable and appropriate fashion the interests of all of its members when it is making policy decisions that affect participation. Grassroots soccer is not

and cannot be the province of political or monetary driven decision-making if the sport is to continue to develop successfully.

6.83 The Hearing Panel is hopeful that this Decision will allow the Parties to get back to running a comprehensive soccer program in a collaborative and cooperative manner. If they fail, not only is another grievance, and the future of the respective entities, at stake, but more importantly so too is the development of soccer in an important market in the US.

VII. DECISION SUMMARY/AWARD

On the basis of the foregoing facts, legal analysis, and conclusions of fact, the Hearing Panel renders the following decision:

a. Grievants' claims are granted in part and denied in part on the bases stated above. The following relief is granted to Grievants, effective immediately:

- i. The decision of ENYYSA embodied in the press release of July 2021 is hereby reversed and the Parties are returned to the positions they occupied as the status quo as existed before that press release issued.
- ii. This Decision is to be published to ENYYSA members by email or other appropriate communication reading simply as follows (no more and no less) within ten days of the issuance of this Decision:

“In June 2020, Eastern New York Youth Soccer Association (‘ENYYSA’) issued a media release announcing that, ‘NYCSL [New York Club Soccer League] will be joining ENYYSA starting immediately for the 2020/2021 soccer year.’ The release stated that to accomplish this result: ‘NYCSL’s players and teams will register as a new division of CJSL [Cosmopolitan Junior Soccer League].’

In July 2021, ENYYSA issued a press release stating in relevant part that:

‘Effective immediately, ENYYSA will no longer sanction any NYCSL (New York Club Soccer League) soccer programming (leagues, tournaments, competitions, clinics, etc.). US Youth Soccer Association player passes issued by ENYYSA are not valid for any NYCSL competitions.’

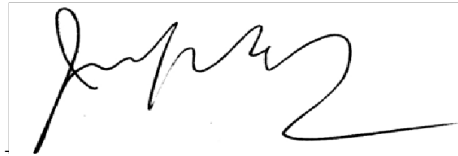
As a result, CJSL and NYCSL filed a grievance against the July 2021 decision of ENYYSA with US Soccer. The impartial and independent Hearing Panel hearing that grievance determined that the decision of ENYYSA should be and is reversed with immediate effect. As a result, the parties are put back in the position they were in before the above quoted announcement of ENYYSA was made, and NYCSL is an affiliate of CJSL with all the rights for itself and its athletes and other affiliated participants as existed before the July 2021 press release was issued by ENYYSA. A copy of the decision on the grievance is attached.”

iii. All other claims for relief are denied.

b. This Decision shall be in full and final resolution of all claims and counterclaims submitted to this grievance, save those that have been specifically reserved as stated herein for further awards. All claims not expressly granted herein are hereby denied.

IT IS SO ORDERED AND AWARDED.

Dated: December 16, 2022



Jeffrey G. Benz
Hearing Officer



Lori Lindsey
Athlete Representative