

In the Matter of the Arbitration between:

USSF Grievance

Colorado Elevation FC,

Claimant,

AWARD OF THE ARBITRATOR

and

Colorado Soccer Association,

Respondent

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the Bylaws of the United States Soccer Federation, Inc. (the “USSF”), having been duly sworn, having duly considered the evidence submitted by Colorado Elevation FC (“CE”) and the Colorado Soccer Association (“CSA”), and weighing the testimony of the witnesses, and having further reviewed the exhibits admitted into the record, a transcript of the hearing, the USSF Bylaws and Policies, and the prior USSF arbitration decisions cited by CE, ENTER THIS AWARD (“Award”).

THE GRIEVANCE

This Grievance was initiated against CSA, an Organization Member of the USSF, by CE, a youth soccer club with its principal office address in Castle Pines, Colorado, but with its principal training facilities in Highlands Ranch, Colorado. The Grievance arises out of CSA’s decision to deny CE’s application for membership with CSA. CE alleges that this denial violates USSF Bylaws and Policies. Specifically, CE alleges CSA violated USSF Bylaw 212, Section 1(1), requiring each Organization Member to comply with all Bylaws, Policies and requirements of [USSF], and USSF Bylaw 212, Section 3(a)(1) which provides that membership of the Organization Member shall be open to any amateur soccer organization in its territory. These Bylaws are further clarified by USSF Policies, and CE alleges CSA violated the following Policies:

USSF Policy 212-1, Section 4(b), which provides that 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; and

USSF Policy 212-1, Section 4(c), which provides that with respect to Section 4, an Organization Member must apply its requirements consistently.

INITIAL DETERMINATIONS

It is undisputed that CSA is an Organization Member, and therefore subject to the above-referenced USSF Bylaws and Policies. While CSA disputed whether CE was an “Affiliated Organization,” within the meaning of the USSF Policies, the Arbitrator determined in issuing his Order with respect to CSA’s Motion to Dismiss, that CE was, in fact, an Affiliated Organization within the meaning of that term under the USSF Bylaws and Policies, and is therefore entitled to the protections provided to Affiliated Organizations under the USSF Bylaws and Policies.

UNDISPUTED RELEVANT FACTS CONCERNING CE’S APPLICATION TO BECOME A MEMBER OF CSA

On or about January 30, 2019, CE submitted an application to become a member of CSA. That application was missing certain items, including a list of “at least 100 currently unregistered players.” At no subsequent time has such a list been provided to CSA.

On or about March 26, 2019, CSA sent a letter to CE, advising CE that its application for membership in CSA had been denied by CSA’s Membership Committee. On or about April 9, 2019, CE filed an appeal of this denial with CSA’s Board of Directors. On May 1, 2019, CE’s appeal was heard by the full CSA Board of Directors. On or about May 17, 2019, CSA sent a letter to CE, advising CE that the CSA Board of Directors “decided to uphold the original decision made by the Membership Committee.” In that letter, CE was advised that it would not be offered membership in CSA for two reasons: 1) CE had not provided the required list of at least 100 currently unregistered players; and 2) CE “was unable to commit to one central area or geographical location, not already serviced by other CSA member soccer clubs.”

On or about August 26, 2019, this Grievance was filed with the USSF. Between the date of CE's receipt of CSA's denial of the CE appeal and the date of the hearing, numerous emails and other communications were exchanged between CE and CSA, some of which included the USSF, through which there were discussions as to the means by which CE might become a member of CSA, without the necessity of the instant hearing. No agreement was reached between the parties as to the admission of CE as a member of CSA, and therefore, the Grievance was heard on December 16, 2019.

ANALYSIS OF GROUNDS FOR DENYING MEMBERSHIP IN CSA

Following CE's appeal of the denial of its membership by the CSA Membership Committee, the denial of CE's application was limited to two reasons. It should be noted, however, that during the hearing, a number of other issues were raised concerning CE and Mr. Ashouri's qualifications, including the reason Mr. Ashouri formed CE, the coaching experience of CE instructors as set forth on the CE website, whether CE's membership application was accurate, and a recent incident resulting in Mr. Ashouri receiving a red card in a soccer game. While the Arbitrator considered all these matters, none of these factors were identified by CSA as a reason for denial of CE's membership application, and the Arbitrator therefore determined that none of these factors were relevant to his consideration of this matter. That left the two specific grounds stated by CSA's Board in its letter of May 17, 2019, denying CE's appeal:

Failure of CE to provide a list of at least 100 currently unregistered players that were included in CE's player base.

CSA's Bylaws provide that the following is a condition to membership in CSA: "New entities (other than entities resulting from the merger of one or more existing Voting Members) applying for membership must include in their player base at least 100 currently unregistered players." There is no dispute that CE failed to meet this requirement. However, USSF Policy 212-1, Section 4(b) provides that 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. Thus, the issue raised by CE in this Grievance is whether the requirement that new entities¹ must have at least 100 currently unregistered players is a “reasonable” requirement and thus one that can be imposed under USSF Policy 212-1, Section 4(b).

CSA argues this is a reasonable requirement because it keeps new clubs from forming by poaching members from other clubs. Jeff Ruebel, President of CSA, testified that “pop-up clubs” are the “bane of [CSA’s] existence.” The testimony of CSA’s witnesses indicated that these clubs are often started by parents who are dissatisfied with their child’s current club or coach (or whose child was dissatisfied), and by parents who simply think they can do a better job coaching than their child’s current coach. The testimony was that these clubs tend to last only a couple years, until the child loses interest in soccer, or the parent loses interest in being involved with the club. Based upon the testimony of CSA’s witnesses, the Arbitrator believes that a provision designed to dissuade clubs from poaching members of existing Organization Members, and/or to discourage pop-up clubs, is a reasonable provision that furthers the interest of soccer, and all Participants.² The provision in question, however, does not directly address poaching of

¹ CE also raised an issue as to what is meant by a “new entity,” and thus, whether it even applies to Claimant, a club that has been in existence for almost five years. At the hearing, CSA suggested at one point that the parenthetical that follows the term “new entities,” defines that term. If that were the case, then the only entity that would not be considered a “new entity” would be one that was not resulting from the merger of one or more existing Voting Members. Thus, a club in existence for 20 years would be considered a “new entity.” The Arbitrator does not find that explanation to be plausible. Thus, whether the requirement even applies to CE is ambiguous, and it is understandable why CE would have thought the requirement did not apply to its application. For purposes of this Award, the Arbitrator has assumed that the requirement was applicable to CE, without intending to reach any finding on that issue.

² The term “Participant” as used in this Award has the same meaning as set forth in the Preamble of USSF Policy 212-1(b).

players, nor is it limited to “pop-up clubs.” Given CE’s five-year history, and its continued growth, CE can no longer be considered a “pop-up club.”³

Testimony from Mr. Ruebel indicated that under FIFA requirements, a player joining a club at any level must be registered with that club, and once registered, that person would continue to be deemed “currently registered” with that club, even if he or she left the club and ceased playing soccer. The testimony showed that is what happened with at least some members of CE. Mr. Ashouri also testified that he never affirmatively recruited any player from another club and no witness presented by CSA testified as to contacts initiated by Mr. Ashouri or by other CE executives of players with other Organization Members. Moreover, two other CE witnesses, parents of CE players, testified that their children had never been recruited to join CE, and did so on their own after dissatisfaction with the teams, and/or coaches of the teams, on which they were playing. Thus, CSA’s requirement that CE have a membership base that includes at least 100 persons who had never been registered with any other club, goes beyond the legitimate concerns of Respondent in protecting existing teams from having members poached. The Arbitrator also heard no credible evidence that any other Organization Member’s viability was in jeopardy as a result of losses of players to CE.⁴

Joe Larusso, the head of CSA’s Membership Committee and a member of the Board of Directors of CSA, testified that only one in three applicants are able to comply with this 100 unregistered player requirement. He also testified that any applicant not able to meet any of the requirements for membership, including this one, would be denied membership by the

³ Thus, this Award is only directed to the application of this provision to CE, and not to its application to a club in its first few years of existence.

⁴ While CSA presented evidence showing that Real Colorado, a Member Organization with 3,800 to 4,000 players, had players leave its Organization to join CE, and it suffered a decrease in membership since the formation of CE, there was no evidence presented showing the viability of Real Colorado or of any other Member Organization of CSA was in jeopardy as a result of player losses to CE.

Membership Committee, subject to the ability to appeal the denial to the CSA Board. This means that if the provision is applied consistently (and not in a discriminatory manner as CE has alleged in its Grievance), two out of three applicants would systematically be denied membership in CSA solely as a result of this requirement. This result establishes an unreasonable impediment to organizations wishing to join CSA and flies in the face of USSF Bylaw 212, Section 3(a)(1), which provides that the membership of the Organization Member shall be open to any amateur soccer organization in its territory. As such, the Arbitrator finds that the provision is not a reasonable requirement and CSA's failure to approve CE's membership based upon its failure to meet this requirement was a violation of USSF Policy 212-1, Section 4(b).

“CE was unable to commit to any one central area or geographic location, not already serviced by other CSA Member soccer clubs.”

CE initially argues that there is no requirement in CSA's Bylaws that an applicant show a commitment to one area or geographical location or that an applicant provide “a niche to any one underserved community,” and thus, their application cannot be denied on these grounds. However, CSA's Bylaws do provide in Section 8D that as a condition for obtaining and maintaining membership in CSA, each Organization Member must satisfy the “policies and requirements of the Association.” As previously indicated, USSF Policy 212-1, Section 4(b), requires that these policies be “reasonable,” but that same Section specifically allows for “rationally supportable geographic rules of the Organization Member.” Thus, the fact that geography is not mentioned in the CSA Bylaws with respect to membership determinations is of no import.

Turning to the specific review of CE's application and the region served by CE, while the above quoted language as to the reason for denial of CE's application was taken from the letter in which CSA denied CE's appeal of the decision of the Membership Committee, the testimony at the hearing indicated the issue was not that CE was unable to commit to any one central area

or geographic location.⁵ Rather, this element of the denial was based on the assertion that the area proposed to be serviced by CE, and particularly the Highlands Ranch area in which its office was located and its principal practice facility was located, was already adequately covered by other Organization Members of CSA, and that CE's presence in that area would dilute, and has diluted, other Organization Members, thus resulting in teams disbanding as a result of a lack of players.⁶

There was evidence presented at the hearing by CSA showing that the Englewood, Colorado area was not adequately covered by an existing Organization Member. However, CE's Exhibit 18 showed the same to be true of the Highlands Ranch area. In his testimony, Mr. Ashouri made the point that a significant number of CE's members lived in or near Highlands Ranch. In cross examination, CSA noted that a number of CE's players also lived in the Englewood area, nearer to Englewood than to Highlands Ranch. However, in CE's Exhibit 5, page 28, CE showed that while, for example, 19 of 218 players lived in Englewood, 70 of those players lived in Highlands Ranch. This page also showed that of the 218 players listed on the Exhibit, more than two-thirds of the players lived in Highlands Ranch, Centennial, Littleton, Lone Tree, or Parker, and that most or all of these players would have to drive or be driven further to fields in Englewood than to the fields in Highlands Ranch, thus putting in question the viability of CE if it were to abandon its principle facilities in Highlands Ranch, as suggested by CSA. There is also the unrefuted testimony of Mr. Ashouri that the principle field that would

⁵ If this had been the issue, there would have been a question as to the discriminatory nature of the application of the requirement, given that evidence showed other CSA Organization Members covered areas larger than proposed by CE, even within the South Denver metropolitan area. CE raised this issue, but because the evidence showed that the issue was not that CE was unable to commit to any one central area or geographic location, it is not necessary for the Arbitrator to rule on this issue.

⁶ In fact, the testimony showed that CSA would have dropped the second reason for denying CE's admission in CSA if CE had abandoned its principal facility in Highlands Ranch, and instead utilized facilities in Englewood, Colorado, as its principal training facility, notwithstanding the fact that CE might continue to serve the same geographic area or areas. Thus, the Arbitrator's analysis of this issue centers on this "relocation" issue.

have been available to CE in Englewood, Englewood High School, would have been a problematic principle location for practices, and more importantly, for games, because the high school had the first right for its own activities, and had the right to cancel any use by CE on short notice in favor of the needs of the high school.

Based on the foregoing, and on other evidence presented at the hearing as to reasons players chose to join CE in the first place, it would seem that if CE is not permitted to continue to use the Highlands Ranch fields, the viability of CE would be jeopardized, and many of its 200-plus players would be left without a home, or be forced to go to other Organization Members, many of which, as CSA witnesses testified, were Organization Members/clubs those players or their families made an affirmative decision to leave. This would neither “promote...the growth and development of soccer” in the South Denver area, which is the first purpose of the USSF, as set forth in USSF Bylaw 102(1), nor would it “provide for the continuing development” of the players who have joined CE, the second purpose set forth in USSF Bylaw 102. As such, the Arbitrator finds that imposing a requirement on CE to abandon its principle playing facility in Highlands Ranch as a condition to becoming an Organization Member of CSA, or requiring CE to utilize facilities in Englewood, Colorado, as its principle facilities is not a “reasonable” policy within the meaning of USSF Policy 212-1, Section 4, and CSA’s denial of CE’s membership for this second stated reason was improper.⁷

RELIEF SOUGHT AND RELIEF AWARDED

In its Verified Grievance Complaint, CE asked for three specific forms of relief. The Arbitrator has determined as follows, with respect to such requests:

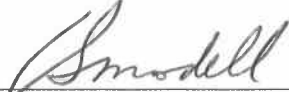
⁷ There was also testimony at the hearing that CE provided nothing new to Participants than was already available at other Organization Members of CSA. CE disputed that allegation. The Arbitrator has reviewed the testimony as to the benefits offered to Participants by CE, including the nature of training, and the cost of participation, among others, and has determined that CE does, in fact, provide benefits to Participants that they did not find at other Organization Members of CSA. However, no detailed discussion of this issue is needed because CE’s application for membership in CSA was not denied on this basis.

1. CE requested that the Arbitrator direct CSA to grant membership to CE based on the evidence presented in the Grievance with respect to the grounds for denial of the membership. This request for relief is GRANTED, and CE should promptly be admitted to CSA as an Organization Member, with the full benefit of membership, and without any requirement that it move its principle facility or restriction on its use of its current facilities.

2. CE has requested that an order be issued restraining CSA from taking any retaliatory action against CE in the future. It is anticipated by the Arbitrator that once CE is admitted as an Organization Member of CSA, it will be treated the same as other Organization Members. Until and unless any retaliatory action is taken, it is premature to grant an injunction against such actions. Thus, the request that CSA essentially be enjoined from any and all retaliatory actions against CE is DENIED.

3. CE has asked for an Award of all its attorneys' fees and costs incurred in these proceedings. No provision of the USSF Bylaws was cited by CE providing for an award of such costs by the Arbitrator and the Arbitrator is therefore not issuing any award with respect to this request.

Dated: January 9, 2020



Charles S. Modell, Arbitrator