

NEW JERSEY SOCCER ASSOCIATION, :

Complainant, :

vs. :

NEW JERSEY YOUTH SOCCER
ASSOCIATION, ALLAN B. SINCLAIR, :
BARRY TOWBIN, JOSEPH IPPOLITO, :
and MICHAEL KODAK, :

Respondents. :

UNITED STATES SOCCER FEDERATION

ARBITRATOR'S DECISION

This matter comes before the undersigned by Grievance Complaint filed by New Jersey Soccer Association (hereinafter referred to as "NJSA") against the New Jersey Youth Soccer Association (hereinafter referred to as "NJYSA") and individual Respondents, Allan B. Sinclair, Barry Towbin, Joseph Ippolito, and Michael Kodak. A grievance hearing was held on December 15, 2005 in Newark, New Jersey. For the reasons stated below, the undersigned finds in favor of NJYSA and the individual Respondents.

BACKGROUND FACTS

I. Grievance Complaint

NJSA filed a Grievance Complaint on August 18, 2005. The Complaint contains allegations that NJYSA, through its President, Allan B. Sinclair, violated United States Soccer Federation (hereinafter "USSF") Policy 531-1, §4 by improperly establishing a State Referee Committee (hereinafter "SRC") by failing to gain NJSA approval for the formation of a non-profit corporation named "USSF New Jersey State Referee Committee, Inc." NJSA alleged that Respondents Barry Towbin, Joseph Ippolito, and Michael Kodak, as unauthorized incorporators,

violated USSF Policy 531-11 Part III. NJSA further alleged that Barry Towbin, as acting State Referee Administrator (SRA), illegally and fraudulently transferred the sum of \$170,000.00 into the new corporation without authorization from NJSA.

II. Events Surrounding the Formation of the Corporation

This matter concerns the alleged illegal creation of a State SRC. NJSA and NJYSA are distinct entities that are governed by the Policies of the USSF. Under these Policies, both entities must agree to establish a State SRC. Complainant claims that Respondents violated USSF Policy 531-1, §4, which states: “The Adult and Youth State Associations within a State may jointly establish a State Referee Committee to administer the National Referee Development Program for their associations.” See U.S. Soccer Federation By Law & Policy Manual, 2005-2006, at 32. Complainant alleges that Respondents violated this Policy when they created a non-profit corporation called the USSF New Jersey State Referee Committee, Inc. (Clmt’s pre-arb stmt at 1.)

Respondents argue that a valid SRC was properly created years earlier and that the new corporation was merely a shell corporation that acted to protect the assets and interests of the SRC. (Resp’s pre-arb stmt at 1.) Respondents assert that their actions were needed because of the loose standards that were utilized in keeping referee monies. Respondents believe the referee monies were commingled with other funds of the NJSA and that tax reporting and proper record keeping were not being maintained. (Resp’s pre-arb stmt at 3.) Respondents also assert that the two entities had been discussing forming a corporation for the SRC for some time, but the process was taking several months longer than it should have. (Id. at 1.)

On or about November 6, 2004, the individual Respondents caused the corporation to be formed without the approval or involvement of NJSA. Thereafter, Respondent Towbin transferred the referee monies from what appeared to be an NJSA account into a bank account of the new corporation. Complainant alleges this was improper and unauthorized, and that Respondent Towbin filled in a signed, blank check in order to transfer the monies. (Clmt's pre-arb stmt at 2.) Respondent Towbin was previously allowed to fill in blank checks and handled paying the bills for the SRC. (Tr. at 91.)

Complainant complains that the actions of Respondent Towbin in transferring the monies and the actions of the other individual Respondents in creating an unauthorized corporation violates USSF Policy 531-11 Part III which states, in part,

Subpart B – Policy[:] Membership [i]s a privilege offered and granted to individuals who perform capably as State Referee Administrators, referees, referee assignors, referee instructors and referee assessors during United States Soccer Federation sanctioned activities. It carries with it an obligation for each individual member to uphold and promote the stated goals and objectives of the Federation and do nothing to bring the Federation into disrepute or work against its goals and objectives. Any conduct which is considered unethical or as a conflict of interest shall be subject to possible disciplinary actions.

See U.S. Soccer Federation By Law & Policy Manual, 2005-2006, at 42. Complainant additionally seeks sanctions against all Respondents.

After the grievance arose, it appears that the USSF intervened and asked NJYSA to allow the NJSA to have an appointee on the corporation committee. (Clmt's closing stmt at 4.)

Respondent Towbin additionally transferred control of the monies to the new SRA, Mr. Mauro. (Tr. at 232.) Respondents have previously offered to form a new corporate governing structure (Galasso ltr of Sept. 20, 2005 at 3) but Complainant has refused to recognize the existence of the corporation. (Tr. at 178.)

DISCUSSION

NJSA, as the Complainant, bears the burden of proof to demonstrate that Respondents violated the provisions of the USSF Bylaws and Policies. As explained below, Complainant has failed to meet this burden for each count asserted in its Complaint.

I. The SRC

It is stipulated that pursuant to USSF Policy 531-1, §4, both NJSA and NJYSA must agree to the formation of the SRC, and some time ago, approximately ten years, both NJSA and NJYSA did agree to and form the New Jersey SRC. (Tr. at 162-63.) Both parties agree that this formation was valid, however, NJSA contends that the creation of the new corporation, USSF New Jersey State Referee Committee, Inc., replaced the originally formed SRC. Since both parties stipulate that the original SRC was properly formed, the real issue becomes whether the new corporation either replaced or superseded the original SRC, such that if the creation of the corporation without NJSA approval acts as a *new* SRC it would violate USSF Policy.

Respondents contend the original SRC remains intact and continues to function as it was originally created. (Resp's closing stmt at 1.) Respondents proffer that the new corporation merely performs ministerial duties, such as keeping funds and records for the SRC, and therefore, no violation has occurred because the original SRC is intact. (Tr. at 258.) Complainants have not rebutted this assertion.

As proof of a new SRC, Complainant offered an email wherein Mr. Towbin purportedly stated to another that the SRC had been disbanded. This proof is not persuasive in light of Complainant's concession that the SRC remains operative, there have been no changes to the SRC Committee members and that NJSA continues to be represented on that Committee, as it has been since inception. (Tr. at 176-78 and Resp's closing stmt at 1.) Moreover, Complainant's testimony through Mr. Zingrilli was that the new corporation is not recognized by him. (Tr. at 178.) Furthermore, Complainant has offered no proof that the new corporation has interfered with or superseded the authority or actions of the SRC. Considering that the original SRC remains viable and functioning, the undersigned finds that the new corporation was not formed as, nor does it act as, a replacement to the original SRC. Therefore, no violation of USSF Policy 531-1 section 4 has occurred because the SRC, which was jointly formed, remains intact.

Authority or lack of authority to form a corporation is an issue that is not addressed in the USSF Policy or Bylaws. (Tr. at 157.) There is nothing stated that specifically allows or disallows the formation of a non-profit corporation either singularly or jointly by either entity. This leaves an uncertain situation. Being that the SRA has control over the SRC, (Tr. at 107) and is a jointly appointed member, it would be impossible to say definitively that Respondent Towbin, as interim SRA, acted wrongly in creating a corporation on behalf of the SRC. Since Complainant cannot show a clear violation of USSF Policy or Bylaws, they cannot meet their burden of proof on this issue by simply stating that they were insulted because they were not consulted or that Respondent Towbin acted rashly. Towbin's actions may not have amounted to "good business" as Complainant stated, but that does not make his actions violative of the governing policies, especially where such policies are silent as to the issue at hand.

Furthermore, the corporation appears to benefit SRC, has acted appropriately in handling the monies, and furthered the goals and objectives of the USSF. In addition, NJYSA allowed the NJSA to have a status on the corporation committee, albeit at the Federation's request. Complainant's own testimony through Mr. Zingrilli acknowledges that this corporation is a good thing. (Tr. at 165.) The resolution at the heart of this matter seems to be an agreement of both entities having input regarding the corporation's governance and bylaws. No one has said this corporation is bad for soccer and needs to be dissolved for that reason – the dispute is over joint ownership.

Since the Policy directives are silent, the undersigned finds that the creation of the corporation did not violate USSF Policies or Bylaws.

II. Referee Funds

The parties agree that there were discussions between NJSA and NJYSA relative to transferring referee money from NJSA to NJYSA for several purposes including better record keeping and tax reporting. The parties further agree that the check transferring these funds was signed by the Vice President of NJSA, Mr. John Zingrilli. Complainant argues this was a signed, blank check that Mr. Towbin utilized to transfer funds without permission.

The banking procedures regarding the handling of these monies before the corporation can be best described as imprudent. Blank checks were consistently signed and given to at least two other people to fill in. (Tr. at 91.) It is unclear what records, if any, were kept besides the bank statements, and Respondent Towbin stated he was fearful that reporting measures were not being followed with respect to taxes. (Tr. at 264.) Where Mr. Towbin was allowed to consistently fill in checks and as acting SRA was responsible for funds, it cannot be said definitively that he illegally transferred funds. Mr. Towbin placed the funds in a secure account

and turned over control to Mr. Mauro, the new SRA and a joint appointee. By all accounts, this was referee money which is now being stored by the new corporation for the benefit of the SRC. Respondents assert all proper records are being maintained. (Resp's pre-arb stmt at 2.) There have been no allegations of misuse or misappropriations of funds against Respondent Towbin.

Complainant has simply proffered insufficient evidence to show that Respondent Towbin acted unethically or fraudulently to sustain a violation of USSF Policy 531-11 Part III. Therefore, this allegation is rejected.

III. Individual Respondents

In finding that the SRC was jointly established by both NJSA and NJYSA, that the new corporate entity does not interfere with the functionality of the SRC, and that there was no violation of USSF Policy, the undersigned finds that the allegations against the individual Respondents cannot stand. In reviewing the individuals' conduct in comparison with USSF Policy 531-11 Part III, there simply is no act that interfered with or hindered the goals and objectives of the Federation, or anything that brings it disrepute. Respondents' actions simply do not rise to the level of "unethical" conduct. Therefore, the allegations against the individual named Respondents do not carry the burden of proof sufficient to warrant finding a violation. These allegations are hereby rejected.

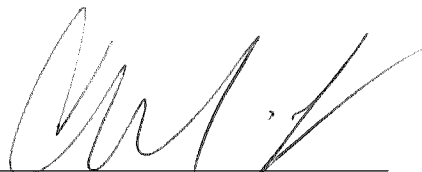
CONCLUSION

Based on the foregoing reasons, the undersigned hereby finds that NJYSA has committed no violation of USSF Policy 531-1, §4 and therefore, Count I of the Grievance Complaint is hereby dismissed. Additionally, Counts II, III, V, and VI, which pertain to the individual Respondents, are hereby dismissed. Furthermore, Count IV against Respondent Towbin has not

been substantiated with sufficient evidence for Complainant to meet its burden of proof and is, therefore, dismissed.

Costs for this proceeding shall be equally split among NJSA, NJYSA and USSF.

This is the final decision of the Arbitrator.

A handwritten signature in black ink, appearing to read 'C.H. Lee', written over a horizontal line.

CHARLIE C.H. LEE
Arbitrator