



Arbitration CAS 2015/A/4309 United States Parachute Association (USPA) & James L. Hayhurst v. Fédération Aéronautique Internationale (FAI) & National Aeronautics Association (NAA), award of 21 September 2016

Panel: Prof. Richard McLaren (Canada), President; The Hon. John Charles Thomas (USA); Mr Hans Nater (Switzerland)

Air sports (parachuting)

Alleged violation of the FAI Sporting Code in the context of a world record jump

Burden of proof of bias

Referral to the previous instance

CAS jurisdiction regarding membership of an organization

1. **A person alleging bias of certain individuals *e.g.* in the context of the appointment and investigation of a board of inquiry of a federation has to adduce profound proof of such bias.**
2. **A CAS panel will only apply Article R57 of the CAS Code and send the first instance decision which is subject of the appeal back to the previous instance if there are sufficient reasons to determine that the errors in the first instance decision are fatal and provided the panel feels compelled to overturn it.**
3. **Issues with respect to membership in an organization are the responsibility and in the purview of the organization. *E.g.* to gain membership, the proper channels within the organization must be followed. Therefore, in the absence of a decision rendered by the competent body of the organization a CAS panel does not have jurisdiction over a request to direct the organization in question to grant an appellant the right to join the organization as member.**

I. PARTIES

1. The United States Parachute Association (“USPA”) is the governing body of the sport of skydiving in the United States. It is a New York not-for-profit corporation with its principal place of business in Fredericksburg, Virginia, U.S.A.
2. Mr James L. Hayhurst (“Mr. Hayhurst”) is the Director of Competition for the USPA.
3. Collectively, Mr. Hayhurst and the USPA will be referred to as the “Appellants”.

4. The Fédération Aéronautique Internationale (“FAI” or “First Respondent”) is the world governing body for air sports, aeronautics and astronautics world records. It is headquartered in Lausanne, Switzerland.
5. The National Aeronautics Association of the United States (the “NAA” or “Second Respondent”) is, *inter alia*, a record-keeper for United States aviation and spaceflight records. It is the “Active Member” of the FAI for the United States. The NAA has delegated by contractual agreement its sporting powers in parachuting to the USPA who acts under the constating instruments as the role of National Airsport Control (“NAC”).

II. FACTUAL BACKGROUND

A. Background Facts

6. Below is a summary of the relevant facts and allegations based on the parties’ written submissions and evidence. Additional facts and allegations found in the parties’ written submissions, may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.
7. The FAI ratifies aeronautical international records (continental and world), including parachuting that are determined by an FAI Member or Associate Member to be in compliance with the FAI Sporting Code.
8. The various FAI Air Sport Activities are conducted under the authority of eleven specialised FAI Air Sport Commissions. Parachuting is one of those Commissions. The normal structure provides for the FAI to exercise the supreme authority in respect of air sport activities. The corresponding Sporting Powers are administered through the respective Air Sport Commissions which include the management of records which, at world-wide level, are sanctioned by the FAI.
9. The Sporting Powers can be delegated. The delegation of the Sporting Powers in each country is to an “Active Member” and the Sporting Powers are exercised by the Active Member representing the particular country. One of the included powers involves “*assistance in the homologation of aeronautics and space records in the respective Countries*”. See Article 2.4.1 & 2.4.2 of the FAI Statutes.
10. The NAA is the FAI Active Member in the United States vested with the authority of enforcement of the FAI Sporting Code including the Sporting Powers across all FAI activities. The entity within the Member that exercises the authority is the NAC. The NAC’s authority or a portion of it may be delegated. The delegation to an aeronautical organisation is under the control of the Active Member.

11. In the foregoing structure, the determination of the extent of the delegation of the Sporting Powers, when such is operated at national level between the Active Member and a sport specific organisation, is an internal issue to be defined between those two entities. Therefore, the Active Member is the sole party responsible for the delegation and that would apply to the management of records at national level.
12. The NAA has entered into a Letter of Agreement (“LOA”) by which it delegates some aspects of its Sporting Powers to the US Parachute Authority. It is a matter of contract as to the scope of the delegation and the power to take back the delegation. Any delegation by the NAA is confirmed annually in a notification to the FAI.
13. The notification for 2014 as set out in the Delegation Form refers to the process of world records and indicates that it is not delegated.
14. NACs are responsible for, among other things, control and certification of all FAI records originating from the country of the FAI Member for which the NAC has been established. In order to control and certify a performance, the Official Observer (“OO”) is the individual who has the authority to control and certify FAI record performances in accordance with the FAI Sporting Code 4.2.1. OO’s register with the NAC or, as in this case, with the NAC delegated air sport authority.
15. The USPA is recognized by the NAA as the sole authority to administer the Parachuting Section of the FAI Sporting Code in the United States and to represent United States parachuting to the FAI. Part of the USPA’s responsibilities include sanctioning, supervising, and certifying official parachuting competitions and record attempts in the United States in accordance with the aims and objectives of the International Parachuting Commission of the FAI, one of the Sporting Commissions of the FAI.
16. At all pertinent times, the NAA and the USPA had a LOA in effect since 22 December 1975 whereby the USPA was granted “sole authority in the United States to administer the Parachuting section of the FAI Sporting Code”. Therefore, the USPA supervised and controlled all parachuting activities in the United States in accordance with the general supervision of the NAA in consonance with the NAA’s responsibilities as the overall representative of the FAI in the USA.
17. The past practise under the LOA in respect of performance record attempts was for the USPA to name its OO who would oversee and control the record attempt. If the attempt was successful, the OO would prepare a dossier. The USPA would - under the authority of the LOA - issue the FAI Sporting Licenses and certify world records that were submitted to the FAI. Without revision of the LOA, the NAA has taken back the issuing of the sporting license and now requires record dossiers to be sent to Mr. Arthur Greenfield, the NAA Director of Contests and Records, for certification and transmittal to the FAI. Prior to Mr. Greenfield’s appointment, the NAA’s input on the official observer’s dossier was limited to making sure the FAI’s Sporting Code was complied with.

18. On 13 January 2013, Mr. Alan Eustace, a USPA member and FAI sporting license holder, contacted Mr. Hayhurst and asked him to be the OO for a world record sky diving attempt. Mr. Hayhurst, the USPA's Director of Competition and Records, agreed to the request.
19. On 24 October 2014, Mr. Eustace, along with his StratEx Team, successfully parachuted from a reported altitude of 41,422 meters (135,897 feet). In doing so, Mr. Eustace allegedly broke the record set two years prior by Mr. Felix Baumgartner and the Red Bull Stratos Project (38,969.4 meters (127,852 feet)).
20. After Mr. Eustace's jump, Mr. Hayhurst collected and analysed the Global Positioning System ("GPS") data, made his findings, and submitted a preliminary claim to the FAI. Over the next six weeks, Mr. Hayhurst prepared a record dossier, including *inter alia*, data cards and readings from the recording devices. That dossier was then submitted to Mr. Greenfield. Mr. Greenfield rejected the first and second versions of the dossier and failed to submit Mr. Hayhurst's third dossier. Then, Mr. Greenfield created a separate dossier that had not been seen or signed by Mr. Hayhurst. It was this dossier that the NAA forwarded to the FAI.
21. Upon learning of the NAA's non-certification, Mr. Eustace contacted Mr. Hayhurst, who in turn submitted his dossier directly to the FAI noting that his values were different than the values rejected (and submitted to the FAI) by the NAA (*i.e.* there were two different record dossiers with different claims).
22. Following Mr. Hayhurst's submission to the FAI, Mr. Jonathan Gaffney, President of the NAA, requested that the FAI adopt the NAA dossier, and not Mr. Eustace's dossier on the alleged world-record jump in question.
23. The FAI ultimately accepted Mr. Eustace's jump record and on 1 April 2015, Mr. Eustace was presented with a certificate of ratification at the Parachute Industry Association Convention in Daytona Beach, Florida.
24. Notwithstanding the FAI's recognition of Mr. Eustace's jump record, the USPA asked the NAA to conduct an inquiry into the way in which Mr. Greenfield handled Mr. Hayhurst's presentation of Mr. Eustace's dossier for world-record recognition. The NAA conducted an investigation and the USPA's claims were rejected.
25. On 17 July 2015, Mr. Hayhurst and the USPA voiced their concern to the FAI, and proceeded to file a formal complaint with the FAI requesting that its complaint be considered and the actions of Mr. Greenfield investigated.
26. The FAI Executive Board accepted the complaint of Mr. Hayhurst and the USPA, and invited the Secretary General of the FAI to appoint a Board of Inquiry ("BOI") to investigate the allegations.
27. On 23 October 2015, the FAI BOI issued its Report to the President of FAI (the "FAI Report"). According to the Appellants, the FAI Report failed to address the actual issue brought to their

attention, namely whether Mr. Greenfield wilfully violated the FAI Sporting Code by fabricating a false dossier with respect to Mr. Eustace's world record jump.

28. It is from the FAI Report that the Appellants now appeal to the Court of Arbitration for Sport (the "CAS").

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

29. On 18 and 19 November 2015, Mr. Hayhurst and the USPA, respectively, filed statements of appeal with the CAS in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the "Code") concerning the FAI Report.
30. By email dated 25 November 2015, Mr. Hayhurst confirmed that while two separate appeals were filed, they could be treated as one "global" appeal with the two parties being considered as co-Appellants.
31. On 26 and 27 November 2015, the Appellants confirmed their joint nomination of Hon. John Charles Thomas (Retired Justice), Richmond, Virginia, USA as arbitrator.
32. On 27 November 2015, the Appellants filed their appeal brief in accordance with Article R51 of the Code.
33. On 8 December 2015, the First Respondent wrote to the CAS Court Office asserting that the CAS did not have standing or jurisdiction to hear this appeal and therefore, it requested that a decision be rendered on this preliminary issue before any further written submissions were exchanged. In the meantime, it requested a suspension of its deadline to fully respond to the Appellants' request.
34. On 9 December 2015, the CAS Court Office invited the Appellants and the Second Respondent to respond to the First Respondent's request. The deadline for the First Respondent to file its answer was suspended.
35. On 11 December 2015, the CAS Court Office confirmed the Respondents' joint nomination of Dr. Hans Nater, Attorney-at-Law, Zurich, Switzerland as arbitrator.
36. On 14 December 2015, the Appellants responded to the First Respondent's request and objected to the suspension of any of the First Respondent's deadlines.
37. On 21 December 2015, the CAS Court Office acknowledged receipt of the Appellants' comments (noting that no such response was received from the Second Respondent) and informed the parties that the First Respondent's request would be forwarded to the President of the CAS Appeals Arbitration Division, who would issue further instructions to the parties.
38. On 4 January 2016, the CAS Court Office, on behalf of the President of the CAS Appeals Arbitration Division, informed the parties *inter alia* that the First Respondent's request to dismiss for lack of standing/jurisdiction was reserved for a decision by the Panel, once

constituted and moreover, the First Respondent's deadline to file its answer would remain suspended pending a decision by the Panel on the First Respondent's request to dismiss for lack of standing/jurisdiction.

39. On 7 January 2016, the First Respondent filed its response to the Appellants' request for provisional and conservatory measures. The Second Respondent did not file any observations.
40. On 25 January 2016, the President of the CAS Appeals Arbitration Division ruled that the request of the Appellants' for provisional and conservatory measures was denied.
41. On 2 February 2016, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division and in accordance with Article R54 of the Code, confirmed the Panel in this procedure as follows:
 - President: Prof. Richard H. McLaren, Professor of Law, London, Ontario
 - Arbitrators: Hon. John Charles Thomas (Retired Justice), Richmond, Virginia, USA
Dr. Hans Nater, Attorney-at-Law, Zurich, Switzerland.
42. On 15 February 2016, the Panel invited the parties to state whether they deemed a hearing necessary on the preliminary issues of standing and jurisdiction, or alternatively, whether they wished to file any further written submissions in this respect.
43. On 17 February 2016, the Appellant and the First Respondent informed the CAS Court Office that they neither deemed a hearing necessary nor intended to file any further written submissions. The Second Respondent did not respond to the Panel's invitation.
44. On 23 February 2016, the CAS Court Office, on behalf of the Panel, informed the parties that the Panel was sufficiently well informed to render a decision on these preliminary issues without the need for a hearing.
45. On 3 March 2016, the CAS Court Office, on behalf of the Panel, advised the parties that the Panel reserved its decision on the First Respondent's objections to jurisdiction and had decided to proceed on the merits of the case. The parties were further informed that no further submissions on the procedural objection were warranted. The First Respondent was invited to submit its answer within twenty (20) days of receipt of the Panel's letter. The Panel further advised that barring any objection from the Appellant and First Respondent, it invited the Second Respondent to file its answer on the merits in accordance with Article R55 of the Code within the same twenty (20) day period.
46. On 7 March 2016, the CAS Court Office on behalf of the Panel, advised the parties that it received no objection to the Panel's proposal to reinstate the Second Respondent's deadline to file its answer. The parties were further advised that the Panel considered a hearing necessary.
47. Following extensions in the time for filing, the Respondent FAI filed its Answer and Exhibits on 15 April 2016.

48. On 19 May 2016 a hearing was held in Washington, DC. The Panel was assisted by Mr. Brent J. Nowicki, Counsel to the CAS, and was joined by the following:

For the Appellants:

Ms. Sherry Butcher
Mr. Edward Scott
Mr. Jason Gordon
Mr. James Hayhurst
Mr. Paul Greene

For the First Respondents (by video conference):

Ms. Suzanne Schödel
Mr. Alvaro De Orleans Borbon
Mr. Jean-Pierre Morand

The Second Respondent did not participate in the hearing.

49. At the inception of the hearing, the parties confirmed that they had no objection with the constitution of the Panel. Upon conclusion of the hearing, the parties confirmed that their right to be heard had been fully respected.

IV. SUBMISSIONS OF THE PARTIES ON JURISDICTION AND STANDING

50. The Appellants' submissions on jurisdiction and standing, in essence, may be summarized as follows:

- The Statement of Appeal requests the following relief and seeks that the CAS:
 - (i) reverse 4 points within the findings of the Board of Inquiry ("BOI") of the FAI dated 23 October 2015;
 - (ii) that the NAA and its respective agents/representatives violated the FAI Sporting Code and assess penalties;
 - (iii) require that the NAA, through its Contest & Records Board review, and the FAI, through its BOI failed to conduct a sufficient inquiry under the FAI's governing documents in accordance with the principles of justice and equity;
 - (iv) it is further submitted that those who violated the Sporting Code be suspended from exercising the FAI Sporting Powers and the right to serve as an FAI Official Observer;
 - (v) direct that the FAI grant Associate Membership and/or supreme Sporting Powers for Parachuting in the United States to the USPA;

- (vi) certain provisional measures which were dealt with in a decision of the President of the Appeals Panel on 25 January 2016; and
 - (vii) costs throughout.
- The BOI report making no recommendations as to penalties is effectively a decision. While the FAI Statutes indicate the file is closed, that in itself does not mean there is no decision. The decision was to make no recommendations.
 - The Second Appellant submits that jurisdiction is established by Article 2.8.2.2.1. The BOI in recommending no penalty, made a decision and such decision was made by the highest authority to rule the matter. As such this matter is ripe for appeal.
51. The Respondents' submissions on jurisdiction and standing, in essence, may be summarized as follows;
- the procedure under the FAI Statutes to appoint a BOI was followed. The BOI, based on its findings and using the discretion vested in the Board, recommended from a range of possible recommendations set out in Article 2.8.2.2.4 that Mr. Hayhurst's complaint be rejected;
 - the fact that no penalty was recommended meant that after notification from the FAI President to the alleged violator the matter is closed. Article 2.8.2.2.3 states that no penalty can be imposed if none was recommended by the BOI. The negative content of the BOI report has the automatic consequence that the file is closed by application of Article 2.8.2.2.3;
 - Article 2.8.1.1.5 provides that only a *"decision by the appropriate highest FAI authority may be submitted exclusively by way of appeal to the Court of Arbitration for Sport (CAS) ..."*. For Mr. Hayhurst, there is no "decision" by the BOI to be appealed. There is in effect no right to challenge a recommendation by the BOI not to apply a penalty because such a recommendation cannot be considered a decision under the meaning of that word in the FAI Statutes. Therefore, there is no standing to appeal and the result is a complete absence of jurisdiction in the matter referred to the Panel;
 - in the alternative, even if a decision of the Executive Board issuing a sanction were presumed to have occurred, it would not provide a right for the complainant to challenge before the CAS;
 - in respect of the NAA, Mr. Hayhurst as an FAI observer does not have any personal entitlement to obtain sanctions against the NAA because it is not provided for in the applicable FAI rules;
 - the USPA was never a complainant under the FAI Statutes. It does not have any standing to appeal against the outcome of the investigation by the BOI. It did not initiate any form of action or complaint by which it might be able to argue there is a right to an appeal to CAS; and

- in the alternative, for the same reasons as argued in respect of Mr. Hayhurst any challenge by USPA would lack standing in the same manner as Mr. Hayhurst. However, it is unnecessary to decide the point because the only holder of the Sporting Powers for the United States of America is the NAA and not the USPA.

V. JURISDICTION (AND STANDING)

52. Article R47 of the Code provides as follows:

An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.

53. The FAI Statutes provide in Article 2.8.1.1.5:

Any decisions made by the appropriate highest FAI authority may be submitted exclusively by way of appeal to the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland, which will resolve the dispute definitively in accordance with the Code of Sports-Related Arbitration. The time limit for appeal is twenty-one days after the reception of the decision concerning the appeal.

54. The Appellants notified the FAI of a possible violation of the FAI Sporting Code by the NAA. The FAI Secretary General after following the procedure in Article 2.8.2.2.1 invited the President of the FAI to appoint a BOI.

55. The BOI performed its investigation functions as set out in Articles 2.8.2.2.2.1 through 2.8.2.2.2.4. The BOI pursuant to Article 2.8.2.2.2.4 made its final report and in its sole discretion decided not to make any recommended courses of action from the list set out in Article 2.8.2.2.2.4.

56. Pursuant to Article 2.8.2.2.3, the President of the FAI notified the results of the BOI to the alleged violator. That article then provides that: “... *the matter shall be closed. No penalty shall be imposed if none was recommended by the BOI*”.

57. Given that the BOI investigations were closed, there are no further proceedings that can be undertaken within the FAI Statutes. Thus, in the language of Article 2.8.1.1.5, there is a decision which was made by “*the appropriate highest FAI authority*”. The key here is to focus on the difference between the “highest FAI authority” and the “appropriate highest FAI authority”. In the opinion of the Panel, given the circumstances of this dispute, the BOI report was a decision by the “appropriate highest FAI authority” and thus was a decision ripe for appeal to CAS within the article.

58. The actions of the BOI constitute a decision within Article R47 of the Code. In the words of Article R67, the “... *Appellant[s] has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body*”. Therefore, there is jurisdiction for the CAS to hear the matter before it. Notwithstanding that this Panel has determined that

it has jurisdiction to hear the matter, for the reasons that will be set out below, the Panel does not consider that it has the jurisdiction to award all of the requests for relief set out in the Statement of Appeal.

VI. ADMISSIBILITY

59. Article R49 of the Code provides as follows:

In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.

60. Article 2.8.1.1.5 of the FAI Statutes provide that the “time limit for appeal is twenty-one days after the reception of the decision concerning the appeal”.

61. The decision appealed from was received by the Appellants on 30 October 2015. The Statement of Appeal was received by the CAS on 18 November 2015.

62. It follows that the appeal is admissible.

VII. SUBMISSIONS OF THE PARTIES ON THE MERITS:

63. The Appellants’ submissions on the merits are as follows:

- In reviewing and certifying the StratEx Record, Mr. Greenfield abused his authority and willfully violated the FAI’s Sporting Code. In particular,
 - o Mr. Greenfield twice capriciously rejected the OO’s certifying record dossier requiring baseless revisions;
 - The practice since approximately 1991 when submitting dossiers for record attempts was for the USPA to send its dossiers to the NAA for compliance purposes only. The NAA was not to interfere with or revise the OO’s findings which are made based on the OO’s expert knowledge combined with personal observation.
 - In this particular case, the OO first submitted the dossier on 11 December 2014. That dossier was rejected because it contained the Utley Comparison report which Mr. Greenfield contended was inappropriate because it conflicted with the OO’s findings.
 - Ironically, Mr. Greenfield advised the Utley Comparative-Analysis Letter should be removed because the findings differed slightly more than the two other independent analyses in the appendix, although all were within 0.01% of the others. The FAI standard for accuracy is 1%.

- Mr. Greenfield also took issue with the OO's approach to the determination of the end of "*distance of fall with drogue*". Mr. Greenfield mistakenly characterized this a "*the determination of parachute open event*".
 - Mr. Hayhurst submitted his second dossier and amended his distance of fall determination to the earlier value requested by Mr. Greenfield. Mr. Hayhurst also removed the Utley letter entirely. In other words, Mr. Hayhurst did exactly as Mr. Greenfield directed.
 - The second dossier was rejected primarily on the basis of formatting demands that had never before been made. Those formatting demands had not been made with respect to the first dossier, despite the formatting of the two being identical. Mr. Hayhurst himself had drafted and/or reviewed dozens of world-record dossiers submitted to the NAA and not one of those dossiers were ever rejected on the basis of formatting.
 - There was no basis for Mr. Greenfield to reject the dossiers sent by the OO, thus such actions amounted to an abuse of authority under the Sporting Code.
- Mr. Greenfield deliberately misled the OO into thinking that the OO's third-submitted dossier would be sent to the FAI, although Mr. Greenfield had manufactured a substitute (and non-compliant) dossier with the assistance of Mr. Brian Utley.
- The most egregious and inexcusable abuse of authority, as well as the violation of the FAI's Sporting Code of Conduct occurred on 9 February 2015 when Mr. Greenfield misled Mr. Hayhurst and the USPA into thinking that the third submitted dossier would be certified and sent to the FAI shortly.
 - Despite indicating to Mr. Hayhurst on 9 February 2015 that the dossier was still under review, in fact, Mr. Greenfield, along with Mr. Utley had manufactured an inauthentic, misleading and non-compliant dossier which they filed with the FAI.
 - Mr. Greenfield was obviously deliberately manipulative given that his email to Mr. Hayhurst was the same day he submitted the manufactured dossier to FAI.
 - While Mr. Greenfield's motives are not known, the most logical explanation is that so that he and Mr. Utley would continue to be associated with the prestigious world-record highest-altitude parachuting record, just as they had been with the Red Bull Stratos project. The other theory is that it was to serve as punishment to Mr. Hayhurst for failing to inform them of the record attempt in advance and inviting Mr. Utley to be a co-Official Observer.
 - Most interestingly, the Greenfield-Utley dossier did not meet the FAI Sporting Code in important ways. More particularly,
 - A dossier requires the signature of the official OO. Mr. Greenfield included a copy of Mr. Hayhurst's original Observer's Report from the

- first dossier to make it look like Mr. Hayhurst had approved of and had knowledge of the manufactured dossier.
- It is particularly telling that Messrs. Greenfield and Utley included the single page of the first report of Mr. Hayhurst because it is the only one that make mention of the Utley analysis. The second two dossiers removed the mention of the Utley analysis as per Mr. Greenfield's requirements.
- The BOI's review was biased and made erroneous findings all of which warrant reversal and the relief sought.
- The FAI BOI failed to follow proper procedure and was biased and erroneous because it was composed of political allies of the NAA. In particular, the review was erroneous because:
 - It went beyond the scope of a proper investigation and did not address the central complaint of the FAI's Official Observer.
 - It made erroneous conclusions in contrast to its factual determinations. For instance, the BOI report acknowledged that the NAA's representative created a substitute dossier made to look like it had Mr. Hayhurst certified it when in fact he had not, yet it did not find this a willful misrepresentation or fraudulent action. Likewise, the BOI did not find this action violated the Sporting Code.
 - Article 2.8.2.2 of the FAI Statutes sets forth the procedure by which alleged violations by an FAI member organization are investigated. The process is that when the FAI is notified of possible violations of its Statutes, By-Laws or Sporting Code, the FAI Secretary General is to inform the Executive Board. The Executive Board then determines whether the alleged violation appears to be legitimate and worthy of investigation. In the event that a BOI is appointed, it is to be composed of three individuals to conduct a hearing and review any submitted evidence.
 - The FAI President was biased and abused his authority to limit the scope of review of the BOI and appoint a BOI composed of at least an overtly bias chairman, so the matter would be summarily closed.
 - The NAA is the largest FAI organization member in the world and has outsized influence within the FAI. The NAA President was instrumental in delivering the 2014 presidential election to Dr. Jonathan Grubbstrom. When this matter reached the FAI, Mr. Gaffney was already wielding his influence by three times requesting the FAI Secretary General that the records office ignore the OO's complaint and adopt the NAA's dossier.
 - President Grubbstrom as early as 25 February 2015 first ignored and resisted the investigation requested by Mr. Hayhurst.

- Once the BOI was constituted, the FAI President abused his authority to limit the BOI's inquiry into "which performance claim is correct" rather than determine whether the NAA and its representative, Mr. Greenfield violated the Sporting Code.
 - The FAI President also appointed three BOI members with no practical knowledge of parachuting and its specialized Sporting Code. The Chairman of the BOI was loyal to the FAI President and openly biased against the USPA and Mr. Hayhurst. The two other members of the BOI found both dossiers submitted by Mr. Hayhurst to be suitable and expressed their objections to the NAA dossier, although in his report, the Chairman completely ignored this. The Chairman's failure to acknowledge these findings further demonstrates his bias and prejudice.
 - The Chairman of the BOI demonstrated his clear bias during the hearing on several occasions. Among the instances was when he lectured the USPA group that attended to testify stating "*The USPA has put a gun to the head of FAI*", and, among other things, "*it offends my personal sense of honor*".
 - The Chairman of the USPA acted as an apologist and defense lawyer for the Respondent, defending the NAA and Mr. Greenfield.
- Even if the BOI had not been biased, their determinations are clearly erroneous and therefore should be reversed with the Appellants being awarded the relief sought.
- The BOI was not tasked to address the central complaint of the FAI's OO that the NAA and Mr. Greenfield manufactured its own inauthentic dossier.
 - The central complaint of Mr. Hayhurst was that on 9 February 2015, Mr. Greenfield submitted his own NAA StratEx dossier without legitimate cause in violation of the applicable Sporting Code.
 - The BOI did not address that complaint in its investigation.
 - The first page of the BOI's report states that its first task was "*to review the record dossiers as received by the NAA and USPA and to determine which performance claim is correct*".
 - The USPA's complaint had nothing to do with the correctness of the findings of the NAA dossier. The complaint was the existence of the dossier in the first place; that it contained unauthorized documents and a letter addressed to the OO without his consent, and that the NAA intentionally misled USPA and the OO about its handling of the record dossier.
 - The BOI's report does not address the allegations in the complaint as required by the Statutes. For this reason alone it should be reversed and the relief sought should be granted.

- BOI acted capriciously when it determined that Mr. Greenfield had not willfully violated the Sporting Code despite deliberately manufacturing and submitting an inauthentic dossier and failing to obtain the OO's signature.
 - The finding of the BOI is not supported by the facts. The OO's certification of the performance is required by the Sporting Code and the certification requires his original signature. The BOI acknowledged this did not happen.
 - The manufactured dossier has pages inserted into it that were not part of the original, yet are inserted in to look as though they were, clearly designed to make it look like it was an original document.
 - The BOI used false rhetoric in its report.

64. The First Respondent's submissions on the merits are as follows:

- While past practice has been to refrain from modifying the OO's report, the unique circumstances of a stratosphere jump required that previous practice be abandoned.
- The role of the OO has always been to observe and report data from a record attempt. In the present case, there were ambiguities regarding the interpretation and collection of data. The responsibility of resolving such ambiguities lies ultimately with Mr. Greenfield and the NAA.
- Mr. Greenfield's first two rejections were well within his responsibilities. His first rejection was due to the fact that he wished to avoid providing analyses with slightly diverging results. Furthermore, he had reservations regarding Mr. Hayhurst's criteria to determining key data values. The second rejection was simply to fix formatting inconsistencies with past dossier submissions.
- When the third dossier was submitted by Mr. Hayhurst, it contained information directly in contrast to revisions Mr. Greenfield requested in his first rejection. The NAA was in charge of the dossier and had final say in its contents. The NAA and Mr. Greenfield have the final say on the contents and can ultimately decide which analyses best conformed with the FAI rules and should be included. Admittedly, the way the situation was managed was unsatisfactory and Mr. Hayhurst ought to have been informed that the dossier being submitted to the FAI was not consistent with the third dossier.
- The claims of bias are baseless. Mr. Greenfield had the authority to make changes and the submission of the final dossier was the responsibility of the NAA and not the OO.
- It is conceded that it was a mistake by Mr. Greenfield not to inform the OO of the changes, however this did not amount to a willful misrepresentation and the previous changes did not amount to an abuse of power.
- The relief sought in this matter cannot be granted in any event.

- A membership status may only be obtained through a decision of the FAI General Conference. The Statutes of the FAI do not provide for a situation where an entitlement to membership might exist. Neither the USPA, nor Mr. Hayhurst have any standing to raise a claim in this respect.
 - There has been no authoritative decision with respect to the membership of the USPA or Mr. Hayhurst, thus it cannot be appealed.
 - An appellant cannot ask for something which was not within the scope of the first instance proceedings.
 - A decision on a sanction cannot be issued.
 - In the unlikely event that the CAS were to find that the BOI erred in not finding that a violation of the FAI rules occurred, then the Panel could not itself issue a corresponding penalty.
 - The only possible decision of the CAS in this particular instance would be to send the decision back to the FAI Executive Board for the determination of an appropriate sanction in application of Article R57 of the Code.
65. Despite being given the chance to make submissions, the Second Respondent failed to file any submissions.

VIII. MERITS

66. Mr. Hayhurst, while being an employee of USPA, launched his complaint to the Executive Board as an FAI OO for the Alan Eustace StratEx Record. In filing his complaint, he alleged a wilful violation of the FAI Sporting Code by the NAA, a Member of the FAI. The specific request was for an investigation following internal investigation by the NAA which had absolved itself of any fault or wrong doing.
67. Ultimately, the matter went before a BOI of the FAI and the BOI determined, among other things that not all the performance claims reported in both world record claim dossiers were within the error margins prescribed in the FAI Parachuting Code; that for the same attempt, Alan Eustace holds national and world records with differing performance values; and no evidence of wilful misconduct or FAI Sporting Code violations by the NAA.
68. In the view of this Panel, the following questions must be addressed:
- i. Whether the BOI's review was biased? To address this, the Panel must determine:
 - ii. Whether the BOI made an error in making its findings or delivering its report.

A. Board of Inquiry's Review Documenting the Record

a. The record claim process

69. On 24 October 2014, Mr. Eustace jumped and claimed to have broken the world record for high-altitude parachuting. The record attempt was overseen by Mr. Hayhurst, who acted as the OO for the attempt, as is the requirement for record attempts.
70. Mr. Eustace's performance resulted in a claim for three records: The exit altitude; the distance of the fall; and, the vertical speed.
71. Mr. Hayhurst collected and analysed the data, and sent an initial report to the FAI. He then prepared the dossier as required and submitted Draft #1 on 11 December 2014 to Mr. Greenfield. The practise up to the submission under dispute herein was that it was his job to certify the record dossier submitted by the OO on behalf of the NAA and then submit it to the FAI. As a consequence, the record claim file is ultimately a NAA file. For this reason, Mr. Greenfield had a legitimate right and obligation to raise questions in regard to the content of the file.
72. On 19 December 2014, Mr. Greenfield returned the dossier to Mr. Hayhurst and requested that he remove peer-review reports in the appendix; including a letter by Mr. Utley whose numbers differed slightly from the other analyses in the appendix.
73. The apparent reason of this suggestion was that the proposed evaluation of the data by Mr. Utley led to slightly different results. Mr. Greenfield apparently wished to avoid providing two analyses with even slightly divergent results; even though results were within the acceptable 1% margin of error for parachuting records. He also mentioned reservations regarding the criteria proposed by Mr. Hayhurst to determine the end of the free fall.
74. On 23 December 2014, Mr. Hayhurst having removed the Utley letter submitted Draft #2 of the dossier. In that draft, Mr. Hayhurst also explained that he had revised the determination on the end of the fall doing so on a more conservative basis. Mr. Greenfield rejected that draft on the basis that it was improperly formatted; despite the fact the formatting was identical to the first draft. An issue never previously raised in many previous dossiers submitted by Mr. Hayhurst using the same formatting.
75. On 12 January 2015, Mr. Greenfield acknowledged receipt of the revised dossier Draft #2 and requested reformatting changes which would render the dossier consistent with the presentation style utilised by the NAA for other dossiers.
76. Draft #3, submitted on 16 January 2015, contained two material changes. Mr. Hayhurst had decided to use average values of the 2 independent data logs, as each of these was equally valid. Second, Mr. Hayhurst had decided to return to his initial evaluation of the end of the fall. This is a portion of the dossier that he had changed further to the concern raised by Mr. Greenfield and would be contrary to the position Mr. Greenfield had expressed.

77. Mr. Greenfield, without informing the USPA or Mr. Hayhurst, discarded Mr. Hayhurst's certified record dossier. When Mr. Greenfield received an email inquiry on 9 February 2015 from Mr. Hayhurst on the status of the dossier, Mr. Greenfield concealed his actions from the OO by indicating that the dossier was still under review and was going to be sent to the FAI before the close of the week.
78. In fact the dossier was not under review.
79. As stated above, there are two primary questions this Panel is must address. The first is whether the BOI's review was biased and the second is whether the review made erroneous findings. If the answer to both or either is yes, whether such findings by the Panel warrant a reversal of the BOI's decision and for the Panel to grant the other relief sought.
 - i. *Was the BOI's review biased?*
 80. The Appellants state that the BOI's review was biased because the FAI President that appointed the BOI was biased and abused his authority in two ways. First, to limit the scope of the review of BOI, and second, to appoint a biased chairman to the BOI.
 81. Despite their strong contentions in this regard, there was very little evidence put forward to support the theory that the FAI President was biased and/or that such bias influenced the BOI.
 82. The FAI President's decision to limit the scope of the review, in this Panel's view, is entirely within the FAI President's discretion. The BOI report also outlines on page one of the report that it was tasked to "*investigate the issues raised by the FAI Official Observer (OO) Mr. James L. Hayhurst in his formal Complaint addressed to FAI President on July 17th, 2015*". To the extent they were directed to investigate that issues, this Panel would consider that included an investigation into the conduct of Mr. Greenfield.
 83. The Appellants also claim that there were several instances of demonstrated bias by the Chairman of the BOI. With respect to the allegations regarding the bias of the Chairman of the BOI, this Panel cannot find that such bias has been demonstrated to the required standard of proof. Even if the Panel were wrong, and there was bias, it has not been proven that such bias impacted the record and/or review. The report appears to have addressed all of the issues it was tasked to do and while the Appellants may disagree with the finding, there is no evidence that the BOI was influenced by bias. To the extent that the Chairman may have been biased, which this Panel has been unable to determine, as the Appellants themselves state, the other two members of the Panel "did their job fully". For this reason, the Panel considers that the review was not tainted by bias.
 - ii. *Was the BOI's review erroneous or improper?*
 84. According to the Appellants, the central complaint of Mr. Hayhurst was that on 9 February 2015, Mr. Greenfield of the NAA submitted his own NAA StratEx dossier without legitimate cause in violation of the applicable Sporting Code. The Appellants contend that the BOI failed to address this complaint.

85. A review of the report of the BOI would suggest that the primary issue addressed by the BOI was which dossier was the correct dossier, although subsidiarily, they were also tasked to *“investigate the issues raised by the FAI Official Observer (OO) Mr. James L Hayhurst in his formal Complaint addressed to the FAI President on July 17th, 2015”*.
86. Notwithstanding the fact that the report provides on page one that the BOI was tasked to investigate Mr. Hayhurst’s complaint, the report does little to address the facts outlined in the complaint. Furthermore, and somewhat curiously, the terms of reference of the report do not seem to parallel the summary provided on page one.
87. In conducting its review, the BOI outlined that there were two main areas of concern, neither of which addressed the true nature of Mr. Hayhurst’s complaint. Nevertheless, the BOI somehow reached a conclusion that there was no evidence of wilful misconduct or FAI Sporting Code violations by the NAA, which would include the actions of Mr. Greenfield.
88. The Report is rather wanton in terms of how it managed to reach those conclusions and fails, in this Panel’s view, to provide a reasoned decision in that regard. This error is not, however fatal to the BOI report such that the Panel feels compelled to overturn the report or send it back for review. If the Panel did find there was such an error, the Panel is of the opinion that the only proper remedy would be to re-direct the report back to the BOI.
89. In addition to failing to provide a full reasoned decision with respect to the true nature of Mr. Hayhurst’s complaint, this Panel would agree that the BOI went beyond what the Appellants requested of the FAI, in making a decision with respect to the correctness of the dossier. Notwithstanding that finding, this Panel does not find that it was erroneous in doing so. It was, to some extent, necessary to make this determination in order to address the question as to whether Mr. Greenfield had deliberately manufactured the dossier. Additionally, it is not wholly outside the powers of a board of inquiry or panel to determine the scope of its review or authority to a certain degree. Certainly the FAI had power to determine the scope of the review of the BOI, as to some extent did the BOI itself.
90. The Appellants also claim that the report of the BOI is inherently contradictory. That it makes findings of facts that would support a different conclusion on the merits. In particular, despite holding that Mr. Greenfield deliberately manufactured and submitted the inauthentic NAA dossier, it went on to find that there was no wilful violation of the Sporting Code.
91. In the view of this Panel, it was the BOI that was in the best position to make this determination. It heard and received evidence from all the parties on this matter and made a finding that Mr. Greenfield’s actions were innocent and excusable. The Panel was not presented with any evidence so contradictory as to necessitate interference with that decision. Accordingly, it does not find the BOI was unreasonable in making this determination and thus does not find it appropriate to overturn its decision.
92. Nevertheless, the Panel in making all of the foregoing conclusions does find it rather exceptional that the dossier was interfered with by the employee of the NAA. The Panel notes that the rejection of the dossiers submitted by Mr. Hayhurst was without explanation and, more

particularly the dossier he fabricated could pose a threat to the integrity of the sport. The Panel recommends that the parties work out a better written understanding of the protocol to be used in the future for such events.

B. Requests for Relief

93. The Panel has determined that it had jurisdiction to hear the matter. In reviewing the requests for relief of the Appellants, the Panel determines that it does not have jurisdiction to award the requests for relief set out below:
- i. Directing the FAI to grant the USPA the right to join the FAI as an Associate Member and/or assignment of direct sporting powers to USPA for parachuting in the United States;
 - ii. Assess penalties against the Respondents.
94. Issues with respect to membership in an organization are the responsibility and in the purview of the organization. To gain membership, the proper channels must be followed. In this FAI membership status can be obtained solely and exclusively through a decision of the FAI General Conference. The rules do not provide for a situation where another form of membership may be granted or under other circumstances. To interfere in the internal affairs and governance of the FAI would be improper at this point. There has been no decision by the competent body of the FAI that would permit this Panel to take jurisdiction and grant such a remedy.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr. James L. Hayhurst and the United States Parachute Association 18 November 2015 is dismissed.
 2. The FAI Board of Inquiry report to the President of FAI dated 23 October 2015 is confirmed.
- (...)
5. All other motions or prayers for relief are dismissed.