



Fargo Soccer Club
Matt Noah, President
4910 Meadow Creek Drive South
Fargo, North Dakota 58104
September 5, 2008

To: USSF Board of Directors
Attention: Greg Fike, Staff Attorney
1801 South Prairie Avenue
Chicago, IL 60616

North Dakota Youth Soccer Association (NDYSA)
Attention: Terry Schneweis, Executive Director and
Larry Monaco, Representative
3022 Walnut Street
Grand Forks, ND 58201

Minnesota Youth Soccer Association (MYSA)
Attention: Candace Daley, Executive Director
11577 Encore Circle
Minnetonka, MN 55343

Appeal Brief

This Appeal Brief ("brief") is in response to the appeal filed by NDYSA disputing the Hearing Examiner's finding in the grievance filed by the Fargo Soccer Club (FSC, aka North Dakota SAY) that NDYSA and MYSA wrongly discriminated against FSC in violation of the USSF's bylaws, policies and rules.¹ In its brief, NDYSA raises a number of convoluted challenges to the Hearing Examiner's decision (the "Decision"). Essentially, NDYSA is attempting to re-argue its case, often referring to so-called "evidence" outside the official record, i.e., the written record and oral testimony. All of NDYSA's arguments lack merit and its appeal must be denied.

We support the findings and decision of the Hearing Examiner on all points appealed to by NDYSA. NDYSA and its members discriminated against FSC and its teams because they were members of SAY – another USSF member. The Hearing Examiner recognized that the USSF bylaws and policies were designed to make it easier – not harder – for kids to be able to play soccer and the Hearing Examiner enforced those rules. The Hearing Examiner correctly recognized that under the USSF bylaws all USSF members are to be treated equally and that a USSF Member Organization must "police the activities of its members to assure compliance with the USSF Bylaws and Policies." The Hearing Examiner correctly recognized that one USSF member cannot discriminate against another and that children should not be denied the opportunity to play soccer because one set of parents is unhappy that

¹ It should be noted that the Minnesota Youth Soccer Association ("MYSA") has not appealed the Hearing Examiner's decision.

another set has formed a new club in town. The Hearing Examiner got it right and the USSF Board of Directors must do the same. The USSF must send the same message to its members. The USSF must enforce its bylaws to ensure the opportunity for children to play soccer in all USSF programs. The USSF must affirm the Hearing Examiner's decision and deny NDYSA's appeal. We further ask that the USSF Board of Directors extend the decision by the Hearing Examiner to find that NDYSA violated both USSF Bylaw 603 and USSF Bylaw 213. We will show that the record indisputably supports both extensions.

The FSC will show that NDYSA and Mr. Monaco, in their appeal brief tried to prejudice and mislead the USSF Board of Directors by introducing so-called "evidence" which they know to be false.

FSC will attempt to respond to the issues raised by NDYSA's appeal in the order that those issues are raised in NDYSA's brief.

1. In its first paragraph, NDYSA attempts to characterize the underlying action. It fails to do so accurately. NDYSA asserts that that the 3 clubs that currently make up the FMWFSL (Fargo Moorhead West Fargo Soccer League) are strictly recreational clubs. That assertion is not correct. Each of the 3 clubs has both recreational and competitive programs with multiple teams in each category. While the league is advertised as a recreational league, a great many of the competitive players from the 3 clubs play in the FMWFSL both in the Autumn and Spring seasons. The NDYSA does not raise any issues in this paragraph, which is generally irrelevant. The Hearing Examiner correctly recognized the issues in the grievance and correctly ruled in FSC's favor.

2. In the second paragraph, NDYSA asserts that the Hearing Examiner incorrectly applied USSF Bylaw 601, and Policies 601-7 and 212-1. As fully supported by the record, the Hearing Examiner correctly applied these provision these provision to the facts in this case and found in favor of FSC.

3. In the third paragraph, NDYSA raises hyper-technical issues with the Hearing Examiner's decision. NDYSA attempts to assert that the use of "previous seasons" was somehow incorrect because the grievance only sought relief with respect to the upcoming season. NDYSA's distinction is meaningless. FSC could not possibly seek relief to participate in a season that has already occurred. While the Hearing Examiner may have broad powers, he cannot turn back time. The record contained information of FSC's repeated efforts to participate and repeated denials by NDYSA, including NDYSA's refusal to grant membership to FSC. For example, the written records show numerous attempts by the Red River Soccer Club to thwart interplay between its teams and the teams of the FSC (see Dean Gross and Mike Thomas email records). The written record also shows attempted coach intimidation and

threats of loss of insurance (again, Gross and Thomas). The written record further shows that NDYSA changed its bylaws to deliberately excluding non-NDYSA teams from interplay (see 2007 and 2008 NDYSA bylaws, rules, procedures). The written record shows that the NDYSA/MYSA interplay agreement does not allow for other USSF Member Organizations to participate in its programs (see NDYSA/MYSA interplay agreement). The written record clearly indicates that the FMWFSL involved two separate USSF Member Organizations – NDYSA and MYSA – who conspired through its member clubs (Red River Soccer Club, West Fargo Soccer Club, Moorhead Youth Soccer Club) to violate USSF Bylaw 603 on Interplay by deliberately excluding the local Soccer Association for Youth (SAY) club, namely the Fargo Soccer Club, from the FMWFSL. Thus, the record clearly supports the Decision on this point and the Decision should be affirmed². But not only affirmed but extended. **We ask the USSF Board of Directors to find on appeal that the NDYSA has violated USSF Bylaw 603.** The Hearing Examiner, in footnote 13 of his decision, only stated that he considered Bylaw 603 and found insufficient evidence indicating such a violation, not that he didn't find any evidence or numerous evidence. We believe there is more than enough evidence in the written record to find NDYSA in violation of USSF Bylaw 603 just as the Hearing Examiner found MYSA in violation of USSF Bylaw 603. The facts and the record are clear. Two separate USSF Member Organizations (NDYSA and MYSA) excluded a separate USSF Member Organization (FSC) from interplay in the FMWFSL for no other reason than that of discrimination.

4. In the next paragraph, NDYSA claims that the Hearing Examiner misconstrued USSF Bylaw 601 and Policy 601-7 and that he should have allowed NDYSA to discriminate against FSC. NDYSA asserts that the Hearing Examiner should have ignored these provisions and looked at different USSF Bylaws and Policies. In other words, NDYSA wants to compartmentalize different USSF bylaws and policies so that it can exclude other USSF members. The Hearing Examiner correctly determined that the USSF bylaws and policies are to be inclusive and not a means for excluding soccer players and teams.

In part (b) of this paragraph, NDYSA attempts to claim that the provisions were wrongly applied because they allegedly are to be applied internally within the same organization and not to non-members of that organization. NDYSA, however, attempts to ignore the fact that it actively refused to allow FSC to join it. In fact, NDYSA – much like the former Rhode Island Youth Soccer Association – engaged in a

² Moreover, NDYSA's focus on "clubs" the plural instead of "club" singular is irrelevant. The inclusion of one club is all that matters. Whether it was more than one is irrelevant.

continuing effort to exclude FSC and its teams, including changing its bylaws to exclude FSC. The Hearing Examiner correctly applied 601-7 to NDYSA, FMWFSL and the member clubs. The Hearing Examiner found that the FSC had not been allowed to register its teams. The NDYSA further states incorrectly that the Bylaw 601 and Policy 601-7 contain no reference to the word "travel". However, 601-7(1(B)) clearly does reference "travel" as correctly applied by the Hearing Examiner. Similarly, NDYSA's attempted reliance on its agreement with MYSA is misguided. While it may eliminate the need for travel permissions between NDYSA and MYSA for interplay between their member clubs, that agreement (attached) is clear evidence of a direct violation of USSF Bylaw 603 since it excludes other Member Organizations from participation, namely the FSC. Clearly, the Hearing Examiner applied the correct bylaws, the correct facts and the correct logic in determining a violation of Bylaw 601 and Policy 601-7.

In part (c) of this paragraph, NDYSA claims that the Hearing Examiner opened a "backdoor" method for requiring a member of one organization to become a member of another organization. This simply is not true and does not make sense. There is no need for any "backdoor"; USSF policy clearly mandates that the front door must be open! USSF policy expressly states that a USSF Organization Member must be open to portions of other USSF Organization Members, provided those portions comply with reasonable registration requirements, which the Hearing Examiner found the FSC was prepared to do. There is no need to consult Robert's Rules or Order or any of the other contortions attempted by NDYSA on this point, including its attempt to claim that games are somehow not competitions because they are "recreational." This bizarre logic is certainly easily refuted by the competition schedule recently posted by the FMWFSL which shows numerous different teams matched against each other on various fields at various times for a six week period of time in what is called a league (see attached). The FMWFSL is not the equivalent of an "open" gym where pick up games are played.

NDYSA's last point in part (d) of this paragraph is a complete red herring. The Hearing Examiner correctly noted that this dispute focused on the participation of "teams" not players.

5. In paragraph 5 (a) – (e), NDYSA claims that the Hearing Examiner erroneously found that NDYSA had violated USSF Policy 212-1 by not allowing FSC to participate in the FMWFSL. NDYSA claims that FSC was not permitted to participate because it was unwilling to follow team selection procedures. That is simply not true. As FSC clearly stated at the hearing, it was and is willing to abide by the team selection procedures. Moreover, the Hearing Examiner's award clearly states that FSC is to "comply with all reasonable rules established for participating in the" FMWFSL. The Hearing Examiner

heard all of the evidence and properly considered it. He recognized that NDYSA intentionally discriminated against and excluded FSC because it was a member of SAY and not USYSA. So convinced of NDYSA's improper motives, the Hearing Examiner specifically included in his award that "NDYSA...nor any of [its] members, shall establish any arbitrary or unreasonable policies, rules, regulations and requirements for participation in [its] leagues." The Hearing Examiner saw how NDYSA had changed its rules before just to exclude FSC and he was not going to let it happen again.

In fact, the Hearing Examiner correctly foretold at least one action NDYSA would take rather than let FSC participate. As noted in its brief, rather than open its programs to allow more kids to play soccer, NDYSA "direct[ed] FMWFSL to stop immediately the interplay between Jamestown and the league." Thus, NDYSA's "solution" is to deny more children the opportunity to play rather than permit FSC's teams to play. NDYSA's continued exclusionary actions are clearly not in the best interests of soccer. NDYSA should be sanctioned by the USSF for its continued bad acts.

Unfortunately, NDYSA's bad faith throughout this entire matter made it clear that they would likely take this wrong path. That is why the Hearing Examiner stated in his Award that: "Teams organized by FSC shall be allowed to participate in the FMWFSL in the fall 2008. Such participation shall be allowed **even if the organizing clubs do not allow participation by members of any other club**, since FSC was precluded from participating in this league in previous seasons in which other clubs were allowed to participate." What makes the continued bad faith of NDYSA even more shocking and disappointing is that it has taken these actions that are clearly not in the best interest of soccer under the advice and counsel of the President of USYSA and USSF Board of Directors member, who is representing them in this matter. The USSF must send a clear message that such actions are not permitted and will not be countenanced.

In his appeal brief, Mr. Monaco claims the FMWFSL league is an in-house league of the 3 clubs. The term "in-house" is commonly used to reference one club's internal league, not to reference a league among different clubs (different corporations, different boards, different bank accounts, different registration procedures) and certainly not a league which involves more than one USSF Member Organization. Mr. Monaco correctly states it is the only recreational league in the FMWF area if one ignores the internal league of pre-school players run by the FSC. And if Mr. Monaco has his way, there will be at least two separate recreational leagues in the FMWF; the FMWFSL and any league run by the FSC. **Mr. Monaco prejudices and misleads the USSF Board of Directors when he states, "It**

[FMWFSL] does not want to admit teams that are intentionally stacked – filled with competitive players – in this recreational league. This type of disparity is not conducive to fair play at the recreational league.” Upon the Hearing Examiner’s decision, the FSC informed the FMWFSL that it would enter 3 kindergarten boys’ teams and 2 kindergarten girls’ teams in to the Fall 2008 FMWFSL. The 3 boys’ teams are the Alligators, Cougars and Zebras. The 2 girls’ teams are the Bumblebees and Dolphins. The Hearing Examiner’s decision was communicated to the FSC at 8:51 am on August 14, 2008. The FSC sent an email to the FMWFSL registering our 5 teams at 7:49 pm on August 14 (see attached). At no time did we register ANY player who had played on any competitive/traveling team despite the fact we could have. On August 15 we sent an email (see attached) to the FMWFSL stating “We thought briefly of entering our older teams but since those are primarily competitive players we didn’t want to create an imbalance or impinge on the spirit of recreational soccer. We’d like to entertain the notion of a local competitive fall league for U10 and above like happens in the Twin Cities and elsewhere nationally.” Mr. Monaco’s appeal and statements were dated August 23, 2008; eight days after the email exchange above. To emphasize the point, see the attached email from Red River Soccer Club coach Dean Gross on August 18, 2008 where he states that half of his competitive/traveling team [RRSC Venom, the 2008 State Champions] from Summer 2008 is now participating in the recreational (FMWFSL) soccer league. The FSC forms teams in much the same way described by NDYSA in section 5(c) or their appeal. In section 5(d) of the appeal, NDYSA claims the FSC does not follow team formation rules. The Hearing Examiner found otherwise. Mr. Monaco is trying to introduce new alleged evidence when his so-called evidence is contradicted by the record. The FSC agreed to abide by the “play up” rule and is doing so by virtue of our 5 kindergarten teams. The question of where we draw our players from is moot since we are a SAY and US Club Soccer affiliate and are operating within our set boundaries. The USSF anticipates and allows different Member Organizations such as SAY, US Club Soccer and US Youth Soccer to have overlapping boundaries. A league rule cannot supersede USSF bylaws. This is part of the USSF Bylaws, USYSA bylaws and both NDYSA and MYSAs bylaws as shown in the written record. Our team formation, team selection and other rules are in conformance with both Policy 212-1(4(b)) and the published rules of the FMWFSL; all of which are part of the written record and all of which were ruled to be in compliance by the Hearing Examiner. Moreover, the Hearing Examiner found that Red River Soccer Club President Dan Dunn’s comments on the philosophical differences and “similar subjective criteria” were not reasonable to exclude a group of participants from joining a league. As the

Hearing Examiner so forcefully states, **“Such a requirement is reminiscent of the types of requirements for social clubs that were designed to exclude minorities.”** Again, there is more than sufficient evidence for a discrimination ruling showing the violation of USSF Bylaw 603.

6. Lastly, in paragraphs 6 and 7, NDYSA alleges that the Hearing Examiner wrongly held NDYSA responsible for the actions of its members. NDYSA also attempts to assert a lack of notice that FSC’s claim was based in part on USSF Bylaw 213(1)(a)(3) which extends the USSF’s bylaws to members of USSF Member Organizations. The Hearing Examiner correctly rejected both of these arguments by NDYSA. With respect to NDYSA’s claims that it was not responsible for the actions of its members, the Hearing Examiner stated: “If the state members of USSF to which these clubs are members had no responsibility whatsoever for the actions of their members, then many of the USSF Bylaws, including those that have been cited in this case, could easily be circumvented. Clearly, that was not intended by the USSF Bylaws.” NDYSA’s assertion on appeal that it is correctly enforcing the USSF Bylaws because it has now also excluded Jamestown so that it can exclude FSC is of no help. It only further shows the bad faith and discrimination of NDYSA against FSC. As to the notice issue, the Hearing Examiner correctly noted that NDYSA has “been on notice since early in these proceedings that FSC’s claims are that its teams have been wrongly denied the opportunity to participate in leagues falling under the jurisdiction of NDYSA...in violation of USSF Bylaws and Policies.” That NDYSA attempted to base its defense on a position directly contrary to the USSF Bylaws is not a notice issue or problem. NDYSA has been obligated to comply with that bylaw provision since it was enacted in 1998.

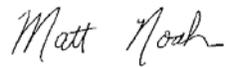
7. For these reasons, NDYSA’s appeal must be denied and the Hearing Examiner’s Decision must be affirmed.

8. The FSC seeks two items of additional relief which are supported by the facts and the record. First, we ask that the USSF Board of Directors find that NDYSA violated USSF Bylaw 603 on discrimination. We believe we had produced sufficient evidence to that effect. We also believe that a ruling in our favor on 603 will put an end to the discrimination by NDYSA and its member clubs. It will provide the correct amount of relief; no more and no less. Second, we ask that the USSF Board of Directors find that NDYSA violated USSF Bylaw 213 which requires NDYSA to be open to any amateur soccer organization in its territory. It is not. The record clearly indicates we sent in money, lists of teams and proper affiliation documents in compliance with both USSF Bylaw 213 and NDYSA Rule 1500. We believe the Hearing Examiner made an honest mistake in thinking that from our original letter dated

January 30, 2008 to NDYSA that membership in NDYSA was not a part of our complaint at the time. Upon careful examination of the written record, one clearly sees that our reference to membership in NDYSA at that time was made because we had applied to be a member club of NDYSA through a different provision of NDYSA bylaws and rules. In our official grievance filed with the USSF, we had subsequently applied to be a member of NDYSA through Rule 1500 and USSF bylaw 213. In our grievance we clearly asserted our rights under 213 and 1500 and seek relief from the USSF in this regard.

Respectfully submitted,

FARGO SOCCER CLUB

A handwritten signature in cursive script that reads "Matt Noah".

Matt Noah, President, North Dakota SAY aka Fargo Soccer Club