

CAUSE NO. 2011-23030

RANDY MATTINGLEY

Plaintiff,

v.

UNITED STATES PROFESSIONAL TENNIS
ASSOCIATION, INC.,

Defendant.

§ IN THE DISTRICT COURT
§
§
§
§ OF HARRIS COUNTY, TEXAS
§
§
§
§ 113TH JUDICIAL DISTRICT

AFFIDAVIT OF PAUL WALDMAN
General Counsel, USPTA

I, Paul Waldman, after being duly sworn, do truthfully and voluntarily state:

1. My name is Paul Waldman. I am over the age of eighteen (18) and competent to make this affidavit. The following testimony is based on my personal knowledge. If asked to testify about the matters herein I can and would do so truthfully.

**THE INTENTION OF THE USPTA BYLAWS WAS TO PLACE THE EXECUTIVE
COMMITTEE IN CHARGE OF EVERY IMPORTANT DECISION OF THE USPTA**

2. Since 1974, I have served as the General Counsel to the United States Professional Tennis Association (USPTA). One of my first tasks as General Counsel was to draft the USPTA bylaws.

3. In drafting the bylaws, I had to set out the respective powers of the Executive Committee and the Board of Directors. The clear intention of the USPTA bylaws was to establish an Executive Committee with authority over every significant decision of the USPTA. This is because the Executive Committee, more than any other USPTA governing body, represents and provides a voice for the members of the USPTA.

4. The Executive Committee is comprised of two representatives from each of the seventeen regional USPTA divisions. Each of these two representatives are elected by the divisions prior to the annual Executive Committee meeting. Bylaws, Art. VI, sec. 3.

5. The Executive Committee members meet at least once a year to discuss and vote on all major decisions affecting the USPTA. These important decisions include adopting a budget, determining where the world headquarters will be, approving the contract with the Chief Executive Officer, establishing the regional divisions from which the members' representatives are chosen, and establishing the USPTA policies, among others.

6. By contrast, the bylaws establish a Board of Directors with far more restricted powers. This is reflected both in the bylaws and in the long-standing practice of the USPTA. I have been present in well over a hundred meetings of the Board of Directors since 1974, and one question routinely asked by board members is whether a decision is too important to be decided by the board, such that it should be presented to the Executive Committee.

7. There can be no doubt in the minds of the boards of directors that the board is subservient to the Executive Committee. At the time I was drafting the bylaws the members of the USPTA through the Executive Committee would not have approved the bylaws if an eight-member board of directors possessed more power than the much larger Executive Committee.

8. Hence, I drafted the bylaws to reflect that the Executive Committee would manage the affairs of the USPTA. See Art. VI, sec. 1 (Powers of the Executive Committee). The bylaws further state that the "Executive Committee will have all powers specifically reserved to it by these bylaws and such other powers of a general policy-making nature." Art. VI, sec. 1. This too was intentional: while the Board of Directors powers were limited, there is no express limitation on the power of the Executive Committee.

9. To make even clearer the absolute power of the Executive Committee over the Board of Directors, the bylaws contain the following provision:

Should any disagreement exist with any other body within the USPTA, such as the Board of Directors, as to the scope of the Executive Committee's powers, the determination of the Executive Committee shall be final.

Bylaws, Art. VI, sec. 1.

10. Moreover, the bylaws give the Executive Committee the power to remove the Board of Directors:

The Executive Committee shall have the power, which may be exercised at a meeting specifically called or at its annual meeting, to suspend, for cause, the authority of any of the directors of the Association.

Bylaws, Art. VI, sec. 1.

11. By contrast to the general powers of the Executive Committee, the Board of Directors' powers are restricted both in the bylaws and by long-standing USPTA practice. Indeed, the first sentence of Article VII, section 1, entitled "Powers of Board of Directors" states: "The Board of Directors shall manage the affairs of the Association between meetings of the Executive Committee." The absolute authority of the Executive Committee over the Board of Directors has long been a tenet of USPTA governance.

12. In sum, in a game of rock/paper/scissors between the Executive Committee and the Board of Directors or any other body of the USPTA, the Executive Committee always wins, and I had to write the bylaws this way because it was the only just way and precisely in order to get the bylaws passed by the membership.

THE EVENTS AT THE JANUARY 2011 BOARD OF DIRECTORS MEETING

13. I was present at a meeting of the USPTA Board of Directors that took place on January 8-9, 2011. Also present at the meeting were Tom Daglis, Randy Mattingley, Bunny Bruning, Mark Fairchilds, Chuck Gill, Jack Groppe (by phone), Jim Loehr, and Harry Gilbert.

14. When Tom Daglis convened the meeting he shared that he was visited by Mattingley and several other board members in his hotel room that morning, and was asked whether he would accept the nominating committee's decision to nominate him for President for a

second term. Tom shared that he had not yet been informed of any decision of the nominating committee. The first day of the board of directors meeting was routine business.

15. The second day of the Board of Directors meeting was like witnessing bullies in a playground. In what appeared to be pre-orchestrated, the plaintiff and four members of the Board made a series of motions against Tom Dagleis, which I recorded in my notes as follows:

Motion: Pres Dagleis shall not make any binding commitments with any entity without prior Board approval.

Motion (Bunny): All written communications between Pres. Dagleis and the national office shall be copied by the president to the Board. All written communications by national to Pres. Dagleis shall be copied by the national office to the Board'

Motion (Mark): The USPTA national Board of Directors expresses a vote of non confidence in To Dagleis as president of the USPTA.

Motion (Randy [plaintiff]): The Board requests a special Executive Committee meeting in Houston for the purpose of removing Tom Dagleis from the office of president of the USPTA.

Motion (Randy [plaintiff]): The Board moves that the USPTA send another representative, rather than President Dagleis, to the USTA meeting in March.

16. The protests of these board members were revealing of their true motivation, as they expressed their sentiment that the nominating committee had chosen the wrong person for president, that it was Randy Mattingley's turn to be President, that Tom should resign, that it had only happened once before that a president was permitted to serve two consecutive terms, that the nominating committee didn't interview enough people, and so on and so forth. I was asked by these board members to find some illegality in the nominating committee's decision. I said that the nominating committee's decision was legal, explaining that regardless of what the board members may think about the nominating committee's choice, the nominating committee was duly elected by the Executive Committee and under the bylaws you have to live with their decision.

17. Then the board of directors wanted to impeach Tom. They wanted to call a special session of the Executive Committee to impeach Tom Daglis, which can only be done under the bylaws “for cause.” I explained to the board that “cause” is a legal term that means something very bad, such as stealing, alcoholism or the like – and not the sort of things they were complaining about, which consisted of Tom not sending them a copy of a letter he sent regarding business, and the like. They ignored me and passed the resolution to call the special session of the Executive Committee to impeach Tom for cause.

18. My sense of the meeting was these board members were part of an alliance, they were very unhappy with the decision of the nominating committee, and they were out for blood.

19. One member of the board, Harry Gilbert, who was not part of the alliance finally counseled Tom to withdraw and decline the nominating committee’s invitation to serve as president for another term. In essence, his advice was “it’s not worth it, you’ll be miserable and unable to function.” And the concern was expressed for Tom’s future ability to get a job, if (in such a small industry) word got out that he was brought before the Executive Committee of the USPTA for impeachment, even if the impeachment was ultimately unsuccessful.

20. At the conclusion of the meeting, Tom said he would need to think over what had just transpired and he would let the board know in a few days whether he would decline the nominating committee’s nomination to serve as president in 2011-2013.

21. Several days later, in a teleconference, Tom Daglis declined the nominating committee’s nomination for president on the condition that the motions made against him not appear in the minutes. The board members responsible for the attacks against Tom agreed that if he declined the presidency no one should publish the motions made against him, and nothing further would be done to harm him. They also agreed that since he was stepping down and cooperating he could attend the meeting with important members of the USTA, in Houston on March 21, despite the motion made that he could not attend that meeting. This in my view

revealed that the motions made against Tom had less to do with a genuine concern for the USPTA than they had to do with a concern to have Randy Mattingley named president.

22. The events of the January 8-9 board meeting were a concern to me because it was the first instance in thirty-six years that a board of directors was circumventing the bylaws and negating the nominating committee's choice for president. Regardless of individual preference one may have for any particular candidate, in my view this action threatened the democratic processes set out in the bylaws and thus the ability of the USPTA to effectively govern itself. If the board can use blackmail to cause a nominee to decline his/her nomination, then the board of directors – not the nominating committee – is effectively choosing the nominees. This would allow the board of directors in the future to effectively elect themselves, which is the opposite of democratic.

THE DECISION OF THE EXECUTIVE COMMITTEE TO REINSTATE THE ORIGINAL NOMINATION IS IN ACCORDANCE WITH THE USPTA BYLAWS

23. I was present at the semi-annual meeting of the Executive Committee on April 8-9, 2011. My notes of that meeting are attached as Ex. A hereto. This was the first Executive Committee meeting convened since the January 8-9, 2011 board meeting. The subject of Tom's nomination for president came up again at this meeting. Tom explained what had happened at the January 8-9 board of directors meeting. He dispelled certain rumors that had been circulating, suggesting that he had campaigned for the office of President, that he had wrongly released a logo without the board's permission, and other scurrilous rumors that had been planted.

24. Daglis also shared what the five board members, including plaintiff, had done in the January 8-9 board of directors meeting that led to his declining the nomination for president. Extensive discussion ensued. Numerous members spoke. Everyone who wanted to speak was given an opportunity to speak. The plaintiff, Randy Mattingley, spoke at length.

25. At the end of the discussion, a member of the Executive Committee, Pat Whitworth, made a motion that was seconded and carried as follows:

RESOLVED: that the alternate slate, presented by the recent nominating committee be rescinded and the original slate of national Board of Directors, formed by this highly respected body, be accepted for the 2011-2013 term.

Minutes of the April 8-9 Exec. Committee Meeting, Exhibit A, attached hereto.

26. I asked for clarification about what the “original slate” was, as the nominating committee’s original slate of officers was not published at that time. It was determined that four of five members of the nominating committee – Harry Gilbert, Pat Hanssen, Sara Stablein and Hunter Lipscomb – were at this Executive Committee meeting. Mr. Gilbert and Mr. Hanssen confirmed that the “alternate” slate would have Randy Mattingley as president, and Tom Daglis first vice president. The “original” slate would have Mr. Daglis president and Mr. Mattingley first vice president.

27. Accordingly, the motion to reinstate the original slate of the nominating committee, with Tom Daglis as president and Randy Mattingley as first vice president, was put to a vote of the entire Executive Committee.

28. According to the USPTA bylaws, votes of the Executive Committee are performed by “weighted” voting. See Article VI, sec. 4 (Voting). Each division has one vote for up to and including 100 voting members in the division. For example, a division with 40 members will have one vote, and a division with 101 members or 160 members will have two votes, and a division with 240 members will have 3 votes, and so on. In addition, each member of the Board of directors gets one vote, as do the last three immediate past presidents. This process was followed in the vote on April 9. In addition, to ensure everyone was able to vote as they truly wished, the vote was done by secret ballot.

29. The motion to reinstate the original slate of the nominating committee with Tom Daglis as president and Randy Mattingley as first vice president passed on a vote of 71 to 42.

30. After that vote, the Executive Committee also passed the following resolution to ensure that what had happened in the executive committee meeting was not later thwarted in private by the board of directors:

RESOLVED: that the national Board not reverse decisions made
by the Executive Committee at this meeting.

Minutes of the April 8-9 Exec. Committee Meeting, Exhibit A, attached hereto.

31. What occurred at the April 8-9 Executive Committee meeting complied with the letter and spirit of the USPTA bylaws. Nothing in the bylaws permits the board of directors to blackmail a nominee into declining the nomination. Never before in the history of the USPTA had this occurred. The decisions of the Executive Committee, acting through its duly elected nominating committee, are not permitted to be undone by the board of directors acting on its own accord. This is what is meant by Article VI, section 1 of the bylaws, which states:

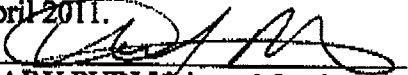
Should any disagreement exist with any other body within the USPTA, such as the Board of Directors, as to the scope of the Executive Committee's powers, **the determination of the Executive Committee shall be final.**

Bylaws, Art. VI, sec. 1.

32. It was well within the general powers of the Executive Committee, as set forth in Article VI, section 1, to reinstate the nominating committee's original choice for president.

33. I swear that the foregoing is true and correct to the best of my knowledge.

SWORN TO AND SUBSCRIBED before me, the undersigned Notary Public on this the 25th day of April 2011.


NOTARY PUBLIC in and for the
STATE OF New York
Commission Expires: 12/27/2013

HAZEL PARNELL
Notary Public, State of New York
Qualified in Westchester County
Reg. No. 01PA035231
My Commission Expires Dec. 27, 2013



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this May 5, 2011

Certified Document Number: 48568377 Total Pages: 9

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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