

**Final and Written Decision
of the Panel
in the South Carolina Association of USATF
grievance entitled Ellis v. Jordan**

This is the final and written decision of the Panel in the South Carolina Association of USATF grievance entitled Ellis v. Jordan memorializing the oral decision announced on November 19, 2018, in Columbia, SC and is written to accord with USATF-SC standing rule 5 K. The Panel have considered the results of the USATF SC 2018 election and, specifically, whether error occurred in the elections of President and Second Vice President, Mr. Brian Jordan and Mr. Steve Mullaney, respectively.

This case came to the panel by way of a grievance filed by Linda Ellis, as plaintiff, against Brian Jordan, as Defendant, following the USATF South Carolina's 2018 election. Ellis' complaint was that the votes were not counted properly and, as a result, the wrong candidates were named President and 2nd Vice President.

Jurisdiction for this matter is properly before this panel. At a pre-hearing conference, procedural matters were discussed, including who carried the burden of proof, the standard, the standard for admissibility of evidence, the order of proceedings, and further procedural matters. Two items specifically discussed pretrial were (1) that the plaintiff carried the burden of proving her claim that the election votes were improperly counted and the wrong parties installed as officers, and (2) the manner in which the hearing would take place (opening arguments by both parties, presentation of evidence by the Plaintiff, then by the Defense (if any), and so forth). The burden of proof was the preponderance of the evidence standard. In terms of evidence, the standard to be applied was a relaxed standard consistent with the South Carolina rules of Evidence, as relaxed for administrative hearings.

Pretrial the parties were instructed that opening and closing statements were not evidence, but allowed. Both parties gave opening arguments. Following the opening arguments, the Plaintiff was given the opportunity to present her case. In this regard, the plaintiff failed. The Plaintiff provided no evidence to support her claim. Specifically, the Plaintiff called no witnesses, and introduced no exhibits, testimony, documentary, or other evidence.

Plaintiff's failure to introduce evidence even a modicum of evidence to support her claim results in the claim failing.

Short Analysis: To prevail the Plaintiff had to show a wrong and that the accused Defendant was responsible for the wrong. The Plaintiff did not show a wrong. The Plaintiff further did not show the Defendant was a participant in the alleged wrong. Either of these failures alone gives sufficient cause to deny her claims. On appeal, it should be acknowledged the panel considered and ruled on each of the two elements separately and found insufficient evidence on either.

Ruling:

The USATF-SC panel hearing the Ellis versus Jordan grievance rule in favor of Jordan on all claims. This panel rules unanimously that there is no evidence that Jordan violated USATF-SC Article 9 Rule A(2) as charged, and there is no evidence that anyone violated Article 9 Rule A(2) with the recount on 8/19/2018 at the Lexington County Library.

As a threshold matter, it appears the Plaintiff named the incorrect party as Defendant. Jordan, who at the time of the election was a candidate, did not participate in the running of or any decision-making pertaining to the election. Jordan, not being involved in the decision-making process, bore no responsibility regarding which candidates prevailed and were named President and Vice President. Because Jordan did not direct, cause, or otherwise participate in a meaningful way in the election, other than his participation as a named candidate, and was not a cause of the outcome, Ellis did not and could not prove her case against him.

The panel also hereby remind the officers of USATF-SC to revise the Association bylaws to comply with USATF Regulation 7.

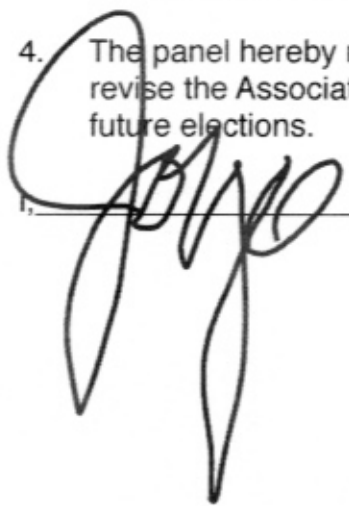
This decision shall be effective upon the date rendered and not be stayed in the event of an appeal.

Arguments:

1. Jordan argued there was no evidence that he or anyone else violated any USATF SC bylaws concerning elections at the recount or at the USATF-SC annual meeting and elections.
2. Ellis argued that the USATF-SC election bylaws had been broken because they were not followed as she had been told they should be interpreted. Ellis provided no evidence that any infractions of USATF-SC bylaws occurred that were likely to have changed the outcome of the 2018 USATF-SC Annual elections. Ellis provided no evidence that Jordan played any role in the decision on how the recount would be conducted, and no evidence that Jordan was present at the recount. Ellis provided no evidence of proxy voting nor of absentee voting at the USATF-SC elections in 2018. Ellis provided no evidence of any error being made in the recount process on 8/19/2018.
3. USATF-SC Standing Rule 5 J.6 Burden of proof. This requires:
 - a. The burden of proof is upon the complainant to prove by a preponderance of the evidence that conduct described in Standing Rule 5-C-1 or 5-D-1 above has occurred;
 - b. Ellis entered no evidence to support the allegations against Jordan. Ellis declined to call any witnesses and declined to answer questions as a witness when asked to do so herself. Ellis has provided no evidence in support of the claims made in the grievance. Ellis therefore cannot meet the preponderance of evidence burden in USATF-SC standing rule 5.
 - c. Jordan entered the Witness Statement of Ian H. Whatley into evidence and provided Whatley to be examined in front of the panel.

- § Whatley testified that he was present at the USATF-SC election on 8/11/2018 and at the recount of 8/19/2018 at the Lexington County Library. Whatley testified that he was a ballot counter at both events. Whatley provided information from his personal knowledge of the election process, the recount, the discussions that led to the recount, the time sequence of events at the election, and who was present at each event.
- § Whatley testified that none of the three—Perry Funnie, Linda Ellis, nor Brian Jordan —were present at the recount held at the Lexington County Library on 8/19/2018. Whatley testified that Linda Ellis was not present at the USATF-SC annual meeting and elections held at Lexington County Library on 8/11/2018.
- § Whatley testified that there was no proxy voting and no absentee ballots were cast at the USATF-SC Annual meeting elections in 2018.
- § Whatley testified that the tally sheets were not signed, and the ballots were sealed at the conclusion of the USATF-SC annual meeting.
- § Whatley testified that, in his role as a ballot counter, he understood there was a problem with the election on 8/11/2018. Whatley testified that subsequently the association sought advice, a discussion to which he was privy. Whatley testified that the decision on how a recount should be conducted seemed prudent and correct in light of USATF Regulation 7 and the Amateur Sports Act. Whatley testified that the discussion of how a recount would be conducted did not involve the candidates.
- § Whatley testified that Jordan was not at the Lexington County Library on 8/19/2018 and further that Jordan did not have the authority to affect USATF-SC actions in regard to elections prior to 8/20/2018.
- § Whatley testified that throughout the discussion of the recount process, the recurrent message was that USATF-SC must bring their bylaws into line with the requirements of USATF Regulation 7.
- § Following cross-examination, the evidence provided at the hearing by Whatley was deemed reliable by the panel.

4. The panel hereby remind the officers of USATF-SC that it is an urgent matter to revise the Association bylaws to comply with USATF Regulation 7 well before any future elections.



(Name), agree with the foregoing opinion.

Association Arbitration Panel
Joyce Welch - AAP Chair
Michael Flournoy - At-Large Member
Shawanna White - Active Athlete

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 JWA