

# INTERNATIONAL SKATING UNION

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## Disciplinary Commission

Case No. 2016-01

March 29, 2016

### **Decision of the ISU Disciplinary Commission**

**Panel:** - Volker Waldeck, Chair  
- Dr. Allan Böhm  
- Susan Petricevic

#### **In the matter of**

**Mr. Stefano Donagrandi,**

**- Complainant -**

**represented by**

**Koninklijke Nederlandsche Schaatsenrijders Bond (KNSB)**

**against**

**Mr. Mitchell Whitmore,**

**- Alleged Offender -**

**and**

**US Speedskating, 5662 South Cougar Lane,**

**- Interested ISU Member**

**Concerning the alleged violation of the ISU Code of Ethics**

## **I. History of the Procedure**

On January 26, 2016 Mr. Stefano Donagrandi filed a complaint against the Alleged Offender together with 7 exhibits. On February 2, 2016 the Alleged Offender and the Interested Member were invited by the ISU Disciplinary Commission to file a statement of reply within 21 days upon receipt of the complaint. The Complainant was requested to name all the witnesses of the incident of December 2-3, 2015.

On February 22, 2016 the Alleged Offender and the Interested Member filed a statement of reply including three statements of eye witnesses of the incident and the report of the U.S. National Sprint Team Coach.

On February 29, 2016 the Disciplinary Commission received the reports of the Medical Doctor, the Physiotherapist and the Team leader of KNSB regarding the incident of December 2-3, 2015.

## **II. Procedural Matters**

1. According to Article 24, Paragraph 1 of the ISU Constitution 2014 the Disciplinary Commission serves as a first instance authority to hear and decide all charges referred to it by an ISU authority or party against any Skater, Official, Office Holder or other participant in ISU activities (Alleged Offender) accused of a disciplinary or ethical offence. The Alleged Offender is accused to have committed a criminal offence on the night of December 2<sup>nd</sup> 2015 in Inzell, Germany, on the occasion of the ISU World Cup Speed Skating event in Inzell. He did not visit Inzell as a “private person” but as team member of the US Speedskating team, although he did not compete in the World Cup due to a hamstring injury. The Complainant was acting as speed skating coach of the Dutch federation, so both parties are subject to the jurisdiction of the ISU.

2. The Alleged Offender has signed the ISU Declaration for Competitors and Officials on October 18, 2015 and hereby accepted the ISU Disciplinary Commission as the arbitration tribunal authorized to issue final and binding awards involving the ISU, its Members and all participants in ISU activities, excluding all recourse to ordinary courts. The Alleged Offender did not contest the jurisdiction of the ISU Disciplinary Commission in his statement of reply. The ISU Disciplinary Commission has jurisdiction to decide this case.

3. The complaint was filed with the ISU Disciplinary Commission on January 26, 2016, i.e. 54 days after the incident on December 3, 2015, within the time line of 60days according to Article 24 No. 6 a) ISU Constitution 2014.

## **III. Facts**

The Complainant was the team coach of KNSB during the ISU World Cup Speed Skating event in Inzell in December 2015. The team of KNSB stayed at the Hotel “Siedl” in Inzell during this competition. The team had chosen this hotel because of its quiet environment.

During the night of December 2, 2015 the Complainant was sleeping in his hotel room, located at the southern side of the hotel, next to the parking lot. At about 3.30 a.m. the Complainant was woken by a car arriving at the parking lot and spinning on the gravel in the parking lot. People were getting out of the car and screaming loudly and continuously. The Complainant got up. He felt responsible for his team of skaters who were sleeping and wanted to avoid then being woken up. He went out of the hotel into the parking lot and saw a car with two men, the Alleged Offender and a member of the New Zealand team, outside the car.

The Complainant describes the incident as follows:

He asked the Alleged Offender to stop screaming and yelling in the middle of the night. For a moment the Alleged Offender stopped screaming but after the Complainant has turned around to go back to the hotel, the Alleged Offender started screaming again. The Complainant turned to him and asked him to stop the noise. Then he saw the Alleged Offender jump on top of him and he was thrown on the ground. He hit the ground with his right shoulder and felt his right arm dislocating from his shoulder. The Alleged Offender was sitting on his back and pressed his face into the gravel. The Complainant was beaten on the left side of his face, blood was coming out of his mouth. He heard the Alleged Offender say: "Are we done, yes or no?".

The Alleged Offender describes the incident as follows:

*"After dinner on December 2, I met some skating friends at a bar in the village of Inzell. After leaving the bar, our group drove to the Chiemgauerhof Apartments to drop off a skater from the New Zealand team. Once we arrived at the hotel, we got out of the car and were conversing and laughing in the driveway. Shortly thereafter, we were approached by the Complainant, who proceeded to yell something at us. I retorted in an equal manner and he went back inside. No more than a minute later, he came back outside and approached me, yelling insulting statements. We yelled back and forth at each other and then he pushed me. I responded by hitting him which knocked him to the ground. I then followed him to the ground in hopes of calming the situation. I asked him several times "are we done here?" After a few more seconds of me holding him down, I got up and went back into the car to avoid escalating the situation. The Complainant approached the car slamming the hood and kicking the door before we drove away."*

The skater from the team New Zealand, Mr. H., the only eye witness, describes the incident as follows:

*"As the Complainant approached us he moved towards the Alleged Offender screaming at him, he then initiated physical contact towards him with both of his hands. It was then the Alleged Offender who responded in what looked like self-defense and that resulted in a fight between the two of them. After about 5-10 seconds the altercation ended. We decided it was best to leave the premises as quickly as possible to limit any further physical confrontation between the man and ourselves so we got into the car. The Complainant then proceeded to damage the vehicle we were driving on the driver side door leaving a dent."*

The witness M. was the driver of the car, who drove the four persons to the hotel. He was sitting in the car and was on his phone at the time of the incident and was unaware of anything happening outside the vehicle.

The witness K. was one of the four passengers. When the driver pulled into the car park he got out of the car along with the Alleged Offender and the witness H. and talked for a few minutes behind the car. Then he decided to say good night and walked to the front door of the hotel and went inside. He was unaware of any events that took place after going inside the hotel.

The Complainant has presented 6 pictures taken immediately after the incident of December 3, 2015. They show injuries on his face and throat caused by the physical altercation with the Alleged Offender.

The first person the Complainant visited after the incident was the physiotherapist of KNSB. He reported on the injuries of the Complainant as follows:

*“Stefano asked me to turn on the lights, when I did that I saw him with blood all over his face and he was saying my arm is out, my arm is out. So first did was replacing his shoulder (I am the physiotherapist of the team) after that we cleaned his face and I called the manager of the Dutch skating team.”*

The team leader of KNSB informed the medical doctor of KNSB. She examined the Complainant and reported:

*“I examined Mr. Donagrandi. He had a red thickened cheek, it was not luxated and I found no fractures by palpation. He also was not being out of conscious but he was really shocked. I gave him ice to cool his cheek and advice to take some paracetamol.”*

#### **IV. Motion**

The Complainant has not filed a special motion but asked to take this complaint very seriously and take the necessary steps to reprimand the Alleged Offender.

#### **V. Law**

(1) The offence against the Complainant is a violation of the ISU Code of Ethics (ISU Communication No. 1717).

Code of Ethics No. 4 b) Paragraph 2 states:

*“Fair play is defined as much more than playing within the rules. It incorporates issues concerned with the elimination of cheating, the use of violence (both physical and verbal)...*

*c) I will not cause damage to persons or property, or engage in illegal activity, recognizing that all such activities bring disrepute to the skating sports and the ISU, and, in certain cases, may result in criminal charges and ISU action against me.”*

(2) US Speedskating raised the question of how this incident could be a violation of the Code of Ethics, as the Alleged Offender was unaware of the Complainant’s affiliation to speed skating and was defending himself against an unknown aggressor outside the field of play. The Panel is of the opinion that the status of the Alleged Offender as team member of US Speedskating and not the status of the victim is crucial for the application of the ISU Code of Ethics. Even if the victim had been a person who did not belong to the ISU family, the ISU Code of Ethics would be applicable, because the assault was committed by a member of the US Speedskating team during an ISU event.

(3) The offence against the Complainant constitutes a malicious injury. According to German criminal law – which would be applicable to the site of the crime in Inzell, Germany – the Alleged Offender fulfilled § 223 StGB (Strafgesetzbuch, German Criminal Law). The Alleged Offender has caused bodily injured and damaged the health of the Complainant.

(4) The eye witness Mr. H. testified that the Complainant moved towards the Alleged Offender screaming at him, then initiated physical contact towards him with both of his hands. It was then the Alleged Offender who responded in what looked like self-defense. Self-defense can be an affirmative defense, § 32 StGB, but only if carried out in an appropriate way. During the course of defending himself a person cannot use force greater than that which is required to stop an immediate attack on them. Even if this defense had been raised, in the opinion of the Panel, the Alleged Offender has exceeded the line of self-defense and turned to a counter attack by using excessive force. This would not be considered as acting in self-defense.

(5) The bodily injury was culpable. The Alleged Offender has confessed to have visited a bar in Inzell prior to the incident, but neither he nor the witnesses have claimed a diminished responsibility due to consumption of alcoholic drinks.

(6) The Alleged Offender has violated the ISU Code of Ethics by committing a malicious bodily injury.

## VI. Decision

1. Michel Whitmore is guilty of misconduct and of violation of the ISU Code of Ethics 2012.
2. A suspension of one year from participation in all ISU activities is imposed on Mitchel Whitmore, beginning on April 1<sup>st</sup>, 2016, and ending on March 31, 2017.
3. Each party shall bear their own costs.

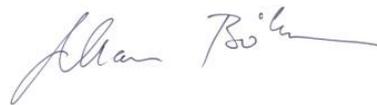
March 29, 2016



Volker Waldeck



Susan Petricevic



Dr. Allan Böhm

The present decision is subject to appeal to the Court of Arbitration for Sport, Avenue de Beaumont 2, CH-1012 Lausanne, Switzerland, within 21 days upon receipt of the decision, in accordance with Article 24 Paragraph 12 and Article 25 of the ISU Constitution 2014.