

To: United States Aquatic Sports Board of Trustees
United States Aquatic Sports Aquatic Coordinating Board
USA Swimming Board of Directors
Selected Other Interested Parties

From: Dale Neuburger

Re: Conflict of Interest Allegations

Date: August 13, 2017

Dear Friends,

Over the last eighteen months, accusations of conflict of interest have been directed toward me related to my professional employment as a sports management consultant and my volunteer service within FINA, the International Aquatics Federation.

For various reasons, primarily due to ongoing legal and administrative proceedings, I have not been able to respond to these allegations. I hope that you understand that my silence has been based solely upon advice of counsel, as I declare unequivocally that I have conducted myself with the highest regard for ethical standards throughout my seventeen-year tenure with FINA.

I have been Director of TSE Consulting – North America, based in Indianapolis, since 2006, providing services to two primary client groups: cities seeking to attract and stage sports events, and sport-related organizations for strategic planning and business management advice. With one exception over twelve years – a collaborative project with Coach Bob Bowman in Turkey – my clients have been exclusively in the United States, Canada, and Mexico.

TSE Consulting – North America is a subsidiary of TSE Consulting SA, based in Lausanne (SUI). My office operates under an agency agreement with the Lausanne office, and our work in North America is totally independent of the work performed in Europe.

In 2006, upon beginning my relationship with TSE Consulting, I informed (then) FINA President, Mustapha Larfaoui, of my new employment status, as well as offering my pledge to exercise great care in carrying out my duties to avoid any possible appearance of a conflict of interest. This was necessary because TSE Consulting SA had performed conference-related services for FINA as early as a conference in Madrid in 2001, primarily in coordinating speaker identification and preparation.

In 2013, FINA was preparing to adopt a Code of Ethics and the creation of an Ethics Panel. At that time, I informed FINA President Julio Maglione of my work-related duties, again, reinforcing my commitment to North American clients and emphasizing that I had no relationship to the work performed by my Swiss colleagues in supporting FINA conferences and conventions.

Subsequently, later in 2013, the FINA Ethics Panel reviewed my dossier of professional duties and relationships and found no cause for disqualification from service as FINA Vice President.

In 2016, TSE Consulting SA entered into an agreement with the Royal Dutch Swimming Federation (KNZB) to provide communications and public relations services in connection with the campaign of Eric van Heijningen to become President of LEN, the Continental Association of Europe. This work included assistance in drafting a "100 Days Plan" for Mr. van Heijningen and other similar duties primarily carried out by a TSE employee in Lausanne of Dutch heritage.

I, nor any of my American colleagues, had any involvement in negotiating the contract or providing services to KNZB. To this day, I have never seen the contract, nor do I know the fees associated with it. The contract was exclusively between TSE Consulting SA and KNZB, and TSE Consulting – North America had no involvement or participation, direct or indirect.

On February 1, 2016, an article appeared in the online publication "Inside the Games," including the following notation regarding Mr. van Heijningen:

His manifesto is to be officially launched next Monday (February 8), with TSE Consulting having been appointed to orchestrate the campaign. FINA vice-president Dale Neuburger is among TSE's directors, although Inside the Games has been told he is playing no role in the campaign.

Although this statement was very clear and explicit, the business-oriented social network, LinkedIn, of which I am a member, sent a notification to individuals included in my contact list about this article. Such LinkedIn notifications are sent automatically when the name of a member is mentioned if the member does not disable such notifications. Within 30 minutes of the notification being sent to my contact list, a colleague informed me, and I changed the notification preferences in my LinkedIn account. Additionally, I immediately sent a message to LEN President Paolo Barelli to explain the circumstances and reiterate my non-involvement in projects outside of North America.

In the winter and spring months of 2016, Mr. Barelli communicated with FINA President Maglione about various matters, including allegations related to the campaign of Mr. van Heijningen, alleging conflict of interest.

In August 2016, the FINA Executive considered the documents brought forward by Mr. Barelli and me, and made the decision that the allegations lacked sufficient merit to be passed to the FINA Ethics Panel. I recused myself from this decision.

Subsequently, in late December 2016, approximately five months after the FINA Executive decision, Mr. Barelli appealed to the Court of Arbitration of Sport (CAS), with FINA as the party to his lawsuit.

In June 2017, the Court of Arbitration for Sport rejected the appeal of Mr. Barelli and ordered that he pay the full cost of the CAS proceeding, including a portion of FINA legal expenses.

Throughout this extended period of time, Mr. Barelli and LEN Bureau surrogates continued to malign my reputation, despite the absence of any corroborating information and despite the explicit ruling of CAS.

Due to my respect for the CAS case, and on advice of counsel, I remained silent, despite irreparable harm to my reputation. For 45 years of my professional career, I have conducted myself honorably and ethically, and I have never had anyone, in any context, cast doubt on my standards of behavior before this unfortunate and mean-spirited situation.

I have attached several documents to this correspondence that provide justification for my outrage, as well as confirmation of my actions.

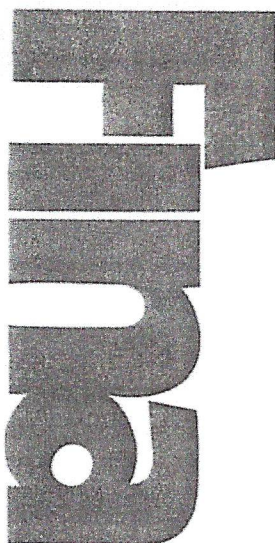
However, it is important to state clearly and unequivocally the following:

- I have never provided professional services to FINA at any time, nor have I have received remuneration in any amount from FINA for work contracted with TSE Consulting SA, based in Lausanne.
- I have never solicited FINA to negotiate a contract for services.
- I had no role, relationship, or engagement with the campaign of Mr. van Heijningen, and therefore, no remuneration associated with it.
- I have presented information to the FINA Ethics Panel in 2013 and 2017, before my elections to the FINA Bureau, and, on both occasions, the Panel found no disqualifying relationships or circumstances.
- The clients of TSE Consulting – North America are exclusively cities and sports organizations located in the United States, Canada, and Canada (with one exception, for work performed in Turkey).

I regret the incalculable harm done by one individual with purely political motivation and with no basis in fact, but I thank those who have trusted in me, believed in me, and supported me, despite the toxic environment that has existed for the last eighteen months. I am grateful for the opportunity to set the record straight and negate the inaccurate and vengeful accusations that have been directed at me by an individual whose assertions have repeatedly been repudiated and rejected.

Sincerely,


Dale Neuburger



FEDERATION INTERNATIONALE DE NATATION



FOUNDED IN 1908

DALE NEUBURGER
VICE PRESIDENT

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To: Mustapha Larfaoui
FINA President

Cornel Marculescu
FINA Executive Director

From: Dale Neuburger
FINA Vice President

Date: September 8, 2006

Re: TSE Consulting

BUREAU 2005 - 2009

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Nigeria

CIJUPING ZHANG
China

HONORARY LIFE PRESIDENT

LIC JAVIER OSTOS MORA
Mexico

Dear President Larfaoui and Mr. Marculescu,

In April 2006, I began employment as Director, TSE Consulting – Indianapolis, joining a network of professional consultants with offices in Lausanne, London, Beijing, Bahrain, and Johannesburg. In my role with TSE Consulting, I provide services to cities in the United States seeking to stage important international and domestic events in a wide range of Olympic sports. The American office of TSE Consulting – Indianapolis has provided services to the cities of Denver and Memphis.

As you know, TSE Consulting, through its Lausanne office directed by Lars Haue-Pedersen, has performed various consulting services for FINA, including assistance with the conference on marketing and broadcast in Barcelona in 2001, the FINA strategic plan, and the FINA World Conference in Madrid later this month.

Each of the TSE Consulting offices operates within separate geographic territories, and I have had no involvement with any of the FINA projects that have been engaged through the Lausanne office, nor will I do so in the future. Further, I will not provide professional services to American cities seeking FINA events. It should be clearly noted that any decisions made by FINA regarding engagement of services with TSE Consulting – Lausanne are not made with any solicitation or representation on my part.

The purpose of this correspondence is to provide clarity regarding my professional employment and to pledge my continued independence in decision-making regarding FINA initiatives, programs, and decisions.

If I can provide any further information, please do not hesitate to contact me directly.

Sincerely yours,

Dale Neuburger
Vice President



Fédération Internationale
de Natation

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Algeria

IMMEDIATE PAST HONORARY
SECRETARY
BAROLO CONSOLO
Switzerland

EXECUTIVE DIRECTOR
CORNEL MARCULESCU

DALE NEUBURGER
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To: Dr. Julio Cesar Maglione
FINA President

From: Dale Neuburger
FINA Vice President

Re: FINA Code of Ethics/Employment with TSE Consulting

Date: April 21, 2013

Dear President Maglione,

As you know, the FINA Bureau approved a Code of Ethics at its most recent meeting in Barcelona on 22-23 February, 2013.

To begin, I ask that you review correspondence (page 3) which was sent to (then) FINA President Mustapha Larfaoui and FINA Executive Director Cornel Marculescu in September 2006. At that time, well before the FINA Code of Ethics was established, I wanted to clarify my professional employment to avoid any possible appearance of conflict of interest in my role with FINA.

Please allow me to state this unequivocally: I support the new FINA Code of Ethics and will comply completely with its requirements.

To that end, I bring to your attention my current and continued employment with TSE Consulting – North America which began in April 2006. In this role, I provide consulting services to cities in North America which seek to stage important domestic and international events in a wide range of sports. From time to time, I provide consulting services to cities or sports organizations outside of North America if my expertise is deemed to be helpful.

TSE Consulting SA is a registered Swiss company, and it has performed various services for FINA which pre-date my employment, as well as services more recently. As an example, TSE Consulting SA assisted FINA with the 2nd FINA World Aquatics Convention in Moscow (RUS), and TSE assisted FINA with previous conferences in Barcelona (2001), Madrid (2006), and Punta del Este (2010).

Each of the TSE Consulting offices worldwide – currently there are six – operates within separate geographic territories. I, nor any employees of TSE Consulting – North America, have involvement with projects initiated through the Lausanne office of TSE Consulting SA. Therefore, any decisions made by FINA regarding engagement of services with TSE Consulting SA have not been, nor will be, influenced in any way through a solicitation or representation by me or through TSE Consulting – North America.



Fédération Internationale
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PRESIDENT
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Switzerland

EXECUTIVE DIRECTOR
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Each TSE Consulting office operates independently. I have no personal involvement with projects undertaken by TSE Consulting SA, nor do I have any financial interest in their outcome. My compensation is based solely on work initiated and completed by me.

In 2009, TSE Consulting SA provided services to the UAE Swimming Federation and the Dubai Sports Council for the Dubai bid to host the 2013 FINA World Championships. At the time of voting, I recused myself to avoid any appearance of conflict of interest, although I had no involvement in the engagement.

In 2013, TSE Consulting SA is providing services to the City of Gwangju (KOR) for its bid to host the 2019 FINA World Championships. I will recuse myself from the voting/selection process in Barcelona, and consistent with the FINA Code of Ethics, I will take no role in promoting the Gwangju bid with my FINA Bureau colleagues at any time. Additionally, if you wish that I not be in attendance during the presentation of the candidatures of the respective bid cities to the FINA Bureau in Barcelona, I will willingly comply with your wishes.

The purpose of this correspondence is to provide clarity regarding my professional employment. If requested, and to promote transparency, I will supply the agency agreement between the Swiss parent company and TSE Consulting – North America.

At the same time, I pledge my continued independence in decision-making regarding FINA initiatives, programs, and decisions, and I pledge strict compliance with the FINA Code of Ethics.

Mr. President, you and I have been acquainted for thirty years. During my involvement in sports over the years, I have conducted myself in an ethical manner. I will continue to do so. As situations arise which might create a perceived or potential conflict of interest, I will inform you immediately.

As always, I thank you for your leadership and commitment to our sport, and I hope that this correspondence clarifies matters in a satisfactory way.

All best wishes,

Dale Neuburger

Sports Strategy, Inc.

To: FINA Executive

From: Dale Neuburger

Re: Professional Client Base

Date: July 24, 2016

Regarding Mr. Barelli's inaccurate and baseless statements in his June 17 letter to President Julio Maglione, I offer the following information for your review and consideration.

- My clients are exclusively in North America, except for one contract with the Turkish Swimming Federation, where I provided administrative support for the work of Coach Bowman. The Turkish Swimming Federation is the only National Federation for which I have supplied professional services over the last ten years.
- I had no involvement with TSE SA (the Lausanne-based regional entity) in delivering services to the Royal Dutch Swimming Federation in support of Mr. van Heijningen. I took no role in the LEN election campaign.
- I have given very clear explanations to FINA — in 2006 and in 2013 — about my role with FINA and my role with TSE. These documents demonstrate the following:
 - Beginning with my first months of engagement with TSE Consulting, to the present, I have devoted considerable attention to ensuring that there was no conflict of interest between my professional duties and my duties to FINA.
 - My 2006 communication with President Larfaoui regarding perceived conflict of interest pre-dated the FINA Code of Ethics by seven years.
 - My 2009 communication with Marcela Saxlund showed that I went to great lengths to notify my FINA Bureau colleagues about the potential appearance of conflict of interest, as well as my recusal from voting in the 2013 FINA World Championships decision, eventually won by Dubai (UAE).
- The initial retention of TSE Consulting by FINA pre-dated my employment with TSE Consulting by five years. Subsequently, I have never taken part in either discussion/negotiation related to proposed FINA contracts, nor in the provision of work associated with those FINA contracts — ever.

TSE — North America client list (last five years)

Mexico

- Mexican Olympic Committee — Guadalajara Youth Olympic Games bid
- INDE — State Institute for Sports and Physical Culture — Nuevo Leon (City of Monterrey)

Canada

- City of Edmonton and Edmonton Events
- City of Ottawa and Ottawa Tourism

USA

- United States Olympic Committee
- USA Taekwondo
- US Rowing
- USA Curling
- US Bowling Congress
- USA Judo
- USA Rugby
- US Tennis Association
- USA Wrestling
- USA Luge
- USA Speedskating
- Visit Pittsburgh
- Buffalo Sports Commission
- Greater Cleveland Sports Commission
- Greater Kansas City Sports Commission
- Greater Cincinnati Sports Commission
- Greater Columbus Sports Commission
- Arizona Stadium and Tourism Authority
- Metro Atlantic Athletic Conference
- Philadelphia Sports Congress

Outside North America

- Turkish Swimming Federation

July 15, 2016

Mr. Dale Neuburger
201 South Capitol Avenue, Suite 555
Indianapolis, IN 46225

Dear Dale,

It is my understanding that there have been some questions within FINA concerning your relationship to TSE Consulting SA, specifically in reference to work performed earlier this year on behalf of the Dutch Olympic Committee and the Dutch Swimming Federation.

You are authorized to share this document within the FINA Executive Committee, as you may deem necessary, but the distribution must be limited, as this is an official document to be filed with the management team of our sister company Burson-Marsteller as well as the WPP Group, the parent company of Burson-Marsteller.

As the Managing Director of TSE Consulting SA I can offer the following information in an authoritative and knowledgeable way:

- You are the President of Sports Strategy, Inc., an American-based company formed in 2006 and located in Indianapolis, which has an agency agreement with TSE Consulting SA. Therefore, you are not an employee of TSE Consulting SA and you act independently and not under my direct authority.
- The geographic territory in which you are authorized to conduct sport-related business is North America, specifically Canada, the United States, and Mexico. In one special circumstance, you were asked to assist with a TSE Consulting contract in Turkey, given your close relationship with Coach Bob Bowman, who was the principal contractor on the project, which was concluded by end March this year.
- TSE Consulting SA has had various contracts with FINA beginning in 2001, which preceded your role with Sports Strategy, Inc. by five years. The CEO of FINA, acting on behalf of FINA, and myself, acting on behalf of TSE, have exclusively negotiated all such contracts. You and your company played no role in the formation of project proposals, the negotiation of fees, or the provision of services related to these contracts. The annual fees for our relationship with FINA have generally not exceeded 30'000 CHF.
- TSE Consulting SA has represented various clients representing cities in Europe and Asia that have sought to host future FINA events. These cities have included Doha (QTR); Dubai (UAE); Gwangju (KOR); Istanbul (TUR). You and your company played no role in any of these bids, either in the negotiation of contracts or in the provision of strategic advice.

- TSE Consulting SA has had multiple contracts with the Dutch Olympic Committee over the past ten years, including strategic communications and event bidding advice for several Dutch cities, including Amsterdam and Rotterdam.
- TSE Consulting SA entered into a contract with the Royal Dutch Swimming Federation to provide strategic communications advice and counsel to Erik van Heijningen in the period leading up to the LEN elections in May 2016. There was no political activity undertaken at any time by TSE Consulting SA – no contacting, lobbying, or influencing -- as we are very clear in stating to prospective clients that our expertise is in communications, not politics.
- Further, at no time was there any involvement by your company or you in providing strategic communications services to Mr. van Heijningen, nor were you involved in political activity of any kind related to the provision of services to the Royal Dutch Swimming Federation.

If there is additional information that I can provide to FINA leaders, I am at their disposal.

Kind regards,



LARS HAUE-PEDERSEN
Managing Director

Date 5 April 2017
Contact Directie
T +31 307513227
E directie@knzb.nl



To whom it may concern

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The Royal Dutch Swimming Federation has no involvement in a CAS-case against Dale Neuburger nor got detailed information about it, but we learned about a grief against Dale Neuburger as FINA Vice-President in relation to his professional position in TSE Consulting and a campaign by Erik van Heijningen as candidate for the LEN-Presidency in 2016.

The Dutch Federation has made this statement "to whom it may concern" to describe facts and its position in case someone would ask questions in relation to the campaign as mentioned.

The Board of Royal Dutch Swimming Federation has after long deliberation decided in the meeting of December 2015 to candidate Van Heijningen for the presidency of LEN.

The Board has decided as such because of a fundamental grief against lack of good governance in LEN for many years, taking the political risk of such a campaign (many people told us to be afraid of expressing their opinion publicly because of the risk of losing position).

The Board has decided to hire TSE Consulting as professional advisor to the campaign, because of a lack of capacity and experience in international relations in the federation itself, as well as the well known habit of Dutch to be (too) direct in communication.

The Dutch Federation has selected TSE Consulting through European director Lars Pedersen, who is an acquaintance of Dutch sport organisations for years and recently was advisor to the City of Amsterdam regarding the bid for EC Athletics. The federation and TSE Consulting have closed a contract, the federation paying a serious amount of money for the consulting of TSE, thus settling a professional relation as contract partners.

Content and direction of the campaign have all been decided on by the federation, with no involvement by anyone outside the federation.

At the side of TSE Consulting Lars Pedersen and two other European employees have been our advisors; from the very beginning Dale Neuburger has made a clear statement that he, working for TSE Consulting in USA, could not have any involvement being a FINA Bureau member; just like Erik van Heijningen mentioned to Dale Neuburger that he did not want to see any involvement from his side either; in other words, a mutual and logical statement from all three persons involved (Pedersen, Neuburger and Van Heijningen). The campaign has been organized exactly in this way - it might sound a bit posh, but do people really think the Dutch federation would need any support from USA Dale Neuburger (or anyone else) to express our opinion on lack of good governance in LEN as we have done publicly? It is even an insult to the

Dutch federation to suggest that TSE has had any interference in our decision making.

Looking back on the campaign and its result the Dutch federation has concluded among others that we have been very very polite ("diplomatic") in our statements during the campaign whereas our initial feeling was to be much more direct with our critics - as we Dutch in principal are used to. It is the contribution of TSE that we have been very diplomatic in our communication.

On behalf of the Royal Dutch Swimming Federation



Erik van Heijningen, President



Jan Kossen, General Director



Erik van Heijningen
LEN Presidential Candidate





Dear Friends

Since the beginning of my term as President of the Royal Dutch Swimming Federation (KNZB) in 2001, I have been immensely privileged to chair the federation and to work with a dedicated team in ensuring its continued success forward.

If elected LEN President, it would be my greatest honour to take this same trust and move our federation forward to ensure that all Member Federations experience a positive impact in their day to day work.

Having talked with so many of you over the months, I understand the challenges you face and your day-to-day needs. This is why I am so happy to share with you my ambitious "First 100 Days" plan. This plan has been carefully prepared over the past months and is ready to be rolled out right after the election should I have the honour of being your President.

If elected, I plan to accomplish 6 important tasks. I believe that each of these areas are important for our sport as a whole.

It is my aim to start discussing these ideas in the various committees and working groups from day one, I want to be accountable to our sport and all members in laying the foundations for a long-term development strategy for LEN. This is why I plan to conduct a real European Tour and personally visit all LEN Member federations in my first term as President. Being with each of you and seeing your challenges will help me better serve you.

I believe that LEN can do more for its Members and I hope that you join me in achieving this goal.

Eric van Heijningen

LEN Presidential Candidate, April 2016





Mr. Neuburger <dale.neuburger@gmail.com>

You appeared in insidethegames.biz

2 messages

LinkedIn <news-noreply@linkedin.com>
To: Dale Neuburger <dneuburger@tseconsulting.com>

Mon, Feb 1, 2016 at 5:09 AM



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Exclusive: Van Heijningen to stand against Barelli for European Swimming Federation Presidency

His manifesto is to be officially launched next Monday (February 8), with TSE Consulting, the Lausanne-based body whose listed directors included FINA vice-president **Dale Neuburger**, having been appointed to orchestrate his campaign. This shows how seriously he is taking the challenge...

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This email was intended for Dale Neuburger (Dale Neuburger, Director and Partner, TSE Consulting). [Learn why we included this](#).
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Exclusive: Van Heijningen to stand against Barelli for European Swimming Federation Presidency

By Nick Butler (<http://www.insidethegames.biz/writers/24053/nick-butler>) at the Intercontinental Hotel in Budapest Monday, 1 February 2016 [Add comment](#)



Royal Dutch Swimming Federation (KNZB) President Erik van Heijningen is to stand against Italian incumbent Paolo Barelli for the Presidency of the European Swimming Federation (LEN) at May's Congress in London, *insidethegames* has learned.

Van Heijningen, a former water polo player, has served on the LEN Bureau since 2006 and was first elected as one of the continental body's five vice-president in 2008.

He has also served as a member of the International Swimming Federation's (FINA) ruling Bureau since 2013 after heading the FINA Doping Panel from 2009 to 2013.

One of the highest ranking lawyers in The Netherlands, van Heijningen works as a State Councillor at the Dutch Council of State Administrative Law division.

He has also served as temporary Mayor of three different Dutch cities, as well as an Executive Board member and public prosecutor of the Province of South Holland.

The 54-year-old has been credited with playing a major role in the KNZB's success both in and out of the water since assuming the Presidency in 2001, by "keeping membership to all time high levels, doubling revenues and professionalising staff as well as implementing modern governance initiatives".

He will attempt to unseat Barelli at a Congress due to be held on the eve of the European Championships in London on May 8.



Paolo Barelli has led the LEN since 2012 and is seeking a second term in office ©Getty Images

Barelli, a former Olympic swimmer who competed at Munich 1972 and Montreal 1976 and won a 4x100 metres freestyle relay bronze medal at the 1975 World Championships in Cali, was elected President in 2012 after Luxembourg's Nory Kruchten relinquished the role.

The 61-year-old Senator from Rome has also headed the Italian Swimming Federation since 2000 and served as honorary secretary of FINA since 2009.

Speaking to *insidethegames* here, confirming his intention to stand, van Heijningen claimed the time is right for change and that he is confident of success.

After years of trying to bring about changes at LEN "from within", he claims to have realised that vying for the top job is the only way to truly make a difference.

His manifesto is to be officially launched next Monday (February 8), with TSE Consulting having been appointed to orchestrate his campaign.

This shows how seriously he is taking the challenge, added the Dutchman, who has started to lobby the 52 European Federations here this week.

FINA vice-president Dale Neuburger is among TSE's directors, although *insidethegames* has been told he is playing no role in the campaign.

No other candidates have emerged so far.



Subject: Inside the Games Article -- TSE Consulting

Date: Wednesday, February 3, 2016 at 7:09:05 AM Eastern Standard Time

From: Dale Neuburger

To: Paolo Barelli

CC: david.sparkes@swimming.org

BCC: Gregory Eggert

Dear Paolo,

I am sending this message to you, with a copy to our friend, David Sparkes, as he has already engaged in some email communication with me on the topic discussed below.

An article in "Inside the Games" indicates that TSE Consulting is assisting the LEN candidacy of Erik van Heijningen and also states that, although I am a Director of TSE, I am not involved in this effort.

Let me give you some background information:

— As I remember discussing with you and David during dinner in Indianapolis, each of the TSE offices operates within specific geographic regions. My "territory" is North America, and I have clients in Canada, Mexico, and the United States. In one or two occasions over the last ten years, I have been asked to participate in a project outside of North America. It is, however, very rare and only when there are extraordinary circumstances.

— The TSE office in Lausanne had done some previous work in the Netherlands related to sports event strategy development and bidding for international events (specifically, Eindhoven and Rotterdam), as well as some work for the Dutch Olympic Committee (Amsterdam as a potential Olympic bid city). I did not participate in any of these projects.

— After my arrival in Budapest, I saw a young woman who works in the Lausanne office in the lobby of the Intercontinental Hotel. After talking with her last Friday, I knew for the first time about the relationship between Erik and TSE.

I emphasize to you that I was unaware of this engagement previously, and I have not previously had any involvement, nor will I have involvement in the future in helping his candidacy.

Further, it would be inappropriate for me as a President of a Continental Association (UANA) to be involved politically in the affairs of another Continent. The last time I attended a LEN Congress was at the invitation of one of your predecessors more than twelve years ago!

I am in the process of writing letters to President Maglione, Executive Director Marculescu, and FINA Ethics Panel Chairman Werner to clarify this matter. I have always been very conscientious about potential, perceived, or actual conflicts of interest, and I will continue to do so. I fully understand my role as a FINA Vice President and as a regional director of TSE Consulting, and I know that the two cannot mix. I have drawn a very clear line between the two, and I will continue to do so.

I consider you to be a friend (as well as David), and I am very apologetic to you for any possible misunderstanding created by this situation.

My best wishes to you, and I hope that we can continue to have friendly relations for many years to come.

Regards,

Dale

DALE NEUBURGER
UANA President

201 South Capitol Avenue, Suite 555
Indianapolis, Indiana 46225
T : +1 317 714 3667
E : dneuburger@tseconsulting.com

Subject: Re: Marcela -- Thank You For Your Help
Date: Sunday, July 17, 2016 at 8:36:03 AM Eastern Daylight Time
From: Dale Neuburger
To: Mr. Neuburger

----- Forwarded message -----

From: Dale Neuburger <dneuburger@tseconsulting.com>
Date: Friday, July 17, 2009
Subject: Marcela -- Thank You For Your Help
To: SPORTS <sportsdep@fina.org>

Marcela, I ask that you put the following short statement on FINA letterhead to be put at the places of each Bureau member:

Dear Colleagues,

As you may know, I am the Director of TSE Consulting -- United States based in Indianapolis. The company provides services to the United States Olympic Committee, various domestic National Federations in Olympic sports, and several American cities.

TSE Consulting -- Lausanne, a separate company based in Switzerland, has provided services to the Dubai bid for the 2013 FINA World Championships. Although I have had no role in the Dubai bid, I choose to recuse myself from the voting process to avoid any appearance of conflict of interest.

I thank you for your understanding.

**Dale Neuburger
FINA Vice President**

DALE NEUBURGER

Director

TSE Consulting - United States

201 South Capitol Avenue

Suite #555

Indianapolis, IN 42225

FEDERATION INTERNATIONALE DE NATATION (FINA)

Respondent

vs.

Mr PAOLO BARELLI

Appellant

**ANSWER
(Article R55 CAS Code)**

Section I – Preliminary Observations

A. The Appealed decision

1. In the appeal, the appealed decision is described as being a “decision” of the FINA Executive not to refer a complaint by the Appellant concerning violations of the FINA Code of Ethics by Mr Dale Neuberger, a FINA Vice-President, member of the FINA Bureau and of the FINA Executive.
2. This description needs some qualifications: a decision in respect of the referral to the Ethics Panel of the circumstances reported by the Appellant had effectively already been made by the FINA Executive on August 3, 2016, after the Appellant had submitted the same allegations and the same request by a letter dated June 17, 2016 (Exhibit RA¹-6) and a further letter dated July 15, 2016 in which the Appellant expressly requested a referral to the Ethics Panel (Exhibit RA-7).
3. After having taken note of the allegations and of the explanations provided by Mr Dale Neuberger in this respect (Exhibit RA-8, & 8.1-5), the FINA Executive decided not to refer the matter to the Ethics Panel.
4. The meeting during which the matter was discussed was not minuted. This does change the fact that the decision was effectively made (Exhibit RA-10, 2, lit b).
5. Since the Appellant did not accept this decision, nor a similar decision concerning another Member of the FINA Executive, Mr Al Mussallam, against which the Appellant had also raised accusations, the Appellant submitted again the same circumstances directly to the attention of the Ethics Panel on November 29, 2016.
6. On December 4, 2016, the Ethics Panel observed that it could only act based on a transfer by the Executive. It accordingly decided to refer both the matters submitted by the Appellant in connection with Mr Neuberger and Mr Al Mussallam to the FINA Executive for a decision in application of art. FINA Constitution 24.5 (i.e. decision on transfer to the Ethics Panel).
7. The express request of Mr Al Mussallam (Exhibit RA-1) led the FINA Executive to effectively reconsider its former decision not to transfer the matter concerned Mr al Mussallam to the Ethics Panel.
8. A corresponding communication was addressed to the Ethics Panel on December 4, 2016 (Exhibit RA-2). The fact that the transfer is decided pursuant to Mr Al Musallam request is expressly stated.
9. This referral led to the Ethics Panel decision dated December 5, 2016, which is the appealed decision in parallel proceedings (CAS 2016/A/4924 - Exhibit R-11)
10. By contrast, there was no reconsideration of the decision not to refer the allegations raised again Mr Dale Neuberger to the Ethics Panel.
11. This was effectively a confirmation of the decision not to transfer the matter, which had already been made on August 3, 2016. This decision not to transfer the matter concerning Mr Dale Neuberger is recorded in the minutes of the Ethics Panel meeting dated December 5, 2016 (Exhibit RA-4, p.4 #10.1 §3).

¹ « RA » refers to the exhibits provided with the Application for bifurcation

12. On December 23, 2016, the FINA Office asked the Members to confirm their decision in respect of Mr Neuberger. This was the basis for the decision communicated on December 26, 2016.
13. In effect, the communication dated December 23, 2016, only confirmed the decision already taken in August 2016 not to refer the same matter to the Ethics Panel.
14. It was also confirmation of the decision made during the meeting of the FINA Executive meeting of December 5, 2016, when no referral of the matter concerning Mr Dale Neuberger was ordered.

B. The proceedings so far

15. The Appellant has filed its appeal statement on January 12, 2017.
16. On January 23, 2017, the Respondent filed an application for bifurcation seeking a preliminary award on the issues of jurisdiction and standing (active and passive).
17. On February 2, 2017, the Panel confirmed that it had decided a bifurcation in respect of the issue of jurisdiction only.
18. On March 8, 2017, the parties were informed that the Panel had decided to "retain jurisdiction".
19. The Appellant filed his appeal brief on March 27, 2017

Section II – The appeal

A. The content of the appeal

20. The Respondent will refer only to the requests set forth in the appeal brief. As expressly confirmed by the Appellant, they supersede the requests set forth in the Appeal statement.
21. Appellant seeks to obtain that the FINA Executive decision be set aside.
22. It further seeks to obtain that the CAS remit the matter to a "differently constituted" FINA Ethics Panel for determination (appeal brief, p. 42, #150).
23. It is to be noted that the Appellant has expressly dropped the requests initially included in the appeal statement to find that Mr Dale Neuberger had committed violations of the Code of Ethics and to accordingly apply appropriate sanctions (see appeal brief, p. 37, #130).

B. The relevant issues

24. The issue of jurisdiction having been decided, the issues to be addressed to decide the outcome of these proceedings still arise at different levels. They are the following:
 - 24.1. At preliminary level, the issue whether the appeal is not late and/or abusive given the fact that it seeks to challenge a decision, which in its merits has already been made long before the decision, against which the appeal is formally filed.
 - 24.2. At the level of the merits, the first issues to be considered are the ones arising in respect of standing. They arise in this case in two different respects:

- 24.2.1. The active standing to sue of the Appellant, i.e. the entitlement of the Appellant to appeal against a decision, which do not concern him directly as a party. This depends on whether the Appellant has a legitimate and actual personal interest to obtain the decision that he is seeking.
- 24.2.2. The passive standing to be sued. In this respect, the issue is whether the appeal is directed against the correct respondent(s) given the decision it seeks. Simply put, can a decision, which in this case directly concerns the interests of a party (Mr Dale Neuberger) be put in question in an appeal without directing the appeal (also) against such directly concerned party.
- 24.3. The second level is the one of the actual merits of the decision as issued by the FINA Executive. Here again, there are two different issues:
- 24.3.1. Whether or not a referral by the FINA Executive was necessary and whether or not the FINA Executive correctly exercised its discretion when it decided not to transfer the matter to the Ethics Panel.
- 24.3.2. The correct exercise of this discretion may notably depend on whether there is any substance in the alleged violations of the Code of Ethics by Mr Dale Neuberger. Despite the fact that the Appellant has now dropped his requests for a formal determination in this respect, it remains therefore relevant to address that aspect as well.
- 24.4. Finally, in the highly improbable case that the CAS would order that the matter should be reviewed by the Ethics Panel, the issue of the constitution of the panel will have to be determined.

C. Discussion of the relevant issues

a. The appeal is late, respectively abusive.

25. In June and July 2016, the Appellant has already submitted a request to have the circumstances, which he denounces as constituting violations of the Code of Ethics by Mr Dale Neuberger referred to the Ethics Panel.
26. Such request was notably expressly made in a letter dated July 15, 2016 (Exhibit RA-7).
27. Following such request and the explanations provided by Mr Dale Neuberger, the FINA Executive considered the matter in its meeting held on August 3, 2016. The decision was made not to transfer the matter to the Ethics Panel (Exhibit RA-10).
28. The Appellant, who is a FINA Executive member and who took part to this meeting is well aware of this decision.
29. At that time, the Appellant did not challenge the decision not to refer. Assuming that he could have been entitled to appeal (in any event, this is not the case, see below), the dead-line to challenge the refusal of the FINA Executive to transfer the matter to the Ethics Panel has now long expired.
30. The so-called reference submitted directly to the Ethics Panel almost 4 months thereafter has the same content and basis. It alleges the same circumstances as the ones, which the FINA Executive had already considered and consequently refused to transfer for consideration to the Ethics Panel on August 3, 2016.
31. The Appellant had effectively repeated the same denunciation, simply disguising it under the different cloth of a direct reference to the Ethics Panel.

32. The abusive character of such repeated denunciation is increased by the fact that in the meantime, the Appellant has had the benefit of the explanations provided by Mr Neuberger (Exhibit RA-8 & 8.1-8.5).
33. These documented explanations evidenced that Mr Neuberger, as TSE North American agent, had absolutely no involvement in the public relation services provided by TSE SA, in connection with the campaign of the Appellant's opponent for the LEN presidential elections. They also established that Mr Neuberger had always addressed potential conflicts of interests with a highly commendable level of care and transparency. As a consequence of such transparency, Mr Dale Neuberger's position had already been reviewed by the Ethics Panel and found unproblematic.
34. Instead of acknowledging the objective information thus provided and draw the logical consequence, that his accusations did not stand, the Appellant just repeated in his reference dated November 29, 2016, the same acrimonious allegations, as if no clarifications had not been provided by Mr Neuberger.
35. Doing so, the Appellant was perfectly aware that the FINA Executive would not change the decision already made not to transfer the matter to the Ethics Panel.
36. On this background, the whole and sole conceivable purpose of this repeated denunciation can only have been an objective to unduly perpetuate an unnecessary discussion. In this context, the attempt to entertain the matter at appeal level in front of the CAS was certainly the most effective way to obtain a long lasting result.
37. The fact that this occurs in the context of a tense electoral process within FINA is no coincidence.
38. In any event, and again irrespective of the fact that the Appellant has, for other fundamental reasons, no entitlement to challenge it, a decision by the FINA Executive not to refer his denunciation has already been made on August 3, 2016.
39. The repeated attempt to submit again a thus already decided issue is abusive. A party, which raised a question and obtained an answer, which it did not challenge in due time, cannot legitimately get the possibility to restart the process by asking the same question again.
40. For this reason already, the appeal, which substantially challenges the decision made on August 3, 2016 shall be deemed as late, respectively abusive.
41. For good measure, it can also be noted that the confirmation of the decision not transfer the matter of Mr Dale Neuberger was effectively reconfirmed on December 5, 2016 in Windsor on the same day as, for other reasons, a different decision was made in respect of the matter of Mr Al Mussallam.
42. This decision was recorded by the Ethics Panel on December 5, 2016 and the Appellant, who attended the FINA Executive Meeting is perfectly aware of that decision.
43. The confirmation process conducted on December 26, 2016 was effectively superfetatory. It was triggered by the fact that the Appellant himself, on December 21, 2016 (Exhibit AB²-28) caused the question to be asked again.
44. The unnecessary third confirmation of the decision already issued on August 3, 2016 and confirmed on December 5, 2016, both times in presence of the Appellant could

² « AB » refers to the exhibits attached to the appeal brief

not, under the circumstances, validly restart a dead-line to challenge the long made initial decision.

b. Lack of standing to sue

73. The Appellant has no standing to file an appeal against a decision of the FINA Executive deciding not to transfer a matter to the Ethics Panel.
74. The Appellant does not indeed have any entitlement to obtain the requests of relief that he is asking the Panel to award.
75. The provisions of the Code of Ethics and their application have an institutional function.
76. Their purpose is the protection of the integrity of the organisation of FINA as an institution. A contrario, the Code of Ethics does not purport to protect individual rights and does not establish any basis for individual entitlements nor claims of individual parties.
77. As a consequence of their function, the structure of the proceedings in front of the Ethics Panel is "vertical", i.e. they are proceedings between the institution, acting through designated decision-making body, being in this case the Ethics Panel, on the one hand and, on the other hand, the individual, who potentially breached the Code of Ethics.
78. In proceedings of this type and structure, and unless the rules provide specifically therefore³, there is by nature and definition no procedural position for individual parties other than the part(ies) directly subject to the decision at stake in the proceedings.
79. As has been already explained in the Application for bifurcation & preliminary award ("the Application", p. 9, lit b, #72ff) to which reference is made in respect of the discussion on standing, this applies in particular and also in regard of a person reporting facts, which may give rise to proceedings in front of the Ethics Panel, in other words to a denunciator.
80. A denunciator is reporting facts and circumstances, which may constitute violations of the provisions of the Code of Ethics. If that is the case, this may lead to consequences for the potential violator(s), not and never for the denunciator himself or herself.
81. The person reporting facts does to have any personal right or claim to obtain that his or her denunciation effectively leads to proceedings, nor to challenge a decision, which he or she might not consider as satisfactory.
82. In other and plain words, the denunciator has no party's position in connection with proceedings in connection with the application of the Code of Ethics. The interests adjudicated in these proceedings are not and never the denunciator's interests but the general interests linked with the institutional enforcement of the Code of Ethics.
83. Pursuant to the Code of Ethics provisions, reporting facts, which may constitute potential violations is, logically, not a right but a duty (see Code of Ethics Art. VI.1).

³ E.g. typically, the cases in which a civil party position is provided for in criminal proceedings

84. The "denunciator" reporting such facts does not acquire a procedural position allowing him or her to act as "prosecutor". He or she has only the obligation to contribute to the clarification of the facts, if requested (Art. VI.2).
85. The fact that the Appellant brought forward facts, which allegedly constituted violations of the Code of Ethics did not therefore give him a right to participate to the proceedings nor, in the specific situation at stake, a personal entitlement to require that his denunciation effectively leads to proceedings in front of the Ethics Panel.
86. A fortiori, the Appellant has, as a matter of principle, no entitlement to file an appeal against the decision not to refer the matter to the Ethics Panel.
87. According to the clear precedents of the CAS (which, in this respect simply mirror the a similar line of precedents in court decisions), a decision can only be challenged by a party, which has a direct, concrete and actual interest in the reliefs. This is summed up in the requirement to have an "interest worthy of protection" (see the Application, p.14, ##121ff).
88. Proceedings of the Ethics Panel and the decisions to be issued in this context do not, as matter of nature and purpose, affect any actual and personal rights of third parties, whether patrimonial or otherwise. This is a fortiori true of the decision by the FINA Executive to transfer a case for consideration by the Ethic Panel.
89. In the present case, the reliefs sought in the appeal do not concern any personal and actual rights or interests of the Appellant.
90. The Appellant has no personal function, nor mission to be the guardian of the application of the Code of Ethics. This is the function of the FINA Executive, when it has to decide whether or not to refer a matter to the Ethics Panel, and of the Ethics Panel, when it considers a matter, which the FINA Executive transfers for its review.
91. Whether or not the circumstances reported by the Appellant are submitted to the Ethics Panel for it to consider whether or not they constitute violations committed by Mr Dale Neuberger, and if so, which sanction would have to be issued against Mr Dale Neuberger are by nature elements, which have not impact on any personal and actual interests of the Appellant.
92. The fact that the circumstances reported by the Appellant include a reference to the alleged links of Mr Dale Neuberger with TSE SA and to the fact that this company was appointed to support an opponent of the Appellant in an electoral process now long concluded (and successfully so by the Appellant) does not allow the Appellant to claim that he would have such an interest.
93. Irrespective of the fact that the claim that TSE SA's activities in the electoral process would allegedly represent a violation of the Code of Ethics by Mr Neuberger personally is without merits and frivolous, a decision on this issue would have in any event no longer any impact on any conceivable personal and actual interest of the Appellant.
94. The outcome of these proceedings could therefore neither directly (as such the opening and conduct of proceedings against Mr Neuberger would have no consequence at all for the Appellant) nor indirectly (when the Ethics Panel would then issue its decision) have any impact on the Appellant's actual and personal interests.
95. In conclusion, the Appellant has no interest worthy of protection to challenge the decision of the FINA Executive not to transfer the matter he reported in connection with Mr Dale Neuberger to the Ethics Panel and to obtain a decision ordering such transfer.

96. Given this obvious lack of standing (in the above sense), the appeal must be dismissed.

c. Lack of standing to be sued : misdirected appeal

97. Reference is made here to the explanations provided in the Application on p. 15, #131.
98. The issue is not that FINA would lack the standing to be sued. FINA, through the Ethics Panel, is the decision making entity and a party against which the appeal has to be directed anyway.
99. The issue is however that the appeal has not been also (but essentially) directed against the party, who should have necessarily been involved in the proceedings, given the reliefs sought by the Appellant.
100. As already mentioned, neither the appeal decision nor the reliefs sought affect the Appellant's interests.
101. In strong contrast, they do indeed concern and potentially affect the direct, personal and actual interests of Mr Dale Neuberger, who is the party, who would be truly directly concerned if the reliefs sought by the Appellant were granted by the CAS panel.
102. Yet, the appeal has not been directed against Mr Dale Neuberger.
103. This means effectively that the Appellant, who was not a party and who has himself no actual personal interest in the outcome of the appeal, is attempting to force the review of a decision without relevance for his own interests in absence of the party, which would be the party directly affected by the reliefs he is seeking.
104. In the Application, the Respondent already brought forward CAS precedents, which confirm that decisions regarding reliefs, which affect the right of third parties cannot be issued without such parties being involved in the proceedings.
105. The Respondent wishes to underline that the present situation is even much clearer than the situation addressed in for example the cited CAS 2016/A/4668.
106. In the present case indeed, the missing party is not simply a party, which might also be affected de facto by the outcome of an appeal processed between the main parties of the proceedings.
107. Here, **the "missing" party at the CAS appeal level, is effectively the only one affected by the reliefs applied for in the appeal!**
108. The consequence is that **the issues concerning that essential "missing" party simply cannot be addressed in its absence.** This would be a fundamental violation of basic procedural principles.
109. First, it would be an **"absolute" violation of the right to be heard: a decision concerning Mr Dale Neuberger's direct interests and only these interests would be discussed and issued in proceedings in which Mr Dale Neuberger is not even named as a party!.**
110. This can only lead to dismissal of the requests for reliefs, which cannot be granted in the absence of the party, which they directly concern.
111. In conclusion of the discussion in regard of issues of standing (active and passive), the Respondent observes that the combination of lack of standing to sue and of the

fact that the appeal is not even correctly directed against the main party concerned results in a peculiar and striking mix: **the appeal has been filed by an appellant, which has no actual and personal interests in the reliefs he seeks. Furthermore, the appeal is not even directed against the party whose personal, direct and actual interests are at stake.**

112. This summarises what these proceedings truly represent for the parties and the CAS: a total waste of efforts and costs and an obvious abuse of proceedings.

d. The Ethics Panel can only act based on a referral by the FINA Executive

45. In accordance with Art 24.5 of the FINA Constitution, matters are transferred to the Ethics Panel by the FINA Executive.
46. Upon receipt of the so called references filed by Appellant on November 29, 2016 in respect to matters concerning both Mr Dale Neuberger and Mr Ali Musallam, the Ethics Panel therefore correctly decided to ask the FINA Executive to indicate whether it would decide to transfer the matter to the Ethics Panel in application of art. 24.5 Constitution (Exhibit RA-4, # 10.1).
47. As is known and recorded in the Ethics Panel's minutes(Exhibit RA-4, # 10.1), the FINA Executive decided differently in the above mentioned two cases.
48. First, and based on Mr Ali Musallam's express request, his matter was effectively transferred to the Ethics Panel, which issued a decision on December 5, 2016. Such decision is the object of parallel appeal proceedings (CAS 2016/A/4924; Exhibit R-11).
49. The Appellant challenges that fact that the Ethics Panel needed a referral by the FINA Executive to act. Respectively, he is of the opinion that the FINA Executive would have practically no discretion in its decision to transfer or not. In the interpretation proposed by the Appellant, the FINA Executive would have just to determine whether the matter would or not be properly a matter for the Ethics Panel.
50. As a preliminary observation, the Respondent reminds the principle that associations under Swiss Law are free to establish their organisation as they see fit.
51. As a consequence of this so called "autonomy," there are very few limits set to the organisation of associations and the solutions they chose shall be respected unless they are contrary to imperative legal provisions or fundamental principles.
52. The clear meaning of art. 24.5 FINA Constitution, which establishes the jurisdictional basis of the Ethics Panel's proceedings, is that this provision establishes a referral system pursuant to which matters are transferred to the Ethics Panel, only if so decided by the FINA Executive.
53. This system is not in contradiction with any imperative provision nor any fundamental principle of law.
54. The system instituted by art. 24.5 FINA Constitution has therefore to be applied and respected.
55. It is to be noted that a similar referral system applies in respect of the jurisdiction of the Disciplinary Commission: as per Art. 23.4 FINA Constitution, the Disciplinary Commission also proceeds based on a referral of the FINA Executive.

56. As the Ethics Panel notes that a question could arise in this respect, the Respondent further observes that there is effectively no contradiction between art. 24.5 FINA Constitution and Art. VI (1) of the Ethics Code. These provisions, which operate at two different levels, deal with two different elements: whilst art. 24.5 FINA Constitution establishes the jurisdictional basis of the Ethics Panel, Art. VI provides the obligation for parties subject to the Code of Ethics to report potential violations to the Ethics Panel. It does not provide that this would institute a jurisdictional basis of the the Ethics Panel to act on such report, absent a referral of the FINA Executive.
57. What happened in this case effectively illustrates the correct process in case a report of potential violation is submitted to the Ethics Panel : the Ethics Panel shall then seek whether the FINA Executive decides to formally transfer the matter for decision.
58. The proposition that the FINA Executive would only be entitled to review whether the matter is properly a matter for the Ethics Panel and have an obligation to transfer any matter to the Ethics Panle finds no basis in the rules.
59. The decision to have a referral system allowing a control on matters, which are transferred to the Ethics Panel may have very good and valid reasons. As the present matter precisely demonstrates, proceedings of this nature can easily be used in abusive manner. A screening by the FINA Executive allowing to select the matters, which are to be effectively transferred is adequate.
60. Even not drawing broadly the scope of the review, which the FINA Executive exercises in applying art 24.5 FINA Constitution, this system allows to avoid to engage proceedings, which are obviously not adequate.
61. In the instant case, the FINA Executive did exercise the discretion, limited or not, it does have pursuant to art. 24.5 FINA Constitution in a fully appropriate manner, when it confirmed its decision not to transfer the repeated groundless accusations raised by the Appellant against Mr Dale Neuberger.
62. The absence of merits of these accusations is obvious on the face of the explanations in file. Furthermore, the Appellant was effectively repeating allegations already submitted a few months before.
63. Given the clarifications received, the groundlessness of the accusations had even become much more obvious.
64. In these circumstances, the FINA Executive's confirmation of its decision not to refer the matter to the Ethics Panel was in any event a correct application of its discretion in the application of C 24.5 FINA Constitution.

e. Absence of potential violations of the Code of Ethics

113. The Appellant has formally and completely retreated from his initial requests for relief, which were seeking to ask the Panel to directly find that Mr Dale Neuberger would have violated the Code of Ethics.
114. Whilst this positions is understandable, the Respondent observes that the Appellant nevertheless continues to put forward explanations both factual and legal, which attempt to support his allegations that Mr Dale Neuberger would be in violation of the Code of Ethics.
115. As mentioned above, the Respondent further observes that it remains relevant for the evaluation of the correctness of the FINA Executive decision to take into account

- the obvious absence of merits of the allegations and explanations put forward by the Appellant.
116. On the merits of the issue whether Mr Dale Neuberger did or not violate the Code of Ethics, this case is a particularly obvious one. This applies both in regard of the effective factual circumstances and in regard of the legal evaluation to be made in regard of Mr Dale Neuberger's management of potential conflict of interests.
117. First, as regard to the facts:
- 117.1. TSE consulting SA is a company based in Lausanne (Exhibit R-12; Extract or commercial registry) is one of the major companies active in communication in sports.
- 117.2. FINA appoints TSE SA from time to time to perform services linked notably with communication service in the context of the organization of major events. Example of the tasks performed by TSE SA on behalf of FINA are listed in Exhibit R-13. The cooperation takes place at operational level. The underlying agreements are negotiated and executed by the FINA management without involvement of the FINA Executive or Bureau members.
- 117.3. Mr Dale Neuberger is neither an officer (board member/director/signatory), nor an employee of TSE SA (Exhibit R-12; see also Exhibit RA-8.5). He has no control or decision power in th
- 117.4. In 2006, Mr Dale Neuberger began a cooperation with TSE Indianapolis, the US operation of the TSE group. Mr Neuberger expressly disclosed the nature of its engagement with TSE Indianapolis to FINA (see Exhibit RA-8 & RA-8.1). He clarified that he was appointed as director of TSE Consulting - Indianapolis and that he would be active only in the United States. It is to be noted that at that time, there was no Code of Ethics in place and no formal requirement to declare potential conflict of interest.
- 117.5. In 2009, Mr Dale Neuberger, at the time again ahead of the implementation of the Code of Ethics, repeated its transparent disclosure. In a statement addressed to the Bureau Members on July 17, 2009, Mr Neuberger mentioned that he had recused himself from voting in respect to a bid, in which TSE SA, which is a separate company from the US company in which he was engaged, had had an involvement. (see Exhibit RA-8.2)
- 117.6. In 2013, as the Code of Ethics had been enacted, Mr Dale Neuberger made an even more detailed disclosure. In such disclosure, Mr Dale Neuberger notably confirmed that he was not involved in any manner in the operation of the other TSE offices including in particular TSE SA. (see Exhibit RA-8.3)
- 117.7. Mr Neuberger's declarations were formally reviewed by the Ethics Panel, as part of the new review process of the candidates instituted in application of the Code Ethics. The conclusions were reported as follows: "*Dale Neuberger, USA, proposed by the Americas, has declared carefully his employment with TSE Consulting – North America, which has provided services for FINA from time to time and his awareness of potential conflict of interest in certain situations. With the vere correct information from him and knowing his experience of the procedure in the FINA Bureau, there is not rason to question his election.*" (Exhibit RA-3).
- 117.8. When his name was brought in connection with the fact that TSE SA was providing public relation support to a candidate who was running for the presidency of LEN concurrently to the Appellant, Mr Dale Neuberger immediately and personally wrote to the Appellant to clarify that he had no involvement in this activity of TSE SA, which had not even been informed of. Mr Neuberger expressed his regrets that there could have existed a misunderstanding in this respect (Exhibit RA-9).
- 117.9. The nature and extent of Mr Dale Neuberger's involvement with TSE – Indianapolis and the fact that he has not been not involved in the activities of TSE SA in general and TSE

SA's appointment on behalf of the Royal Dutch Swimming Federation in connection with the LEN election in particular is confirmed in a detailed statement established by Mr Lars Haude-Pedersen, TSE SA's managing director (Exhibit RA-8.5).

118. In view of the above, the following can be observed as regards the evaluation of the conduct of Mr Dale Neuberger in the perspective of the application of the Ethics Code:
- 118.1. There is absolutely no basis to consider any potential violations of the Code of Ethics by Mr Dale Neuberger.
- 118.2. Mr Dale Neuberger has fully disclosed elements, which could lead to potential conflicts of interests in respect with his engagement with TSE - Indianapolis.
- 118.3. When the possibility of conflicts arose in connection with the involvement of TSE SA in matters in respect to which a vote took place, Mr Dale Neuberger very correctly and strictly abstained. This occurred despite the fact that he had neither personally nor through TSE - Indianapolis, any involvement in the concerned matters.
- 118.4. His position in TSE - Indianapolis has been specifically reviewed and cleared by the Ethics Panel. This corresponds to a clearance of any issue in this respect in accordance with art. 14, 15 and 16 of the Code of Ethics.
- 118.5. As regards the appointment and the mission of TSE SA on behalf of Mr Van Heinijgen, it is confirmed and clarified that Mr Dale Neuberger did not have any involvement in this operation. He is further not a director of TSE SA and has no power of decision in respect of that company. Consequently, there is simply no factual basis for the allegation that Mr Dale Neuberger would have personally breached the principle of neutrality by being involved in an appointment, which effectively was completely outside of his legal and personal sphere of activities and decision.
119. In conclusion, the allegations brought forward by the Appellant are obviously without merits and the decision of the FINA Executive not to transfer the matter to the Ethics Panel for review of the Appellant's accusations is completely appropriate.
120. If anything, the behaviour of Mr Dale Neuberger is exemplary in terms of observance of the Code of Ethics and principles to be applied in relation with potential conflicts of interest.
121. There is no justification to ask the Ethics Panel to review the situation of Mr Dale Neuberger in relation with his position in TSE Indianapolis. The Ethics Panel has indeed already reviewed that aspect and there is no need to repeat that review.
122. Furthermore there is no reason to ask the Ethics Panel to examine accusations linked with the alleged involvement of Mr Dale Neuberger in operations of TSE SA in respect of the past LEN elections. Mr Dale Neuberger was indeed, as a matter of clear fact, not involved in these operations.

f. Constitution of the Ethics Panel

123. In the unlikely event that the CAS Panel would decide to remit the matter for decision to the Ethics Panel, the Respondent observes that it would be inappropriate for the CAS Panel to issue any determination in regard of the constitution of the Ethics Panel.
124. In this case, there is indeed absolutely no reason for the CAS to determine anything in respect of the constitution of the Ethics Panel.

125. The mere fact that the Ethics Panel decided to ask the FINA Executive to determine whether the matter was transferred or not in application of Art, 24.5 of the FINA Constitution is obviously not a reason per se to consider that the Ethics Panel, as constituted when it decided to ask for such decision, would be biased in any respect.
126. Accordingly, if the matter would be sent back to the Ethics Panel for decision, such should simply be constituted regularly in accordance with the applicable provisions.
127. A panel of at least three members would consequently be formed as directed by the Chairman of the Ethics Panel (art. C 24.6).
128. There is no reason nor basis for the CAS Panel to intervene and set different directions in respect of the constitution of a decision making body of FINA. This would inter alia be a clear and baseless violation of the autonomy of FINA.


Section III – PRAYERS FOR RELIEF

In light of the above, FINA respectfully requests that the CAS Panel issues an award as follows:

- I The Appeal is declared inadmissible.
- II The Appeal is dismissed.
- III The Appellant shall bear all the cost of the proceedings
- IV FINA shall be awarded a contribution towards its legal costs

Lausanne, April 19, 2017

For the Fédération Internationale de Natation:


Jean-Pierre Morand