



Judgment of the USC Appeals Board in the matter of:

***Muslim Students Association v. USC Clubs Governance Committee,
2015:5***

Judgment Date: October 11, 2015

Panel: Brandt Chu (Deputy Chair), Rufina Ning, and Jeffrey Wong

Reasons for Judgment: The Board

SUMMARY:

The SOA's oral statement to the MSA did not satisfy the requirements of an "approval" under the 2013 Clubs Event Planning Procedure. Although SOAs can give approval (including oral approvals) at their "discretion," such approvals must be made in circumstances that guarantee the same or similar levels of safety, security, and preparation as if the explicit provisions of the Procedure were followed. Examining the totality of the circumstances, the statement did not represent a valid final event approval. The decision of the CGC to sanction the MSA was reasonable.

JUDGMENT:

Introduction

1. The issues on this appeal are (1) whether the Muslim Student Association (hereafter the "MSA") obtained approval for their event in accordance with the 2013 USC Clubs Policy "Clubs Event Planning and Risk Management Procedure" (hereafter the "Procedure") and (2) whether the decision of the USC Clubs Governance Committee (hereafter the "CGC") to sanction the MSA was reasonable.

2. For the reasons that follow, the USC Appeals Board rules in favour of the CGC and upholds the decision to place the MSA on probation for eight (8) months.

Facts

3. On February 3, 2015, the MSA submitted an event proposal for their annual ski-trip. They received an email reply from a Student Organizations Advisor (hereafter "SOA") on February 5, 2015 providing them with "permission to plan." The reply also indicated that the MSA was to provide all their waivers forms and a complete list of participants by Thursday, February 12, 2015. The MSA did not meet this deadline.

4. On Friday, February 13, 2015, MSA representatives went to the USC office and spoke to a second SOA. According to the MSA, the organization obtained implicit "verbal approval" for their event. They were under this impression since when MSA representatives asked if there was anything left to do, the reply from the second SOA was: "everything was completed." Moreover, the second SOA provided, via email, a list of eleven (11) participants who the CGC had received waiver forms from, although past the original deadline. While it is unclear how explicit was the verbal approval provided, it is clear that this second SOA provided no explicit written approval. The office then closed until it re-opened on February 18, 2015. The ski event took place on Tuesday, February 17, 2015 with thirteen (13) attendees – two (2) more than was listed in the second SOA's e-mail.

5. It should be noted that neither party contested the aforementioned facts when given the opportunity to do so.

6. After inquiring into the issue, the CGC determined that the ski event did not have final explicit approval. The CGC then sanctioned the MSA by placing them on probation for eight (8) months.

Issue 1 – whether the second SOA's oral statements constituted an "approval"

7. There is no doubt that the MSA did not follow a number of the explicit provisions found in the Procedure or directions given to them by USC officials or SOAs. For example, the MSA did not meet the deadline requirements set out in s. 2.02, provide all the necessary waivers required by s. 2.07, and meet the extended deadline provided to them on February 5, 2015.

8. Nonetheless, the main issue on this appeal is whether the second SOA's oral statement constituted a valid approval for the purposes of ss. 2.05 and 2.09 of the Procedure. The Board notes that s. 2.05 states that "event proposals shall require approval," but does not explicitly state whether approval must be in writing or can be provided orally. The Board concludes that s. 2.05 when read with s. 2.09 should be given a somewhat liberal interpretation, and in certain limited circumstances a verbal statement may constitute a valid "approval" for the purposes of ss. 2.05 and 2.09. S. 2.09 of the Procedure states that "the USC and the Student Organizations Advisors reserve the right to approve or deny any event proposal, in whole or in part, at their own discretion." When s. 2.09 is read together with s. 2.05, it suggests that the drafters intended for SOAs to have a degree of flexibility during the event proposal approval process that could include verbal approvals.

9. Moreover, a somewhat flexible interpretation of the Procedure aligns with how the rules have been applied in the past by SOAs. In this case for example, while s. 2.02 of the Procedure requires proposals to be submitted twenty-one (21) days prior to the proposed date, rather than denying the MSA's event proposal outright when it was submitted a mere 2 weeks prior to the event date, discretion was exercised in favour of the MSA. A waiver of the explicit requirements under s. 2.02 appears to be a valid use of the discretionary power granted by s. 2.09.

10. However, the more difficult question to respond to is exactly when a verbal statement will constitute a valid approval. Examining the written provisions of the Procedure and its implicit purpose, to ensure that only safe, secure, and well-planned events are approved, there are at least two situations where an

oral statement will constitute a valid approval to the satisfaction of ss. 2.05 and 2.09. First, an oral statement will constitute approval where the SOA has had an adequate opportunity to ensure that an event proposal generally meets the same or similar standard of safety, security, and preparation guaranteed by the explicit provisions of the Procedure. Second, a verbal statement will constitute approval where it is reasonable to believe that a written approval would have been granted in the same circumstances.

11. Turning to the facts, the second SOA's oral statement did not constitute an approval that satisfies the Procedure. Firstly, the statement was made without the SOAs collectively having an adequate opportunity to ensure the proposal generally met the same or similar levels of safety, security, and preparation that the explicit provisions of the Procedure attempt to guarantee. There was insufficient time for a thorough evaluation of the event proposal and its accompanying documents. The fact that waiver forms were still being submitted one (1) business day prior to the USC closing its office until after the proposed event is indicative of the lack of opportunity for proper review. Secondly, it is unreasonable to believe that a written approval would have been granted in the same circumstances, in particular given that the MSA had already missed the extended deadline provided by the SOA in its e-mail dated February 5, 2015.

12. The Board recognizes that there may have been miscommunication between the parties. However while there is some evidence of a valid verbal approval, the SOA's oral statement cannot be taken to constitute a valid approval under the Procedure.

13. The facts of this case further demonstrate exactly why verbal approvals must be limited. The sanction of ad hoc and hastily crafted events of the scope proposed by the MSA, without a thorough review of the documents necessary to ensure safety and security, appear to be the exact sort of activity the Procedure was written to prevent. The potential for participants who have not signed a waiver form to attend an USC-sanctioned event in particular illustrates the necessity of limitations. Although discretion can and should be exercised where appropriate, there should be reasonable limits to ensure the basic aims of the Procedure are protected. The MSA's conduct, especially considering the event's high-risk nature, invited unnecessary liability and risk for which its participants and the USC could ill afford.

Issues 2 – whether the sanction Imposed by the CGC was reasonable

14. The role of the Board with regards to sanctions is best articulated in *Club Ratification Appeals Part I* as being "to ensure the presence of fairness in USC decision-making and adherence to stated policies and by-laws." As such, the CGC's decision to sanction must be given significant deference and is held to the reasonableness standard.

15. As only 11 of the 13 participants who participated in the event submitted waivers and the CGC's decision was made under the pretext that the second SOA gave no approval to the MSA, the Board concludes that the sanction imposed was reasonable.

DISPOSITION SUMMARY:

16. The Board finds in favour of the CGC and upholds the probation on the MSA for a period of (8) months.

Appeal Dismissed.