

DECISION OF THE GOTHAM VOLLEYBALL GRIEVANCE COMMITTEE

JANUARY 31, 2010 MEETING
REGARDING SPRING 2010 DIVISION X SELECTION

THIS DECISION HAS BEEN REDACTED TO REMOVE THE IDENTITIES OF THOSE PERSONALLY INVOLVED. ALL REDACTED NAMES/INFORMATION IS IN ITALICS.

BACKGROUND

The day following the Spring 2010 Division X draft, two captains in that Division reported to Division Representative *XXXXXXXX* (“*Division Representative*”) that two of the players picked by *TEAM CAPTAIN*, one of the Division X Captains, did not try out. The two players were *PLAYER 1* and *PLAYER 2*. *PLAYER 1* had previously played in A *LOWER DIVISION* and *PLAYER 2* was new to Gotham and therefore both players were required to try out in order to be selected.

After reviewing the circumstances surrounding the tryout process at the January 31, 2010 meeting, Chair Eric Eichenholtz (At-Large), Joe Bannan (Division 1), Brian Carroll (Division 2), Rene Deida (Division 3), Leo Pedraza (Division 5), John Albanese (Division 7) and Cynthia Jennings (Division 8) all voted to declare *PLAYER 2* ineligible for the Spring 2010 Season.

Joe Bannan (Division 1), Brian Carroll (Division 2), Leo Pedraza (Division 5), John Albanese (Division 7) and Cynthia Jennings (Division 8) also voted to declare *PLAYER 1* ineligible for the Spring 2010 Season. Chair Eric Eichenholtz (At-Large) and Rene Deida (Division 3) voted to allow *PLAYER 1* to play this season. The Committee unanimously agreed that both players be entitled to dues refunds (with *PLAYER 1’S* pro-rated) and that *TEAM CAPTAIN* must pick players from the eligible player pool to replace both players declared ineligible.

Joe Bannan (Division 1), Brian Carroll (Division 2), Rene Deida (Division 3), John Albanese (Division 7) and Cynthia Jennings (Division 8) also voted to that *TEAM CAPTAIN* cannot serve as a Captain following this season until Spring 2011. Chair Eric Eichenholtz (At-Large) voted to warn *TEAM CAPTAIN* instead and Leo Pedraza (Division 5) abstained from the vote.

The Committee also unanimously agreed that to recommend changes to the tryout process to the Gotham Board of Directors.

John Orcutt (Division 4) was unable to attend the meeting due to a prior commitment. Ethan Felson (Division 6) was unable to attend due to a family commitment. Susan D’Addario (Division 9) was unable to attend the meeting due to illness.

SUMMARY OF THE FACTS

The mission of Gotham Volleyball emphasizes the concept of building community (specifically the LGBTQ community as well as the community at large) through the sport of volleyball. Essential to this mission, Gotham runs its league through open tryouts utilizing a draft process. When properly executed, the process ensures fair competition by allowing all captains to choose from a pool of qualified players whose skills and ability the captains have had an opportunity to judge through prior competition in Gotham or during the tryout process. This process also encourages and requires players to go outside their immediate circle of friends and meet new people involved in the league. This stands in stark contrast to other recreational volleyball leagues, who allow people to join as teams rather than as individuals and prioritize strict volleyball competition over the concept of community.

In order to ensure the process is fair and all Captains have equal chance to build a competitive team, Gotham has adopted a rule that requires that any players new to the league tryout in order to being eligible for consideration in the division or divisions the player wishes to join. In recent years, following several occasions where skilled players were successfully “hidden” from other Captains by being asked not to attend tryouts, the rule was expanded to require any returning player who had not played in that particular division or a higher division within the last three seasons to also try out.

This information is widely disseminated to all involved in the tryout process. Captains are made aware of this rule in their Captain’s packet. All players who try out receive an e-mail confirming their registration. The e-mail clearly provides, “Attending tryouts for League play is required for all new members, returning members who did not play last season, and returning members who want to move up to a higher division, and is highly recommended for everyone else.” Similar language is included on Gotham’s website and registration system.

In order to enforce this rule, when a Captain selects a player who is new to the league, is trying to move to a higher division, or has not played at that division’s level or higher in the past three years, that player’s name is checked against the list of players who “checked in” to go to tryouts. A player might check in for tryouts but ultimately fail to come to his or her tryout. However, there is currently no process to confirm whether or not a player, after checking in for tryouts, actually went and completed the tryout process.

For the Spring 2010 season, Gotham Volleyball held tryouts for *DIVISION X* on *DATE OF TRYOUT*. *PLAYER 1*, who is friendly with *TEAM CAPTAIN*, one of the Division X captains, registered for tryouts and came to try out on *DATE OF TRYOUT*. *PLAYER 2*, *PLAYER 1’S SIBLING*, did the same. While *PLAYER 1* claims that they registered to try out for *TWO DIFFERENT DIVISIONS*, Gotham’s computerized registration database indicated that both *PLAYERS* only registered for Division X.

Upon their arrival, both *PLAYERS* checked in and went to Gotham Power Manager Billy Bowden, who was volunteering at the “court assignment desk”¹ during tryouts. They asked Bowden how long the process would take. Bowden explained that players trying out for Division *Y* only would be called first, followed by Divisions *Y* and *X*, followed by Division *X* only. He explained that they were registered for Division *X* only but could go to the laptop computer maintained near the registration desks to change their registration to Divisions *Y* and *X*. Both *PLAYERS* declined to do so. According to Bowden, neither *PLAYER* indicated *EITHER PLAYER* had to leave early. Bowden stated he saw both *PLAYERS* upstairs, with their jackets on, thereafter. He again offered to allow them to change their registration, but they declined.

PLAYER 1 explained to the Grievance Committee by email, that *THE PLAYERS* needed to leave by 2 PM on the day of tryouts for a prior engagement and did not recall any offer to change her tryout registration being made until they had been waiting about an hour for their tryout court to be reached. At that point, *PLAYER 1* explained, it was too late for *PLAYER 1* to try out.

Although *THE PLAYERS* did not try out, *TEAM CAPTAIN* was friendly with and had seen *PLAYER 1* play previously, and knew of *PLAYER 2* through *PLAYER 1*. *TEAM CAPTAIN* explained to the Committee that he understood from *PLAYER 1* that *PLAYER 2* had some experience playing beach volleyball in California.

Gotham Commissioner Seth Eichenholtz, who was running the Division *X* draft that day, explained that after tryouts for all players wishing to play in Division *X* had concluded, he met with the Captains and provided them with a list of players who registered to try out for Division *X*. He explained that the list contained all players who registered, that some of the players who registered may not have tried out, and encouraged the captains to ask any questions if they were unsure about the list. Eichenholtz gave the captains a 10 minute period to organize their notes. Both *PLAYERS* were on the list of eligible players. No captain asked any questions concerning the *PLAYERS*.

TEAM CAPTAIN explained to the Committee that he may not have been paying attention to everything that was being explained about the draft list, and instead assumed that all players on the list were eligible to be drafted. He did not recall seeing either *PLAYER* try out, but claimed he believed he could choose them because they were on the list. He stated that he relied on the list in deciding that they were eligible to be selected. He did not raise any concerns about the *PLAYERS*' eligibility.

During the Division *X* draft, when all players required to come to tryouts were selected, their names were checked against the list of players who checked in to confirm their attendance. Because both *PLAYERS* had checked in, they passed this safeguard in the process. *TEAM CAPTAIN* picked both *PLAYERS* during the draft process. No

¹ After checking into tryouts, a player goes to the court assignment desk to have his or her name placed on a tryout court on a first-come, first-served basis. Eventually, each group of 12 is called into a tryout gym to play volleyball in front of the captains.

captains objected to the selections, and at least one captain, XXXXXXXX, acknowledged meeting *PLAYER 1* earlier.

The next day, two captains approached to XXXXXXXXXXXX, the Division Representative for Division X, and stated they did not believe either *PLAYER* tried out. *DIVISION REPRESENTATIVE* reported this to complaint Eichenholtz, who referred the issue to this Committee pursuant to Article IX, Rule 3b of the Gotham Bylaws.

Due to scheduling issues, the Committee was unable to meet until after the first week of play. *PLAYER 1* played, but *PLAYER 2* did not. *PLAYER 1* was described as a “good” player, who likely would have been picked in Division X had *PLAYER 1* tried out. During the meeting, Gotham Vice Commissioner Josh Christensen, who served as the Executive Board Representative to the Grievance Committee for this issue, stated he was made aware that *PLAYER 2* was a setter who had played NCAA Division I volleyball at two schools, XXXXXXXXXXXX. When asked about this fact, *TEAM CAPTAIN* explained that he was not aware that *PLAYER 2* played NCAA Division I volleyball.

During closed deliberations, the draft rosters, which are printed out based on the data in the Gotham registration database at the time of the draft, were checked to see if *PLAYER 2* had described her prior playing experience when they registered. The section allocated for prior playing experience was blank. Thus, no Captains were made aware of *PLAYER 2*'S playing experience. However, the live data was taken from Gotham's database at the time of the Committee meeting did contain an entry about *PLAYER 2*'S college experience. Thus, *PLAYER 2* appears to have had modified her registration profile to add her college experience at some point after the Division X draft occurred.

DISCUSSION

The rule at issue is at the heart of what makes Gotham Volleyball unique as an organization. Gotham has a reputation for being a place where anyone can come, try out, and make a team based on skills and ability and be welcomed into the organization. In order to maintain a competitive league, all Captains need to have a fair opportunity to at least be aware of the players that are eligible to be picked. Because this rule is so essential to Gotham's league structure, the Committee believes it needs to be strictly enforced.

It is not disputed that this eligibility rule was violated. Both *PLAYERS* were not eligible to be drafted since they failed to actually try out. The Committee also notes that, while *PLAYER 1* has played in Gotham before, *PLAYER 1* appears to have a pattern of registering for the league only when *PLAYER 1*'S friends in the league are serving as Captains.

Not trying out after a player checks in violates both the letter and spirit of the rule requiring those new to Gotham, returning after a long absence, or looking to move to a higher division to try out. As discussed above, Gotham's rules prohibit individuals who

seek to play with only a particular player or group of friends to try and evade the league draft process. There are other leagues (and even other programs within Gotham such as Team Power and friendship tournaments) that allow a group of friends to form their own teams and play volleyball together. Instead the purpose of Gotham's league activities is to have all members of the Gotham community be eligible to be picked by any of the Captains in a division best suited to a player's skills. In order to do this, all captains must be able to have at least basic knowledge about the players they are choosing from.

While the Committee does not believe that either *PLAYER* actually intended to check in and not complete the draft process, the circumstances concerning the *PLAYERS* tryout paint a picture of two players who did not seem overly concerned about adhering to these important rules, possibly because they knew that one of the Captains knew them from outside of Gotham Volleyball. This insider information is precisely the sort of favoritism the rule is designed to prevent.

Moreover, to the extent we had any doubt about the justness of this result, such doubts were resolved after uncovering the apparent fact that *PLAYER 2*, a highly talented and successful college volleyball player, was not up front during the tryout process about *PLAYER 2'S* experience and appears to have added this information to *PLAYER 2'S* registration after the fact. While *TEAM CAPTAIN* said he was not aware of *PLAYER 2'S* college experience, it is certainly true that he was more aware of the fact that *PLAYER 2* was a superior player than the other captains in the draft room. In order for the tryout process to work, all players looking to try out are obligated to try out in good faith and be up front about their level of volleyball play and experience. We are confident that *PLAYER 2* did not fulfill this obligation to the league.

Because both players did not try out as required by the rule, the Committee has determined that neither *PLAYERS* are eligible to play in Gotham Volleyball this season.²

The Committee also finds fault with how *TEAM CAPTAIN* handled this situation. In order for the draft process to work successfully, all participants in the process – especially the captain – must be open and honest, and uphold Gotham's rules and regulations. Captains certainly do not need to share their draft strategies, but should raise any issues if they have any doubt that the action they seek to take is appropriate. The Committee finds it self-serving for *TEAM CAPTAIN* to claim that he did not hear the announcement about the nature of the draft list, saw the *PLAYERS'* name on the draft sheet and simply assumed they were eligible. *TEAM CAPTAIN* should have known or asked if the *PLAYERS* were eligible because according to him, they texted him that they had left. Those doubts should have been raised with the other captains during the draft and before picking either *PLAYER*.

² *PLAYER 1* played during Week 1 of the season. Due to conflicting schedules, it was not practical for the Grievance Committee to meet to resolve this issue prior to that point. No penalty will be taken for *PLAYER 1'S* participation, as *PLAYER 1* was permitted to play in order to preserve the *status quo* until the Committee could meet and review this issue.

No Captain should take a “pick now, ask questions later” approach. To avoid this, Gotham has established a fair process that allows time for Captains to identify and discuss any issues related to players’ eligibility prior to the commencement of the draft. It is very clear that issues related to team selection are best resolved during the draft process. The league relies on its captains to be responsible and bring potential problems to the attention of those running the tryout process. When a captain is aware of a potential problem with the draft that may ultimately work to his or her advantage, it is essential that the captain makes others aware of the potential problem.

The process is far from infallible and mistakes have been made. Tryouts are a complex process where over 800 people are sorted into 72 teams at nine different skill levels. Everyone’s cooperation is essential to get it done right. When potential issues are raised during the draft, they can be resolved right away and in the presence of all captains. Once the draft concludes, it is exponentially more difficult to resolve issues, as teams have already been selected and other players have become unavailable. Thus, captains are obligated to bring potential problems to the attention of their fellow captains and the league officials presiding over the draft. *TEAM CAPTAIN* failed this obligation.

In our view, whether or not *TEAM CAPTAIN* was actually trying to obtain an advantage here is not as critical as the fact that he selected players knowing they did not try out without sharing that fact. In order to deter other Captains from engaging in similar conduct, we have decided to declare *TEAM CAPTAIN* ineligible to serve as a Captain until the Spring 2011 season.

We wish to emphasize our belief that in order for Gotham to work, all parties, particularly the captains, must fully participate in the draft process in good faith. If a Captain has *any* doubt about whether a player is eligible that Captain has a responsibility to be up front about that at the draft. The committee believes that compliance with the rules discussed in this decision are essential to Gotham successfully functioning, and the Committee wishes to emphasize that it believes that attempts to evade and circumvent these core rules will almost invariably lead to sanctions, including suspensions.

RECOMMENDATIONS FOR POLICY CHANGES

Finally, we were also asked to review and recommend how to prevent this situation from occurring again. It is clear that the best way to resolve these sorts of issues are before or at the draft process and it is clear that some method is needed to flag those individuals who checked in to try outs but did not complete the process. Based on our discussions, it seems as if the best way to accomplish this would be for those managing the tryout courts to keep a list of all players who did not respond when called to appear for their tryout, which is the last part of the process. This list can then be referenced like the check in list during the draft and will allow the league to inform the Captains at the draft that a player did not try out.

CONCLUSION

For the reasons discussed above, the Committee has determined as follows:

- 1) *PLAYER 2* is ineligible to play in the Spring 2010 season because *PLAYER 2* did not try out and is entitled to a full dues refund.
- 2) *PLAYER 1* is ineligible to play in the Spring 2010 season because *PLAYER 1* did not try out and is entitled to a dues refund, minus a prorated portion for the first week of play.
- 3) Replacements for *PLAYER 1* and *PLAYER 2* shall be chosen from the pool of eligible players for Division X.
- 4) Following this season, *TEAM CAPTAIN* may not serve as a Captain until Spring 2011.
- 5) The Committee recommends to the Gotham Board of Directors that during future tryouts, a list of those who did not show up when called for their tryout courts be kept and provided to the individual running the draft in order to verify which players did not complete the tryout process.

NOTICE OF APPEAL RIGHTS

Under Article XI, Section 3c of the Bylaws of the Gotham Volleyball League, “Any interested party may appeal the Committee’s decision, within ten (10) business days of the Committee releasing its decision, to the Board of Directors. An appeal is initiated when an interested party delivers a letter stating the nature of the appeal to the Commissioner.” Therefore, all interested parties are advised that in order to be timely, any letter seeking appeal of this decision **must** be delivered to Seth Eichenholtz, Commissioner, Gotham Volleyball League on or before February 12, 2010.

DISSENTING OPINION

Eric Eichenholtz, Member-at-Large and Committee Chair:

While I agree with, have joined in and written most of the Grievance Committee's majority decision on this issue, I also write this dissent because I disagree with the result reached in two respects. First, joined by Division 3 Representative Rene Deida, I disagree with the decision to declare *PLAYER 1* ineligible for the season. The Committee majority is correct that *PLAYER 1* should not have eligible to be selected because *PLAYER 1* had previously played in a lower division and did not try out. However, given the circumstances here, removing two players from one team at this point strikes us as too harsh. Because *PLAYER 1* had played before, and the fact that it appears some of the other Captains may have been somewhat aware of *PLAYER 1* and *PLAYER 1'S* playing abilities, I would have allowed *PLAYER 1* to play this season. Rene and I agree completely with the decision of the Committee to declare *PLAYER 2* ineligible.

Similarly, I, as the sole dissent, disagree with the Committee's decision to declare *TEAM CAPTAIN* ineligible to serve as a Captain again until the Spring 2011 season. In the past, the Gotham Board of Directors has worked to warn and educate captains prior to taking this sort of harsh action. Declaring a Captain ineligible to serve in future seasons is not unprecedented, but is intended to be an action of last resort, one that impedes a division's ability to choose its captains. The circumstances we are presented with here do not justify this extraordinary action. I fully agree with the rest of the Committee that we need to strongly encourage captains to be upfront during the tryout process and to work with the league to ensure a fair and level playing field at tryouts, but I think that a warning, coupled with the removal of two players on the team is a more than sufficient deterrent to prevent this sort of situation from occurring again.