

GOTHAM VOLLEYBALL LEAGUE
DECISIONS OF THE GRIEVANCE
COMMITTEE AND BOARD OF
DIRECTORS REGARDING
GREIVANCE AND SPORTSMANSHIP
REFERRAL OF

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NOTE: THIS DECISION WAS VACATED IN PART ON APPEAL BY THE BOARD OF DIRECTORS ON FEBRUARY 20, 2018

**DECISION OF THE GOTHAM VOLLEYBALL GRIEVANCE COMMITTEE
FEBRUARY 7, 2018 MEETING -- GRIEVANCE OF GRIEVANT 1**

BACKGROUND

All member's names have been redacted to preserve anonymity. Grievant (G1) bring this grievance regarding the conduct of Respondent (R1). G1 alleges that R1 violated the Sportsmanship and Anti-Violence Policy by his conduct during the Fall Season of 2014. After reviewing the matter, the Grievance Committee dismisses the grievance. There was a majority vote of members present, Andre Carneiro (Division Play Representative), Susan D'Addario (Member At Large Representative), Justin Hill (Power Representative), and Sonia Parada (Power Representative). Bradley Schleyer (Division Play Representative) and Clovis Thorn (Division Play Representative) voted against dismissal of the grievance. Jacob Rossmer (Grievance Officer) abstained.

SUMMARY OF THE FACTS

On the evening of 1/8/18, the Grievance Officer received an e-mail from a former Gotham member (G1) who was filing a formal grievance stating that he was "sexually assaulted" by another Gotham member (R1) during his time with Gotham.

G1 reported that the incident happened during his first season, when he hosted a gathering at his apartment for his team following Saturday Division Play. G1 reports that at one point in the night, after everyone had been drinking, R1, who was also his coach "called me into the hallway. He then coaxed me into my own bathroom. From there he shut the door, blocked my exit, and forced himself on me. He grabbed me and kissed me against my will. I resisted and did what I could to get out of the situation without causing a scene."

G1 expressed that he felt as if R1 was in a "position of power over me." G1 never reported this incident, stating, "I was new to the city and very vulnerable because I desperately wanted to meet new people and fit in." G1 added that due his experiences with R1, "I became distrusting of others in the league and eventually left a year later when I finally reached the point that I felt the league had been too tarnished in my mind to provide me any benefit."

On the evening of 1/10/18, both the Grievance Officer and Treasurer met in person with G1 to get more information about the incident. Regarding being in the bathroom with R1, G1 described it as something he knew he "didn't want," and that he "wanted to stop" it; he added that he was "pretty sure" that R1 was drunk at the time. When questioned about why he decided to inform Gotham of this incident at the present time, G1 explained that he had experienced other sexual trauma in his past, and started going to therapy in response. As part of his therapy process, G1 decided in December to write an article about his experiences with sexual assault. While he was writing the article, he had a flashback of sorts to what happened with R1, and suddenly remembered the incident, describing the experience with R1 as a previously "blocked" memory. G1 said that once he realized what had happened with R1, he decided that he needed to go back and "do something about it." He added that he couldn't say or do anything about the incident at the time, but now he feels he has the "right and responsibility" to do something.

G1 didn't explicitly remember any other situations with R1 where R1 assaulted him, but described having his butt grabbed many times over the course of the season without being able to remember the offender(s). G1 wasn't able to explicitly express how he felt about R1, but said he was always uncomfortable around him, felt like he was a "predator," and that he always had a bad "feeling" with R1. He added that he was aware that "many people" also felt that way. G1 reported that he had heard from others that they had similar encounters with R1.

Following the information from G1, the Grievance Officer reached out to the second member (G2), who reported the incident with him occurred in 2014 as well. G2 was in his second season of Gotham and R1 was also his coach at the time of the incident. G2 stated that: "One day after a game in Hell's Kitchen, we went to Hardware to have drinks and hang out. I went to the bathroom, and while I was at the urinal, R1...came out of the stall, walked over to me at the urinal, looked me in the eye, reached and grabbed my penis and said, 'nice' or something similar, then walked out of the bathroom." G2 described feeling "pretty startled" and not knowing what to do. He was encouraged to inform his captain by another Gotham member, and after much insistence from this other Gotham member, G2 reluctantly allowed this other member to inform

G2's captain. According to G2, his captain "reached out to me to tell me he had spoken to R1 who insisted nothing similar would ever happen again." G2 explained that he did not file a formal grievance because "I was pretty embarrassed," and that there were no other incidents of this behavior with R1 from that point forward.

Included in the report was an incident that happened in mid-2016; at that time, a third Gotham member (G3) reported to the Secretary that he was at Hardware with his teammates after a game and that the "bar was less crowded than usual." G3 was in a group of about six or so people near the bar, and R1 was next to him. R1 proceeded to "put his left hand inside my underwear on the back side and grabbed my butt." G3 reported to have grabbed R1's arm and "took it out of my underwear. I walked away afterward since I did not want to be near R1."

Shortly after, G3 reported the incident to the Secretary, who informed G3 that "there wasn't anything that could officially be done since it technically didn't happen at a Gotham event," but said that he would discuss it with the then Grievance Officer, who would then talk to R1. G3 was informed by the Secretary that the then Grievance Officer discussed the incident with R1. G3 reported that there were no further incidents with R1 from that point forward.

R1 was given an opportunity to respond to the allegations. He was not informed of any identifying information regarding the Grievants. He responded:

First, thank you for providing me the redacted version of the report. As I was stunned and distressed by your initial contact about a complaint, I'm further distressed by the actual accounts that are alleged. I was hoping that the report would provide further clarity, however, I am only further dismayed, as the accounts in question do not give me any recollection of these alleged events, nor do they help me recall who the complainants might be. And I say that last part not necessarily to find out who my accusers are, but rather to know who may have been upset by my actions. Though I believe these accusations to be false or at best misunderstandings, it's certainly upsetting to me that anyone would feel uncomfortable by my actions.

Regarding jurisdiction, I did have a few points to make and find clarification. Per our initial conversation of Gotham's jurisdiction in such matters, I raised the point

that I believe Gotham only has jurisdiction in areas of official Gotham events -- i.e. in the gyms/schools where we play and sometimes practice, at Gotham-sponsored socials (EOS party, Welcome Socials, etc...), and Gotham-sponsored fundraisers (Ballapalooza, AIDS Walk, Sangria Showdown, etc...). I personally do not view un-official activities that occur after matches at places such as GYM Bar or Hardware or other places to be subject to Gotham guidelines on matters of sportsmanship and conduct. As I don't believe team brunches and other gatherings, that are not officially sanctioned by Gotham Volleyball, should be included under the official purview of the League. You mentioned in that conversation that you believe such purview does extend to post-match gathering spots off the grounds of Gotham-leased property. While I do not agree with that assessment, I do understand your point about that narrow category of gatherings (post-match at GYM Bar or Hardware Bar) as they are so ubiquitous and have become an extension to the League experience.

However, upon reading the redacted grievance, I realized the first alleged incident from G1 was in neither of those places -- not a gym or school, not an official Gotham event, nor at a post-match informal gathering, but rather in someone's home. I strongly feel that Gotham does not have jurisdiction over that or any other private event its members choose to go to or even host. I believe this sets a bad precedent and would allow Gotham to reach into the homes and businesses of many of its members, who initially met through the League. I have personally had roommates directly from postings I've advertised on the un-official Gotham Facebook group. By allowing such jurisdictional reach (over reach in my opinion), an argument could be made that all conduct within my home with those roommates is subject to Gotham's rules of sportsmanship and conduct. Or that the many times I've hosted my teams for a gathering, would also be subject to Gotham by-laws. While I do not mean to be glib, I do believe that to be an untenable precedent for Gotham to take.

That said, jurisdiction aside, please understand that my intent is not to have these allegations dismissed in their entirety. I think some sort of un-official

reconciliation could transpire with G1. And I hope to do that in due course, if they agree to such a meeting.

Additionally, I believe such reach opens the Board and the League to legal liability. And I say that, certainly not as a threat or indication of future actions I may take, but as friendly advice. I am not a legal scholar by any means, but this must be taken into account if the League is setting precedence in such matters. Regarding the complainants and the allegations they have brought forth, I also want to mention their anonymity. As I previously mentioned in our last conversation and indicated above, based on the events alleged in the complaints, I do not know who any of the complainants are or may be. I do not believe any proper response can be garnered from me without knowing the identities of the complainants. While I understand and appreciate the confidentiality in which complainants, for any reason, can approach the Grievance Committee, I find it nearly impossible to respond without being able to face my accusers. One of the main American virtues of legal jurisprudence is the right to know one's accusers. Please understand, that with this point I most certainly do not wish revenge or adverse action toward these complainants, but rather an opportunity for reconciliation. Again, without knowledge of their identities, I cannot properly respond to the complaints. That said, I wish their identities, as well as mine, to be kept anonymous in any official findings and actions of the Grievance Committee and Board. But again, please know my desire to directly speak to the complainants, if they are willing. While the work of the Gotham Grievance Committee is very important, working toward their forgiveness or the chance to express my sorrow for the feelings they have about the events is most important to me.

On an unrelated point, you indicated in our initial conversation that in each instance I was either a coach or captain of the complainant. Please understand that I view these roles as volunteer opportunities and opportunities for responsibility and leadership in the League. I do not view them as positions of power per se. Please know that I certainly hope the Board will take actions to clarify and update the policies around sexual harassment. Though an athletic

league setting is clearly different than that of an employer/employee situation, clarification is nonetheless important. It troubles me that my response needs to include matters of jurisdiction and anonymity as I'd much rather focus on just the facts and work toward reconciliation, but I understand the need for it, as the League grapples with this.

Lastly, while I believe the allegations to be false or a misunderstanding, I look for your guidance and leadership and that of the Grievance Committee as you move forward in this process. I appreciate the work you do for the League. Thank you.

DISCUSSION

The Grievance Committee met on the evening of 2/7/18. Meeting called to order at 7:05PM. The Grievance Officer reinforced the need for confidentiality and anonymity regarding all topics and incidences discussed, and the goals for the meeting were set. Throughout the entirety of the meeting, the identity of all parties remained anonymous; instead, they were referred to as G1 (Grievant 1), G2 (Grievant 2), G3 (Grievant 3), and R1 (Respondent). The grievance process, as outlined in the Gotham Bylaws, was reviewed, and referred to at times during the meeting.

The Grievance Officer clarified that G1 is the person who filed the formal grievance and the statement from G2 was provided in support of G1's grievance. The committee was also informed that the statement of G3 was independent and unrelated to G1's grievance; G3's statement had been included in this grievance as it alleges a pattern of similar behavior by R1.

The meeting started with the discussion of whether Gotham has jurisdiction over this grievance given both the location of the incident (at G1's home) and the fact that G1 is a former member and currently has a non-member status. Multiple opinions were expressed regarding these two questions. The discussion extended to the nature of the Committee's jurisdiction over a grievance from a non-member regarding acts of violence; as well as how jurisdiction is defined and interpreted in Section IX of the Gotham Bylaws, and in Section III (the anti-violence section) of the Sportsmanship and Anti-Violence Policy (SAVP).

Some committee members argued that “Gotham Events,” as described in SAVP Section III.2, should be strictly restricted to Gotham gyms during activities and social spaces during official Gotham sanctioned or sponsored events; others argued that Gotham’s jurisdiction should also include the two bars regularly visited after division play (Gym Bar and Hardware). A third group expressed their beliefs that the committee may have jurisdiction under SAVP Section III.2 whenever a Gotham “leader figure” (which includes coaches, captains, division representatives, and Board members) is involved, regardless of location. The argument put forward by this third group is that when a leader is involved in the discussion, it presents a power differential, and one that could potentially be used to affect, take advantage, and/or harm a non-leadership member.

The committee put aside the question of jurisdiction for a period and discussed the grievances themselves, the respondent’s response, and potential sanctions. All committee members showed grave concerns with the incidents alleged; most members agreed that the alleged incidents fall within the “Violence” component of Gotham’s Sportsmanship and Anti-Violence Policy. It was further added that, if true, the incidents merit a police report or legal action. The meeting was adjourned at 10PM.

CONCLUSION

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

1) Majority opinion: (4 votes – Andre, Susan, Justin, Sonia)

The Grievance Committee majority recommends a dismissal of G1’s grievance. The majority finds that a) G1 lacks standing to grieve as a non-member of Gotham, given that the issue grieved is not among the exceptions outlined in the Bylaws IX.4.A and b) the incident described in G1’s grievance does not fall within the meaning of a “Gotham Events” under SAVP III.2,. While the majority opinion of the committee did not agree on a definition of “Gotham Events” under SAVP III.2, there was agreement by the majority that a private event at G1’s home does not constitute a Gotham Event pursuant to this section. The majority votes to dismiss the grievance because G1 lacks standing to bring a grievance under the Bylaws and the incident complained of was not a Gotham Event under SAVP III.2.

All committee members, however, are deeply concerned by the incidents brought to the committee by G1, and this decision does not preclude any other actions that G1 deems appropriate or necessary.

The majority notes, however, that G2's and G3's statements were not considered as formal grievances, but supplements to G1's grievance; therefore, their right to file a grievance based on the incidents described in their statements is preserved if they chose to do so. The majority wants to also make clear that this decision is not a ruling on whether or not the pattern of behavior raised by G1, G2, and G3's allegations constitutes a repetitive or unusually serious violation under SAVP II.3.f.

Minority opinion: (2 votes – Bradley, Clovis)

Dissenting opinion provided by Bradley Schleyer:

Our Grievance Committee's biggest discussion was regarding what Gotham Volleyball's jurisdiction covers. Does it cover only official gym and event locations at their designated times? Does it expand to cover post-league play at GYM Bar and Hardware Bar? Does it expand beyond that to any gathering with one's team? I understand and respect the argument made for each.

My perspective on jurisdiction varies from the majority opinion. The Respondent (R1) was the Grievant's (G1's) coach. This is not an incident between two members but rather between a member and a coach. R1 argues that his role as a coach is not a position of power but merely as a volunteer. I agree halfway with R1. A coach is a volunteer. A coach is also a position of power. In fact, every member of the Gotham Board, every captain and every coach is a position of power. They are both volunteers and in a position of power. As such, they are particularly responsible for making sure Gotham Volleyball provides a safe space for members.

I consider Gotham Volleyball's jurisdiction to not be bound by any geographical space. Rather, the jurisdiction covers the duration of the player-coach relationship. Jurisdiction begins from the day R1 was announced as the coach through the end of season tournament (or other announced date that would terminate this relationship). Hence, any incident between G1 and R1 should be under Gotham Volleyball's jurisdiction so long as the incident occurred while R1 was G1's coach, as is the case.

Any violence or sexual harassment clearly has an effect on their dynamic as a player – coach relationship regardless of the physical location.

I respectfully disagree with the majority opinion to not proceed with this grievance. Three Gotham members have come forth regarding inappropriate behavior and two occurred within the player – coach relationship. At a bare minimum, I advise Gotham Volleyball to forbid R1 from holding any leadership role in Gotham Volleyball for a significant period of time. I also advise Gotham Volleyball to recognize these power dynamics and hold all volunteers and members who are in positions of power to a higher code of conduct.

Dissenting opinion provided by Clovis Thorn:

I agree that Gotham has jurisdiction in this case for many of the same reasons Bradley presents, and I join him in his dissent.

Gotham has jurisdiction because the Respondent (R1) was in a position of perceived power as a coach. (All Gotham leaders are volunteers, so R1’s argument that they are not powerful because the role is a “volunteer opportunity” is not valid.) The Sportsmanship and Anti-violence Policy part II.2 holds Gotham leaders to a higher standard. Grievant 1’s complaint was a clear violation of this standard.

The kind of sexual abuse and harassment we are considering here is based on unwanted sexual pressure plus a power differential. Indeed, the Grievants felt they could not speak up because of R1's seeming importance in Gotham.

Gotham cannot control the setting or, frankly, the harassment, but we can control whether a power differential is present. Therefore, I recommend enforcing a prohibition against R1 serving in any position of power in Gotham including those named in the SAVP II.2.

2) Majority opinion: (7 votes – Andre, Susan, Justin, Jacob, Sonia, Bradley, Clovis)

The Grievance Committee recommends that the Board review, and potentially clarify, the definition of jurisdiction in the Sportsmanship and Anti-Violence Policy, Section III.

3) Majority opinion: (7 votes – Andre, Susan, Justin, Jacob, Sonia, Bradley, Clovis)

The Grievance Committee recommends that the Board considers increasing the 10-day statute of limitations in the bylaws for both current and former members to file a grievance; the Grievance Committee believes this can be especially important for incidents involving violence or sexual harassment/assault.

4) Majority opinion: (7 votes – Andre, Susan, Justin, Jacob, Sonia, Bradley, Clovis)

The Grievance Committee recommends that the Board add an amendment to the SAVP to explicitly include sexual harassment and assault policies.

5) Majority opinion: (7 votes – Andre, Susan, Justin, Jacob, Sonia, Bradley, Clovis)

The Grievance Committee recommends that the Board considers including education/training regarding sexual harassment and assault to all Gotham leaders (Board members, division representatives, captains, and coaches).

NOTICE OF APPEAL RIGHTS

Under Article XI, Section 3c of the Bylaws of the Gotham Volleyball League, any aggrieved party may appeal this ruling to the Gotham Volleyball Board of Directors within 10 business days of the Committee's decision. In order to be timely, any letter seeking appeal of this decision must be delivered to Trevor Cano, Commissioner, Gotham Volleyball League, on or before February 24, 2018.

FEBRUARY 20, 2018 DECISION OF THE BOARD ON APPEAL

Action of the Gotham Volleyball Board of Directors Regarding the Grievance Committee's February 7, 2018 Decision

Motion to adopt in part and vacate in part the Grievance Committee's February 7, 2018 Decision for the reasons stated below and send the issue back to the Grievance Committee for further consideration as detailed below. Approved without objection by the Board at its February 20, 2018 meeting.

In its February 7, 2018 decision, as a result of its hard work and thoughtful deliberation, the Committee issued 5 recommendations about an issue raised by a former member about alleged misconduct by a team's volunteer coach. Recommendation 1, which was to dismiss the issue for jurisdictional reasons, was adopted by the Committee by a 4-2-1 vote. Recommendations 2 through 5, which addressed other aspects of the issue before the Committee, were unanimous.

The Board adopts, in their entirety, Recommendations 2 through 5.

The Board vacates Recommendation 1, which dismisses the issue for lack of jurisdiction based on the Committee's interpretation of the Gotham Bylaws and policies. The conduct at issue should not have been considered as a grievance under Article IX, but rather a referral to consider whether there is a repetitive and serious violation of the Sportsmanship and Anti-Violence Policy, consideration of which is not limited by the timing of the complaint nor the individual's non-member status. The Board also respectfully vacates the Committee's reasoning about Section III of the Sportsmanship and Anti-Violence Policy (SAVP) limiting the Committee's jurisdiction. Section III describes a procedure for handling instances of violence at Gotham events and is not intended to limit only to those events what constitutes misconduct under the policy. Rather, the SAVP is designed to allow Gotham to provide a safe environment for its members to enjoy Gotham's community and is intended to allow Gotham to address conduct that takes away from that safe environment if Gotham believes it needs to do so in order to achieve the safe environment required under the policy. The Board has also passed a revision to the SAVP to clarify this ambiguity, but consideration of this matter should proceed using the policy in effect at the time of the Committee's decision. The Board finds that jurisdiction over this matter exists under either version of the SAVP.

The Board agrees with the unanimous Committee that any dismissal of the former member's allegations on technical grounds does not remove Gotham's obligation to address the information brought to Gotham's attention by the grievant and other members in the subsequent investigation. Therefore, in vacating the decision, the Board recommends that President Trevor Cano refer the responding member back to the Committee for review and potential sanction based on the pattern of behavior alleged in the grievance and subsequent investigation. See SAVP Section II,3,f. If the President makes such a referral, the Committee is respectfully instructed that it has jurisdiction under either version of the SAVP, should give all interested parties an opportunity to be heard, and should consider (1) whether it believes any inappropriate conduct occurred based on all information available to it, (2) if so, whether such conduct warrants sanction under the SAVP, and (3) if so, what is the appropriate sanction. Guidelines for sanctions under the policy are listed in Section IV of the SAVP, should be issued only to the extent necessary to fulfill the policy listed in

Section I of the SAVP, and should be consistent with prior sanctions decisions available on the Gotham website.

The Board respectfully instructs the Secretary to append this action of the Board to the Committee's February 7, 2018 decision when placing that decision on the Gotham website.

NOTE: THIS DECISION WAS MODIFIED ON APPEAL BY THE BOARD OF DIRECTORS ON APRIL 10, 2018.

DECISION OF THE GOTHAM VOLLEYBALL GRIEVANCE COMMITTEE

MARCH 29, 2018 MEETING **SPORTSMANSHIP REFERRAL OF RESPONDENT**

BACKGROUND

The Gotham Grievance Officer received complaints of misconduct regarding a Gotham member (“Respondent”) from three current members and one former member of Gotham (the “Grievants”). Specifically, the Grievants separately reported that Respondent on various occasions, usually at social gatherings, touched various members in a sexual way without their consent and, in one specific during a Gotham-sponsored social event, engaged in an act of oral sex without the other’s consent. Finding these behaviors both sufficiently serious and repetitive enough to warrant Grievance Committee review, President Trevor Cano referred the complaints to the Grievance Committee pursuant to Section II(3)(f) of the Gotham Volleyball Sportsmanship and Anti-Violence Policy.

After reviewing the evidence regarding Respondent’s behavior, which includes statements from all of the Grievants and the Respondent, as well as in-person interviews with Respondent, the most recent Grievant (G4), and the Gotham member who was Captain of G1’s and G2’s team, the Committee found Respondent’s behavior constituted sufficiently serious and repetitive violations of the Gotham Sportsmanship and Anti-Violence Policy, that, if unaddressed, could compromise Gotham’s ability to provide a safe space for its community. The Committee also found that the behavior was especially inappropriate for a long-time Gotham member who was serving in various leadership capacities. Accordingly, the Committee voted to suspend Respondent for one year, until April 1, 2019, followed by a period of probation upon his return, for one year, until April 1, 2020, during which Respondent will be ineligible to serve in any leadership role (this includes captain, coach, Board member, or leadership committee position) in Gotham Volleyball. All members of the Committee were present at the meeting.¹ The decision of the Committee was unanimous, with Susan D’Addario (At-Large), Andre Carneiro, Bradley Schleyer, Clovis Thorn (Division Play), Justin Hill and Sonia P. (Power) all voting in favor of the decision. Grievance Officer Jacob Rossmer abstained from the vote.

¹ Committee Member Clovis Thorn arrived at the meeting at approximately 8:07 PM. As a result, he missed most of Respondent’s presentation to the Committee. The other Committee members briefed him on the substance of Respondent’s presentation. Board member Seth Eichenholtz, who served on the Committee as the Board’s non-voting advisor pursuant to Article III, Section 27, C, 1 of the Gotham Volleyball Bylaws, was also present for and participated in all proceedings except for Respondent’s presentation.

SUMMARY OF THE FACTS

As detailed in the report of the Committee's February 7, 2018 meeting (the "February 7 Decision"), this matter started when a grievance was filed by a former Gotham member (G1) on January 8, 2018 about Respondent's behavior. During subsequent investigation, the Committee learned of two current Gotham members (G2 and G3) who separately alleged additional inappropriate conduct by Respondent, also detailed in the Committee's February 7 Decision. After the February 7 meeting, President Trevor Cano referred the allegations by G1-3 back to this Committee for review as evidence of repetitive behavior that violates Gotham's Sportsmanship and Anti-Violence Policy (SAVP). For the full account of G1-3's allegations, please refer to the February 7 Decision.

On March 13, 2018, while this Committee was scheduling another meeting to address the allegations by the first three Grievants, the Grievance Officer independently received a complaint from a fourth individual (G4) complaining of inappropriate behavior by Respondent. In sum, G4 reported that when he first joined Gotham in Fall 2010, while at a Gotham sponsored welcome social, he encountered Respondent in the bathroom of the venue. According to G4, after Respondent tried to see G4's penis while G4 used the urinal. Then, G4 alleges that Respondent grabbed him by the waist of his jeans, pulled G4 into a bathroom stall and, with G4 stating clearly his desire for Respondent to stop, Respondent put his mouth on G4's penis. G4 said that he pushed Respondent off him and into the bathroom stall door. G4 said he "did not want to make a scene" because he did not know anyone other than his new teammates. G4 said that when he got away from Respondent, G4 went upstairs and acted to his teammates as if nothing happened.²

G4 alleges that this encounter was the first of several harassing encounters he has experienced involving Respondent, several of which he detailed to the Committee. These are the three most relevant additional incidents:

- Shortly after the first incident, G4 was shopping in Chelsea when he received a text message while in the store from an unknown number. It said in sum and substance "I see you. Meet me in the dressing room and let's finish what we started." G4 learned it was from Respondent, who he had not given his telephone number to nor did he know his name at the time. When G4 asked Respondent how he got his number, Respondent replied that he was on Gotham's Board and had access to all sorts of information about Gotham members.
- G4 also reported during our meeting that sometime later, while he was serving as a line referee during a Gotham match, Respondent grabbed his rear end and

² After receiving G4's allegations, considering the serious nature of the allegations, and the context of these pending decisions, Gotham President Trevor Cano, in consultation with the Grievance Officer, suspended Respondent from Gotham Volleyball pending this Committee meeting pursuant to Section IV, 2(c) of Gotham's Sportsmanship and Anti-Violence Policy.

exclaimed “can these shorts get any tighter?” G4 said this touch was unwanted and he was upset by the incident.

- On January 14, 2018,³ G4 attended a memorial event at Gym Bar for a former Gotham member who had passed away recently. He again encountered Respondent who, without warning, put his hand down G4’s pants, grabbed his penis, and insisted he was “just saying hello.” G4 forcibly removed Respondent’s hand from his pants.

In both his complaint and when he spoke with the Committee during our meeting, G4 insisted that he was motivated to bring his information to Gotham’s attention because he believed that many know about Respondent’s behavior and because he did not anyone else to fall victim to that behavior.

Prior to the Committee meeting, Respondent submitted a written response to G4’s allegations, stating upon reflection, he now feels violated by G4’s behavior and asked Gotham to sanction G4 for his behavior. At our March 29 meeting, Respondent withdrew his complaint against G4, stating that upon reconsideration, the encounter with G4 in 2010 was consensual.

During the March 29 meeting, the Committee heard directly from Respondent for the first time. Respondent addressed the allegations from all four Grievants, stating that they initially did not sound familiar to him, especially when he was provided with redacted Grievant statements. He added that upon being provided the identities of the Grievants, he was “shocked.” Respondent addressed each allegation separately, starting with G1. He reported that in Fall of 2014, the team he was coaching with G1 had played their Division Play match and went to a bar in Hell’s Kitchen. The bar was almost empty, so G1 invited the team back to his apartment, and the group of six or so teammates picked up supplies that included alcohol. Respondent described how the majority of the gathering occurred on G1’s balcony. At one point, the Respondent went to the bathroom at G1’s apartment by himself, while everyone was out on the balcony. No one else returned into the apartment during this time, and Respondent went to the bathroom, peered quickly into G1’s bedroom when he saw the bedroom light was on, and then returned to the balcony. He reported that nothing else of happened at the party.

Respondent provided the Grievance Committee with paperwork related to his interactions with G1 on Facebook Messenger since that time, and reported an ongoing friendship, where they saw each other sporadically in the company of others. Respondent described having bumped into G1 at a bar in Chelsea a couple of months after the incident, and Respondent reported a comfortable conversation between the two of them. Respondent also reported that G1 invited Respondent to a party at his apartment in October of 2015; when Respondent arrived, G1 invited Respondent into his bedroom and changed his clothes in front of Respondent. Respondent denied that anything sexual

³ Notably, this incident took place *after* Respondent was told of G1-3’s allegations to Gotham. Therefore, this conduct, if true, took place after Respondent was made aware that this sort of behavior was upsetting to others.

happened or was discussed at that time. Respondent reported his belief that G1 does not remember the initial incident correctly and that G1 may be experiencing conditions of memory loss leading to “false memories.” According to Respondent’s documentation, the last Facebook Messenger interaction was in 2016 when G1 wished Respondent a Happy Birthday. Respondent reported that G1 was Facebook friends with Respondent until two months ago, at which time G1 unfriended Respondent.

Regarding the incident with G2, Respondent reported a different version of events than G2 had – Respondent said that both he and G2 were coincidentally at urinals in the bathroom at Hardware; upon finishing, Respondent jokingly nudged G2, pretended to peek around the urinal dividers, and said, “Nice.” Respondent emphasized that this was all just a joke, and that due to the dividers in the bathroom, he had no ability to see G2’s penis.

G2 proceeded to report the incident to his captain at the time (who also came before the Committee and confirmed that G2 complained about the incident with Respondent), and the captain addressed the issue with Respondent. The team captain explained this behavior made G2 uncomfortable, and Respondent expressed feeling bad for making G2 uncomfortable. Respondent reported that no other incidents happened that season, and that he saw G2 this past Holiday season and chatted with G2 for at least five minutes without noting any discomfort from G2.

Regarding the incident with G3, Respondent described how he was in a group with G3 and about five or so other people in Hardware bar. Respondent placed his hand on G3’s back and in an effort to be flirtatious, placed his hand a little lower on G3’s lower back. Unlike G3’s allegations, Respondent emphasized that his hand never went any lower than G3’s lower back, and that this was all done in a purely flirtatious manner. G3 expressed his disapproval immediately to Respondent, who removed his hand, and that was the end of the incident.

Regarding the incident with G4, Respondent reported that he has known G4 the longest, and they have some close, mutual friends. Respondent addressed several of the incidents alleged in G4’s report, including the incident at Boxers in 2010. G4 recalled the incident as being consensual, and that G4 and Respondent planned the “rendezvous” upstairs prior to heading to the bathroom. He added that he wished to withdraw his previous allegation against G4 that G4 violated Respondent, stating that due to the time lapse, and the fact that he believed the interaction to be consensual, he wished at that time to drop any grievance.

Respondent denied any inappropriate behaviors in the other incidents described by G4, and denied having ever obtaining G4’s phone number through his leadership position in Gotham.

Respondent added that until the initial grievance, Respondent was Facebook friends with all four of the Grievants, and until this day, G2-G4 remain his friends on Facebook. Respondent expressed his belief that there should be a time limitation, as well

as a jurisdictional limitation, on Gotham's ability to intervene in these incidents. He reported his concern that he was suspended following the report of G4's grievance, but that G4 was not suspended upon Respondent filing his own grievance against G4. Grievance Committee members asked several questions of Respondent and then he left the meeting.

The Grievance Committee next met with the Captain of the team from Fall of 2014 that Respondent coached, which included both G1 and G2. He reported that he attended the party at G1's apartment that resulted in the initial grievance. The Captain stated that he did not recall any incidents at that party, and was not alerted to any incidents from G1. The Captain addressed the incident with G2 by meeting with Respondent and informing him that Respondent's behavior made G2 uncomfortable. The Captain asked G2 how he would like to handle the situation further, and G2 reported that he did not want to get Respondent in trouble, and that the captain's actions were sufficient. The Captain reported that no further incidents were reported to him. The Captain answered several questions from the Grievance Committee and then left the meeting.

The Grievance Committee then met with G4, who answered questions from the Grievance Committee regarding his allegations against Respondent. G4 reported that the incident in 2010 at Boxers was not mutual, and that he had never spoken to Respondent prior to being in the bathroom with him at the same time. He added that many of the details provided by Respondent were false. He reported that he is not friends with Respondent, but has been in similar social circles with Respondent from early on his time at Gotham. He added his belief that Respondent was not intoxicated during all of the incidents that G4 alleged Respondent was inappropriate with G4. G4 was asked about how Respondent's behavior has affected his experience in Gotham. G4 reported that many of these experiences have been unsettling and upsetting to him, but that he believes he has the ability to look past them and enjoy his time in Gotham. He expressed his concerns that other, more vulnerable, members of Gotham could be more significantly affected by such incidences. Following the questions, G4 left the meeting.

DISCUSSION

As the Committee has previously stated, one of the paramount priorities for Gotham is to maintain the environment described in the Sportsmanship and Anti-Violence Policy, which states, "Gotham seeks to use volleyball competition to help bring people together, foster friendships, reinforce healthy lifestyles, and build community pride and participation. In order to ensure these goals, Gotham Volleyball officials and participants are entitled to a non-judgmental, competitive, safe, positive, encouraging, and fun environment." Based on this policy statement, the Gotham Volleyball Board of Directors decided at its February 13, 2018 meeting that we should address the current complaints of sexual assault and harassment within our community. They instructed us to answer the following questions: (1) whether we believe that Respondent engaged in inappropriate conduct based on all the information available to us; (2) if so, was this

conduct a violation of the Gotham's Sportsmanship and Anti-Violence Policy (SAVP); and (3) if so, what is the appropriate sanction.

This matter is one of the most challenging ones this Committee encountered. This was the first time that this Committee has received allegations of a sexual nature under the SAVP. It was also the first time that this Committee was asked to review behavior that was so starkly disputed between the parties. Finally, it was the first time that this Committee was asked to address conduct that straddled the lines between conduct that occurred during Gotham activities and events, and conduct outside those events that, arguably, could affect the Gotham community. Because of this, we hope to make clear how we believe we addressed these challenges, as well as make clear what this decision means and what it does not. The remainder of this opinion describes our decisions regarding the questions the Board asked us to answer, and the reasoning behind our decisions.

1. Respondent Engaged In Inappropriate Conduct At Various Times Over The Past Eight Years

The behavior as alleged and as described in the February 7 Decision and in the earlier section of this decision speaks for itself – if true, Gotham members justifiably felt violated by Respondent's unwanted sexual advances and touching. G4's allegation of what occurred at the 2010 Gotham social event, if true, constitutes sexual assault and a clear violation of our policies. In their own ways, all four Grievants expressed they were coming forward out of a belief that they were likely not the only subjects of Respondent's behavior, and a desire to protect others from similar conduct.⁴ In turn, Respondent did not seem apologetic or reflective about how his behavior affected the Grievants or could affect others. Rather, he denied the behavior and tried to address the allegations by insisting that he had social connections to each of the Grievants or that any behavior was typical, welcome and consensual.

Respondent's strong denials of any inappropriate behavior contrasted drastically with the other evidence before the Committee. We do not find it credible that four individuals, from different Gotham social circles and experiences, all coincidentally made up somewhat similar stories of sexual harassment and/or assault by the Respondent or coincidentally misinterpreted his intentions in strikingly similar ways. In fact, Respondent was specifically asked why four different people would make up similar allegations against him and had no explanation. We also do not accept Respondent's implication that just because the four Grievants had, in various ways (social media or in

⁴ Both G4 and another witness alluded to the fact that Respondent's conduct may be more widespread than the incidents described only by these four Grievants and may be ongoing. G4 described Respondent's ongoing behavior as almost an open secret among the Gotham membership, one he does not perceive is taken seriously by some. Because we are only focused on the reliable evidence before us, we do not base our decision on this hearsay information. However, as discussed later in the sanction section, we do hope this decision makes clear that such harassment and assault has no place within the Gotham community and if any members wish to come forward about this kind of conduct by any member of the Gotham community, they will be taken seriously.

person) maintained a cordial relationship with him over time, it follows that they were not offended by his conduct. Their statements and taking the step of providing their stories to this Committee all supports a finding that they did not appreciate his conduct. The Committee believes that, more likely than not, the explanation is that Respondent has repetitively engaged in this harassing behavior directed toward these members of Gotham over the period covered by the Grievants' reports. Therefore, by a 6-0-1 vote, the Committee believes that it is more likely than not that the Respondent engaged in behavior as described by all four Grievants, as opposed to crediting Respondent's denials of engaging in the behavior as alleged.

2. The Behavior Represents Both A Serious And Repetitive Violation Of The Sportsmanship And Anti-Violence Policy.

The Committee believes that the only way for Gotham to maintain a safe environment is to take action to address unlawful or inappropriate acts of one member that impairs the safety of or creates an environment of harassment toward other members of Gotham. That said, this Committee is also mindful that Gotham Volleyball is not in the business of policing the personal lives of its members. In this case, we only considered events relevant when they were connected to Gotham or tended to establish the pattern of behavior that we believed was connected to and detrimental to the Gotham experience. When drawing the line, we recognized that some behavior that takes place out of Gotham events can have a real impact on Gotham but disregarded behavior that did not have any connection to Gotham. Another important distinction in this case is the number of different allegations – the behavior referred to us was not one isolated incident where someone drunkenly crossed a line, but rather a pattern of repetitive behavior with negative effects (and potential continued effect) on Gotham members. Therefore, it was less relevant to us where the actions took place but rather how this impacted the Gotham experience for other members.

Some of the behavior alleged by the Grievants took place at bars after Gotham events. Some of G4's allegations were instances that took place at private events, or in the case of his receiving a text while shopping, during an activity that was not associated with Gotham at all. We believe that it is widely accepted in the Gotham community that teams socialize at gay bars or at team get togethers after matches. Many view this as a key part of the Gotham experience. Therefore, we find its appropriate to consider conduct that takes place at these venues when the team is still together, especially from Gotham leaders such as team captains and coaches, because to not do so would potentially create an environment where individuals with power to affect members' Gotham experience could have free license to engage in inappropriate or harassing conduct the minute they leave a Gotham activity. We also recognize that many of these events occurred when alcohol use was involved, yet we do not believe that is an excuse for Respondent's conduct. Similarly, while one witness asserted that some level of sexual harassment is "common" in Gotham, essentially arguing that everyone else does it, this is also no excuse for Respondent's conduct. In any event, harassment and assault of the severity described by the Grievants does not appear to be commonplace in the Gotham community and, to the extent it is present, is something that should be corrected.

Here, while Respondent strongly denied any malevolent intent toward any fellow Gotham member, his conduct as described by the Grievants tells a different story. The facts before the Committee demonstrate that Respondent has repetitively engaged in conduct that involves unwanted touching and, in one instance, sexual assault. This conduct is a violation of the SAVP because it can damage the safe environment that Gotham strives to maintain, and constitutes conduct that is as inappropriate as it is serious. These incidents violate Gotham's policies and Gotham's ability to create a safe space for its membership.

Also notable in this particular case is G4's allegation – which we credit -- that Respondent used his position as a Gotham Board member to access Gotham's member information database to obtain G4's telephone number. Gotham's members put an incredible amount of trust in Gotham's leaders to safely maintain and keep confidential a variety of personal information. Any breach of this trust, including misappropriating that information for a leader's personal use is serious, a violation of Gotham's policies, and needs to be addressed.

For all of these reasons, by a 6-0-1 vote, we believe the incidents as described by the Grievants constitute violations of the SAVP.

3. The Committee Finds That A Year-Long Suspension Followed By A Year-Long Probation Period Is Appropriate In This Case.

Having determined that the behavior violates the SAVP, we considered the question of what sanction is appropriate to address this conduct. We have weighed various factors here. We are aware that some of these allegations involve conduct that is years old. We are also aware that while some of this conduct, which connected to Gotham, took place outside of the Gotham community. But, the essential question here is whether or not we believed on the weight of the evidence before us whether that, without a corrective sanction, Respondent might continue to engage in conduct that endangers the membership, especially those new to Gotham. We concluded, based on the evidence, that if we did not address this conduct through a suspension, Respondent may repeat his behaviors and endanger other Gotham members.

Most notable to the Committee was Respondent's seeming lack of any understanding of or regret about how his behavior affected the Grievants. Respondent's strong denials of any wrongdoing contrasted with ample evidence that Respondent's conduct was harmful to the Grievants (and perhaps others in Gotham's community as alleged by two witnesses who spoke to us). This leads us to conclude that he does not appreciate the severity of his conduct or how it may be offensive to some. We also understand that before this process, Respondent may not have been aware of the extent to which his behavior had harmed others. Respondent has now learned how his behavior affected the Grievants, yet this did not seem to change his view of his own behavior or invoke any observable self-reflection that could prevent future instances of misconduct. Further, some of the alleged behavior toward G3 took place after Respondent had been

warned by another Gotham leader that his behavior toward G2 was inappropriate and unwelcome, so the warning was not effective in deterring the conduct.

For all of these reasons, we believe a sanction is appropriate in this matter. Having decided that a suspension is appropriate, we have to consider an appropriate length of suspension. Since the SAVP was passed by the Board in 2007, the longest suspension ever issued under the policy has been one year. We believe that going beyond that precedent would be excessive in this case, but we believe anything shorter would not be adequate. As a result, we are recommending that Respondent be suspended from Gotham Volleyball for one year.⁵

The Committee also seeks to address that Respondent was a Gotham Leader at the time of almost all of these incidents. Under the SAVP, Gotham expects its leaders to “be role models of sportsmanship.” Members who fill these roles are given a lot of power by Gotham, including, as relevant here, the ability to organize events, access personal information for members, and be seen by members as individuals with “power” in the organization. In exchange for giving these individuals outsized importance in our Gotham community, Gotham charges the individuals filling these roles with the responsibility of never abusing this power, behaving to a higher standard, and when conducting themselves in and around the Gotham community to not only avoid crossing the line into harassing and abusive behavior, but to never come near that line in the first place. We are also mindful of the role this power dynamic can play in the realm of sexual conduct and consent.

Here, at most times that he was engaging in inappropriate behavior, Respondent held multiple roles that are expected under Section II of the SAVP to exemplify this model behavior. SAVP Section II, 2, a-g. Respondent’s behavior would be unacceptable from a member who was not a Gotham leader, but the fact that Respondent was a leader and used his resources as a leader to further a pattern of harassment makes his conduct that much worse. It is clear from what has been reported to us the Respondent wholly failed in his duty to act as a role model, and even affirmatively abused his power when using the member database to get G4’s cell phone information. Therefore, we recommend that upon Respondent’s return to Gotham, there be an additional probationary period of one year during which he be precluded from serving in any leadership role as defined in the SAVP Section II, 2, a-f. We understand limiting who can be selected by the membership to serve in leadership roles is a serious matter and should be reserved for only the most extreme instances of misconduct, but we believe the pattern of behavior here is one of those instances that warrants this kind of limitation.

We hope that these two sanctions, combined, pushes Respondent to reflect and change his behavior so that he can return and continue his positive contributions to the Gotham community without this negative behavior. We also hope that this decision sends

⁵ Since, in the past, Gotham has always provided a suspended member a *pro rata* refund of the member’s division play dues, we also believe it is appropriate to keep with that precedent and do so here. The *pro rata* refund of the division play dues will start as of week 6, the first week that Respondent was suspended.

a strong signal that there is no place for sexual harassment and assault in the Gotham community, that any victims of similar misconduct as part of their Gotham experience who chooses to make a complaint will have that complaint taken seriously, and that there were be consequences for any members of our community -- especially those who are entrusted to serve as leaders -- who engage in repetitive behavior of sexual harassment or assault in the safe spaces provided by our organization.

CONCLUSION

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

- 1) By a vote of 6-0-1, the conduct of Respondent described above represents repetitive and serious violation of the Gotham Volleyball Sportsmanship and Anti-Violence Policy as well as independently constitutes sanctionable conduct.
- 2) By a vote of 6-0-1, the appropriate sanction for Respondent's conduct is a suspension from all Gotham Volleyball competition and events through April 1, 2019. During this period, Respondent cannot exercise the benefits of Gotham membership, is considered in bad standing and cannot attend any Gotham events.
- 3) By a vote of 6-0-1, Respondent will be afforded a *pro rata* refund of his Division Play dues for this season, starting with Week 6 (the first week of his suspension) through the end of this season.
- 4) By a vote of 6-0-1, upon his return and until April 1, 2020, Respondent will be on probation and unable to serve in any leadership roles as defined in SAVP Section II, 2, a-f.

NOTICE OF APPEAL RIGHTS

Under Article IX, Section 4e of the Bylaws of the Gotham Volleyball League and Section VI(4)(h) of the Gotham Volleyball Sportsmanship and Anti-Violence Policy, any interested member may appeal this decision to the Gotham Volleyball Board of Directors within 10 business days of the Committee's decision. In order to be timely, any letter seeking appeal of this decision **must** be delivered (by e-mail to grievance@gothamvolleyball.org or other means) to Jacob Rossmer, Grievance Officer, Gotham Volleyball League on or before April 16, 2018.

APRIL 9, 2018 DECISION OF THE BOARD ON APPEAL

**Action of the Gotham Volleyball Board of Directors
Regarding the Grievance Committee's March 29, 2018 Decision**

The Board has carefully reviewed the Grievance Committee's March 29, 2018 decision. The Board is in substantial agreement with the decision. However, the Board believes, under the circumstances presented, that in order to ensure that Gotham remains a safe space, the respondent's return to Gotham as well as to any leadership position in the organization cannot be unconditional. Therefore, the Board modifies and supplements the terms of respondent's suspension and subsequent probation as follows:

The respondent is suspended from all Gotham Volleyball competition and events for at least one year under the terms of the March 29, 2018 Grievance Committee decision, at which point he may apply to the Board for reinstatement. Respondent will not be reinstated and will remain on suspension unless he demonstrates to the Board an understanding that his conduct is inappropriate and took action to address his conduct.

Following the end of respondent's suspension, respondent will be unable to take any leadership position in Gotham Volleyball for at least one further year, subject to Board approval upon respondent demonstrating his full adherence to the Sportsmanship and Anti-Violence Policy and continued demonstration of the criteria necessary for his reinstatement to Gotham.

The Board will consult with experts in the relevant field to determine objective standards for evaluating whether respondent meets the criteria described above and will advise respondent of such prior to his first opportunity to reply for reinstatement.

In all other respects, the decision of the Grievance Committee is affirmed.

Approved without objection by the Board at its April 9, 2018 meeting.