IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

MARIANO TAITANO Plaintiff, v. NMI AMATEUR SOFTBALL ASSOCIATION, et al., Defendants.	Civil Action No. 93-356 **ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

The Defendants, N.M.I. Softball Association and Joseph T. Torres, and the Defendants Department of Sports and Recreation [sic] and William Sakovich [sic] pursuant to the Court's Order of Conversion on November 22, 1993, have filed motions for summary judgment on grounds that the Plaintiff, Mariano Taitano, has failed to raise a genuine issue of material fact.

I. FACTS

On October 7, 1988, Defendant NMI Amateur Softball Association (NMIASA) came into existence, giving residents of the Northern Mariana Islands the opportunity to participate in

organized softball games. The original requirements for NMIASA player eligibility included an age of 19 years or older, three months of residence in the CNMI, and the payment of membership dues. *Defendant's Exhibit B: Rules of 1993 Softball Season* at 1. Understandably, this new softball league attracted several players from the already existing NMI Baseball Players Association (NMIBPA), who decided to join the NMIASA while continuing to be active with the NMIBPA.

The Plaintiff, a United States citizen and resident of the Commonwealth of the Northern Mariana Islands, has played baseball in the NMIBPA as well as softball in the NMIASA for several years. Until recently, neither organization objected to his participation in both leagues. However, after the Defendant Joseph T. Torres became President of the NMIASA in 1992, the NMIASA amended the rules for the 1993 softball season by adding rule 15 to the ground rules (hereinafter ground rule 15). This amendment prohibits any player active in the NMIBPA from participating in NMIASA games. As a result, the Plaintiff claims the NMIASA has violated its bylaws by altering membership requirements through an improper procedure. At the very least, the Plaintiff has been precluded from participating in any NMIASA "fast pitch" softball games.

On March 11, 1993, the Plaintiff brought suit against the Defendants NMIASA, NMIASA President Torres, the Department of Sports and Recreation[1/], and "Bill Sacovich,"[2/] a government employee allegedly responsible for running the Department of

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[1/] A Department correctly labeled the Department of Community and Cultural Affairs.

[2/] A name correctly spelled "William Sakovich"

Sports and Recreation. The Plaintiff's complaint seeks to enjoin the NMIASA's enforcement of ground rule 15, and alleges that:(1) the addition of ground rule 15 violates Article X of the NMIASA Bylaws; (2) the collective actions of the Defendants constitute state action violating the Plaintiff's associational rights as set forth in Article I, Section 2 of the Commonwealth Constitution; (3) the collective actions of the Defendants violate the Plaintiff's right to equal protection of the laws as set forth in Article I, Section 6 of the Commonwealth Constitution.

It is an undisputed fact that the Defendant NMIASA pays a user fee for its use of public facilities. Although the exact amount has yet to be disclosed, the Plaintiff alleges that the user fees paid by the NMIASA are substantially less than those paid by other private groups. Discovery on this matter has yet to be conducted.

On April 15, 1993, two of the named Defendants, Department of Sports and Recreation and William Sakovich (hereinafter Government Defendants), filed a motion to dismiss the plaintiff's claim based on Commonwealth Rule of Civil Procedure 12(b)(6). On April 26, 1993, the remaining Defendants, NMIASA and NMIASA President Torres (hereinafter NMIASA Defendants), filed a separate motion for summary judgement for failure to state a claim upon which relief can be granted. On November 23, 1993, after due notice and opportunity to be heard, this Court converted the Government Defendants' Rule 12(b)(6) motion into a motion for summary judgment pursuant to Rule 12(b).

II. ISSUE

The Court will address the following issues:

(1) Whether the Court should grant summary judgment because the Plaintiff failed to name the intended Government Defendants, by their proper names in the complaint;

(2) Whether the Plaintiff's claim that the NMIASA violated Article X of its bylaws by creating ground rule 15 can survive the Defendant's motion for summary judgment;

(3) Whether ground rule 15 could violate Plaintiff's freedom of association;

(4) Whether ground rule 15 could violate the Plaintiff's right to equal protection of the laws.

III. STANDARD OF REVIEW

Summary judgment is proper "only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Bauer v. McCoy*, 1 CR 248, 265 (D.N.M.I. 1982), citing *U.S. First National Bank of Circle*, 652 F.2d 882, 887 (9th Cir. 1981). The existence of a genuine issue of fact is dependent on the existence of a viable legal theory, which if proved, would entitle plaintiff to judgment. *Pangelinan v. Castro*, 2 CR 429, 433 (D.N.M.I. 1983), citing *Ron Tonkin Gran Turismo v. Fiat Distrib.*, 637 F.2d 1376, 1381 (9th Cir. 1981), *cert. denied*, 102 S.Ct. 128 (1981). The court must construe the evidence and its attendant inferences most favorably to the party opposing the motion. *Pangalinan*, 2 CR at 433, citing *Harlow v. Fitsgerald*, 102 S.Ct. 2727, 2737 n.26 (1982).

IV. ANALYSIS

(A) Misnamed Defendants

As a preliminary matter, the Government Defendants asked this Court to dismiss the Plaintiff's claim against them because he failed to properly name them as parties to the litigation. Rule 10(a) requires a plaintiff's complaint to include the names of all the parties. Com. R. Civ. P. 10(a). The Government Defendants claim that by referring to them as "Department of Sports and Recreation" and "Bill Sacovich", rather than as "Department of Community and Cultural Affairs" and "William Sakovich", the Plaintiff failed to properly notify the Government Defendants of the actions pending against them.

The CNMI Judiciary has not addressed the issue of what constitutes a proper naming of the parties to a legal proceeding under Rule 10. Therefore, pursuant to 7 CMC §3401, this Court shall rely on federal determinations involving Federal Rule of Civil Procedure 10(a) which directs that "[I]n the complaint the title of the action shall include the names of all the parties." The face of the Plaintiff's complaint reveals that he has not adhered to the letter of Rule 10(a). However, past interpretations of Federal Rule of Civil Procedure 10(a) appear to grant plaintiffs some latitude. In *Kroetz v. AFT-Davidson Co.*, 102 F.R.D. 934 (E.D.N.Y. 1984), the court denied defendant's motion to dismiss based on Fed. R. Civ. P. 10(a) even after acknowledging that the plaintiff incorrectly listed the defendant's tradename rather than its proper name on the face of the complaint. *Kroetz*, at 935. The *Kroetz* court found that the improper name used in the complaint was actually the defendant's

tradename as well as the name of one of the defendant's products. *Id.* Therefore, no dismissal was warranted because the tradename effectively put the defendant on notice of the suit. *Id.* The court added that the defendant's prompt answer further showed that the defendant had not been prejudiced by the misnaming. *Id.*

Here, attempting to file suit against the Department of Community and Cultural Affairs, the Plaintiff named the Department of Sports and Recreation as a defendant. The Government Defendants claim that a sports and recreation department or agency does not exist in the C.N.M.I. However, the Court takes judicial notice of the fact that the government section of the C.N.M.I. phonebook lists "Sports and Recreation" as one of several divisions within the Community and Cultural Affairs Department. Therefore, while a Department of Sports and Recreation may not technically exist in the CNMI, certainly the phonebook listing shows the existence of some type of sports and recreation entity within the CNMI's Community and Cultural Affairs Department.

The use of the defendant's tradename in the *Kroetz* case and Mr. Taitano's naming of a division within the Community and Cultural Affairs Department extremely analogous. At the very least, the "Sports and Recreation Department" as it appears in the Plaintiff's complaint is a product or outgrowth of the Community and Cultural Affairs Department. Thus, the Defendant Community and Cultural Affairs Department received sufficient notice of this lawsuit when it was served with papers naming a division of itself as a defendant. Furthermore, the Government Defendant's timely answer to the Plaintiff's complaint has convinced the Court that

the Government Defendants have not been prejudiced by the Plaintiff's error.

Similarly, William Sakovich received sufficient notice and was not prejudiced when the Plaintiff referred to him as Bill Sacovich in the complaint. Essentially, the Plaintiff replaced *William* with the popular nickname *Bill*, and supplanted the letter *k* in Sakovich with the similar sounding letter *c*. Mr. Sakovich received sufficient notice of the complaint.

(B) <u>The Alleged Violation of Article X of NMIASA Bylaws</u>

In order to address the Plaintiff's allegations concerning NMIASA Bylaw violations, the Court first turns to Title 4, Division 4 of the Commonwealth Code entitled *Corporations, Partnerships and Associations*. Title 4 empowers the Governor to grant charters of incorporation for the establishment of private non-profit corporations but offers no guidance with respect to alleged by-law violations occurring in non-profit corporations. 4 CMC §§ 4101 et seq. On August 13, 1990, the legislature enacted the Commonwealth Business Corporation Regulations (CBRC). Although Section 10.20 and 10.22 of the CBRC offer some guidance for amendment to bylaws, the drafters of CBRC effectively limited the scope of the corporate regulations to profit making corporations by defining "corporation" as "domestic corporations...*for profit*". 12 Com. Reg. No. 07 at 6918 (1990)(emphasis added). Thus, the CBCR does not offer the Court any guidance with respect to the actions of the non-profit corporation, NMIASA. In the absence of C.N.M.I. written or

customary law to the contrary, the Court resorts to the common law. 7 CMC §3401.

The Plaintiff claims that the Defendants NMIASA and Joseph Torres amended the NMIASA membership requirements listed in Article IX of the Bylaws, and thereby violated Article X of the Bylaws by enacting ground rule 15. In order to amend the Bylaws, Article X requires "a majority of the directors [to be] present and voting at any regular or special meeting, provided that at least five (5) days written notice is given to each director of the intention to xxx [sic] amend, xxx [sic] (the) by-laws [sic]." *Plaintiff's Complaint for Declaratory Relief and Injunction*, at 5.

Bylaws of a corporation operate as a contract between members of the corporation and between the corporation and its members. *Dentel v. Fidelity Savings and Loan Ass'n*, 539 P.2d 649 (Or. 1975); *Paulek v. Isgar*, 551 P.2d 213 (Colo. App. 1976). Therefore, when the NMIASA adopted Articles IX and X of the Bylaws, it made a pact with its members that anyone satisfying the requirements for membership listed in Article IX would not be turned away from membership unless Article IX were later amended through the strict amendment process described in Article X.

The Declaration of Newman Techur, Vice President of the NMIASA, suggests that ground rule 15 was adopted along with the rest of the rules for the 1993 softball season by obtaining the signature of a representative from each team. This method of adoption differs from the bylaw amendment provision contained in Article X. Therefore, if ground rule 15 alters the membership requirements of the NMIASA, the Board will have breached its duty to the Plaintiff.

The Plaintiff's allegation that ground rule 15 amends Article IX is based on his view that placing a limitation on eligibility to *play* in the NMIASA games is synonymous with placing a limitation on NMIASA membership. The Defendants counter that players not eligible to play NMIASA softball as a result of their activity with the NMIBPA are still welcome to remain members.

A comparison of the NMIASA "Player's Eligibility" section of the Rules of 1993 Softball Season with the membership requirements contained in Article IX of the Bylaws manifests evidence that the members of the NMIASA perceive a difference between NMIASA membership and eligibility. For example, a person can be a member of the NMIASA after 30 days of residency and upon reaching the age of 18. *Plaintiff's Complaint*, at 5, whereas a person is not eligible to play softball until establishing 3 months of residency and attaining the age of 19. *Defendant's Exhibit B: Rules of 1993 Softball Season* at 1.

On the other hand, neither Plaintiff's complaint nor his memorandum in opposition demonstrate any evidence indicating that a restraint on eligibility amounts to a restraint on membership. Therefore, construing the evidence and its attendant inferences most favorably to the party opposing the motion for summary judgment, the Court finds no genuine issue of material fact. The Defendants' motion for summary judgment of the Plaintiff's bylaw violation claim is granted.

(C) Freedom of Association

Next, the Plaintiff alleges that the Defendants have violated his associational rights. The right of association derives from the First Amendment right to freedom of speech and assembly. *NAACP v. Alabama ex rel. Patterson*, 78 S.Ct. 1163, 1171 (1958). The right to associate applies where state action may curtail a group's ability to associate with regard to political, economic, religious or cultural beliefs. *Id. See generally Railway Mail Ass'n v. Corsi*, 65 S.Ct. 1483 (1985) (labor organization unsuccessfully sued state for enacting a law preventing the organization from denying membership to persons because of their race); *Loving v. Virginia*, 87 S.Ct. 1817 (1967) (couple successfully sued state for violating their freedom of association by enacting a statute which infringed their right to choose each other as spouses); *see also* NOWAK ET AL., CONSTITUTIONAL LAW § 16.41 (3rd ed. 1988).

For example, in *NAACP v. Alabama ex rel. Patterson*, the NAACP avoided the enforcement of a state statute compelling disclosure of certain information by arguing that the State of Alabama, through the enforcement of a statute, had infringed on its right to associate as a group. *NAACP*, 78 S.Ct. 1163, 1164 (1958). The Court held that the State of Alabama could not compel the NAACP to disclose a list of its rank and file members in Alabama to the state's attorney general because it would expose them to general public hostility, thus violating their right to associate. *Id.* at 1172. Similarly, in *Roberts v. United States Jaycees*, 104 S.Ct. 3244 (1984), the U.S. Jaycees challenged a Minnesota statute forbidding discrimination on the basis of sex in places of public

accommodation claiming the statute violated their freedom to associate as a group of men. *Id.*

Here, the Plaintiff must show that the creation of ground rule 15 amounts to state action and that he has a right to associate with the NMIASA which has been hindered by the NMIASA's creation of ground rule 15. As is explained in the "Equal Protection" portion of this Court's opinion, the Plaintiff's state action argument has merit. However, the Court finds that the Plaintiff, as a matter of law cannot rely on the right to associate, as embodied in the First Amendment, to protect him from Defendants' actions. Unlike the cases cited above, the case at bar involves an individual softball player praying for relief from a softball association's decision not to associate with him on the playing field because of his status as an active baseball player. Plaintiff's counsel has not provided nor has this Court found any case law extending the right to freedom of association to cover individuals who have been excluded from group activities. Although such a claim may fall within the framework of Article I, Section 6 of the Commonwealth Constitution, providing for equal protection of the laws, it clearly falls outside the traditional frontier of the right of association. In other words, the right to freedom of association does not give an individual the right to be included within an association which has decided it does not want him. Rather, an individual's alleged right to be included in a group is more properly adjudicated through an equal protection claim. The Defendants' request for summary judgment of Plaintiff's freedom of association claim is, therefore, granted.

(D) Equal Protection

Finally, the Plaintiff alleges that the Defendants' actions have violated his constitutional right to equal protection of the laws as provided by Article I, Section 6 of the Commonwealth Constitution. This Court must give the Equal Protection Clause of the Commonwealth Constitution the same meaning and interpretation as the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. *Sablan v. NMI Board of Elections*, 1 CR 741, 754 (D.N.M.I. App. 1983). The Equal Protection Clause guarantees that any government created classification will not be based upon impermissible criteria or arbitrarily used to burden a group of individuals. *Harris v. McRae*, 100 S.Ct. 2671, 2691 (1980).

In order for the Plaintiff's equal protection claim to survive the summary judgment motion before the Court, it must be possible for the Plaintiff to show that the NMIASA's creation of ground rule 15 constitutes state action. *See Burton v. Wilmington Parking Authority*, 81 S.Ct. 856, 860 (1961); *Fortin v. Darlington Little League Inc.*, 514 F.2d 344, 347 (1st Cir. 1975). Assuming the Plaintiff can satisfy the state action requirement, it also must be possible for the Plaintiff to show that the classification contained in the NMIASA's ground rule 15 is not rationally related to a legitimate government interest. *See In re Blankenship*, 3 N.M.I. 209, 219 (N.M.I. 1992). The Court will begin the equal protection analysis with the threshold question of state action.

1. State Action

The Equal Protection Clause only applies to action by state government or officials and those significantly involved with them. *Fortin*, 514 F.2d at 347 (citing *Adickes v. S. H. Kress & Co.*, 90 S.Ct. 1598, 1619 (1970)). Therefore, the Plaintiff must be able to show that the NMIASA's apparently private practices are "so entwined with governmental policies or so impregnated with a governmental character as to become subject to the constitutional limitations placed upon state action " *Evans v. Newton*, 86 S.Ct. 486, 488 (1966), *construed in Fortin*, 514 F.2d at 347. When making this state action determination, the Court is obliged to sift facts and weigh circumstances to determine the extent of the Commonwealth's nonobvious involvement in NMIASA conduct. *Burton*, 81 S.Ct. at 860; *see Fortin*, at 347 (quoting *McQueen v. Drucker*, 438 F.2d 781, 784 (1st Cir. 1971)).

In the case as bar, the Plaintiff has alleged that the NMIASA's adoption of ground rule 15 occurred under color of Commonwealth law. The Plaintiff points to the fact that the C.N.M.I. Government allows the NMIASA to use the public facilities for NMIASA softball games. The Defendants argue that the mere use of public facilities by a private group does not amount to state action. If a private group's mere use of a public facility amounted to state action, Defendants point out, every family picnic would run the risk of falling under color of state law. With this, the Court agrees.

The Plaintiff's allegations go much further. The Plaintiff asserts that the NMIASA receives discounts on the user fees paid to the NMIASA for the softball fields. The Plaintiff also points

out that to the extent the fields are used by the NMIASA they are made unavailable to the general public. Further, the Plaintiff has presented this Court with evidence of expensive additions to the Civic Center Baseball Field (ie. a lighting project costing $358,790.00 paid for by the Department of Public Works) which suggests that any user fees already being paid are insufficient to cover the costs of the softball facilities.

In *Fortin v. Darlington Little League, Inc.*, a case factually similar to the case at bar, the U.S. First Circuit Court of Appeals held that a private league's heavy dependency upon city baseball diamonds introduced significant state involvement in its activities sufficient to subject it to the Equal Protection Clause. *Fortin*, 514 F.2d at 347. The *Fortin* court found that the private league took on a semi-official character in the public consciousness tantamount to state action because the city baseball diamonds were designed to the specifications of the private league and were occupied by the league most of the time. *Id.*

In light of the *Fortin* case and the Court's obligation to construe the evidence and its attendant inferences most favorably to the party opposing the motion, the Court finds that a viable legal theory exists with respect to the threshold question of state action.

2. Rational Basis Test

In light of the Court's finding that the NMIASA's creation of ground rule 15 could amount to state action, the Court now considers whether ground rule 15 could violate the Plaintiff's right to equal protection. For purposes of equal protection

analysis, the Court will consider ground rule 15 as a product of state action.

State action that does not employ suspect classifications or impinge on fundamental rights must be upheld against equal protection attack when the means employed is rationally related to a legitimate government purpose. *Hodel v. Indiana*, 101 S.Ct. 2376, 2387 (1981); *see In re Blankenship*, 3 N.M.I. 209, 219 (N.M.I. 1992) (when a suspect class or a fundamental right is not in danger of violation, restrictions placed on admission to a profession only requires a rational relationship to a legitimate state interest).

In the case at bar, the Plaintiff does not claim, nor does this Court find him, to be a member of a suspect class. Other than the Plaintiff's freedom of association argument already rejected by this Court, the Plaintiff alleges no other infringement of a fundamental right. Therefore, in order for Plaintiff's equal protection claim to survive this motion for summary judgment, it must be possible for this Court to find the Defendant's activities to lack any rational relationship to a legitimate state interest.

Traditionally, the burden of establishing unconstitutional state action has always been placed on the party alleging it. *Metropolitan Casualty Insurance Co. of New York v. Brownell*, 55 S.Ct. 538, 540 (1935). In his lone argument to this Court, Plaintiff contends that the NMIASA's decision to bar NMIBPA ballplayers from playing in NMIASA games is arbitrary and capricious because "no reasons were given for the imposition of

[ground rule 15]." *Plaintiff's Memorandum in Opposition to Motions to Dismiss and for Summary Judgment* at 8.

The Court finds this argument entirely unpersuasive. The presumption of reasonableness is with the State. *Salsburg v. State of Maryland*, 74 S.Ct. 280, 284 (1954). Without some evidence of invidious or arbitrary conduct on the part of the rule makers responsible for ground rule 15, the fact that the NMIASA has not expressed the rationale behind ground rule 15 is not enough to call the rule into question.

Plaintiff's first attempt to offer evidence of arbitrariness appears in his declaration and explains that ground rule 15 has had an allegedly negative effect on the NMIBPA membership. Such evidence will not be considered because it is based on the incorrect premise that the NMIASA has a duty to consider the welfare of the NMIBPA when forming NMIASA eligibility rules.

The Plaintiff also offers evidence that the NMIASA membership has not increased as a result of ground rule 15. However, as the Court will point out momentarily, membership increase does not appear to be the purpose of ground rule 15. The Plaintiff has failed to carry his burden of calling ground rule 15 into question by showing arbitrary or invidious discrimination.

The Fourteenth Amendment allows the State to act within a wide scope of discretion, and statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it. *McGowan v. State of Maryland*, 81 S.Ct. 1101, 1105 (1961); *see McDonald v. Board of Election Com'rs of Chicago*, 89 S.Ct. 1404, 1408 (1969). With this guideline for review in mind, the Court now turns to the language of ground rule 15:

> *In order to develop Fastpitch Softball to a higher level*, no members of the Association (manager, coach or player) who is playing in the Saipan Baseball League (Major League) will be allowed to play in the CNMI Men's Fastpitch League.

Defendant's Exhibit B: Rules of 1993 Softball Season, at 4 (emphasis added). The drafters of ground rule 15 have stated the purpose of the new rule by expressing an intent "to develop Fastpitch Softball to a higher level." Assuming the Plaintiff's argument that the Commonwealth has taken on the responsibility of regulating NMIASA sports activities is true, developing the softball league certainly amounts to a legitimate goal.

Although the rule does not state how the exclusion of baseball players is rationally related to the goal of developing softball, it is within this Court's authority to discern whether any state of facts reasonably may be conceived to justify the exclusion of active NMIBPA ballplayers from participation in NMIASA softball games. *McGowan v. State of Maryland*, 81 S.Ct. 1101, 1105 (1961). The NMIASA Board could have reasonably decided that excluding active baseball players from participation in NMIASA games would increase the level of softball play because such a rule would result in a softball league comprised of only the most dedicated softball players. It is reasonable to believe that softball players who are also active in the NMIBPA games would be more likely to encounter scheduling problems or injuries which would interfere with their ability to be devoted participants in the NMIASA league. When the record is void of any indication that a classification is invidious and valid reasons for the classifications appear to exist, a court cannot find the classification violative of the Equal Protection Clause of the

Fourteenth Amendment. *Id.* at 1105-06. Therefore, based on the record before the Court, the Plaintiff cannot show that the classification contained in the NMIASA's ground rule 15 is not rationally related to a legitimate government interest. Accordingly, the Defendant's motion for summary judgment as it applies to Plaintiff's equal protection claim is granted.

V. CONCLUSION

For the foregoing reasons, the Court **ORDERS** as follows:

(1) The Defendants' motion to dismiss pursuant to 12(b)(6) which was converted to a motion for summary judgment by this Court is **DENIED.**

(2) The Defendants' motion for summary judgment on the Plaintiff's claim of a corporate bylaw violation is **GRANTED.**

(3) The Defendants' motion for summary judgment of the Plaintiff's freedom of association claim is **GRANTED.**

(4) The Defendants' motion for summary judgment of the Plaintiff's equal protection claim is **GRANTED.**

So ORDERED this 2 day of February, 1994.

ALEXANDRO C. CASTRO, Presiding Judge