

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

DOUGLAS G. LOGAN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CAUSE NO. 1:10-CV-1315-TWP-TAB
	)	
USA TRACK & FIELD, INC.,	)	
	)	
Defendant.	)	

**COUNTERCLAIM FOR DECLARATORY JUDGMENT AND DAMAGES**

Defendant, USA Track & Field, Inc. (“USATF”), by counsel, for its Counterclaim for Declaratory Judgment against Plaintiff, Douglas G. Logan (“Logan”), states:

**I. Preliminary Statement**

1. This is a declaratory judgment action, pursuant to 28 U.S.C. §§ 2201 and 2202 in which USATF seeks a declaration of its obligations to Logan pursuant to a “term sheet” signed by the parties and with respect to the lawsuit that has been filed by Logan against USATF.

2. Specifically, USATF seeks a declaration that the “term sheet” or “term sheets” are unenforceable for a number of reasons including the statute of frauds, illegality and for lacking certainty, that to the extent they are enforceable, Logan committed several material breaches that preclude him from enforcing the remaining terms, that Logan’s conduct provided USATF with cause to terminate him and that USATF has paid him all that is required.

3. Recently, the Board has discovered additional serious misconduct by Logan that if known, would have resulted in his immediate termination. Specifically, Logan, as CEO, instructed the USATF staff to not withhold Indiana state and local income taxes from Logan’s pay because Logan’s position was he was a Florida resident and no state income tax was owed. Logan spent time working at the USATF offices in Indianapolis and he lived part-time in

Indianapolis during his service as CEO. The failure to withhold state and local taxes is a violation of Indiana Code §§ 6-3-2-2(a)(4), 6-3-4-1(2), and 6-3-4-8. Logan's request was solely for his benefit and subjected USATF to liability for the full amount of unpaid state and local taxes, penalties and interest. Further, this violation of Indiana law imposed personal liability upon those individuals in the USATF payroll department that trusted Logan, relied on his leadership and followed his direction. USATF seeks a declaration that by directing USATF's staff to commit tax evasion and violate Indiana law Logan committed willful or gross misconduct or dereliction of duty which bars Logan's claims.

4. Upon information and belief, Logan failed to file an Indiana tax return for years 2008 and 2009. Logan was required by Ind. Code § 6-3-4-1(2) to file an Indiana return. To the extent he did not, USATF seeks a determination that he committed willful or gross misconduct or dereliction of duty which bars his claims.

5. USATF has also recently discovered that Logan, even after being warned and required to pay back prior unreasonable expenses, again charged on his company credit card approximately \$15,000 of expenses that are not eligible for reimbursement pursuant to USATF's travel and reimbursement policy. Had the USATF Board known of these improper charges, they would have been included as grounds for termination. USATF seeks a declaration that repeatedly violating USATF's travel and entertainment policy is willful or gross misconduct or dereliction of duty which bars Logan's claims.

6. USATF also seeks damages for breach of Logan's fiduciary duty and for attorneys' fees and costs. Logan should be required to repay the taxes, penalties and interest his actions have subjected USATF to pay and he should be forced to repay the improper and unreasonable expenses charged on his company credit card.

7. Finally, USATF seeks a declaration that Logan was paid his “End Payment” and that none of the other payments described in the Term Sheet are “wages” under Indiana law.

## **II. Background Information**

8. USATF is a not-for-profit corporation and the national governing body for track and field, long distance running, cross-country running and race walking. Its mission is to drive competitive excellence and popular engagement in the sport.

9. Logan served as Chief Executive Officer of USATF from July 2008 through September 15, 2010.

10. Logan was very highly compensated by USATF. His base salary, effective January 1, 2010, was \$500,000 per year. He received an executive benefits allowance of \$48,000 per year. USATF paid Logan \$2,000 per year for membership in the Indianapolis Columbia Club. He had twenty (20) days of paid vacation each calendar year. His reasonable travel, entertainment and business expenses were paid by USATF.

11. Logan’s term as USATF’s CEO was defined by very contentious relationships between himself, the Board and various constituency groups.

12. Upon undertaking the job as CEO, Logan set many ambitious goals and accomplished few, if any.

13. Despite being very highly compensated, Logan abused the USATF travel policy by running up improper charges on his company credit card, and by failing to promptly submit expense reports and receipts.

14. His ethics were further called into question when he improperly gave gifts to a female athlete which prompted an investigation and counseling.

15. Because of these and many other issues, Logan was terminated by the USATF Board on September 15, 2010.

### **III. The Term Sheet**

16. Effective July 1, 2010, Logan and USATF entered into an Employment Term Sheet.

17. The July 1, 2010 term sheet is substantially similar to an Employment Term Sheet entered effective July 21, 2008.

18. At the center of this dispute is paragraph 13 of the term sheet which is entitled “Severance”.

19. Paragraph 13 generally provides that if Logan is terminated with cause then USATF will pay him only his “End Payment”. “End Payment” is defined to include Logan’s Base Salary, accrued vacation and any unreimbursed expenses earned or incurred but not paid through the date of termination. If Logan is terminated with cause there is no time period specified for payment of his “End Payment.” Presumably this is to allow USATF sufficient time to calculate unreimbursed expenses and unused vacation pay to date.

20. If Logan is terminated without cause, then USATF will:

- a. pay Logan his End Payment;
- b. “continue” to pay Logan his Base Salary during the period from the date of termination through 2013 “in accordance with USATF’s regular payroll practices”; and
- c. if participating, “continue” Logan on the USATF medical and dental insurance programs through 2013.

21. Paragraph 13 also provides that if these “payments” are determined to be “nonqualified deferred compensation”, then no payments will commence or be made earlier than

the first day of the seventh month following the month in which Logan's employment terminated.

22. Consequently, if Logan was fired without cause (as Logan claims) and if the severance payments are determined to be nonqualified deferred compensation, no payment, even Logan's "End Payment", is due before April 1, 2011 and Logan's lawsuit which contains no request for declaratory relief is not ripe.

**IV. The Term Sheet Does Not Include Necessary Material Terms, Contains Illegal Terms and is Unenforceable**

23. In a 2-count complaint, Logan argues that he was terminated without cause and is therefore entitled to the "Severance" payments contained in paragraph 13 of the term sheet through December 31, 2013 – more than a three-year term.

24. The sheer length of the term makes the transaction subject to Indiana's statute of frauds, which prohibits enforcement of oral contracts that cannot be performed within one year.

25. The term sheet contains an integration clause on the last page that states, "this term sheet represents the entire understanding . . . and supersedes all previous understandings and agreements (written and oral)" between Logan and USATF.

26. Logan's 2-count complaint relies almost entirely upon oral terms and understandings that are not contained within the term sheet.

27. Specifically, the amount and timing of payments to be made to Logan if he is terminated without cause are not specified and as a consequence the term sheet lacks the required definiteness and certainty to be enforced.

28. Logan's 2-count complaint assumes that the "End Payment" in paragraph 13(a) is to be paid "no later than the regular pay day for the pay period in which separation occurred."

29. This term is not contained anywhere in the term sheet.

30. Paragraph 4 of the term sheet sets forth Logan's Base Salary; however, it does not set forth the regular intervals on which it will be paid, how it is to be paid, what is to be withheld and the amount of the actual payments. Paragraph 13 similarly does not set forth when the End Payment should be paid unless it is considered nonqualified deferred compensation, in which case no payment is due until April 1, 2011 and this would include the "End Payment".

31. In paragraph 13(b), if Logan is terminated without cause, the term sheet states USATF will "continue" to pay Logan his "Base Salary" through the end of the term "with such salary payments to be made in accordance with USATF's regular payroll practices."

32. Paragraph 13(b) contemplates more than one salary payment, but the amount of "such salary payments" is not specified.

33. "USATF's regular payroll practices" are not defined or contained in the term sheet and implementation of this term necessarily requires a determination and investigation of USATF's regular practices regarding Logan's pay.

34. In the past, and pursuant to Logan's direction, USATF's regular payroll practice was to not withhold from Logan's salary for Indiana state and local taxes.

35. This past practice is illegal pursuant to I.C. §§ 6-3-2-2(a)(4), 6-3-4-1(2) and 6-3-4-8.

36. Paragraph 13(b) is unenforceable because it seeks to "continue" this illegal practice.

37. To the extent Logan claims the written term sheet requires USATF to continue to pay him his salary through 2013 according to the same terms it was paid to him from July 15, 2010 to September 15, 2010, it is now clear that payment scheme was unlawful, and the term sheet is unenforceable because the USATF cannot be required to continue to subject itself to

additional liabilities. To the extent Logan is relying on any alleged oral modifications to the written term sheet to modify the illegal payment scheme he imposed on USATF during his tenure as CEO, any such oral agreement would be unenforceable pursuant to the statute of frauds and one violative of the term sheet's integration clause.

**V. To the Extent the Term Sheet is an Enforceable Contract, Logan's Material Breaches Preclude His Enforcement**

**A. Logan Did Not Serve at the Board's Direction and Under the Board's Policies and Directives**

38. Pursuant to Paragraph 3 of the term sheet and the USATF Governance Handbook, Logan was to serve at the Board's direction. He was to manage and supervise the day-to-day affairs of USATF under the Board's policies and directives.

39. Logan did not serve at the Board's direction.

40. Logan referred to the Board as a "bunch of clowns" and to its president and vice president as Fantasia and Opie.

41. Logan treated the Board indignantly and with insubordination.

42. By failing to serve at the Board's direction and under the Board's policies and directives, Logan committed a first material breach of the term sheet, thereby preventing him from enforcing the remaining terms.

**B. Logan Did Not Protect USATF's Interests, Subjected it to Liability and Violated USATF's Ethics Policy**

43. The USATF governance handbook required Logan to follow USATF policies including the code of ethics, and protect USATF interests from liability to third parties. Further, he was precluded from receiving a benefit to which he was not entitled.

44. By directing USATF staff to not withhold state and local income taxes, Logan failed to protect USATF from liability to the Indiana Department of Revenue and received a

benefit to which he was not entitled – he did not pay state and local income taxes from July 2008 until September 15, 2010.

45. Upon information and belief, Logan did not file Indiana state tax returns for 2008 and 2009. This is also a violation of USATF's code of ethics.

46. Further, Logan provided improper gifts to a female athlete causing an investigation.

47. These breaches of his material duty preclude Logan from enforcing the remaining terms of the term sheet.

C. Logan Failed to Provide a Self-Evaluation for 2009

48. The term sheet asserts that it includes the "material terms" of Logan's employment.

49. In paragraph 4 of the term sheet, it provides that in addition to Logan's yearly report described in the Governance Handbook, he shall annually report in writing to the Board and USATF membership a self evaluation of his accomplishments and a review of the goals from the previous year.

50. Logan failed to provide such an annual self evaluation, which constitutes a material breach of the term sheet precluding enforcement of the remaining terms.

D. Logan Charged Unreasonable Expenses on his USATF Credit Card

51. Pursuant to paragraph 8 of the term sheet, USATF provided Logan with a USATF credit card which Logan was permitted to use for reasonable travel, entertainment and business expenses.

52. Logan failed to submit travel and expense reports for reimbursement in a timely fashion.



53. Routinely, Logan submitted expense reports six, seven and even eight months after expenses were incurred. This is a violation of USATF travel and expense policy.

54. In December 2009, Logan took a trip to Beirut which should have been reimbursed by the United States Olympic Committee. Logan failed to instruct USATF staff to send the travel expenses to the United States Olympic Committee for reimbursement. As a result, there was a significant delay in receiving funds from the USOC.

55. Logan previously used his corporate travel card for airline upgrades knowing that these upgrades were his responsibility and were violations of USATF policy.

56. Recently, USATF discovered an additional \$15,000 of ineligible expenses.

57. The violation of the USATF travel and expense policy and the use of the USATF credit card for ineligible and unreasonable expenses is a material breach of the term sheet and precludes Logan from enforcing the remaining terms.

**V. Logan Was Terminated For Cause**

58. Paragraph 12 of the term sheet defines cause for termination as “dereliction of duty”.

59. Dereliction of duty is a military term. It widely refers to failure, through negligence or obstinacy, to perform one’s legal duty to a reasonable expectation.

60. Under the various regulations of military law, avoidance of a duty or failure to follow an order from a superior can result in a charge of dereliction of duty.

61. To the extent Logan failed to serve at the Board’s direction or pursuant to the Board’s policies and procedures, by definition, he committed a dereliction of duty.

62. To the extent Logan failed to provide an annual self evaluation pursuant to his term sheet or the Board’s request, he committed a dereliction of duty.

63. To the extent that Logan failed to submit reasonable and eligible expenses for travel, entertainment and business purposes pursuant to his term sheet or the USATF travel and reimbursement policy, he committed a dereliction of duty.

64. Similarly, Logan's actions, in indignantly and insubordinately failing to follow the Board's directives, in alienating the different constituent groups of USATF, and in providing improper gifts to a female athlete also constitute willful and continued failure in the performance of his material duties or gross misconduct.

**VI. After-Acquired Evidence that Would Have Resulted in Termination**

65. The Board recently discovered that Logan directed USATF staff to not withhold for Indiana state and local taxes in violation of Indiana law, which has subjected USATF to liability for taxes, penalties and interest.

66. Logan made such a direction for his own personal benefit and placed USATF at risk of substantial liability for taxes, penalties and interest.

67. Logan's direction to USATF staff to violate Indiana law and evade taxation constitutes dereliction of duty, gross misconduct and/or willful breach of his material duties.

68. Upon information and belief, Logan failed to file Indiana state tax returns for years 2008 and 2009.

69. Had the Board known of these facts prior to Logan's termination, it would have utilized them as a reason for termination.

70. A review of Logan's credit card receipts, subsequent to his termination, revealed that Logan charged approximately \$15,000 of expenses that were unreasonable or not permitted by USATF's travel and entertainment policy.

71. The submission of \$15,000 of improper expenses constitutes dereliction of duty, gross misconduct and/or willful breach of his material duties.

72. Had the Board known of these improper expenditures prior to his termination, it would have utilized this fact as a reason for termination.

**VII. Logan Was Paid His “End Payment”**

73. In paragraph 10 of the term sheet, End Payment is defined as “Executive’s base salary, accrued vacation and any unreimbursed expenses earned or incurred, but not paid through date of termination.”

74. Logan’s last day at USATF was September 15, 2010.

75. No later than September 30, 2010, Logan was paid semi-monthly salary of \$20,833.33, the semi-monthly allowance for benefits as contained in paragraph 7 of the term sheet of \$2,000, costs for Medicare parts A and B as well as supplemental health insurance of \$225, and he was paid for 36.8 days of unused vacation in the amount of \$64,358.97. In all, Logan was paid \$23,058.33 for salary and expense reimbursements, and \$64,358.97 for unused vacation.

76. All of Logan’s credit card charges have been paid.

77. In fact, it has been determined that Logan submitted for payment ineligible expenses totaling more than \$15,000.

78. As a result, Logan has been paid all end pay to which he is due and owing.

**VIII. Even if Logan was not Terminated for Cause, he is Owed Nothing**

79. USATF has already paid Logan his “End Payment” pursuant to paragraph 13(a) of the term sheet.

80. The payments referred to in paragraph 13(b) and 13(c) are not “wages” under Indiana law.

81. Logan was not participating in the USATF medical insurance program at the time of his termination and USATF cannot “continue” him on that plan.

82. Logan seeks to continue a payment scheme for three more years that USATF learned, following Logan’s termination, was unlawful because it required USATF, at Logan’s direction, to provide salary payments to him without withholding for Indiana state and local taxes. This payment scheme has already subjected USATF officials to penalties for tax evasion and, if continued, would subject them to continued penalties for unlawful conduct for three more years. Paragraph 13(b) of Logan’s “Term Sheet” is unlawful and thus unenforceable.

83. In addition, pursuant to paragraph 13, if the severance payments are deemed to be “nonqualified deferred compensation” then no payments will commence or be made earlier than the first day of the seventh month following the month in which Logan’s employment terminates.

84. The severance payments contemplated by paragraph 13 of the term sheet are nonqualified deferred compensation pursuant to Section 457(e)11 of the Internal Revenue Code and Section 409(a) of the Internal Revenue Code; therefore, no payment is due to Logan before April 1, 2011, even if he was not terminated for cause.

**IX. Request for Return of Funds**

85. Logan breached his fiduciary duty to USATF by charging on his credit card improper and unreasonable expenses.

86. Logan breached his fiduciary duty by directing USATF staff to not withhold from his pay Indiana state and local income tax.

87. If the term sheet is an enforceable agreement, Logan breached this agreement by charging improper and unreasonable expenses on his company credit card and by directing USATF staff to not withhold from his pay state and local income taxes.

88. These breaches have caused USATF damage and subjected it to liability to the Indiana Department of Revenue.

89. Logan owes USATF all state and local income taxes owed from July 2008 to September 15, 2010, along with all interest and any penalties and for all unreasonable and improper charges to his USATF credit card.

WHEREFORE, USATF prays that the Court declare its rights and obligations under the term sheet and in this lawsuit and find:

i. Because the term sheet does not specify the timing and amount of the payments mentioned in Paragraph 13(b), that part of the term sheet is too uncertain and indefinite to be enforced.

ii. The provisions which Logan is seeking to enforce require reference to oral agreements or conduct outside the agreement; therefore, Logan is attempting to enforce an oral agreement that is not enforceable pursuant to the statute of frauds.

iii. Paragraph 13(b) of the term sheet contains an illegal term – to continue to pay Logan’s salary through 2013 “in accordance with USATF’s regular payroll practices.” Pursuant to Logan’s direction, USATF’s regular payroll practice was to not withhold for Indiana state and local taxes. This past practice is illegal and paragraph 13(b) is unenforceable as a result.

iv. Logan committed a first material breach of the term sheet as described below which preclude Logan from enforcing the remaining terms:

- a. Logan refused to serve at the direction of the Board and pursuant to the Board's policies and directives;
  - b. Logan instructed USATF staff to commit tax evasion and violate Indiana law;
  - c. Logan failed to provide an annual self evaluation; and
  - d. Logan submitted ineligible and unreasonable expenses for travel, entertainment and non-business reasons.
- v. Logan was terminated for cause:
- a. Dereliction of duty simply means the failure through negligence or obstinacy, to perform one's legal duty to a reasonable expectation.
  - b. Not only does Logan's conduct constitute a dereliction of duty, but his insubordination and animosity toward the Board and other constituent groups and his improper gifts to a female athlete constitute willful failure of his material duties and/or gross misconduct.
  - c. Logan's directive to violate Indiana law and commit tax evasion and failure to file tax returns constitutes willful failure to perform his material duties, gross misconduct and/or dereliction of duty.
  - d. Logan's continued and repeated submission of improper and unreasonable charges on his company credit card is willful failure to perform his material duties, gross misconduct and/or dereliction of duty.
- vi. Logan was paid his "End Payment".
- vii. Logan was not participating in the USATF medical insurance program at the time of his termination and therefore cannot be continued on that program.

viii. The severance payments described in paragraph 13 of the term sheet constitute nonqualified deferred compensation and, therefore, no payment would be due to Logan (even if he were not terminated for cause) until April 1, 2011.

ix. The severance payments described in paragraph 13 do not constitute “wages” pursuant to Indiana’s Wage Claim statute.

x. Logan is responsible for the unpaid state and local income taxes and improper charges placed on the USATF credit card.

xi. USATF is entitled to its attorney fees and costs for having to defend against Logan’s premature action and for prosecuting this counterclaim for declaratory judgment and damages.

Respectfully submitted,

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, PC

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 17, 2010, a copy of the foregoing *Counterclaim for Declaratory Judgment* was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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s/ Todd J. Kaiser

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