



# South Florida ASA

*South Florida ASA, Inc.* – a 501(c)(4) tax-exempt organization

*South Florida Youth ASA, Inc.* – a 501(c)(3) tax-exempt charitable organization

(Serving Broward, Martin, Miami-Dade, Monroe, Palm Beach, and St. Lucie Counties)

5201 S.W. 101<sup>st</sup> Terrace \* Cooper City, FL \* 33328-4949

(954) 600-7891 (M-F, 8AM-5PM) \* (954) 252-7565 (fax)

10/01/2008

The complaint filed by Gregory Higgins (Complainant) against David Garcia (Respondent) came before *South Florida ASA* Commissioner Moris L. Uhler for hearing on 09/04/2008 at 7:00 pm, and was conducted at Brian Piccolo Park, Meeting Room, 9501 Sheridan Street, Cooper City, Florida. Both parties were given notice of the time and place of the hearing and neither had an objection thereto. Neither party objected to *South Florida ASA* Commissioner Moris L. Uhler as the one who conducted the hearing.

The Complainant was present and was not represented by counsel. The Complainant was accompanied by (deleted) and (deleted).

The Respondent was present and was not represented by counsel. The Respondent was accompanied by six individuals, those being the following: (i) 2 players from the opposing team; (ii) a teammate of the Respondent; (iii) a fan watching the game; (iv) an umpire working a game on a different field at the sports complex; and (v) the spouse of the Respondent who was keeping score of the game.

In summary....

The Complainant alleged Respondent, after being ejected from the game, charged the Complainant and pushed the Complainant twice with closed fist into the chest of the Complainant. The Complainant provided the following items which were mailed to the Respondent with the notice of hearing:

1. ***Broward County Board of County Commissioners, Risk Management Division, Loss Notice:*** This report provided a description of the incident and the action to prevent reoccurrence. This report was written by park personnel who were not present at the field when the incident occurred. The report does state that *umpire, Greg Higgins approached Mr. Garcia and ejected him from the game. Mr. Garcia then pushed Umpire Higgins twice.*
2. ***Supervisor's Investigation Report:*** This report provided a description of the incident and the action to prevent recurrence. This report was written by park personnel who were not present at the field when the incident occurred. The report does state that *umpire Higgins ejected Mr. Garcia from the game. Mr. Garcia pushed umpire Higgins twice.*



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3. **Incident/Investigation Report (Police):** This is the Coconut Creek Police Department report. This report provided the name and address of the Complainant and Respondent. This report also provided a narrative of the incident from the point of view of the Complainant, (deleted), the Respondent, and a teammate of the Respondent. The police officer noted that *no arrest was made due to conflicting statements from witnesses, no sign of injury to (the Complainant) and being unable to determine the primary aggressor.*
4. **Umpire Game Sheet:** This report is the score sheet provided to the umpires for their assignment. This report also contained the ejection report. In the report (written by the umpires), it states that *(Garcia) charged out of 3<sup>rd</sup> base dugout and began cursing both umpires. Greg Higgins walked from 1<sup>st</sup> base toward Garcia who continued to curse him and Higgins ejected player Garcia who then pushed umpire Higgins 2 times.*
5. **Written Statement of the incident by the Complainant.** From this report, it is noted that *(Higgins) was fearful that the plate umpire would be attacked. I then walked in from the first base area where I was standing and tried to aid the plate umpire. Garcia now began yelling, screaming, and swearing at me. At that point I ejected Mr. Garcia from the game. He then turned around and charged toward me from where he was which was about 15 - 20 feet away. He charged directly in front of me and struck me with both fists closed. He knocked me backward and when I was able to regain my balance and stand up straight again he then used both closed fists to push me in the chest a second time.*
6. **Written Statement of the incident by (deleted).** From this report, it is noted that *several players including David Garcia came out from the dugout and began arguing the call. Greg Higgins walked to the foul side of the 3<sup>rd</sup> base foul line where player Garcia continued to berate and curse Higgins. Higgins then ejected Garcia. After being ejected Garcia became even more enrage and with both hands pushed Higgins two times while shouting “get out of my face, get out of my face.”™*

The Respondent presented an argument that the Respondent did not charge the Complainant, as noted in the above reports. The Respondent did acknowledge pushing the Complainant twice, but only to remove the Complainant from the Respondent’s “personal space” (the space around a person in which that person would feel threatened if another individual occupied that space) since the Respondent felt threatened in that, per the Respondent, the Complainant charged the Respondent.



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The oral argument presented by the Respondent was corroborated by the Respondent's witnesses present at the hearing. All witnesses stated that the Complainant "got into the face" of the Respondent, but the Respondent only used one hand to push away the Complainant since the Respondent was holding a bat in one hand, not two closed fists. It should also be noted that all, except one witness, stated that the Complainant charged the Respondent from the 1<sup>st</sup> base area.

However, as noted above, the one witness who arrived late after the hearing began stated that the Complainant walked across the diamond. This witness stated that he was the pitcher for the opposing team. In my opinion, it also appears that this witness may not have been coached as to what to testify to since all of the other witnesses presented the same testimony. It was also observed by the presiding official when arriving for the hearing that the Respondent and Respondent's witnesses were conducting a meeting prior to the hearing. My question is what was discussed?

Prior to closing the hearing, the presiding official then asked the Respondent if he touched the Complainant. The Respondent's answer was yes. The Respondent was then asked if the Complainant touched the Respondent. The Respondent's answer was no.

The presiding official then asked the Complainant if he touched the Respondent. The Complainant's answer was no. The Complainant was then asked if the Respondent touched the Complainant. The Complainant's answer was yes.

The hearing was then adjourned at 8:16 pm.

Subsequent to the meeting (on 09/05/2008), the presiding official contacted Jose Fonte (*Southern Region* Player Representative) to discuss this situation. As both a former player and umpire, it was the opinion of Mr. Fonte that if anyone were to invade his "personal space", that Mr. Fonte would try to remove that individual from his "personal space". It was also Mr. Fonte's opinion that both parties were at fault and that both parties should be sanctioned with some sort of probation and/or disqualification.



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Subsequent to the meeting (on 09/05/2008), the presiding official contacted Matt Dunbar (*South Florida ASA Umpire-in-Chief*) to discuss this situation. In Mr. Dunbar's opinion, both parties are at fault. The Complainant violated a basic rule of umpiring in becoming the aggressive party (per oral testimony of the Respondent's witnesses). However, at no time should a player (the Respondent) ever touch another individual, whether an umpire or not. A player must learn to control himself the same as an umpire must learn to control himself.

In addition to the above, the presiding official was also in receipt of an email dated 07/24/2008 at about 12:46 PM from (deleted) to the park. From this email, it is noted that *the umpire behind the plate started arguing with our team about the number of outs, so one our players asked for the umpires to huddle together to figure this out and get on the same page. This is when things got crazy. The first base umpire left his position and proceeded toward our dugout on the third base side of the field, to step into the face of one of our players, (who, yes was my husband). My husband asked the umpire to back off and get out of his face, but the umpire did not and stayed in his face, so my husband put his hands out to slightly push him back. Then the umpire came again into his face and once more my husband told him to get out of his face, but he didn't and my husband pushed him back. Next, the umpire threw him out of the game and my husband packed his things and left.*

It is interesting to note here that per (deleted), "my husband put his hands out to slightly push him back". The word hand is in the plural, not singular. So it appears that the Respondent was not holding a bat in one hand, but did indeed use both hands to push the Complainant.

Also attached to this email (which was provided by Tradewinds Park) were additional comments from park personnel, which states that *I (deleted) called (deleted) today and asked him for an unbiased version of what happened during last Wednesday's game. He described the behavior of (Garcia) as "arrogant", "cocky", and aggressive with continuous profanity-laced insults. He felt as if the umpires were very lenient considering he had never seen a player act in the manner Mr. Garcia was acting. While Greg Higgins may have gotten too close to Mr. Garcia, he believes the intent of Mr. Higgins was only to protect his fellow umpire and was not aggressive.*



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It is interesting to note here that the umpire “may have gotten too close to Mr. Garcia”. Even though the individual did not say that the Complainant charged the Respondent, it is also noted that the individual did not say that the Respondent charged the Complainant, but that the umpire “may have gotten too close to” the Respondent.

ASA Code 505(E)(01) states that physical violence calls for a suspension of a minimum of one-year loss of eligibility. In this case, was there physical violence to warrant a minimum one-year suspension?

In the police report, it was noted that there was no sign of injury. In the opinion of the presiding official, physical violence would produce injuries. However, during the hearing, the Complainant did state that he underwent testing in a hospital the day of the hearing to determine if the Respondent’s push to the chest of the Complainant may have aggravated scar tissue from a previous heart operation. Whether or not the umpire should have been umpiring is not going to be addressed since it is unknown as to when the surgery occurred.

Based upon the arguments and evidence presented by the parties appearing, *South Florida ASA* Commissioner Moris L. Uhler makes the following findings and orders:

**THE RESPONDENT COMMITTED THE ACT COMPLAINED OF AND SUCH ACT REQUIRES DISQUALIFICATION.** The reasons for the disqualification are as follows:

1. The Respondent did admit to contacting the Complainant.
2. The fact that if an individual during a recreational softball game feels that someone has entered their “personal space” does not grant them the right to contact anyone. Everyone is accountable for their actions.

**IT IS HEREBY RESOLVED THAT the disqualification period shall begin on the date of this ruling and shall end on 03/31/2009.**

**IT IS HEREBY FURTHER RESOLVED THAT the Respondent shall not be allowed to participate in any ASA events, whether championship play, recreational play, or as a team manager, coach, and/or sponsor. If it is determined that the Respondent participated in**



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**any of the above, then the Respondent, team, player(s) and/or sponsor will be disqualified for a period not ending before 12/31/2010.**

**IT IS HEREBY FURTHER RESOLVED THAT** if there is a criminal proceeding based upon the Coconut Creek Police Department's police report (Case #2008-19284) and the Respondent is adjudicated as either guilty or pleads no-contest or guilty, the *South Florida ASA* Commissioner reserves the right to extend the disqualification period to a date to be determined at the time of the resolution of a criminal proceeding. However, it will be the responsibility of the Respondent to notify the presiding official if and when any and all possible criminal charges have been dropped by providing written notification from either the Coconut Creek Police Department and/or the Office of the State Attorney.

Based upon the arguments and evidence presented by the parties appearing and the additional information not disclosed during the hearing but noted above, *South Florida ASA* Commissioner Moris L. Uhler also makes the following findings and orders:

1. From oral testimony presented, the Respondent stated that the Complainant entered his "personal space" instead of the Respondent charging the Complainant.
2. It should never be the policy of an umpire to confront and/or instigate a confrontation with a player and/or representative of a team.
3. From the police report, no arrest was made due to conflicting testimony of witnesses.
4. As noted from the park's discussion with the opposing team manager, the umpire "may have gotten too close to" the Respondent.

**IT IS HEREBY RESOLVED THAT** the Complainant is hereby placed on probation as of the date of this ruling and shall end on 03/31/2009.

**IT IS HEREBY FURTHER RESOLVED THAT** the Complainant shall act in accordance with the Umpire Manual and that if a complaint is filed with the *South Florida ASA* Commissioner, the Complainant may then be subject to disqualification.

It should be noted that any attempt by *the Respondent or other individuals* to file with *South Florida ASA* a complaint against the Complainant will not be looked upon lightly. If such a



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complaint is filed, and upon a duly called hearing, it is determined that the complaint is frivolous, *the Respondent* will be disqualified for an additional one year period. Only a violation of the ASA Code, and/or Official Rules of Softball, and/or Bylaws of *South Florida ASA* will be considered.

Neither party has filed an appeal with the Executive Director of the *Amateur Softball Association of America*.



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OF SOFTBALL