

JUDGE, JURY AND EXECUTIONER?

Written by Charles Jay
Monday, 11 November 2002 18:00

Several days ago, in something that has heretofore gone largely unreported, the California State Attorney General's office, acting pursuant to consultation with the athletic commission, agreed to return a sanctioning fee that was withheld from the World Boxing Association for the Eric Morel-Denkaosan Kaovichit fight which was held in Anaheim on October 12. And my understanding is that as far as they're concerned, they couldn't have done it fast enough.

When you come to think of it, while some could argue with conviction that there was some moral authority for California to have taken its original action, there was really no legal authority.

Why?

The answer - if you look closely enough - is in a letter Tim Lueckenhoff sent to United States Attorney General John Ashcroft, dated October 11:

The Honorable John Ashcroft

Attorney General

950 Pennsylvania Avenue, NW

Washington, DC 20530

Re: Violation of the Professional Boxing Safety Act of 1996.

Dear Attorney General Ashcroft:

As President of the Association of Boxing Commissions, an organization that represents 46 state and 8 tribal boxing commissions across the United States it is my duty to report to you a situation involving the World Boxing Association, WBA, which I believe to be a violation of Professional Boxing Safety Act of 1996 (PBSA) and its subsequent amendments contained in the Muhammad Ali Boxing Reform Act.

The PBSA specifically states that;

Appeals Process - "a sanctioning organization shall not be entitled to receive any compensation, directly, or indirectly, in connection with a boxing match, until it provides the boxers with notice that the sanctioning organization shall, within 7 days after receiving a request from a boxer questioning that organization's ratings of the boxer.

(1) provide to the boxer a written explanation of the organization's criteria, its rating of the

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boxer, and the rationale or basis for its ratings (including a response to any specific questions submitted by the boxer); and

(2) submit a copy of its explanation to the Association of Boxing Commissions."

As you will note from the attached documents heavyweight boxer Kirk Johnson appealed to the WBA for an explanation regarding his reduction in the rankings. Mr. Johnson has not received a written explanation was outlined in the above federal law. The Association of Boxing Commission also, has not received a copy of the explanation.

The federal law specifically states that:

"Whenever the Attorney General of the United States has reasonable cause to believe that a person is engaged in a violation of this chapter, the Attorney General may bring a civil action in the appropriate district court of the United States requesting such relief, including a permanent or temporary injunction, restraining order or other order, against the person, as the Attorney General determines to be necessary to restrain the person from continuing to engage in, sanction, promote or otherwise participate in a professional boxing match in violation of this chapter."

Therefore, I would request that your office investigates this matter thoroughly and prosecute this matter to the full extent of the law. Violations of this law should not be allowed to continue. If your office should need any additional information, please contact me at your earliest convenience.

Sincerely,

Timothy J. Lueckenhoff

President, ABC

CC: Michael Chertoff

Assistant Attorney General

Criminal Division

ABC Membership

I agree with Mr. Lueckenhoff - violations of the law should not be allowed to continue, including those committed, or which may have been committed, by organizations like the NABF, WBO, IBA, WBF and others. I imagine I should expect more letters will subsequently be written to Ashcroft which will cover those transgressions.

Oops, I forgot - this is Chapter 72 already. By this time, you're much too smart to believe something like that.

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Regardless - notice the paragraph from Lueckenhoff's letter where he quoted directly from the Professional Boxer Safety Act -

"Whenever the Attorney General of the United States has reasonable cause to believe that a person is engaged in a violation of this chapter, the Attorney General may bring a civil action in the appropriate district court of the United States requesting such relief, including a permanent or temporary injunction, restraining order or other order, against the person, as the Attorney General determines to be necessary to restrain the person from continuing to engage in, sanction, promote or otherwise participate in a professional boxing match in violation of this chapter."

Well, the truth of the matter is that the Attorney General of the United States had NOT issued a restraining order, a civil action, or any other sort of measure against the WBA. Therefore, there would seem to be no legal justification for withholding the WBA's sanctioning fee, at least at that moment, until the organization was given some sort of DUE PROCESS. Yet, action had already been taken on the part of California to withhold those fees, before the U.S. Attorney General's office was even made aware of the WBA situation.

The preceding day, Lueckenhoff had sent a letter to Gilberto Mendoza of the WBA:

Mr. Menzdoza (sic),

This shall serve as official notice that the Association of Boxing Commissions lends its entire support to the California State Athletic Commission regarding their decision to withhold the WBA's sanction fee on an upcoming WBA World Title fight, until your organization answers Mr. Kirk Johnson's appeal regarding him being lowered in your rankings. Many individuals who have followed this

situation believe your organization has violated the Professional Boxing Safety Act of 1996.

At the present time, I am drafting correspondence to be sent to the United States Attorney General asking that action be taken against the WBA for this alleged violations. I encourage you to provide Mr. Johnson with his well deserved explanation for his reduction in the rankings.

Sincerely,

Tim Lueckenhoff President, ABC

He copied this letter to the entire ABC membership, with the following note attached:

"I just sent this email to Gilberto Mendoza President of the WBA and Rob Lynch. Rob deserves to be commended for his commission's actions."

Well, it was nice for "official notice" to come from the ABC that the WBA's sanctioning fees were being denied to them. Not that Lueckenhoff, who isn't a California state official, a

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Deputy Attorney General, a prosecutor, or a United State legislator, but merely the president of a trade association - had any official connection with the situation to begin with. And if indeed he interpreted that he was acting in an "official" capacity on this issue, was it not a clear misinterpretation of his duties, seeing as he had convicted the organization without a trial being held, or a charge officially brought?

Perhaps Lueckenhoff would have been better advised to caution California against taking premature action until a response had been received from Ashcroft's office, in accordance with federal law.

Funny thing is, the WBA was made aware of the fact that the state of California had withheld its sanctioning fee from every source imaginable - EXCEPT the state of California.

Witness this letter sent by attorney Bob Mack, representing the WBA, to Rob Lynch of the California commission:

November 6, 2002

Mr. Rob Lynch, Executive Officer

California Athletic Commission

1424 Howe Ave., Suite 33

Sacramento, CA 95825-3217

Re: World Boxing Association Sanction Fee

Dear Mr. Lynch:

This letter is written on behalf of the World Boxing Association (WBA) regarding press reports that the California State Athletic Commission has decided to withhold, or has actually withheld, a sanctioning fee due the WBA for a world title boxing match conducted in the State of California on Saturday, October 12, 2002.

First, to our knowledge no official communication has been received from the California State Athletic Commission by us in any form regarding such a decision. Our knowledge is based on press reports, and copies of e-mails sent to us by third parties.

If such a decision has been made, I would appreciate the California Athletic Commission

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communicating the decision, its basis, and other related information to us as soon as possible. I would also like confirmation from the Commission as to the amount of the sanctioning fee being withheld (if it is in fact being withheld), the depository in which it is being withheld, and some reference to the authority and facts on which the State Commission relied in its decision to withhold the sanctioning fee.

In an article dated October 10, 2002 on Fightnews.com, a Mr. Dean Lohuis was quoted as follows: "We are going to withhold the sanctioning fees until they respond,..." The "they" in his quotation was a reference to the WBA and the phrase "until they respond" related apparently to the WBA's response to correspondence received from Mr. Dino Duva. The article specifically stated as follows: "According to California's chief inspector, Dean Lohuis, the money will be held in escrow until the WBA either explains or changes their ratings."

Furthermore, in an e-mail sent to the WBA executive director on October 9, Mr. Tim Lueckenhoff stated that the California Commission had made a "decision to withhold the WBA's sanction fee...until your organization answers Mr. Kirk Johnson's appeal regarding him being lowered in your ranking."

To my knowledge, at no time did any officer or employee of the California State Athletic Commission request any information from the WBA regarding this matter. Apparently, all of its knowledge of this matter was obtained secondhand by officers or employees of the Association of Boxing Commissions, who also made no contact with the WBA to determine the accuracy of any of the information upon which your apparent decision was based.

Please be informed that the ratings committee of the WBA met in New York City on October 15, 2002 to discuss the rating of Mr. Kirk Johnson in the number 10 position of the heavyweight division for the August ratings, which had been announced in early September. After that rating had been announced, the WBA received an unsigned communication from Mr. Dino Duva, a copy of which is attached. The communication did not specifically request any of the information set out in 15 U.S.C.S. §6307c(b), or that such information be transmitted by copy to the Association of Boxing Commissions. The attached letter, on the other hand, stated as follows: "Please advise immediately regarding this situation. I would appreciate it if you can contact or call me immediately to discuss." In response, the executive director of the WBA e-mailed Mr. Duva, informing him that the WBA had "decided to hold a public hearing on October 16 at New York City in a venue to be announced." The e-mail further stated that the ranking movements would be explained at the meeting and that all affected boxers would be allowed "the opportunity to appeal" at that hearing.

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In response to the October 3 e-mail of Mr. Mendoza, Mr. Duva, rather than stating that an explanation at the October 16 meeting would be unsatisfactory and that, instead, his letter had intended to request the sort of information set out in 15 U.S.C.S. §6307c(b), asked for the specific place and time of the meeting. The WBA promptly responded.

At the October 16 meeting in New York City, the WBA announced that, for various reasons, it had granted what had been referred to as an "appeal" of Mr. Duva on behalf of Mr. Kirk Johnson, and was vacating the ratings that had been announced earlier in September. The executive director of the WBA, at the same meeting, explained the reasons for the ratings, which were now vacated, and also announced new ratings. At the same meeting, Mr. Duva stated that his unsigned letter of September 24, 2002 was a request for information, but was not an "appeal", even though a specific and clear request for information, if it follows the requirements of 15 U.S.C.S. §6307c(b), is described by the federal act itself under the subsection entitled "Appeals Process."

Regardless, the WBA responded to Mr. Duva's "appeal" by granting it and vacating the rating to which it had objected. The WBA also provided an explanation of the vacated rating, even though it had not received, in proper form, a request for such information. Not only did the California State Athletic Commission and the Association of Boxing Commissions not request from the WBA any information regarding this matter before the October 16 meeting, but, to my knowledge, neither the Commission nor the Association has requested any information from the WBA regarding its handling of the matter.

It is unfortunate when a government agency engages in a "rush to judgment." It is even more unfortunate when that rush to judgment is based on incorrect information, and where there has been no attempt whatever to obtain the correct information from those who have it.

I have examined the federal statute, the state statutes under which your Commission operates, and your own rules and regulations, and can find no authority for the withholding of a sanction fee by your Commission under these facts. The federal statute does not authorize you to withhold such a fee under these facts. Mr. Kirk Johnson was not a participant in the boxing match for which you withheld the fees, nor was Mr. Kirk Johnson ever re-rated so as to be removed from "the top 10 boxers" in his division, and therefore no provision of 15 U.S.C.S. §6307c was violated in this matter. Furthermore, the WBA has not violated any of the provisions of 15 U.S.C.S. §6307d, and therefore is "entitled to receive"

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its fees related to the match held in California on October 12, 2002. The WBA intends to act in compliance with all applicable federal and state statutes and regulations. We ask that you also do so.

I would appreciate a prompt response.

Sincerely,

SMITH ALLING LANE, P.S.

Robert E. Mack

REM:cjs

Enclosure

cc: Mr. Tim Lueckenhoff

Hon. John McCain

World Boxing Association

On the same day, there was this letter that was sent directly to Lueckenhoff:

November 6, 2002

VIA FACSIMILE - 573-751-5649

Mr. Tim Lueckenhoff, President

Association of Boxing Commissions

Missouri Office of Athletics

P.O. Box 1335

Jefferson City, MO 65102

Dear Mr. Lueckenhoff:

On October 9, 2002, you sent an e-mail to Mr. Gilberto Mendoza of the World Boxing Association stating that it was an "official notice that the Association of Boxing

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Commissions lends its entire support to the California State Athletic Commission regarding their decision to withhold the WBA's sanction fee on an upcoming WBA World Title fight, until your organization answers Mr. Kirk Johnson's appeal regarding him being lowered in your rankings."

At a public hearing on Wednesday, October 16, 2002, in New York City, the WBA announced that it had granted what you referred to as Mr. Johnson's "appeal" and had vacated his earlier announced lowered rating. Furthermore, at the same hearing, the WBA stated its reasons for the now vacated rating, and announced new rankings for the heavyweight division. I have attached a copy of a letter sent to the California State Athletic Commission, setting out in greater detail the precise facts of this matter. In what appears to be a hasty and ill-informed rush to judgment on the part of the "Many individuals" referred to in your letter, apparently the California officials have acted on incomplete or incorrect information, without any serious attempt to determine the accuracy or validity of their opinions.

Your e-mail also stated that "I am drafting correspondence to be sent to the United States Attorney General asking that action be taken against the WBA for this alleged violations." As set out in my letter to the California Commission, there were no violations of the federal act, and your assumptions that there were are totally incorrect and mistaken.

I have also reviewed a copy of a letter from Senator John McCain, the Attorney General, dated October 11, 2002. Senator McCain's letter apparently has relied on information provided by you or your organization to him, and is also mistaken in important and material respects. The WBA would hope that you and your organization would act responsibly and then only after attempting to obtain and receiving all the necessary information that would assist you if a similar situation were to arise.

Not only did the WBA do what you requested in your e-mail, that is, "provide Mr. Johnson with...[an] explanation for his reduction in the rankings", the WBA also granted what you described as his "appeal," and vacated the ratings to which he had objected. Its disposition of the Kirk Johnson matter therefore has resolved the "appeal" regarding rating. Your request that Mr. Johnson be provided an "explanation for his reduction in the rankings" also has been satisfied.

Federal and state government officials should be expected to exercise their authority and considerable influence responsibly and prudently. In any situation that may arise in the

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future regarding appeals of ratings, we respectfully request that you make every reasonable attempt to obtain reliable information before accusing this organization of violations of federal statute and exhorting the United States Attorney General to bring legal action against this organization.

Sincerely,

SMITH ALLING LANE, P.S.

Robert E. Mack

REM:cjs

Enclosure

cc: World Boxing Association

Hon. John McCain

What's my evaluation of all this?

We have nothing against the Ali Act being enforced. But, the Act itself is nebulous, and open to wide interpretation.

As it says in Section 11 of the Ali Act -

"A sanctioning organization shall not be entitled to receive any compensation, directly or indirectly, in connection with a boxing match, until, with respect to a change in the rating of a boxer previously rated by such organization in the top 10 boxers, the organization -

(1) posts a copy, WITHIN 7 DAYS OF SUCH CHANGE, on its Internet website or home page, if any, including an explanation of such change, for a period of not less than 30 days."

Of course, as was discussed in

Chapter 26

, you could take this rule to mean that if an organization DIDN'T take someone out of its top ten, it wouldn't apply. I preferred to look at what the SPIRIT of the law was. Still, the NABF example was different, in that it had actually stripped a champion of a title, which creates a definitive line of demarcation in terms of the earning ability of a fighter - relatively speaking, a sizeable difference, I'm guessing, between being the NABF champ and an NABF challenger.

Even so, you really can't blame Lueckenhoff, Jack "Minister of Main" Kerns, and the rest of the ABC hierarchy if they are upset. It's not a bad thing that they are angered when they

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see an injustice. And there was no real plausible explanation for the arbitrary movement of some of the fighters in the WBA's September heavyweight ratings (although, as Mack mentioned, those ratings were later "vacated"). But the problem is that the ABC's attempt at enforcement here was an arbitrary act in and of itself. It was also "selective" in nature. If you're going to call people out on the Ali Act or the Professional Boxer Safety Act, you've got to do so with the same resolve across the board - not just in those circumstances where it will bring the most headlines.

If the ABC wants to advocate holding back sanctioning fees when it suspects a violation of the Ali Act, then it should try to get the law changed to require that those fees be held in escrow, pending civil or criminal actions brought by the U.S. Attorney General's office, or a state's attorney general, within a reasonable period of time. Of course, as we know by now, what makes it problematic is that action may NEVER be taken. Therein lies another inherent difficulty.

No one enforces the Ali Act, or the Professional Boxer Safety Act. You've heard John McCain talk about it. Lueckenhoff admitted as much at the Senate "hearing" back in May. And I guess that's enough to make someone want to take action that might be considered inappropriate. It goes without saying that I myself have written at times as if I were judge, jury, and executioner.

But then again, when you're making your living off taxpayer dollars you can't be caught taking the law into your own hands.

Somewhere along the way, one has to ask the question as to why the laws aren't enforced properly.

One part of the answer is somewhat obvious - no one really cares enough. After all, Ashcroft would seem to be busy enough worrying about terrorists. Why int he world should he be worried about boxing?

Also, though, there's no AWARENESS of the law. And the blame for that has to be laid at someone's feet. Whose feet, you might ask? Well, I'll give you folks an opportunity to answer that on your own. I'd be interested in hearing your responses.

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