

## DOES RUIZ HAVE A CASE?

Written by Charles Jay  
Tuesday, 20 August 2002 18:00

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This litigation involving WBA heavyweight champion John Ruiz and Don King Productions (DKP) has the potential to be a very instructive case.

For the time being, let me be the instructor, since there appears to be a misunderstanding of the fundamental principles at work.

The case brings up the very legitimate question as to whether a promoter has anything in the way of a "fiduciary duty" to a fighter.

I notice the issue was addressed in Monday's Boston Herald story, where it mentions that Ruiz' people charged King with " 'wanton, willful, and malicious breaches' of his fiduciary duties by deliberately hampering the World Boxing Association heavyweight champion's negotiations for a lucrative November defense against former champion Mike Tyson." The story was written by a responsible reporter, George Kimball, so I can only assume there was nothing lost in the translation between the Ruiz camp and Kimball regarding the precise language. And through that language, there seems to be an assumption that there indeed IS a fiduciary duty on the part of King toward Ruiz.

But really, King has one overriding obligation to Ruiz - to deliver a specified number of fights at a fee that is (a) subject to negotiation, and (b) not below a pre-determined minimum price..

It is not necessarily to "advise" Ruiz, or to act in the fighter's best interests, at least to where it is to the exclusion of his own, or even to the exclusion of other heavyweights he may do business with.

Ruiz' lawyer and co-manager, Tony Cardinale, has a fiduciary duty to the fighter.

Norman Stone, the other co-manager, has a fiduciary duty to the fighter.

Don King does NOT have a fiduciary duty to the fighter. He simply has a CONTRACTUAL relationship with him.

King is not Ruiz' manager - in fact, in many ways, his function is actually AT ODDS with that of the managers of Ruiz.

You see, the obligation of Stone and Cardinale is to secure, for their fighter, the best price possible with the promoter, who happens to be King. That creates, by definition, an adversarial relationship - not in the sense that they are enemies, but hopefully - ideally - in the healthiest sense possible, in that they are both negotiating in good faith with each other, with each having objectives that are not necessarily mutually inclusive of each other.

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For example, if King wants Ruiz to fight "Fighter X", and offers \$1 million to Ruiz, and Stone and Cardinale come back and they want \$2 million, they will negotiate back and forth over the figure, until a deal is made in which both parties are satisfied. The less Ruiz takes, the more money King will make, at least theoretically. Likewise, the more money Ruiz is able to negotiate for himself, the LESS money King will make.

I haven't seen Ruiz' contract, so I honestly don't know if there are notations in there that spell out an obligation on King's part "to act in Ruiz' best interests", as is the claim. I'd be a little surprised if it goes very far beyond a reference to "good faith negotiations". But I'm reasonably certain that there's something in the deal granting King "exclusive worldwide rights" to promote Ruiz' fights.

What that means is that unless there is a situation that is mandated by a sanctioning body, King has a considerable voice regarding who John Ruiz fights, by virtue of the obligations he has contracted to fulfill in the promotional agreement, and those rights Ruiz has in turn granted to King.

Mike Tyson is the #12-rated contender by the WBA, which means he is not 'mandatory' by any stretch. Mike Tyson has been knocked out in his last fight, as we know. It can be perceived that Mike Tyson is "damaged goods", by virtue of that knockout loss. That he might come with too high a price tag relative to his pay-per-view value is entirely possible. And to top it off, Mike Tyson is suing Don King, for up to \$100 million.

Whether Tyson actually has a valid case or not is immaterial to this discussion.

The fact is, Don King does not really have to promote a John Ruiz-Mike Tyson fight if he doesn't want to. Don King does not have to release Ruiz to take this fight, even though it may very well be in the best interests of Ruiz from an immediate financial perspective. He does not have to do it because he is not the "advocate" for Ruiz; the promoter-fighter dynamic has to include a convergence - or better yet, an accommodation - of interests, meaning that there have to be objectives served for both parties involved, not just one.

Why should Don King agree to give Tyson something that he is not necessarily entitled to, if Tyson is not willing to make concessions on his end that are going to serve any of King's interests?

If John Ruiz fought Mike Tyson and lost, King could be left with (a) a promotional property (Ruiz) whose career would be worth a lot less on the open market than it was before; and (b) a \$100 million lawsuit that he would still have to defend himself against.

All arising out of a "voluntary" defense of a title.

Under the circumstances, is it not perfectly reasonable to expect that King - or ANY promoter, for that matter - would take steps to protect himself in this situation?

Is it not perfectly reasonable that King would ask, or even REQUIRE, that Tyson drop his

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lawsuit in exchange for receiving a title shot that could quite possibly give him much more future earning power - a shot King does not necessarily have to grant - as part of a settlement of the conflict with Tyson? I mean, look around - lawsuits are settled EVERY DAY on the basis of considerations that each side will give the other. The consideration King would give Tyson includes the opportunity to fight for a world title and justify future multi-million-dollar paydays, which, if Tyson were to get lucky, might actually approach or exceed the amount he is looking for out of the King lawsuit.

Furthermore, is it not perfectly reasonable that King would ask Tyson to sign a promotional agreement, or options on prospective title defenses - so long as the term of such an agreement would not exceed one year? Only in the event that it ventures outside that scope would it indeed be a violation of the Ali Act's provision against "coercive contracts". If King is asking that Tyson, for example, sign a five-fight deal that would last for more than a year, then such a deal would likely be in violation of the Ali Act. But if King were willing to show some flexibility in this regard, such a demand could easily be adjusted so as to make it compliant with Federal law.

Is King preventing Ruiz from advancing his career, or maximizing his earnings? Maybe, maybe not. It's really a matter of conjecture, since several factors have to come into play. Regardless, maximizing Ruiz' earnings is not necessarily King's obligation. That is the job of Ruiz' managers. The extent of King's real obligation is to fulfill the terms laid out in the promotional contract.

Should King have Ruiz' best interests at heart? Sure, inasmuch as the better Ruiz does, the more valuable a commodity he would be for King. But as long as he has not blatantly operated CONTRARY to Ruiz' best interests throughout the period of his agreement, which I don't think he has, he might just be on solid ground

No, I'm not sure Ruiz has a strong case, if whoever is reviewing it is not pre-disposed to discriminate against King because of his reputation.

"If the contract contains a specific clause that would cause them (DKP) to have to make a fight with Tyson, then so be it," says Lou DiBella, president of DiBella Entertainment. "If it doesn't, don't vilify Don King for simply operating within the rules. Believe me, I didn't think I'd be defending Don King. But in this case, I have to."

If Ruiz did indeed win, though, it would have a tremendous effect on the validity of the "standard" promotional contract, and the way this business is conducted between promoters and fighters. Of course, that doesn't necessarily have to be a BAD thing. But it would more or less re-define the role of a promoter, and I would imagine some of the laws governing boxing would have to be rewritten.

Please note - while I take an opposing view to that of Ruiz here, I'm not arguing TOO HARD against him, because of course, as with most things, there's another side to this coin. That'll come next.

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For now - class is dismissed.

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