

Written by Charles Jay

Sunday, 25 August 2002 18:00

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Well, as we predicted, John Ruiz lost to Don King the other day in U.S. District Court in New York. That was really the only plausible result, given the laws of contracts as well as the circumstances. Yeah, I know Ruiz' people were hoping to get the judge who is supposed to hear Mike Tyson's lawsuit against Don King - if I were them, I'd want that too. I'd certainly do my best to trade in on King's notorious reputation, especially if I didn't have case law on my side.

But ultimately this decision is one that should indeed be dictated by the facts, rather than personalities. And I think it's best that this particular judge - Laura Taylor Swain - has not handled boxing cases before, because she'd be less likely to have a pre-conceived notion about either the plaintiff or the defendant. After all, this case has the potential to affect the way all promoters deal with all fighters. Her ruling against Ruiz' petition for a temporary restraining order (preventing King from interfering with the negotiations for a Ruiz-Tyson fight) was correct, even if she refused to admit Chapter 51 of "Operation Cleanup" into evidence, as King's lawyer, Peter Fleming, attempted to do :)

I would imagine that none of what King is alleged to have done vis-a-vis Tyson really matters, because King is not breaking with any of his obligations as per the promotional agreement with Ruiz.

Remember, as we pointed out in the last chapter, there is nothing in the King-Ruiz agreement that requires King to maximize the earnings of Ruiz, or to make the best financial deal for Ruiz for any particular fight, whether it is Ruiz' desire to go in that direction or not.

I'll go even one further - the attempts by Ruiz and Tyson to negotiate for a fight WITHOUT the involvement of King could be interpreted as a tortious interference with King's contract on the part of Tyson's people, inasmuch as King does indeed have the exclusive right to secure and promote fights for Ruiz.

Ruiz is probably a better fighter than many people give him credit for, but with all due respect, his camp can posture all they'd like about King being the "big bad wolf" here; I have a feeling all King would have to do is show the judge a tape of Ruiz' 19-second knockout loss to David Tua, then explain that he subsequently was able to steer that very same fighter to a mandatory #1 ranking, without having to beat a truly legitimate contender, and to a heavyweight championship that he has managed to hold on to for 18 months - through a draw and a disqualification - and this judge might just be ready to give King the James J. Walker Award, right then and there.

But I promised you folks there was going to be another side to this coin, and basically, here it is --

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In Section C-2 of Professional Boxer Safety Act, this is the way a "manager" is defined:

"(10) MANAGER- The term `manager' means a person who, under contract, agreement, or other arrangement with a boxer, undertakes to control or administer, directly or indirectly, a boxing-related matter on behalf of that boxer, including a person who is a booking agent for a boxer."

This is the way a "promoter" is defined:

"(14) PROMOTER- The term `promoter' means the person primarily responsible for organizing, promoting, and producing a professional boxing match. The term `promoter' does not include a hotel, casino, resort, or other commercial establishment hosting or sponsoring a professional boxing match unless--

`(A) the hotel, casino, resort, or other commercial establishment is primarily responsible for organizing, promoting, and producing the match; and

`(B) there is no other person primarily responsible for organizing, promoting, and producing the match."

Yes, a promoter provides for and arranges for a fight card to take place. The promoter also signs fighters to promotional contracts, and that doesn't represent a fundamental departure from his basic function - promoting fights - since one would assume the fighters under contract would be appearing on those cards.

A manager is unquestionably an advocate for the fighter - he is, theoretically, in the kind of "adversarial" position that is generally considered to be healthy for the process - negotiating the best purse, for the best terms, with the promoter, on behalf of his fighter.

That's theory, and indeed, it sometimes constitutes practice. However, in some instances reality is quite different. That's because a lot of things in this business have changed. The nature of boxing is such that it has become very improbable that a fighter can advance his career without committing himself to a promotional contract. And once the promotional contract is signed, the manager more or less relinquishes any control he may have over his fighter's career, whether it is voluntary or not. In most cases, the manager is completely entrusting the career of his fighter to the promoter, who has the staff, the financial resources, the contacts, and presumably the expertise, to make that career successful.

The promoter will make the decisions as to when, where, against whom, and for how much a fighter will perform. The managerial function often becomes reduced to that of a "care-taker". With very few exceptions, the days where the power resided in the hands of the manager are long gone.

And we haven't even talked about those so-called managers who are "close associates" or operatives of promoters, are therefore a benign entity.

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With this reduced authority on the part of managers, the promoter has taken on more and more of a proprietary interest in a fighter's career, assuming much more of a managerial function, in substance if not in name, or in law.

Because promoters do indeed sign fighters to contracts, and invest money in careers, it can be argued that it is in their best interests for the fighter's career to progress in a positive direction; therefore, you would assume they are working in the fighter's best interests. This certainly is not an unreasonable expectation on the part of the fighter.

But remember, the promoter is not contractually bound to act in a fighter's "best interests". Any promoter, in fact, who includes that kind of language in a contract is probably leaving himself vulnerable.

When a fighter is offered the opportunity to earn a payday on a show that is being promoted by ANOTHER promoter, the dynamic of the promoter's role changes - in my opinion, considerably.

That is because, as the holder of the fighter's exclusive promotional rights, the promoter is in the position where he customarily has the right to be compensated in exchange for "releasing" those promotional rights for that single event.

To illustrate this, we'll take a look at how money is distributed for a fight. Let's say, for example, that HBO or Showtime is paying "Promoter A" a total of \$2 million in fees for the right to televise a fight card. That money is then budgeted in certain ways - perhaps \$1.4 million of that is set aside to pay the two fighters in the main event.

To simplify things, let's suppose this figure is split down the middle - where \$700,000 apiece is "available" for each fighter. One of the fighters is under a promotional deal with "Promoter B", so therefore "Promoter A" has to have his written permission to use the fighter, and consequently he negotiates the purse with him. He appraises "Promoter B" as to what is available, and at that point "Promoter B", who is empowered in the way a manager may have been in a different era of boxing, negotiates NOT for the best purse figure for the fighter, but more in terms of best deal for HIMSELF.

So what happens? He negotiates a \$300,000 "side deal" for himself, then turns around and offers \$400,000 to the fighter, telling him "that's what the fight is worth". If the fighter signs for that figure (and he usually will), "Promoter B" has just pocketed a nice piece of change - a figure, in fact, equal to 75% of what the fighter is getting. That's basically how it works - and the fighter never knows a thing about it if anyone can help it, because "Promoter B" is going to afford "Promoter A" the same courtesy when the roles are reversed somewhere down the line.

It's important to note that the pie doesn't necessarily get any bigger because of a promoter's side deal - the promotional fee is not IN ADDITION to the money earmarked for the fighter; it comes OUT of it.

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So in effect, not only is the promoter, who has thrust himself forward as the fighter's exclusive representative, not negotiating from the perspective of the best interests of the fighter he has under contract, he is, in effect, negotiating AGAINST him. It's not like a managerial relationship, where if the manager bargains a promoter UP from \$400,000 to \$600,000 his fee goes from \$133,000 to \$200,000 (based on 33-1/3%) - here if the fighter gets LESS, the promoter winds up with MORE.

You had better believe there's nothing "fiduciary" about that relationship, although the promoter, as the sole negotiating representative of the fighter, would seem to be positioning himself much the same as a fiduciary would.

The fighter and his camp do not have an opportunity to negotiate the best purse for themselves with the ACTUAL promoter, because by virtue of the agreement, they are PRECLUDED from such negotiations. This state of affairs was affirmed by Judge Swain's ruling.

You're going to say, "Gee, all this sounds like a conflict of interest", and maybe it is. Of course, there may indeed be some degree of justification for this - that's a subject we can devote a whole chapter to. For this purposes of this story, though, we don't want to examine the "right and wrong" of such an arrangement; we want to establish that such arrangements DO exist, and that they change the role and function of the promoter in such specific circumstances.

It's a point, however, that has been completely lost on those who have crafted, and who have lent advice pursuant to, the Federal boxing legislation that is in place, and that which is being proposed.

Let's revisit that definition of "manager", as it appears in the Professional Boxer Safety Act

"(10) MANAGER- The term `manager' means a person who, under contract, agreement, or other arrangement with a boxer, undertakes to control or administer, directly or indirectly, a boxing-related matter on behalf of that boxer, including a person who is a booking agent for a boxer."

Well, given the situation we just laid out for you, that could very well describe a promoter, couldn't it?

Now look again at the definition of a "promoter":

"(14) PROMOTER- The term `promoter' means the person primarily responsible for organizing, promoting, and producing a professional boxing match."

Well, as we've demonstrated, you can position yourself as a promoter, and get paid for it, without being "primarily responsible for organizing, promoting, and producing a professional boxing match", can't you?

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Finally, let's examine the definition of a "promotional agreement" from the same section of the Professional Boxer Safety Act:

"(15) PROMOTIONAL AGREEMENT- The term `promotional agreement' means a contract between a promoter and a boxer under which the boxer grants to a promoter the exclusive right to secure and arrange all professional boxing matches requiring the boxer's services for--

`(A) a prescribed period of time; or

`(B) a prescribed number of professional boxing matches."

Whether you realize it or not, there are people possessing promotional contracts with fighters who don't put on any shows at all; they just know that it is better to have a promotional deal than it is to have a managerial deal, because (a) it offers more control over the fighter, and (b) it affords the opportunity to make more money off the fighter. If you've read this chapter, you understand this.

So shouldn't the definition of a "promoter" be modified, at the very least, to specifically include ALL parties who have promotional agreements with a fighter?

Shouldn't the definitions of manager and promoter be contemplated more carefully and perhaps rewritten?

Shouldn't a number of provisions in the Federal law be changed to more accurately reflect the way the business of boxing is actually conducted?

Sure, there's a possibility that Ruiz could win his action against King, which is scheduled to be heard on September 6. But for that to happen, Judge Swain would have to most likely (1) completely reverse the position that she took in the TRO hearing; (2) rule that there is something inherently illegal about the structure of promotional contracts in boxing; and (3) take steps toward re-defining the role of the promoter in boxing.

As far as the latter is concerned, maybe some changes are in order. But I don't think it's Judge Swain's place to do it in court; rather, it is something that would need to be done through amendments to the Federal legislation, after consultation with experts. It's not a simple thing to do.

Ideas? I've got a few. And you'll read them soon enough.

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