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**BEFORE AN ARBITRATOR
STATE ATHLETIC COMMISSION
STATE OF CALIFORNIA**

In the Matter of the Consolidated Arbitration
of Contract Dispute Between:

**LIBRADO ANDRADE, Boxer
ENRIQUE ORNELAS, Boxer**

and

ALLISON ENGLEBRECHT, Manager.

Case No. **62202-1** and **62202-2**
(Consolidated)

**DECISION OF THE
ARBITRATOR**

The above captioned arbitration matter came on regularly for hearing before Martin Denkin, a Commissioner of the California State Athletic Commission, the Arbitrator duly appointed by the Commission. The Arbitrator was assisted by Deputy Attorney General Earl R. Plowman. The matter was convened at 10:00 a.m. on June 22, 2002 at the Office of the Attorney General in Los Angeles. Librado Andrade and Enrique Ornelas (hereinafter "Boxers"), the parties requesting the arbitration were both present and assisted by David Martinez, their trainer and a Second licensed by the Commission. Also assisting Boxers was Carol Mona. Interested parties Dr. Joe Noriega and Mr. Charles Casas, CFO of the World Boxing Hall of Fame also attended. Allison Englebrecht (hereinafter "Manager") was present with and assisted by Roy Englebrecht, Licensed

1 Promoter, and prepared to proceed. The two Boxers had jointly requested
2 arbitration of their two separate boxer-manager contracts with Manager and it was
3 the wish of all parties that the matters be consolidated for hearing as the issues
4 were common to both contracts. Based on the Notices to the parties, the records
5 of the Commission, the testimony under oath, written documents furnished by the
6 parties and arguments made both at the arbitration and afterwards¹, the Arbitrator
7 now makes the following:

8 FINDINGS OF FACT

9 1. Boxers and Manager were at the time of the making of the
10 Boxer/Manager contract which is the subject of this arbitration, both licensed by
11 the Commission and Boxers and Manager are currently licensed in California.

12 2. On January 2, 2001, Boxers and Manager appeared before an
13 official of the Commission and executed a standard boxer/manager form contract,
14 the term of which was three (3) years. The contracts were approved by the
15 Commission on or about June 8, 2001. There was an extensive and detailed
16 addendum to the contracts which was signed in May, 2001 by the parties and
17 accepted by the Commission. There also appears to have been another
18 addendum which was not submitted to the Commission but which set forth how
19 the manager's share of purses was to be split with the Trainer and matchmaker
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21 1. Counsel for the Arbitrator received three (3) post hearing communications on June 25,
22 2002 as follows:

23 (a) Two facsimile messages from Roy Englebrecht offering further testimony concerning
24 telephone calls to and from David Martinez and arguing that \$667.00 withheld by the
25 Commission as a Manager's share from the purse of Boxer Andrade from a June 24th bout be
26 paid to Allison Englebrecht; and

27 (b) A telephone message left by David Martinez to the effect that he had re-submitted
28 Manager's NSF check from February, 2002 and that the Big Wave account did not have funds to
honor the check as of June, 2002.

The parties were informed by notice that they were to have all necessary witness present and
prepared to proceed on June 21 and nothing was said at that time by anyone about the
unavailability of material witnesses and so the record was closed by the Arbitrator.

1 and arranging payment to the Trainer for his services. The testimony of the parties
2 and documents produced by the parties demonstrates that the terms and
3 conditions of the contracts and the addenda were negotiated over the preceding
4 month with offers and counter offers being faxed between the Boxers' trainer,
5 David Martinez and Roy Englebrecht, father of Manager.

6 3. In or about February, 2002 both Boxer's notified the Commission
7 in writing that Manager had violated the terms of the contract by failing to obtain
8 bonafide offers to fight for a period in excess of four months and that in essence
9 Manager had not worked for their best interests and that they were actually being
10 managed and controlled by Manager's father. Boxers requested arbitration of the
11 contract specifying Sections B(2) and C(5) the terms of the printed form contract,
12 but generally alleging that Manager had acted in ways which were not in the best
13 interests of Boxer in terms of selecting opponents and arranging for bouts. Boxers
14 also alleged that there was money due and owing to them, as the \$250 per month
15 stipend to be paid to each boxer pursuant to the addendum to each contract had
16 not been paid since February, 2002. This was not disputed. The evidence also
17 demonstrated that there remains an NSF check (number 0059) in the amount of
18 \$500.00 issued by Manager to Trainer David Martinez for February, 2002²
19 pursuant to the addenda to the contract which was not filed with the Commission..

20 4. The Arbitrator asked the parties if it was both
21 understood and expected as an unwritten part of the contract that the actual
22 power in the performance of the contract was to be Roy Englebrecht Promotions
23 and that Boxers would be regularly engaged in Englebrecht shows and matched
24 by Englebrecht Promotion's licensed Matchmaker, Mr. Jerry Bilderrain. It was

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26 2. At the arbitration hearing Roy Englebrecht inferred that the Big Wave account currently
27 had monies in it to honor the check. In response to this, as noted in footnote 1 (supra), Trainer
28 Martinez reported that after the hearing he again attempted to negotiate the check and was
advised that the account in question did not have sufficient funds to honor the check.

1 agreed that this was the case and in fact Manager, who is currently working as a
2 teacher and who previously was a world ranked volleyball player on tour around
3 the world was not and is not always available to Boxers. Despite the fact that an
4 entity, Big Wave Boxing, LLC was set up ostensibly as Manager's company, the
5 evidence establishes that Big Wave was funded by Roy Englebrecht Promotions
6 and the signing bonuses paid to Boxers and their trainer totaling \$13,500.00 were
7 Roy Englebrecht Promotions checks which were listed as loans to Big Wave. For
8 all practical purposes Big Wave was operated on a day to day basis by Roy
9 Englebrecht and the reason for creating Big Wave, as documented both in a
10 newspaper article introduced by Manager and in faxed memoranda of the
11 negotiations between Roy Englebrecht and David Martinez, was to evade
12 provisions of federal law, commonly referred to as the Mohammed Ali law,
13 prohibiting a promoter from being a boxer's manager as well.³

14 5. Based upon the testimony it is determined that the Boxers
15 relied upon their long time trainer, Mr. David Martinez to represent them in
16 negotiating with Roy Englebrecht and Matchmaker Bilderrain and this produced
17 steady bouts for both boxers during the first year of the contract. However during
18 the latter part of 2001, Roy Englebrecht ceased to actively promote under his own
19 name and began to serve as a managing officer/shareholder for Golden Boy
20 Promotions which is headed by Boxer Oscar De La Hoya. The last show
21 produced by Roy Englebrecht under his own company was December 27, 2001,
22 This show appears to have involved the Golden Boy Promotions matchmaker,
23 Robert Steinfeld. The last time that either boxer fought in an Englebrecht show
24 was September 27, 2001. In that bout Boxer Andrade injured his hand and was not
25 available to fight until January, 2002.

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27 3. Initially the agreement proposed by Roy Englebrecht called for a direct contract with Roy
28 Englebrecht Promotions. On 12/19/2000 the proposal was to align with either Big Wave
Boxing, or Beach Battle Boxing or Beach Boxing LLC.

1 6. Boxer Ornelas was available to fight from October, 2001. In
2 response to a question by the Arbitrator as to why Boxer Ornelas did not fight in
3 the last Roy Englebrecht/Big Wave card on December 27, 2001, Roy Englebrecht
4 testified "My plan was to end the year with Enrique [Ornelas] but the opponent
5 wanted \$4000.00, and this was too much." The Arbitrator notes that Boxer
6 Andrade fought in a bout he made himself on or about June 24, 2002 following the
7 arbitration and the manager's 33.3% share was and is being held due to the
8 pending arbitration request. The Arbitrator was personally present at said bout and
9 assumes jurisdiction over the withheld purse.

10 7. At a precise date unknown to the Arbitrator, Mr. Martinez, the
11 Trainer, contacted Mr. Englebrecht, who was now to find out about fights for
12 Boxers and angered Mr. Englebrecht by stating in so many words that he did not
13 believe that Manager was acting in the best interests of the Boxers and that the
14 association by Roy Englebrecht with Golden Boy Promotions was not benefitting
15 Boxers. At some point in these discussions Mr. Martinez stated that he was
16 "going to the press" and that Boxers would be seeking arbitration. It appears that
17 this conversation appeared sometime in late January or early February, 2002.
18 The practical effect of this was to anger Roy Englebrecht and Big Wave ceased to
19 pay the \$250.00 monthly stipend to either boxer called for by the contract or the
20 \$500 per month to their trainer. Monies in the Big Wave account were withdrawn
21 leaving an outstanding check to Mr. Martinez for his services which could not be
22 cashed. Even though Golden Boy Promotions circulated a publicity postcard to
23 the public which listed Boxers on the under card at a Golden Boy show, Boxers
24 were never contacted to fight in that show. It is noted that it is a violation of Rule
25 240 of Commission Rules to promote a show wherein there is not yet a card
26 approved or signed contracts with fighters.

27 8. The parties agree that an attempt was made to arrange a bout
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1 for Boxer Ornelas in a Golden Boy show in Bakersfield, CA. on or about January
2 17, 2002. The Matchmaker in this case was Robert Steinfeld and the effort failed
3 due to an inability to find a suitable opponent. Boxer's maintained that Mr.
4 Englebrecht was unwilling to fly in an opponent for a "minor" or non-televised
5 show and Mr. Englebrecht maintained that this was not the case. The opponent
6 proposed at one point was a boxer who was also trained by Mr. Martinez, Roberto
7 Barro, and Boxer Ornelas was reluctant to fight someone who was training under
8 the same trainer. At no time was any of this reduced to writing and insofar as can
9 be determined, Manager played no role in this transaction whatsoever and made
10 no effort herself to find fights for Boxers and relied on her father to take care of
11 this obligation..

12 9. In response to questions by the Arbitrator both Boxers stated
13 with the exception of the period October-December, 2001 for Mr. Andrade, they
14 were ready to fight. The Arbitrator notes that both Boxers have done well in the
15 ring and are undefeated. They each had 5 fights for Big Wave since signing the
16 contract with Manager. Boxers are recognized as serious middleweight
17 contenders and are expected to move into light heavyweight contention. Both
18 have a style that looks good on television and project an image that is a credit to
19 boxing. Mr. Roy Englebrecht testified that during Boxer Ornelas' relationship with
20 Big Wave Boxer was ranked 95th in the top 100 Super Middleweight boxers by the
21 International Boxing Organization (IBO).⁴It is unclear whether Boxers and Mr.
22 Martinez wanted Roy Englebrecht to arrange for them to be a part of Golden Boy
23 Promotions or merely to have Mr. Steinfeld include Boxers and Mr. Martinez on
24 Golden Boy cards in the manner Mr. Bilderrain had done during his association
25 with Mr. Englebrecht. From the testimony of the parties it is clear that Mr. De La

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27 4. The Arbitrator notes from his own expertise that the IBO ranking, while a mark of some
28 distinction, is not generally considered to be as significant as a ranking by certain other
sanctioning bodies.

1 Hoya had strict criteria for boxers in his shows and personally approved who could
2 or could not be on the card. Mr. Englebrecht represented that he had taken video
3 tapes of Boxers to Mr. De La Hoya, but due to other commitments, Mr. De La
4 Hoya had not gotten back to him on the suitability of Boxers to be a part of Golden
5 Boy. However, the issue is not the state of mind of Roy Englebrecht and his
6 relationship to Golden Boy Promotions and his intentions in this regard to Boxers
7 and the remains of Big Wave. The issue is the boxer-manager contract between
8 Boxers and Allison Englebrecht in her role as a licensed manager of licensed
9 boxers.

10 10. The Arbitrator has reviewed the contract and the addenda to
11 contract and notes that the requirements for education in English and computer
12 skills of the boxers at the expense of Big Wave is commendable and certainly do
13 not exploit Boxers. However, the Arbitrator is faced with a difficult problem and
14 that is that the parties all apparently entered into a contract with Manager, the
15 daughter of Roy Englebrecht, to evade the Mohamed Ali law which prohibits a
16 promoter from also managing a boxer. The expectation was that Roy Englebrecht
17 build a stable of boxers for his shows and that Boxers and their trainer would fight
18 regularly in Englebrecht shows. This worked for a while, but then Roy
19 Englebrecht moved on to Golden Boy Promotions and lost the final authority to
20 decide who would fight. Manager, who had no experience in boxing and who was
21 essentially a manager in name only, was unable or unwilling to take an active role
22 and to arrange bouts for Boxers in other shows. Thus, Boxers were left with only
23 a \$250 per month stipend to live on; no experienced manager to build their record
24 and pick opponents for them and no access to a promoter and matchmaker team
25 who could put them on cards. Compounding this was the relationship between
26 two third parties, Trainer David Martinez and Manager's father, Roy Englebrecht.
27 When Trainer Martinez had a falling out with Roy Englebrecht and advised him

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1 that Boxers were going to ask for arbitration, Roy Englebrecht caused Big Wave
2 and Manager to cease paying the stipend to Boxers and removed them from a
3 Golden Boy show after the publicity had already gone out. The reason for this
4 was the belief by Roy Englebrecht, a third party, that somehow Martinez, another
5 third party, had 'insulted' Manager. The Arbitrator finds that Manager failed to act
6 in the best interests of Boxers and was complicit in the actions of Roy Englebrecht
7 which led to the illegal punishment of Boxers by cutting off their contractual
8 stipend for exercising their rights to seek arbitration of their contract with her under
9 the laws and regulations of the Commission.

10 11. Manager/Ron Englebrecht Promotions seeks
11 to recover approximately \$31,000.00 in this matter from boxers. This is broken
12 down as follows in copies of checks and invoices and does not include the
13 outstanding NSF check from Big Wave for \$500.00:

- 14 a. \$5000 signing bonus to Boxer Ornelas
- 15 b. \$5000 signing bonus to Boxer Andrade
- 16 c. \$3500 signing bonus to Trainer Martinez
- 17 d. \$300 for mouthpiece or mouthpieces
- 18 e. \$1445.45 for clothing
- 19 f. \$7000 for stipend paid to boxers through 3/02
- 20 g. \$6500 for payments to Trainer for his services⁵

21 **DETERMINATION OF ISSUES**

22 1. The Arbitrator has jurisdiction over the parties and over the subject
23 matter of the arbitration.

24 2. Manager has failed to use her best efforts to secure remunerative
25 boxing contests and to at all times act in the best interests of Boxers in violation of

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⁵ Payments to Mr. Martinez of \$500 per month were testified to, but these are not and were not a part of the boxer-manager contract approved by the Commission.

1 Section B2 of their contract. The career of Boxers was at all times secondary to
2 the current business plan of Manager's father and while this was beneficial to the
3 Boxers initially, when Roy Englebrecht Promotions ceased to operate, he was
4 unable or unwilling to assist Manager and Boxers after he affiliated with Golden
5 Boy Promotions. Further, Manager failed to pay Boxers their agreed stipend after
6 March, 2002 and failed to secure funds for Big Wave to honor the February check
7 to Trainer for his services.

8 3. Manager has failed to obtain a good faith offer of a boxing match
9 or exhibition or contest from a responsible person, firm or corporation for at least
10 four (4) consecutive months in violation of provision C(5) of the contract. In fact,
11 Boxer Ornelas has not fought for approximately 9 months and Boxer Andrade for
12 6 months. The claim of a fight in Bakersfield on January 17 as a qualifying
13 bonafide offer is rejected as unproven. Due to the relationship between Trainer
14 Martinez and Roy Englebrecht, the admitted assignee of Manager, payment by
15 Englebrecht of a signing bonus to Martinez for Boxers and monthly payments to
16 Martinez thereafter would render, any match between Boxer Ornelas and another
17 fighter training with Martinez in violation of clause B(3) of the contract.

18 4. The claims for recovery of monies by Manager are denied. Boxers
19 and their trainer received payment of "signing bonuses." A signing bonus is just
20 that; a bonus for entering into a contract and the obligation to pay it is due when
21 the parties contract. Further, monies paid to trainer were not a part of the boxer-
22 manager contract. The invoices for clothing are not charges that Manager
23 incurred and are invoiced to Roy Englebrecht Promotions. There is no provision
24 in arbitration of a Commission boxer-manager contract to adjust the financial
25 claims of persons not actually a party to the contract or whose hidden interest was
26 otherwise illegal. Even if these had been paid by Big Wave, they would be
27 considered to be the usual and customary business expenses of manager and
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1 these are not recoverable.

2 5. Manager's claim that the \$250 per month stipend paid to each
3 boxer should be recovered by her. This claim is also denied. This term of the
4 addendum set up an ongoing mutual obligation between Boxers and Manager.
5 Each month Boxers were supposed to be ready to fight or healing from injuries
6 and preparing to fight and each month they were each paid a stipend. As noted
7 above, the Arbitrator finds that Boxers fulfilled their obligations until Mr.
8 Englebrecht's tiff with Mr. Martinez. The Arbitrator finds that the failure of
9 Manager, for whatever reason, to honor her contractual obligations and pay
10 Boxers each month was a violation of the contract.

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13 6. Based on the foregoing, the Arbitrator hereby issues the following:

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ORDER

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16 1. The arbitration petition heretofore filed is granted and the Boxer-
17 Manager contract between the parties is dissolved.

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19 2. The Manager's share of the purse withheld by order of the
20 California Commission from the bout held on June 24, 2002 is ordered paid to
21 Boxer Librado Andrade as payment of that purse to Manager would be an unjust
22 enrichment. Manager played no role in securing the fight and has not contributed
23 to nor advanced the career of Boxer Andrade since in or about March, 2002.

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25 3. Within 20 days from the effective date of this decision and order,
26 Manager shall make good the NSF check paid to David Martinez as his February
27 stipend for training boxers. This can be honored by a cashiers check from Big
28 Wave to Boxers, in which case the check (Number 0059) signed by Manager shall
be returned to her or by Manager depositing sufficient funds in the Big Wave
account and notifying Martinez when this has been done so that the outstanding

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1 check can be cashed by him. Whatever manner Boxers and Manager and all
2 those acting in concert with them do to resolve this matter, Boxers and Manager
3 shall resolve the matter an report to the Executive Office of the Commission when
4 the matter is resolved. In the event Manager fails to do this, Boxers and their
5 trainer shall report this failure to the Commission for appropriate action against
6 Manager's license in California.

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8 .This Decision shall become effective on August 20, 2002.

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13 DATED: July 20, 2002

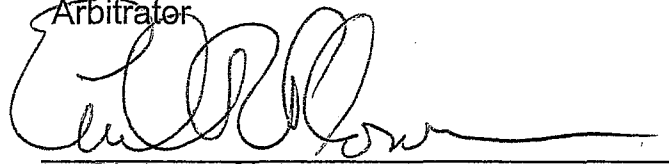
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MARTIN DENKIN, COMMISSIONER
STATE ATHLETIC COMMISSION

Arbitrator



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