# 1 2 3 4 5 6 7 8 BEFORE AN ARBITRATOR STATE ATHLETIC COMMISSION 9 DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA 10 11 12 Case No. M-2022-0014 In the Matter of the Arbitration of **Contract Dispute Between:** 13 14 **DECISION OF THE ARBITRATOR** MICHAEL ZERAFA, Boxer, 15 and 16 **ELVIS GRANT PHILLIPS, Manager** 17 18 INTRODUCTION 19 On or about January 18, 2024, the California State Athletic Commission (Commission) 20 received a Request for Arbitration from Michael Zerafa (Boxer) concerning a dispute with Elvis 21 Grant Phillips (Manager) under the parties' Commission-approved Boxer-Manager Contract No. 22 M-2022-0014 (generally referred to herein as "the Contract"). On March 25, 2024, the arbitration 23 convened with Commission Executive Officer Andy Foster presiding. The hearing was in-person at the Ronald Reagan State Office Building in Los Angeles, with some live appearances being 24 25 made by videoconference. 26 Boxer was present and represented by attorney George Gallegos. Manager was present and 27 represented by attorney John Wirt. The following witnesses were duly sworn and provided 28

testimony at the arbitration hearing: Michael Zerafa, Selin Ozturk, Robert Mack and Elvis Grant Phillips. All evidentiary exhibits submitted by the parties were received without objection.

This Decision is based on the Arbitrator's consideration of the documentary and testimonial evidence presented and pertinent legal authority.

#### **PARTIES**

Boxer is a professional fighter whose boxer federal identification number is CA-556657. Boxer obtained his boxer federal ID by submitting an application to the Commission. The same boxer federal ID (CA-556657) was used by Boxer to obtain a Nevada boxing license for a March 30, 2024 boxing contest. Manager is, and was at all times relevant to this arbitration, a boxing manager licensed by the Commission.

## **JURISDICTION**

Professional Boxing is regulated in California by Business and Professions Code (Code) section 18600, et seq., known as the Boxing Act, and California Code of Regulations, title 4, section 220, et seq., which are the duly enacted regulations that supplement the legislature's statutory framework.

Code section 18613 provides, in pertinent part:

(a) (1) The commission shall appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the commission and vested in him or her by this chapter. The appointment of the executive officer is subject to the approval of the Director of Consumer Affairs.

#### Code section 18855 provides:

The commission shall recognize and enforce contracts between boxers or martial arts fighters and managers and between boxers or martial arts fighters and licensed clubs. Contracts shall be executed on printed forms approved by the commission. The commission may recognize or enforce a contract not on its printed form if entered into in another jurisdiction. No other contract or agreement may be recognized or enforced by the commission. All disputes between the parties to the contract, including the validity of the contract, shall be arbitrated by the commission pursuant to the provisions of the contract. Subject to Section 227 of Title 4 of the California Code of Regulations, a person who seeks arbitration of a contract shall send a written request to the commission's headquarters and to the office of the Attorney General. The commission may seek cost recovery related to arbitration proceedings from the parties subject to the proceedings.

California Code of Regulations, title 4, section 221, subdivision (b), states in pertinent part:

All disputes between the parties to the contract, including the validity of the contract, shall be arbitrated pursuant to the provisions of the contract.

Additionally, paragraph C.4. of the Contract states, in pertinent part, that "[a]ll controversies arising between the parties hereto, including but not limited to controversies concerning the validity and/or enforceability of this contract, shall be submitted to arbitration . . ." and "the decision of the arbitrator shall be final and binding upon the parties hereto and each of them bound thereby." (Respondent Exhibit 1.)

#### THE CONTRACT

Boxer and Manager entered into the Contract on July 15, 2022. The Contract was memorialized on a standard preprinted form approved by the Commission. It was executed in the presence of Commission representative Patrisha Blackstock and was approved by the Commission as Contract ID M-2022-0014 on July 15, 2022. The term of the Contract is three (3) years and it has an expiration date of July 14, 2025. (Id.)

Pursuant to Section A.2 of the Contract, Manager is to receive 25% of Boxer's purse for all fights taking place during the contract period. The contract provides that Boxer shall render services "solely and exclusively for Manager in such boxing contest, exhibition, or training exercises as Manager shall from time to time direct, whether in California or elsewhere." Boxer also agreed not to accept or engage in any boxing contests, exhibitions, or training exercises without written permission from Manager. (Sections A.3-6.) Among other things, Manager agreed to use his best efforts to secure remunerative boxing contests and to act in the best interests of Boxer (Sections B.2.)

Boxer asserts that the Contract is void because Boxer did not hold a boxing license at the time the Contract was executed. A tentative decision rejecting that argument and affirming the validity of the Contract was issued by the Arbitrator prior to the hearing. The Arbitrator hereby adopts the tentative decision as the final decision on that issue. A copy of the tentative decision is

attached hereto as Exhibit A and, by this reference, is incorporated as though set forth fully herein.

#### **SUMMARY OF THE PARTIES' POSITIONS**

## Boxer's Argument

Boxer alleges Manager has failed to fulfill his responsibilities under the Contract by not securing remunerative boxing contests and failing to act in the best interests of Boxer as required by Section B.2 of the Contract. Specifically, Boxer alleges that Manager has failed to secure a single fight for Boxer since the Contract was executed in July 2022 and that Manager has rejected various fight opportunities over that time without consulting Boxer. According to Boxer, Manager rejected these fight opportunities out of his own interests and to the detriment of Boxer's interests, thereby violating the Contract as well as the covenant of good faith and fair dealing that is implied into every contract in the State of California. (Petitioner's Brief.)

Boxer asks for the Contract to be terminated pursuant to Section C.5. of the Contract, which permits the Arbitrator to terminate the Contract if Manager fails to obtain a good faith offer of a boxing match for four (4) consecutive months. Alternatively, Boxer asserts that the Contract is void because he was not licensed at the time of its execution. (Id.)

## Manager's Argument

Manager argues that he has worked diligently from the outset of the Contract to position Boxer for an opportunity to challenge for the World Boxing Association's (WBA) middleweight title and that all of his hard work has paid off with the March 30, 2024 WBA championship bout against Erislandy Lara. According to Manager, his lobbying efforts with the WBA resulted in Boxer jumping from his position as the number four ranked middleweight contender in July 2022 to the number one ranked contender in August 2022, making him the mandatory challenger for the WBA title against Lara. Manager claims the mandatory bout has been delayed because the WBA granted a special exception permitting Lara to fight Danny Garcia before Boxer's mandatory title challenge and by promoters who pressured Boxer to step aside and allow the Lara-Garcia fight to take place. (Respondent's Brief.)

Manager disputes the claim that he has not secured a single bout for Boxer since becoming his manager in July 2022, citing Boxer's November 2022 fight against Danilo Creati as well as the March 30, 2024 fight with Lara as evidence to the contrary. Manager also asserts that he negotiated a contract with TGB Promotions, LLC (TGB) in May 2023 for Boxer to have a step aside bout against an opponent of his choosing for \$100,000 and then fight for the WBA title against the winner of the anticipated Lara-Garcia contest for up to \$350,000. Further, Manager asserts that Boxer has breached the Contract by failing to pay him 25% of the purse from the Creati fight and by misleading him and the Commission about an existing contractual relationship with a manager in Australia. (Id.)

Manager asks that the validity of the Contract be upheld and for the Contract to remain in full force and effect until its stated expiration date of July 14, 2025. Manager seeks to be paid 25% of Boxer's purse from both the Creati fight and the Lara fight. Manager also asks to be reimbursed approximately \$20,000 for various legal fees incurred over the course of the Contract and \$6,000 for fees related to obtaining a P-1 visa for Boxer. (Id.)

## **EVALUATION OF ISSUES**

# Boxer's Jump in the WBA Rankings

In August 2022, the month after the Contract was executed, Boxer moved up from being the fourth ranked contender for the WBA middleweight title to the number one ranked contender. (Respondent Exhibit 2.) Manager credits himself for this position change, testifying that he met personally with WBA president Gilberto Mendoza and other WBA officials to lobby on Boxer's behalf. However, Manager concedes that the WBA never told him directly that Boxer moved up because of his efforts, but he claims it is the only logical explanation given that neither Boxer nor any of the fighters ahead of him in the July rankings fought during the interim.

The evidence indicates that Chris Eubank Jr, the number one contender in the July rankings was removed from the August rankings but that Boxer did move ahead of Ryota Murata and Jamie Munguia in the August rankings to become the number one contender. (Id.) While it was not established that Manager's efforts were solely responsible for Boxer's move up in the rankings, it is reasonable to believe that Manager's lobbying of WBA officials helped Boxer

move up and Manager should be credited for that work. Manager's engagement with WBA officials shows a proactive attempt to advance Boxer's career from the very outset of their contractual relationship and supports the notion that the parties' plan from the beginning was to try to obtain a WBA title shot.

## Manager's Handling of No Limit Boxing Negotiations

Prior to signing with Manager, Boxer had been in discussions with Australian promoter No Limits Boxing (No Limits) regarding a possible pay per view (PPV) bout in Australia, and Boxer wanted to continue those discussions in order to schedule a tune up fight ahead of an anticipated title fight. No Limits extended an offer to Boxer via an email to Manager on October 23, 2022, that guaranteed Boxer a purse of \$40,000 Australian dollars (AUD) (approx. \$26,000 USD) with the possibility of an extra \$25,000 AUD if there were 35,000 PPV buys. (Respondent Exhibit 5.) Boxer claims that Manager never conveyed the offer and unilaterally rejected it.

The evidence does not support Boxer's claim. Instead, the evidence indicates that Manager was in communication with Selin Ozturk, Boxer's partner and informal adviser on boxing matters, regarding the No Limits offer on the same day that it came in. (Petitioner Exhibit 3: Oztruk Decl. (Exh. 6).) On cross examination of Ms. Oztrutk, it was also demonstrated that Manager did not try to hide the fact that the offer had a potential upside for a higher payday related to PPV buys and that Manager correctly advised Ms. Ozturk that the fight would not yield 35,000 PPV purchases so the additional bonus for PPV sales was a hollow offer. Further, the evidence shows that both Ms. Ozturk and Manager found the offer insulting, and Ms. Ozturk instructed Manager to decline it.

# Negotiations for November 2022 Bout

On October 24, 2022, No Limits contacted Manager to let him know that they were extending a new offer against a different opponent (Danilo Creati) in which Boxer would be guaranteed \$50,000 AUD, plus a \$15,000 AUD media bonus and an extra \$25,000 AUD if there were 35,000 PPV sales. (Respondent Exhibit 5.) Manager initially declined the offer, telling No Limits that the purses they were offering were insulting given the fact that Boxer was ranked number one in the WBA rankings and number two in the International Boxing Foundation (IBF)

rankings. (Id.) Nonetheless, Manager indicated that he would like to keep working with No Limits to try to put a deal together in the near term, and he also broached the possibility of a future "mega fight" between Boxer and Australian fighter Tim Tszyu, who held the World Boxing Organization (WBO) light-middleweight title, and which Manager believed would break PPV records in Australia. (Id.)

Manager testified that he did not want Boxer to take the Creati fight because he believed the risk was not worth the reward in that Boxer stood to make a total of only \$65,000 AUD (approx. \$42,000 USD). However, Boxer was adamant that he wanted to take the fight, and Manager ultimately acquiesced to Boxer's wishes. The evidence shows that Manager gave Ms. Ozturk permission to contact No Limits directly to discuss the fight offer but in an email to No Limits, dated October 27, 2022, Manager instructed No Limits to send him the bout agreement for review and informed them that he would be handling everything on Boxer's behalf going forward. (Id.) In short, the evidence is insufficient to support Boxer's claims that Manager improperly withheld information from Boxer and that Manager was not involved in securing the Creati fight with No Limits.

The Creati fight took place on November 23, 2022, and Boxer prevailed. The evidence indicates that on December 13, 2022, No Limits paid Boxer \$65,000 AUD for the fight. (Id.) To date, Manager has received no portion of Boxer's purse from the fight. Accordingly, Boxer has materially breached the Contract. Ms. Ozturk testified that Boxer offered to pay Manager but Manager failed to provide his banking information for a wire transfer. However, it was established during cross-examination of Ms. Ozturk that Manager actually did provide his banking account information to Boxer's attorney prior to fight for purposes of receiving his 25% management fee. In addition, it is clear that had Boxer wanted to pay Manager, he could have done so by other means (e.g., by check) if he believed that he did not have sufficient information for an electronic transfer. Additionally, at the hearing, Boxer did not provide a reasonable explanation as to why Manager had not been paid for a bout that occurred 15 months ago.

<sup>&</sup>lt;sup>1</sup> Pursuant to Section A.6. of the Contract, Boxer may not take a fight without Manager's consent.

#### Boxer's Lack of Activity Since November 2022

Boxer has not had a fight since the Creati bout in November 2022. In February 2023, the IBF issued an order for Boxer, as the number two contender, to fight top contender Esquiva Falcao for the vacated IBF middleweight title. Manager testified that he attempted to negotiate a deal for the fight with Falcao's promoter Top Rank, Inc. but was unable to do so. Ultimately, the IBF sent the fight to a purse bid with the minimum bid being \$100,000. According to Manager, Top Rank had little interest in the fight, was not prepared to offer much money, and was going to require it to take place in Falcao's home country of Brazil.

On March 13, 2023, the day before the purse bid was set to take place, the WBA issued a resolution, ordering its middleweight champion Erislandy Lara to fight Boxer who was the top contender for the WBA middleweight belt. (Respondent Exhibit 10.) After the WBA ordered the mandatory bout, Manager withdrew Boxer from the purse bid for the IBF title fight. Boxer claims that Manager withdrew him from the purse bid without his knowledge or consent.

Manager claims the goal has always been for Boxer to fight for a WBA title and that Boxer had been in agreement with this strategy from the beginning.

In her testimony, Ms. Ozturk acknowledged that she and Boxer were in favor of going with the WBA over the IBF, but they did not agree that Manager should have withdrawn Boxer from the IBF purse bid. However, Ms. Ozturk also acknowledged that if Boxer had gone forward with the Falcao fight for the IBF title, it would have upended his opportunity to fight Lara for the WBA title. In addition, Boxer publicly stated that he chose to seek the WBA title over the IBF title because he believed it would be more lucrative and because, in looking at the contenders list of both organizations, he believed the WBA provided the better route.

After the WBA ordered the mandatory title fight between Boxer and Lara, TGB filed a request on behalf of Lara for the WBA to grant a special permit sanctioning a fight between Lara and Danny Garcia to take place before the mandatory bout against Boxer. (Id.) Manager advised Boxer to refrain from pushing for the mandatory at that time in order to maintain good relations with influential boxing entities TGB and Premier Boxing Champions (PBC). The WBA granted TGB's request on May 2, 2023. (Id.)

On May 3, 2023, Boxer signed a "step aside" bout agreement with TGB, the terms of which called for Boxer to fight an opponent of his choosing on the undercard of the anticipated Lara-Garcia fight in July or August 2023. (Petitioner Exhibit 4: Zerafa Decl. (Exh. 9).) Boxer's purse for the fight was set at \$100,000, however the contract also provided that if Boxer's chosen opponent turned out to be Lara or Garcia, Boxer's purse would be increased to \$250,000 or \$350,000, respectively. (Id.) In addition, the contract stated that if Boxer were to win the fight against an opponent other than Lara or Garcia, then TGB would have an option to promote a fight between Boxer and the winner of the Lara-Garcia fight. (Id.) Boxer testified that he signed the agreement because he felt he had no choice. Manager testified that he advised Boxer to sign the agreement because he believed it was a great deal that allowed Boxer to earn good money in a tune up fight before fighting for the championship and a minimum purse of \$250,000.

The Lara-Garcia fight never took place so the undercard fight promised to Boxer per the step aside agreement never materialized. Although the wisdom of Manager's advice can questioned, especially in hindsight, it appears to have been a well-intentioned effort to serve Boxer's interests under difficult circumstances such that it would constitute a "good faith offer of a boxing match" for purposes of Section C.5. of the Contract.

# WBA Convention in December 2023

After it became apparent that the step aside bout was not going to take place, Manager took action to try to push the WBA for the mandatory bout with Lara by having Boxer join him at the WBA's convention in Orlando, Florida, in December 2023. The strategy worked and on January 15, 2024, the WBA again ordered a mandatory title fight between Lara and Boxer. (Respondent Exhibit 10.) However, during the convention, there was an incident in which Manager's son was accused of spitting on manager Sampson Lewkowicz, and Manager was asked to leave the property. Boxer claims that thereafter, Ms. Ozturk met with WBA officials to secure the mandatory bout with Lara so Manager should not be credited for having obtained the WBA order.

While the evidence indicates that Ms. Ozturk had some interaction with WBA officials at the convention, it is abundantly clear that, despite the unprofessional incident involving Mr. Lewkowicz, Manager was the driving force behind the WBA's decision to order the mandatory

bout. Robert Mack, counsel to the WBA, testified that he was present at the convention and that 2 he believes the biggest factor in convincing the WBA to order the fight was the fact that Boxer 3 came to the convention and addressed WBA officials directly. It was Manager who decided to 4 bring Boxer to the convention and Manager who paid Boxer's and Ms. Ozturk's airfare from 5 Australia and for their hotel accommodations in Orlando. (Respondent Exhibit 8.) Mr. Mack 6 also testified that Manager's attorney John Wirt played a large role in convincing the WBA to 7 order the fight, and it was Manager who paid Mr. Wirt's legal fees and arranged to have Mr. Wirt 8 attend the convention. 9 Negotiations for March 2024 WBA Championship Bout 10 Boxer also claims that after the WBA ordered the mandatory, Ms. Ozturk negotiated directly with PBC and TGB to secure the bout agreement for a fight against Lara in Las Vegas, 12 Nevada, on March 30, 2024. The agreement, which was signed on January 24, 2024, provides for 13 a purse of \$150,000 and states that TGB will promote Boxer's next immediate fight, which is to 14 take place within 180 days of the Lara fight. (Respondent Exhibit 12.) The contract further states 15 that Boxer's purse for the next fight will be \$500,000 if Boxer were to beat Lara and a minimum 16 of \$30,000 if he were to lose. (Id.) Although the evidence indicates that Ms. Ozturk insinuated 17 herelf into the bout negotiations, text messages and emails from representatives of both PBC and 18 TGB leave no doubt as to Manager's significant involvement in the negotiations. (Id.) 19 Manager's Request for Reimbursement of Advances 20 Manager seeks reimbursement of approximately \$20,000 for legal fees that were purportedly incurred as a result of his management of Boxer, including fees allegedly related to

pressuring the WBA to order the mandatory fight with Lara and fees related to responding to a lawsuit in which Manager was alleged to have interfered with an existing contractual relationship between Boxer and Australian manager Sam Labruna. Manager also seeks reimbursement of \$6,000 for expenditures allegedly related to Boxer obtaining a P-1 work visa.

26 ///

21

22

23

24

25

1

11

27 ///

28 ///

15

16

17

18

19

20

21

22

23

24

27

28

Manager's claims for reimbursement are not valid. California Code of Regulations, title 4, section 224<sup>2</sup> sets forth the procedures that Managers must follow if they intend to seek reimbursement for any indebtedness they occur on a boxer's behalf. Among other things, Rule 224 requires a Manager to furnish a statement to the Boxer every ninety days, under penalty of perjury, that sets forth "as to each transaction or item at least the following information: the amount of money involved, the date that the indebtedness occurred, the purpose of the indebtedness, and the name of the person to whom the debt is owed." Rule 224 also requires the manager to "obtain the boxer's signature and date of signature on each accounting and within ten days after furnishing the accounting to the boxer, the manager shall file with the commission a true copy of the accounting."

Manager clearly failed to follow the strictures of Rule 224 with respect to any indebtedness he incurred on Boxer's behalf. Therefore, the Arbitrator will not consider Manager's request for reimbursement. Moreover, regarding legal fees associated with a lawsuit in Australia, Manager presented insufficient evidence to establish that Boxer misrepresented the status of his contractual relationship with manager Sam Labruna at the time the Contract was executed.

# TGB's Payments to Boxer and Manager for the Lara Fight

On March 28, 2024, the Arbitrator submitted a request to TGB to withhold Manager's disputed share (25%) of the purse from the Erislandy Lara fight pending the outcome of these proceedings. That request was made pursuant to the Arbitrator's authority under the Boxing Act, including Business and Professions Code section 18856, and the Commission's sole jurisdiction over Boxer-Manager Contract No. M-2022-0014, which controls the parties' contractual relationship with respect to boxing matches both inside and outside of California. (See *George Foreman Assocs., Ltd. v. Foreman*, 389 F. Supp. 1308, 1315 (N.D. Cal. 1974), aff'd, 517 F.2d 354 (9th Cir. 1975); *Castillo v. Barrera* (2007) 146 Cal.App.4th 1317).

25 ///

26 ///

<sup>&</sup>lt;sup>2</sup> Pertinent Commission regulations under title 4 of the California Code of Regulations are sometimes referred to herein as "Rules."

1 TGB initially agreed to withhold the disputed funds pending the outcome of this arbitration, 2 but later reported to the Commission that it was compelled by the Nevada State Athletic 3 Commission to release all the funds to Boxer notwithstanding the Commission's authority over 4 Contract No. M-2022-0014. As such, the purse that Boxer received for the Lara fight included the 25% (\$37,500) that Manager is due under the Contract.<sup>3</sup> To date, Boxer has not paid 5 6 Manager the \$37,500 he is owed under the Contract for the Lara fight. Instead, TGB covered 7 Boxer's obligation to Manager under the Contract, incurring an additional expense of \$37,500 to 8 ensure that Manager received his portion of the purse from the Lara fight. (Exhibit B.)<sup>4</sup> 9 FINDINGS OF THE ARBITRATOR 10 Manager was involved in securing both the November 2022 Creati fight and the WBA title 11 fight against Erislandy Lara that took place on March 30, 2024. Per the Contract, Manager is 12 owed 25% of Boxer's purse from both fights, and Boxer's refusal to pay Manager his fee for 13 either fight constitutes a clear breach of the Contract. 14 Manager acted in the best interests of the Boxer, and did not breach Section B.2 of the 15 Contract. Manager also did not violate the covenant of good faith and fair dealing. Although the 16 prudence of some of Manager's actions can be second-guessed in hindsight, the evidence 17 indicates that Manager took actions with the belief that they were in the best interests of the 18 Boxer, and that those efforts would result in good faith offers for boxing matches. Accordingly, 19 the Arbitrator does not find sufficient cause to terminate the Contract pursuant Section C.5. of the 20 Contract. 21 /// 22 /// 23 /// 24 <sup>3</sup>Attached hereto as Exhibit B is a true and accurate copy of TGB's disclosure form to 25 Boxer, signed under penalty of perjury as required by 15 U.S.C. § 6307e of the Professional Boxing Safety Act, and a signed addendum thereto documenting all deductions to made to 26 Boxer's purse as well as certain additional costs incurred by TGB that were not deducted from Boxer's purse. 27 <sup>4</sup> TGB also reimbursed Manager \$6,085.00 for costs associated with Boxer's visa. As

explained above, Manager is not entitled to recover those costs from Boxer.

28

1		ORDER
2	IT IS LIED	EBY ORDERED THAT:
3	11 15 HEK 1.	Boxer-Manager Contract ID M-2022-0014 is valid and enforceable. By its terms, the
4		ill expire on July 14, 2025.
5	2.	Boxer shall pay \$37,500 USD to TGB Promotions, LLC (TGB) as reimbursement for
6		ring Boxer's Contract obligations to Manager. The \$37,500, represents the 25%
7	management fee from the purse that Boxer received for the Erislandy Lara fight on March 30,	
8	2024.	in the from the purse that Boxer received for the Erishmay Bara fight on March 50,
9	3.	Boxer shall pay \$10,568 USD to Manager, which represents the 25% management fee
10		65,000 AUD purse that Boxer received for the Danilo Creati fight on November 23,
11	2022.	20,
12	4.	The Commission may assist in the execution of this Order by withholding specified
13		f Boxer's purse in future bouts.
14		1
15	This	decision shall become effective on
16		
17	DATE:	
18	211121	Andy Foster ANDY FOSTER ARBITRATOR
19		EXECUTIVE OFFICER CALIFORNIA STATE ATHLETIC COMMISSION
20		
21		
22		
23		
24		
25		
26		
27		
28		
		13