

BEFORE THE GEORGIA ATHLETIC AND ENTERTAINMENT COMMISSION
STATE OF GEORGIA

IN THE MATTER OF:

BEN BREWER,
Licensee,

Respondent.

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SECRETARY OF STATE
MAIL SERVICES

FINAL DECISION

I. INTRODUCTION

On November 18, 2015, a hearing was conducted in the above-referenced matter before the Georgia Athletic and Entertainment Commission (the "Commission" or "GAEC"). The purpose of the hearing was to determine whether the Commission should sanction the Respondent's license as a professional mixed martial arts fighter. The Respondent, Ben Brewer, was notified of the hearing by certified mail but failed to appear for the hearing. The Commission was represented by Reagan W. Dean, Senior Assistant Attorney General.

II. FINDINGS OF FACT

1.

Respondent was served with Notice of Hearing and Matters Asserted and Statutes and Rules Involved (State's Exhibit No. 1) by certified mail (State's Exhibit No. 2) by the Executive Director of the Commission. In addition, the Executive Director emailed notice of the hearing to Respondent's manager. (State's Exhibit No. 3).

2.

The hearing date was subsequently changed from November 19, 2015, to November 18, 2015. An Amendment to Notice of Hearing to Change Date to Wednesday, November 18, 2015

(State's Exhibit No. 4) was served upon Respondent by certified mail (State's Exhibit No. 5) by the Commission's Executive Director

3.

No response was received from Respondent or anyone on his behalf to either the Notice of Hearing and Matters Asserted and Statutes and Rules Involved (State's Exhibit No. 1) or the Amendment to Notice of Hearing to Change Date to Wednesday, November 18, 2015 (State's Exhibit No. 4)

4.

Respondent was licensed as a professional mixed martial arts fighter by GAEC to participate in professional mixed martial arts ("MMA") fights in the State of Georgia.

5.

Undisputed Productions, LLC is a promoter licensed by GAEC to promote and put on professional MMA events in the State of Georgia.

6.

Undisputed Productions, LLC promoted and put on an event including professional MMA on or about August 8, 2015, in Atlanta, Georgia.

7.

Respondent and Undisputed Productions, LLC, entered into a contract (State's Exhibit No. 6) whereby Respondent agreed to fight and participate in a professional MMA match on that date. The contract, among other matters, contracted Undisputed Productions, LLC, to pay Respondent \$1,000.00 to fight plus an additional bonus of \$1,000.00 if he won the fight, plus reimbursement for gas and a hotel room for two nights

8.

David Oblas for Undisputed Productions, LLC, testified as to communications he had with Respondent in the days shortly prior to the scheduled fight on August 8, 2015. His communications included text messages between Respondent and Oblas. (State's Exhibit No. 7).

9.

Respondent needed blood work and an eye examination performed prior to the contracted fight. David Oblas worked with Respondent to have Respondent's blood work performed and Undisputed Productions, LLC, paid \$130.00 for the blood work that was done. David Oblas and Undisputed Productions, LLC, also worked to assist Respondent to get an eye examination. Undisputed Productions, LLC, also paid for a hotel room for Respondent to stay in while in Atlanta for the fight.

10.

On the afternoon of August 7, 2015, Respondent first notified David Oblas and Undisputed Productions, LLC, that he did not intend to appear for the contracted fight. David Oblas attempted to convince Respondent to appear and to obtain the eye examination necessary for the fight.

11.

However, Respondent failed to appear for the weigh-ins on August 7, 2015.

12.

Respondent failed to appear to fight and participate to in the contest or match on August 8, 2015, as required by the contract thereby failing to perform under the terms of the contract (State's Exhibit No. 6).

13.

Respondent failed to perform under the terms of the contract with Undisputed Productions, LLC, concerning the professional MMA fight on or about August 8, 2015.

14.

Following failure of Respondent to appear to fight and fulfill the contract, his scheduled opponent did not have anyone to fight and Undisputed Productions, LLC, paid the opponent the sum of \$2,000.00.

III. STATUTES AND RULES INVOLVED

O.C.G.A. § 43-4B-4 provides, in part:

(a) The commission shall have the sole authority to license organizations that govern and authorize matches, contests, and exhibitions of martial arts and wrestling and to exempt organizations from licensure in accordance with this article. The commission shall have sole authority to permit and regulate matches, contests, and exhibitions of martial arts and wrestling. The commission shall have the sole authority to license promoters of matches, contests, and exhibitions of martial arts. The commission shall have the duty to safeguard the public health, to protect competitors, and to provide for competitive matches by requiring licensed organizations to abide by rules promulgated by the commission for basic minimum medical and safety requirements based on the nature of the activity and the anticipated level of physical conditioning and training of competitors. The commission shall have the authority to inquire as to a licensed organization's plans or arrangements for compliance with such rules. The commission shall have the authority to require annual fees for licensure and a fee for each such match, contest, or exhibition or for each show and to penalize licensed organizations, licensed promoters, and the holders of match permits that violate the provisions of this article or rules of the commission promulgated in accordance with this article.

O.C.G.A. § 43-4B-13 provides, in part:

- (a) The commission shall have the authority to refuse to grant a license to an applicant upon a finding by a majority of the entire commission that the applicant has failed to demonstrate the qualifications or standards for a license contained in this Code section or under the laws, rules, and regulations under which licensure is sought. It shall be incumbent upon the applicant to demonstrate to the satisfaction of the commission that he or she meets all of the requirements for the issuance of a license, and, if the commission is not satisfied as to the applicant's qualifications, it may deny a license without a prior hearing; provided, however, that the applicant shall be allowed to appear before the commission if he or she so desires.
- (b) The commission may, by majority vote, after prior notice to the holder of any state license and after affording such a holder an opportunity to be heard, fine the license holder, revoke or suspend a state license, or take other disciplinary action against the licensee;

O.C.G.A. § 43-4B-19 provides, in part:

- (a) Whenever it may appear to the commission that any person is violating or has violated any provision of this article or Article 1 of this chapter and that proceedings would be in the public interest:
 - (1) Subject to notice and opportunity for hearing in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act" unless the right to notice is waived by the person against whom the sanction is imposed, the commission may:
 - (A) Issue a cease and desist order prohibiting any violation of this article or Article I of this chapter;
 - (B) Issue an order against a person who violates this article or Article 1 of this chapter, imposing a civil penalty up to a maximum of \$1,000.00 per violation; or
 - (C) Issue an order suspending or revoking a license of the person violating this article or Article 1 of this chapter;
- (c) Procedures relating to hearings, notice, counsel, subpoenas, records, enforcement powers, intervention, rules of evidence, decisions, exceptions, review of initial decisions, final decisions, and judicial review of decisions shall be governed by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act, " unless the provisions of such chapter are contrary to the express provisions of this article or Article 1 of this chapter.

O.C.G.A. Section 43-1-19(a), provides that:

- (a) A professional licensing board shall have the authority to refuse to grant a license to an applicant therefor or to revoke the license of a person licensed by that board or to discipline a person licensed by that board, upon a finding by a majority of the entire board that the licensee or applicant has:
 - (2) Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of a business or profession licensed under this title or on any document connected therewith; or practiced fraud or deceit or intentionally made any false statement in obtaining a license to practice the licensed business or profession; or made a false statement or deceptive registration with the board;
 - (6) Engaged in any unprofessional, immoral, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice materially affects the fitness of the licensee or applicant to practice a business or profession licensed under this title, or of a nature likely to jeopardize the interest of the public, which conduct or practice need not have resulted in any actual injury to any person or be directly related to the practice of the business or profession but shows that the licensee or applicant has committed any act or omission which is indicative of bad moral character or untrustworthiness; unprofessional conduct shall also include any departure from, or the failure to conform to, the minimal reasonable standards of acceptable and prevailing practice of the business or profession licensed under this title;
 - (8) Violated a statute, law, or any rule or regulation of this state, any other state, the professional licensing board regulating the business or profession licensed under this title....which statute, law, or rule or regulation relates to or in part regulates the practice of a business or profession licensed under this title, when the licensee or applicant knows or should know that such action is violative of such statute, law, or rule;

O.C.G.A. Section 43-1-19(d), provides that:

- (d) When a professional licensing board finds that any person is unqualified to be granted a license or finds that any person should be disciplined pursuant to subsection (a) of this Code section or the laws, rules, or regulations relating to any business or profession licensed by the board, the board may take any one or more of the following actions:
 - (1) Refuse to grant or renew a license to an applicant;
 - (2) Administer a public or private reprimand, but a private reprimand shall not be disclosed to any person except the licensee;
 - (3) Suspend any license for a definite period or for an indefinite period in connection with any condition which may be attached to the restoration of said license;

- (4) Limit or restrict any license as the board deems necessary for the protection of the public;
- (5) Revoke any license;
- (6) Condition the penalty upon, or withhold formal disposition pending, the applicant's or licensee's submission to such care, counseling, or treatment as the board may direct;
- (7) Impose a fine not to exceed \$500.00 for each violation of a law, rule, or regulation relating to the licensed business or profession.

GAEC Rule 85-1-.02(9) provides, in part, that:

- (9) Suspensions and Revocations.
 - (a) The commission may revoke, suspend, place on probation or take other disciplinary action against the license of any licensee who has violated any of its rules or regulations or any of the provisions of O.C.G.A. 43, Chapter 4B or whose application contains false statements or material omissions.

GAEC Rule 85-1-.05(6) provides:

(6) Contracts.

Contract or Bout Agreement: Unless agreed upon in advance by the Georgia Athletic and Entertainment Commission, all bout agreements must be on the form approved by the commission.

1. The amount of guarantee or percentage promised; the number and time limit of rounds; when and where the official weigh-in will be conducted; when and where the Contestants are scheduled to appear; weight; and all other reasonably expected to be an issue of agreement within professional boxing contracts and agreements.
 - (i) Weights expressed on bout agreements for all four and six round bouts shall allow no less than a +/-2 pounds variance of the contracted weight.
 - (ii) Weights expressed on bout agreements for all championship (12 rounds) matches shall be absolute and shall not allow for any variance.
2. Signature of the promoter or his or her designated representative, and the Contestant or his or her designated representative.
3. All bout agreements will state in bold type: Each Contestant applying for a license is required to obtain on their own a Hepatitis B and Hepatitis C blood test and must present to the commission representative no later than at the weigh-in the results of such test conducted within 180 days of the proposed match.

- (b) **Contract or Bout Agreement: Required Form for Submission.** All information appearing on any written agreements or contracts shall be typed or printed clearly.
- (c) **Contract or Bout Agreement: File with Commission.** One copy of each signed written agreement or contract, once executed by both parties and within three days of such execution, shall be filed with the commission.
 - (1) No boxing match shall be allowed to commence prior to execution of a signed contract or bout agreement by both parties or before said contract or bout agreement is submitted to the commission.
- (c) **Violations: Grounds for Suspension.** Violation by either party of any written bout agreement or contract may be grounds for suspension of any license issued by the commission and may in addition to such suspension result in a fine imposed by the commission.

GAEC Rule 85-1-.05(7) provides:

(7) Failure to Perform.

(a) **Promoter Failure to Perform.** The Failure of a promoter to perform according to the terms of the contract; to produce contestants or special added attractions as advertised; to pay the contestants their contractual guarantee, or percentage; or the failure of a promoter to live up to his or her agreement with his or her contestants or performers who did perform as scheduled is prohibited.

(b) **Contestant Failure to Perform.** The failure of a contestant under contract with a licensed promoter to perform according to the terms of said contract; or the failure of a contestant to live up to his or her agreement with an person to which the contestant is under contractual agreement is prohibited.

(c) Violation: Penalties.

(i) Violation of either paragraph (a) or (b) within this subsection shall, for the first offense, be grounds for administrative suspension of not less than 90 days and a fine of not more than the contracted purse amount disclosed on the bout agreement or contract.

(ii) The second and/or any subsequent violation by any person of either paragraph (a) or paragraph (b) within this subsection may, in addition to any suspension by the commission, subject the violator to a fine of not more than the contracted purse amount as disclosed on the bout agreement or contract plus not more than an additional \$10,000. Said fine to be imposed by the commission.

- (iii) Any person or license holder violating on three or more occasions either sub-paragraph (a) or sub-paragraph (b) within this subsection shall have his or her license suspended indefinitely. Provided however that any action by the commission to enforce or attempt to enforce the provisions of this sub-paragraph will be taken only after notice and hearing according to the “Georgia Administrative Procedure Act,” Title 50, Chapter 13 of the Official Code of Georgia Annotated.

GAEC Rule 85-3-.18 Licensing provides, in part:

- (a) All mixed martial arts events shall be subject to the licensing requirements of 85-1-.02.

GAEC Rule 85-3-.21 Health and safety rules provides:

- (a) All mixed martial arts events shall be subject to the uniform medical requirements of 85-1-.04.
- (b) All mixed martial arts events shall be subject to the additional health and safety requirements of 85-1-.05.
- (c) All mixed martial arts events shall be subject to the additional medical facilities and equipment requirements of 85-1-.05.
- (d) All mixed martial arts events shall be subject to the insurance requirements of 85-1-.05.

IV. DECISION AND ORDER

Upon consideration of all the evidence, the Commission finds that grounds for sanctioning Respondent’s license as a mixed martial arts fighter have been proven by the preponderance of the evidence. The Commission finds the evidence showed that Respondent was under contract with the licensed promoter, Undisputed Productions, LLC, to fight and failed to appear and perform as required by the contract. The promoter attempted have the Respondent fulfill his obligations under the contract including paying for Respondent’s blood work and

assisting to have an eye examination done. The promoter paid the sum of \$2,000.00 to Respondent's opponent due to Respondent's failure to appear and perform under the contract.

Based upon the evidence and findings, Respondent's license as a mixed martial arts fighter is hereby indefinitely suspended provided that after a minimum of six (6) months of suspension and the reimbursement of \$2,130.00 to Undisputed Productions, LLC, the Respondent may request in writing for the Commission to terminate the suspension. In connection with any such request, the Respondent may be required to appear before the Commission and provide satisfactory documentation of proof of reimbursement of \$2, 130.00 to Undisputed Productions, LLC, together with any other information requested by the Commission.

This 1st day of December, 2015.

GEORGIA ATHLETIC AND
ENTERTAINMENT COMMISSION

DON GEARY
Chairman

ATTEST:


MATTHEW WOODRUFF
Executive Director

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