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**BEFORE AN ARBITRATOR
STATE ATHLETIC COMMISSION
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

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

ELVIS GRANT PHILLIPS, Manager,

and

MARCOS RENE MAIDANA, Boxer

DECISION OF THE ARBITRATOR

INTRODUCTION

On September 27, 2022, this matter came before Andrew Foster, Executive Officer for the California State Athletic Commission (Commission). Mr. Foster, acting in his official capacity, was duly appointed by the Commission to arbitrate the contract dispute between Elvis Grant Phillips (Manager) and Marcos Rene Maidana. (Boxer). The Boxer-Manager contract (generally referred to herein as “the Contract”) in dispute was executed by the parties on September 4, 2020.

The arbitration convened by videoconference at approximately 10:20 a.m. on September 27, 2022, pursuant to written notice to all parties. (See Exhibit 1, Notice of Continued Arbitration) Manager was present and chose not to be represented by counsel. Boxer was present and represented by attorney Fernando Arias Camano. The following witnesses were duly sworn and provided testimony at the arbitration hearing: Elvis Grant Phillips, Marcos Rene

1 Maidana, Gustavo Martin Gomez Maidana, and Jesus Villarruel. All evidentiary exhibits
2 submitted by the parties were received without objection. Court certified Spanish interpreter
3 Stephanie Wall (Certification No. 300450) was also present and provided interpreting services
4 throughout the hearing.

5 This decision is based on the arbitrator's consideration of the documentary and testimonial
6 evidence presented and pertinent legal authority.

7 **LICENSURE OF BOXER AND MANAGER**

8 Manager is, and was at all times relevant to this arbitration, a boxing manager, duly
9 licensed by the Commission. Boxer is, and was at all times relevant to this arbitration, a boxer,
10 also duly licensed by the Commission.

11 **JURISDICTION**

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

16 Code section 18613 provides, in pertinent part:

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

21 Code section 18855 provides:

22 The commission shall recognize and enforce contracts between boxers or
23 martial arts fighters and managers and between boxers or martial arts fighters
24 and licensed clubs. Contracts shall be executed on printed forms approved by
25 the commission. The commission may recognize or enforce a contract not on
26 its printed form if entered into in another jurisdiction. No other contract or
27 agreement may be recognized or enforced by the commission. All disputes
28 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

1 commission may seek cost recovery related to arbitration proceedings from
2 the parties subject to the proceedings.

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

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

7 Additionally, paragraph C.4 of the Contract states, in pertinent part, that “[a]ll
8 controversies arising between the parties hereto, including but not limited to
9 controversies concerning the validity and/or enforceability of this contract, shall be
10 submitted to arbitration . . .” and “the decision of the arbitrator shall be final and binding
11 upon the parties hereto and each of them bound thereby.” (See Phillips Exhibit 1, 2020
12 Boxer-Manager Contract.)

13 **THE CONTRACT**

14 Boxer and Manager entered into the Contract on September 4, 2020. The Contract was
15 memorialized on a standard preprinted form approved by the Commission. It was executed in the
16 presence of Commission representative Jesus Villarruel and was approved by the Commission as
17 Contract ID M-2020-0015 on September 9, 2020. The term of the Contract is three (3) years and
18 has an expiration date of September 3, 2023. (Phillips Exhibit 1.)

19 Pursuant to Section A.2 of the Contract, Manager is to receive 30% of Boxer’s purse for all
20 fights taking place during the lifetime of the contract. The contract provides that Boxer shall
21 render services “solely and exclusively for Manager in such boxing contest, exhibition, or training
22 exercises as Manager shall from time to time direct, whether in California or elsewhere.” Boxer
23 also agreed not to accept or engage in any boxing contests, exhibitions, or training exercises
24 without written permission from Manager. (Sections A.3-6.) Among other things, Manager
25 agreed that Boxer’s share of the money earned through boxing contests entered into pursuant to
26 the Contract would be no less than \$500,000 per year. Manager also agreed to use his best efforts
27 to secure remunerative boxing contests and to act in the best interests of Boxer (Sections B.1-2.)

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1 **THE PARTIES' POSITIONS**

2 Manager asserts that Boxer has been unresponsive to multiple fight proposals submitted by
3 Manager since the inception of the Contract. Manager further asserts that Respondent agreed to
4 engage in an exhibition fight in Dubai against YouTube celebrity Yao Cabrera without Manager's
5 authorization or involvement. In essence, Manager asserts that Respondent has breached sections
6 A.1. and A.6. of the Contract as well as the covenant of good faith and fair dealing that is implied
7 into every contract in the State of California. *See Racine & Laramie, Ltd. v. Dep't of Parks &*
8 *Recreation* (1992) 11 Cal. App. 4th 1026, 1031-1032 [explaining that the covenant of good faith
9 and fair dealing is implied into every contract in order to prevent a contracting party from
10 engaging in conduct that frustrates the other party's rights to the benefits of the contract.] In light
11 of Boxer's alleged breaches and failure perform in good faith under the contract over the past two
12 years, Manager seeks to have the Contract extended by a period of two years.

13 Boxer argues that Manager has failed to provide any "concrete" fight offers and that the
14 Dubai exhibition bout against the YouTube celebrity was never actually intended to take place
15 but was only part of a public relations campaign for Boxer's event promotions company, Chino
16 Promotions. Boxer does not dispute that the Contract is valid or that there is approximately one
17 year left under the Contract, but he argues that the Contract should not be extended due to
18 Manager's failure to secure any concrete offers.

19 **FINDINGS OF THE ARBITRATOR**

20 Validity of Contract

21 As conceded by both parties, the Contract entered into by Boxer and Manager on
22 September 4, 2020 is a valid and enforceable contract. The parties were both duly licensed by the
23 Commission at the time of contract; the parties utilized the appropriate preprinted and approved
24 form to memorialize the agreement; the term of the Contract did not exceed five (5) years; the
25 contract called for manager to receive less than 33 1/3 percent of Boxer's gross earnings; a
26 Spanish-speaking Commission representative. Mr. Jesus Villarruel, was present for the execution

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1 of the Contract and provided translation services as needed to the parties¹; and the Commission
2 formally approved and recorded the contract in its files. Accordingly, the Contract satisfied the
3 requirements of California Code of Regulations, title 4, sections 220 through 222,² for purposes
4 of validity and enforcement.

5 Manager's Actions and Performance under the Contract

6 The documentary and testimonial evidence presented establishes that Manager sought and
7 obtained offers for multiple remunerative boxing contests during the first two years of the
8 Contract. Although Boxer had not fought since 2014, within the first few months of executing
9 the Contract, Manager obtained an offer from Dream Boxing Promotion LLC (Dream Boxing) for
10 a potential three-fight deal that would have paid Boxer \$500,000 for the first fight, \$1,500,000 for
11 the second fight and up to \$13,000,000 for the third fight. (Phillips Exhibit 2.) Text messages
12 from Manager to Boxer in late January 2021 indicate that Boxer would have been permitted to
13 pick his opponent for the first fight and would have been provided \$75,000 in training expenses,
14 with the fight taking place sometime in May 2021. The text messages also indicate that Boxer's
15 promotions company, Chino Promotions, could have been a co-promoter of the event. (Phillips
16 Exhibit 6.)

17 Pursuant to the terms of the proposed promotions agreement, air travel from Argentina to
18 the United States would have been provided for Boxer and two others, and Boxer would have
19 been provided with up to three hotel rooms (or an apartment) for the 60 days preceding the fight.
20 (Phillips Exhibit 2.) Manager's text messages during this time period also indicate that Manager
21 had previously been in separate discussions for a bout against Oscar de La Hoya. (Phillips
22 Exhibit 6.) Finally, Manager's texts encouraged Boxer to speak to his advisors Jorge Acero Cali
23 (Acero) and Gustavo Martin Gomez Maidana (Pileta) if necessary and act quickly so that things
24 could be finalized before Boxer left Argentina to train in the United States. (Phillips Exhibit 6.)

25 _____
26 ¹ Mr. Villarruel testified that, based on his participation in the contract signing, he had no
27 doubt that the parties fully understood the terms of the Contract and that he believes they entered
28 into it of their own free will.

² Pertinent Commission regulations under title 4 of the California Code of Regulations are
sometimes referred to herein as "Rules."

1 Manager contends that Boxer failed to respond to his communications regarding the 2021 Dream
2 Boxing contract, and Boxer offered no evidence to the contrary.

3 With the 2021 Dream Boxing contract apparently off the table, Manager provided an offer
4 (i.e., letter of intent) from The One Entertainment Media Inc. (The One), dated March 2, 2021, for
5 an 8-round bout against Fernando Vargas Sr., in which Boxer was to be paid no less than one
6 million dollars (\$1,000,000). (Phillips Exhibit 4.) Text messages from Manager to Boxer
7 indicate that Manager sent The One's letter of intent to Acero and that Boxer had 15 days to sign
8 the letter of intent if interested.³ (Phillips Exhibit 4.) Manager contends that Boxer and his
9 representatives failed to respond to his communications regarding The One's May 3, 2021, letter
10 of intent to put on the Vargas fight, and Boxer offered no evidence to the contrary.

11 In December 2021, Manager contacted Karim Akkar of Legacy Sports Management in
12 Germany regarding rumors that, without Manager's involvement, Mr. Akkar was setting up an
13 exhibition fight between Boxer and a YouTube celebrity that was to take place in Dubai. (Phillips
14 Exhibit 5.) Mr. Akkar expressed his belief that the Contract between Manager and Boxer
15 pertained only to fights in the United States and also did not apply to exhibitions. (Phillips
16 Exhibit 5.) Although Manager's threatened to take legal action, promotion of the exhibition bout
17 continued with Boxer engaging in publicity events, including a face off, the fight that was
18 scheduled for March 2022. Ultimately, the fight did not take place, as the YouTube celebrity was
19 not permitted to leave Argentina due to potential criminal issues.⁴

20 Despite the fact that Boxer agreed to participate in the Dubai exhibition bout without
21 Manager's involvement or authorization, Manager continued to obtain fight opportunities for
22 Boxer. In February 2022, Manager obtained and sent to Boxer another offer from Dream Boxing
23 for a potential three-fight deal that would have paid Boxer \$750,000 for the first fight against an
24 opponent of Boxer and Manager's choosing. (Phillips Exhibit 3.) Pursuant to the terms of the
25 proposed promotions agreement, air travel from Argentina to the United States would have been

26 ³ Both parties agree that Boxer had instructed Manager to deal directly with Acero during
27 this time period.

28 ⁴ Official notice is taken of media coverage of the Dubai exhibition bout, including social
media posts made by Boxer himself.

1 provided for Boxer and three others, and Boxer would have been provided with up to four hotel
2 rooms (or an apartment) for the 60 days preceding the fight. (Phillips Exhibit 3.) Manager
3 contends that Boxer and his representatives failed to respond substantively to his communications
4 regarding the 2022 Dream Boxing offer, and Boxer offered no evidence to the contrary.

5 Based on the documentary and testimonial evidence provided, as summarized in pertinent
6 part above, it is clear that Manager satisfied his contractual obligation to secure remunerative
7 boxing contests that would have paid Boxer no less than \$500,000 per year. Having failed to
8 obtain responses from Boxer regarding multiple fight opportunities and in light of Boxer's actions
9 with respect to the Dubai exhibition bout, Manager filed a request for arbitration in March 2022.

10 *Boxer's Actions and Performance under the Contract*

11 Boxer contends that his failure to respond to the fight proposals tendered by manager is
12 excused because the proposals were not "concrete offers." Boxer also asserts that his failure to
13 entertain the fight proposals is excused because he was overweight and not in condition to fight,
14 because Manager failed to advance him training expenses, because Manager only spoke to Acero
15 about the fights, and because Manager never came to Argentina to meet with him. Regarding the
16 Dubai exhibition fight that Boxer agreed to without Manager's involvement, Boxer claims that
17 the fight was merely a hoax and was never really going to happen.

18 Boxer's arguments are unconvincing. Boxer provided no evidence to suggest that the
19 Dream Boxing contracts were sham proposals that would not have resulted in Boxer's
20 participation in remunerative boxing contests. Likewise, Boxer provided no evidence to suggest
21 that the letter of intent from The One for an 8-round bout against Fernando Vargas Sr. and a
22 minimum purse of \$1 million was a fake offer that would not have resulted in a fight contract.

23 In his testimony before the arbitrator, Boxer essentially admitted that Manager had in fact
24 obtained real fight opportunities for him, but Boxer testified that he was upset that Manager had
25 not advanced him any money for training expenses. However, Manager was not obligated under
26 the contract to provide any funds out of his own pocket for training expenses, and Boxer
27 conceded this point in his testimony. Furthermore, in addition to at least one text message in
28 which Manager referenced an offer of \$75,000 in training expenses for the first fight under the

1 2021 Dream Boxing contract, the Dream Boxing contracts themselves provided for eight (8)
2 weeks of gym access and transportation from Boxer's hotel (or apartment) to the gym, as well as
3 a 10% advance on the fight purse that would have been given to Boxer upon his arrival in the
4 United States for training. (Phillips Exhibits 2 and 3.)

5 Boxer also asserts that Manager failed to procure genuine fight opportunities because the
6 proposed fights were generally planned to be middleweight bouts. According to Boxer, he was
7 overweight (in excess of 200 pounds) and could not have fought as a middleweight. This
8 argument is also unconvincing. Throughout his professional career, the highest weight class at
9 which Boxer competed was super welterweight (154 pounds).⁵ Manager testified that he had
10 discussions with Boxer and his representatives about Boxer moving up to middleweight (160
11 pounds) or super middleweight (168 pounds) for his comeback from retirement. Furthermore, the
12 Dubai exhibition bout that Boxer agreed to and promoted without Manager's involvement was
13 scheduled to be a middleweight contest. In addition, text messages from Boxer to Manager
14 earlier this year indicate that Boxer had targeted former lightweight Acelino Freitas as a potential
15 opponent. (Phillips Exhibit 6.) Most importantly, however, Boxer testified that he never informed
16 Manager about his weight class concerns.

17 Boxer's remaining arguments also fail to justify his unresponsiveness to Manager's fight
18 proposals. For example, Boxer contends that Manager dealt only with Acero and that this
19 somehow created problems, yet Boxer acknowledged in his testimony that he instructed Manager
20 to deal with Acero. Furthermore, text messages directly from Manager to Boxer regarding fight
21 opportunities show that although Manager may have dealt with Acero per Boxer's request, he
22 also communicated directly with Boxer. At the arbitration hearing Boxer also suggested that
23 Manager's failure to travel to Argentina to meet with him somehow created issues that prevented
24 Boxer from taking any of Manager's fight proposals. Boxer made no real attempt to explain why
25 Manager's failure to travel to Argentina created any problems with respect to his ability to
26 communicate with Manager about fight proposals, and given the ability to communicate easily by

27 _____
28 ⁵ Official notice is taken of Boxer's professional boxing record as maintained by
Box.Rec.com.

1 phone, text, email and videoconference, it is difficult to see how this could have caused any such
2 issue.

3 In summary, Boxer failed to provide any reasonable justification for his failure to accept
4 Manager's fight proposals or to engage substantively with Manager regarding those proposals.
5 Instead, based on text message between the parties, it appears that Boxer hoped to pressure
6 Manager into renegotiating Manager's fee down from 30% to 5%. (Phillips Exhibit 6.) These
7 text messages also indicate that Boxer thought he could avoid his obligations under the Contract
8 by engaging in an exhibition bout in Argentina, threatening that Manager would receive nothing
9 at all if he took such a fight. (Phillips Exhibit 6.)

10 Conclusions

11 The evidence establishes that Manager has dutifully performed his obligations under the
12 Contract to secure remunerative boxing contests for Boxer. The evidence also establishes that, by
13 refusing to accept any of the various fight opportunities proposed by Manager or even to
14 communicate substantively with Manager regarding those opportunities, Boxer has breached the
15 covenant of good faith and fair dealing by engaging in conduct that frustrated Manager's right to
16 the benefits of the Contract. In addition, Boxer breached section A.1. of the Contract by failing to
17 render services solely and exclusively for Manager in such boxing contests or exhibitions as
18 directed my Manager and section A.6. of the Contract by agreeing to take a boxing contest or
19 exhibition without first obtaining written permission from Manager to do so.

20 At the time that Boxer-Manager Contract ID M-2020-0015 was executed, Boxer had not
21 fought for approximately six (6) years. Nonetheless, Manager demonstrated the ability to secure
22 boxing contests that would have resulted in earnings to Boxer of at least \$500,000 a year as
23 provided in section B.1. of the Contract. Boxer's breaches of contract have caused an additional
24 two (2) years to pass without a fight. Equity demands that Manager should not have to bear the
25 burden of any potential diminished marketability caused by Boxer's breaches over the past two
26 (2) years by guaranteeing Boxer a minimum of \$500,000 in earnings per year. Manager, of
27 course, has a strong financial incentive to seek the strongest bout offers he can obtain because is
28 entitled to 30% of Boxer's purse under the contract.

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ORDER

WHEREFORE, THE FOLLOWING ORDER is made:

1. Boxer-Manager Contract ID M-2020-0015 shall remain valid, enforceable and unexpired until Boxer has competed in a total of three (3) boxing contests or exhibitions authorized by Manager. Boxer-Manager Contract ID M-2020-0015 shall terminate once Boxer has competed in the three (3) boxing contests or exhibitions cited above. Notwithstanding the foregoing, Boxer-Manager Contract ID M-2020-0015 shall expire on September 3, 2025, regardless of whether Boxer has competed in the three (3) boxing contests or exhibitions cited above.

2. Manager shall not be required to guarantee a minimum amount of annual Boxer earnings under the contract.

This decision shall become effective on 11/17/2022.

DATE: 11/17/2022

Andrew Foster
Andrew Foster, Executive Officer
Arbitrator
California State Athletic Commission

DECLARATION OF SERVICE

(Page 1 of 2)

Case Name: **In the Matter of the Arbitration between Marcos Rene Maidana and Elvis Grant Phillips**
Case No.: **M-2020-0015**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 300 South Spring Street, Suite 1702, Los Angeles, CA 90013-1230. On November 21, 2022, I served the following document(s):

DECISION OF THE ARBITRATOR

(A) **By Facsimile:** I served the attached document by transmitting a true copy by facsimile machine, pursuant to California Rules of Court, rule 2.306. The facsimile machine I used complied with Rule 2.306, and no error was reported by the machine. Pursuant to rule 2.306(h)(4), I caused the machine to print a record of the transmission, a copy of which is attached to this declaration.

on the parties through their attorneys of record, by placing true copies thereof in sealed envelopes addressed as shown below for service as designated below:

(B) **By First Class Mail:** I caused each such envelope to be placed in the internal mail collection system at the Office of the Attorney General in a sealed envelope, for deposit in the United States Postal Service with postage thereon fully prepaid, that same day in the ordinary course of business.

(C) **By Certified Mail:** I caused each such sealed envelope to be placed in the internal mail collection system at the Office of the Attorney General as certified mail with return receipt requested.

(D) **By Messenger Service:** I caused each such envelope to be delivered to a courier employed by a professional messenger service, with whom we have a direct billing account, who personally delivered each such envelope to the office of the addresses listed below. Name of messenger service: _____

(E) **By Overnight Mail:** I caused each such envelope to be placed in a box or other facility regularly maintained by the express service carrier, or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided. Name of overnight service: Federal Express International Priority

on the parties through their attorneys of record, by electronic mail for service as designated below:

(F) **By [Name of Court Required System]:** Correspondence that is submitted electronically is transmitted using the [System Name] electronic filing system. Participants who are registered with [System Name] will be served electronically.

(G) **By E-mail:** I served the attached document by transmitting a true copy via electronic mail.

DECLARATION OF SERVICE

(Page 2 of 2)

Case Name: **In the Matter of the Arbitration between Marcos Rene Maidana and Elvis Grant Phillips**
Case No.: **M-2020-0015**

TYPE OF SERVICE: [B]
Elvis Grant Phillips
14 Monarch Bay Plaza Ste. 416
Dana Point, CA 92629

TYPE OF SERVICE: [E]
Sebastián A. Rodríguez Barbaró
Av. Juana Manso 590, Piso 19, of. 2 (C1107CBN) C.A.B.A.
Buenos Aires, Argentina
Tracking Number:

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on November 21, 2022, at Los Angeles, California.

J Park

/s/ J Park

Declarant

Signature

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