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BEFORE AN ARBITRATOR
STATE ATHLETIC COMMISSION
STATE OF CALIFORNIA

In the Matter of the Arbitration of Contract
Dispute Between:

Case No. **091707-2**

DECISION OF THE ARBITRATOR

BRANDON VERA, Mixed Martial Artist

and

MARC DION, Manager.

The above captioned arbitration matter came on regularly for hearing before Armando Garcia, Executive Officer of the California State Athletic Commission, the Arbitrator duly appointed by the Commission. The matter was convened at 10:00 a.m. on September 17, 2007 at the Office of the Attorney General, 110 West "A" Street, Suite 1100, San Diego, California 92101, pursuant to written notice to all parties. Karen Chappelle, Supervising Deputy Attorney General acted as counsel to the Arbitrator. Brandon Vera, Licensed Mixed Martial Artist (Hereinafter "Vera") appeared and was represented by Craig Nicholas, Esq. He also presented Joe Silva, the Vice President of Talent Relations with the Ultimate Fight Championship Manager Marc Dion (Hereinafter "Manager") was present and represented by Stephen Cummings, Esq. Both parties were prepared to proceed. Based upon the records of the Commission, Notices to the parties, and following the taking of testimony of the parties and other witnesses under oath, and

1 following receipt of documents in evidence and upon taking official notice of the records
2 and proceedings of the California State Athletic Commission and following submission of
3 the parties of oral arguments on the evidence and due consideration thereof, the Arbitrator
4 now makes the following:

5 FINDINGS OF FACT

6 1. On August 4, 2004, Brandon "The Truth" Vera , entered into a
7 "Mixed Martial Arts/Kick Boxing Contract/Manager Contract (hereinafter, Boxer-Manager
8 Contract)" with respondent, manager Mark Dion (hereafter "Dion"). (Exh. 1 of arb.
9 hearing, p. 1.) This contract was different in form and content from the actual
10 Commission Boxer-Manager contract, a State of California form, and it was not approved
11 by the California State Athletic Commission (hereafter "Commission"). (Exh. 1, Clause
12 1(a).) Among other differences, this contract called for Dion as manager to receive a share
13 of all compensation from any source paid to Vera.

14 2. On September 21, 2005, Vera entered into the contract at issue in the
15 instant arbitration, a Commission-approved "Boxer-Manager" contract with Dion. (Exh. 2
16 of arb. hearing, pp. 1, 2.) Under this contract, Vera agreed to render services from
17 September 21, 2005 to September 20, 2010 "solely and exclusively for Manager [Dion] in
18 such boxing context, exhibition, or training exercises as Manager shall from time to time
19 direct," and to pay Dion 33 and 1/3 percent of any money Vera earns for his services " in
20 such boxing context, exhibition, or training exercises." (Exh. 2, Clause A, p. 1.) This
21 contract limits a manager's compensation to purses. No addendum was added to the
22 standard Commission contract to expand the scope of the manager's share beyond purses.
23 Dion agreed to use his "best efforts to secure remunerative boxing contests and at all
24 times to act in the best interest of Boxer." (Exh. 2, Clause B, p. 1.) The Commission
25 contract requires controversies between the parties to submit to binding arbitration. (Exh.
26 2, Clause C(4).)

27 3. Following the signing of the contract, Vera fought Fabiano Schwermer
28 on October 3, 2005 and won a second round TKO. Vera then fought Justin Eilers on

1 February 4, 2006 and won with a KO in the first round. Soon after entry of the September
2 2005 Commission-approved contract, Dion obtained a three-fight UFC promotional
3 contract for Vera. Under this promotional contract, Vera fought Asuario Silva on May 27,
4 2006 and won by submission in Round 1. Vera fought the second fight with Frank Mir on
5 November 18, 2006 and won by TKO in the first round. (Dion arb. brief, p. 3; Vera arb.
6 brief, p. 3.) According to UFC sources, Vera sustained an injury in the Mir match and did
7 not fight match in the UFC promotional contract until after this arbitration.

8 4. Following the Mir match, Dion began negotiations for a second UFC
9 fight contract to significantly increase Vera's earnings. On December 4, 2006, UFC
10 President Dana White met with Dion to discuss re-signing Vera to a new multi-fight deal
11 with the UFC, and White made an offer by writing a series of numbers on a Post-it note.
12 (Dion arb. brief, pp. 3-4.) Dion discussed the offer with Vera, who wanted to make a
13 counter-offer for more money. Dion telefaxed the discussed counter-offer for Vera to
14 approve. Upon Vera's approval, on December 7, 2006, Dion e-mailed the counter-offer to
15 White. Vera reviewed the sent e-mail, and told Dion he wanted a signing bonus. Dion
16 revised the counter-offer to include the signing bonus, and e-mailed the revised counter-
17 offer. (Dion arb. brief, pp. 4-5, citing Dion's Exh. 42.) In late December, UFC
18 "matchmaker" Joe Silva told Dion that "the real UFC's offer was 50/50 for the first fight,
19 60/60 for the second fight, and 70/70 for third fight. If VERA became a World Champion it
20 would be 90/90, 100/100, 110/110 as well as \$100,000.00 signing bonus." Vera was not
21 interested in this offer, so Dion rejected it on December 26, 2006 at 4:46 p.m. (Dion arb.
22 brief, p. 5, citing Dion's Exhs. 39 and 46.) That same day, at 7:16 p.m., the UFC sent Dion
23 a letter extending Vera's contract three months on the ground that Vera was injured in
24 May 2006. Dion felt that the UFC was trying to punish Vera for rejecting its offers. Dion
25 and Vera decided to dispute the UFC's attempt to extend the contract, and to try to
26 schedule Vera's third fight by May 27, 2007, as required by the UFC's three-fight contract,
27 in order to give Vera additional leverage. (Dion arb. brief, p. 5.) Since the UFC did not
28 discuss any proposed fights, in January 2007 Dion hired attorney Stephen Cummings to

1 help negotiate with the UFC. (Dion arb. brief, pp. 5-6.)

2 5. Angry with the UFC offer and questioning that offer, Vera decided to
3 travel to Las Vegas in February 2007 (RT 49) and directly approach "matchmaker" Silva
4 without Dion. Vera met with Silva, who represented to Vera that the UFC's offer on the
5 Post-it note included a \$100,000 signing bonus. Thereafter Vera's communications with
6 Dion broke down. (RT 27-28, 49.) Vera called and met with Floyd Evangelista, who
7 wanted to become Vera's manager in the Philippines and who said a sponsor in the
8 Philippines wanted to pay Vera \$30,000. Not wanting to turn down the deal, Vera
9 instructed Evangelista to contact Dion. Afterward, Dion called Vera to tell him that
10 Evangelista could get him a \$25,000 sponsorship from the Philippines. (RT 28-29.)

11 6. In March 2007, Vera told the UFC not to deal with Dion, but he did
12 not inform Dion. (Dion arb. brief, p. 6.) On March 21, 2007, attorney Cummings
13 received a letter from attorney Pollie Gautsch. This letter tried to terminate the August
14 2004 contract for alleged sponsorship violations. (Dion arb. brief, p. 7, citing Vera's Exh.
15 1.) On March 26, Cummings advised that the Commission-approved September 2005
16 contract was controlling, not the August 2004 contract. (Dion arb. brief, p. 7.)

17 7. Believing Dion to have breached his fiduciary duty as Vera's manager,
18 Vera ended their relationship. (Vera arb. brief, p. 3, ¶ 2.)

19 8. Through attorney Craig Nicholas, Vera requested arbitration of his
20 dispute with Dion. (Nicholas's 7/11/07 letter to Commission Executive Officer Garcia.)
21 On September 17, 2007, an arbitration hearing was held before State Athletic Commission
22 Executive Officer Armando Garcia. (RT 2.) Attorney Craig Nicholas appeared on behalf of
23 Vera, attorney Cummings appeared on behalf of Dion, and SDAG Karen Chappelle
24 appeared on behalf of the arbitrator. (RT 2.) At the conclusion of the hearing, the matter
25 was submitted. (RT 134.)

26 9. On October 20, 2007 Vera fought Tim Sylvia, the final fight pursuant
27 to the original UFC promotional contract and lost a unanimous decision.

28 //

1 Claimant Vera's Arguments

2 10. Vera argues that Dion breached his fiduciary duty to Vera in three
3 ways. (Vera arb. brief, pp. 4-6.) First, Dion misrepresented UFC contract negotiations.
4 Vera maintains that after he defeated Silva and Mir, the UFC became interested in making
5 him the next challenger for the heavyweight title. Having been told by Vera about the
6 importance of obtaining a multi-fight, signing-bonus contract with the UFC, Dion
7 misrepresented to Vera that the UFC would not offer him a signing bonus, when in fact the
8 UFC had offered Vera a \$100,000 signing bonus. Because of Dion's misrepresentation,
9 Vera claims he lost his "number one contender status and an opportunity to fight for the
10 title," he lost "months of fighting in the prime of his career," and he lost his trust of Dion.
11 (Vera arb. brief, pp. 3-4.)

12 11. Second, Vera contends that Dion breached his fiduciary duty by
13 misrepresenting to Vera that a sponsor offered less money than what was offered, with
14 Dion planning to pay a kickback to someone who provided the referral. (Vera arb. brief, p.
15 5.)

16 12. Third, Vera maintains Dion breached his fiduciary duty by harming
17 Vera's relationship with the UFC and potential sponsors. Vera claims that the overly
18 aggressive and abrupt Dion "treated UFC representatives in a caustic and unreasonable
19 manner," and "verbally berated a potential sponsor during negotiations, ending the
20 potential sponsorship opportunity." (Vera arb. brief, p. 5.)

21 Respondent Dion's Arguments

22 13. Dion first objects to consideration of Vera's sponsorship dispute
23 because it is based on the August 2004 contract that was not approved by the
24 Commission, and not the Commission-approved and therefore controlling September
25 2005 contract. (Dion arb. brief, pp. 7-8.) Next, he denies breaching the September 2005
26 contract, since he obtained a UFC contract providing for three fights within the year.
27 (Dion arb. brief, p. 9, citing Dion's Exh. 35.) Dion claims that Vera is the one who
28 breached their contract by advising the UFC that Dion was no longer Vera's manager.

1 (Dion arb. brief, p. 9.) (Dion also accuses Vera of slandering him on the Internet.)

2 14. Regarding Vera's claim that Dion failed to disclose a \$100,000 signing
3 bonus offered by the UFC, Dion questions why an e-mail set forth in Vera's Exhibit 26 was
4 only sent to UFC representative Dana White and to a Lorenzo Fertitta, and not sent to
5 Dion. Dion maintains that Vera's attempt to use the e-mail to void the September 2005
6 contract is questionable, since the purposed e-mailed offer was not communicated to
7 Dion. (Dion arb. brief, p. 10.) (Dion suggests that the UFC and Vera "were working
8 together behind the scene" to exclude Dion and terminate his 33 and 1/3 percent
9 commission. Dion maintains that the UFC committed intentional interference with Dion's
10 contract with Vera. Dion asks the Commission to independently investigate the UFC's
11 actions. (Dion arb. brief, p. 11.))

12 15. Next, Dion argues that Vera submitted no evidence regarding the
13 Philippine offer, and it is irrelevant. While individuals from the Philippines expressed an
14 interest for Vera to fight there, Vera could not fight anywhere without the UFC's
15 permission. Citing Exhibit 54, Dion states he notified the UFC about a possible fight in the
16 Philippines, but that the UFC never responded. Dion contends the lack of response was
17 due to the UFC's intentional interference with Dion's contract with Vera, so that the UFC
18 and Vera could reduce their expenses by Dion's 33 and 1/3 percent commission. (Dion
19 arb. brief, p. 11.)

20 16. Dion maintains that in March 2007, he forwarded an accounting that
21 neither Vera nor his attorney disputed, and that the expenditures and receipts show Dion's
22 good-faith efforts toward Vera. (Dion arb. brief, p. 12, citing Exh. 1 in Financial
23 Documentation Folder.) Dion requests the arbitrator order that Dion be paid 33 and 1/3
24 percent of any money paid by the UFC to Vera or any other entity or person for any
25 fighting activities until September 2010. (Dion's arb. brief, p. 14.)

26 DISCUSSION

27 17. The problem facing the Arbitrator in this matter is that the item
28 that is the source of the dispute between the parties is an oral bonus allegedly

1 promised as a part of renegotiation of a UFC promotional contract that everyone
2 agrees existed, but is outside specific terms of the Boxer-Manager contract. The
3 Arbitrator's problem is compounded by the terms of the 2004 Boxer-Manager
4 contract which was not approved by the Commission. This proposal contained
5 much broader remuneration for Dion, as it went beyond purses and included a
6 manager's share of all remuneration paid to Vera for any purpose, including signing
7 bonuses. Essentially the parties have now come before the Commission seeking
8 adjudication of an outside agreement with a Nevada promoter that was not ever
9 presented to the Commission for its approval and seeking compensation under a
10 contract that was not accepted by the Commission.

11 18. The Commission has no jurisdiction to arbitrate or adjudicate the
12 UFC promotional contracts, as these appear to uniformly confer jurisdiction to litigate
13 them in the courts of Las Vegas, Nevada. However, in determining whether the conduct of
14 the parties to the California Boxer-Manager warrants the relief sought in this arbitration,
15 the arbitrator may consider the actions of all persons directly or indirectly involved.

16 19. By the terms of the Boxer-Manager contract signed by the parties and
17 accepted by the Commission, Manager is only entitled to compensation in the form of a
18 fixed share of each of Boxer's purses during the term of the contract. No mention is made
19 of compensating Manager for either signing bonuses or other bonuses paid by a third party
20 promoter or sponsor in the contract in effect, and no addendum was ever filed that would
21 have authorized this. For that reason, the parties must adjudicate their dispute over the
22 bonuses pursuant to the terms of the promotional contract or in the courts.

23 20. For purposes of this arbitration, it is necessary to determine whether
24 Manager acted reasonably and in the best interests of Boxer in terms of the allegedly
25 offered promotional and endorsement opportunities. There was no evidence presented
26 that Manager would in any way have benefitted from the rejection of a bona fide
27 promotional or endorsement opportunity. Even though the Boxer-Manger contract
28 approved by the Commission limits Manager's compensation to purses from boxing

1 contests, exhibition or training exercises (Clause A1) it is in Manager's interests to use his
2 best efforts in all areas on behalf of Boxer and career.

3 21. What is clear from the record is that Boxer sought compensation in
4 liquid form and made this known to Manager. In the case of one of the endorsement
5 allegedly offered, it appears that the compensation offered includes stock in lieu of cash.
6 Knowing the wishes of Boxer, it cannot be said that rejection of such an offer by Manager
7 was unreasonable.

8 22. While the record contains some discussion about a possible fight in
9 the Philippines, it appears that there was never a firm offer for this show or shows and it
10 remained just a discussion.

11 23. In the case of the promotional contracts with UFC, the arbitrator
12 notes that the compensation and bonus allegedly offered consists of a Post-it note. While
13 it is not disputed by the parties that the note was apparently written by Dana White,
14 President of the UFC, the existence or non-existence of the elusive signing bonus appears
15 to have come from Mr. Silva, who is identified as a matchmaker and an attorney at
16 different places, "explaining" the Post-it note. There is also a series of letters in the
17 evidence from Kirk Hendrick, who is identified as Chief Operating Officer of UFC. It
18 seems to the arbitrator that the ambiguity of the Post-it note, which appears to be the root
19 of the current dispute, could have been avoided if UFC had put their offer in the form of a
20 proposed contract and sent it to Manger.

21 24. It is the responsibility of the Commission to not only ensure fighter
22 safety, but to act in the best interests of boxing and martial arts in the enforcement of
23 contracts approved by it. The boxer has not met his burden of proving that the manager
24 has engaged in illegal conduct in violation of the laws and regulations of the Commission
25 which would establish legal cause for issuance of an order terminating the contract
26 however, the evidence has established that the personal relationship between the boxer
27 and manager has deteriorated to the point where an impasse exists has been created
28 which is not good for either party or for boxing or mixed martial arts in general.

1 25. A boxer-manager contract by its very nature is a contract for the
2 performance of personal services and contains an implied covenant and promise by both
3 parties of good will, trust and mutual cooperation, which in this case has been frustrated.
4 There was testimony that this breakdown of respect and of trust between the parties has
5 resulted in verbal exchanges leading the arbitrator to conclude that the boxer and manager
6 are presently incompatible to the extent that it would be contrary to the best interests of
7 boxing and the boxer to force him to remain under contract until the expiration of the
8 term. It is therefore consistent with the best interests of boxing and the boxer to allow the
9 boxer to terminate the current contract upon terms and conditions which are fair, just and
10 equitable to both parties.

11 26. There does not appear to be a dispute between Vera and Dion that
12 Dion has been reimbursed for expenses and purses up through the Mir bout. Dion asserts
13 that he is entitled to 1/3 of Vera's purses through the end date of the contract in 2010.
14 While Dion is entitled to some of the benefit of his bargain with Vera, it does not appear to
15 the arbitrator that this request is justified. However, Dion negotiated the original
16 promotional agreement with UFC, and he should be entitled to the Manager's 1/3 share of
17 the last fight purse in that original promotional agreement.

18 27. In addition to 1/3 of Vera's purse from the Sylvia fight, the arbitrator
19 finds that based upon the figures under discussion between UFC and Dion, and what was
20 represented to Vera by Silva about the Post-it note, that a fair projection of Vera's purses
21 through 2010 could range from several hundred dollars to in excess of a million dollars.
22 However, the arbitrator has no information on the extent of Vera's injuries but can
23 estimate based upon his knowledge, training and experience that the effect the loss in
24 November, 2007 will have a considerable negative impact on that amount. Accordingly,
25 the Arbitrator determines that the reasonable likelihood of reimbursement from boxer's
26 future purses is the sum of \$100,000. This amount is found to be fair, just and equitable
27 and can either be paid by boxer or any future manager or may come from boxer's future
28 purses.

DETERMINATION OF ISSUES

1
2 1. The Arbitrator has jurisdiction over the parties and over the subject
3 matter of the arbitration, but not over the promotional agreement signed by both Vera and
4 Dion with UFC Promotions and any subsequent promotional agreements not filed with the
5 Commission and approved by them.

6 2. Vera has not met his burden of proving that Dion engaged in illegal
7 conduct in violation of the laws and regulations of the Commission which would establish
8 legal cause for issuance of an order terminating the contract or that Dion failed to act in a
9 reasonable manner in discharging his obligations as a manager as provided for in the
10 contract. However the evidence has demonstrated that the level of distrust that exists
11 between Vera and Dion is such that termination of their contract would be in the best
12 interests of mixed martial arts and the parties.

13 3. The Arbitrator does not have jurisdiction to award monetary damages
14 pursuant to the boxer-manager contract, but may act to equitably terminate the Boxer-
15 Manager contract signed in 2005 in a manner consistent with the best interests of boxing
16 and martial arts.

17 4. Based on the foregoing, the Arbitrator hereby issues the following:

ORDER

18
19 1. The petition for termination of the Boxer-Manager contract signed on
20 September 10, 2005 between Brandon Vera, Mixed Martial Artist and Marc Dion, Manager
21 is granted and the contract is hereby ordered terminated.

22 2. Boxer shall pay to Manager the sum of 1/3 of the purse paid to Vera
23 from the fight with Tim Sylvia in November, 2007. In addition, Vera
24 shall pay, or cause to be paid, the sum of one hundred thousand
25 dollars (\$100,000.00) to Dion from his future purses.

26 3. Payment of the sums called for by this order shall be accomplished
27 by the Commission withholding one-third of each future purse
28 earned by the boxer in California, or by the commission in any sister

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jurisdiction which recognizes the California Commission, and causing the same to be paid to Marc Dion until the balance is paid in full.

- 4. Should Vera seek to obtain another manager at any time prior to full payment or satisfaction of the award, the entire unpaid balance, if any exists, shall be due and owing, and some accommodation to pay the remaining amount must be made before Vera will be permitted to enter into a new manager relationship in California or in any jurisdiction which recognizes the lawful orders of the California Commission and the new manager acknowledge that he or she has been provided with a copy of this decision.
- 5. Vera and any new manager he obtains shall truthfully report to the Commission the amount of money actually paid to him for each bout wherever it takes place and the failure to accurately and truthfully report and account for purse monies will constitute grounds to suspend the license of Vera as well as the license of any future manager of Vera or any promoter who falsely reports amounts of purse money in any bout agreement or in any bout in which Vera participates.

This Decision shall become effective on March 28, 2008

DATED: March 3, 2008


 ARMANDO GARCIA, EXECUTIVE OFFICER
 STATE ATHLETIC COMMISSION
 Arbitrator

Attorney for Arbitrator

Exhibits Testified to at Arb. Hearing:

- 1: pre-Commission-approved contract (RT 18)
- 2: Commission-approved contract (RT 19)
- 3: 3/24/06 letter from White to Vera stating that the UFC agreed to pay Vera a signing bonus (RT 50-51, 98)
- 7: Vera/Dion's counter-offer to UFC, which Dana White forwarded to Silva (RT 22, 87)
- 9: UFC's extension letter (RT 75)
- 31: UFC offer of 50/50, 60/60, 70/70, and if Vera became a champion, 90/90, 100/100, 110/110 plus \$100,000 signing bonus (RT 88, 92, 97)
- 39: 12/4 original UFC "post-it" offer (RT 58, 62)
- 41: Dion's counter-offer e-mail to Dana White in response to "post-it" offer (RT 65, 67, 102)
- 42: Dion's fax to Vera of the scratch paper proposing the final, full counter-offer to White (RT 66-69)
- 43: Dion's e-mail to Dana White regarding 12/14 phone conversation (RT 71)
- 44: Joe Silva 12/21 phone call to Dion (RT 72)
- 45: Vera negotiating in the Philippines (RT 73)
- 46: Dion informing White that Vera and Dion "decided to pass" because Silva's numbers are half of what White offered four days earlier (RT 73)
- 50: Dion sending mass e-mails re sponsorships (RT 75-76)
- 55: 3/6/07 e-mail from Dion to Joe Silva; Dion asked Silva is there was any news on Vera's next fight (RT 83, 119)
- 65: 12/14 Elite XE press conf. W/ Dion, Vera and Dion-managed boxer, K.J. Nunes (RT 69-70)

DECLARATION OF SERVICE BY MAIL

Re: **BRANDON VERA**, Mixed Martial Artist and **MARK DION**, Manager

State Athletic Commission Case No. 091707-2

I am over 18 years of age, and not a party to the within cause; my business address is 300 South Spring Street, Suite 1702, Los Angeles, California 90013; I served a true copy of the attached **DECISION OF THE ARBITRATOR**, on each of the following, by placing same in an envelope addressed as follows:

STEPHEN T. CUMMINGS, ESQ.
835 Fifth Avenue, Suite 303
San Diego, CA 92101-6136

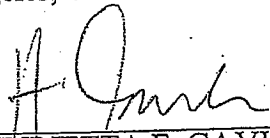
CRAIG NICHOLAS, ESQ.
Nicholas & Butler, LLP
225 Broadway, 19th Floor
San Diego, CA 92101

I hereby certify that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Each said envelope was then, on **March 6, 2008**, sealed and deposited in the United States Mail at Los Angeles, California, the county in which I am employed, with the postage thereon fully prepaid.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on **March 6, 2008**, at Los Angeles, California.


HENRIETTA E. GAVIOLA
Declarant