

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF DISCIPLINARY

PROCEEDINGS AGAINST:

STANLEY JOHNSON,

FINAL DECISION AND ORDER

RESPONDENT

LS0105221RBX

The State of Wisconsin, Department of Regulation and Licensing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Department of Regulation and Licensing.

The Division of Enforcement and Administrative Law Judge are hereby directed to file their affidavits of costs with the Department General Counsel within 15 days of this decision. The Department General Counsel shall mail a copy thereof to respondent or his or her representative.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 19th day of March, 2002.

Oscar Herrera

Department of Regulation and Licensing

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION & LICENSING

IN THE MATTER OF

DISCIPLINARY PROCEEDINGS AGAINST

STANLEY JOHNSON

PROPOSED DECISION

Respondent

LS0105221RBX

The parties to this proceeding for the purposes of § 227.53, Stats., are:

Stanley Johnson

3255 North 29th Street

Milwaukee, WI 53216

Department of Regulation & Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708

Department of Regulation & Licensing
Division of Enforcement
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708

This matter was commenced with the filing of a Complaint and Notice of Hearing on May 22, 2001, captioned in *The Matter of Disciplinary Proceedings Against Championship Productions, Inc. and Stanley Johnson*. A chronological sequence of the proceedings thereafter includes the following:

- Championship Productions, Inc. (Championship) filed its Answer to the Complaint on June 8, 2001. Respondent Stanley Johnson (Mr. Johnson) failed to file an Answer.
- A prehearing conference was conducted on June 28, 2001. Participating were John R. Petitjohn, attorney for Championship; Charles J. Howden, attorney for complainant, and the administrative law judge (ALJ). Mr. Johnson did not participate.
- A second prehearing conference was attempted by telephone on July 11, 2001, for the purpose of eliciting Mr. Johnson's Answer, if any. Mr. Johnson was not available to participate and the conference was terminated.
- A third telephone prehearing conference was attempted on July 19, 2001. Mr. Johnson did not answer the telephone and a message was left on his answering machine. Mr. Johnson subsequently returned the call and indicated that he would make himself available for a conference to be conducted on August 1, 2001. Mr. Johnson could not be reached on August 1, 2001.

On October 8, 2001, Charles J. Howden, attorney for the complainant, filed his *Complainant's Notice and Motion for Default Judgment Against Stanley Johnson*. The stated grounds for the Motion were set forth in an accompanying Affidavit by department Investigator Angi Jerney, which included Ms. Jerney's sworn statement supporting the allegations of the Complaint as they relate to Mr. Johnson, and the averment that Mr. Johnson neither filed an Answer to the Complaint nor appeared to defend against the allegations of the Complaint.

A hearing on the Motion was conducted on October 18, 2001, at which time testimonial and documentary evidence was presented supporting the allegations of the Complaint as they relate to Mr. Johnson. Mr. Johnson did not appear for the hearing, nor did anyone appear purporting to represent him. Accordingly, the motion for default was granted, and the ALJ ordered as follows:

NOW, THEREFORE, IT IS ORDERED that, pursuant to § RL 2.14, Wis. Admin. Code, complainant's Motion for Default Judgment is granted. Following the hearing in this matter, the administrative law judge will make findings and conclusions relating to Mr. Johnson's conduct in this matter consistent with the Complaint and other evidence of record. Should Mr. Johnson appear at the hearing, he shall be permitted to testify in mitigation, but shall not be permitted to submit evidence contravening the allegations of the Complaint.

On January 7, 2002, the ALJ received notification that a stipulated resolution of the matter as it related to Championship had been reached. The ALJ thereupon canceled the scheduled hearing in the matter, and the Department ultimately accepted the parties' Stipulation on January 25, 2002. A copy of the Stipulation is attached hereto and made a part hereof.

Based upon the foregoing, the ALJ recommends that the Department accept as its final decision in this matter as it relates to Stanley Johnson the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Championship Productions, Inc., (Championship) is a Wisconsin corporation having an address of 125 South Jefferson Street, Green Bay, Wisconsin 54301
2. Championship is licensed as a "Professional Club" as that term is defined in section RL 110.02(6) of the Wisconsin Administrative Code, which states: "'Professional club' means a club licensed under ch. 444, Stats., to conduct professional boxing shows."
3. The professional club license number of Championship is 262-006.
4. The president of Championship is John R. Petitjean, (Mr. Petitjean).
5. Stanley Johnson (Mr. Johnson), date of birth February 11, 1951, was at all times relevant hereto licensed as a boxing second, license # 265-019. Mr. Johnson's address of record is 3255 North 29th Street, Milwaukee, WI 53216. The license is currently in a non-renewed status, and Mr. Johnson has the right to renew the license upon payment of an annual fee to the Department of Regulation & Licensing (Department).
6. A valid professional boxing show permit for each boxing "show" sponsored by a professional club is required pursuant to the provisions of section 444.02 of the Wisconsin Statutes. A "show" is defined in section RL 110.02(7) of the Wisconsin Administrative Code as follows:

(7) "Show" means any boxing or sparring event the admission to which requires the purchase of a ticket or the payment of anything of value. "Show" and "exhibition" as used in ch. 444, Stats., have the same meaning.
7. Section RL 110.02(8) of the Wisconsin Administrative code, defines "sparring" to include an exhibition bout.
8. On or about September 20, 1999 Championship, acting through Mr. Petitjean, filed with the Department of Regulation and Licensing, an application for a show permit for October 7, 1999.
9. Section RL 113.01, Wis. Admin. Code, requires that each boxer participating in a professional boxing show be licensed by the Department under chapter RL 115, and approved under section RL 110.04 of the Wisconsin Administrative Code.
10. On October 5, 1999 Championship was issued a professional boxing show permit for a show to take place on October 7, 1999. This permit listed the names of seven licensed and approved boxers for the show. In addition to these approved boxers, eight persons were identified as requiring further information prior to being approved for participation in the October 7, 1999 show.
11. Mr. Johnson was not included in the names of licensed boxers or those needing additional information.
12. Championship presented the October 7, 1999 show at the Stadium View Bar in Green Bay, Wisconsin. Members of the public were charged an admission to view this show.
13. During the October 7, 1999 show, Championship, acting through its representative, Alan King, allowed Stanley Johnson to participate as a boxer in a bout with licensed boxer Frano Budimir.
14. At no time relevant hereto was Stanley Johnson licensed as a boxer in Wisconsin.
15. State Inspector Angel Villarreal informed King, prior to the Johnson-Budimir bout, that the bout was not approved.

CONCLUSIONS OF LAW

1. The Department of Regulation and Licensing has jurisdiction in this matter pursuant to sec. 444.02 of the Wisconsin Statutes.
2. By participating as a boxer in the October 7, 1999 show without a boxing license, Mr. Johnson has violated § RL 113.01(1), Wis. Admin. Code, and is therefore subject to discipline under § RL 116.01(4), Wis. Admin. Code

ORDER

NOW, THEREFORE, IT IS ORDERED, that the license of Stanley Johnson as a boxing second, and any right to renew that license, is hereby suspended for a period of six months from the date of the Final Decision and Order of the department adopting the terms of this proposed Decision.

IT IS FURTHER ORDERED that Stanley Johnson is hereby assessed a portion of the costs of this proceeding, consisting of the costs of the hearing on complainant's *motion for default judgment*, and the costs associated with the preparation of this Proposed Decision.

OPINION

Under § RL 2.14, Wis. Admin. Code, failure by the respondent to file an Answer to the Complaint or to appear for the hearing conducted on complainant's Motion for default, permits the department to make findings and enter an order on the basis of the Complaint and other evidence of record. Moreover, there was abundant evidence adduced at the default hearing to support the Findings of Fact set forth above.

First, there is the sworn affidavit of Cletus J. Hansen, Division Administrator for the Department's Division of Business Licensure and Regulation, attesting to the fact that Mr. Johnson was not licensed as a professional boxer in Wisconsin on or after October 7, 1999.

Second, there is the testimony of Robert Lynch. Mr. Lynch has been in amateur and professional boxing since the 1940's as a competitor, boxing second, referee, promoter and manager, and he currently manages Eric Morel, reigning WBA Flyweight title holder. He also has served as an inspector of boxing shows for the Department. Mr. Lynch attended the October 7, 1999 show in Green Bay, serving as one of the judges, and personally observed Mr. Johnson participating in one of the matches. His testimony includes the following:

Q. (by Mr. Howden) And did you intend to attend the show as a spectator?

A. That was my intention. I had in fact purchased tickets for myself and a friend of mine that I had picked up at Appleton on the way up to Green Bay, and we purchased tickets and were having a hamburger and a beer prior to the show in the Stadium View Bar.

Q. And -- and then what happened at that time?

A. We were approached by another friend of mine from the sport of boxing that was serving as the chief of officials for that show. In other words, his responsibility was to -- to see to it that there were three qualified judges available to judge the show. He told me that two of this people had failed to arrive and that he was worried that he might not have all three judges for the show. He was to be one himself, and his name is Mr. Sprague. And he asked if I would serve as a second judge, and my companion, my friend, Mr. Reed, would also help him judge. So we said yes, we'd be available if his other judges didn't arrive by show time.

Q. Did you then act as a judge that evening?

A. That's right. When -- another hour or so went by and the show was about to start, and he sent a person to come in and ask us if we would turn in our tickets and come in and serve as a judge through the entire show for him. That we did.

Q. Now, during that show did you have occasion to -- to see Stanley Johnson enter the boxing ring?

A. Yes. I -- I noted, I saw my friend, Stanley Johnson, enter the boxing ring.

Q. Now, had you known Mr. Johnson previous to that time?

A. Since about 1980 or '81 I've been acquainted with Mr. Johnson.

Q. So -- so you could identify him if -- if he was present at -- at this show?

A. Oh, yes, definitely. He's -- he's a real distinguished-looking person.

Q. Okay. So in fact you did see him, I understand; is that --

A. That's correct, I did.

Q. Did you see him enter the ring as a boxer?

A. Yes, sir. He entered the ring gloved and in boxing trunks and boxing shoes, prepared to box.

Q. And -- and he had an opponent to box with?

A. Yes, there was an opponent in the ring already, and I think the name was a Mr. Budamir.

Q. And did you judge the bout between them?

A. That's right. It was one of the I think six or seven actual bouts that took place, and I judged each and every bout.

Q. Now, did you have occasion at a later date to provide a tape of that bout to the Department of Regulation & Licensing?

A. That's correct. A tape of the show was mailed to me a few months, probably two months or so after the show. And I don't believe I even looked at it right away, but then after looking at it, I saw that the entire show was on that film, and so I brought that in to this Department of Regulation & Licensing, I guess it was in March of 2000. (Tr., pp. 8-10).

Mr. Lynch's testimony is credited, and the violation by Mr. Johnson is established by clear and satisfactory evidence.

It is well established that the objective of licensing discipline is the protection of the public by promoting the rehabilitation of the licensee and by deterring other licensees from engaging in similar misconduct. *State v. Aldrich*, 71 Wis. 2d 206 (1976). Punishment of the licensee is not an appropriate consideration. *State v. McIntyre*, 41 Wis. 2d 481 (1968).

The purpose of the requirement that boxers in Wisconsin be licensed, as testified by Mr. Lynch is twofold.

I think it probably originated as a protection for the boxers, knowing that they have gone through a medical exam and that they are who they purport to be. You usually have to show a good identification in order to be licensed so that you have the correct person fitting the correct name and that they are physically and emotionally ready to go into the ring and box. I think there was a secondary reason years ago, to protect the public from sham bouts, having people go in under assumed names and falling down very early in the fights.

Then they have what's called a pre-bout physical, which is done by the physician. Probably in this case, I think I can give you an example, if the show was to get underway at 8:00 p.m., they probably would schedule the pre-bout physicals at 5:00 or 6:00 p.m. so the doctor could see -- in this case, there were to be six bouts, and he'd be seeing twelve people, checking their eyes, their vital signs, heartbeat, lung -- lung capacity, listening for that. Vision is one of the very important things. He also would look at their hands to be sure that they don't have a currently broken hand. And then he rather assesses their mental state, and subtly checks that, and to see if they are smelling of alcohol or anything of that nature, right prior to the fight. It's separate from -- the licensing physical I believe can take place any time within 30 days of the bout, and I think it then is good for a period of one year, and the pre-bout physical is separate and distinct. That's the last resort to be sure that the people going into the ring are -- are who they purport to be and that they are healthy (Tr., pp. 13-14).

No one who follows boxing would deny the value of the physical examination administered to boxers prior to permitting them to enter the ring. It would appear that no real harm resulted from Mr. Johnson's appearing in this show, but that does not mitigate the seriousness of the violation. On balance, it is deemed that the interests of deterrence and rehabilitation militate for the conclusion that Mr. Johnson's license as a boxing second should be suspended for a period of six months. It is noted that the recommendation by complainant was that the license be suspended for two years, but it is also noted that Mr. Johnson's license expired on April 13, 2001, and his application for renewal was denied. Accordingly, the actual length of the suspension of his license will be approximately 18 months.

Finally, it is recommended that a portion of the costs of this proceeding be assessed against Mr. Johnson. There were originally two respondents involved in these proceedings, with the action against one of them being resolved by Stipulation and without assessment of costs. Mr. Johnson's failure to participate in these proceedings has resulted in the necessity to conduct a default hearing and to prepare a Proposed Decision, both of which involve Mr. Johnson exclusively. It seems appropriate then that these costs, at least, should be assessed against him. Appropriate because Regulation & Licensing is a program revenue agency, and the costs associated with the litigation of disciplinary actions, unless they are borne by the persons committing the acts leading to those actions, must be borne by licensees who have not engaged in unprofessional conduct.

Dated this 28th day of February, 2002.

Respectfully submitted,

Wayne R. Austin

Administrative Law Judge