

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ANTWUN ECHOLS	:	CIVIL ACTION
	:	
Plaintiff	:	
	:	
v.	:	
	:	
ARTHUR PELULLO &	:	
BANNER PROMOTIONS, INC.	:	NO. 03-1758
	:	
Defendants	:	

Newcomer, S.J.

April , 2003

**O P I N I O N**

Presently before the Court is Plaintiff's Motion for a Temporary Restraining Order. Upon careful consideration of the parties' submissions as well as the evidence and argument presented during a hearing in this matter, this Court finds that Plaintiff has failed to show the requisite irreparable harm and therefore, Plaintiff's Motion is denied.

**FINDING OF FACTS**

Plaintiff, Antwun Echols, a thirty-one (31) year old professional boxer, brings suit and asks this Court for injunctive relief preventing Defendants, Arthur Pelullo and Banner Promotions, Inc., from enforcing a November 1, 1999, promotional contract giving the Defendants exclusive rights in

promoting and representing Plaintiff in his capacity as a boxer. The suit contains various allegations concerning the validity of the contract as well as the Defendants' conduct in performance of the contract. Specifically, Plaintiff alleges that the contract is indefinite and therefore, unenforceable. In addition, the Plaintiff contends that the Defendants defrauded him of funds owed to him in association with a, so called, step-aside fee. Among other claims, the Plaintiff also alleges that the Defendants violated the Plaintiff's rights as protected by the Muhammad Ali Boxing Reform Act (15 U.S.C. § 6301 et seq.) when they failed to properly disclose the true amount of the step-aside fee.

In the Motion currently before the Court, Plaintiff seeks injunctive relief to enjoin the Defendants from asserting any rights under the parties' promotional agreement. The Plaintiff does not want the Defendants to represent him in negotiating an upcoming world title bout. Plaintiff is currently ranked as the top contender in the super-middleweight division by two of the three major sanctioning bodies in professional boxing. The International Boxing Federation ("IBF"), one of the sanctioning bodies, recently issued an edict mandating that the IBF champion, Sven Ottke, must defend the title against Plaintiff on or before June 15, 2003. Negotiations between the Plaintiff and Ottke concerning this bout must be completed no later than

April 16, 2003. Should the parties fail to come to an agreement, the IBF will call a "purse bid" for the bout. Under a purse bid any registered promoter may bid on the right to promote the fight. The highest bidder is awarded the promotional rights. If the highest bidder is not one of the party's original promoters, the original promoter loses the right to promote the fight. IBF rules provide that 25% of the purse bid amount is given to the challenger (the Plaintiff) and the remaining 75% goes to the champion (Ottke). Thus, for the purposes other than the purse awards and promoters, a purse bid fight differs little from a bout which is negotiated between the parties.

## **DISCUSSION**

Plaintiff brings a Motion for a Temporary Restraining Order under Federal Rule of Civil Procedure 65(b). However, because the requirements of Federal Rule of Civil Procedure 65(a) have been met (i.e., proper notice has been given), and the parties have consented, this Court will treat Plaintiff's Motion as a Motion for Injunctive Relief under Federal Rule of Civil Procedure 65(a).

### **I. Legal Standard**

The Supreme Court has provided that the standard "for

granting a preliminary injunction requires the plaintiff to show that in the absence of its issuance he will suffer irreparable injury and also that he is likely to prevail on the merits." Doran v. Salem Inn, Inc., 422 U.S. 922, 931 (1975). Plaintiff proposes a more demanding standard which requires the Court to consider four factors: (1) whether the movant has a reasonable probable probability of success on the merits; (2) whether irreparable harm would result if the relief sought is not granted; (3) whether the relief would result in greater harm to the nonmoving party; and (4) whether the relief sought is in the public interest. Plaintiff's Brief, p 1 citing Swartzwelder v. McNeilly, 297 F.3d 228, 234 (3d Cir. 2002). Regardless, for the reasons explained below, this Court is unable to grant the relief sought under either of the proposed standards.

## **II. Application**

Plaintiff raises two lines of argument in an attempt to satisfy the standards necessary for a preliminary injunction. They are as follows: (1) Defendants' continued representation in negotiating the world title bout will injure Plaintiff financially; and (2) Defendant's continued representation will detrimentally effect Plaintiff's career.

## **A. Irreparable Harm**

### **1. Financial detriment**

A majority of Plaintiff's written and oral argument has focused on the potential for financial loss should the Defendants continue to represent Plaintiff in the negotiations for the world title bout. Even if this Court were to agree with Plaintiff's contentions, such an argument is an exercise in futility. This Court is unable to ignore the long line of precedent holding that monetary damages alone are insufficient to constitute irreparable harm. Adams v. Freedom Forge Corp., 204 F.3d 475, 484 (3d Cir. 2000) ("The irreparable harm requirement is met if a plaintiff demonstrates a significant risk that he or she will experience harm that cannot adequately be compensated after the fact by monetary damages."); Acierno v. New Castle County, 40 F.3d 645, 653 (3d Cir. 1994) ("[T]o show irreparable harm a plaintiff must demonstrate potential harm which cannot be redressed by a legal or an equitable remedy following a trial. Economic loss does not constitute irreparable harm."); A.O. Smith Corp. v. F.T.C., 530 F.2d 515, 525 (3d Cir. 1976) (Irreparable harm "must be of a peculiar nature, so that compensation in money cannot atone for it."). Quite clearly, any financial harm sustained as a result of the Defendants' representation of the Plaintiff can be addressed and remedied by legal means following a trial. The Plaintiff has failed to show otherwise.

Surprisingly, Plaintiff fails to make the case that Plaintiff's possible financial damages are immeasurable and are therefore irreparable. However, even if Plaintiff had presented this line of argument it would fail as the Third Circuit has held, "[a]n inability to precisely measure financial harm does not make that harm irreparable or immeasurable." Acierno, 40 F.3d at 655. Plaintiff's reliance on financial detriment as a basis for irreparable harm is misplaced and therefore fails.

## **2. Detriment to Plaintiff's career**

In another attempt to show irreparable injury, Plaintiff argues that his career will be detrimentally effected should the Defendants continue to represent him during the negotiations for the world title bout. At the outset, the Court notes the obvious importance of such a fight to Plaintiff's career, however, is unpersuaded by Plaintiff's argument. Such an argument is entirely premised on the idea that the Defendants have the ability to somehow prevent Plaintiff from fighting in a world title bout. As the Court interprets the evidence, this is not the case.

The testimony elicited from Mr. Pelullo clearly shows that in the event the Defendants are unable to reach an agreement with their counterparts (Ottke's representatives) and the Plaintiff by April 16, 2003, a purse bid system will trigger. An

important aspect of the purse bid scenario, for these proceedings, is that such a scenario still affords the Plaintiff the exact opportunity to fight for the title without any interference by the Defendants. The only significant difference between a purse bid sponsored fight and one negotiated by the Defendants and their counterparts is the method, and possibly amount, of compensation for the Plaintiff and his opponent. Under a purse bid system, the Plaintiff would receive twenty-five percent of the gross proceeds of the fight instead of an amount negotiated between the Plaintiff and the Defendants. As explained in the preceding section, any funds which the Plaintiff was wrongfully denied can be recovered through a remedy at law following a trial. Because the Defendants cannot stymie the Plaintiff's ability to fight in June for the world title, the Plaintiff has failed to demonstrate how his career would be irreparably injured through the Defendants' continued representation. The Plaintiffs fail to argue or show any other means by which continued representation by the Defendants would harm Plaintiff's career.

**B. Prevail on the Merits**

The Plaintiff's failure to show irreparable harm prevents this Court from issuing a preliminary injunction. Therefore, any discussion of the Plaintiff's likelihood of

prevailing on the merits in this matter is unnecessary and will, consequently, be omitted.

AN APPROPRIATE ORDER WILL FOLLOW.

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Clarence C. Newcomer, S.J.

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O R D E R

AND NOW, this        day of April, 2003, for the reasons set forth in the accompanying Opinion, it is hereby ORDERED that Plaintiff's Motion for a Temporary Restraining Order/Preliminary Injunction (Documents 2 & 3) is DENIED.

AND IT IS SO ORDERED.

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Clarence C. Newcomer, S.J.