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Arbitration Panel Issues \$10 Million Sanction Against Lance Armstrong

An arbitration panel has issued a \$10 million sanction against Lance Armstrong arising out of perjured testimony he provided to the panel over 9 years ago. *Armstrong and Tailwind Sports Corp v. SCA Promotions, Inc., SCA Insurance Specialists, Inc.*, Final Arbitration Award (Feb. 4, 2015). A dissenting arbitrator would have held that the panel did not have authority to issue such a sanction and that it was contrary to the terms of a final settlement between the parties.

SCA Promotions, Inc. (SCA) agreed to pay Lance Armstrong certain sums if he won the Tour de France in successive years. After Armstrong won the requisite Tours, SCA contested its obligation to pay because it asserted that he had cheated. The parties engaged in arbitration. Before the arbitration was decided, the parties resolved their dispute in a settlement agreement that provided for SCA to pay Armstrong \$7.5 million. In the settlement, the parties also consented to future arbitration. Thereafter, the parties engaged in multiple additional arbitration proceedings before the panel. Among other things, Armstrong sought sanctions against SCA.

Armstrong later publicly admitted that he cheated to win the Tour de France. SCA then went back to the arbitration panel and asked that Armstrong be sanctioned. In a strongly worded decision, the majority of the panel held that

[t]he case yet again before this Tribunal presents an unparalleled pageant of international perjury, fraud and conspiracy. It is almost certainly the most devious sustained deception ever perpetrated in world sporting history. Tailwind Sports Corp. and Lance Armstrong have justly earned wide public condemnation. That is an inadequate deterrent. Deception demands real, meaningful sanctions.

The panel awarded \$10 million—the approximate amount of SCA’s prior payment to Armstrong and its attorneys’ fees.

Armstrong disputed the panel’s jurisdiction, but the panel concluded that it had jurisdiction because of the consent to its jurisdiction in the parties’ settlement agreement. The panel also held that Armstrong’s prior assertion that the panel had authority to sanction SCA constituted consent to its issuance of sanctions against him.

Armstrong further argued that that the panel did not have authority to issue sanctions even if it had jurisdiction over the issue. The panel found that it did have authority under the settlement agreement. It tied the sanction to the settlement agreement by finding that Armstrong’s perjury prevented SCA from performing its duties under the parties’ agreement, breached Armstrong’s contractual duty to arbitrate and interfered with the panel’s proper discharge of its duties.

One member of the panel strongly dissented. He would have held that the parties’ prior settlement was a final resolution that could not be set aside. He noted that the settlement arose in a situation wherein SCA was open to significant liability for selling insurance without a license. He also noted that the settlement was final, that the parties agreed not to challenge it and agreed that it was not based on any representations. According to the dissent:

The final decision by the Panel reminds me about the “do right rule.” It doesn’t matter what the law is, let’s just do what is right. Arbitrators, like judges don’t have that luxury, and the Panel exceeded its authority by indulging itself here.

If one accepts this sanction for what it is, it could only be done in equity. Equity demands that one will not suffer an injury for lack of a remedy at law, but equity also demands clean hands from one seeking to invoke it. As neither party comes with clean hands, then equity should not provide a remedy.

SCA has filed a complaint to confirm the arbitration award in the Dallas Texas District Court. It will be interesting to follow the course of the litigation and see whether the Dallas District Court confirms the award, and whether it agrees with the majority or the dissent.

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