

BEFORE
ARBITRATOR
JOHN C. CULVER

In the Matter of:

LLOYD BLOOM AND NORBY WALTERS,
d/b/a WORLD SPORTS &
ENTERTAINMENT, INC.,

Grievants,

v.

RONALD HARMON,

Respondent.

Case No. 11059-014

Place and Date of Hearing:

Washington, D.C.
June 10, 1987

Appearing for the Grievants:

Michael S. Feldberg, Esq.
Peter C. Neger, Esq.

Appearing for the Respondent:

Martin W. Rauch, Esq.

Witnesses:

Ronald Harmon
William Polian
Valerie Thomas
Norby Walters
Lloyd Bloom
Jesse Harmon

I. Background

This dispute involves a claim by the Grievants, Lloyd Bloom and Norby Walters, d/b/a World Sports & Entertainment, Inc., against Ronald Harmon, the Respondent, for fees allegedly owed for negotiating NFL player contracts on Mr. Harmon's behalf with the Buffalo Bills, and for the repayment of more than \$54,000 given to Mr. Harmon, his girlfriend, and members of his family. At all relevant times, Messrs. Bloom and Walters were Contract Advisors at least provisionally certified by the National Football League Players Association ("NFLPA"). Mr. Harmon is a player in the National Football League and a member of the NFLPA.

From the evidence and testimony presented at the hearing, it appears that while Mr. Harmon was a junior at the University of Iowa, he was contacted by telephone by Mr. Bloom, who expressed an interest in acting as his Contract Advisor. (Hearing Transcript (hereinafter "Tr.") at 30). Mr. Bloom and his colleague, Mr. Walters, who had represented clients in the entertainment industry, had recently formed a company called World Sports & Entertainment, Inc. ("WSE") with the intention of entering the sports representation business (Tr. at 186-187). They planned to begin by representing approximately five players in the 1986 NFL draft (Tr. at 177).

On or about March 9, 1985, Mr. Harmon met with Messrs. Bloom and Walters at their office in New York. Mr.

Harmon brought his father to the meeting, at Mr. Walters' invitation. (Tr. at 130). Mr. Walters explained to Mr. Harmon that he would be one of a handful of players that WSE would be representing, and that if Mr. Harmon performed as expected, he could obtain for him million dollar endorsements, as Mr. Walters had done for his clients in the entertainment industry.

At the meeting, Mr. Walters gave Mr. Harmon and his father a proposed representation agreement. Mr. Walters also read the contract to the Harmons. (Tr. at 34-35). After Mr. Harmon and his father reviewed the agreement, Mr. Harmon executed it, over his father's objections. (Tr. at 38, 136). The Agreement was identical to the Standard Form Agreement attached to the NFLPA Regulations Governing Contract Advisors (hereinafter "Regulations") as Exhibit C. See Claimant's Exhibit (hereinafter "Cl. Ex.") 1. The parties also entered into a second representation agreement, not relevant here, which covered negotiations in the United States Football League, Canadian Football League, or any other professional football league besides the NFL. See Cl. Ex. 2.

Although the parties agree that the representation agreement (hereinafter the "Agreement") was entered into on March 9, 1985, it was dated January 2, 1986, nearly 10 months in the future. The parties offer different explanations for post-dating the Agreement. The Grievants state that they wanted to give Mr. Harmon time to "walk away" if he decided

After Mr. Harmon signed the Agreement and Promissory Note, he began to receive payments from WSE.

to terminate the Agreement before January 2, 1986. Mr. Harmon says that the Agreement was post-dated because under the NCAA rules, he would be ineligible to play football at the University of Iowa if he signed an agreement with a Contract Advisor before January 2, 1986, when his college eligibility expired.

At their March meeting, the parties also signed a document evidencing an interest free loan of \$2,500 from WSE to Mr. Harmon, and Mr. Harmon executed a document entitled "Promissory Note," in which he agreed to repay WSE \$2,500 from the earnings he derived as a professional athlete. See Cl. Ex. 3. Mr. Walters had given Mr. Harmon the \$2,500 in cash at this meeting. (Tr. at 321.) At the same meeting, there was also agreement that WSE would provide additional money, at least \$250 per month, to Mr. Harmon until such time as a professional contract was negotiated. These future payments and the \$2,500 loan were presented to Mr. Harmon as a package that he would get if he signed the Agreement with WSE. (Tr. at 140, 349). The Grievants contend that the additional money was in effect a continuation of the \$2,500 loan. Mr. Harmon says that this money was not a loan, but was instead a stipend offered by WSE for living expenses, and to induce him to retain the Grievants as his Contract Advisors. After Mr. Harmon signed the Agreement and Promissory Note, he began to receive payments from WSE,

generally on a monthly basis, ranging in amounts from \$250 to \$2000. These payments began on April 8, 1985 and ended on or about August 1, 1986. On one occasion, WSE also paid Mr. Harmon's brother, Kevin, \$350. In addition to these monthly payments, WSE purchased plane tickets in substantial amounts for Mr. Harmon, his girlfriend and his brother, and also provided Mr. Harmon or members of his family with concert tickets. WSE also paid more than \$32,000 for the downpayment and insurance on a Mercedes-Benz automobile for Mr. Harmon at the end of June, 1986.

Mr. Harmon asserts without contradiction that WSE also paid him \$1,500 for revealing the telephone number of his college teammate, Devon Mitchell, so WSE could solicit him as a client. WSE also offered Mr. Harmon \$2,000 if he would introduce them to Larry Station, another teammate, but Mr. Harmon stated that he declined this offer. (Tr. at 155-156).

In April of 1986, Mr. Harmon was one of two players selected by the Buffalo Bills in the first round of the NFL draft. In May of 1986, Mr. Bloom accompanied Mr. Harmon to the Bills' minicamp, where he met William Polian, the General Manager of the team. (Tr. at 99). Sometime in June, Mr. Polian conveyed the Bills' initial offer of \$950,000 over four years to Mr. Bloom. (Tr. at 99-100). The offer was rejected after Mr. Bloom discussed it with Mr. Harmon.

Mr. Polian had five or six telephone conversations with Mr. Bloom in June and July, during which they decided to let the market dictate their negotiations. (Tr. at 101). What happened thereafter is in dispute. The Grievants assert that the Bills increased their offer to \$1.1 million. Mr. Harmon denies that such an offer was made. Mr. Polian does not recall whether such an offer was or was not made. (Tr. at 102). However, it is agreed that such an offer was not accepted; by mid-July, the Bills had communicated a higher offer of \$1.3 million to Mr. Bloom. (Tr. at 102).^{1/} On August 7, 1986, Mr. Bloom met with Mr. Polian at his office at the Bills' training camp in Fredonia, New York. By this time, Mr. Harmon was the last holdout from training camp. The Bills had just signed their other first-round draft choice, Will Woolford. Mr. Bloom and Mr. Polian spent approximately 2-1/2 hours in negotiations over Mr. Harmon's contract. (Tr. at 103). There was not much discussion about Mr. Harmon's salary, but there was substantial discussion about the Bills' purchasing a Rolls Royce automobile for Mr. Harmon as an "add on" to his signing bonus. (Tr. at 104). Mr. Polian was clear that the Rolls Royce was in lieu of any increase in the signing bonus, so the offer remained at \$1.3 million. (Tr. at 105). Mr. Polian and Mr. Bloom made plans

^{1/} Mr. Bloom testified that the \$1.3 million offer was given on August 7, 1986, not in mid-July.

to meet on the next day, August 8, 1986; in the interim Mr. Bloom telephoned Mr. Walters and Mr. Harmon, and apparently Mr. Harmon's brother, Derek, to discuss the offer. (Tr. at 355).

The parties disagree about what was decided during the telephone call or calls. Mr. Harmon asserts that the call took place on August 9, and that he told Mr. Bloom that he wanted to get into camp and conclude the negotiations as soon as possible. He also alleges that he dismissed WSE on that day. The Grievants, on the other hand, say that Mr. Harmon told Mr. Bloom that he would think about the offer for a few days. (Tr. at 355). It is undisputed, however, that Mr. Bloom did not show up for the meeting with Mr. Polian on August 8, but instead went to California. Mr. Polian does not recall being told by Mr. Bloom that their meeting was cancelled; Mr. Bloom says that he left word to such effect with Mr. Polian's office.

The next time the Grievants spoke to Mr. Polian was on August 12. They say that on the morning of the 12th, Mr. Polian communicated a final \$1.4 million offer to Mr. Bloom. (Tr. at 357). Mr. Polian denies that he communicated such an offer. (Tr. at 106). He says that he spoke to Mr. Walters on the afternoon of the 12th, but that no \$1.4 million offer was made. Instead, he asserts that Mr. Walters told him that he had been trying to reach Mr. Harmon, but was unable to do so. Mr. Polian testified that he then told Mr. Walters that

Martin Rauch was in his office and that he had produced an affidavit from Mr. Harmon which stated that Mr. Harmon was now being represented by Mr. Rauch. (Tr. at 108, Resp. Ex. 1). Mr. Polian explained that Mr. Rauch had contacted his assistant on August 11 and stated that he was now representing Mr. Harmon. Mr. Polian, through his assistant, informed Mr. Rauch that he would have to obtain an affidavit from Mr. Harmon stating that he had changed Contract Advisors. (Tr. at 109). Mr. Rauch submitted the Affidavit to Mr. Polian on August 12; when Mr. Walters telephoned on that date, Mr. Polian told him that he was obligated to deal with Mr. Rauch, and not WSE, with respect to Mr. Harmon's contract. (Tr. at 108).

Mr. Rauch and Mr. Polian engaged in extensive negotiations throughout August 12, and reached an agreement in the early morning hours of August 13. (Tr. at 109, 111). Mr. Harmon signed contracts with the Buffalo Bills which provide for the following base salaries:

| | |
|-------|-----------|
| 1986: | \$150,000 |
| 1987: | \$175,000 |
| 1988: | \$225,000 |
| 1989: | \$275,000 |

See Cl. Ex. 4. In addition, the Bills agreed to pay Mr. Harmon a signing bonus of \$300,000 on January 1, 1987 and another \$300,000 on January 1, 1988. Id. Each of the contracts also provided for various playing time and performance bonuses.

On September 11, 1986, WSE filed a grievance against Mr. Harmon, requesting payment of fees for negotiating Mr. Harmon's contracts with the Buffalo Bills, in accordance with the parties' Agreement. WSE also sought repayment of more than \$54,000 for what it characterized as "miscellaneous living and automobile expenses." Mr. Harmon filed an answer to the grievance on October 8, 1986, claiming that the Agreement and loan documents were, for several reasons, illegal, void and unenforceable. Mr. Harmon denied that WSE carried out substantial negotiations for him, and asserted that he discharged WSE before a \$1.4 million offer was made to him. Mr. Harmon also denied that WSE was entitled to reimbursement of \$54,000. Finally, Mr. Harmon questioned the jurisdiction of this Arbitrator over a dispute that he claimed was not governed by the Regulations.

On January 6, 1986, WSE appealed their grievance to arbitration. WSE then instituted a civil action against Mr. Harmon in the New York Supreme Court on February 1, 1987, seeking the same relief as requested in their grievance. The Court ordered the action stayed pending this arbitration. On June 1, 1987, WSE filed a motion to dismiss the grievance. The motion was denied, and an arbitration hearing was held on June 10, 1987. The parties filed post-hearing briefs on August 28, 1987.

WSE concedes that its negotiations caused the Bills to increase their offer to Mr. Harmon from \$950,000 to \$1.4 million. Although WSE concedes that it did not consummate

II. Issues

- A. Is WSE entitled to compensation for negotiating Mr. Harmon's contracts with the Buffalo Bills?
- B. Must Mr. Harmon reimburse WSE for over \$54,000 in miscellaneous living and automobile expenses?

III. Relevant Authority

- Section 4: Agreements Between Contract Advisors and Players: Maximum Fees
- Section 5: Requirements Concerning Contract Advisor's Conduct
- Section 7: Arbitration Procedure

IV. Contentions of the Parties

A. Contentions of WSE

WSE contends that on March 9, 1985, the parties entered into their Agreement, which appointed WSE as Mr. Harmon's exclusive agent for negotiating a professional football contract. It asserts that Mr. Harmon executed the Agreement without undue pressure and of his own free will, and for that reason the Agreement was valid and enforceable. The Grievants claim that the principal reason the Agreement was postdated to January 2, 1986 was not for any illicit purpose, but to give Mr. Harmon an opportunity to change his mind and "walk away." WSE argues that its negotiations caused the Bills to increase their offer to Mr. Harmon from \$950,000 to \$1.4 million. Although WSE concedes that it did not consummate

the deal between Mr. Harmon and the Bills, it maintains that it would have done so had Mr. Harmon not prematurely terminated the Agreement. Thus, WSE contends that it performed its obligations under the Agreement, and that Mr. Harmon has breached it by not paying WSE the compensation provided for under Section 2 of the contract.

WSE also asserts that Mr. Harmon has wrongfully refused to repay money that it loaned to him. It notes that Mr. Harmon admitted to signing loan papers for \$2,500 on the day that the parties entered into their Agreement. Moreover, the Grievants claim that from March 1985 through August 1986 Mr. Harmon received additional loan proceeds, usually by wire transfer, in the total amount of \$8,135. They claim that Mr. Harmon requested this money to cover his monthly financial needs, and that it was part of the deal Mr. Harmon required in order to sign the Agreement.

WSE argues that Mr. Harmon was also given over \$12,157 worth of airline tickets for himself, his brother Kevin, and his girlfriend. Moreover, it contends that it made downpayments totaling \$31,517 for a Mercedes Benz automobile for Mr. Harmon, plus \$621 for insurance costs. Since Mr. Harmon has not reimbursed WSE for any of these so-called "loans," WSE claims that it is entitled to be repaid.

Thus, the Grievants request an award of the compensation provided for in the parties' Agreement, and

repayment of \$54,924.42 they claim is owed them by Mr. Harmon.

B. Contentions of Mr. Harmon

Mr. Harmon contends that the Agreement between him and WSE was illegal, void and unenforceable, because it violated the NFLPA Regulations and the NCAA Constitution. He asserts that WSE violated the NFLPA Regulations because it paid him money to induce him to hire WSE to serve as his Contract Advisor and to solicit other college athletes. He says that WSE provided materially false information to him by stating that the post-dated agreement would not violate the NCAA Constitution. Mr. Harmon further states that Mr. Walters claimed to be a certified contract advisor when in fact he was not.

Mr. Harmon contends that the Agreement violated § 3-1-(c) of the NCAA Constitution, which renders a student athlete ineligible to participate in an intercollegiate sport if the individual contracts to be represented by an agent in the marketing of the individual's athletic ability or reputation in a sport. In addition, Mr. Harmon contends that the advancement of monies to him constituted an "extra benefit" prohibited by §3-1-(g)-(5) of the NCAA Constitution. He asserts that WSE's actions in this regard constituted an interference with the contractual relationship between himself, Iowa University, and the NCAA.

Mr. Harmon also argues that the Agreement was unconscionable because of the unequal bargaining position that existed between him and WSE. While WSE had experience in contractual matters, Mr. Harmon submits that he was a college student who had no prior business experience. He also asserts that WSE engaged in misrepresentation and fraud by telling him that Mr. Walters would be personally involved in the negotiation process and that Mr. Walters was in fact a certified contract advisor.

Even if the Agreement were valid, Mr. Harmon claims that WSE failed to perform under it. First, Mr. Walters did not communicate with the Buffalo Bills until August 12, 1987. Second, Mr. Harmon argues that Mr. Bloom did not engage in substantial negotiations with the Bills. He claims that, prior to August 7, Mr. Bloom and Mr. Polian merely agreed to follow the trend set by other player negotiations. Although Mr. Bloom and Mr. Polian had a meeting on August 7, Mr. Harmon asserts that Mr. Bloom missed an important meeting with Mr. Polian on August 8. Mr. Harmon also denies that WSE ever received a \$1.4 million offer from the Bills. For these reasons, he maintains that WSE is not entitled to any fees for negotiating with the Buffalo Bills.

With respect to the more than \$54,000 for which WSE requests repayment, Mr. Harmon argues that there was no written evidence of a loan except for the \$2,500 promissory note executed on or about March 10, 1985. Since there was no

written agreement for the other money allegedly loaned, Mr. Harmon claims that WSE is barred from recovery under the New York Statute of Frauds. Moreover, Mr. Harmon claims that the only amounts to be reimbursed under the parties' Agreement were expenses incurred in negotiations. The only item that he asserts was reimbursable under the Agreement was \$150 in air fare for Mr. Bloom to fly to Buffalo to meet with Mr. Polian on August 7, 1986.

Based on the foregoing, Mr. Harmon contends that he had the right to terminate his Agreement with WSE because WSE had breached the terms and conditions of the NFLPA Regulations. Moreover, he asserts that WSE has failed to prove that it is entitled to reimbursement in the amount of over \$54,000. Finally, Mr. Harmon argues that WSE is not entitled to an award based on quantum meruit because it has not requested it, nor has it offered proof in support of such a claim.

V. Discussion and Analysis

A. Issue A - Fees for Contract Negotiations

The Agreement between the parties, executed on March 9, 1985 but dated January 2, 1986, was identical to the standard form agreement attached to the NFLPA Regulations as Exhibit C. The standard agreement, developed by the NFLPA Board of Player Representatives, was intended to protect the interests of NFL players and to establish fair terms for

Contract Advisors. For these reasons, the Arbitrator must reject Mr. Harmon's argument that the Agreement in itself was illegal, unconscionable and void as against public policy.

The fact that Mr. Harmon executed the Agreement before his college eligibility had expired may have been a violation of applicable NCAA rules, but Mr. Harmon has not cited any public laws which were violated by the execution of the Agreement. The post-dating of a contract does not necessarily render it illegal or violative of the NFLPA Regulations. Although it is deplorable that both parties may have violated the NCAA rules by entering into their Agreement when they did, the Arbitrator has no jurisdiction to enforce the NCAA Constitution. The relevant issues here--and the source of the Arbitrator's jurisdiction--are questions arising under the NFLPA Regulations: must Mr. Harmon pay WSE fees for negotiating his NFL contracts and must he reimburse WSE for loans it allegedly made to him?

In addition, the terms of the parties' Agreement are not so one-sided as to oppress or unfairly surprise a party, and cannot therefore be considered "unconscionable." See, e.g., Division of Triple T Service, Inc. v. Mobile Oil Corp., 60 Mis. 2d 720, 304 N.Y.S. 2d 191, 201 (1969). As mentioned, the Agreement is identical to the NFLPA standard representation agreement, a document which was designed primarily to protect the NFL players from unfairness. Mr.

this case, Mr. Walters essentially admitted that this was the purpose of these payments:

Q Mr. Walters, that fear you had of other agents coming to [Mr. Harmon] between March 9, 1985 and January 2, 1986, was the reason you asked him to sign a contract on that date, was it not?

A No, that was not the only reason.

Q That was a reason?

A Not [the] real reason. It is just that my business background of 20 years of signing talent made me know that if you are able to create a deal of sorts with a client, and you can create a cash flow for that client, they would be willing to let the contract kick in when the time came. I do it today. I do it now.

(Tr. at 288-289).

Since it is found that Messrs. Walters and Bloom provided payments of significant value to Mr. Harmon in order to become his Contract Advisor, they have violated Section 5(C)(1) of the Regulations. The fact that Mr. Harmon may have freely accepted or even requested the money does not make their conduct acceptable under the Regulations.^{2/}

The Regulations do not state what the consequences of such solicitation will be on an agreement which is

^{2/} WSE also violated Section 5(C)(2) of the Regulations by offering and providing money to Mr. Harmon for introductions to his teammates at the University of Iowa. That section provides that a Contract Advisor is prohibited from "providing or offering to provide anything of significant value to any other person in return for a personal recommendation of the Contract Advisor's selection of a player."

subsequently executed or effectuated. However, under the circumstances, the correct remedy is to render the Agreement null and void. Otherwise, if the Agreement were enforced, the Contract Advisor who provided something of significant value to an NFL player in order for the player to execute a representation agreement would benefit from his or her wrongful conduct. Such a result would contravene the obvious intent of Section 5(C)(1) of the Regulations, which was to prohibit Contract Advisors from being retained by players simply on the basis of how much money or goods they could give to a player. If such unfettered "bribery" were permitted, the result could be bidding wars between Contract Advisors for the rights to represent athletes. Clearly, the Regulations do not sanction such behavior. Indeed, one of the major purposes behind Player/Contract Advisor Regulation is to ensure that players choose Contract Advisors on the basis of their professional competence and trustworthiness. Thus, Messrs. Walters and Bloom are not entitled to enforce the Agreement they had with Mr. Harmon, since the Agreement was the result of inducement which was impermissible under the Regulations.^{3/}

negotiations on his behalf, even though the Arbitrator had requested any and all such records at the hearing. (Tr. at 358).

^{3/} Since the Arbitrator finds that the Agreement was void because WSE violated Section 5(C)(1) of the Regulations, the issue of whether Mr. Harmon terminated WSE in accordance with the Agreement does not need to be addressed.

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Although the Agreement is nullified, WSE did provide valuable negotiation services to Mr. Harmon from which he benefitted. Mr. Harmon was a willing participant in the "scheme" with WSE, and should not be able to get the benefit of those services without paying WSE for their fair value. The undisputed evidence is that Mr. Bloom negotiated with the Bills from their initial offer of \$950,000 to their next to final offer of \$1.3 million. The Grievants contend that they received the Bills' final offer of \$1.4 million, but they were unable to consummate the deal because Mr. Harmon terminated them and retained Mr. Rauch. However, the Arbitrator credits the testimony of Mr. Polian, the Bills' General Manager who negotiated with the Grievants, that the last offer they received on Mr. Harmon's behalf was \$1.3 million.

The Grievants should therefore be compensated for their efforts on a quantum meruit basis. It is difficult to arrive at the reasonable value of the services they provided to Mr. Harmon, since they did not introduce much reliable evidence, except for telephone bills, regarding the amount of time they spent in negotiations on his behalf, even though the Arbitrator had requested any and all such records at the hearing. (Tr. at 358). Nevertheless, from the testimony and records submitted, the Arbitrator is able to arrive at a figure which he feels is a reasonable approximation of the services the

these calls could have involved matters relating to other WSE

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Grievants provided to Mr. Harmon. Mr. Bloom did spend one day at the Bills' minicamp with Mr. Harmon in early May of 1986. Although his meeting with Mr. Polian was brief, it is reasonable to assume that Mr. Bloom spent approximately 8 hours that day on Mr. Harmon's behalf, among travelling to Buffalo from New York, preparing for his meeting with Mr. Polian, and familiarizing himself with the Bills' organization.

Similarly, Mr. Bloom travelled to Buffalo on August 7, 1986 to meet with Mr. Polian a second time for about 3 hours. Considering the amount of travel time and preparation time necessary for this meeting, it is reasonable again to assume that Mr. Bloom spent a total of 8 hours on Mr. Harmon's behalf.

In addition to these meetings, Mr. Bloom, and to a lesser degree, Mr. Walters, made many telephone calls to Mr. Polian, Valerie Thomas, a research analyst at the NFLPA, and Ralph Cindrich, the Contract Advisor for Will Woolford, all in an effort to advance negotiations between Mr. Harmon and the Buffalo Bills. WSE's telephone bills show that from April 1986 to August 12, 1986, when WSE officially learned of its termination, 14 calls totalling 22 minutes were made to the Bills' office in Hamburg, New York. During the same period, 27 calls totalling 184.2 minutes were made to the offices of the NFLPA in Washington, D.C. Although some of these calls could have involved matters relating to other WSE

clients, the Arbitrator has no reason to disbelieve that most of this time was spent on Mr. Harmon, especially when one considers the testimony of Valerie Thomas, who confirmed that she was in frequent contact with WSE regarding Mr. Harmon. The telephone records also show that WSE made five calls to Mr. Cindrich for a total of 18.8 minutes, presumably to discuss what offers the Bills had given to Mr. Woolford.

The total time WSE spent on the telephone calls was 225 minutes, or 3.75 hours. The Arbitrator will assume that WSE required at least 5 minutes for each of these 46 calls to prepare for the call by reviewing files and/or dialing, for an additional 230 minutes or 3.83 hours. In addition, the Arbitrator accepts Mr. Bloom's testimony that he made numerous telephone calls to the Bills outside of New York without charging the calls to WSE's telephone bill (Tr. at 338). Without any more evidence than Mr. Bloom's testimony, the Arbitrator will assume that Mr. Bloom made no more than 10 such calls. Using the average length of calls which did appear on WSE's bills ($225 \text{ minutes} / 46 \text{ calls} = 4.89 \text{ minutes} \times 10 \text{ calls} = 48.9 \text{ minutes}$), and the same 5 minutes per call preparation time ($5 \text{ minutes} \times 10 \text{ calls} = 50 \text{ minutes}$), the Arbitrator finds that Mr. Bloom spent no more than a total of 98.9 minutes, or 1.65 hours, on these additional calls. Thus, adding all of this time together, the Arbitrator finds that WSE spent approximately 25.23 hours on Mr. Harmon's behalf. The Arbitrator recognizes that these calculations

are imprecise, but without more substantial evidence, they are the most reasonable method of determining the amount of time that WSE spent on Mr. Harmon's contract negotiations.

Although there was no record evidence of the hourly rate that might be charged for such services, the Arbitrator finds that \$125 per hour is a reasonable rate. Under Section 4(C) of the Regulations, a Contract Advisor who fails to negotiate compensation for a player in excess of the applicable minimum salary for any year covered by the contract may charge the lesser of \$125 for each hour spent in negotiations, or \$1,000. This provision reflects the NFLPA's estimation of a reasonable hourly rate for contract negotiation services; thus, the Arbitrator will use it in calculating WSE's award in quantum meruit. Since WSE spent 25.23 in negotiations for Mr. Harmon at the rate of \$125 per hour, it is entitled to \$3,153.75 as the reasonable value of its services.

In addition to fees for negotiating with the Buffalo Bills, WSE is entitled to reimbursement for reasonable and necessary telephone and travel expenses associated with the negotiations. The telephone bills submitted by the Grievants show that they incurred \$65.72 in charges on AT&T calls. However, several other calls were made on the MCI Network, and no charges are indicated. The Grievants may submit a breakdown of the charges for these calls to Mr. Harmon, which he should pay. In the event that

a difference arises over the amounts for these calls, the parties may contact the Arbitrator for resolution. However, given the relatively insignificant amounts involved for these calls, it is expected that the parties will be able to resolve any differences privately. In addition to the telephone calls, at the hearing in this case, Mr. Harmon agreed to pay WSE \$150 for air fare spent when Mr. Bloom travelled to Buffalo on August 7 to negotiate with Mr. Polian. (Tr. at 225). Thus, Mr. Harmon must pay WSE \$215.72 (\$65.72 plus \$150) as reimbursement for reasonable and necessary travel and telephone expenses.

C. Issue C -- The "Advances"

WSE asks for an award of more than \$54,000 as reimbursement for cash payments to Mr. Harmon and his brother, for airline tickets, concert tickets, and the downpayment and insurance for a Mercedes Benz automobile. WSE contends that these "payments" were in fact loans to Mr. Harmon, which he was obligated to repay after he began earning compensation as an NFL player. Mr. Harmon, on the other hand, claims that this money was offered to him with no agreement that it would be repaid.

There is no dispute that on or about March 9, 1985, WSE loaned \$2,500 to Mr. Harmon. Mr. Harmon signed a loan document and a promissory note pursuant to which he agreed to repay WSE from "any and all earnings derived from [his] activities as a professional athlete." See Cl. Ex. 3. Mr.

Harmon must honor the promissory note and repay WSE the \$2,500.

Although WSE had Mr. Harmon execute loan documents for the \$2,500 advance, there is no evidence that it asked him to execute any documents for any other payments. WSE has offered no logical explanation for the discrepancy. This raises the inference that since no loan documents were executed, the subsequent payments were not thought of as loans by both parties. WSE has not offered sufficient evidence to rebut this inference. Indeed, WSE has not carried its burden in showing that the parties ever intended these payments to be loans.

Under the circumstances, and in the absence of any written documents or other reliable evidence establishing that these payments were loans, the Arbitrator will not order Mr. Harmon to repay them. The requirement of clear evidence of a loan agreement is necessary because without it, parties will inevitably argue over whether the payment of monies was an enforceable loan or some other type of payment. The NFLPA Regulations recognize the importance of having written agreements between NFL Players and Contract Advisors. Section 4 of the Regulations provides in pertinent part that "[a]ll agreements between a Contract Advisor and a player which are not in writing . . . shall be of no force and effect." Although this section refers specifically to representation agreements, the underlying policy applies

equally to the loaning of money from a Contract Advisor to an NFL player. It is particularly important to have documentation establishing whether a payment of money is a loan or a gift, because otherwise questions of impropriety could arise under Section 5(C)(1) of the Regulations, such as those which have arisen in this case.^{4/}

The nature of some of the payments made to Mr. Harmon could also discredit WSE's assertion that they were loans. WSE twice gave Mr. Harmon or his family tickets to a concert, and occasionally airline tickets were given to Mr. Harmon, his girlfriend or members of Mr. Harmon's family. If WSE intended these items to be loans, it had the burden of establishing clear and formal agreements outlining the reciprocal obligations of the parties.

Moreover, WSE may have viewed the money it gave to Mr. Harmon as an investment in him and in its fledgling sports representation business. Mr. Harmon was the first

^{4/} Mr. Harmon has also argued that even if there was an agreement to repay this money, the Agreement is not enforceable under the New York Statute of Frauds. The New York Statute of Frauds provides, inter alia, that agreements, which by their terms may not be performed within one year, must be in writing or they are void. N.Y. Gen. Oblig. Law. § 5-701(a)(1) (McKinney 1978). Since it is found that there was no oral agreement that Mr. Harmon had to repay this money, this argument need not be addressed. However, even if the parties did agree in March of 1985 that Mr. Harmon would repay this money after he earned compensation from an NFL team which drafted him in the April 1986 draft, it could be argued that Mr. Harmon could not have repaid WSE within one year and, therefore, that the oral agreement was unenforceable. See, e.g., Hoagland, Allum & Co., Inc. v. Alan-Norman Holding Corp., 228 App. Div. 133, 239 N.Y.S. 291 (1930).

player WSE represented, and it only intended to represent a handful of players in its first year of operation. Thus, WSE may have invested this money in Mr. Harmon with the hopes that it would "pay off" in endorsements for Mr. Harmon, on which WSE would earn substantial commissions, and with the promise of attracting other players to represent in years to come. Although the Arbitrator recognizes that in this case the investment obviously did not pay off and WSE may not get a return on its \$54,000 in expenditures, if the company wanted to ensure that it would be paid back, it should have secured Mr. Harmon's express agreement that he would do so. Indeed, it should have satisfied itself that it had proof that the parties intended the cash payments, airline tickets, concert tickets and automobile payments to be loans, not gratuities incidental to the Player/Contract Advisor relationship. Since WSE has failed to satisfy its burden of proof that both parties understood these items to be loans, it is not entitled to reimbursement.

It should be emphasized that the Arbitrator does not wish to exculpate Mr. Harmon from the role he played in this distasteful case. Indeed, Mr. Harmon knew or should have known that his acceptance of these payments was wrong; it compromised his integrity and jeopardized his relationship with the NCAA and his university. Mr. Harmon admitted that he affirmatively requested money from WSE on several occasions. Although the Arbitrator finds that Mr. Harmon has

no obligation under the NFLPA Regulations to repay this money, because there was no agreement to do so, he will not, of course, be relieved of the incalculable cost of his conduct in personal terms. The Arbitrator also observes that there are other forums in which the consequences of Mr. Harmon's activities may be addressed.

VI. Decision and Award

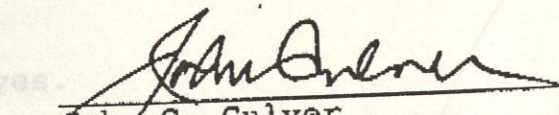
Mr. Harmon must pay WSE \$3,153.75 as restitution for the services it provided to him in negotiating with the Buffalo Bills. Mr. Harmon must also reimburse WSE in the amount of \$215.72 for reasonable and necessary telephone and travel expenses incurred in such negotiations. WSE may petition Mr. Harmon for the costs of the telephone calls it made on the MCI Network, and Mr. Harmon should reimburse WSE for such charges.

Mr. Harmon must also repay WSE the \$2,500 it loaned to him on or about March 9, 1985. Under the NFLPA Regulations, he has no obligation to repay the more than \$54,000 in cash payments, concert tickets, airfare, and automobile expenses given to him or spent for his benefit.

Pursuant to Section 7(H) of the Regulations, Mr.

Harmon shall make payment of \$5,869.47 (\$3,153.75 plus \$215.72 plus \$2,500) to WSE within ten days.

October 28, 1987
Washington, D.C.


John C. Culver
Arbitrator

Q And then they gave you what you had just said you needed. Is that correct?

A Right.

Q Do you have a brother named Kevin?

A Yes.

Q From time to time did World Sports and Entertainment send money to him?

A No. Sent him one, without my approval, without me saying, send my brother money. They sent it on their own.

Q They just sent a wire transfer out to your brother?

A That is right.

Q How did he know to go to Western Union to pick it up?

A Well, first of all, the only time I can remember that they sent him money was when he was in the airport and he was stranded with another one of their clients, and they sent it on their own to him. He did not ask. The client asked money, and they said, did my brother need any money?

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1 the mailbox one day, did it?

2 A It was more or less them asking me in a subtle way
3 if I needed, not me saying I want.

4 Q They would ask you if you needed anything and --

5 A Say yes.

6 Q -- you'd say yes.

7 A Right.

8 Q And then they gave you what you had just said you
9 needed. Is that correct?

10 A Right.

11 Q Do you have a brother named Kevin?

12 A Yes.

13 Q From time to time did World Sports and Entertainment
14 send money to him?

15 A No. Sent him one, without my approval, without me
16 saying, send my brother money. They sent it on their own.

17 Q They just sent a wire transfer out to your brother?

18 A That is right.

19 Q How did he know to go to Western Union to pick it
20 up?

21 A Well, first of all, the only time I can remember
22 that they sent him money was when he was in the airport and
23 he was stranded with another one of their clients, and they
24 sent it on their own to him. He did not ask. The client
25 asked money, and they said, did my brother need any money?

Acme Reporting Company

1 And he said, yes. I did not tell them to send my brother
2 money. They sent that on their own.

3 Q But they did not just magically know that your
4 brother was stranded in an airport so they could send money.
5 Somebody asked them. Right?

6 A They had a client out there. I just said, a client
7 of theirs was there too.

8 Q And they did that. Is that correct?

9 A Yes. Is that correct?

10 Q Did you ever tell World Sports and Entertainment
11 you needed anything that they did not get for you?

12 A That I needed? ... but I never took the money.

13 Q Yes. I am going to go through a history of payments

14 A What do you mean by need?

15 Q Is there anything you asked them for which they did
16 not give you? ... plane tickets, or whatever. Please feel free

17 A They offered. I said yes. That was the extent
18 of it.

19 Q Is there anything that you ever requested of World
20 Sports and Entertainment that they did not do for you?

21 A What do you mean by requested? They gave me --

22 Q Did you ever ask them for a plane ticket that they
23 did not send? ... May 3, 1988?

24 A Or did they offer a plane ticket to me?

25 Q Okay. And did you ever say you wanted one and they

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1 Q World Sports and Entertainment paid it, is not that
2 correct?

3 A Right.

4 Q It was another 600-and-some-odd dollars, is not
5 that correct?

6 A I do not know. I did not see the insurance until I
7 got my own insurance.

8 Q Okay. But they paid at least the first premium on
9 the insurance. Is that correct?

10 A If you say they did, I guess so.

11 Q The car was in your name, was it not?

12 A It was in my name, but I never seen the money.

13 Q Now, I am going to go through a listing of payments
14 made by World Sports and Entertainment to you or for your
15 benefit, and I am going to ask you if you recall receiving
16 this money, or plane tickets, or whatever. Please feel free
17 to consult whatever records you wish to consult, if you have
18 them.

19 Do you recall receiving \$250 by wire transfer on
20 or about April 8, 1985?

21 A Yes.

22 Q And do you recall receiving \$250 by wire transfer
23 on or about May 3, 1985?

24 A (Inaudible)

25 Q Sir, I did not hear your answer.

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XEROX TELECOPIER 295 : 11-5-87: 9:37 AM
NOV 05 '87 10:34 P-M WINSMITH: SBB

CC111 63
P.3/12

1 Q MR. RAUCH: Just one second. I am trying to find
2 those Western Union receipts that I referred to in my
3 opening. Might they just have sent it to you without any

4 request? THE ARBITRATOR: Gentlemen, at this point we will
5 go off the record. recall.

6 Q (Whereupon, there was a brief recess from 11:30
7 a.m. to 11:35 a.m.)

8 A THE ARBITRATOR: Are you ready to proceed now,
9 Mr. Feldberg? whom?

10 A MR. FELDBERG: You, sir.

11 Q THE ARBITRATOR: Why do you not go ahead then?

12 A BY MR. FELDMAN: saying that.

13 Q Mr. Harmon, I think the pending question is, do
14 you recall receiving \$250 by wire on or about May 3, 1985?

15 A Yes. do not recall one way or the other?

16 Q And do you recall receiving an additional \$600 by
17 wire on or about May 14, 1985, 11 days later? July 2, 1985.

18 A Right. long ticket from World Sports & Entertainment?

19 Q And how is it that you got another \$600 that month?

20 A I do not know. I do not recall.

21 Q It just came to you from World Sports and
22 Entertainment, is that correct? is that correct?

23 A Right.

24 Q Do you think you asked him for it? you received

25 a \$250 A wire I do not recall. World --

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1 Q You do not recall one way or the other?

2 A No, I do not recall asking.

3 Q Might they just have sent it to you without any

4 request? And do you recall that the very next day, August 3,

5 1985 you received a plane ticket from World Sports and

6 Entertainment? Q How did you know to go to the Western Union office

7 to pick it up? Yes.

8 A Telephone. And then \$250 on

9 Q From whom?

10 A From Lloyd Bloom.

11 Q He just called you to say, go pick up \$600?

12 A I do not recall saying that.

13 Q Do you think maybe you asked him? 10, 1985, \$2257

14 A No, I do not recall.

15 Q You do not recall one way or the other?

16 A No, I do not recall asking.

17 Q Do you recall, Mr. Harmon, that on July 2, 1985,

18 you received a plane ticket from World Sports & Entertainment?

19 1985 A To where?

20 Q Between Iowa and New York.

21 A Yes. do not recall, one way or the other?

22 Q They paid for that. Is that correct?

23 A Correct. recall getting \$250 by wire on October 31,

24 1985 Q Do you recall that on August 2, 1985, you received

25 a \$250 wire transfer from World --

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1 A What was the date?

2 Q August 2, 1985, \$250, by wire.

3 A Yes.

4 Q And do you recall that the very next day, August 3,
5 1985, you received a \$450 plane ticket from World Sports and
6 Entertainment between, I believe, New York and Cedar Rapids?

7 A Right. Yes.

8 Q You received that, too. And then \$250 on
9 September 3, 1985?

10 A September 3? Yes.

11 Q \$250 on October 2, 1985?

12 A Yes.

13 Q Another airline ticket on October 10, 1985, \$525?

14 A To where?

15 Q I believe, New York and Cedar Rapids.

16 A Excuse me?

17 Q I believe between New York and Cedar Rapids. Do
18 you recall getting an airline ticket on or about October 10,
19 1985?

20 A I do not recall.

21 Q You do not recall, one way or the other?

22 A I do not recall that.

23 Q Do you recall getting \$250 by wire on October 31,
24 1985?

25 A Yes. Yes.

Acme Reporting Company

1 Q Do you recall getting a plane ticket from World
2 Sports and Entertainment on November 1, 1985, worth \$510?
3 November 18, 1985?

3 A To where?

4 Q I do not know.

5 A I do not recall.

6 Q You do not recall one way or the other? Do you
7 recall that on November 7, 1985, World Sports & Entertainment
8 paid for a plane ticket for an S. Parker?
9 How about another plane ticket \$796, it looks like
10 between New York and Cedar Rapids on November 21, 1985?

9 A Yes.

10 Q And S. Parker is a woman who was a friend of yours
11 at the time?
12 Do you recall that you got \$150 by wire from World
13 Sports on November 2, 1985?

12 A Right.

13 Q And paid for that ticket so she could visit you?

14 A Right.

15 Q For the weekend --
16 four days later on December 6, 1985?

16 A Yes.

17 Q -- or whatever?

18 A Whatever.

19 Q She traveled from San Francisco to Iowa to visit
20 you?
21 Do you deny it?

21 A Right.

22 Q And World Sports & Entertainment paid for her plane
23 ticket, is that correct?
24 Do you recall an additional \$200 wire transfer
25 ten days after that, on December 16, 1985?

24 A Right.

25 Q Do you recall that you received another plane
26 MR. BAUGH: Yes, yes, what was that amount?
27 MR. FELDBERG: \$200.

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1 ticket worth \$525 from World Sports & Entertainment on
2 November 18, 1985?

3 A To where?

4 Q I wish I could tell you but I cannot. You do not
5 recall one way or the other?

6 A I do not recall that.

7 Q How about another plane ticket, \$796, it looks like
8 between New York and Cedar Rapids on November 21, 1985?

9 A Yes.

10 Q Do you recall that you got \$150 by wire from World
11 Sports on December 2, 1985?

12 A Yes.

13 Q And an additional \$250 by wire from World Sports
14 four days later on December 6, 1985?

15 A December 6?

16 Q Yes.

17 A I do not recall that.

18 Q That you do not recall?

19 A No.

20 Q Do you deny it?

21 A I deny it? No, I just do not recall.

22 Q Do you recall an additional \$200 wire transfer
23 ten days after that, on December 16, 1985?

24 MR. RAUCH: Excuse me, what was that amount?

25 MR. FELDBERG: \$200.

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1 Q MR. RAUCH: On December what?

2 A MR. FELDBERG: Sixteenth, 1985.

3 Q MR. RAUCH: Thank you.

4 A THE WITNESS: \$200?

5 BY MR. FELDBERG:

6 Q Yes.

7 A Yes.

8 Q You got that. Do you recall receiving on January 22
9 of 1986 a check for \$500 from World Sports & Entertainment?

10 A Yes.

11 Q Do you recall receiving a plane ticket between
12 New York and Cedar Rapids on the next day, January 23, 1986;
13 worth \$219?

14 A Yes.

15 Q In February, 1986, did you get another plane ticket
16 from World Sports and Entertainment between New York and
17 Cedar Rapids for \$219?

18 A Not that I recall; no.

19 Q Do you deny it?

20 A Do I deny it? I do not recall.

21 Q Did you get \$300 by wire on February 3, 1986?

22 A Yes.

23 Q Did you or members of your family receive four
24 tickets to a concert by Patti Labelle on February 12, 1986?

25 A That was offered.

1 Q And did you take it?

2 A Did I take them?; no.

3 Q Did you or members of your family?

4 A He offered it to my family. I had nothing to do

5 with that. Okay. Do you recall any month in which you did not

6 get about THE ARBITRATOR: Who is "he"? the month?

7 A THE WITNESS: Walters.

8 Q BY MR. FELDBERG: a plane ticket to go to San --

9 with Q own Mr. Walters? so get a plane ticket to go to

10 San A and Yes. the next day, on March 5, 1986?

11 Q And did your family accept that offer?

12 A Yes, they did. paid for by World Sports & Entertain-

13 ment Q Did Ms. Parker receive another air ticket worth

14 \$478 from San Francisco to Cedar Rapids on February 19, 1986?

15 A Yes. that was so you could travel between Cedar

16 Rapid Q an It was the second trip that World Sports &

17 Entertainment paid for for Ms. Parker, is that correct?

18 A Correct. get some tickets for a Patti Labelle

19 concert Q Turning to March of 1986, did you receive \$250 cash

20 on March 4, 1986? no.

21 A No. members of your family?

22 Q I am sorry, by wire, on March 4, 1986?

23 A How much? remember?

24 Q \$250.

25 A March 4th? all that on March 18, 1986, World Sports

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Q Yes.

A Not that I recall; no.

Q Do you deny it?

A No, I do not deny it.

Q Okay. Do you recall any month in which you did not get about \$250 by wire at the start of the month?

A No.

Q Did you also get a plane ticket to go to San -- withdrawn. Did you also get a plane ticket to go to San Francisco the next day, on March 5, 1986?

A Yes.

Q And that was paid for by World Sports & Entertainment?

A Yes.

Q And that was so you could travel between Cedar Rapids and San Francisco?

A Yes.

Q Did you get some tickets for a Patti Labelle concert again in March of 1986?

A Not me, no.

Q Did members of your family?

A I recall? I do not know.

Q You do not remember?

A Yes.

Q Do you recall that on March 18, 1986, World Sports &

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1 Entertainment sent a plane ticket for your brother Kevin --

2 A Yes.

3 Q -- worth \$484?

4 A Yes.

5 Q And they also sent another plane ticket worth
6 \$555 to you?

7 A Right.

8 Q Do you recall that they sent you by wire another
9 \$200 in cash the next day, March 19, 1986?

10 A The next day?

11 Q March 19; yes.

12 A Maybe just how I left for New York?

13 Q Well, I just said when they sent you the plane
14 ticket. Do you have a recollection of receiving a wire of
15 \$200 on March 19, 1986?

16 A March 19?

17 Q Yes.

18 A How much is it?

19 Q \$200, sir.

20 A Yes.

21 Q In April, 1986, did you receive a wire transfer of
22 \$350 from World Sports, on April 8?

23 (Pause)

24 MR. RAUCH: It could be the 9th. I am not sure,
25 off the record here.

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