

COMMONWEALTH OF PENNSYLVANIA

WEST SHORE BOXING & KICKBOXING : BEFORE THE BOARD OF CLAIMS  
CLUB :  
 :  
VS. :  
 :  
COMMONWEALTH OF PENNSYLVANIA, :  
STATE SYSTEM OF HIGHER EDUCATION, :  
SHIPPENSBURG UNIVERSITY : DOCKET NO. FC-1128-98

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**FINDINGS OF FACT**

1. Plaintiff, West Shore Boxing & Kickboxing Club (hereinafter "West Shore") is a club registered with the Pennsylvania Department of State as a non-profit organization located at 43 East Locust Street, Mechanicsburg, Pennsylvania 17055. (Plaintiff's Claim)

2. Mr. Thomas C. Joerg owns and operates Joerg's American Karate Studio also at 43 East Locust Street, Mechanicsburg, Pennsylvania 17055. Mr. Joerg is also President of West Shore Boxing & Kickboxing Club. (N.T. 8)

3. Defendant, State System of Higher Education, Shippensburg University (hereinafter "Shippensburg"), is an instrumentality of the Commonwealth of Pennsylvania with its principal offices in Shippensburg, Pennsylvania with an address at 1871 Old Main Drive, Shippensburg, Pennsylvania 17257. (Defendant's Answer)

4. The Boxing Club at Shippensburg University (hereinafter "Boxing Club") is a Club consisting of University students funded by the Student Association. (N.T. 82)

5. The Student Association is elected from members of the student body at Shippensburg University. (N.T. 78-79)

6. The funding for the Student Association comes from fees levied on the students by the Student Association. (N.T. 79)

7. A requirement of the Student Association for a recognized Club to be funded by the Association is that there be an Advisor to the Club with some relationship to Shippensburg University. (N.T. 85)

8. Dr. Michael Thomas, a Captain in the United States Army served as the Boxing

Club's Advisor at the time of this case. (N.T. 85-86)

9. Captain Thomas was an employee of the United States Army and his salary was paid by the Federal Government. But, Captain Thomas was a U.S. Army ROTC Instructor teaching Reserve Officer Training Corp courses at Shippensburg University. (N.T. 87)

10. The Boxing Club Team was coached by Mike Regan, a Federal Marshall, who is not employed by Shippensburg University. (N.T. 103)

11. The Boxing Club is listed in the Shippensburg University student handbook. (N.T. 84)

12. At all times relevant hereto, Dr. Kenneth Cox was Chairman of the Eastern Collegiate Boxing Association. He is retired, having been employed by Lock Haven University. (N.T. 40; Plaintiff's Exhibit I)

13. The Eastern Collegiate Boxing Association (hereinafter "ECBA") is comprised of public and private schools and includes among others: Shippensburg University, Penn State University, Mansfield University, Virginia Military Institute, U.S. Military Academy at West Point, and U.S. Naval Academy. (Plaintiff's Exhibit D)

14. On the first Saturday of February, 1995, and February, 1996, boxing meets were held at the West Shore facility and were sponsored by the Boxing Club and West Shore. (N.T. 6)

15. The boxing meets were scheduled and arranged by ECBA. (N.T. 9)

16. Following the 1996 meet, correspondence occurred between Dr. Cox and Mr. Joerg about the possibility of scheduling a similar meet in February of 1997. (N.T. 20; Plaintiff's Exhibit I)

17. In attempting to schedule a 1997 meet at the West Shore facility, Mr. Joerg was told by the Boxing Club President, Dennis Maley, that the event would not be held on February 1, 1997 but February 22, 1997 and Mr. Maley did not say where the event would be held, that is the West Shore facility or Shippensburg. (N.T. 23)

18. In further exchanges of correspondence with Dr. Cox, Mr. Joerg was advised to contact Mike Regan to firm up the location of the February, 1997 meet. Mr. Regan and Mr. Joerg never communicated subsequent to this with regard to the meet. (N.T. 41)

19. Through correspondence from Dr. Cox to Mr. Joerg, a meet was scheduled for February 22, 1997 and the location was listed as Shippensburg or West Shore with a question mark. (N.T. 20)

### CONCLUSIONS OF LAW

1. The Board of Claims has subject matter jurisdiction over the claim asserted by West Shore Boxing & Kickboxing Club. **72 P.S. §4651-1-10.**

2. The Board of Claims has jurisdiction over the parties to this Claim. **72 P.S. §4651-1-10.**

3. West Shore failed to prove a commitment by Shippensburg University, or for that matter, any other person or interest to definitely schedule a boxing meet at any time in 1997 at West Shore's facility.

4. To the contrary, Shippensburg, through its actions, kept its options open and retained its right to hold the event at its own facility or elsewhere.

5. West Shore failed to prove an exchange of consideration necessary to establish a legally enforceable contract.

6. Having failed to prove an intent by the parties to be bound and having failed to prove the specificity necessary for a commitment, no contract existed between Shippensburg and West Shore.

7. Having failed to prove a specific commitment, West Shore has failed to prove that it justifiably relied to its detriment on representations made by Shippensburg.

8. Although Shippensburg denies legal responsibility for the actions of the Boxing Club, by allowing the Club to use the University's name, to hold functions within University facilities and by appointing an Advisor to the Club, and identifying the Club in school publications and by not publishing a disclaimer for the Club's activities, Shippensburg created the appearance to the general public that to the contrary, Shippensburg was legally responsible for the activities of the Boxing Club.

### OPINION

This matter was called to hearing before the Eastern Panel, composed of Richard Swartz, Attorney Member, and Conrad Kambic, Engineer Member. The Panel Report has been submitted and

reviewed.

From the initial filing and throughout this matter, Plaintiff has appeared pro se. Plaintiff initially filed this action in the Court of Common Pleas of Cumberland County. On March 13, 1998, acting on a Motion of Defendant, the Court of Common Pleas of Cumberland County entered a Rule to Show Cause why the matter should not be transferred to the Board of Claims. On April 16, 1998, Defendant filed a Motion to make the Rule Absolute. On the 27th of April, 1998, an Order was entered by the Court of Common Pleas of Cumberland County transferring the matter to the Board of Claims. Pursuant to a Board Order, the transferred documents were made a part of the record. On May 26, 1998, Defendant filed Preliminary Objections. On November 20, 1998, the Board sustained Defendant's Preliminary Objections with permission for Plaintiff to file an Amended Complaint. Plaintiff timely filed an Amended Complaint. On September 16, 1999, an Order was entered assigning the matter to a Panel. On November 17, 1999, a hearing was held before a Panel and a Panel Report was filed. The transcript was made of the hearing and presented to the parties. Thereafter, the parties filed Proposed Findings of Fact, Proposed Conclusions of Law and Briefs in Support thereof. The matter is ripe for determination by the Board.

It is well established contract law in the Commonwealth, and in general, that the burden is on the Plaintiff to prove by a preponderance of the evidence, the existence of the contract to which the Defendant is a party. Viso v. Werner, 471 Pa. 42, 369 A.2d 1185 (1977) In order to carry this burden, the Plaintiff must prove an exchange of consideration between the parties, a delineation of the parties respective rights and responsibilities and an assent to these matters as indicated by the signature of both parties or some similar demonstration of agreement. Viles v. Viles, 416 Pa. Super 95, 610 A.2d

988 (1992) Further, in order for the contract to be enforceable, both parties must manifest an intent to be bound by the terms of the agreement and these terms must clearly and with certainty define the rights and responsibilities of the parties. There must be a mutuality of assent between the parties or what has from time to time metaphorically been referred to as a "meeting of the minds". Burkett v. Allstate Insurance Company, 368 Pa. Super 600, 534 A.2d. 819 (1987)

In early February of 1995 and 1996, intercollegiate boxing matches were held at the West Shore facility and were co-sponsored by the Boxing Club and West Shore. Plaintiff's theory of liability in this case is that the Boxing Club and Shippensburg obligated itself to conduct a similar meet in early February of 1997. It is incumbent upon Plaintiff to prove the elements of a legally enforceable contract not the least of which is that both parties have assented to specific terms defining the rights and responsibilities of each party. This is one of many of Plaintiff's failures to carry its burden. Nowhere in Plaintiff's testimony or the many exhibits introduced by Plaintiff can the Board find where Shippensburg had assented to schedule a boxing meet in February of 1997 at Plaintiff's facility. To the contrary, it is clear that Shippensburg refused to make the commitment that Plaintiff alleges to have occurred. At best, Shippensburg through the Boxing Club, agreed to a match sometime in the month of February, 1997, but the location was never specifically agreed to. The evidence shows that Shippensburg preserved the option to hold the event either at the University or Plaintiff's facility.

Since Shippensburg did not agree to hold the meet at Plaintiff's facility, it is clear that there is no mutuality of assent between the parties.

Further, having no certainty as to where the event would occur, and some question as to the date of the proposed event, there is no merit to the Plaintiff's contention that he relied to his

detriment on statements made by Shippensburg. Plaintiff never succeeded in successfully pinning down Shippensburg, Dr. Cox, or anyone to a commitment to a specific time and place for the event. Having failed to do so, any expenditures he made, he made at his jeopardy.

As further defense, Shippensburg advanced the argument that the Boxing Club was totally independent of the University since it received no University funding among other reasons and being totally independent, the University had no legal responsibility for any actions of the Club. Although it is not necessary to opine on this defense since Plaintiff has failed to carry its burden, it is worth noting that Shippensburg allowed the Club to use the University's name, it allowed its students to participate in the Club's activities and to hold offices by which the Club was directed. Shippensburg appointed one of its subcontractors to serve as an Advisor to the Club. The Club is identified in school publications. Club events are held at University facilities. Students practice at University facilities. In short, the Club has all the trappings of the University sports teams and it is the Board's opinion that Plaintiff reasonably believed that the Club's President and Advisor had the ability to bind Shippensburg to a contract.

For the foregoing reasons, the Board will enter the following Order:

**ORDER**

**AND NOW**, this 13th day of November, 2000, it is hereby **ORDERED**, **ADJUDGED** and **DECREED** that the Claim of Plaintiff, West Shore Boxing & Kickboxing Club, is hereby **DISMISSED** with prejudice.

Each party to bear its own costs and fees.

BOARD OF CLAIMS

SIGNED 11/13/00

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David C. Clipper  
Chief Administrative Judge

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Louis G. O'Brien  
Engineer Member

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James W. Harris  
Citizen Member

