

FOOTBALL ASSOCIATION REGULATORY COMMISSION

In the matter of disciplinary proceedings brought pursuant to The Football Association Rules for the season 2014-2015

THE FOOTBALL ASSOCIATION

-and-

(1) MATTHEW KLEINMAN

(2) ALEX LEVACK

(3) ALI RAHNAMA

(4) BRIGHTON & HOVE ALBION FC

Commission: David Casement QC (Chairman)

Peter Powell

Tom Finn

Date: 16 February 2015

WRITTEN REASONS OF THE REGULATORY COMMISSION

Introduction

1. These disciplinary proceedings arise out of the transfer of Dale Stephens ("the Player") from Charlton Athletic FC ("CAFC") to Brighton & Hove Albion FC ("the Club"). The transfer took place on 30 January 2014 ("the Transaction").
2. On the Agent Declaration Form ("AG/1 Form") dated 30 January 2014 it was recorded that the Club used the services of a Registered Lawyer Ali Rahnama, a qualified solicitor. It was declared on the AG/1 Form that

CAFC used the services of an Authorised Agent, Martin O'Rourke. The Player was declared to have not used any Authorised Agent in respect of the Transaction.

3. Mr Rahnama as well as signing the AG/1 Form on 30 January 2014 also signed a Representation Contract with the Club and also a Player's Football League Contract ("Form 13A") in which he identified himself as the Club's Agent.
4. At the time of the Transaction the Player was subject to a Representation Agreement with Matthew Kleinman, an Authorised Agent. The Representation Agreement was effective from 8 February 2012 until 8 February 2014.
5. Mr Kleinman was a director of a sports management company called Sidekick Management Limited ("Sidekick"). The other director of Sidekick was Alex Levack. Eventually during the final hearing the Commission was told that the shareholding of Sidekick was owned on a 50/50 basis between Mr Levack and his wife and that Mr Kleinman held no legal or beneficial interest in Sidekick.
6. During the course of a Football Association investigation into the Transaction it became clear during interviews that Mr Rahnama had not met either the Club or the Player and had not conducted any of the negotiations. Mr Rahnama was a solicitor with McFaddens LLP who were requested by Mr Levack to act on the Transaction on behalf of the Club even though the terms of the Transaction had been or were being negotiated by Messrs Levack and Kleinman. The request was passed to Mr Rahnama and he agreed to act.
7. Mr Rahnama was an inexperienced solicitor. At the time of the Transaction he had been qualified for about six months. Messrs Levack

and Kleinman have been Licensed Agents since 2001 and 2008 respectively.

8. All of the respondents to these proceedings have pleaded guilty to the various charges set out in the charge letters issued on 25 November 2014. The nature of the charges admitted by the respondents are summarised within these reasons and for convenience the substantive provisions that have been infringed are set out in the schedule annexed hereto.

The Final Hearing

9. The final hearing of these proceedings was heard on 12 February 2015 at Wembley. As well as the Regulatory Commission the following attended the final hearing:

The Football Association:

Amina Graham, Barrister

Ian Ryder (Observer)

Agents:

Sebastian Purnell, Barrister

Ali Rahnama

Alex Levack

Matthew Kleinman

Max Eppel, Solicitor

Jacob Miller, Solicitor

Brighton & Hove Albion Football Club:

Graham Bean, Representative

Derek Allen (Club Sec)

Paul Barber (CEO)

10. The Commission is grateful to the representatives for their submissions on behalf of all of the parties to these proceedings.

The Charges

11. The respondents have been charged with Misconduct pursuant to The Football Association Rules, Rule E1(b) and have pleaded guilty to the following provisions of the Football Agents Regulations 2014-2015:

Matthew Kleinman: C.2 and H.10

Alex Levack: Regulations C.2 and H.10

Ali Rahnama: Regulations C.2, F.1, H.10 and H.13

Brighton & Hove Albion Football Club: Regulations C.2 and F.1

12. The substantive provisions are set out in the schedule hereto.
13. This case and the admitted charges can be summarised as follows. The four respondents completed paperwork in respect of the Transaction in such a way as to conceal from the Football Association the involvement of Messrs Levack and Kleinman in the Transaction. This was despite the fact that all four of the respondents were aware that the negotiations in respect of the Transaction had been entirely undertaken by Messrs Levack and Kleinman and that they and/or Sidekick would be paid the commission due under the Transaction. It was also despite the fact that the Club had no relationship with Mr Rahnama and had never heard of him.
14. A number of declarations on the various forms signed by Mr Rahnama were false including the following:

(1) on the AG1 form he signed the following declarations “They confirm that no other Agents have been involved in the Transaction or Contract Negotiation” and “The undersigned confirm that they have completed and supplied to The FA the relevant Representation Contract(s) and disclosure documents in relation to the Transaction or Contract Negotiation and that no payment to an Agent, other than that specified in the relevant Representation Contract(s), will be made, sought, or accepted by the undersigned in respect of this Transaction...”(page 79)

(2) in the Representation Contract with the Club it was stated at clause 5 “In consideration for the provision of the Services, the Club shall pay the Authorised Agent a fee ...” (page 83)

15. Mr Rahnama knew of those provisions and knew the declarations were false. Messrs Levack and Kleinman knew of those provisions and knew the declarations were false. The Club also knew the true position namely that Messrs Levack and Kleinman had negotiated the transaction and would be receiving commission and therefore knew the documents concealed the truth from the Football Association.

Submissions in Mitigation

16. Mr Purnell, Barrister for Messrs Levack, Kleinman and Rahnama advanced a plea in mitigation on behalf of his clients. In particular it was said that his clients had pleaded guilty and were entitled to credit for their pleas. It was also noted and we accept that none of these three Respondents have previously been found to have breached any of the Regulations.
17. At the forefront of his submissions on behalf of Messrs Levack and Kleinman was that they had overlooked the fact that Mr Kleinman had a

current Representation Agreement with the Player and could have done the transfer perfectly legitimately. It was in a sense an oversight which, coupled with the fact that they did not feel able to ask the Player to sign a new Representation Agreement, because of strained relations, led them down an erroneous path of getting someone else to act for the Club. They believed that neither of them could act for the Club because one of them had recently acted for CAFC. The entire matter was therefore an administrative mistake and reflected poor administration within their business and nothing else.

18. On behalf of Mr Rahnama it was submitted that he was naïve and inexperienced and simply wanted to gain experience in the football transfer market. Mr Rahnama did not want any money even for his limited amount of time and involvement in the matter but was persuaded to invoice Sidekick the sum of £460 plus vat. That was to be compared with the commission of £75,750 excluding vat which Messrs Levack and Kleinman would receive.
19. The Commission was asked to give credit for the guilty plea from Mr Rahnama and to take into account that this is his first offence.
20. Mr Purnell referred to two previous decisions namely that of The Football Association v Any Mahfuz (21 May 2014) and also that of The Football Association v Phil Smith (20 May 2014 and on appeal on 9 July 2014). It was urged upon the Commission that it should treat this case more leniently than the Mahfuz case which involved unauthorised agents and led to a two year suspension with 18 months suspended. It was also that argued that this case should be treated more leniently than the Smith case which on appeal saw a two year suspension of licence (18 months of which was suspended) reduced to seven weeks given the new evidence of financially adverse consequences. It was said that Smith was also a more serious case than this because in Smith The FA had previously advised on the impermissibility of what Smith went on to do.

21. We wish to make it clear that sanctions imposed by the Regulatory Commission and the Appeal Board are made on the facts of individual cases and do not provide any binding precedent in respect of this Commission. As far as the mitigating factors advanced are concerned, including those highlighted by reference to the two cases above, the Commission addresses those factors within its findings.
22. Mr Bean, on behalf of the club, also asks the Commission to give credit for the guilty plea and to note that the Club has never been in a position of being in breach of these Regulations. Mr Bean laid the blame for this entire matter at the door of Messrs Levack and Kleinman. In particular the Club contended that Mr Kleinman lied to Mr Burke and Mr Allan by telling them that he did not have a Representation Agreement with the Player when in fact he did.
23. We heard limited testimony from Messrs Levack, Kleinman and Rahnama. We also heard from Derek Allan and Paul Barber from the Club.

Findings

24. The offences that have been admitted are serious offences which involved the respondents deliberately concealing information from The Football Association in respect of the involvement of Agents in Transactions. It involved a number of parties acting in combination to deceive the Football Association by means of false declarations and failing to provide information about the true nature of the Transaction. This must be looked at in the context of the objective of the Regulations which seek to ensure transparency in respect of Transactions and enable The Football Association to regulate, investigate and hold to account those involved. The activities of those involved in these proceedings undermine that objective.

25. The fact that Messrs Levack and Kleinman are Licensed Agents and Mr Rahnama is a Licensed Lawyer as opposed to being Unauthorised Agents is not mitigation in the circumstances of this case. As Ms Graham rightly pointed out when Authorised Agents act in such a way to mislead The Football Association they are in no better position than Unauthorised Agents.

26. The assertion that this Transaction could easily have been done in a different way and in compliance with the Regulations is just that, mere assertion, at best speculative and in any event an irrelevance. It is merely an assertion and speculation because we have been provided with no evidence from the Player that he would have agreed to dual representation or that he would have agreed to pay 5% commission to Mr Kleinman. In interview the Player gave the following answers (page 9):

“LC: Okay. How would you normally pay Matt as your agent? Would normally the club pay on your behalf? You don’t get involved in it.

DS: Yes. I’ve never been involved in that.

LC: The club pay on your behalf. It’s a benefit-in-kind to you. So it doesn’t come out of your salary. You don’t make any payments to him.

DS: Well I’ve never made any payments to Matt. I’m not going to start dishing money out if I don’t have to.”

27. We consider this to be the true position and the objective of Messrs Levack and Kleinman, namely to get the Club to pay. The alternative, which is that the primary thought was to act as agent for the Player and that this would have happened had Mr Kleinman properly appreciated that his Representation Contract was still current is far fetched and we reject it. In his interview Mr Kleinman himself said ““It sounds ridiculous but” (page 56). It not only sounds ridiculous but it is ridiculous. Mr Kleinman never even checked the Representation Contract. He never

phoned The Football Association which has a team of people who could have assisted him with the dates. The suggestion that Messrs Levack and Kleinman were labouring under a misapprehension about the duration of the Representation Agreement with the Player is ethereal.

28. We also agree with the submission made by Ms Graham that the reason as to why these Agents did what they did was irrelevant. Their activities were designed to mislead The Football Association and undermine its work of trying to create and maintain transparency for the benefit of all Participants in football and to maintain the integrity of the regulatory system.
29. The credibility of both Messrs Levack and Kleinman is also undermined by the initial reaction of Mr Kleinman to enquiries by The Football Association in his email of 11 March 2014 (page 103). That email was further designed to throw The Football Association off the scent and sought to concoct a story about an agreement between him and the Player for him not to act in the transfer to Brighton and asserted that Mr Kleinman in fact did not act. We now know that Messrs Levack and Kleinman negotiated the terms face to face with the Club on 29 January 2014 and Mr Kleinman was present with the Player for the signing on 30 January 2014. This further attempt to mislead The Football Association in its investigation of the Transaction is a serious aggravating factor.
30. Regarding the finances of Sidekick we were underwhelmed by the lack of assistance from Messrs Levack and Kleinman. When asked what was the shareholding of Sidekick Mr Levack said he did not know. Eventually he was able to give instructions that he and his wife owned all the shares on a 50/50 basis and Mr Kleinman had no legal or beneficial interest in the shares of Sidekick. When asked about the annual turnover or net asset value of Sidekick Mr Levack said he did not know. Both Mr Levack and Mr Kleinman are directors of Sidekick. Mr Levack was prepared to say that any suspension would result in two employees being laid off –

we were not provided with any particularity about their roles or the reasons why they would have their employment terminated. We regard the purported inability to be able to provide basic financial information about the turnover and net asset value of Sidekick as being unhelpful and disingenuous. There were at least two opportunities to provide such information, in the written statements that were lodged and orally to the Commission.

31. Mr Levack was however able to confirm that pipeline income for his business would be approximately £500,000 in the next three to six months. No request was made to adjourn these proceedings to allow further financial information to be provided. We would have expected that if there was financial information to assist in showing Sidekick faced financial difficulties such would have been provided. We were also told that as well as Messrs Levack and Kleinman there are two other agents who work for Sidekick. On the evidence available we conclude that Sidekick is a very successful business.
32. Mr Rahnama is a solicitor and should have known better. He was responsible for ensuring that everything he did was in compliance with the Regulations. He allowed himself to become involved in these events because he wanted to gain experience and contacts in the football business. We bear in mind that he did not gain anything from this transaction and never intended to gain anything. In the event he was never paid the £460 plus vat that he was persuaded to invoice to Sidekick. We consider that he became involved in this matter as a result of his naivety and his inexperience but whilst that amounts to mitigation it does not provide any excuse.
33. The Club has a long and distinguished history in football. We accept the evidence that the Club was misled by Mr Kleinman as to the existence of a current Representation Contract with the Player. That however does not excuse the failure to comply with the Regulations. In evidence before

the Commission Mr Allan accepted that he knew Messrs Levack and Kleinman had negotiated the contract and they would gain financially from this transaction. We accept Mr Allan's contrition which was evident before the Commission and that this represented an aberration in an otherwise exemplary career. However he himself admitted in his statement that he "had an underlying worry regarding the agents involvement."

34. We accept the submission of The Football Association that the main protagonists in this matter are those who planned it and implemented it namely Messrs Levack and Kleinman. As Licensed Agents they fell well below the standards expected of those holding such a position.
35. Whilst we give credit for the guilty pleas such credit is of necessity only limited credit. It was only during the course of the investigation that it was admitted that the Regulations had been breached and once it became clear that the Player was under a Representation Contract with Mr Kleinman and that the latter together with Mr Levack conducted the negotiations the respondents in these proceedings had no option but to plead guilty. In the context of Mr Kleinman that guilty plea followed a further attempt to mislead The Football Association.

Sanction

36. Regulation 8.1 of the FA Disciplinary Procedures - Regulations 2014-2015 provides:

The Regulatory Commission shall have the power to impose any one or more of the following penalties on the Participant Charged:

- (a) a reprimand and/or warning as to future conduct;
- (b) a fine;

- (c) suspension from all or any specified football activity from a date that the Regulatory Commission shall order, permanently or for a stated period or number of matches;
- (d) the closure of a ground permanently or for a stated period;
- (e) the playing of a match or matches without spectators being present, and/or at a specific ground;
- (f) any order which may be made under the rules and regulations of a Competition in which the Participant Charged participates or is associated, which shall be deemed to include the deduction of points and removal from a Competition at any stage of any Playing Season;
- (g) expulsion from a Competition;
- (h) expulsion from membership of The Association or an Affiliated Association;
- (i) such further or other penalty or order as it considers appropriate.

37. Regulation 8.3(a) provides:

“Save where any Rule or regulation expressly requires an immediate penalty to be imposed, and subject to sub-paragraphs (b)-(d) below, The Regulatory Commission may order that a penalty imposed is suspended for a specified period or until a specified event and on such terms and conditions as it considers appropriate.”

38. We note that there will be substantial changes to the rules relating to Agents from 1 April 2015. In so far as a period of suspension is imposed upon a person who is an Authorised Agent it shall operate so as to prevent that person from carrying out any Agency Activity during the period of suspension and shall further prevent that person from carrying on any Intermediary Activity after 1 April 2015 for the period of suspension.

39. After taking into account all of the mitigation and having concluded that Matthew Kleinman and Alex Levack carry the most responsibility for the breaches that have occurred including persuading Mr Rahnama and the Club to become involved in these activities and that they have benefitted to the extent of the payment of £9,937.50 excl vat which has been paid to Sidekick, the Commission imposes the following penalty:

(1) Matthew Kleinman and Alex Levack are hereby given a warning as to their future conduct in respect of their observance of the Football Agents Regulations and the FIFA Regulations on Working with Intermediaries;

(2) Matthew Kleinman and Alex Levack are hereby suspended from all Agency Activity and Intermediary Activity for a period of 14 months. Seven months of that suspension shall be immediate (namely to 16 September 2015) and the remaining 7 months shall be suspended for a period of 12 months thereafter (namely until 16 September 2016). That suspended part of the suspension will not take effect unless prior to 16 September 2016 either person commits an offence contrary to the Agents Regulations or the FIFA Regulations on Working with Intermediaries;

(3) Matthew Kleinman and Alex Levack are each fined £7,500.

40. After taking into account all of the mitigation and having concluded that Mr Rahnama had a lesser role in these activities the Commission imposes the following penalty:

(1) Ali Rahnama is hereby given a warning as to his future conduct in respect of his observance of the Football Agents Regulations and the FIFA Regulations on Working with Intermediaries;

(2) Ali Rahnama is hereby suspended from all Agency Activity and Intermediary Activity for a period of 9 months. Three months of that suspension shall be immediate (namely to 16 May 2015) and the remaining 6 months shall be suspended for a period of 12 months thereafter (namely until 16 May 2016). That suspended part of the suspension will not take effect unless prior to 16 May 2016 Mr Rahnama commits an offence contrary to the Agents Regulations or the FIFA Regulations on Working with Intermediaries.

41. After taking into account all of the mitigation and having concluded that the Club has, in the events which have happened, benefited from the non-payment of most of the commission namely £65,812.50 the Commission imposes the following penalty:

(1) the Club is hereby given a warning as to its future conduct in respect of his observance of the Football Agents Regulations and the FIFA Regulations on Working with Intermediaries;

(2) the Club is fined the sum of £90,000.

42. The Commission has had regard to the principle of proportionality, the importance of the objective behind these Regulations and the serious and deliberate nature of the breaches. The Commission has also had regard to the need to deter others from acting in breach.

43. The Commission's provisional finding regarding costs is that Messrs Levack and Kleinman shall pay two-thirds of the costs of the Commission hearing and the Club shall pay one-third of the costs. The parties shall have seven days in which to lodge written submissions if they object to that order setting out their reasons and the order that they contend should be made. If such written submissions are not lodged within that timescale this will become a final order in respect of costs.

44. Messrs Kleinman, Levack and Rahnama and the Club have a right of appeal under the FA Disciplinary Regulations.

David Casement QC (Chairman)

Peter Powell

Tom Finn

16 February 2015

SCHEDULE

Relevant provisions from the Football Agents Regulations 2014-2015 referred to in the written reasons.

C.2 A Club, Player or Authorised Agent must not so arrange matters as to conceal or misrepresent the reality and/or substance of any matters in relation to a Transaction or Contract Negotiations

F.1 An Authorised Agent, Club and Player shall ensure that the name, signature and licence or registration number of each and every Authorised Agent or Exempt Solicitor carrying out any Agency Activity in relation to a Transaction or Contract Negotiation (whether directly or indirectly) is shown on all relevant contracts and documents as is required from time to time. This must include the name of the client, the name of any Organisation with which an Authorised Agent is associated, a description of the services provided, and all remuneration arrangements, including any remuneration paid or due to be paid to each and every person involved in the Transaction or Contract Negotiation. This obligation applies to any person who has carried out any Agency Activity in any

part of a Transaction or Contract Negotiation (including where any duties or services or responsibilities are assigned or subcontracted).

H.10 An Authorised Agent shall disclose to The Association full details of all remuneration of any nature received and/or made by him and/or an Organisation with which he is connected, as a result of any Agency Activity, which shall include where an Authorised Agent's activities, services, duties or responsibilities have been assigned or subcontracted.

H.13 An Authorised Agent, an Authorised Agent's Organisation, must not pass, either indirectly or indirectly, any remuneration of any nature in relation to Agency Activity to any Unauthorised Agent or any other person, regardless of which party carries out the Agency Activity, save as permitted under Regulation G9. This does not affect the ability of an Organisation to pay its unlicensed employees or staff pursuant to their employment or other contracts or any other parties for purposes unrelated to any Agency Activity.