**ON APPEAL TO AN APPEAL BOARD OF THE FOOTBALL ASSOCIATION**

**BETWEEN:**

**(1) MR MATTHEW KLEINMAN**

**(2) MR ALEX LEVACK**

**Appellants**

**and**

**THE FOOTBALL ASSOCIATION**

**Respondent**

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**Reasons for Appeal Board Decision 21 April 2015**

## Introduction

1. These are the written reasons for an FA Appeal Board decision made at a hearing at Wembley Stadium on Tuesday 21 April 2015, requested under 3.8 of the *Regulations for Football Association Appeals*.[1]

2. The Appellants Mr Matthew Kleinman and Mr Alex Levack are football agents. This appeal is by each Appellant against a penalty of suspension from agency activity and intermediary activity imposed on him by an FA Regulatory Commission on 12 February 2015 for his admitted misconduct under FA Rule E1(b) for breaches of the FA *Football Agents Regulations*[2] in relation to a transaction involving the transfer of a player Mr Dale Stephens from Charlton Athletic FC to Brighton & Hove Albion FC on 30 January 2014 ("the Transaction"). There is no appeal against the warning as to future conduct or the fine of £7,500 imposed on each Appellant by the Regulatory Commission (chairman Mr David Casement QC sitting with Mr Peter Powell and Mr Tom Finn). On 16 February 2015 the Regulatory Commission gave written reasons for its decision.

3. The Appeal Board members are Mr Nicholas Stewart QC (Chairman), Mr Denis Smith and Mr Mick Kearns.

4. The Appellants attended the appeal hearing with their counsel Mr Nick de Marco, assisted by Professor Mel Stein of Clintons (solicitors for Mr Kleinman) and Mr Paul Fletcher of Adelphi Sports Law (solicitors for Mr Levack). Ms Amina Graham appeared as counsel for The Football Association. Mr Robert Marsh, the FA Judicial Services Manager, acted as secretary to the Appeal Board.

5. We were greatly assisted by skilful and thorough written and oral submissions from counsel.

[1] The FA Handbook Season 2014-2015, pp.359-362

[2] FA Handbook 2014-15, pp.286-316. The breaches were strictly breaches of the 2013-14 regulations although the Regulatory Commission decision refers to breaches of the 2014-15 regulations and annexes the 2014-15 regulations. However, there were no changes from 2013-14 to 2014-15.

## The Transaction in January 2014

6. At the time of the Transaction in January 2014 Mr Kleinman had been an Authorized Agent for the purposes of the *Football Agents Regulations* for some 6 or 7 years and Mr Levack for some 13 years. They both worked for a sports management company Sidekick Management Limited ("Sidekick"). The evidence accepted by the Regulatory Commission was that Mr Levack was a director and with his wife the 50/50 owner of Sidekick, while Mr Kleinman had no legal or beneficial interest in Sidekick. The Regulatory Commission described Mr Kleinman as the other director but we note a minor correction: It was conceded on this appeal that Mr Kleinman had been a director for 6 months from 1 October 2012 to 31 March 2013, but apparently no longer than that. This point has no weight either way on this appeal, as Mr Kleinman was clearly an important and active agent in Sidekick.

7. The Transaction was negotiated by Mr Levack and Mr Kleinman and they arranged to receive a total commission of £75,750 (exc VAT) from the buying club Brighton & Hove Albion FC ("Brighton"). However, they believed that under the *Football Agents Regulations* neither of them could act for Brighton because one of them had recently acted for the selling club Charlton Athletic. In order to get round this difficulty they arranged for the documentation in connection with the Transaction to show as Brighton's agent Mr Ali Rahnama, who had been qualified as a solicitor for about six months and was also an Authorised Agent by virtue of being a Registered Lawyer under the *Football Agents Regulations*. The false documentation included the representation contract. But Mr Rahnama was not the true agent at all and played no part in the negotiations and eventual agreement of the transfer. The agency work was all done by Mr Levack and Mr Kleinman and the commission was all going to go to them or to Sidekick. Mr Rahnama was only ever going to receive a very modest fee payable to his employers McFaddens.

8. The apparent involvement of Mr Rahnama as the Club's agent was therefore an entirely false front. Mr Rahnama signed several documents and declarations, knowing they were false and with the clear knowing collusion of Mr Kleinman, Mr Levack and Brighton. All four were charged with misconduct under FA Rule E1(b) and pleaded guilty before the same Regulatory Commission. We do not need to go into the fine details of the documentation and how they amounted to breaches of several of the *Football Agents Regulations*. If needed, they are set out in the Regulatory Commission's reasons, also published on The Football Association website

www.thefa.com or otherwise available from The FA. It is sufficient to say that we firmly endorse the Regulatory Commission's summary in paragraph 13 of its reasons:

> "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."

as well as paragraph 24 of those reasons:

> "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 the 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 regulated, investigate and hold to account those involved. The activities of those involved in those proceedings undermine that objective."

We stress that very last point. We emphasise the importance of these matters in The FA's and other football authorities' continuing work to sustain transparency and credibility in the activities of agents and the operation of the transfer market. The deliberate and dishonest actions of all the four participants clearly justified strong penalties.

## The Suspension and the Grounds of Appeal

9. The suspension imposed on the Appellants was as follows:

> "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[3] commits an offence contrary to the Agents Regulations or the FIFA Regulations on Working with Intermediaries."

10. Despite our clear view that these offences justified strong penalties, we must consider carefully whether in relation to each of Mr Kleinman and Mr Levack the suspension imposed by the Regulatory Commission was justified or whether it ought to be set aside or modified on any of the grounds of appeal put forward under 1.6 of the *Regulations for Football Association Appeals*, that in imposing those suspensions the Regulatory Commission:

(1) misinterpreted or failed to comply with the rules or regulations relevant to its decision; and/or

(2) came to a decision to which no reasonable Regulatory Commission could have come; and/or

(3) imposed a sanction that was excessive.

## Application to present new evidence: 2.6 of appeal regulations

11. As a first step we had to rule on applications that the Appeal Board should hear new evidence. The applicable regulation is 2.6 of the *Regulations for Football Association Appeals*, which states:

"The Appeal Board shall hear new evidence only where it has given leave that it may be presented. An application to present new evidence must be made in the Notice of Appeal or the Response, setting out the nature of the evidence, and why it was not presented at

[3] In case it might be argued that the suspended part of either Appellant's suspension could come into effect even if it were only the other Appellant who committed a further offence, we have amended the wording of the suspension order to make the point clear: see para 47 below. We do not think that can have been intended by the Regulatory Commission, as it would be contrary to principle for such a significant further punishment to be triggered against one Appellant by a breach which was not his breach at all.

> the original hearing. Save in exceptional circumstances, the Appeal Board shall not grant leave to present new evidence unless satisfied with the reason given as to why it was not, or could not have been, presented at the original hearing and that such evidence is relevant. The Appeal Board's decision shall be final."

The Appellants' Notice of Appeal did squarely raise the issue of new evidence as required by the second sentence of regulation 2.6, so there was no difficulty on that particular score.

12. It was sought to adduce written statements of Mr Dale Stephens (the player being transferred to Brighton in January 2014), Mr Kleinman and Mr Levack, together with an appendix to Mr Levack's statement. Those statements are quite detailed and they contain both evidence and argument which could and should have been raised before the Regulatory Commission. We see no content of any materiality where we are satisfied with the reason given as to why it was not presented at the original hearing.

13. One point which was urged on behalf of the Appellants is that they were hampered in their presentation of evidence before the Regulatory Commission by there being a conflict of interest between them and the solicitors advising and representing, McFaddens, because McFaddens was the firm employing Mr Rahnama. It followed, Mr de Marco submitted, that it was in McFaddens' interests to play up the Appellant's responsibility and correspondingly to play down Mr Rahnama's. Mr Levack's proposed statement also described inadequacies in the advice given by McFaddens about the material which should be put before the Regulatory Commission.

14. McFaddens have not acted or been involved in these appeal proceedings. We do consider it would have been better if McFaddens had not acted for the Appellants as well as for their own employee Mr Rahnama before the Regulatory Commission. It is a realistic inference, even without Mr Levack's new statement, that they did not give the best advice to the Appellants on the question of what evidence they should present for the Appellants' case on sanctions (though we should note the alternative, though less likely, explanation that they did give adequate advice which was not followed by the Appellants). Nevertheless, we do not see that the *conflict of interest* is at all likely to have had a material impact on the running of the Appellants' case. The relative responsibility of the Appellants and Mr Rahnama was not an area lending itself to much doubt or dispute. Deficiencies in the presentation of evidence for

the Appellants to the Regulatory Commission were in our view attributable to inadequate thought and attention of both the Appellants and their legal representatives, not to the very limited practical conflict between the Appellants and McFaddens. In considering whether we are satisfied with the reasons why evidence was not presented at the original hearing, it is not the task of this Appeal Board to try to differentiate between decisions of clients and lawyers and decide where any fault lies. All the new evidence proposed by the Appellants could have been presented at the original hearing and we are not satisfied with the reason why it was not.

## Are there "exceptional circumstances" under regulation 2.6?

15. It follows from that conclusion and the express terms of regulation 2.6 that we can only admit new evidence in exceptional circumstances.

16. The proposed new statements are wide-ranging. If admitted, they would involve further new evidence from the FA as respondent to the appeal and inevitably to cross-examination. That would generate just the sort of hearing which regulation 2.6 is designed to discourage, whether before the Appeal Board or by remission for hearing or rehearing before the same or a different Regulatory Commission.

17. The Appellants were represented by counsel (not Mr de Marco) at the Regulatory Commission hearing and although he also represented Mr Rahnama, counsel could have requested but did not request any adjournment to allow further financial information to be provided (as noted in paragraph 31 of the Regulatory Commission reasons). We do not see that any decision to seek or not to seek an adjournment could realistically have been affected by any conflict of interest between McFaddens and the Appellants.

18. While the proposed new statements are wider-ranging, it is the introduction of new financial evidence which was particularly important in the Appellant's application to adduce new evidence. Mr Levack wished to put before the Appeal Board a number of the Appellants' representation contracts with clubs and players which it was claimed would demonstrate that the financial loss to the Appellants (or to Sidekick) as a result of their suspensions was far greater than the Regulatory Commission could have thought on the evidence before it. The Regulatory Commission referred in paragraph 31 of its reasons to Mr Levack's figure of

[redacted] for "pipeline income" of approximately [redacted]. Mr Levack's proposed new evidence would assert that there was a large potential additional loss because Sidekick "stands to lose over [redacted] from existing contracts, which could increase to [redacted] if we continue to be suspended and cannot register as Intermediaries[4] because of the penalties imposed". It is that loss from work already done under existing contracts which has been referred to as "pipeline income" on this appeal, although it is in a different category from the pipeline income referred to in paragraph 31 of the Regulatory Commission reasons. The pipeline income of approximately [redacted] mentioned by the Regulatory Commission referred to expected new income over the next three to six months after the Regulatory Commission hearing.

19. The Appeal Board has considered those new *Regulations on Working with Intermediaries*, which we regard not as evidence but as regulations which we should examine in the same way that a court must always look at the relevant law including all statutes or statutory regulations. However, we are not persuaded that it is right to admit the new evidence in the form of the contracts on which the Appellants wish to make their fresh arguments, including the argument based on the effect of their contracts in the light of those new regulations.

20. It must have been obvious to the Appellants themselves, even without advice from their lawyers, that a suspension was a highly likely outcome and that there was at least a serious risk that there would be an immediately effective suspension. In those circumstances it should have also been obvious to the Appellants, and not just to their legal advisers, that the financial consequences of a suspension were directly relevant. They were pleading guilty after all, so the hearing was going to be only about the penalty. If they hoped to reduce or even try to avoid altogether a period of immediate suspension, they would need to demonstrate as fully as they could the allegedly dire consequences for their business. The contracts they now seek to put before the Appeal Board were clearly material for that purpose.

21. We have carefully considered whether there are exceptional circumstances which justify admission of the new evidence, or a discrete part of the proposed evidence such as the

[4] The reference to registration as Intermediaries relates to the new FA *Regulations on Working with Intermediaries*, which were still under preparation at the time of the Regulatory Commission hearing but have since come into force on 1 April 2015.

contracts, even though we are not satisfied with the reasons why it was not presented at the original hearing.

22. We were referred to an FA Appeal Board decision in *Phil Smith v The FA*, 11 July 2014, where the Appeal Board allowed new evidence of the serious financial consequences of an agent's suspension although they expressly noted that "in principle the Appeal Board could see a sound argument that both the Appellant himself (with all his experience and personal knowledge of his standard contracts) and his legal advisers could and should have given obvious thought to the complete consequences of the loss of an agent's licence. It is not good enough simply to observe that no thought was given to the same because those concerned had not entertained the possibility that just such a course may be taken by the Commission". However, they continued: "Equally, however, the Board appreciated that the consequences were in respect of discrete contractual arrangements that may not have been at the forefront of the Appellant's mind at the time of the original hearing". The new evidence was admitted.

23. It is not surprising that the Appellants rely heavily on that decision in *Phil Smith v The FA*, but the decision is not a binding precedent. The facts do appear quite closely similar in many respects, but we cannot possibly have the same detailed knowledge of those individual facts as had the Appeal Board actually dealing with it. Each case turns on its own facts and, importantly, the decision in the present case is for our independent judgment and discretion based on our detailed consideration of the facts and material in the case before us. Our judgment is that on the facts of this case we should not adopt the same approach as the Appeal Board in *Phil Smith v The FA*.

24. Mr de Marco urged upon us that we must consider, as the ultimate test, the overall fairness of taking into account the new evidence. He submitted that fairness required the Appeal Board to consider evidence highly relevant to sanction. The proposed new evidence is certainly relevant, as it would have been before the Regulatory Commission. The ultimate test *is* fairness. However, fairness includes the fair and correct application of the test for admission of new evidence under 2.6 of the *Regulations for Football Association Appeals*. Applying that test to this case, we reject the Appellants' application to present new evidence.

25. We note that in *Phil Smith v The FA* the FA as respondent did not oppose the admission of the new evidence. In the present case, the FA's initial complete opposition to the Appellant's application for admission of new evidence was modified at the hearing. Ms Graham did not oppose the admission of contracts which might be adduced to support the ground that the immediate suspension would effectively impose a retrospective financial penalty much larger than the Regulatory Commission would have contemplated and that if it had known the true position it would not have imposed that suspension. (We should make it clear that Ms Graham did not accept that even the new material would have supported that ground in the end, and we are also far from accepting that it would.)

26. We have declined to accept even the non-opposed new evidence. While cooperation between parties is always welcome, careful application of 2.6 by the independent decision of the Appeal Board is crucial. We do not find exceptional circumstances to justify admitting the new evidence.

27. The FA had its own application for admission of new evidence but it was largely consequential upon success of the Appellants' application so need not be considered further.

28. We have considered one further new item: a schedule **Sanctions Imposed for Breaches of The FA Agents Regulations** which was prepared by the FA but had not been before the Regulatory Commission. It summarises a number of previous decisions of FA Regulatory Commissions and Appeal Boards in cases involving agents. That is not *evidence* at all, requiring admission through regulation 2.6. It is information about the operation of the FA's regulatory and disciplinary system which can always be considered when relevant, in the same way as explained in paragraph 19 of these reasons in relation to the new *Regulations on Working with Intermediaries*.

## The substance of this appeal

29. We therefore turn to the grounds of appeal, based only on the material which was before the Regulatory Commission, the new *Regulations on Working with Intermediaries* and the schedule mentioned in paragraph 28 above.

30. Mr de Marco submits that the suspensions were disproportionate in relation both to: (i) the penalties imposed on the other two participants charged, Mr Rahnama and Brighton and (ii) penalties in other comparable cases.

31. The comparison with the penalties imposed on Mr Rahnama and Brighton does not lead us to find anything wrong with the suspensions imposed on the Appellants. Mr de Marco submitted that it was Mr Rahnama who actually made the false declarations and prepared and signed the false documentation; and that it was unusual for a principal offender to be penalised more lightly than accessories (which is how he characterised the Appellants). That is a quite unrealistic approach. When the Regulatory Commission said in paragraph 13 of its reasons that "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", it was clearly well aware of who had actually done what. In paragraph 34 the Regulatory Commission said that the main protagonists were the Appellants who planned and implemented the matter and in paragraph 39 that the Appellants carried the most responsibility for the breaches including persuading Mr Rahnama and Brighton to become involved. That strikes us as the only reasonable assessment of the evidence before the Regulatory Commission. "Planned" does not have to mean some elaborate protracted scheming and "persuaded" does not necessarily mean heavy or protracted pressure. The Appellants were clearly by far the more experienced agents and the prime movers. The distinction between principal and accessory is quite artificial. We can easily see why the Regulatory Commission imposed a shorter suspension on the relatively very inexperienced Mr Rahnama and that gives no indication whatever that the suspensions imposed on the Appellants were excessive.

32. As far as Brighton is concerned, their actions were inexcusable but they are not the experienced Authorized Agents for whose benefit and at whose instigation the false documents were used so as to mislead the FA. Suspension was not available as a suitable penalty for Brighton. The effective fine for Brighton was just over £24,000 (i.e. the £90,000 fine less the commission of £65,812.50 which Brighton saved). We do not think Brighton could have complained if it had been quite a lot higher and overall we do not regard the penalty on Brighton as any indication that the suspension of the Appellants was excessive. The fact that the FA did not appeal against the Brighton penalty, as it could have done under 1.5 of the *Regulations for Football*

*Association Appeals* on the ground of undue leniency, does not affect this point one way or the other.

33. Comparison with other cases does not lead us to fault the decision of the Regulatory Commission in this case. We were referred to a brief note of the outcome of some 15 cases dating back to 2008, only four of which involved an immediate effective suspension. However, the information about most of them is sparse and we do not find a clear settled pattern to support the conclusion that the suspensions imposed on these Appellants were significantly out of line with a clearly established range which would make these suspensions excessive. We have noted the *Phil Smith* v *The FA*, where we do have the full Regulatory Commission and Appeal Board reasons, but we do not consider that a comparison of this case with that case, where the new evidence admitted by the Appeal Board had a very marked effect on the penalty, shows that the Regulatory Commission in the present case was wrong in the penalty it imposed on the Appellants. The Regulatory Commission expressly referred to the Phil Smith case at paragraph 20 of its reasons and correctly observed that it provided no binding precedent.

34. The Regulatory Commission's approach to the very limited financial evidence was entirely sensible. Mr Levack put the pipeline income (i.e. the future income in the sense indicated in paragraph 18 of these reasons) expected in the following three to six months at approximately £500,000. The conclusion in paragraph 31 that Sidekick was a very successful business cannot be faulted. On that limited evidence available to the Regulatory Commission, we do not see it as seriously arguable that the suspensions were excessive. They could not be seen as having a disproportionate or unfairly damaging effect on the Appellants or their business, given that their business derived from their status within the very system which they had abused and undermined by their dishonest subterfuge.

35. Mr de Marco pointed to the Regulatory Commission's express finding in paragraph 29 of its reasons that the credibility of both Mr Levack and Mr Kleinman was undermined by Mr Kleinman's email of 11 March 2014 in which he deliberately sought to mislead the FA when they were making enquiries about this matter. The Regulatory Commission described this as a serious aggravating factor, which it was. However, Mr de Marco makes the fair point that there is no evidence that Mr Levack was involved in that email at all, so the aggravating factor

could not fairly be applied to him – as he says it apparently was because the two Appellants received the same suspension.

36. We consider that Mr de Marco is right that the Regulatory Commission regarded both Appellants as involved in that 11 March 2014 though there is no evidence that Mr Levack actually was. Nevertheless, we do not regard that point as making the suspension excessive as against Mr Levack or justifying any interference with the Regulatory Commission decision in relation to Mr Levack. It is clear enough to us that the 7 month immediate suspension was set in whole months designed to cover one transfer window; and that the Regulatory Commission regarded the activities of Mr Levack and Mr Kleinman as so intertwined that to allow either to become active within that transfer period would in practice weaken the effect of the suspension of the other. Given that Mr Levack was the considerably more experienced agent and that he and not Mr Kleinman was an owner of Sidekick, it was entirely fair overall that his suspension was as long as Mr Kleinman's. Reducing Mr Levack's suspension would be tinkering, which is exactly what an Appeal Board should not do.

37. The Regulatory Commission decision was a reasonable one, was not excessive and the relevant rules and regulations were fairly applied.

## The effect of the new Regulations on Working with Intermediaries

38. It was argued by Mr de Marco that the Regulatory Commission had no jurisdiction to suspend the Appellants from Intermediary Activity, because when it made its order the new *Regulations on Working with Intermediaries* were in draft only, not in force, and made no provision for Intermediaries to be Participants or for the FA to have similar jurisdiction over them as over licensed agents.

39. We reject that argument. The jurisdiction of the Regulatory Commission was clear. Under 8.1(c) of the *Regulations for Football Association Disciplinary Action* it had power to impose "suspension from all or any specified football activity" and under 8.1(i) to impose "such further or other penalty or order as it considers appropriate". The Appellants were Participants both when they committed the breaches for which they were charged and when they appeared before the Regulatory Commission. In the absence of any express definition of "football activity" for

the purposes of regulation 8, we consider it would be an unduly narrow interpretation for it not to include activity as a football agent or intermediary. But even if that is wrong, the power in 8.1(i) clearly extended to allow a suspension which was the equivalent under the imminent new system of a suspension from activity under the then current system of the *Football Agents Regulations*. While the precise effect of a suspension under the new system might not have been known to the Regulatory Commission when it made its order, in the light of the imminent change of regulation of agents the form of order adopted was the only sensible practical course. The Regulatory Commission had clear jurisdiction to make the suspension order in that form and there was nothing unfair in the order made.

40. In order to continue their business of representing clubs and players, it will be necessary for the Appellants to apply for registration as intermediaries under the *Regulations on Working with Intermediaries*. They will not be able to apply until their suspensions are completed on 16 September 2015 and there is no guarantee that they will be successful. Mr de Marco submitted that in effect that made the suspensions open-ended, which he said went not simply to jurisdiction but supported the ground of appeal that the sanction was excessive.

41. We do not agree. The precise consequences of the suspensions for the Appellants' future registration under the *Regulations on Working with Intermediaries* are a matter of speculation. However, if (which we do accept as a distinct possibility) the effect of this case is to damage their prospects of registration, having regard to the requirement in Appendix II, paragraph 1.3, to satisfy the Football Association of their "impeccable reputation before such Registration will be accepted", that will be a consequence of their serious admitted breaches which have led to the suspensions. In any event, we see no reason why the Regulatory Commission should have withheld suspensions, which were clearly otherwise appropriate sanctions, because they might have had those further detrimental consequences. A sanction with no immediate suspension would have been plainly inadequate for either Appellant.

42. We give a similar answer in relation to a specific aspect of the proposed new evidence which we have declined to admit under 2.6 of the *Regulations for Football Association Appeals*. The representation contracts, which the Appellants wished to introduce on appeal to show their potentially large loss of accrued pipeline income, also contained clauses which apparently entitled their clients to terminate the contracts because of the suspensions. Mr de Marco

argued that as well as potentially triggering the losses of that accrued pipeline income, the effect of termination would be that other agents or intermediaries would be free to approach the Appellants' former clients, which they would not have been able to do if the Appellants had not been suspended and their representation contracts had continued in force. It was argued by Mr de Marco that this was another factor which would have reduced the sanction if the Regulatory Commission had appreciated the full effect of the suspensions.

43. Even leaving aside our overall view that there are no exceptional circumstances justifying admission of any new evidence, we consider it highly unlikely that this point could have made any difference to the Regulatory Commission's decision. Without looking at the specific contractual provisions, the Regulatory Commission would have understood perfectly well that a 7 month suspension would in practice mean that some client connections would be lost, some would survive and that at some point or another a suspension of that length was bound to create a risk of clients moving to other agents or intermediaries.

## Appeal Board conclusions: Suspensions upheld

44. The Appellants were asking this Appeal Board to lift the immediate suspension altogether. However, in the end the various arguments put forward so skilfully by Mr de Marco essentially run up against the following basic points:

(1) It can only be in the most exceptional circumstances (not applicable here) that an agent or intermediary who has sought to mislead the Football Association by a dishonest breach of the regulations will *not* receive an immediate suspension.

(2) In most cases, as in this case, to be realistically effective at all the suspension will need to be for at least several months and will usually need to cover at least one transfer window.

(3) The financial effects of the suspension are clearly relevant as part of the overall picture in working out the penalty, but a Regulatory Commission is *not* required to fine tune suspensions. It could and should adopt a fairly broad approach.

(4) Suspensions are bound to hurt – that is the point of them. If the financial damage from suspension is going to be unusually heavy in a particular case, then that is something that the agent or intermediary (who is after all best placed to know that) should think about before committing the breach.

45. In setting out that approach, we are not presuming to tie the hands of future Regulatory Commissions or Appeal Boards. They will exercise their own judgments on the facts of their particular cases, as did the Regulatory Commission in this case. However, we are confident that the principles we have set out above will be endorsed by other Regulatory Commissions and Appeal Boards as the correct approach. It was clearly the approach of the Regulatory Commission in this case, and it was the right one.

46. Our final comment is to note that in paragraph 42 of its reasons, the Regulatory Commission had regard to the need to deter others from acting in breach. That is important. So far as the message has not been clearly received from previous cases, it might now be more widely understood.

47. The appeal is dismissed, the Regulatory Commission order stands (with only the minor change of wording indicated in footnote 3 to paragraph 9) and this Appeal Board orders:

(1) Each Appellant is suspended from all Agency Activity and Intermediary Activity for a period of 14 months, with 7 months of that suspension being immediate (namely from 16 February 2015 to 16 September 2015) and the remaining 7 months being suspended for a period of 12 months thereafter (namely until 16 September 2016), that suspended part of the suspension not to take effect unless prior to 16 September 2016 that Appellant commits an offence contrary to the Football Agents Regulations or the FIFA Regulations on Working with Intermediaries.

(2) The warning as to the Appellant's future conduct, the fine of £7,500 and the order for the Appellants to pay two-thirds of the costs of the Regulatory Commission all stand as ordered by the Regulatory Commission.

(3) The Appellant must each separately pay £1,000 towards the costs incurred by this Appeal Board.

(4) The appeal fees paid by the Appellants are forfeit to the Football Association.

Nicholas Stewart QC
Chairman

Denis Smith

Mick Kearns

19 May 2015