

**OFFICE OF THE MISSISSIPPI SECRETARY OF STATE
REGULATION AND ENFORCEMENT DIVISION**

IN THE MATTER OF:

**Fred Howard
1268 Rice Road
Madison, MS 39110**

Respondent

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**Administrative Proceeding
Number: AA-12011**

FINAL ORDER

This cause came before a hearing officer for a hearing on February 27, 2013, following a number of prior requests for continuance by Fred Howard (hereinafter "Howard"). On May 8, 2013, David R. Lynch, the appointed Hearing Officer submitted his Recommendations as Findings of Fact and Conclusions of Law. The Recommendation is attached as Exhibit A. Thereafter, counsel for Howard was given an opportunity until Friday, May 24, 2013, to review and respond to the Hearing Officer's Report and Recommendation. Howard submitted a timely response to the Hearing Officer's Findings of Fact and Conclusions of Law. Therefore, the above-styled cause stands ready for final adjudication via this Final Order,

FINDINGS OF FACT

1. The Secretary of State has the authority to administer and to provide for the enforcement of all provisions of the Mississippi Athlete Agent Act (hereinafter "Act"), Mississippi Code Annotated Section 73-42-1, *et seq.*, which regulates persons acting as athlete agents in the State of Mississippi.
2. Howard is an athlete agent and is subject to the requirements of the Act and regulations promulgated thereunder.

3. An enforcement notice was issued to Howard on September 25, 2012, informing him of a violation regarding Howard's interactions regarding a student athlete at Jackson State University, the same being Mr. Donovan Robinson. The notice informed Mr. Howard that he was entitled to an administrative hearing on the matter.
4. The Division received a letter from Howard on October 10, 2012, requesting an administrative hearing.
5. A Notice of Hearing was sent to Howard on November 5, 2012. The following violation of the Act was alleged:

Respondent entered into an agency contract with a student-athlete and publically represented himself as an athlete agent while not being a registered athlete agent with the Secretary of State's Office as required by Mississippi Code Annotated Section 73-42-7(1).
6. A hearing on the matter was held on February 27, 2013, with Hon. David R. Lynch serving as hearing officer.
7. The Hearing Officer's Findings of Facts and Conclusions of Law is attached to this Final Order as Exhibit A. The Hearing Officer determined that Howard violated Mississippi Code Annotated Section 73-42-7(1). The Secretary of State accepts the recommendation of the Hearing Officer and hereby adopts the Hearing Officer's recommendations, in total, as the opinion of this agency.

CONCLUSIONS OF LAW

8. Howard solicited Donovan Robinson, of Jackson State University, a Mississippi student-athlete, to enter into an agency contract when Howard was not a registered athlete agent with the Mississippi Secretary of State's Office as required by Mississippi Code Annotated Section 73-42-7(1).

9. The hearing officer recommended an administrative penalty of Twenty- Five Thousand Dollars (\$25,000.00), the maximum allowed by statute to be paid to the Secretary of State. The Undersigned assesses a penalty of Fifteen Thousand Dollars (\$15,000.00), because of the cooperation of Mr. Howard. In doing so, the Undersigned still finds the violation by Howard egregious and a blatant disregard for Mississippi Law. Howard, a Mississippi resident, solicited and signed a Mississippi student-athlete to a representation contract. Mr. Howard's response presents no relevant mitigating factors to the violation.

As such, the Secretary of State finds the Hearing Officer's report and recommendation to be well-reasoned. Pursuant to the authority granted by Mississippi Code Annotated Section 73-42-1 it is hereby **ORDERED** that an administrative penalty in the amount of Fifteen Thousand Dollars (\$15,000.00) shall be paid to the Secretary of State for the above described violation. Such fine is due within thirty (30) days from the date of this Final Order.

SO ORDERED AND ADJUDGED.

This, the 25 day of June, 2013.




C. DELBERT HOSEMANN, JR.
Secretary of State
State of Mississippi

FINDINGS OF FACT

1. The Secretary of State has the authority to administer and to provide for the enforcement of all provisions of the Uniform Athlete Agents Act (hereinafter "Act"), Miss. Code Ann. § 73-42-1, et seq. (hereinafter "Code") which governs persons acting as athlete agents in the State of Mississippi.
2. Donovan Robinson ("Robinson") was engaged in the intercollegiate sport of football at Jackson State University and was eligible to be engaged in the sport of football for a professional sports team during the time period he had contact with Respondent.
3. According to Respondent's own admission and after review of the record, Robinson entered into a contract authorizing Authentic Athletix ("AA") to negotiate or solicit on Robinson's behalf a professional-sports-services contract.
4. According to Respondent's own admission and after review of the record, Respondent solicited Robinson to sign a professional-sports-services contract with AA.
5. Upon review of the record and by his own admission, Respondent did not apply for a certificate of registration prior to soliciting Robinson to enter into an agency contract.
6. Respondent solicited Robinson to sign an agency contract as early as November 29, 2011 (see Exhibit 1).
7. Respondent did not submit an application to register as an athlete-agent to the Mississippi Secretary of State until August 22, 2012 (see Exhibit 11).
8. Respondent did not knowingly fail to comply with the Act.
9. As part of its representation of Robinson, AA, through Fred Howard, required Robinson to execute a Promissory Note in the amount One Thousand and Five Hundred Dollars (\$1,500.00) at an interest rate of ten percent (10%) due to AA advancing funds of the same

amount to Robinson for expenses incurred by Robinson to attend training camps (see Exhibit 3) (the Promissory Note).

10. AA procured a professional-sports-contract for Robinson with the New Orleans Saints, executed by Fred Howard and a representative of AA on June 21, 2012, and by Robinson and a representative of the New Orleans Saints on June 22, 2012, for Robinson to be paid as much as \$390,000.00 for the 2012 season, \$480,000.00 for the 2013 season, and \$570,000.00 for the 2014 season (see Exhibit 8) (the "Contract").

11. Robinson had other opportunities to try out with other teams before and after the Contract, but those tryouts did not lead to a professional-sports-contract for Robinson

12. The Contract also provided that for the aforementioned amounts to be earned, Robinson was required to be "a member of the Club's 53 Man Active/Inactive Roster." Robinson was never a part of "the Club's 53 Man Active/Inactive Roster," and therefore never received any remuneration under the Contract, resulting in substantial loss to Robinson due to the loss of the Contract, the need to repay the Promissory Note, and any lost opportunities with other teams.

13. Due to Robinson never receiving remuneration from a professional-sports-services-contract, Respondent never received any compensation from Robinson or AA.

14. Whether Respondent received any compensation from Robinson or AA has no bearing on whether Respondent is considered to be an athlete agent within the meaning of the Act.

15. By his own admission, Respondent attempted to contact and/or did contact other student-athletes for agency contracts with AA. These athletes include Kevin Bolton from the University of Southern Mississippi, Marceles Wilder from Jackson State University, Chance Dennis from Delta State University, Dominique Davenport from Delta State University, Darius

Hanks from the University of Alabama, and Isaac Williams from Alcorn State University. The record is unclear to what extent Respondent attempted to solicit these student-athletes into agency contracts with AA nor the time period of the various solicitations.

CONCLUSIONS OF LAW

16. Robinson was a "student-athlete" within the meaning of Miss. Code Ann. § 73-42-3(l).

17. Respondent's solicitation of Robinson to enter into a contract authorizing Authentic Athletix to negotiate or solicit on Robinson's behalf a professional-sports-services contract causes him to be an athlete agent within the meaning of Miss. Code Ann. § 73-42-3(b).

18. As an athlete agent, Respondent is subject to the requirements of the Act.

19. Miss. Code Ann. § 73-42-7(1) requires, in part, for individuals acting as athlete agents in the State of Mississippi to be issued a certificate of registration under Miss. Code Ann. § 73-42-7. Miss. Code Ann. § 73-42-7(2) provides an exception to the general registration requirement "for all purposes except signing an agency contract if within seven (7) days after an initial act as an athlete agent, the individual submits an application to register as an athlete agent in this state" (the "Exception"). Respondent's failure to register as an athlete agent with the time period required by Miss. Code Ann. § 73-42-7 is a violation of the Act by Respondent.

20. Miss. Code Ann. § 73-42-33 provides that "The Secretary of State may assess a civil penalty against an athlete agent not to exceed Twenty-five Thousand Dollars (\$25,000.00) for a violation of [the Act]."

21. Miss. Code Ann. § 73-42-33 does not require a knowing violation. The Secretary of State's allegation only referenced civil penalties under Miss. Code Ann. § 73-42-33, and

penalties under this section have no scienter requirement. The only section of the Act that has a scienter requirement with regards to registration is Miss. Code Ann. § 73-42-27(2). Intentional violations under that section carry criminal penalties. Miss. Code Ann. § 73-42-29. However, Miss. Code Ann. § 73-42-33 imposes a civil penalty for *any* violation of the Act with no reference to any scienter requirement imposed by another section. The structure of this provision is in clear contrast to the criminal penalties section, which specifically references the scienter requirement of Miss. Code Ann. § 73-42-27(2). Finally, absent a scienter requirement, Mississippi has long recognized that ignorance of the law is not a defense. *Royer Homes of Miss., Inc. v. Chandeleur Homes, Inc.*, 857 So.2d 748, 754 (Miss.2003) (quoting *Farragut v. Massey*, 612 So.2d 325, 329 (Miss.1992)). Respondent's ignorance of the law is no defense to imposition of civil penalties pursuant to Miss. Code Ann. § 73-42-33.

THEREFORE, an administrative penalty of \$25,000.00 is hereby recommended against Fred Howard for his violation of the Act, to be paid to the Secretary of State, who shall also be reimbursed for all costs and expenses incurred in the investigation of the violations and the institution of administrative proceedings as a result thereof.

Respectfully submitted, this the 8th day of May, 2013.



David R. Lynch
Hearing Officer