

**WRITTEN REASONS FOR DECISION OF
THE EDMONTON COMBATIVE SPORTS COMMISSION**

Appeal Number	1-2021
Date of Hearing	May 10, 2021
Panel:	Daniela O’Callaghan (Chair), Trevor Kelly (Vice Chair), Manav Deol (Member)
Appellant:	Mr. Pasqualino Santoro, Applicant for Promoter’s Licence Application No. 388738876-001
Witness	Mr. Terry McLean, speaking on behalf of the Appellant
Respondent	Mr. Troy Courtoreille, Executive Director
Counsel for Respondent	Ms. Sarah Davis, City of Edmonton Legal
Counsel for the Commission	Mr. Cameron Ashmore, City of Edmonton Legal
Date Decision Issued	May 22, 2021

Introduction:

Mr. Santoro, as a sole proprietor, applied for a promoter’s license that would allow him to stage a Commission-sanctioned event. The initial application which was submitted on March 2, 2021 was incomplete and re-submitted on March 3rd and 4th.

The Executive Director refused to issue a promoter’s license and provided written reasons for the refusal on March 26, 2021. The grounds for refusal were that Mr. Santoro is not qualified to be licensed as a promoter and it is not in the public interest to issue Mr. Santoro a promoter’s license. Much of the reasoning of the Executive Director was based around an event called Exodus, which was an event scheduled for October 19, 2019 that did not proceed, as well as concerns about Mr. Santoro’s financial capacity to stage an event and unwillingness to be forthcoming and to meet the requirements for running a successful event. Mr. Santoro appealed the licensing decision and the Commission heard the appeal through a three-member appeal panel on May 10, 2021.

The Commission has a mandate to hear appeals from the Executive Director’s licensing and permitting decisions and may confirm, cancel, vary or substitute the decision being appealed. This is an appeal *de novo*, which means that the appeal hearing is a new opportunity to consider the promoter’s license application based on the evidence presented at the hearing. Section 20 of Bylaw 15594, which allows the Commission to hear from witnesses and receive any evidence, makes it clear that the panel should treat this appeal as a *de novo* hearing.

Decision:

By a 2-1 majority decision, Mr. Santoro is granted a promoter’s license with two conditions:

1. Within two weeks of submitting an event permit application, Mr. Santoro must issue two preliminary certified cheques in the amount necessary to pay the estimated costs set out in ss.10(4)(a) and (b) of Bylaw 15594, based on a reasonable preliminary

event budget for such expenses. This preliminary payment will offset any additional payments required to fully meet these Bylaw obligations closer to the event date.

2. At the time of submitting an event permit application, Mr. Santoro must provide a signed letter from Mr. McLean which includes the following:

- a) Confirmation that Mr. McLean is an owner and financial controller of the company that is funding the event;
- b) Confirmation of the total amount of funds that have been allocated for the event and proof by way of a current bank statement;
- c) Confirmation that the event funds are held in a bank account that is separate from funds that are intended for other purposes; and
- d) An undertaking to immediately inform the Executive Director in writing if the noted funding arrangement changes (and details of the same) or falls apart.

A number of interim evidential decisions were issued by the panel and the reasons for these decisions are provided in Appendix 1.

Issues in this Appeal:

The panel considered four issues within the legal framework set out in the:

- City of Edmonton Bylaw 15595, Combative Sports Bylaw (“Bylaw 15594”); and
- Edmonton Combative Sports Policy #2: Licensing Promoters (“Policy #2”).

The four issues in this appeal are:

1. *Is Mr. Santoro qualified to become a licensed promoter?*
2. *Does Mr. Santoro have the financial capacity to stage an event?*
3. *Does the failure of the Exodus Event mean that Mr. Santoro is not qualified to become a licensed promoter or that it is not in the public interest for him to be licensed?*
4. *Has Mr. Santoro failed to be forthcoming with information or credibly answer questions in the licensing application process, including the appeal hearing? If so, is this failure a basis for refusing the promoter license application per Policy #2 or in the public interest?*

ISSUE #1: Is Mr. Santoro qualified to become a licensed promoter?

Section 3(a) of Policy #2 states that the Executive Director may refuse to issue a promoter’s license if, in the sole opinion of the Executive Director, the promoter is not qualified to host a Commission-sanctioned event. Once an appeal to this Commission occurs, it is up to the Commission to determine whether Mr. Santoro is qualified based on the evidence presented.

In the opinion of the panel, the determination of whether a promoter is “qualified” requires consideration of a number of factors such as their background in combative sports, experience in promoting events, organizational capacity and ability to adhere to legal or policy

requirements and standards, and confirmation of their financial means to stage an event. Financial capacity will be assessed below, as a separate issue.

The Executive Director's position is that Mr. Santoro is not qualified to become a promoter, primarily because (i) he has no recent experience either at the professional or amateur level and (ii) he has not demonstrated an ability to comply with current policies and legislation. The Executive Director stressed that there have been significant changes to the Commission's standards and policies since 2010, which is when Mr. Santoro last promoted an event in Edmonton. Furthermore, he pointed to Mr. Santoro's incomplete applications, combative attitude and reluctance to respond to information requests as indicators that he lacks organizational capacity or the ability to follow rules.

Mr. Santoro conceded that he did not have recent experience in promotions but stated that he had staged five successful professional events in Edmonton between 2008 and 2010. He has been involved in combative sports in a number of roles since 1997. Also, Mr. Santoro confirmed that he has not been previously suspended, disciplined or refused a licence.

The panel finds that Mr. Santoro's background and past experience as a promoter is relevant and a suitable indicator of his ability to follow standards and policies to host a successful and safe event in Edmonton. We note that section 5 of Bylaw 15594 does not require that an applicant's background and experience in promotions be within five years preceding the date on which the application is submitted. This five-year timeframe applies to suspensions or hearings only.

A promoter may fail or make mistakes after a long lay-off from promotions, especially when standards and policies have been significantly overhauled. However, we are not convinced that Mr. Santoro cannot follow the rules now as he did when he last promoted successful events, even if current requirements are more onerous. Finally, we accept the Executive Director's view that the licence application process is one of several ways to judge a promoter's ability to comply with the rules. Mr. Santoro could have done a better job of completing his licensing application but this does not disqualify him.

Therefore, the panel finds that Mr. Santoro is qualified to become licensed as a promoter.

ISSUE #2: Does Mr. Santoro have the financial capacity to stage an event?

Section 5(1)(a) of Bylaw 15594 states that an applicant for a promoter's license must complete and submit an application form. The form requires an applicant to demonstrate that they have the financial capacity to stage a promotion.

The Executive Director's original decision was that Mr. Santoro does not have the financial capacity to stage an event because there's no evidence that he has direct access to funds allocated for an event.

Mr. Santoro called Mr. McLean to give evidence on his behalf. The information provided by Mr. McLean was not provided to the Executive Director at the time of his initial decision and Mr. Santoro should have provided this information as part of his initial application. The panel found that Mr. McLean was a credible witness who stated:

1. The financial information included in Mr. Santoro's application relates to a holding company, 2009270 Alberta Inc. Mr. McLean is the owner and financial controller of

this company and has allocated a significant amount of money for Mr. Santoro to stage an event. There is no reason that these funds will not be made available in the future.

2. Mr. McLean has a long-standing relationship with Mr. Santoro and is personally invested in creating opportunities for Mr. Santoro's sons to further their boxing goals.
3. There is currently no formal partnership agreement between Mr. Santoro and the holding company for the purposes of staging an event.

The panel accepts that Mr. McLean, through the holding company, is committed to and has the financial capacity to finance an event promoted by Mr. Santoro.

The current legal framework does not require an applicant to directly own the funds that have been earmarked for an event. Therefore, the arrangement proposed by Mr. Santoro and Mr. Mclean is not inconsistent with the current rules. However, the panel is concerned that the funding arrangement between Mr. Santoro and the holding company has not been formalized. Since Mr. Santoro does not have direct access to the funds, the panel believes that conditions on the license, as outlined above, are necessary to ensure such funds will not be re-allocated or unavailable should unforeseeable or extenuating circumstances arise. Section 16 of Bylaw 15594 allows the Executive Director to set such a condition, and Section 21 of this Bylaw allows the panel to do the same by substituting the decision.

Therefore, the panel finds that Mr. Santoro has the financial capacity to stage an event.

ISSUE #3: Does the failure of the Exodus event mean that Mr. Santoro is not qualified to become a licensed promoter or that it is not in the public interest for him to be licensed?

Mr. Santoro was the licensed promoter of a failed boxing event scheduled on October 19, 2019 in Stony Plain, Alberta (the "Exodus"). Exodus was billed as a high profile event and was to be sanctioned by the Central Combative Sports Commission (the "CCSC").

In the weeks leading up to Exodus, the health of Mr. Santoro's father declined and he was eventually placed in palliative care at the University of Alberta hospital. Mr. Santoro was grief stricken and prioritized taking care of his father. He explained that he missed a payment deadline for the event because those funds were re-purposed to pay for his father's medical expenses. Mr. Santoro's father died on November 9, 2019 and his mother died shortly thereafter on December 29, 2019.

The Executive Director was sympathetic to Mr. Santoro's personal family circumstances but believes that they did not justify a failure to meet his promoter obligations. The Executive Director noted that in addition to missing a payment deadline, a CCSC representative confirmed that Mr. Santoro also missed deadlines for submitting a security plan, a medical plan, an updated bout card, and proof of event insurance. These missed deadlines ultimately resulted in the CCSC cancelling Exodus on October 4, 2019.

Mr. Santoro acknowledged his failure and was apologetic for failing to meet his promoter responsibilities during that time but stressed that "I failed the one time my parents died."

The panel does not condone a promoter re-purposing event funds for personal use. However, the panel heard no evidence of irreparable harm, outstanding judgments, or litigation related to the failed event. Also, the CCSC did not discipline Mr. Santoro.

The panel accepts Mr. Santoro's evidence that his father's failing health and related stressors affected his emotional well-being and financial circumstances. These extenuating circumstances are relevant and we believe materially impacted his ability to run a successful event. Overall, the failure of Exodus is inconsistent with Mr. Santoro staging successful events in the past and does not disqualify him from becoming a licensed promoter. We view this as an issue associated with significant personal hardship which is unlikely to be repeated in the future.

ISSUE #4: Has Mr. Santoro failed to be forthcoming with information or credibly answer questions in the licensing application process, including the appeal hearing? If so, is this failure a basis for refusing the promoter license application per Policy #2 or in the public interest?

The initial licensing decision and much of the argument of the Executive Director referenced the failure of Mr. Santoro to be forthcoming and credible in the application process. The Executive Director provided a number of examples of this, including:

- Mr. Santoro's failure to fully disclose the Exodus event and the surrounding information about Exodus including his comments about whether he received a promoter's license for that event;
- Mr. Santoro's failure to fully and correctly disclose his relationship to Elite Championship Boxing (ECB); and
- Mr. Santoro's failure to provide the correct information about financing and referencing Mr. McLean as a trustee of his father's estate and implying that this was the money being used to finance promotions.

The panel:

- Accepts Mr. Santoro's explanation that he did not reference the Exodus event in his application because it was cancelled. The panel also accepts that Mr. Santoro was careless in stating that he did not receive a promoter's license for the event. In the end, Mr. Santoro provided the Executive Director with a detailed response to information requests about the event and consented to the Executive Director contacting the CCSC.
- Considers that Mr. Santoro did not fully understand the meaning of "financial interest" when describing his relationship to ECB. This relationship was confirmed during the hearing.
- Considers that Mr. Santoro provided certain but not all necessary supporting information about his financial capacity to stage an event. It was incumbent on Mr. Santoro to fill in the gaps and not simply rely on the Executive Director to confirm the details. Also, the panel accepts that Mr. Santoro was not careful with his words when he referred to Mr. McLean as a "trustee" of his father's estate.

The panel partially agrees with the Executive Director and concluded that at different stages of the licensing and appeal process, Mr. Santoro at times failed to be forthcoming with information or gave unreliable information. The panel does not find that Mr. Santoro intentionally misled the Executive Director or the panel.

Having concluded that Mr. Santoro, at times, was not forthcoming or provided unreliable information, the next question is whether it is a basis for refusing the promoter's license application, either under Policy #2 or in the public interest under section 16 of Bylaw 15594.

Overall, the panel is troubled by this conclusion because it is incumbent on applicants to provide timely, transparent, and correct information during an application process and thereafter in the event permitting process. However, with the evidence that was provided, the panel determined that these shortcomings are not sufficiently severe to disqualify Mr. Santoro from becoming licensed under Policy #2, with certain conditions.

The panel largely attributes Mr. Santoro's unreliability to being careless with his words or failing to understand what was being asked of him. The panel largely attributes Mr. Santoro's failure to be forthcoming as being guarded or viewing requests for information as attacks on his credibility. The panel is of the opinion that Mr. Santoro is highly motivated to successfully stage an event in Edmonton and therefore can change his approach going forward. Mr. Santoro should take note of the panel's comments in the conclusion of this decision.

The panel must also determine whether in light of these concerns, it is the public interest to not issue a promoter's license. This is the only issue where the panel did not reach a consensus.

When considering the public interest in the context of issuing a promoter's license, the safety of athletes is paramount. Another consideration is public and stakeholder confidence in the ability of the City of Edmonton and the Commission's to sanction successful events.

The majority of panel members conclude that granting Mr. Santoro a promoter's licence carries some risk, but this risk is minimized by the fact that he has credibly demonstrated an ability to stage successful and safe events in the past. Also, we note that the legal framework in which licenses are issued is relevant. There are certain checks and balances in the current framework for staging events, including oversight from the Executive Director, the involvement of Commission officials and the ongoing authority of the Executive Director to suspend, impose conditions or cancel the license at any time if new concerns or incidents arise.

Conclusion:

For all the reasons set out above, Mr. Santoro is granted a promoter's license with the conditions noted at the beginning of this decision.

It is clear to the panel that much of the frustration of the Executive Director was caused by Mr. Santoro's carelessness with his words. Mr. Santoro has taken this as a personal attack and has attacked back leading to the possibility of a dangerous spiral. We would encourage both parties to use this opportunity to "reset" the process and start fresh. Future issues will be avoided if Mr. Santoro is more forthcoming and does not take requests for information as attacks on his credibility. We wish to emphasize that whether as an applicant or as a licensed promoter, Mr. Santoro should be cooperating fully with the Executive Director and should not be passing off requests for information to assistants.

The panel notes that it expects Mr. Santoro to become familiar with the Commission's current standards, policies and other requirements. Furthermore, when Mr. Santoro completes future paperwork, it is crucial that he gets it right, that he understands fully what is required of him,

or that he seeks clarification as necessary from the Executive Director. If there are ongoing issues, this may be a reason for the Executive Director to conduct a further license review.

Finally, the panel wishes to comment on the fact that Mr. Santoro expressed frustration with the licensing application process and made personal remarks about the Executive Director's professionalism and character. The panel is of the view that the Executive Director completed a thorough, professional review of the application and the documentary evidence in this appeal shows that he made reasonable information requests in order to properly process and assess the application.

Appendix 1

(Written Reasons for Decision of Edmonton Combative Sports Commission – Appeal #1-2021)

1. (Interim) Evidential Decision No. 1, dated May 6, 2021- Re: Mr. Santoro’s request to submit sur-rebuttal evidence; Admissibility of Attachment 1 of the Executive Director’s rebuttal evidence.

Background:

At the Pre-Hearing Conference on May 3rd, 2021, the panel reserved its decision on whether or not to consider sur-rebuttal evidence from Mr. Santoro until it had an opportunity to review the proposed evidence. Mr. Santoro stated that he wished to respond to Attachment 1 of the Executive Director’s rebuttal evidence (Attachment 1). The panel received Mr. Santoro’s sur-rebuttal evidence for review on May 5, 2021.

Decision:

The sur-rebuttal evidence would not be considered. The majority of the information in Mr. Santoro’s sur-rebuttal submission had been previously provided to the panel and was therefore unnecessary. The remainder of the evidence responded to Attachment 1, which was also unnecessary because the panel determined that Attachment 1 was inadmissible and would not be considered.

Attachment 1 consisted of an unsworn “witness statement” from Mr. David Aiken in the form of an email dated May 3, 2021. This document had observations about an event staged by Mr. Santoro at “the Griesbach Facility”. The information in this document was vague and had no apparent connection to specific actions or inactions by Mr. Santoro in his capacity as a promoter aside from the fact at the end of the night he was observed “sweeping floors” and “questioning why the promoter should be doing that work”.

The panel determined that Attachment 1 should have been included in the Executive Director’s initial appeal package and was not properly rebuttal evidence. The panel also considered that Attachment 1 was not particularly relevant to the issues in the appeal.

2. (Interim) Evidential Decision No. 2, dated May 7, 2021 re: Executive Director request to call David Aiken as witness and Mr. Santoro’s request to call Mr. McLean as a witness.

Background:

After ruling on the admissibility of Mr. Santoro’s sur-rebuttal evidence, the panel was asked to rule on whether (a) Mr. McLean could testify on behalf of Mr. Santoro and (b) Mr. David Aitken could testify on behalf of the Executive Director.

Decision:

a) Mr. McLean

The panel decided to hear the testimony of Mr. McLean. Section 20 of Bylaw 15594 allows the panel to hear any witnesses that may provide relevant and material information. Although Mr. McLean was not listed as a witness in Mr. Santoro’s original appeal package, the issue of financial capacity to stage the

event was known by all parties and it was readily apparent that Mr. McLean's testimony would be solely on this issue. It was established that Mr. McLean's testimony would provide information on whether funds in the financial materials referenced in Mr. Santoro's license application were allocated for the purposes of a combative sports event. Therefore, there would be little to no prejudice to the Executive Director in allowing Mr. McLean's testimony. The Executive Director was advised that he would be given an opportunity to introduce rebuttal evidence to address Mr. McLean's testimony if necessary. The Executive Director did not call rebuttal evidence or request to do so.

b) Mr. Aitken

The panel decided that it would not hear the testimony of Mr. Aitken. Allowing Mr. Aitken to testify on the Friday before the hearing would be prejudicial to Mr. Santoro. Such a ruling would have the effect of introducing testimony about an issue that did not factor into the license refusal and would amount to introducing a new issue in the appeal. Further, as noted in an earlier interim evidential ruling, we did not think this evidence was relevant.

We note that Mr. Aitken was potentially being introduced to rebut the evidence of Mr. Gerke and Mr. Grotski (proposed witnesses for Mr. Santoro) regarding a past event sanctioned by the Commission in which Mr. Santoro was a promoter. Ultimately, Mr. Gerke and Mr. Grotski did not attend the hearing.

3. (Post-Hearing) Evidential Decision No.3 dated May 12, 2021 re: ECSC Policy Sub-Committee Briefing for April 3, 2019

Background:

Following the Executive Director shared with the panel a document titled "Policy Sub-Committee Meeting Briefing – April 3, 2019".

Decision:

The panel decided to consider only a portion of the document. The document states in part that the Commission policy re-development work, which ultimately resulted in the Commission's existing 13 policies, was initiated in 2009. The documents further states that the policy re-development work was followed by industry consultations in 2013. This is the only information from the document that the panel considered. Mr. Santoro did not object.

4. (Post-Hearing) Evidential Decision No. 4, dated May 12, 2021 re: information about the June 18, 2021 event in Grande Prairie.

Background:

On May 12, 2021, the Executive Director submitted supplemental evidence regarding a statement that Mr. Santoro had made during the hearing. Mr. Santoro stated that he had already been "scheduled" with the City of Grande Prairie. The Executive Director interpreted that to mean that Mr. Santoro claimed he was approved for a professional event and a date had been confirmed (June 18, 2021).

The Executive Director submitted that he could "confirm the City of Grande Prairie has not approved any combative sporting, and no events are scheduled" and noted there are pandemic related restrictions in the Province of Alberta, which includes Northern Alberta and the Edmonton Region.

Decision:

The panel determined that this evidence would not be considered. There was no direct evidence from the City of Grande Prairie on this issue. It was suggested that the panel could contact the Grande Prairie commission directly to test the credibility of Mr. Santoro's statement that he was "scheduled" there, but the panel considered that it would be inappropriate for a decision-making body to undertake such a fact-finding exercise.

The Executive Director's submission stated "As such, I question the actions of Mr. Santoro, and what he is currently representing to the general public, by advertising for a June 18 event with pay-per-view purchases only, when he has not been approved to host an event". The panel determined that this issue is irrelevant to the appeal. If Mr. Santoro is advertising an event without approval, we would expect that the appropriate sanctioning body would fully investigate the matter, issue a decision and enforce their rules.