

Revelation from the Legislation of Sport Agent in USA

Hongquan Li

Sports Economics and Management School, Central University of Finance and Economics
Beijing 100081, China
E-mail:lihongquan22@163.com

Houzhong Jin

Sports Economics and Management School, Central University of Finance and Economics
Beijing 100081, China
E-mail:jinhouzhong@126.com

Jie Cao

Sports Economics and Management School, Central University of Finance and Economics
Beijing 100081, China

Yongmin Hua

Beijing Sport University, Beijing 100084, China

Chuanchuan Kong

Beijing Sport University, Beijing 100084, China
E-mail:Kcc139@163.com

Li Lin

Beijing Sport University, Beijing 100084, China

Received: November 22, 2011

Accepted: April 1, 2011

doi:10.5539/mas.v5n3p231

Abstract

The paper aims to discuss the successful experience of the legislation of sport agent in USA and analyze its present situation with the documentation, so as to obtain revelation of related legislation in China.

Keywords: USA, Sport agent, Legislation

Sport agent has developed in USS for several decades and now it has two levels of law systems: government and society. Since the sport agent industry started late, the related law legislation is consequently delayed and the organization system is not mature yet. Though China Football Association has issued "The Management of Football Agent of China Football Association" and the General Administration of Sport of China has issued "The management of Sport Agent in China", due to the sport agents' role in China's sport market has not been fully recognized, the related laws and regulations needs to be perfected.

1. General introduction of sport agent

At present, there is no authoritative, scientific and agreed definition for sport agent. In China, it is usually defined as: people, corporations or other economic organizations who have obtained legitimate certificate and take part in sport economy activities, such as mediation and agency to facilitate the parties to have a deal, aiming to gain commission. Its essence is to create value and live a life by taking part in sport agent activities.

2. The present situation of legislation of sport agent in USA

2.1 Legislation in state government

In USA 24 states have issued regulation for sport agent, with the aim to supervise and manage their work. They also assign Labor Inspectors Association, Management Department, State Special Secretary Department, and Legislative Committee Legal Office as the accordingly registration and management organization. Its management can be divided into two levels. The first level includes the generally applied civil law and criminal law, which can be applied if the sport agents misconduct when they negotiate and sign contracts. It can also be used if the sport agents disobey the fiduciary duty. The second level includes special regulations for sport agent. With the coming out of UAAA, some states have started to introduce this bill. The bills that issued by state government are made to protect the public's interest, particular to protect the universities whose students sportsman have been wrongly treated by sport agents in accordance with the NCAA and thus incur financial loss.

Though the states have different sport agent bill, they normally include: registration, fees, management of cash deposit, scope of sportsman, inform the education organization, inform the sportsman, prohibited behavior during the contract, integration of the rules of association and conference, save of records and unlawful penalty. The state government regulation focuses on the established unlawful behavior of the sport agents. The government protects the citizen's right, particular the student sportsman and higher education organization by its policy and its authority.

2.2 Sportsman labor union regulation

Sportsman labor union is an organization guided by the State's Labor Law and is endowed with the right to represent the sportsman to do negotiations. Representing the sportsman's interest and the professional league's officers, it mainly serves to reach group negotiations. The National Football League players association is the strictest and perfect organization among the top four professional leagues. It requires that nobody should represent the sportsman or in the name of American Football League to negotiate upon individual contract, unless he has been identified as sport agent by the league's regulation. It also rules that the sport agent and contract consultant must have related education background, working experience, certificate, record of credit, experience of civil cases and special experience in sport industry. If he were lawyer, he should be a member of Law Institute etc. Sports labor unions are now issuing management regulation of sport agent. Each sportsman labor union has its particular regulation for sport agent. Some of them are similar with the state's regulation. Generally, they formulate the regulations on registration, norms of conduct, penalties etc. The most influential sportsman labor union in USA: basketball, baseball, American football and ice hockey sports labor union all requires the sport agent registered in their association so they could represent the sportsman to deal with negotiations.

2.3 Student sportsman sports federation regulations

The National Collegiate Athletic Association is an organization specially for managing the sports activities in the universities of USA. It manages the inter-universities sports activities and its members with the unified national standard. On the one hand, the professional consult organization is established especially for the students to provide them with professional advice; on the one hand, it has the right to cancel their participating right and be sanctioned. The National Collegiate Athletic Association and the related universities have also made special regulations for sport agent and sport agency activities. Their purposes are to protect the student sportsman's interest and the purity of their amateur quality. The regulations of NCAA focus on instruct and guide the students to negotiate with the sport agent and sign agency contract. It also claims the students behave well so to exert influence on the sport agent. NCAA can only punish the universities by financial sanction, and have nothing to do with the sport agent's unlawful behaviors. Obviously, the regulation of NCAA could not have direct force for the sport agent. In a word, the regulations of NCAA have restricted the sport agent's behavior and unified the legislation differences among the states, which can help the administrator to supervise the sport agent.

3. Revelation from the legislation of sport agent in USA

3.1 Uniform legislation

According to the established system in China, the Sports management centers of State Sport General Administration all have the corresponding sports associations. Actually, it is the same people who are responsible for two different things. The sports associations are non-governmental organizations and the administrators could not substitute for each other. As a matter of fact, the manager system of sport agent in China can be described as crossly charged by different departments. So far, the State Administration of Industry and Commerce and General Administration of Sport of China have not issued any formal and uniform regulations on sport agent management. Meanwhile, the administrative measures made by the Sports management centers of State Sport General Administration or sports associations cannot play the role as the State Administrative Laws. Therefore, the State Sport General Administration should unite the related departments to issue the national laws on sport agent and sport agency activities. The law should be framed in the related laws, regulations, industrial and commercial administrative laws and regulations and focus on the management of registration, qualification, and the agency activities.

3.2 Clarify qualification and registration

At present, the qualification requirements and management of sport agent are very loose in China. Different places require differently and areas less developed have not established management system. Consequently, a number of sport agents who do not have certificates have participated in this market and some sport agent even do agency which are beyond their scope. This has seriously disturbed the sport market and also has a bad influence on the sport agency industry. During the period when the football clubs were introducing foreign aid, since there was no sport agent to take part in this process, the clubs directly dealt with the sportsman's brokerage. Some of them were introduced or recommended by the foreigners, or introduced by some "grey sport agents". They blindly introduced the sportsman without full comprehension of the sportsman. So the situation was almost in chaos and also caused damage to the clubs and China's football market. Due to the waste of resources and some people's bad behaviors, it also brought negative effect on the development of China's sportsman industry.

3.3 Clarify the adjustment scope

When enact the Law of Sport Agent, the adjustment scope must be clarified. The following questions must be referred to. Firstly, it is the subject. The law's adjustment scope should be appropriate for all kinds of sport agents who are taking part in sport brokerage in China, including Chinese or foreign natural person, corporation, and foreign companies agencies in China. Secondly, it is the adjusted objects of the law. It refers to all sport brokerage happened in China, including brokerage involving foreign parties. Questions that need further studies are as follows. Firstly, when it comes to foreigners (natural person, corporation and its branch), should the specific provisions be made by the Law of Sport Agent or should the principal provisions made by the law and the specific provisions left to slip law? Or should the law made exclusive provisions and the slip law made specific provisions? Secondly, how to define brokerage involving foreign parties? Does it mean one of the parties is foreign? Or does it mean the object of the brokerage happens abroad or does it mean the brokerage happen abroad? Or it refers to a combination of them?

3.4 Clarify the commission and cash deposit

Since the sport agent's clients are sportsman whose value is harder to estimate than common products, the standard of commission is more complicated. If there were not a certain base of invisible sports property, it may encounter phenomenon of bidding up and slump. So the price may not match with the value, which will disturb the order of sports market. In China, many sport agents charge the commission at random. Due to lack of specified provisions on management, some sport agents violate their clients' interest. They charge unreasonable fees during the process of brokerage or add extra commission after finishing brokerage, which leads to financial disputes between the sport agent and their clients.

3.5 Clarify the methods to address disputes

Though the sport agents are restrained by the contracts, various kinds of disputes are likely to happen during the brokerage process. For example, the contract is not in standard form; draw up false contract and violate their clients' interest; using mean ways such as forcing, cheating and bribing to make the brokerage or maliciously collaborate with other party to violate the client's interest. When these questions are coming up, normally they will address the related departments and organizations to mediate and arbitrate. Since the law on this field in China is not perfect, the judicial power should be clarified. The sportsman labor union in USA has formed special arbitration commission to address the disputes between the sportsman and the sport agent. It is endowed with the right to criticize the sportsman, cancel the sportsman's certificate and prohibit the sportsman's business and suspend the sportsman's license etc. As a result, the legislation on sport agent should include the special regulation on the way to address the brokerage disputes, the arbitration commission and the procedure and method to apply arbitration, the payment and deadline of arbitration.

3.6 Perfect the supervision system

The supervision organization should clarify the industrial and commercial administration, the authorities of sports brokerage, the sport agent profession association and judiciary. Meanwhile, necessary information about the sport agent should be open to the public. The top four professional leagues in USA all requires the agent to make the information of their background and related experience open to the public. As a consequence, the agent can be known to more sportsmen and also it can decrease black-box operations caused by lack or asymmetry of information. It can also enhance the supervision. The sports management center can make the necessary information of the agents open to the public when supervise the agents, which can make the sports brokerage more transparent and decrease unlawful conduct.

References

- Bin, Zhang. (2007). Study of the management system of sport agent in USA. *Sport Culture Guide* 2007(5):71-73.
- Haiting, Xiao, Yanling Li, Xiaocheng Wang and Huamin Luo. (2006). Discussions on the legislation on sport agent in China. *Journal of Chengdu Sports College*. 2006,32(1):27-30.
- Jian, Chi. (2009). *The development of competitive sports: approaching USA*. People's Sports Publishing House 2009 .1
- Jianshe, Li and Qiaojun Wang. (2004). Conceptualization of the legislation of sport agent management in China—a comparison between the management methods of sport agents in China and USA. *China Sport Science and Technology*. 2004, 40(3):17-19.
- Xuxu, Ma. (2006). Legal remedies of the sport agents' aberrant behavior in USA and its revelation. *Journal of Tianjin Institute of Physical Education*. 2006.21(2):103-105.
- Yushuo, Qian. (2008). An analysis of the sport agent system in USA. *Journal of Changchun Normal University(Natural Science)*. 2008.27 (5):74-76.