

# LATINLAWYER MAGAZINE

## Honduran football federation wins again

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A US judge has refused to vacate an arbitral decision favouring the Honduran national football federation (Fenafuth) over sport marketing company Traffic Sports USA.

On 28 August, Florida District Judge Alan Gold dismissed Traffic Sports' complaint that the court did not conduct the arbitration fairly in March this year, owing to a conflict between Honduran and Florida state law.

**Gary Davidson** of Fenafuth's counsel, **Diaz Reus Rolf & Targ LLP**, says, "For too long, Traffic Sports has forced the independent federations to accept the business terms which Traffic Sports presented. Thanks to Fenafuth's resolve and the good legal assistance it received, other federations may now have a better ability to negotiate fair contracts with Traffic Sports or, if they so choose, other media companies."

Under a contract made in 2003 between the two parties, Traffic Sports was licensed to market media rights for teams in the Honduran league.

In the event of a dispute, the parties agreed to resolve dispute by arbitration under the terms allowed by Honduran law. But a second clause in the contract held that should a dispute arise, it should take place in the city where the claimant is headquartered under the applicable local laws.

In 2006, Traffic Sports filed an arbitration claim arguing that the contract automatically entitled it to an extension, while Fenafuth argued that it only had the right to compete with other bidders for an extended concession.

Initially Fenafuth challenged the Florida court's jurisdiction - but its petition was unsuccessful, and a state court ruled that the Florida International Arbitration Act applied rather than the US Federal Arbitration Act.

"The US Supreme Court has made a concerted effort to clarify that unless expressly agreed to by the parties to a contract, federal law and, more particularly, the Federal Arbitration Act will control arbitrations in international disputes like this," says Davidson.

"From our perspective, much confusion can be avoided if the parties drafting arbitration clauses take the time to write a clear provision that specifies the controlling law and as many other details as possible regarding the conduct of the arbitration," he adds.

Having lost the arbitration, however, Traffic Sports then claimed that the arbitral award should be cancelled because the arbitrator did not accept expert testimony on Honduran law. The company argued that the court should have analysed the conflicts between Florida and Honduran law.

Judge Gold found that the case did not present a "true conflict" of laws as Traffic Sports had advanced their original arbitration claim on the basis that Honduran and Florida law were the same.

Bob Allen, of Traffic Sports' counsel, Robert Allen Law, says, "The standard of review under the Florida International Arbitration Act, on a motion to vacate, is very limited. Mistakes in the

interpretation of law are not sufficient to overturn a decision, so the Federal Court was limited in how it could proceed. The outcome, perhaps, suggests the advantages of a three-judge panel.”

Judge Gold refused a request from Fenafuth that sanctions be imposed on Traffic Sports for making a frivolous claim.

Traffic Sports may take an appeal to the Eleventh Circuit Court of Appeals. “It does so, however, at its peril,” says Davidson. He explains, “The basis for challenging the award was narrow to begin with, and the grounds for appealing the confirmation are even more restricted.”

#### **Arbitral tribunal**

- Judge Alan Gold

#### **Counsel to Traffic Sports USA**

- Robert Allen Law

Partners Bob Allen, Tom Farrar and Paul Feltman in Miami

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