

DECISION

of the

**EUROPEAN BRIDGE LEAGUE
DISCIPLINARY COMMISSION**

on 18 May 2016

President: Mr. Jurica **Caric** (CRO)

Members: Mr. Gabor **Winkler** (HUN)
Mr. Rex **Anderson** (IRL)

In the case of

Mr. Lotan Fisher
Mr. Ron Schwartz

I. Facts and procedure

1. The elements set out below are a summary of the main relevant facts, as established by the European Bridge League Disciplinary Commission (hereinafter referred to as “the Commission”) in particular on the basis of the documents regarding written and oral submissions, as well as the evidence submitted by Messrs Lotan Fisher and Ron Schwartz (hereinafter also referred to as “the Players”). While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Players and their representative in these proceedings, it refers in the present decision only to the submissions and evidence it considers necessary to explain its reasoning. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows.
2. The President of the European Bridge League (EBL) appointed an Investigation Committee – consisting of Messrs Eric Laurant, Jan Kamras and Jean-Paul Meyer – in order to conduct investigations into allegations that the Players cheated at the 2014 EBL European Championships in Opatija (hereinafter referred to as the “Competition”).
3. The Players are bridge players affiliated to the Israel Bridge Federation (“IBF”).
4. The allegations of cheating had arisen from a signalling hypothesis that had initially been discovered by Per-Ola Cullin after analyzing certain boards from the relevant matches at the Competition.
5. After a preliminary analysis of the relevant boards, the Investigation Committee found that there was indeed evidence of the signalling hypothesis. The hypothesis, as discovered by Mr. Cullin and confirmed by the Investigation Committee, was that the Players used the bidding tray and board, at the end of the auction and prior to making the opening lead when defending, to indicate a suit (if any) where they had strength relative to the other suits and which they would be happy for partner to lead.
6. In a letter dated 10 October 2015 from the Investigation Committee, the cheating hypothesis and certain data from the relevant boards were sent to the Players. The hypothesis was expressed in the following terms:

“It is the partner of the opening leader who removes the tray and places the board on the table, irrespective of which side of the screen the tray ends up on after the removal of all bidding cards. The position on the table where he places the board is the signal for any suit preference. According to our observations, the “code” is as follows:

- *Board placed on his own side of the table => club preference.*
- *Board placed in the center of the table => diamond preference.*
- *Board placed near the corner of the screen opening => heart preference.*
- *Board placed on his partner’s side of the table => spade preference.*

- *Not removing the tray from the table => no particular preference.*

"Preference is judged relative to what is indicated by the bidding.

If the opening leader has obvious lead and does not want/need a signal, he would lead without waiting for, or not following "a signal".

7. In a letter dated 20 October 2015 from their lawyer, the Players denied the allegations against them. The letter also requested that the Investigation Committee postpone its independent investigation until proceedings before the IBF had been concluded.
8. On 1 November 2015, the Investigation Committee turned down the Players' request to postpone the EBL disciplinary proceedings.
9. On 19 November 2015, the Players filed their defense to the preliminary findings of the Investigation Committee.
10. In their submissions, the Players contested a number of the alleged suit preferences in the hand of the signaler. With respect to the boards where the suit preference was contested by the Players, the Investigation Committee sought the opinion of a panel of four experts (hereinafter referred to as "the Expert Panel"). The Expert Panel was ultimately asked, with respect to 19 boards, to opine whether there was a suit preference or no clear preference in the hand of the signaler.
11. The Investigation Committee then requested three statistics expert opinions – from Messrs Nicolas Hammond, Prof. Greg Lawler and Mr. Peter Buchen – who all calculated that the probability that the Players' board placements were random was close to zero.
12. In light of these findings, the Investigation Committee reached the conclusion that disciplinary proceedings should be commenced against the Players for using illicit prearranged methods and made such recommendation to the EBL Executive Committee.
13. Based on the recommendation from the Investigation Committee, the EBL Executive Committee decided to constitute a Disciplinary Commission to hear and determine the cheating allegations made against the Players.
14. The Commission was constituted as follows: Mr. Jurica Caric (President), Mr. P.O. Sundelin and Mr. Gabor Winkler. The Executive Committee appointed Mr. Serge Vittoz – attorney-at-law specialized in sports law in Lausanne, Switzerland – as counsel to assist the Commission with regard to the conduct of the disciplinary procedure.
15. A hearing was scheduled on 4 May 2016 at EBL's headquarters in Lausanne, Switzerland (hereinafter referred to as "the Hearing").

16. On 21 March 2016, the EBL filed its written submissions to the Commission.
17. On 12 April 2016, the Players filed their answer to the EBL's written submissions.
18. In their answer, the Players in particular challenged the position of Mr. Sundelin to sit in the Commission, for alleged lack of impartiality as he supposedly previous bad relations with Mr. Fisher. Although Mr. Sundelin contested any merits to the challenge, he decided to withdraw from the case and Mr. Rex Anderson was appointed by the Executive Committee to sit in the Commission.
19. Before the Hearing, the Commission accepted further submissions and evidence filed by the Parties.
20. The Hearing was held on 4 May 2016 in Lausanne, in the presence of all members of the Commission.
21. The Commission was assisted at the Hearing by Ms. Nikica Sver (ad hoc secretary), Mr. Serge Vittoz (counsel) and Mr. Fotis Skoularikis (technician).
22. In the course of the Hearing, the following witnesses were heard, either in person or via tele- or video-conference:
 - Mr. P. Olaf Cullin (bridge expert);
 - Mr. Bas Drijver (bridge expert);
 - Mr. Avi Hadad (polygraph expert);
 - Prof. Greg Lawler (statistics expert);
 - Mr. Nicholas Hammond (statistics expert);
 - Mr. Peter Büchen (statistics expert);
 - Mr. Revaz Jinjikhashvili (statistics expert);
 - Prof. Eilam Gross (statistics expert).
23. The Players were given the opportunity to present their case and answer questions by the Commission.
24. The Commission denied the admissibility of new evidence filed after the Hearing.

II. The Position of the Parties

25. The EBL's position is, in substance, the following:
 - a) There is no case of "double jeopardy", in particular as the Players violated the EBL's rules, in an EBL competition and that the EBL is only seeking suspension from its competitions;
 - b) The polygraph expert opinion is not a sufficiently reliable evidence to free the Players;

- c) The EBL bears the burden of demonstrating that the Players violated the applicable rules;
- d) The standard of proof to be applied is the standard of "comfortable satisfaction";
- e) The experts' opinions sought by the Investigation Committee demonstrate that the Players exchanged information through prearranged method of communication during the Competition. According to the statistics experts called by the EBL, the chance that the board placements were random is statistically virtually impossible;
- f) The bridge experts called by the EBL corroborate these findings.

26. The Players' position is, in substance, the following:

- a) The procedure before the EBL should be annulled in application of the prohibition of "double jeopardy", as proceedings are pending before the IBF;
- b) The Players shall be exonerated as they successfully passed a polygraph test;
- c) The applicable standard of proof is the criminal standard "beyond reasonable doubt";
- d) The Players' statistics expert opinions demonstrate that the method used by the EBL's statistical experts were wrong;
- e) The EBL modified its accusations by basing its argumentation on a four-position theory to a five-position, which is unacceptable and only the initial four positions theory should be taken into consideration.
- f) The bridge expert opinion of Mr. Liran demonstrates that the Players did not use a prearranged code of communication.

III. Merits

A. Jurisdiction

27. According to article 33.8 of the EBL Statutes, the Executive Committee has the competence to *"prescribe a disciplinary code of conduct with rules of procedures and sanctions and to delegate the enforcement of the code of conduct to a Disciplinary Commission"*.

28. The Executive is also competent to appoint the Disciplinary Commission (art. 33.11).

29. As previously mentioned, the Commission was appointed by the Executive Committee.

30. The Commission therefore concludes that it is competent to decide on the present matter, which is not contested, in principle, by the Parties.

B. Double jeopardy

31. The Players consider that the principle of the prohibition of “double jeopardy” (*ne bis in idem*) is applicable in the case at hand, in particular in view of the pending procedure before the IBF, and that the present procedure shall be annulled for this reason.
32. The Commission agrees that this general principle of law is applicable in sports disciplinary proceedings. However, in the case at hand and as stated by the EBL, the Players allegedly committed a violation of the EBL Disciplinary Code during an EBL event and the latter only seeks a suspension from its own events. The Commission is therefore of the opinion that the pending procedure before the IBF does not have the exact same object and therefore that the principle of the prohibition of “double jeopardy” is not applicable in the case at hand.
33. The Players’ request in this regard is therefore rejected.

C. The modification in the EBL’s accusation

34. The Players also contend that the fact that the initial accusation, by the Investigation Committee, was based on a four-position theory and that it was modified at a later stage by the EBL to a five-preference theory is not admissible.
35. The Commission notes that during the formal disciplinary procedure before it, the EBL’s accusations were based from the very beginning, in its written submissions dated 21 March 2016, on a five-preference theory and that therefore the EBL has not modified its accusations.

D. The applicable standard of proof

36. The Players contend that the applicable standard of proof is “beyond reasonable doubt”, whereas the EBL’s position is that the standard of “comfortable satisfaction” is the one to be applied by the Commission.
37. The Commission considers that the applicable standard of proof in sports disciplinary proceedings is the “comfortable satisfaction”, which is higher than a balance of probabilities but lower than the criminal standard of beyond reasonable doubt (see, for example, CAS 2009/A/1920).

E. The applicable rules

38. The EBL Disciplinary Code sets out certain types of reprehensible conduct, which may give rise to a sanction. Examples of reprehensible conduct, in particular (i) “illicit actions or behaviour affecting the proper running of a competition or its result” are considered as reprehensible (Article 3, para. 3) and “serious infringement of the EBL Statutes or Regulations” (Article 3, para. 1).

39. Law 73, chapter B (“inappropriate communication between partners”) of the Laws of Duplicate Contract Bridge, which were adopted by the EBL, reads as follows:

1. *Partners shall not communicate by means such as the manner in which calls or plays are made, extraneous remarks or gestures, questions asked or not asked of the opponents or alerts and explanations given or not given to them.*
2. *The gravest possible offense is for a partnership to exchange information through prearranged methods of communication other than those sanctioned by these laws.*

40. As to the applicable sanctions which can be applied, Article 4 of the EBL Disciplinary Code reads as follows:

Article 33.8 of the Statutes makes provision for a certain number of sanctions liable to be imposed on NBOs persons. Depending on the gravity of the case, sanctions can take the following form:

1. *warning, possibly published on the EBL website;*
2. *suspension of the NBO or the person concerned from one or several official events;*
3. *exclusion from participating in EBL activities;*
4. *banning from participating in EBL events;*
5. *monetary fine.*

F. The violation of the EBL Disciplinary Code

41. The Commission considers that the EBL established to its comfortable satisfaction that the Players have breached Article 3 of the EBL Disciplinary Code, through the use of the exchange of information through a prearranged method of communication, which is forbidden by Law 73 of the Laws of Duplicate Bridge.

42. To reach this conclusion, the Commission first thoroughly analyzed the video footage of the concerned matches of the Competition. The Commission was supported in this regard by the bridge experts’ written and oral evidence. In this regard, the Commission concluded that even if one follows Mr. Liran’s position concerning the number of hands which matched the hypothesis, which is more favorable for the Players, the latter actions remain, to say the least, very abnormal.

43. The Commission is of the opinion that the infrequent use of the code is not surprising, as it protects it from being discovered. A player who cheats by using a code would never use it in an insignificant board or when it is assumed that his partner would probably play the preferred suit anyway. Furthermore, a player would never play according to the code, when the illogicality of such play would

jeopardize the confidentiality of the code. Furthermore, if a player does not follow the code, the latter would nevertheless help him plan the defense. In the case at hand, the frequency of the use of the code in the case at hand is surprisingly large.

44. Furthermore, the Commission considers that the statistics expert opinions provided by the EBL are convincing and that they come in support of the above considerations.
45. The Commission considers that the polygraph tests successfully passed by the Players are not sufficient evidence to counter the above findings. In this regard, the Commission deems that even if some weight can be put on such evidence in certain circumstances, it is not sufficient in itself, in the case at hand, to demonstrate the innocence of the Players.
46. The Commission therefore confirms that the Players have breached the above-mentioned regulations, by using the code, which shall be considered as a prearranged method of communication.

G. The sanctions

47. The Commission agrees with the EBL that the Players' conduct contravenes the spirit of bridge, injures its integrity and eliminates the equality of chance that is the essence of any sporting competition. The Players have engaged in a form of illicit behaviour, which is described as the gravest offense possible in the Laws of Duplicate Bridge.
48. Furthermore, the Commission also stresses that the length of a career in the sport of bridge is longer than for most of other sports. Therefore, this should also be taken into consideration when determining the quantum of the sanction.
49. Considering the above, the Commission considers that the Players shall be (i) banned from participating in EBL events or activities as individual players for a period of five (5) years, (ii) banned from participating in EBL events or activities as a pair playing together for life and (iii) that they shall bear the costs of the present proceedings, including the costs incurred by the EBL in the investigation and prosecution phase.
50. Finally, the Commission decided not to impose any monetary fine to the Players, as requested by the EBL, as it considers that the above sanctions would already have a sufficient financial impact on them.

ON THESE GROUNDS

The Disciplinary Commission hereby rules:

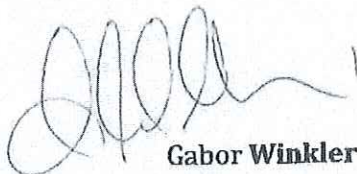
1. Messrs Lotan Fisher and Ron Schwartz are banned from participating in EBL events or activities as individual players for a period of five (5) years.
2. Messrs Lotan Fisher and Ron Schwartz are banned from participating in EBL events or activities as a pair playing together for life.
3. Messrs Lotan Fischer and Ron Schwartz shall bear the costs of the present proceedings, including the costs incurred by the EBL in the investigation and prosecution phase.
4. All other motions or prayers for relief are dismissed.

Date of the decision: 18 May 2016

Date of the motivated decision: 31 May 2016

THE DISCIPLINARY COMMISSION

Jurica Caric
President



Gabor Winkler



Rex Anderson