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Midterm Paper: The “MFJ” Dilemma

Based on the facts given and the current circumstances following the knowledge of Mississippi Fred Johnson’s criminal record by St. Jude and its subsequent release into the media, multiple parties involved with the music festival will need to seek legal action to compensate for monetary losses and breach of contract. However, much of this is dependent on whether Mr. Johnson and St. Jude Children’s Hospital ever had a contract established in the first place. Despite multiple parties taking significant damages, this case is too complex to be remedied through litigation on all sides; to resolve many of the issues present, arbitration out of court will be necessary. In my personal opinion, I believe that because of the negotiation and subsequent meeting of the minds which took place over email between St. Jude and Blue Pyramid, there is a quasi-contract in place for Mr. Johnson’s headlining performance at FedEx Forum. Certain aspects of the deal between Blue Pyramid and St. Jude were established and agreed upon, but due to the limitations of the agreement and the incomplete nature of the negotiations, its enforceability quite limited.

Had correspondence continued as usual without any mention of Fred’s criminal history, I would be inclined to believe that further terms and conditions would have been addressed and settled by the two negotiating parties, allowing this email correspondence to be considered a sound, enforceable contract with all necessary contractual elements present. However, because of Mr. Schwartz’s choice to forgo his fiduciary relationship with his client, Mr. Johnson, proceedings to finalize an agreement over email were abruptly discontinued, leaving the

performance agreement in a quasi-contractual state. While Mr. Johnson and Blue Pyramid Booking could very well litigate St. Jude Children's Hospital in court and allow a judge to decide which party is owed payment, this plan of action is risky and ultimately too expensive. Terms were negotiated and agreed upon over email correspondence, such as the length of residency, performance fee, venue location and artist advance, but no performance agreement has been drafted and signed in the form of a contract itself. Because there is a positive trend of mutual agreement among email and text correspondence between the two parties, litigation would most likely be lengthy and costly. The disclosure of Mr. Johnson's criminal background leading to the dissolution of the performance agreement were caused by outside parties Mr. Schwartz, manager of Mr. Johnson and the unnamed employee(s) of St. Jude, responsible for the disbursement of this information among the organization.

There likely is not a strong enough case for Blue Pyramid and Mr. Johnson to sue said employee(s) of St. Jude, making their only option litigation against St. Jude as a corporation. This makes liability much harder to prove in this case, mostly because Mr. Schwartz was the original purveyor of Mr. Johnson's criminal history. If Blue Pyramid Booking decides to take this to court, I would expect a large amount of legal service fees and court fees, as well as a potential ruling in favor of St. Jude. Arbitration will allow an uninvolved third party to mediate and settle the quasi-contractual dispute between the two parties with minimal fees and the most beneficial outcome for both parties. The recommendation for arbitration is crucial in this case because the agreement between St. Jude and Blue Pyramid Booking is an agreement which can be considered a quasi-contract. St. Jude does not have a very strong case against Mr. Johnson, and this can be attributed to a lack of a signed contract stipulating any terms and or requirements

of Mr. Johnson as an artist of the festival and representative of St. Jude Children's Hospital. Had a contract been signed by Mr. Johnson and Blue Pyramid acknowledging requirements of Mr. Johnson to have a clean criminal background, St. Jude would have sufficient means to successfully take legal action against Mr. Johnson and Blue Pyramid Booking; unfortunately, no stipulations were acknowledged or agreed upon. In an arbitration case, I would argue for Mr. Johnson to keep his \$10,000 advance given by St. Jude to cover damages, such as the \$5,000 already spent by Kiva Records for Mr. Johnson's backline stage equipment. Under a standard record label contract, a \$5,000 advance such as this would be recouped by Kiva following the completed payment of the artist, Mr. Johnson, after the completion of his contractual obligation with St. Jude. Because Mr. Johnson is now unable to complete his performance of the contract due to his removal from the festival, it is only right for the \$10,000 advance to remain in the possession of Mr. Johnson. I believe the majority, if not the entirety, of the \$10,000 will be directed towards recoupment of Kiva's advance, recoupment travel expenses already paid for by Mr. Johnson in the form of hotel reservations and plane tickets, and subsequent legal fees from the arbitration settlement. I believe that Mr. Johnson may be able to get back a portion of the remaining \$40,000 sum due to the lack of stipulations communicated by St. Jude, but I don't believe it will be much, considering that the initial \$10,000 is likely to cover the current money damages caused by the cancellation of Mr. Johnson's performance. Additionally, Blue Pyramid may request remedy in the form of their intended commission from Johnson's participation in the festival, which was lost upon St. Jude's removal of Mr. Johnson from the festival lineup. Because terms were not discussed or agreed upon regarding a scenario such as this, St. Jude has little jurisdiction to demand any recoupment from Blue Pyramid. Blue Pyramid may choose to

litigate, but if they are seeking remedy for money damages from their lost commission, it might be in their best interest to settle outside of court. With a booking agent taking roughly five to ten percent of artist revenue per performance, litigation would be far too expensive, as Blue Pyramid's revenue from this particular performance would be anywhere from \$2,500 to \$5,000 based on the \$50,000 artist fee agreement between Blue Pyramid and St. Jude. Even if they were to factor in commission from ticket sales and merchandise sales into their figure, arbitration would still be the most cost effective option for Blue Pyramid's proceedings against St. Jude for money damages.

Despite the shortcomings of the quasi-contract established by the parties involved, legal action can be taken outside of arbitration by certain parties. For instance, slander or defamation by Mr. Schwartz can be resolved based on contractual obligations explicitly stated in the managerial contract between Mr. Schwartz and Mr. Johnson. Legal action in the form of litigation can be taken against Mr. Schwartz, as it is clear that he has breached his fiduciary duty to his client, Mr. Johnson, by sharing sensitive information about his client freely and openly, without direct solicitation. Litigation is not the only means by which Mr. Johnson can settle the dispute with Mr. Schwartz, but it might help Mr. Johnson receive the best outcome for money damages caused by his manager's costly mistake. There is no possibility of restitution under these circumstances of defamation, so choosing to attack money damages is the only option for Mr. Johnson and his legal team. The only danger with litigation rather than arbitration rests in the judge's final decision regarding the dollar amount to be received by Mr. Johnson following a positive verdict in court; if Mr. Johnson and Mr. Schwartz were to settle outside of court, a figure could be agreed upon that is fair for both parties. If I were representing Mr. Johnson, I would

threaten to sue for a high dollar amount, only for the purpose of eventually settling for a more reasonable figure outside of court, further mitigating the legal fees necessary for Mr. Johnson to remedy the existing money damages.

As for Mr. Graham, the promoter of the festival, the best course of action to recoup money damages would be to seek legal action against St. Jude. With Mr. Johnson's criminal background being public record, St. Jude had every opportunity to perform a background check on Mr. Johnson before reaching out to Blue Pyramid Booking. As a promoter, Mr. Graham is responsible for attracting artists and creating a lineup on behalf of the beneficiary organization, St. Jude Children's Hospital. With this being said, it is reasonable to state that it is the responsibility of St. Jude to create and enforce any stipulations they may have for their participating artists. With Mr. Graham unaware of any stipulations set by St. Jude for their artists and unaware of the criminal background of Mr. Johnson, Mr. Graham has the means to take legal action in response to a breach of contract between himself, the promoter, and St. Jude, the beneficiary organization. While Mr. Graham could file for specific performance, demanding the reinstatement of Mississippi Fred Johnson as the headlining act for the festival, the press release from the media about Mr. Johnson would make this plan of action unwise and frankly unattainable from a public relations standpoint for both St. Jude and Mr. Graham's promotion agency. Mr. Graham could either file for money damages or restitution against St. Jude, seeking the same outcome with either plan. Ten thousand dollars has already been spent by St. Jude through Mr. Johnson's advance, and with three weeks until the festival, there is little chance of Mr. Graham receiving that sum of money to put towards another artist (if St. Jude was even capable of successfully suing Mr. Johnson for money damages, which is highly unlikely).

Additionally, securing a headlining artist three weeks before a festival will likely cost more money than Mr. Johnson's original fee of \$50,000, a figure decided upon well in advance of the festival date. The best plan for Mr. Graham and his promotion agency would be to make a case outside of court to remedy his contract with the festival through specific performance. Mr. Graham could demand that St. Jude provide any funds necessary, on top of the remaining \$40,000, to book a new headliner of equal status and/or popularity in order to maintain public interest and ticket sales. The headliner is often the greatest selling point of any large music festival, and Mr. Graham will need all of the financial resources possible in order to find another artist willing to go through the inconvenience of negotiating a deal and performing at a festival in the short span of three weeks. I would suggest he also demand a contract be made in advance of the booking of a replacement headlining artist in order to avoid any further issues or complications.

While St. Jude is the loser in this case scenario, Memphis Guitars, sponsor for the festival, might take the biggest loss of all parties involved. Mr. Johnson has the opportunity for litigation regarding the sponsor's unauthorized use of his copyrighted material for radio advertisements and use of his photograph and trademarked "MFJ" logo for physical advertisements. While Mr. Johnson could have sent a cease and desist letter until a monetary figure had been agreed upon for the use of his likeness in advertisements, St. Jude's removal of Mr. Johnson from the festival makes this unauthorized advertising extremely costly for his reputation in the city of Memphis and abroad. Under the current circumstances, the advertisements of Mr. Johnson's headlining performance only serve to remind the public of the controversies regarding his removal from the festival, which strengthens his case for treble

damages. I would advise Mr. Johnson and his legal team to seek treble damages for Memphis Guitars' use of the "MFJ" trademark, Mr. Johnson's copyrighted material, and his likeness. Cause for this can be established on the basis that the trademark owner, Mr. Johnson, has now been injured by confusion following his removal from the headlining spot and the festival altogether. I further suggest litigation rather than settlement for this case, as treble damages will be upheld by the court system due to copyright and trademark law; additionally, this is a clear cut case of both copyright and trademark infringement, with little room to dispute the facts of the case since neither Mr. Johnson or his legal team granted any rights to Memphis Guitars. While Memphis Guitars have the ability to pursue a case against St. Jude Children's Hospital or Mr. Graham to seek restitution, their case would be thrown out quickly and only create more monetary losses for the company through court fees, as they blatantly participated in trademark and copyright infringement. Had Memphis Guitars received authorization from Mr. Johnson and his legal counsel to use the trademarked material for promotional purposes, they would have a strong case to receive compensation for the money damages caused by the removal of Mr. Johnson from the festival. Memphis Guitars will take the greatest loss from this situation, and they are also at risk for more losses, as St. Jude could proceed with legal action against Memphis Guitars for unauthorized advertisement before an agreement was settled. This would be St. Jude's only hope at receiving any remedy for damages ensued by this scenario, and it is likely that they would take legal action against Memphis Guitars to cover their own losses. Under a normal contract, St. Jude would have an agreement with their sponsor to fulfill advertising duties correctly and within the law; obviously, this was not fulfilled by Memphis Guitars, thus making both St. Jude and their sponsor liable for copyright and trademark infringement.

This attempt to find resolution for all parties is merely one path out of many that can be taken. Scenarios like these can involve reactionary cases, with parties seeking to remedy contracts and damages based upon legal action taken by other involved parties. Arbitration is the most conservative agreement to settle most of these disputes, for with the amount of money on the line, damages will be best recouped without the additional cost of court fees.