

May 1, 2018

## Factual Investigation by the Audit Committee of the Interested Party situation regarding Jay Whipple

### Preface

I was added to the Audit committee investigation of the Jay Whipple matter after they had started the investigation. I re-interviewed the people they had already spoken to and others they had not. I reviewed the materials provided to them by the ACBL General Counsel. This included email chains, copies of the Data Usage Agreement (hereinafter DUA) signed by the ACBL and Jay Whipple, Mr. Whipple's Conflict of Interest statements from his tenure on the ACBL Board of Directors, ACBL conflict of interest policies and New York not for profit law. I also reviewed documents from a Board Oversight committee investigation of Mr. Whipple with his permission. I reviewed financial documents from Bridge Finesse, the company owned by Mr. Whipple which provided services to the ACBL and its districts, units and clubs. I spoke with the members of the Audit committee, Sharon Anderson, Jay Whipple, Linda Dunn and Robert Hartman. I requested information from Bahar Gidwani by email as he was on vacation at the time, which he promptly provided.

### Bridge Finesse

Bridge Finesse is a company owned and operated by Jay Whipple to provide bridge related services to the ACBL and its districts, units and clubs. Mr. Whipple receives no compensation for the work he puts into projects but he does have paid employees.

The Common Game started in 2012 and was the first project. It started without involvement from the ACBL but it eventually gained access to ACBL data which was helpful. This began prior to Robert Hartman's tenure as CEO of the ACBL. There is no charge to players or clubs for the Common Game. Players are asked to make a donation for the expert commentary. All donations are applied to the cost of the annual honorariums provided to the experts who perform the hand analyses. The remainder of the cost of the honorariums is paid by Bridge Finesse.

A tournament service was also developed. BF would provide advertising, send the first day bulletin to players who had played at the tournament the year before, daily bulletins to people playing this year, and a survey to players at the end of the tournament. Regionals were charged \$100.00 and sectionals were charged \$25.00. In the beginning all funds went to the ACBL Education Foundation, that practice changed and BF now keeps the payments. Fast Results was later added to the service at no additional costs. Services to sectionals were eventually eliminated.

The ACBL decided to produce its own version of Fast Results and after about two years Mr. Whipple shut down his results service to tournaments. However, the ACBL version – Live -is unable to provide results for swiss team and ko events. They request a report from the BF server and use it. This is why there is a mention of BF on the ACBL results – it is an

acknowledgement of the source of the information and a disclaimer as to responsibility for errors. It is placed at the very bottom of the page and provides very little traffic on the BF website even though a link is provided – in the three months preceding my conversation with Mr. Whipple no traffic was so generated.

BF also provides consulting services to clubs. Fees for these services vary. They help with a club reservation system and a seeding program is in the alpha stage.

The above services were already operating before Mr. Whipple was elected to the ACBL BOD. Additional services have been provided since Mr. Whipple joined the BOD, primarily regionals in clubs. The first Regional At Clubs was held two years ago in Tampa. BF received no payments for this event. The first REACH was held last summer. Bridge Finesse was offered 20% of the proceeds to provide the platform. ACBL did not and does not have a platform that will support this type of event. Mr. Whipple refused the payment but said a donation could be made to the Education Foundation in that amount if the ACBL wanted to maintain that business model. When the second REACH was held, no payment was made to either BF or the Education Foundation, EXCEPT that BF was reimbursed for banking fees incurred with the credit card payments. BF acted as the credit card processor for entry fees and incurred costs of 2 ½ to 3% of the amounts charged. BF has been actively contesting all chargeback claims and still has about \$1000 while the remainder of the chargebacks are resolved. Once all chargebacks have been resolved the remaining funds will be sent to the ACBL.

Rank Up is provided at no cost but tournaments not included under its geographic guidelines may advertise on this site for \$100.00. About 25% of the traffic to this site is provided by the ACBL.

#### BF Finances

BF's revenues are nominal. 2017 revenues were approximately \$3000.00. The company operates at a large loss which is paid for by Mr. Whipple's capital contributions, which have averaged almost \$150,000.00 per year. BF is developing a product for social bridge which it hopes may be profitable in the future. The other services are offered as a service to improve duplicate bridge at Mr. Whipple's expense. He started out offering them to his home district, and other districts and clubs asked to join in.

#### Conflict of Interest Statements

For his first few years on the board, Mr. Whipple just listed Bridge Finesse on his COI statement. This was done at the suggestion of Peter Rank, then League Counsel, who received and summarized the statements for the BOD. This year, after the changes proposed in the Conflict of Interest Policy, Linda Dunn suggested that Mr. Whipple make a disclosure of each activity of Bridge Finesse, which he did.

Mr. Whipple did not participate in the discussion or the vote on the ACBL online partnership desk, as he was operating one at the same time.

#### Data Usage Agreement

After Mr. Whipple was elected to the BOD, then CEO Robert Hartman was concerned about the appearance of impropriety in a BOD member having such wide access to ACBL members' data. Mr. Whipple was asked to sign a DUA. The parties were unable to agree on terms and the matter was referred to the Board Oversight Committee. Language was agreed on and a DUA was signed, and mislaid. All parties have performed as if the DUA was in effect and another copy will be executed. Mr. Hartman had no concerns that Mr. Whipple had violated the DUA or misused data prior to the DUA. There was a concern that Mr. Whipple was getting updated information that the ACBL did not receive, but this was resolved by BF passing on such information to Carol Robertson. None of the BOC referral involved the issue of interested party transactions.

#### Action by the BOD

No one thought anything wrong was happening until recently. Each interaction with BF should have been presented to the BOD for a vote on the propriety of dealing with an interested party once Mr. Whipple was elected to the BOD. Since everyone on the BOD knew that Mr. Whipple owned Bridge Finesse, as did everyone in ACBL management, and Mr. Whipple was not receiving any compensation for his work, this was not realized to be necessary. Each project was either discussed in committee or by the full board, but the separate interested party vote was not taken.

#### Increase in the Value of the Bridge Finesse

Bridge Finesse has no positive value at this point. There are scenarios where the company could be sold for the value of the contact information regarding bridge players it has gathered by someone wanting to start a rival league, but that would require Mr. Whipple wanting to sell and wanting to destroy the organization he has spent years, and much of his own money, trying to improve.

#### Summary

Each transaction should be reviewed by the BOD and retroactively ratified if the board deems this appropriate. Each transaction must be reviewed separately. A new copy of the DUA should be executed. The BOD should define de minimus transactions.

Original signed by Georgia Heth  
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