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COURT OF FANTASY FOOTBALL

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DOUG M. : Index No. **2602**
: Date: **December, 11 2008**
: League Type: **H-2-H FOOTBALL**
: Dispute: **RULES DISPUTE**
Petitioner, : Judge: **MARC EDELMAN**
: :
- against - : **COURT ORDERS THAT THE**
: **LEAGUE PLAYOFF BRACKET**
ADAM S. : **SHALL BE SPLIT INTO TWO**
: **SEPARATE BRACKETS, EACH**
Respondent : **FUNDED WITH 50% OF THE PRIZE**
----- X **MONEY.**

**DOUG M. & ADAM S. EACH SHALL
BE SEEDED IN ONLY ONE OF THE
TWO SUB-BRACKETS. ALL
OTHER PLAYOFF TEAMS SHALL
BE IDENTICALLY SEEDED IN
BOTH.**

BACKGROUND

Petitioner Doug M. and Respondent Adam S. are competitors in the Bring Back Favre Keepers League, a head-to-head fantasy football league that is hosted by the CBS Sports “Commissioner” service. The league only has a rudimentary constitution, which was created using a CBS Sports template. However, the league involves a significant amount of money. The league entry fee is \$175 per team, with prize payouts of \$1400 to the league champion, \$350 for the runner-up, and \$220 for the team with the best regular season record.

Last weekend, Doug M. and Adam S.’s teams met in the first round of the bracketed playoff tournament. Astoundingly, the game ended in a tie. The league is now unsure of how to proceed.

Heading into last week’s games, Adam S.’s team had a better regular-season record, but Doug M.’s team had more points. Both argue on those grounds that their team should advance into the next round.

This court took jurisdiction to address the following two questions:

1. Is there are written agreement that determines which of these two teams shall advance into the next round of the playoffs?
2. If there is no written agreement on this issue, what is the fairest way to proceed?

ANALYSIS

I. Is There a Written Agreement about which Team Should Advance?

The first issue for the court to consider is whether there is a written agreement that determines which team should advance. The starting point (and ending point) for this review is always the language in the league constitution. (*See Tom L. v. Commissioner, Index N. 2305, Oct. 29, 2008*). However, here, all that exists is a very rudimentary constitution, created in conjunction with the CBS Sports Commissioner service. The only language in the constitution with respect to breaking ties states as follows: “Ties in the standings are resolved in this order: Winning Percentage, Total Points.”

I invited both parties to brief the issue about whether this clause is intended to apply to ties in a game, as well as to ties in overall record. Neither party chose to brief the issue. This court – upon its own best judgment – therefore concludes that the plain meaning of the text applies *only* to standings, and does not apply to deciding a single game. Hence, the writing in the league constitution does not address which team shall advance into round two of the playoffs.

II. Given the Constitution is Silent, What is the Fairest Way to Proceed?

Given the league constitution is silent on what team shall advance in the playoffs, this court next turns to equitable principles, and including custom, usage, past dealings, and, if necessary, the *cy pres* doctrine.

A. Custom, Usage and Past Dealings

As a general matter, when a contract is silent on any particular issue, a court turns to custom, usage and past dealing to determine what serves as the best default provision. (*See Tom L. v. Commissioner, Index N. 2305, Oct. 29, 2008*). In other words, the next question for this court to consider is what serves as the standard practice in the fantasy sports marketplace for breaking playoff ties.

Upon the court’s review, it takes judicial notice to the fact that both custom and usage on this issue are mixed throughout the fantasy sports. According to games hosted by ESPN, “in the event that two teams have the same number of points at the conclusion of their playoff game, the system tiebreaker awards the win to the higher seeded team.”

(www.espn.com). According to Yahoo, the first tie breaker is “most touchdowns scored by entire starting roster.” (www.yahoo.com). Meanwhile, in CBS Money Leagues – *a distinctly different product, with a distinctly different Constitution from CBS Commissioner Leagues* – the team with the most combined passing, rushing and receiving yards proceeds to the next round. (<http://football.sportsline.com/splash/football/spln/single/rules>). Furthermore, a brief survey of my colleagues shared with me the wide range of tie-breakers they use in their leagues (playoff bench scoring, regular season winning percentage, regular season points, coin toss).

This all goes to tell you is that there us no standard custom, usage, or past dealing for the court to reply upon. Further, to adopt any one of these three standards to resolve a past event would be wholly arbitrary. Irrespective of what standard this court chooses, it clearly would not represent the parties’ spoken, or even latent, intent.

B. *Cy Pres Doctrine*

Given custom, usage, and past dealings each provide little guidance, the court has no alternative but to shift next to the doctrine of *cy pres*. The doctrine of *cy pres* means that the court recognizes that there is no perfect solution, and therefore it will adopt a solution that is as close as possible to the parties’ interests, goals and intent.

While so much of fantasy football is about competing against friends, this particular league is also clearly about money (a \$175 is a real investment). With that it mind, the court recognizes that any *cy pres* remedy should be one that closest approximately the reasonable monetary expectations of each party based on the actual performance of the teams in round one of the playoffs.

While Israel’s great King Solomon once decided that splitting a baby is not the right way to resolve a dispute over the baby’s true mother, here the court concludes (sincerely no less) splitting a playoff bracket into two solves the problem just fine. Unlike a baby, a bracket is not alive. Two playoff brackets therefore can thrive alongside one another.¹

Therefore, rather than arbitrarily picking one to advance between Doug M. and Adam S., this court rules the fantasy bracket shall be split into two – “Bracket A” and “Bracket B”. Both brackets shall be absolutely identical to one another in all respects, *except* that Doug M. advances in Bracket A, and Adam S. advances in Bracket B. The prize money for the winner of Bracket A shall be \$700 to the league champion, and \$175 to the runner-up. The same shall be true for Bracket B. Indeed, a single owner can, and probably will, win both brackets. In that case, that owner collects the full \$1400. However, based on this setup, neither Doug M. nor Adam S. is eligible to win more than \$700. This is the mathematically proper outcome, and a fair one to boot. (*Indeed, should Doug M. and Adam S. both lose this week, the brackets again become identical and merge back into one*).

¹ Moreover, Bayesian Theory (and other statistical analyses) recognizes this is the right conclusion for maintaining the intended expected returns of all parties in the league.

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This solution is completely fair for not only to Doug M. and Adam S., but also for all remaining playoff teams. Indeed, for the team that is forced to play Doug M. and Adam S. simultaneously this week, there is no disadvantage to doing so. In fact, that team is better hedged against risk because even if that team were to lose to one of its two opponents under the split-bracket format, that owner remains in the running for \$700 of prize money in the other bracket.

Furthermore, even though this solution leads to one more team using the waiver wire in the upcoming weeks, the court finds this effect *de minimis*, especially since it has already instructed Doug M. and Adam S. to continue using the waiver wire all week.

Finally, setting up two brackets and keeping track of the results may at first sound a bit confusing to any league commissioner. Therefore, if you are not sure how to do so, please send me your current playoff bracket with the teams that remain, and I will provide you with the duel bracket to use moving forward.

CONCLUSION

For the foregoing reasons, this court orders the Bring Back Favre Keepers League playoff bracket shall be split into two playoff brackets “A” and “B,” with equal prize money funded to each bracket. All playoff teams shall be seeded identically in both brackets and shall be entitled to win all prize money from both brackets, *except* Doug M. shall be seeded only in “Bracket A” and Adam S. shall be seeded only in “Bracket B.”