



**GENERAL PURPOSES TRIBUNAL
OF FOOTBALL NEW SOUTH WALES
FINAL DETERMINATION
IN THE FOLLOWING MATTER:**

GPT 16/23

Date of Hearing	20 June 2016
Date of Final Determination	23 June 2016
Respondent	Mr Gennadi/Gary Spivak
Attendees & Witnesses	Mr Gennadi Spivak, also known as Gary Spivak Mr John Harris (Director PBFC)
The basis upon which the matter is before the General Purposes Tribunal	Football NSW Grievance and Disciplinary Regulations Section 8.2 for alleged breaches of sections 15.3(b), and/or clauses 2.1 and 2.2 (g) of the FFA Code of Conduct and/or and/or Article 4.9(a) of the FFA National Registration Regulations.
Key Words/Phrases	Dual Registration with Member Associations.
General Purposes Tribunal Members	Mr David P. Lewis (Chair) Mr Louis Fayd'herbe Ms Mendo Cklamovski

A. INTRODUCTION

Football NSW has established the following Bodies pursuant to Section 5.1 of the Football NSW Grievance and Disciplinary Regulations (“Regulations”). This matter was determined pursuant to the 2014 Regulations:

The GPT may impose sanctions in accordance with Schedule 3 of the Regulations.

B. NOTICE OF CHARGE

FNSW issued a Notice of Charge to the **Respondent** on 1 June 2016.

The Charge related to the Dual Registration by the Respondent with two different teams - one in the Eastern Suburbs Football Association and the other in the St George Football Association.

The Notice to the Respondent specified the following charges:

Charge 1

Alleged breaches of Section 15.3(b) of the Football NSW Grievance and Disciplinary Regulations 2014, Schedule 3 Table C and/or Section 2.1 and 2.2(g) of the FFA Code of Conduct; and/or Article 4.9(a) of the FFA National Registration Regulations.

Football NSW Grievance and Disciplinary Regulations 2014

15.3 Misconduct

Misconduct shall mean any act or omission by a Member which:

(b) constitutes a breach of the FFA Rules and Regulations;

(d) constitutes a breach of Football NSW Rules and regulations (including these regulations) unless a document contains a provision or provisions for dealing with any breach thereof;

Alleged breaches of Clauses 2.1, 2.2 of the **FFA Code of Conduct** (effective from 1 January 2007) are also relevant to the Charge under Section 15.3(b) and/or (d) of the Football NSW Grievance and Disciplinary Regulations 2014.

2.1 A Member must not bring FFA or the game of football into Disrepute.

Without limiting the generality of clause 2.1, a Member will be taken as having brought football into Disrepute if any of the following occurs:

2.2(g) forgery and falsification, including creation of a false document, forgery of a document or signature, the making of a false claim or providing inaccurate or false information on a prescribed form;

2.2(k) any other conduct, behaviour or statement that materially injures the reputation and goodwill of FFA or football generally.

Article 4.9(a) of the FFA National Registration Regulations

4.9 Prohibition on Dual Registration

(a) A Player can be registered with only one Club in each form of the game at a time.

(b) A Player registered with FFA can play only for the Club (in the relevant form of the game) nominated on the Prescribed Form unless the Player is playing:

(i) for a Representative Team;

(ii) for a schools team that is not a Club;

(iii) in a benefit, testimonial or charity match if that Player has written special permission from FFA or a Member Federation as the case requires;

- (iv) in a trial match provided the Player has the written permission of his or her Club and plays in no more than 2 trial matches or such other number of matches as may be specified in Competition Rules; or
 - (v) any other exceptional circumstances approved by FFA in its absolute discretion, including the nature and extent of injuries, suspension or Representative Team call ups, or a National League Player needing to maintain fitness when a National League is out of season.
- (c) A Player may be registered for a maximum of three Clubs in each form of the game during a Season. During this period, the Player is only eligible to play in Matches for two Clubs in each form of the game.
- (d) If the Player plays in a National League, the different Season timings of the Competitions that the Player is seeking to register for will be taken into consideration.
- (e) A Replacement Player for a National League Club or a National League Player on loan to a Club or Institute (in accordance with the relevant Competition Rules) must be registered with the new Club (and not its parent Club).

The **Respondent** allegedly engaged in conduct that:

- constituted a breach of the FNSW and FFA Rules and Regulations;
- was unsportsmanlike or unprofessional;
- brought or may have brought football and/or Football NSW into disrepute and/or damaged the reputation and goodwill of the game.

Relevant Conduct

The relevant conduct alleged exhibited by the **Respondent** was as follows:

On 24 March 2015, the Participant (Gennadi Spivak) registered to play Football with Pagewood Botany FC in the Eastern Suburbs Football Association. The Participant used the Football Federation Australia Registration Number 80390958, the name, "Gennadi Spivak", the date of birth, "11 January 1967" and the address, "Park Pde Pagewood". The email address used to register was pbfc_admin@optusnet.com.au. - this is the club contact email address of Pagewood Botany FC Club.

On 29 March 2015, the Participant registered to play Football with Hurstville City Minotaurs SC in the St George Football Association. The Participant created a new Football Federation Australia profile which had the Registration Number 80454267 and he used the name, "Gary Spivak", the date of birth, "11 January 1967" and the address, "7 Orbell St Kingsgrove". The email address used to register was petersarikakis@bigpond.com - this is the club contact email address of Hurstville City Minotaurs SC.

C. THE HEARING

The Respondent produced a Notice of Response dated 8 June 2016 and entered the following plea: *"I am pleading GUILTY to the charge and I accept the report(s) attached to the Notice of Charge."*

Mr John Harris, Solicitor and Director PBFC represented the Respondent.

Mr Spivak, the Respondent, gave evidence that after he registered for the Pagewood Club in early 2015 he was approached by representatives of Hurstville City Minotaurs SC and asked him to also register for their team. He admitted that he was a good player and that he was playing with both Over 45 teams for both clubs in 2015.

The Respondent was asked how he registered on the MyFootballClub website for the Hurstville City Minotaurs SC. He noted that he did not and that they created that registration for him under a different variation of his name. He further claimed that the unnamed Hurstville City Minotaurs SC representative was aware that he had a New Zealand driver's licence and that he provided that document to that person and then this was used to create a second FFA registration under the name Gary Spivak, the name on his NZ licence.

The Respondent was shown a copy of the MyFootballClub registration Terms and Conditions. This document contains the following warranties:

MyFootballClub Registration Terms and Conditions:

By registering with FFA using the FFA Registration System (MyFootballClub) you (the Member) (or, if the Member is under 18 years of age, the Member's parent or legal guardian):

- 1. warrant that the information provided is current and correct;*
- 2. agree to comply with FFA Statutes, including the National Registration Regulations, National Code of Conduct, National Disciplinary Regulations and Grievance Resolution Regulations, copies of which are available on www.footballaustralia.com.au or on request;*
- 3. agree to comply with the Laws of the Game and the Competition Administrator's Competition Rules;*

There are many more warranties that a registrant must attest to on completing an application.

The Respondent claimed that he did NOT complete the registration process on MyFootballClub for Hurstville City Minotaurs SC as all he did was to provide his NZ details to that Club and they completed the online application. It was clear that his evidence was that he did not directly make the false declaration under the MyFootballClub Terms and Conditions for the second of his registrations.

D. BACKGROUND, SUBMISSIONS & EVIDENCE

The Respondent's dual registration only came to light when amazingly both his teams, Over 45s Pagewood and Over 45s Hurstville City Minotaurs, were scheduled to meet in the FNSW Champions of Champions grand final in October 2015.

In a letter to FNSW dated 23 October 2015, Pagewood Botany FC noted the following:

- "2. The Pagewood club has been aware of the possibility of dual registration of the player since 20 October 2015 and immediately stood the player down. The Pagewood club became aware of the fact of possible dual registration after comments were made by players/representatives of the Hurstville Minotaurs Club following their recent disqualification from the Over 45 Champion of Champions competition. We were also advised at that time that the matter was being referred to Football NSW. Accordingly this is our explanation for not bringing it to the authorities' attention promptly as we understood a complaint had been made to Football NSW."*

And further:

- 5. "We were recently advised by the player that his games with the Hurstville Minotaurs were on a Friday night. His explanation, whilst unacceptable to us, was that he wanted to play more football. We note that the different game days is why we were unaware of the dual registration.*
- 6. Our Club and its players had no previous knowledge of the player's dual registration.*

We believe that the Club has acted in good faith but has been intentionally misled by the player."

In summary the Respondent claimed that:

1. He was approached by an unidentified representative of Hurstville City Minotaurs SC after he had registered with Pagewood and urged to dual register with that team.

2. That representative told him that he was permitted to do so however also advised him not to tell anyone.
3. Further, that representative wished to use the Respondent's New Zealand driver's licence for identification and the first name 'Gary' instead of 'Gennadi'.
4. The Respondent did not complete the second registration details on MyFootballClub and this was attended to by Hurstville City Minotaurs SC.
5. The Respondent merely wished to play more football and therefore this offer was attractive to him.

E. CONSIDERATION & DETERMINATIONS

It was clear that either the Respondent was aware that this dual registration was not permitted or that he simply failed to make the appropriate inquiries in relation to the proposal from Hurstville City Minotaurs SC. On his own evidence he stated that he asked a few times whether this was permitted and notwithstanding that he was told that it was he cannot seriously claim that he had no idea given that he was told not to discuss this with anyone coupled with his knowledge of the obvious acts of Hurstville City Minotaurs SC to conceal his identity by use of a different name and identity documents.

He cannot absolve himself of the requirement to ensure that he did not participate in an act of what constitutes fraud and a breach of the FFA Statutes merely by ignoring the facts.

The Tribunal was aware that the Respondent had been a member of the Bondi United Club from at least 2005 through 2014 in the Eastern Suburbs Football Association and must have been aware of the rules of that Association given his lengthy experience in football.

Back in 2005 ESSFA, as it then was, and the St George SA had regulations that expressly disentitled dual registration.

The Tribunal takes note of the decision in [2006] AUESFA 1, a decision of the ESSFA Judiciary Committee right on point dealing with Dual Registration involving a False Declaration on an ESSFA registration form.

In that matter the ESSFA Judiciary found:

The players completed their St George SA Registration Forms in a manner that was deceitful in that they did not list their current club, Glebe Wanderers, and merely listed their UK clubs. In Mr AD's case he even included the year as 2004, clearly incorrect as in that year he was registered to Glebe. Mr NW declared in his Form that he last played in 2000 thereby omitting his registration with Glebe and asserting that he had not played in a league since that year.

These two players claimed that they thought this form only dealt with teams in the current Association. The Judiciary Committee cannot accept that evidence as if this was really their belief their forms would have included reference to their current registration with Glebe Wanderers.

The Judiciary Committee advised the players that making a false declaration in any form is a serious matter and that they should pay close attention to the terms of any declaration in the future. The Judiciary Committee also drew the players' attention to the declaration in both forms to the effect that they agreed to abide by the rules of each Association. The players claimed that ignorance of these rules was justified, however the Judiciary Committee noted that it was their obligation to seek out these rules to ensure that they complied with them.

The Judiciary Committee is satisfied that this was not an attempt by the players to totally conceal their identity as they have used their correct names. However, either by omission (in the case of Mr AR) or wilful deceit in the case of Messrs AD and NW, they attempted to hide the fact that they were also registered with another club in another association.

In that matter the Respondents were all suspended for four (4) Fixtures.

F. FINDINGS

The Tribunal finds the Respondent, Mr Gennadi Spivak, GUILTY of the charge.

The Respondent pleaded GUILTY to the Charge at the first opportunity in October 2015.

The Respondent admitted that he knew something was wrong yet made no attempt to inquire whether his actions were permitted.

The Tribunal determined that this was a very serious offence as it involved fraud by the Respondent albeit at the instigation of the Hurstville City Minotaurs SC.

The Tribunal found that the Pagewood Botany Football Club had no prior knowledge of this matter and that they acted quickly and responsibly once it became clear that the Respondent was in breach of FFA Statutes.

G. SANCTIONS

The Tribunal imposed the following sanction on the Respondent under Table C, Number 3 - Other Offences by Participants: *"Bringing the game into Disrepute"*.

The Minimum Sanction for this offence is six (6) matches. Given the length of time it has taken to bring this matter to the Tribunal and the early guilty plea, four (4) matches of this sanction are suspended.

The Respondent is suspended for **two (2) Fixtures for the offence under the Charge** from all Football related activities, including spectating and coaching. This reduced suspension has been imposed based on the age of the Respondent as well as the time taken by FNSW to bring the Charge before the Tribunal.

For the purposes of clarification, in accordance with section 14.4(g) of the 2014 Regulations: *"A Participant must serve the Suspension in the same age-grade for which he or she received that Suspension and will not be eligible to participate in **any** Fixture until that Suspension is served in full."*

The Respondent is to submit a detailed written report setting out the circumstances of the approach to dual register by the Hurstville City Minotaurs SC to the Respondent.

The Tribunal determined that the Respondent also pay the costs of the Tribunal processes as determined by FNSW.

Aggrieved parties to a determination of the FNSW General Purposes Tribunal may lodge an appeal to the FNSW Appeals Tribunal in accordance with articles 8.6 and 9.2 of the FNSW Grievance and Disciplinary Regulations. Any appeal must be submitted on the Notice of Appeal form (Prescribed Form 13) to tribunal@footballnsw.com.au with the relevant Application Fee (\$750) within seven (7) working days of the Final Determination of the GPT being sent to the Club.



David P. Lewis

Chairman

23 June 2016

The Schedule

Index of Documents

ANNEXURES

GPT 16-23 FNSW v Gennadi Spivak

ANNEXURE A	MyFootballClub Profile of Gary Spivak registered to play with Hurstville City Minotaurs SC
ANNEXURE B	MyFootballClub Profile of Gary Spivak registered to play with Pagewood Botany FC.
ANNEXURE P1	Email received from Pagewood Botany FC on 25 May 2016 at 1:25pm
ANNEXURE P2	Copy of Gennadi Spivak Licence provided to Pagewood Botany FC
ANNEXURE S1	Email received from St George Football Association on 26 May 2016 at 12:24pm
ANNEXURE S2	Copy of Gary Spivak Licence provided to St George Football Association