

Opinion

At issue The Red Sox sale

Despite what the critics say, it wasn't a bag job

By Einer Elhaug

The Red Sox sale has been vilified more unfairly than perhaps any other sports transaction in history. Critics complain that organized baseball unjustly favored the Henry group, that John Harrington sold out the charity by not selling to the highest bidder, and that local bidders should have been favored. These critiques are not only inconsistent, but legally misguided.

The first point missed is that Major League Baseball is a partnership. Although each team is separately owned, each team is also a partner in the joint venture of putting on a baseball season.

If you were in partnership, would you want someone else to unilaterally decide who you are going to have to work with in the future? Of course you wouldn't, and the law does not require you to. Instead, every partnership has a right to decide whom to accept as a new partner.

Nor did Harrington shortchange the charity. If the critics are right that organized baseball would approve only the Henry group, then the rival bids were not really available to the charity anyway. Accepting bids that get disapproved can't get the charity any more money. To the contrary, the charity would probably get less in a second bidding round, because the Henry group would have less to bid against.

Then critics switch to arguing that Harrington misled the rival bidders into thinking they had a realistic shot. But if so, that would only help the charity by creating an impression of serious bidding that increased the bid.

In fact, it was not that organized baseball would definitely approve only

of the Henry group. It was that it would approve of the Henry group with far more speed and certainty — and for perfectly legitimate reasons.

Henry had already been approved as a partner of Major League Baseball, which also had every incentive to act quickly on a deal that would also solve its business problems concerning who would own the Expos.

In contrast, a new applicant to join the baseball partnership is normally investigated for six to 12 months, and applicants who have substantial media interests (such as the Dolan and Prentice bidders) take longer. And after that long delay, the rival bidders might not be approved. Harrington would have violated his fiduciary duty if he had not taken that into account.

After all, suppose you were selling your house and had two bidders. Hank has a preapproved loan and offers \$700,000, payable immediately. Chuck offers \$790,000, conditional on getting mortgage approval a year from now. Would you conclude you must be better off selling to Chuck? Doubtful.

At a 10 percent rate of return, \$700,000 now is worth \$770,000 a year from now, so the money is not really that different. And if Chuck does not ultimately get approved, then you have wasted a year, and Hank might no longer be willing to bid \$700,000 because he isn't bidding against Chuck anymore.

Just so with the Red Sox. Since all the bidders were grown-ups, they had to understand this.

Then there is that last-minute deal giving Aramark concession rights. Critics make it sound sinister, but what did it really mean? It meant Aramark would neutrally assess bidders rather than favoring those who were most likely to give it a concession contract. And it meant the O'Donnell-



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Karp group's bid could not be based on any value it would derive from using its control over the Red Sox to direct the concession contract to itself instead. These are hardly nefarious effects.

So it is time to stop wasting time

vilifying the Red Sox sale, and begin focusing on more important issues. Like, how can you get good seats to see the Sox?

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