

Ullum v American Kennel Club
2015 NY Slip Op 31105(U)
June 25, 2015
Supreme Court, New York County
Docket Number: 159629/2013
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

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RALPH G. ULLUM, CHERYL FRENCH, and
TOPAZ SIBERIANS KENNEL,

Plaintiffs,

Index No.
159629/2013

Decision and
Order

- against -

Mot. Seq. 02

THE AMERICAN KENNEL CLUB, a/k/a AKC,
and DENNIS SPRUNG, independently and as
President of the AKC,

Defendants.

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HON. EILEEN A. RAKOWER, J.S.C.

In December 2010, a dog show was held in Illinois. The dog show was organized by the Starved Rock Kennel Club, and used The American Kennel Club, aka AKC ("AKC") official entry forms. French registered seven individually named Siberian Husky dogs. On each of the seven entry forms, it was required that the entrant list the "actual owner(s)" and the "breeder." On six of the seven entry forms, French listed only herself as the "actual owner" and only herself as the "breeder" of the dogs. On one of the forms for the dog named "Trillium Blue's Hershey Bliss," French listed "Cheryl French & Breeders" as the "actual owner" and "Elizabeth Demartino and Diane Spondue" as the "breeder." French alone signed each of the seven forms. On none of the seven entries are there the names of "Ralph G. Ullum" ("Ullum") or "Topaz Siberians Kennel" ("Topaz").

The entry forms contain an arbitration clause, which states:

I (WE) AGREE THAT ANY CAUSE OF ACTION, CONTROVERSY OR
CLAIM ARISING OUT OF OR RELATED TO THE ENTRY,
EXHIBITION OR ATTENDANCE AT THE EVENT BETWEEN THE

AKC AND THE EVENT GIVING CLUB ... AND MYSELF (OURSELVES) OR AS TO THE CONSTRUCTION, INTERPRETATION AND EFFECT OF THIS AGREEMENT SHALL BE SETTLED BY ARBITRATION PURSUANT TO THE APPLICABLE RULES OF THE AMERICAN ARBITRATION ASSOCIATION.

As a result of Ullum's "violation [in] feeding a dog medication that a veterinarian identified as having the potential to adversely affect the dog's performance and health" on December 17, 2010 at the Starved Rock Kennel Club dog show, the AKC suspended Ullum from all AKC privileges for five years, effective January 19, 2011, issued Ullum a fine of \$1,000, and prohibited Ullum from being on the grounds of an AKC approved event during the term of the suspension.

On November 11, 2011, Ullum was acquitted of all criminal charges filed as a result of the December 17, 2010 incident. On August 2, 2012, Ullum filed a Request for Reinstatement with AKC to end the suspension early. AKC denied the Request.

On October 13, 2013, Ullum, French, and Topaz (collectively, "Plaintiffs") commenced an action in this Court against AKC and Dennis Sprung, as President of the AKC. Plaintiffs asserted five causes of action against AKC and Sprung for defamation, breach of contract, tortious interference, negligence infliction of emotional distress and prima facie tort. On December 17, 2013, AKC and Sprung moved to dismiss the Complaint pursuant to § §3211(a)(5) and (a)(7). By Decision and Order dated May 30, 2014, the action was dismissed pre-answer.

On January 23, 2015, Ullum, French, and Topaz submitted a Demand for Arbitration before the American Arbitration Association ("AAA") concerning "Respondent's [the AKC's] arbitrary and capricious conduct resulting in \$1,000.00 fine and 5-yr suspension of claimant's AKC privileges." As the basis of their request for arbitration, Ullum, French, and Topaz rely on an arbitration clause contained in the official entry form and append a blank entry form to the Demand for Arbitration. While they append a blank entry form to the Demand, the only signed and completed entry forms before this Court to the entry of Siberian Huskeys for December 16 and December 17, 2010 at the Starved Rock Kennel Club event signed only by French. No form submitted is signed by Ullum or Topaz.

AKC moves for an Order staying and preliminarily enjoining Plaintiffs' Demand for Arbitration before the AAA, and all proceedings until the final determination of this matter. Plaintiffs oppose.

Oral argument was held on February 13, 2015 and March 31, 2015. On February 13, 2015, the Court temporarily stayed the arbitration.

Under the Federal Arbitration Act (the "FAA"), challenges to the existence or validity of an arbitration clause are for the Court to decide even in those instances where there is a broad agreement to submit matters to arbitration. See also CPLR 7503; *Cap Gemini Ernst & Young, U.S., L.L.C. v. Nackel*, 346 F.3d 360, 365 (2d Cir. 2003). Similarly, under New York law, "whether the parties made a valid agreement to arbitrate" and "if so, whether the agreement has been complied with" are threshold questions to be addressed on a motion to stay. *County of Nassau v. Civil Serv. Empls. Ass'n*, 14 A.D.3d 509, 509 (2d Dep't 2005).

CPLR §7501 provides:

A written agreement to submit any controversy thereafter arising or existing controversy to arbitration is enforceable without regard to the justiciable character of the controversy and confers jurisdiction on the courts of the state to enforce it and to enter judgment on an award. In determining any matter arising under this article, the court shall not consider whether the claim with respect to which arbitration is sought is tenable, or otherwise pass upon the merits of the dispute.

The proponent of arbitration has the burden of demonstrating that the parties agreed to arbitrate the dispute at issue." *Eiseman Levine Lehrhaupt & Kakoyiannis, P.C. v. Torino Jewelers, Ltd.*, 44 A.D.3d 581, 583 [1st Dep't 2007]). "A court will not order a party to submit to arbitration absent evidence of that party's 'unequivocal intent to arbitrate the relevant dispute' and unless the 'dispute falls clearly and unequivocally within the class of claims agreed to be referred to arbitration' 'The determination of whether there is a clear, unequivocal and extant agreement to arbitrate the disputed claims . . . is a question for the court and not the arbitrator.'" (*Bunzl v. Battanta*, 224 A.D.2d 245, 245-46 [1st Dep't 1996]).

To the extent that Ullum and Topaz are seeking to arbitrate any claims against the AKC, there is no evidence of any arbitration agreement between them and AKC. In their Demand for Arbitration, Ullum, Topaz, and French collectively rely on the arbitration provision contained in the official entry form and attach only

a blank entry form to their Demand for Arbitration. The only signed and completed entry forms before this Court relate to the seven entries of Siberian Huskeys for the December 2010 dog show, which are signed only by French and do not list or otherwise identify Ullum or Topaz as “actual owner”, “breeder”, or in any capacity or manner.

Additionally, to the extent that French seeks to arbitrate claims related to Ullum’s suspension based on the entry forms she completed for the December 16, 2010 dog show, such claims are not “arising out of or related to the entry, exhibition or attendance” of French at the December 17, 2010 Starved Rock Kennel Club event. None of the dogs registered by French on those entry forms are listed as co-owned with Ullum, nor is there any claim that those dogs were impacted by Ullum’s suspension. The only document that French submits to show the effect that Ullum’s suspension had on her regards the “transfer” of a dog (not one of the dogs registered for the December 17 event).

The Court finds there is no agreement to arbitrate as between Ullum, Topaz, and the AKC. Further, the subject claim French seeks to arbitrate is completely unrelated to the entry forms she signed which constitute the agreement to arbitrate between French and the AKC. To the extent that French claims that she is damaged by Ullum’s suspension because they co-own Huskeys, they do not co-own any of the Huskeys French registered at the Starved Rock Kennel club event.

Wherefore it is hereby,

ORDERED that AKC’s motion to stay and enjoin arbitration is granted; and it is further

ORDERED that the arbitration commenced by French, Topaz, and Ullums against the AKC with the AAA by Demand for Arbitration dated January 23, 2015 is hereby permanently stayed and enjoined.

This constitutes the decision and order of the Court. All other relief requested is denied.

Dated: JUNE 25, 2015

JUN 25 2015


Eileen A. Rakover, J.S.C.