

UNITED STATE DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

LUIS A. GARCIA SAZ and Wife,
MARIA DEL ROCIO BURGOS
GARCIA,

Plaintiffs,

vs.

CASE NO: 8:13-CV-220-T27 TBM

CHURCH OF SCIENTOLOGY FLAG
SERVICE ORGANIZATION, INC., and
CHURCH OF SCIENTOLOGY FLAG
SHIP SERVICE ORGANIZATION, INC.,

Defendants.

**PLAINTIFFS' OPPOSITION TO DEFENDANT'S OPPOSED MOTION
FOR CLARIFICATION [DE 244]**

Under the guise of a Motion for Clarification, Defendants filed an unauthorized Motion for Rehearing which has already twice been denied.

In the Court's Order of April 10, 2017, [DE 238] the Court clearly declined to allow the Defendants to choose two arbitrators after the Court chose one and further specifically held "No party shall, directly or indirectly, interfere with the selection of arbitrators as described, and shall not contact, attempt to contact, or respond to contact by any individual listed by Defendants or selected to serve as an arbitrator by the Court. A violation of this Order shall result in the imposition of sanctions against the individual violating the terms of this Order."

Defendants, then in violation of this Court's Order, filed a Motion [DE 239] on April 25, 2017, which on Page 7 stated:

The same caution must apply to the method by which a chosen arbitrator is notified. The Court order appears to contemplate that it will contact the individuals it randomly selects to determine their availability and to give them direction about the arbitration. The Court thus would be injecting its power and authority into the arbitration proceedings by altering the religious procedures set forth in the arbitration agreements, contrary to "the principle that civil authorities must abstain from interposing themselves in matters of church organization and governance." *Church of Scientology Flag Service Organization v. City of Clearwater*, 2 F.3d 1514, 1537 (11th Cir. 1993). It is the function and duty of the IJC to contact persons selected as arbitrators, after a party to arbitration informs the IJC of its choice. Here, the Court should act in the same manner as the plaintiffs would if they selected, *i.e.*, the Court should notify the IJC who would then contact the person selected.

The Court in its order of May 19, 2017, [DE 243] in footnote 4 the Court stated:

Defendants' contention that the arbitration agreement requires the IJC to contact the arbitrators and schedule arbitration is incorrect. Nothing in the agreement expressly requires that procedure. And Defendants' concern that individuals selected by the Court to serve as arbitrators will inevitably contact a Church official can be alleviated by Defendants informing Church officials of this matter and the Court's directives.

There has to be an end to litigation. There is nothing unclear about the Court's Order. There is also nothing unclear about the Defendants' attempts to give a "wink and a nod" to the potential arbitrators suggesting to them that the Defendants want them to arbitrate on behalf of the Defendants as co-conspirators against the Plaintiffs. The Court

wanted to make sure that no one, including the IJC, had any contact with potential arbitrators. If it is true that Scientologists by their nature would hesitate to be involved in any proceeding directed by this Court shouldn't the Court find that out? If Scientologists simply wouldn't take part in a fair and unbiased proceeding isn't that exactly what the Court should know? If it is true as Defendants' state in Page 3 of their current motion, "that direct contact to Scientology parishioners from a civil court about Scientology procedure may cause alarm of such individuals" doesn't that confirm what Plaintiffs have argued? That Scientologists in good standing could not participate in an arbitration proceeding unless they were assured by the IJC that they would be in conspiracy with the Defendants to deprive Plaintiffs of a fair hearing?

Defendants told this Court it would be impossible to provide contact information for the randomly selected member in good standing. When the Court ordered them a second time to do so, they miraculously were able to do so on very short notice. Now Defendants state that it is impossible for them to contact their Church officials to let them know that they are to have zero contact with any proposed arbitrator. Defendants' state that they are unclear about what would be a proper or improper response. Just what is unclear about the Court's statement that the Defendants "shall not contact, attempt to contact, or respond to contact by any individual listed by Defendants or selected to serve as an arbitrator by the Court?" There is absolutely nothing unclear about that statement. It is not credible that Defendants would never have contact with their own clergy. How hard would it be for the Defendants to send an email to everyone in their clergy that simply said if you are contacted by a potential arbitrator named by a Federal Judge, please have absolutely no contact with these potential arbitrators. Simply respond we

have been instructed by Court Order to have absolutely no contact with you. Please do not call or communicate with us again about this arbitration.

Defendants' excuse is that there are more than a dozen Churches and missions of Scientology in Southern California or that there are several hundred Church officials who a parishioner might seek guidance from and that that makes it impossible for the Defendants to inform these people not to have contact with potential arbitrators. This makes absolutely no sense and is completely disingenuous. Defendants' statement on Page 4 that "Defendants simply are not capable of contacting each of them in a short period of time to instruct them how to respond, let alone in the nuanced fashion necessary to keep within the Court's "directives" also makes no sense and is completely disingenuous. The plain truth is Defendants insist that they have inappropriate contact with potential arbitrators to make sure they understand the arbitrators need to be on board with the Defendants in this arbitration process. That is exactly what the Court ordered should not take place and that is exactly what the Defendants are asking the Court that they be permitted to do.

The letter attached to Defendants' Motion as Exhibit 1 is completely inappropriate. It amounts to a final argument by the Defendants about what Plaintiffs' claim is about. It fails to mention Plaintiffs' allegations of fraud and mischaracterizes Plaintiffs' allegations as a request for refund of donations made to the Churches. It allows the IJC to be characterized as someone who is neutral and fair and invites the arbitrators to contact the International Chief Justice. It invites the arbitrators to resist arbitration telling them there is no ecclesiastical requirement for them to participate.

The entire point of the Court's admonition not to contact potential arbitrators is obviated by Defendants' attempts to have the IJC unilaterally contact these arbitrators. The IJC has tremendous power in Scientology. He has the power to declare a member with life altering consequences to that member. Any contact at all would be intimidating and inappropriate and all contacts with anyone should be met with a simple statement that the person contacted is not permitted to talk or have any contact with potential arbitrators in any fashion whatsoever.

Incredibly the rest of the Defendants' Motion insists upon the use of the rules of the Scientology Committee of Evidence. This Court specifically rejected the use of those rules in its original order compelling arbitration. Responding to that inappropriate suggestion would require this Court to rehear the two days of testimony that it heard initially.

This Court should deny Defendants' Opposed Motion for Clarification and should instruct the Defendants to contact its officials in the Southern California region and warn them to have no contact whatsoever with potential arbitrators and to state that if they are contacted by a potential arbitrator that they are prohibited from discussing in any fashion the issue of their participation in arbitration and to say nothing further to these potential arbitrators.

DATED: This 7th day of June, 2017.

Respectfully submitted,

By /s/ Theodore Babbitt
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