

UNITED STATES 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-T-27TBM

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

Defendants.

DEFENDANTS' OPPOSED MOTION FOR CLARIFICATION

Defendants, by their undersigned counsel, move for clarification with respect to portions of the Court's order of May 18, 2017 and with respect to the arbitration hearing. In doing so, defendants also seek to clarify the procedures that will be followed pursuant to the ecclesiastical rules of the Scientology religion, as required under the Enrollment Agreements by which the parties agreed to arbitration of disputes.

The Court has determined to choose three arbitrators who will conduct the arbitration from the list of 500 Scientologists in good standing that defendants provided to the Court. Defendants had moved that the Court select only a single arbitrator in light of the plaintiffs' failure to do so (and in light of the fact that defendants had done so), but the Court has decided that it will choose all three arbitrators pursuant to Section 5 of the Federal Arbitration Act.

Defendants submit, however, that the Court's opinion should be clarified, in several respects.

1. First, the Court states in footnote 4 of its opinion that nothing in the enrollment agreement “expressly states” that the IJC shall notify the arbitrators and schedule the arbitration. While technically accurate with respect to the term “expressly,” the agreements make clear, as discussed below, that the request for arbitration shall be made to the IJC and that the IJC has the power to resolve disputes about the choice of arbitrators. Moreover, plaintiffs agreed to be bound “exclusively” by the “internal . . . ecclesiastical rule, custom, and law of the Scientology religion.” Given that inarguable context, it is the IJC who is responsible under Church policy for insuring that the arbitration proceed and for instructing the arbitrators as to the appropriate procedures to be followed and the appropriate Scientology law applicable, such as, for example, the applicable policy letter concerning refunds of donations, as the IJC made clear in his earlier testimony before the Court. And, as discussed below, under the procedure that the IJC has chosen for use in the arbitration, the IJC will appoint a member of the panel to act as Secretary, one of whose duties is to schedule the arbitration.

The Court states that it will notice a hearing for the purpose of scheduling arbitration. The Court does not state that it itself will assume the role of scheduling the arbitration. Indeed, it is difficult to contemplate how the Court as a practical matter could schedule the arbitration, let alone without improperly assuming powers to conduct an ecclesiastical proceeding.

The Court’s interest in enforcing its order compelling arbitration by assuring that the arbitration proceed in a timely fashion without delay may be accomplished if the Court were to provide boundaries and guidelines within which the appropriate ecclesiastical actors may convene and schedule the arbitration in accordance with Church policy and procedures, such as within three months, with the parties providing notification to the Court of the scheduling and progress. This would permit the Court to insure that its mandate is enforced without unduly

intruding into the religious arbitration process, which was created precisely to avoid civil court entanglement in dispute resolution involving ecclesiastical matters.

2. Second, the Court states that it will directly contact those individuals it randomly selects to inquire as to their willingness and availability to serve as arbitrators. Defendants seek clarification as to how the Court intends to do so. Defendants have expressed to the Court their concerns that direct contact to Scientology parishioners from a civil court about Scientology justice proceedings may cause alarm of such individuals, who did not assume their identities and contact information would be disclosed to a court without notice, as well as about the practical problems that may arise from this process. It also raises ecclesiastical questions, because parishioners may raise questions about such contacts with appropriate Church officials. Indeed, it is possible parishioners may decline to discuss the matter until contacting such persons.

Defendants have also raised the uncertainty of what Church officials should say to parishioners who contact them. The Court suggests in footnote 4 that defendants inform Church officials “of this matter and the court’s directives,” so that the latter may respond to inquiries from those parishioners whom the Court may contact to serve as arbitrators. But defendants are under an injunction not to discuss this matter or the Court’s directives, even with Church officials, some of whom are on the list presented to the Court. Defendants are uncertain what it is they should or even are permitted to say to “Church officials,” let alone what the Court requests that the defendants instruct such officials to say to a parishioner who is contacted by the Court and then seeks advice from such a Church official. Certainly a Church official cannot be asked to refuse to discuss the matter with a parishioner, or to give a non-informative response. It would be a clear interference with religious exercise and speech, let alone an improper

entanglement between church and state, were a court to interpose itself between Church parishioners and Church officials with respect to communications from parishioners.

Nor is it clear what, in the Court's view, would be a proper or improper response. Parishioners contacted by the Court may have questions that relate to religious issues, not just scheduling matters. For example, a parishioner who is on a particular intense course of religious counseling or study may seek advice whether he may interrupt that activity to participate in religious arbitration. Such religious questions are far beyond the competence of this or any court to answer, and must be referred or left to the discretion of the religious authorities.

Moreover, the Scientology religion is not organized into a single entity. There is not a single Church in the Los Angeles area; there are more than a dozen Churches and Missions of Scientology in Southern California from whom names were randomly selected, and there are several hundred Church officials from whom a parishioner might seek guidance. 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." And if the defendants were to try to invoke the assistance of some Church officials in the Los Angeles area to assist in contacting the numerous others, all the problems discussed above would be multiplied several times over.

In sum, defendants seek clarification of all the issues above. Defendants believe that the Court's intention to contact prospective arbitrators itself without the participation of the IJC may lead to confusion, delay, and uncertainty. One solution might be for the IJC initially to contact the parishioners whom the Court randomly selects by letter, such as that attached here, thereby assuring the Court of the neutrality of the communication. (Exhibit 1)

Defendants wish to clarify how they should proceed to avoid those problems without participating in an intrusion of the state into ecclesiastical custom, law, or procedure, and also to assist in making the process go forward equitably and with dispatch.

In addition, and to preserve the record, Defendants adhere to their objection that the Court's decision to select all three arbitrators exceeds the relief requested in defendants' motion and what is necessary or appropriate to address the problem of plaintiffs' failure to designate a Scientologist in good standing; is not otherwise authorized by Section 5; deprives defendants of the right under the Enrollment Agreements to select one of the arbitrators who in turn would participate in the selection of the third arbitrator, as a result of plaintiffs' obstruction of the process because, as Mr. Garcia stated, he refuses to select a committed Scientologist as he is required to do by the Enrollment Agreements; and otherwise violates the terms of the Enrollment Agreements and the First Amendment restrictions upon Court interference with religious law and rules. Indeed, the appropriate course of action in light of plaintiffs' failure to abide by the agreements would be to dismiss their complaint outright for failure to prosecute and for waiving their right to arbitrate.

3. Beyond defendants' preservation of their objection, once the arbitrators are in place the arbitration should proceed in the same manner as it would have but for the Court's selection of arbitrators. Section 5 by its terms expressly is directed only to the selection of arbitrators:

If in the agreement provision be made for a method of naming or appointing an arbitrator or arbitrators ..., such method shall be followed; but ... if a method be provided and any party thereto shall fail to avail himself of such method, ... then upon the application of either party to the controversy the court shall designate and appoint an arbitrator ... who shall act under the said agreement with the same force and effect as if he ... had been specifically named therein; ...

The section, and the statute, do not authorize or permit a court otherwise to take over an arbitration proceeding as if it were an auxiliary to the court itself.

The Enrollment Agreements specifically provide not only that any dispute be submitted to Scientology ecclesiastical arbitration, but that the request for arbitration *be submitted to the International Justice Chief and that the rules and procedures of the Scientology justice system must apply to such an arbitration.* The provisions of the agreements that are relevant to this motion to compel arbitration include the following:

6. This Contract memorializes my freely given consent to be bound exclusively by the discipline, faith, internal organization, and *ecclesiastical rule, custom, and law of the Scientology religion* in all matters relating to Scientology Religious Services, *in all my dealings of any nature with the Church.* . . . By signing this Contract, I recognize, acknowledge and agree that:

a. . . . I am forever abandoning, surrendering, waiving, and relinquishing my right to sue, or otherwise seek legal recourse with respect to any dispute, claim or controversy against the Church, all other Scientology churches, all other organizations which espouse, present, propagate or practice the Scientology religion, and all persons employed by any such entity both in their personal and any official or presentational capacities, regardless of the nature of the dispute, claim or controversy.

b. * * *

c. Should I or anyone acting or purporting to be acting on my behalf ever sue, or otherwise seek legal recourse with respect to any dispute, claim or controversy against the Church, any other Scientology church, any other organization which espouses, presents, propagates or practices the Scientology religion, or any person employed by any such entity, regardless of the nature of the dispute, claim or controversy, I intend for the submission of this Contract to the presiding judicial officer to be a complete and sufficient basis for the immediate dismissal of any and all such proceedings with prejudice to further proceedings of any kind.

d. *In accordance with the discipline, faith, internal organization, and ecclesiastical rule, custom, and law of the*

Scientology religion, and in accordance with the constitutional prohibitions which forbid governmental interference with religious services or dispute resolution procedures, should any dispute, claim or controversy arise between me and the Church . . . which cannot be resolved informally by direct communication, I will pursue resolution of that dispute, claim or controversy solely and exclusively through Scientology's Internal Ethics, Justice and binding religious arbitration procedures, which include application to senior ecclesiastical bodies, including, as necessary, final submission of the dispute to the International Justice Chief of the Mother Church of the Scientology religion, Church of Scientology International ("IJC") or his or her designee. [emphasis added]

e. Any dispute, claim or controversy which still remains unresolved after review by the IJC shall be submitted to binding religious arbitration in accordance with the arbitration procedures of Church of Scientology International, which provide that: [emphasis added]

I. *I will submit a request for arbitration to the IJC and to the person or entity with whom I have the dispute, claim or controversy;*

[OMITTED PARAGRAPHS CONCERNING CHOOSING OF THREE ARBITRATORS]

V. *consistent with my intention that the arbitration be conducted in accordance with Scientology principles, and consistent with the ecclesiastical nature of the procedures and the dispute, claim or controversy to which those procedures relate, it is my specific intention that all such arbitrators be Scientologists in good standing with the Mother Church.*

The Enrollment Agreements thus provide that no claim against the church shall be litigated in the civil courts, and that the only forum for dispute resolution shall be the Scientology justice system, including the arbitration system. Critically, the Enrollment Agreements specify that it is the IJC to whom a request for arbitration must be made, and the IJC

who is responsible that the arbitration proceed “in accordance with Scientology principles,” including most importantly in “*accordance with the . . . ecclesiastical rule, custom, and law of the Scientology religion, and in accordance with the constitutional prohibitions which forbid governmental interference with religious . . . dispute resolution procedures.*” As the IJC has testified, he has determined that the ecclesiastical procedures that he will direct the arbitrators to follow will be, to the extent applicable, the rules of a Scientology Committee of Evidence.¹

The IJC is the Convening Authority for the arbitration. “The Convening Authority sets out in its instruction to the Committee (Bill of Particulars) the matter to be investigated and supplies any information already available together with names of any person known to be involved or requesting justice (Interested Parties).” As Mr. Ellis testified before this Court, the IJC will also advise the members of the panel that they must be fair and neutral in finding the facts and determining a just result, no matter whether the parties are in good standing with the Church. He also will instruct the members of the panel as to the appropriate Scientology policy or policies that may apply to the subject matter of the dispute. The Convening Authority also is responsible for appointing one of the members of the Committee, here one of the arbitrators, to act as Chairperson to conduct the proceedings, and another to act as Secretary and to carry out certain functions:

SECRETARY: The Secretary is appointed specifically by the Convening Authority. The Secretary is a proper member of the Committee and has a vote. The Secretary prepares

¹ While this Court found at an earlier stage of this case that it was not clear that the rules of a Committee of Evidence had been established as the proper ecclesiastical procedure *prior* to the motion to compel arbitration having been made in this case, the question addressed here is quite different. At this point, the IJC, who is the senior authority on the matter within the Scientology internal justice system, has determined that the rules of a Committee of Evidence should be and are the appropriate ecclesiastical procedures to be followed in implementing an arbitration as contemplated under the Enrollment Agreements. That is a question of the interpretation and application of Scientology ecclesiastical justice and law, and is not a matter within the cognizance of the civil courts, for all the reasons discussed throughout this case and which the Court has previously recognized.

and issues all notices to attend, attends all meetings, keeps all notes, collects all documentary evidence offered in the hearings, procures tapes and a tape recorder, does all the tape recording, and collects all members of the Committee for scheduled hearings.

[Dkt. 127-2]

As this Court has recognized throughout this case, it is for the Scientology religion to establish and implement the procedures attendant to its internal justice system. The judiciary has no role in interpreting or applying religious doctrine or practice. *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 449 (1969). A court cannot begin to adjudicate what is and is not Church doctrine or the importance of the doctrine to the religion. Litigating in court about what does or does not have religious meaning touches the very core of the constitutional guarantee against religious establishment. *New York v. Cathedral Academy*, 434 U.S. 125, 133 (1977) A Church's declaration of its religious beliefs and practices must be accepted by the Court, lest the judiciary become entangled in deciding the nature and content of a religion. *In re Holy Spirit Ass'n for the Unification of World Christianity v. Tax Comm'n of the City of New York*, 55 N.Y.2d 512, 518 (N.Y. 1982).

The Eleventh Circuit rigorously has upheld this doctrine, insisting that the judiciary must avoid even the appearance of intrusion into matters of church doctrine or internal governance:

The Fifth Circuit applied a settled principle when it declared that “the law is clear: civil courts are barred by the First Amendment from determining ecclesiastical questions.” *Simpson v. Wells Lamont Corp.*, 494 F.2d 490, 493 (5th Cir.1974); accord, e.g., *Natal v. Christian & Missionary Alliance*, 878 F.2d 1575 (1st Cir.1989). In applying this principle we must not “narrowly limit” its scope to actual differences in church doctrine. The cases negative such a strict view. A “spirit of freedom for religious organizations, an independence from secular control or m[a]nipulation[,] in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine” is reflected in the Supreme Court's decisions. *Simpson*, 494 F.2d at 493 (quoting *Kedroff*, 344 U.S. at 116, 73 S.Ct. at 154).

Church of Scientology Flag Service Organization v. City of Clearwater, 2 F.3d 1514, 1537 (11th Cir. 1993).

The IJC's decision to apply the procedures contained within the 1963 policy letter relating to Committees of Evidence to internal arbitration proceedings is a question of Church law for the defendants to decide. In *Gonzalez v. Roman Catholic Archbishop of Manila*, 280 U.S. 1 (1929), Gonzalez claimed the right to be appointed to a chaplaincy in the Roman Catholic Church under a will which provided that a member of his family receive that appointment. The Archbishop of Manila refused to appoint Gonzalez on the ground that he did not satisfy the qualifications established by Canon Law for that office. The Court held it was the Archbishopric, not the civil courts, which had the task of analyzing and interpreting Church law in order to determine the validity of Gonzalez' claim to a chaplaincy. Here it is the International Justice Chief who has the task of analyzing and interpreting Church law and applying it to the resolution of the Gracias' dispute.

The point was reemphasized in even stronger terms in *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976), where the Court reversed a state court decision finding the removal of a Bishop to be arbitrary under Church procedures. The Court held that the decision of the Serbian Diocese authorities was beyond civil court review.

[N]o "arbitrariness" exception in the sense of an inquiry whether the decisions of the highest ecclesiastical tribunal of a hierarchical church complied with church laws and regulations is consistent with the constitutional mandate that civil courts are bound to accept the decisions of the highest judicatories of a religious organization of hierarchical polity on matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law.

Id. at 713.

Defendants thus seek to clarify that, once the selection of arbitrators is in place, the arbitration will proceed, as intended, as a religious arbitration under the supervision and control of appropriate Scientology religious authorities, specifically the IJC. Any other result would

undermine the purpose and intent of the arbitration process created by the Enrollment Agreements to which the plaintiffs repeatedly agreed.

COMPLIANCE WITH LOCAL RULE

The undersigned counsel has contacted plaintiffs' counsel, Theodore Babbitt, and is authorized to represent to the Court that Mr. Babbitt opposes this motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 2, 2017, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following: THEODORE BABBITT, ESQUIRE, tedbabbitt@babbitt-johnson.com, and other counsel of record.

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