

Ex-Scientists Say Church Is Foiling Fraud Row Arbitration

By **Shayna Posses**

Law360, New York (April 14, 2016, 5:59 PM ET) -- Two former Scientologists told a Florida federal court Wednesday that the church waived its right to arbitrate their fraud claims by thwarting the process, demanding the couple choose a Scientologist in “good standing” as their arbitrator but barring them from speaking to any church members directly.

Luis A. Garcia Saz and his wife, Maria del Rocio Burgos Garcia, asked the court to lift the stay on their suit imposed after their claims over allegedly misused contributions were sent to arbitration last year, saying the Church of Scientology has deliberately obstructed the process for months by shooting down every arbitrator the California couple proposes and making it impossible for them to find an acceptable alternative.

In March 2015, U.S. District Judge James D. Whittemore held that an arbitration agreement between the Garcias and the church applies. Under the agreement, the church purportedly chooses one arbitrator, the couple chooses another, and those arbitrators choose a third. All arbitrators must be Scientologists in “good standing,” according to court filings.

“While the court found that the limited process set forth in the arbitration agreement was sufficient, in practical application that is not the case because the defendants have taken the unreasonable position of insisting on a definition of ‘in good standing’ that makes it impossible for plaintiffs to choose an arbitrator of their own choice,” the couple said.

“Scientology continues to act in a manner that indicates they believe they are ‘above the law’ and can deny anyone their right to due process with impunity.”

The Garcias sued in January 2013, almost three years after they left the church, contending it “had lost its spiritual, moral and financial compass under the leadership of David Miscavige,” according to the complaint.

They said they donated \$340,000 for the construction of a “Super Power” church building in Clearwater, Florida, that was begun in 1998 but had not yet opened. The church told them that the delays in opening the building were due to lack of funds, but the Garcias contended that at least \$200 million was raised for the project that was supposed to cost \$40 million.

Judge Whittemore stayed the case last year after concluding that the Garcias' claims are subject to arbitration under various contracts between the parties.

The couple **asked the judge to reconsider** the next month, contending that the court erroneously assumed that they agreed that the Church of Scientology is a religious institution entitled to First Amendment protection. The couple said they have plenty of evidence to show that it is instead a secular, commercial entity engaged in fraudulent activities.

However, the judge affirmed, and an appeal to the Eleventh Circuit failed in July when the panel concluded it didn't have jurisdiction because the decision to stay the case wasn't an appealable order.

In the months since the circuit court's decision, the Garcias allege that they have made continued efforts to suggest an arbitrator that fits the church's requirements. Yet, the church's international justice chief has rejected anyone they suggested — 45 in total — saying the individuals aren't members in good standing or are unavailable, even though most of the people are listed on a church website providing names of members to reach out to for more information about the religion.

In the midst of this process, the justice chief has pointed out that individuals the Garcias have contacted have reported the interactions to him, reminding the couple that they are not allowed to talk to any Scientologist except the justice chief, according to Thursday's motion.

The couple has asked for a complete list of Scientologists in good standing, but the justice chief has allegedly refused to comply. Having resigned from the church six years ago and being barred from speaking to members, the Garcias don't know and can't find out who is a member in good standing, they argued.

"Plaintiffs have no way to determine the identity of the pool of eligible arbitrators in 'good standing,' which is exclusively in control of the defendants," the Garcias said. "Due to defendants' obstruction, plaintiffs cannot proceed and select their arbitrator."

Theodore Babbitt, who represents the couple, told Law360 on Thursday that they are hoping for the court to either decide the church has waived its right to arbitration or order the church to provide a list of all members in good standing.

Babbitt noted his clients' frustration, saying they've "done just about all you can do to comply with the judge's order, and the church just keeps throwing up roadblocks."

Representatives for the church didn't immediately return a request for comment Thursday.

The plaintiffs are represented by Theodore Babbitt of [Babbitt & Johnson PA](#) and Ronald P. Weil of [Weil Quaranta PA](#).

The defendants are represented by Robert V. Potter and F. Wallace Pope Jr. of [Johnson Pope Bokor Ruppel & Burns LLP](#) and Eric M. Lieberman of [Rabinowitz Boudin Standard Krinsky & Lieberman PC](#).

The case is Garcia Saz et al. v. Church of Scientology Religious Trust et al., case number [8:13-cv-00220](#), in the U.S. District Court for the Middle District of Tampa.

--Additional reporting by Carolina Bolado. Editing by Bruce Goldman.