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FILED
Law Div. - 345
AUG 28 2013
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

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IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION

ALPHA KAPPA ALPHA)
SORORITY, INC.,)

Plaintiff,)
v.)
BARBARA MCKINZIE,)
Defendant.)

No. 2013 L 007218
Calendar W
Honorable Sanjay T. Tailor

3298

JURY TRIAL DEMANDED

CC
PT

PLAINTIFF'S RESPONSE TO MOTION TO DISMISS

Plaintiff, ALPHA KAPPA ALPHA SORORITY, INC. ("AKA"), by and through its attorneys, HENDERSON ADAM, LLC, hereby responds to the Motion To Dismiss brought by Defendant, BARBARA MCKINZIE, as follows:

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BACKGROUND

AKA is suing Defendant for breach of fiduciary duties, conversion, and unjust enrichment. Over the course of her term as chairman of the board of directors of AKA, Defendant improperly took in excess of \$1 million from AKA by deceiving AKA into paying her much more than the amount actually budgeted and approved for her by the AKA board. This action seeks restitution for the amounts Defendant wrongfully took from AKA and money damages to compensate AKA for Defendant's breach of various duties owed it by Defendant, as well as to punish Defendant for her egregious and willful conduct.

Defendant claims she has been cleared of wrongdoing by another court. Def. Mtn. at 2. That is not correct. In *Daley v. Alpha Kappa Alpha Sorority, Inc.*, No. 2009 CA 004456 B (Super. Ct. D.C. May 14, 2013), the court did not hold Defendant did nothing wrong; rather the court merely found that the individual plaintiffs in that lawsuit had no standing to pursue claims

that belonged to the sorority. *Id.* at 58. The *Daley* court specifically noted that the sorority had the right to pursue claims against Defendant. *Id.* The *Daley* court wrote the following:

Ms. McKinzie's alleged misappropriation of funds and other misconduct damaged AKA but not Plaintiffs, so although AKA may have a claim against her, Plaintiffs do not have any claim against her for damages for wrongdoing unrelated to their suspensions. Moreover, because Ms. McKinzie is out of office and indeed suspended, no equitable relief against her can remedy or redress any misconduct during her term as president, and in any event, any equitable relief relating to such misconduct would likewise benefit AKA and not Plaintiffs.

Daley, No. 2009 CA 004456 B at p. 58.

Defendant also contends that this lawsuit is inappropriate because AKA has a policy of arbitration. The fact of the matter is that the Defendant wrongfully took AKA money and her reliance upon the AKA arbitration policy as a ground to avoid answering this suit must fail for the following reasons: first, there is no arbitration agreement between AKA and the Defendant; second, AKA's national policy of arbitration is not mandatory; third, the policy does not apply to anything other than new membership intake disputes; and lastly, the policy does not apply to Defendant as she is not a current member of AKA.

ARGUMENT

As an initial matter, Defendant fails to cite what provision of the Illinois Code of Civil Procedure under which she brings her motion to dismiss. Defendant states on page three of her motion that this Court lacks jurisdiction to hear this matter. (However, on the very next page of the motion, Defendant concedes that this Court does have jurisdiction. Def. Mtn. at 4.) Since Defendant has attached several documents to her motion and asserts that they establish that dismissal of this suit is warranted, Plaintiff will assume Defendant intends to bring the motion pursuant to 735 ILCS 5/2-619. Section 5/2-619 provides that dismissal may be warranted for a variety of reasons, lack of jurisdiction being foremost amongst them.

I. There is no Arbitration Agreement between Defendant and AKA.

The Uniform Arbitration Act adopted by Illinois at 710 ILCS 5/1 *et. seq.*, which the Defendant cites in her motion as the basis for dismissal, does not contain any provision that requires the dismissal of an otherwise valid claim, such as the Plaintiff's claim here. Nor has Defendant cited to a single provision of the Uniform Arbitration Act that states this Court does not have jurisdiction to hear this matter. What the Defendant seems to be attempting to do by way of her motion is to make an application for arbitration under 710 ILCS 5/2(a), which provides:

On application of a party showing an agreement described in Section 1, and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue so raised and shall order arbitration if found for the moving party, otherwise, the application shall be denied.

However, Defendant cannot meet the above statutory requirements. The Illinois Uniform Arbitration Act provides that the Defendant bears the burden of demonstrating a valid arbitration agreement, 710 ILCS 5/1, and Defendant has failed to attach any such agreement between her and AKA that *requires* the parties to pursue their dispute in arbitration. This is so because no such agreement exists. There is simply no mandatory arbitration agreement between the parties here. Therefore, the motion to dismiss should fail for this reason alone.

II. The AKA Arbitration Policy Is Not Applicable In This Case Because It Is Permissive Not Mandatory.

Defendant quotes an AKA arbitration policy, not a specific agreement between AKA and the Defendant, in her motion to attempt to establish this action should go to arbitration. Not only is her reliance on the policy misplaced, but Defendant's quote of the policy is misleading. Defendant states: "The Arbitration policy states in pertinent part:... To reduce legal fees for both

the Sorority and its members, it is required that prior to taking a suit related to Alpha Kappa Alpha to court, sorors must go through the AKA Arbitration process.” Def. Mtn. at 3. But that is not what the *actual* AKA arbitration policy states. What Defendant has quoted is not the *actual* AKA arbitration policy but rather a foreword to the policy. The *actual* policy provides that “[w]hen the sorority and a soror have a dispute that cannot be internally resolved, either party may... invoke arbitration.” Exhibit A at 3 (emphasis added). That language is unmistakably permissive, not mandatory.

III. The Arbitration Policy Only Applies to Membership Intake Process Disputes Involving New and Potential AKA Members.

The AKA Arbitration policy does not apply to Defendant. The foreword quoted by Defendant clearly states: “It should be noted that the policy of arbitration is a part of the **Membership In-take Process** of Alpha Kappa Alpha Sorority, Incorporated. All new members must agree to the process of arbitration.” Exhibit A at 2. Defendant was not a new member in 2008 when the policy was initiated; rather she had been a member for about twenty-five years and was the then-current President of AKA. Furthermore, this is not a dispute focused on membership or internal sorority policies; rather this is a civil action seeking the restitution for money the Defendant wrongfully took from AKA. Unfortunately, AKA was left with little choice but to file this suit against Defendant to protect its interests because the Defendant has never responded to AKA’s requests to Defendant to repay the money she wrongfully took.

IV. Defendant Is Not A Current Member of AKA And Thus Is Not A Party To The AKA Arbitration Policy.

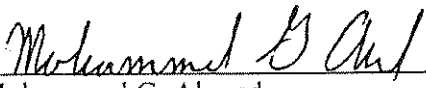
AKA’s Arbitration policy only applies to the sorority and its sorors. Defendant is not a current member of AKA. She is suspended and was suspended at the time this action was filed. Moreover, Defendant never appealed her suspension to the AKA Directorate (Board).

Therefore, even if the policy requires arbitration (which it does not) and Defendant is deemed to be party to the policy (she is not), she is not a current member of AKA so the sorority is not bound to pursue its claims against Defendant in arbitration.

CONCLUSION

For the afore-mentioned reasons, this action is properly before the Court and does not require arbitration.¹ Plaintiff Alpha Kappa Alpha Sorority, Inc. therefore requests that this Court deny Defendant Barbara McKinzie's motion to dismiss or stay these proceedings and order the Defendant to answer the Complaint immediately, as well as any other such relief the Court deems just.

Dated: August 28, 2013


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¹ Defendant also attaches mediation materials to her motion to dismiss yet made no argument in her motion that this dispute should be subjected to mediation. Should this Court deem that Defendant has made such an argument, then Plaintiff requests that the Court deny the motion as to mediation also.