



Seventh Circuit Court of Appeals holds a National Association May Not Terminate A Chapter Without Economic Cause

By: Steven John Fellman
Partner, Association Practice Group
June 2011

The Girl Scouts of the United States of America (the National) was founded in 1912 and incorporated in 1950 as a non-profit corporation by an act of Congress. The National has established many local and/or regional councils or chapters. There is an agreement between the National and its chapters which authorizes each chapter to use the National association trademark for "Girl Scouts" and sell various trademarked products including "Girl Scout Cookies" in each chapter's assigned geographic area.

In the agreement between the national organization and the chapters, the chapters acknowledge that the national organization Board of Directors has the authority to make the final decision, either during the term of the charter or upon issuance of a new charter, in all matters concerning jurisdictional lines.

The National decided that 300 chapters were too many. It made a management decision to shrink the number by two-thirds. As part of the rearrangement of boundaries, the Manitou, Wisconsin Chapter, whose territory occupied a large irregular slice of eastern Wisconsin, was slated to be dissolved. Sixty percent of its territory would be given to a new chapter that would occupy much of Northern Wisconsin and Michigan's Upper Peninsula and the other forty percent would be divided between two other new chapters, in Southern Wisconsin.

The Manitou chapter decided to sue the National. The chapter argued that under the Wisconsin Fair Dealership law (Wisconsin Statutes, Ch. 135), the National could not terminate the chapter "franchise" unless it could show "good cause." Under Wisconsin law, good cause would require that the National show that the chapter had failed to substantially comply with essential and reasonable requirements imposed by the National. The Manitou chapter argued that it had done everything requested by the National and thereby under the Wisconsin statute, the National could not effectively terminate its existence.

The National argued that the Wisconsin Fair Dealership law was designed to protect franchisee's from unfair business practices of franchisors. It claimed that as non-profit organizations, neither the National nor the Manitou chapter were covered by the provisions of the Wisconsin statute. The Seventh Circuit Court of Appeals disagreed. *Girl Scouts of Manitou Council, Inc., v. Girl Scouts of the United States of America, Inc.*, U.S. Court of Appeals (7th Cir.) No. 10-1986 Slip Opinion May 31, 2011. The Seventh Circuit noted that about two-thirds of the Manitou

chapter's income derived from the sale of "Girl Scout Cookies" and "Girl Scout" merchandise. The Court found that non-profit organizations often engaged in "commercial" activities and that in this case, such activities accounted for a majority of the local chapter's income and almost a fifth of the National organization's income. Thus, both the National and local chapters were engaged in commercial operations and are subject to the Wisconsin statute.

The District Court had ruled that the National organization did have the right to terminate the local chapter on the basis that the reorganization would be of assistance in enabling the National to promote its basic purpose of providing benefits to girls throughout the country. The Court of Appeals rejected this argument holding that there has been no showing that the National would be less able to promote its purposes whether the local chapter existed or whether there was reorganization. The National argued that unless it had the right to reorganize, its constitutional right of free expression guaranteed by the First Amendment would be violated. The Court of Appeals summarily rejected this argument concluding that there was no support for such a position.

The Court of Appeals concluded that since there was no legal or factual basis for the National organization's constitutional claims, the Manitou chapter's motion for summary judgment should be granted under the Wisconsin Fair Dealership law. Further, the action of the District Court in favor of the National be reversed and the case be remanded to the District Court with instructions that the District Court grant summary judgment in favor of Manitou on the Fair Dealership claim and order appropriate relief.

This case has ramifications for every national association that has chapters in states having fair dealership laws. In such states, the national organization may well have to meet the requirements of the state fair dealership law in order to reorganize or terminate local chapters. Even if the written signed agreement between the national association and the chapter gives the national the right to terminate the chapter without cause, in states where there is a fair dealership law, the national will have to meet the requirements of such a law before taking action against a chapter. For further information, contact Steve Fellman at sfellman@gkglaw.com.