

## Reputation Management Site Wins Arbitration Of User Dispute

By **Mike LaSusa**

*Law360 (September 29, 2020, 10:37 PM EDT)* -- MyLife.com Inc. has won a bid to arbitrate a user's claims that the reputation management website harmed him and others by putting negative information in their online profiles, with a California appeals court ruling the users had agreed to submit such disputes to arbitration.

The appeals court made clear that its unpublished ruling issued Monday only assessed whether plaintiff Joseph Cohen had agreed to the clause of MyLife's user agreement that allows an arbitrator to decide whether the dispute is subject to arbitration.

"Where, as here, the issue is arbitrability, the court does not look to the contract as a whole; the only question is whether, under state law, the parties knowingly agreed to arbitrate issues of arbitrability under the contract," the court said. "Challenges to the validity of the underlying contract (e.g., fraud in the inducement, ambiguity, lack of consideration, mutual mistake, unconscionability) are not considered at this stage."

Cohen brought the proposed class suit in December 2018 in San Diego court. He argued that MyLife had violated California's Unfair Competition Law and the Consumer Legal Remedies Act by publishing "false and reckless" information about users on the reputation management site.

MyLife countered with a bid to send the case to arbitration, citing an arbitration clause in the site's user agreement that incorporates the rules of the American Arbitration Association, which give arbitrators the ability to decide whether a dispute can be arbitrated.

The San Diego court ultimately ruled that the agreement wasn't clear enough about who should decide the arbitrability of the agreement, so the court assumed that responsibility and decided to void the arbitration agreement on the grounds that it went against California public policy.

MyLife appealed, leading to Monday's ruling upending the lower court's decision and sending the case to arbitration.

The appeals court explicitly declined to address Cohen's argument that the user agreement went against California public policy, once again saying that is an issue for the arbitrator to decide.

Mark C. Zebrowski of Morrison & Foerster LLP, who represented MyLife, celebrated Monday's ruling as a victory.

"The appeal addresses an important procedural issue for MyLife and the company appreciates that the appellate court determined to enforce the language and intent of MyLife's arbitration clause," Zebrowski said.

Helen Irene Zeldes of Schonbrun Seplow Harris & Hoffman & Zeldes LLP, who represented Cohen, said the fight "isn't over."

"Plaintiff respectfully disagrees with the Court of Appeals decision," Zeldes said. "The arbitration agreement forced upon Mr. Cohen did not clearly and unmistakably delegate the issue of arbitrability to the arbitrator."

Cohen is represented by Helen Irene Zeldes, Ben Travis and Paul L. Hoffman of Schonbrun Seplow Harris & Hoffman & Zeldes LLP.

MyLife is represented by Mark C. Zebrowski and Benjamin S. Kagel of Morrison & Foerster LLP.

The case is Cohen v. MyLife.com Inc., case number D076067, in the Court of Appeals for the State of California, Fourth Appellate District.

--Editing by Jay Jackson Jr.