

# Court of Appeal in The Hague upholds award dismissing allegations that the underlying agreements were null and void

by *Practical Law Arbitration*, with *Van Oosten Schulz De Korte Advocaten*

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In *Applicant v Straight-Line (ECLI:NL:GHDHA:2022:576)*, the Court of Appeal in The Hague refused to set aside an award in which the tribunal had ruled that the applicant breached a franchise agreement and settlement agreement. The court dismissed the applicant's allegations that the agreements were null and void pursuant to Belgian and European law.

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The Court of Appeal in The Hague has rejected an application to set aside an award in which the tribunal had ruled that the applicant, a Belgian citizen, breached a franchise agreement, which was for coaching services in accordance with a program developed by Straight-Line, and a subsequent settlement agreement that terminated the franchise agreement. The court dismissed the applicant's allegations that the agreements were null and void pursuant to Belgian and European law.

The court first assessed if there was a valid arbitration agreement. The court began by ruling that, due to the choice of law provisions included in the arbitration clauses in the franchise agreement and settlement agreement, Dutch law applied. Belgian law did not apply as the respective provisions on the precontractual information obligation by Straight-Line, as the franchisor, were not of a fundamentally mandatory nature. That being so, the court addressed the setting aside application and found that it had jurisdiction to assess the issue of nullity. This was despite the fact that this issue was also put in parallel before a Belgian court, which ruled that it lacked jurisdiction because of the arbitration clauses.

The court then addressed if the applicant or her limited partnership was a party to the settlement agreement. It ruled that, even though the agreement stated that it was entered into by the applicant, acting under the name of her limited partnership, the applicant herself was a party to the settlement agreement. After all, the applicant had not obtained written approval by Straight-Line for the transfer of the rights and obligations under the franchise agreement from the applicant to her limited partnership. Therefore, the tribunal had jurisdiction.

Lastly, the court dismissed the applicant's assertion that the award violated public order because the franchise agreement violated European competition law as it included fixed prices to be charged by the applicant to her customers. The court ruled that the franchise agreement did not in fact provide for fixed prices, but only for maximum prices, which did not have a material effect on the relevant market. Moreover, even if the franchise agreement had included fixed prices in violation of European competition law, the court ruled that this would not cause the entire franchise agreement to be null and void.

Case: *Applicant v Straight-Line (ECLI:NL:GHDHA:2022:576)* (5 April 2022).

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