No. 2021-CV-0079

In the

District of Columbia Court of Appeals

THE NATIONAL RIFLE ASSOCIATION OF AMERICA,

Appellant,

v.

JAMS, INC. and WINSTON & STRAWN LLP,

Appellees.

Appeal from the Superior Court of the District of Columbia Civil Division in Case 2020 CA 003346 B *(Hon. Robert Rigsby, Judge)*

BRIEF FOR APPELLEE, JAMS INC.

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RULE 28(a)(2) STATEMENT

The parties in the trial court and appellate proceeding, and their respective counsel, are:

Plaintiff Appellant, National Rifle Association of America, represented by Robert H. Cox and William DeVinney of Briglia Hundley, P.C., and Philip J. Furia and Stewart G. Milch of Brewer, Attorneys and Counselors.

Defendant-Appellee JAMS, Inc., represented by Robert F. Muse and Ronald Kovner of Levy Firestone Muse LLP, and Jessica R. MacGregor of Long & Levitt LLP.

Defendant-Appellee Winston & Strawn LLP, represented by Paul J. Maloney and Matthew Berkowitz of Carr Maloney P.C.

There were no intervenors or amici curiae in the Superior Court. Defendant-Appellee JAMS has no parent corporation and no publicly held corporation owns 10% or more of its stock.

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I. ISSUES PRESENTED

A. Where a Party alleges an arbitrator and his sponsoring organization failed to provide adequate disclosures, are claims against the provider barred by arbitral immunity?

B. Where parties have participated in an arbitration subject to the Federal Arbitration Act, does arbitral immunity bar claims against an arbitration provider, such as JAMS?

C. Where there is no "live" controversy arising out of Judge Neville's tenure as arbitrator, is the NRA's claim for Declaratory Relief Moot?

II. STANDARD OF REVIEW

This Court reviews dismissal of a complaint pursuant to a Rule 12(b)(6) motion *de novo,* "presuming the *complaint's* factual allegations to be true and construing them in the light most favorable to [the plaintiff]." *Bleck v. Power*, 955 A.2d 712, 715 (D.C. 2008) (emphasis added). "To survive a motion to dismiss, a complaint must set forth sufficient facts to establish the elements of a legally cognizable claim." *Woods v. District of Columbia*, 63 A.3d 551, 552–53 (D.C. 2013).

III. STATEMENT OF THE CASE

JAMS was appalled and dismayed to learn one of its now former neutrals, Hon. Richard Neville (Ret.), circulated a vile, racist essay to a circle of his friends and also an attorney representing the NRA in a matter then pending before him. JAMS' response was to take prompt action to remove Judge Neville not only from the matter between the NRA and another party represented by Winston & Strawn ("Winston"), but from all matters then pending before him. Then it severed its relationship with him. JAMS refunded the parties all fees paid during Judge Neville's tenure.

The parties to the NRA arbitration agreed to the appointment of a new arbitrator, who issued rulings *de novo*. The NRA's recent Motion to Dismiss the appeal against Winston suggests that the matter between their clients is now closed.

The NRA sued JAMS for breach of contract and declaratory relief, seeking damages resulting from its reliance on alleged inadequate disclosures as well as judicial declarations regarding information it asserts Judge Neville should have disclosed and his unfitness to serve *ab initio*. The Court concluded the claims against JAMS were barred by arbitral immunity and dismissed them.

The Court's dismissal of the claims against JAMS should be affirmed

on appeal. The NRA concedes arbitral immunity applies not only to Judge Neville but to JAMS. Nevertheless, it seeks to avoid its application on two theories: first, it asserts it should not apply to its claims because they do not arise from acts integral to the arbitration process.; and second, it asserts D.C. Code §16-6144 does not extend immunity to sponsoring organizations like JAMS. Neither argument overcomes arbitral immunity. The NRA's complaint alleges harm flowing from acts integral to the arbitral process: disclosure. There is no factual basis for its argument to apply the D.C. Code. The arbitration agreement under which JAMS and Judge Neville provided arbitral services called for the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq. ("FAA"), to govern. The scope of arbitral immunity under the FAA is determined by federal law. As explained below, that law makes clear immunity applies to both the arbitrator and his or her sponsoring organization.

The bar of arbitral immunity is reason enough to affirm the Court's dismissal of the NRA's claim for declaratory judgment. There is an additional reason to affirm its dismissal: the claim is moot. Judge Neville was removed as arbitrator and the new arbitrator ruled *de novo* on issues he previously decided. There is no actual live controversy or issue connected to Judge Neville's tenure as arbitrator.

For these reasons, JAMS respectfully requests the Court's Order dismissing the claims against it be affirmed.

IV. STATEMENT OF FACTS

A. The Arbitration Before Judge Neville

On January 1, 2019, the NRA and another party entered into a contract which required arbitration of all disputes between them. The arbitration agreement specifically provided that it was governed by the "Federal Arbitration Act, 9 U.S.C. §§ 1 et seq." and designated Fairfax, Virginia, the place of arbitration. A185; A205. The agreement called for application of the Institute of Conflict Prevention and Resolution ("CPR") Rules, including CPR Non-Administered Arbitration Rule 20, which provides for arbitral immunity to the organization as well as the arbitrator. A271.

The NRA proposed former JAMS neutral, retired Cook County Superior Court Judge, Richard Neville, as arbitrator, and the other party, who was represented by Winston, agreed. A14; A333[1]. Thereafter, Judge

[1] NRA does not include an as filed First Amended Complaint in its Appendix. Instead, it includes the Motion for an Order Directing the Court to Enter the First Amended Complaint on the Docket, to which the First Amended Complaint is an exhibit (A316-495) as well as the Court's Order granting that motion (A840).

Neville prepared signed disclosures. A355-63. The parties to the arbitration were informed the disclosures were "based upon the arbitrator's own knowledge as well as a diligent search of records available to the arbitrator and JAMS personnel, and further based on the information supplied concerning the names of the parties and their counsel…" A355. In response to the question whether "Arbitrator …has or has had a significant personal relationship for a party or lawyer for a party?" Judge Neville answered, "No". A356. He also denied there was "any other matter" that "might cause a person…to doubt [his] ability to be impartial"; "lead [Judge Neville] to believe there is a substantial doubt as to his capacity to be impartial", and/or would lead him "to believe his…disqualification will further the interests of justice." A357.

Between November 2019 and June 2020, Judge Neville presided over the arbitration. A336. On June 20, 2020, Judge Neville forwarded an email to a group of recipients, including counsel for the NRA, which attached what was purported to be an article published in the Baltimore Sun, but was in reality a vile, racist essay. A337.

B. Judge Neville Is Removed As Arbitrator

On June 22, 2020, the NRA's counsel wrote to Judge Neville and

CPR [the organization empowered by virtue of the parties' arbitration agreement to remove him] demanding the arbitrator's disqualification. A445-449. The racist email Judge Neville forwarded was the basis for its request. *Id.* The NRA raised an additional issue regarding the appearance of a senior Winston partner, Terry Grimm, among the recipients of the email Judge Neville forwarded, but concluded that any questions it might have about Judge Neville's relationship with Mr. Grimm "may be mooted by Judge Neville's immediate removal." A449. JAMS was copied on the correspondence. *Id.* On June 23, 2020, Winston agreed to Judge Neville's removal as arbitrator. A454.

On June 24, JAMS informed the NRA the matter was being reviewed by senior management. A458. In a June 26 letter to the parties, JAMS CEO, Chris Poole, apologized and denounced the racist email Judge Neville sent. A462. He confirmed Judge Neville had been removed as arbitrator in the matter and informed the parties JAMS had taken additional measures to address his improper conduct, including suspending him from new appointments and reviewing his other open matters. *Id.*

Although it conceded Judge Neville's removal as arbitrator likely mooted any questions it might have regarding his relationship with Mr. Grimm, the NRA wrote to JAMS three times, seeking information about

Judge Neville's relationship with Mr. Grimm. A478-493. It did not request a refund of arbitration fees in any of these communications. *Id.* JAMS responded to the NRA's inquiries on July 10, producing verbatim Judge Neville's description of his relationship with Mr. Grimm. A495.

JAMS promptly severed ties with Judge Neville and on August 11, 2020 announced the ways in which it was working to combat racism, including a review of the JAMS process for vetting neutrals prior to joining JAMS, strengthening existing mandatory training modules and reviewing neutral contracts to ensure enforcement of company values and ethics. A528.

C. NRA Files Original Complaint; A New Arbitrator Is Appointed And Rules *De Novo*

Without ever asking JAMS for a refund, the NRA filed a Complaint in which it sought them as an item of damages. A8. On August 27, 2020, JAMS fully refunded arbitration fees to both parties. A345. A new arbitrator, Hon. James R. Eyler (Ret.), a former judge of the Maryland Court of Special Appeals, was appointed. A541; A612; A621. The Parties to the Arbitration agreed Judge Eyler was not to be informed of Judge Neville's rulings. A330. Accordingly, he was directed by the Parties to the arbitration to rule *de novo* on all issues. A541. Judge Eyler ruled on the very issues the NRA attempted to litigate below: whether and in what amount the NRA must advance

Winston's fees and what impact Judge Neville's relationship with Mr. Grimm should have on the new arbitrator's rulings. A612; A621.

D. Proceedings in Superior Court

The NRA's Original Complaint asserted two causes of action against JAMS: Count I for Breach of Contract based on disclosures made by Judge Neville and JAMS, which "falsely assured the NRA that Neville was fit to serve as neutral" (A24); and, Count III for Declaratory Relief., in which it sought a declaration that Judge Neville was "*ab initio* unfit to serve as an arbitrator" because of his alleged relationship with Grimm. (A27).

On September 11, 2020, JAMS moved to dismiss the NRA's complaint asserting arbitral immunity. A264. Later the same day, the NRA filed its First Amended Complaint, which added no new substantive allegations or causes of action against JAMS. A324-498. The Court rejected the filing. A497. The NRA filed a motion to have the First Amended Complaint deemed filed. A316-498. To dispel any confusion and minimize duplication of effort, JAMS and the NRA entered into a stipulation under which JAMS would file a Motion to Dismiss the First Amended Complaint, the NRA would file a single opposition to both Motions to Dismiss, and, JAMS would file a single reply brief in support of both

motions. A499-500. Pursuant to the Stipulation, JAMS moved to dismiss the First Amended Complaint on the same grounds as before. A503-34. Both of JAMS' motions to dismiss were fully briefed as of October 20, 2020. A580-599; A 626-36.

On October 21, 2020, the Court entered an Omnibus Order granting JAMS' Motion to Dismiss the Original Complaint on the basis of arbitral immunity. A637. That same Order granted in part and denied in part Winston's pending Motions to Dismiss the Original Complaint. *Id.* However, the Omnibus Order did not address JAMS or Winston & Strawn's Motion to Dismiss the First Amended Complaint, which remained un-filed. Winston filed a Motion for Reconsideration directing the court to the unresolved Motion to Dismiss the First Amended Complaint. A645. The NRA then filed a motion for entry of judgment on the Court's dismissal of claims against JAMS on arbitral immunity grounds. A812. Because the entry of the judgment the NRA requested would leave a record that did not reflect disposition of the NRA's claims made against JAMS in the First Amended Complaint, JAMS objected. A835-839.

On December 16, 2020, the Court entered an Omnibus Order, noting its October 18, 2020 "erroneously ruled on [JAMS' and Winston & Strawn's] respective Motions to Dismiss …as they related to the NRA's

initial complaint, filed on July 29, 2020." A840-1. The Court explained it should have ruled on the Defendants' pending Motions to Dismiss the First Amended Complaint. *Id.* On December 16, 2020, the Court formally granted the NRA's Motion Directing the Clerk to enter the First Amended Complaint on the docket as filed, vacated the October Omnibus Order, and held JAMS and Winston's Motions to Dismiss the original complaint moot. *Id.* The next day, it entered an Order granting Winston's Motion to Dismiss the Amended Complaint. A842-52. In dismissing the NRA's declaratory relief cause of action, the Court found the NRA's cause of action was no longer ripe because, "Judge Neville has been removed and however distasteful his opinions may be, he no longer has any role in or influence over the arbitration." A849. On January 9, 2021, the Court entered an order granting JAMS' Motion to Dismiss the NRA's First Amended Complaint on the basis of arbitral immunity. A853-4.

V. SUMMARY OF ARGUMENT

The Court's order dismissing the NRA's claims against JAMS should be affirmed because:

- The NRA's claims against JAMS are barred by arbitral immunity because they arise out of Judge Neville and JAMS'

alleged inadequate disclosures during the arbitrator selection and appointment process.

- The arbitration agreement under which the Parties arbitrated specified application of the Federal Arbitration Act. As such, federal law, which extends arbitral immunity to neutrals and their sponsoring organizations, applies.
- In addition to being barred by arbitral immunity, the NRA's claim for declaratory relief, through which it seeks a declaration that JAMS had an obligation to make certain disclosures about Judge Neville and that Judge Neville was unfit to serve as an arbitrator *ab initio*, is moot. Given Judge Neville's removal as arbitrator, there is no live controversy concerning his tenure as arbitrator.

VI. LEGAL ARGUMENT

A. Arbitral Immunity Bars the NRA's Claims Against JAMS

The Court correctly determined Count One for Breach of Contract and Count Three for Declaratory Relief were barred by arbitral immunity. The NRA employment contract under which the ongoing arbitration took place provides that "[t]he arbitration shall be governed by the Federal Arbitration

Act, 9 U.S.C. §§ 1 et seq." ("FAA"). A185; A205. The FAA "establishes a national policy favoring arbitration when the parties contract for that mode of dispute resolution," *Preston v. Ferrer,* 552 U.S. 346, 349, 128 S.Ct. 978 (2008) (citing *Southland Corp. v. Keating,* 465 U.S. 1, 104 S.Ct. 852 (1984)), and "provides for the application of federal substantive law regarding arbitration in both federal and state courts." *Bank of Am., N.A. v. D.C.*, 80 A.3d 650, 674 (D.C. 2013) (citing *Southland,* 465 U.S. at 16). The District of Columbia Court of Appeals has emphatically stated that its decisions align with federal policy regarding arbitration. *See Hercules & Co. v. Shama Restaurant Corp.,* 613 A.2d 916, 922 (D.C. 1992) (quoting *Hanes Corp. v. Millard,* 531 F.2d 585, 599 (D.C. Cir. 1976):

> Our decisions, *like those of the federal courts*, have emphasized the "fundamental and powerful" policy "embodied" in modern arbitration statutes that favors voluntary commercial arbitration "and narrowly constricts the scope of judicial intervention" in such proceedings.

Id. (emphasis added). *See also, Texas Brine Co., LLC v. Am. Arbitration Ass'n, Inc.*, No. CV 18-6610, 2018 WL 5773064, at *2 (E.D. La. Nov. 2, 2018), *aff'd sub nom. Texas Brine Co., L.L.C. v. Am. Arbitration Ass'n, Inc.*, 955 F.3d 482 (5th Cir. 2020) (noting that "the FAA preempts state law to the

extent necessary to protect the achievement of the aims of the FAA"). Accordingly, the Trial Court was properly guided by the federal decisions applying arbitral immunity.

The doctrine of arbitral immunity derives from and is a natural extension of judicial immunity, the long-recognized doctrine which "protect[s] the finality of judgments [by] discouraging inappropriate collateral attacks . . . [and] also protect[s] judicial independence by insulating judges from vexatious actions prosecuted by disgruntled litigants." *Forrester v. White,* 484 U.S. 219, 225, 108 S.Ct. 538, 543 (1988) (citing *Bradley v. Fisher,* 80 U.S. 335, 348 (1872)). Recognizing that the role of an arbitrator is essentially equivalent to that of a judge, the courts have uniformly extended judicial immunity to arbitrators[2] and, in order to promote the strong federal policy favoring arbitration and protect the arbitral process, have extended that immunity to the organizations that sponsor arbitration. *See Olson v. Nat'l Ass'n of Sec. Dealers*, 85 F.3d 381, 382–83 (8th Cir. 1996) (Extending immunity to the NASD and noting that "[t]he courts also agree that to give effect to these underlying

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2 The CPR Rules under which the arbitration is being conducted embody arbitral immunity. CPR Non-Administered Arbitration Rule 20 provides, "Neither CPR nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these Rules." A533.

policies, arbitral immunity extends beyond arbitrators themselves to organizations that sponsor arbitrations").

Thus, federal decisions, including two published decisions by the U.S. District Court for the District of Columbia, consistently hold that claims against the arbitrator, the forum or sponsoring organization for damages resulting from acts or omissions within the scope of the arbitral process, including particularly acts involving the selection and appointment of arbitrators - acts underlying the NRA's Amended Complaint - are barred by arbitral immunity and must be dismissed.

In *Cherdak v. American Arbitration Association, In.,* 443 F. Supp. 3d 134, 155 (D.D.C. 2020), Judge Colleen Kollar-Kotelly applied arbitral immunity to protect the American Arbitration Association from liability for failing to comply with its own requirements and rules of procedure, emphasizing the need to protect arbitrators and their organizations from the threat of litigation as they discharge their duties: "Just as judicial immunity ensures that the judiciary can act without harassment or intimidation, the doctrine of arbitral immunity 'is essential to protect . . the decision- making process from reprisals by dissatisfied litigants.'" *Id.* (quoting *New England Cleaning Services, Inc. v. AAA*, 199 F.3d 542, 545 (1st Cir. 1999)).

In *Young Habliston v. Finra Regulation, Inc.*, No. 15-2225, 2017 WL

396580, *6 (D.D.C. Jan. 27, 2017), Judge Amy Berman Jackson held that the scope of this immunity extended to the sponsor's acts in providing biased arbitrators, requiring dismissal under Rule 12(b)(6) of a suit for damages and other relief. Judge Jackson noted that immunity would be "illusory" if it was confined to the arbitrator and not extended to the sponsor "because '[i]t would be of little value to the whole arbitral procedure to merely shift the liability to the sponsoring association.'" 2017 WL 396580 at *6 (quoting *Corey v. N.Y. Stock Exch*, 691 F.2d 1205, 1211 (6th Cir. 1982)). Without immunity, a sponsoring organization "could [be] discourage[d] from sponsoring future arbitrations." *Cherdak,* 443 F. Supp. 3d at 158 (quoting *New England Cleaning Services, Inc. v. Am. Arbitration Ass'n*, 199 F.3d 542, 546 (1st Cir. 1999)). That same rationale applies here. If JAMS or similar organizations faced litigation and liability whenever an arbitrator was alleged or found to be biased, it would certainly discourage JAMS from sponsoring arbitration.

Cherdak and *Habliston* are consistent with the decisions in other circuits. *See, e.g., Pfannenstiel v. Merrill Lynch*, 477 F.3d 1155, 1159 (10th Cir. 2007) (noting that "courts uniformly hold that arbitration forums and sponsors, like courts of law, are immune from liability for actions taken in connection with administering arbitration"); *Olson v. National Ass'n of*

Securities Dealers, 85 F.3d 381, 383 (8th Cir. 1996) (holding that arbitral immunity protects all acts within the scope of the arbitral process and dismissing breach of contract claims against NASD for providing an arbitrator who had an ongoing business relationship with the opposing party in the arbitration); *Austern v. Chicago Bd. Options Exch., Inc.*, 898 F.2d 882, 886 (2d Cir. 1990) (holding that a failure to extend immunity to a sponsoring organization for improper selection of an arbitration panel would discourage sponsorship of future arbitration, contrary to the policy of the FAA). *Texas Brine,* 2018 WL 5773064, at *2–3 (applying arbitral immunity to dismiss the complaint, removed from state court, seeking to recover arbitration and state court litigation costs from AAA for appointing conflicted arbitrators, noting that AAA's selection of arbitrators in "within the scope of the arbitral process").

The NRA concedes arbitral immunity protects Judge Neville (who it did not sue) and JAMS "under 'proper circumstances". It argues those circumstances do not exist here because its claims against JAMS do not arise from "administrative tasks…integrally related to the arbitration." Appellant's Brief ("AB") p. 23. According to the NRA, its claims do not arise from alleged inadequate disclosures, but to JAMS' alleged failure to "evaluate" Judge Neville "long before" the arbitration. *Id.* The NRA does

not and cannot point to a single pleading allegation in either the Original or the First Amended Complaint to support this argument. A review of both pleadings exposes the NRA's argument as a baseless attempt to recast its allegations: as laid bare in its Complaint and FAC, the NRA sued JAMS based on its failure to disclose Judge Neville's claimed bias and alleged relationship with Grimm. Both iterations include a heading asserting Judge Neville "failed to disclose" a "critical conflict". A15; A335. In both iterations of the Complaint, the NRA asserts it "relied on disclosures made by Neville and JAMS". A 24; A344. In both versions of its complaint Judge Neville's "disclosures falsely assured the NRA that [he] was fit to serve as a neutral." *Id.* The NRA twice alleged that it would not have agreed to Judge Neville's appointment "had [he] disclosed…[his] racist worldview or connection to Winston…" A24; A345. Disclosure (or a failure related thereto) is precisely the type of activity courts uniformly hold is within the scope of the arbitral process and protected by arbitral immunity. *See, e.g.*, *Young Habliston*, 2017 WL 396580 at *1n.2 (biased arbitrators with disqualifying relationships), *Olson,* 85 F.3d at 382 (arbitrator with an undisclosed business relationship with the opposing party); *Texas Brine*, 2018 WL 5773064 at *1 (arbitrators with an undisclosed conflict of interest).

Finally, the NRA asserts arbitral immunity does not extend to JAMS

under D.C. Code §16-4414. It offers no explanation why D.C. law should be applied to the underlying Arbitration, nor can it. The arbitration agreement governing the underlying matter provided for arbitration under the FAA, not D.C. law. A185; A205. And, as explained above, federal law clearly extends arbitral immunity to providers like JAMS.

To avoid application of the FAA, the NRA must point to specific language in the arbitration agreement calling for application of state arbitral law. See, *Foulger-Pratt Residential Contracting LLC v. Madrigal Condominiums LLC* 779 F. Supp.2d 100, 109 (D.D.C. 2011) (citing to *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, (1995). Under *Mastrobuono*, a general choice of law provision will not trump the FAA; only a specific clause selecting state law to govern an arbitration will suffice. *Id.* at p. 110-11. See, *Contech Const. Products, Inc. v. Heierli,* 764 F. Supp.2d 96, 107-08 (D.D.C. 2011) (Holding that a provision stating that "any mediation or arbitration proceedings shall occur in Washington, D.C." does not permit the application of D.C. law rather than the FAA). Because the agreement governing the underlying Arbitration specifically called for the FAA to govern and did not mention D.C. law, even in passing, the FAA controls. Thus, the Court's order references the D.C. Code §16-4414, but correctly applied federal law to determine the scope of arbitral immunity.

B. NRA's Claim For Declaratory Relief Is Moot

As to JAMS, the Court dismissed the NRA's claim for declaratory relief based solely on arbitral immunity. A853. Ignoring arbitral immunity, the NRA asserts the Court was wrong to dismiss its claim for Declaratory Relief because it is entitled to a judicial declaration that Judge Neville should have disclosed his relationship with Grimm and that Judge Neville was unfit to serve as arbitrator *ab initio*. AB, p. 5. Even if it were not barred by arbitral immunity, as we now show, this claim is moot because there are no longer any "live" issues in the arbitration with regard to Judge Neville. See, *FOP v. District of Columbia*, 113 A.3d 195, 198-199 (Department's production of documents requested under FOIA mooted request for declaration that its response was "unlawful, arbitrary and capricious"); *Hardesty v. Draper*, 687 A.2d 1368, 1373, FN7 (1997 (dismissal of appeal as moot because there was no reasonable expectation the alleged violation would occur again; the court was not available to address petitioner's desire for "personal satisfaction" even if "well-deserved").

The NRA conceded below that: 1) Judge Neville was removed as the arbitrator; 2) Judge Eyler was appointed as the new arbitrator; and, 3) Judge Eyler was charged with conducting hearings de novo. A454; A541; A612;

A621; A330. Nevertheless, the NRA argues it has a ripe basis for seeking declarations regarding Judge Neville's alleged inadequate disclosures because they caused it "to spend even more time and money on proceedings before a new arbitrator". AB p. 27, Clearly, under the NRA's construction "ripeness" is the equivalent of having a claim for damage, which, as discussed in Section III (A) is barred by arbitral immunity. The NRA offers no other basis for its declaratory relief action. In briefing below, it explained it required declaratory relief to prevent Judge Eyler from ruling that Winston's client was entitled to an advancement of fees during Judge Neville's tenure. A597. But that issue was already decided *de novo* by Judge Eyler. A615; A621.[3] What is more, the NRA has moved to dismiss its appeal as to Winston, suggesting there is no pending controversy between it and Winston's client.[4] Whatever the status of the claims between Winston's client and the NRA, there is simply no actual live controversy or issue connected to Judge Neville's tenure as arbitrator. Without one, in addition to being barred by arbitral immunity, the NRA's claim for declaratory relief is moot.

[3] The NRA does not dispute that Judge Eyler made that ruling. A. 780.
[4] NRA Motion to Dismiss Appeal as to Winston & Strawn LLP (filed September 22, 2021)

VII. CONCLUSION

The NRA's breach of contract claim is barred by the doctrine of arbitral immunity. The NRA's claim for declaratory relief is barred by the doctrine of arbitral immunity and moot. The judgment of the Superior Court should be affirmed.

Respectfully submitted,

/s/ Robert F. Muse

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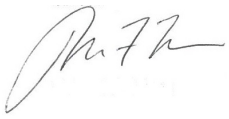
CERTIFICATION PURSUANT TO ADMINISTRATIVE ORDER M-274-21

Counsel Robert F. Muse has reviewed Superior Court Civil Rule R. 5.2 and Administrative Order M-274-21 and states that this brief complies with the applicable requirements of those provisions. There are no items in the brief that require redaction.



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Brief for Appellee, JAMS, Inc. was served by electronic means through the District of Columbia Court of Appeals E-Filing system this day of October 1, 2021, as follows:

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