



V3 World Management v. Synergy Worldwide

2019 | Cited 0 times | D. Utah | February 12, 2019

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH V3 WORLD MANAGEMENT, INC.,

Plaintiff, v. SYNERGY WORLDWIDE, INC.,

Defendant.

MEMORANDUM DECISION AND ORDER

Case No. 2:16-cv-323-DB District Judge Dee Benson

Before the court are two motions for summary judgment: a Motion for Partial Summary Judgment filed by Plaintiff (Dkt. No. 58) and a Motion for Summary Judgment filed by Defendant. (Dkt. No. 57.) The Motions have been fully briefed by the parties, and the court has considered the facts and arguments set forth in those filings. Pursuant to civil rule 7-1(f) of the United States District Court for the District of Utah Rules of Practice, the Court elects to determine the motion on the basis of the written memoranda and finds that oral argument would not be helpful or necessary. DUCivR 7-1(f).

Background multi-level marketing company that sells nutritional supplements. Synergy sells its products through distributors, sometimes referred to as who earn revenue by either reselling products directly to consumers or by its Policies and Procedures, which

2 (Synergy Worldwide Policies & Procedures , Introduction. 1

V3 is a corporation solely owned by Bernard Feldman. V3 purchased an established Synergy distributorship in 2011 for a substantial sum. Since that time, V3 has not sold products directly to consumers or recruited new distributors to its downline. Rather, V3 has continued to receive substantial and consistent revenue from the previously established downline. V3 was a distributor for Synergy until its distributorship was terminated by Synergy on March 1, 2016. Mr. Feldman is also the sole owner of another entity, HealthBanc International LLC In September of 2006, HealthBanc entered into a Royalty Agreement with

sales of Greens Formula products manufactured and sold by Synergy. In February of 2016,



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HealthBanc brought suit against Synergy for failure to pay royalties allegedly owed to it under No. 2:16-cv-135-JNP-PMW. About a week after HealthBanc filed its distributorship by letter

and business several sections of the Policies and Procedures, including

1 In its Opposition to Synergy Judgment, V3 argues that Synergy has failed to show that the 2015 Policies and Procedures produced by Synergy are applicable to this 2011 distributorship. The court finds that V3 has waived that argument by relying on the 2015 policies in its Motion for Preliminary Injunction. And, in any event, the previous version of the Policies and Procedures contained the same contract provisions relevant to this business practices, Section 8.5 relating to involuntary termination, and Section 8.7 relating to termination for version.

3 cause Synergy or its Members the loss of reputation, or that business practice and will be grounds for disciplinary action, including termination of Membership involuntary Termination Synergy has the right to take quick and decisive action in limiting or terminating a Team Membership that is found in violation of the Policies and Procedures); and 8.7 If there exists litigation, or other significant dispute, in which the interests of a Team Member are adverse to the interests of Synergy, Synergy may, upon written notice to the Team Member, terminate or suspend the Membership of such Team Member if Synergy, in its sole discretion, determines that such termination or suspension is desirable to protect its business interests[.] -14.)

Discussion Federal Rule of Civil Procedure 56 per pleadings, depositions, answers to interrogatories, and admissions on file, together with the

affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. The court examines the factual record and reasonable inferences therefrom in the light most favorable to the party opposing summary judgment. *Applied Genetics Int'l, Inc. v. First Affiliated Sec., Inc.*, 912 F.2d 1238, 1241 (10th Cir. 1990).

V3 moves for partial summary judgment on the basis of the judicial proceedings privilege. V3

4 distributorship.

5 judicial proceedings privilege has broad underlying principles. *Moss v. Parr Waddoups Brown Gee & Loveless*, 2012 UT 42, ¶ 30, 285 P.3d 1157, 1165. The purpose of the privilege is to promote the integrity of the adjudicatory proceeding and its truth finding. *Pratt v. Nelson*, 2007 UT 41, ¶ 27, 164 P.3d 366 (internal quotation marks omitted). The privilege applies to litigation statements and conduct during every stage of the litigation process. *Moss*, 2012 UT 42, ¶¶ 30-35. tempered by its inherent authority [to] provide adequate safeguards. *Id.* at ¶ 38. The court finds that the judicial proceedings privilege applies here to prohibit Synergy from asserting that the filing of a lawsuit is a sufficient basis to terminate its contract. Synergy has argued that pursuant to the Policies and Procedures, it may



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deprive a Team Member of its distributorship and related contractual benefits regardless of the merit of the lawsuit filed against it. In the interests of justice and the integrity of the judicial system, the court cannot enforce such a position. The judicial proceedings privilege bars Synergy from arguing that of a lawsuit

Synergy moves for Summary Judgment on the basis that it had a contractual right to

covenant of good faith and fair dealing for its termination. Synergy relied, at least in part, on it determined that the litigation privilege prohibits Synergy from relying on litigation conduct as a

5 ne issue of material fact as to whether Synergy breached its contract with V3 when it terminated its relationship with V3. Even if the judicial proceedings privilege were inapplicable, summary judgment would still be inappropriate because there is a dispute as to whether HealthBanc litigation conduct against Synergy is attributable to V3. with a beneficial interest in a Synergy Team Membership (Policies and Procedures, Section 2.) The Policies and Procedures further ny

individual or entity that can be viewed by the company, or by other Team Members, as actively working a specific Synergy Account will be deemed as having a beneficial interest in that account Id., Section 3.4.) Synergy argues that HealthBanc had a beneficial interest in V3 because they are both owned and controlled by the same person Mr. Feldman. But the relevant portion of the

products or seek additional distributors for its downline, but instead received regular, passive income from its existi own account, and even more questionable whether HealthBanc did. Thus, there is a genuine issue of material fact with respect to whether was a proper reason, pursuant to the Policies and Procedures, to terminate

6 Conclusion

DATED this 12 th

day of February, 2019.

BY THE COURT:

Dee Benson United States District Judge

