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Judge Narrows Challenge to Ban on Ultimate Fighting

BY VICTOR LI

NEW YORK has won the first round in a suit attacking the state's ban on mixed martial arts (MMA) matches, but the challengers are still in the fight.

Last November the Ultimate Fighting Championship (UFC) and a collection of mixed martial arts fighters, fans, and instructors sued to overturn New York's long-time ban on the sport on constitutional grounds. The plaintiffs, represented by Jamie Levitt of Morrison Foerster and NYU law professor Barry Friedman, alleged that the ban infringed their freedom of speech and expression, violated the Equal Protection and Due Process clauses of the 14th Amendment, and represented an unlawful restraint on interstate commerce (NYLJ, Nov. 18, 2011).

On Aug. 17, Southern District Judge Kimba Wood knocked out the fighters' Equal Protection and Due Process claims, which she'd ordered both sides to brief back in January. The remaining issues, including the core First Amendment challenge, will be briefed after the parties agree to a schedule at the end of the month.

Wood concluded in *Jones v. Schneiderman*, 11 Civ. 8215, that the state had a legitimate interest in promoting public morality and protecting the fighters when it enacted the ban in 1997, and that the ban was rationally related to those goals.

The plaintiffs argued that the testimony of medical professionals who appeared before the Legislature did not prove that the sport was any more dangerous than boxing. But Wood held that the Legislature was not obligated to produce evidence or statistical data to sustain the rationality of its action before passing the ban.

Noting that the sport was in its infancy at the time and medical data was limited, the judge said, the Legislature had sufficient basis to "speculate" that professional mixed martial arts posed a significant basis to the health and safety of participants.

Moreover, the judge observed, "The New York legislature is not required to legislate uniform restrictions governing combat

and combat sports. It is well within the discretion of the legislature to enact a law addressing one sport today, while leaving legislation concerning others to another day."

Even if the law was justified when passed, the fighters argued that the sport has become safer, more mainstream and better regulated since 1997.

But Wood wasn't convinced. "In contrast to some circuit courts, the Second Circuit has not expressly embraced the view that changed circumstances may be considered as part of a rational basis review," she wrote.

Wood acknowledged that the sports promoters have taken steps to make mixed martial arts safer.

"Undoubtedly, the adoption of MMA's unified rules, in accordance with the regulation of other fights, have reduced the health and safety risks to fighters," she said, adding that promoters have instituted other regulations "to further mitigate those risks."

The judge noted that prior to all UFC matches, competitors undergo medical testing, including blood tests, neurological examinations, brain scans and eye tests. At least two emergency medical technicians and two doctors are present at ringside for every fight. And concussions trigger mandatory waiting periods and doctor evaluations to return to competition.

Nevertheless, Wood said, the state ban still satisfies rational

basis scrutiny. She noted that "in the sport's limited existence, there have been two deaths in regulated MMA matches in the United States... Any long-term effects of head injuries sustained by MMA fighter necessarily remain uncertain. These risks are sufficient to find that the legislature continues to have a rational basis to prohibit the live performance of MMA in New York."

Reacting to Wood's ruling, NYU's Friedman said, "This is hardly a cataclysmic event. The judge did not touch our largest claims, namely that our clients' First Amendment rights are being violated."

Levitt did not respond to a request for comment.

John Schwartz appeared for Attorney General Eric Schneiderman. Assistant Manhattan District Attorney Patricia Bailey also filed a brief supporting dismissal of the lawsuit.

The UFC has been battling to lift the ban on MMA events in New York, principally through legislation. The Assembly declined to take up the bill's proposal earlier this year.

Victor Li, a reporter for the Litigation Daily, an affiliate of the New York Law Journal, can be reached at vl@alm.com.

Online

» The Southern District decision is posted at nylj.com.

Obituary



Samuel "Sandy" Lindenbaum

Samuel "Sandy" Lindenbaum, a zoning and land use specialist at Kramer Levin Naftalis & Frankel, died Aug. 17 at his home in East Hampton. He was 77.

Lindenbaum worked with many of New York City's best-known developers in a half century as an attorney, including Donald Trump, Larry Silverstein and Harry Helmsley.

A statement from Kramer Levin said Lindenbaum began practicing law almost simultaneously with the adoption of New York City's 1961 Zoning Resolu-

tion, which encouraged development of a new generation of high-rise buildings in the city.

Lindenbaum had told his colleagues that among the projects of which he was most proud were the Weill Cornell Medical building, the Museum of Modern Arts' building on West 53rd Street and renovations of Rockefeller Center and the Chrysler Building, according to the firm.

He was also active in numerous charitable and philanthropic organizations, including the Metropolitan Museum of Art, the Peggy Guggenheim Collection, the Albert Einstein College of Medicine and the American Friends of the Israel Museum. Lindenbaum was a member of the Council on the Arts from 1976-86 and 1994-99.

He received his undergraduate and law degrees from Harvard University and began practicing in 1960. He was of counsel at Kramer Levin.

Funeral services were held at the Sanctuary Building of Central Synagogue in Manhattan.

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