

Past Suits Doom Baiul's \$10M Royalty Case, Producer Says

By **Jeff Zalesin**

Law360, New York (September 10, 2015, 6:08 PM ET) -- Television producer Barry Mendelson insisted Wednesday that figure skater Oksana Baiul's California federal suit against him, NBCUniversal Media LLC and others seeking \$10 million in royalties for the 1994 special "Nutcracker on Ice" must be dismissed because Baiul improperly split her claims.

Mendelson and his company Mendelson Entertainment Group LLC said in a two-page reply brief that Baiul has filed earlier lawsuits over the same "primary right" to compensation for the "Nutcracker on Ice" performance. The skater's filing in opposition to dismissal of the case failed to justify allowing her to keep pursuing the same grievance against different defendants, Mendelson told U.S. District Judge Dean D. Pregerson.

"Plaintiff misses the point of the rule against splitting causes of action," he said. "It bars future actions against parties in the prior litigation and against parties which did not participate in any earlier lawsuit. In fact, a major purpose behind the rule is to prevent a plaintiff from taking a shot at defendant #1 and losing, and going on to defendant #2 in another lawsuit and losing, and then going on to defendant #3, etc."

Baiul has filed three other lawsuits over related claims, including one whose dismissal was **affirmed by the Second Circuit** and one now pending in New York federal court, according to a motion to dismiss filed in August by NBC and joined by Mendelson. Baiul later accused NBC of improperly seeking judicial notice of past court filings.

Mendelson, however, replied that Baiul can't get around her previous failure to sue all relevant defendants.

"It does not matter why she failed to include everyone or why she failed to assert all her causes of action," he said. "It was her duty to properly frame her earlier lawsuit(s), but she did not."

Baiul lodged the present suit in June in a California state court against NBCUniversal, its affiliate NBC Sports, On Ice Inc. and Mendelson, a onetime OII executive. NBC Sports quickly removed the suit to federal court.

The Ukrainian athlete alleged that NBC Sports, due to fraud or a mistake, never entered into a written royalty agreement with the then-teenage figure skater for the televised Nutcracker performance. Baiul said that she should receive \$10 million or more in royalty payments for the distribution and licensing of the "Nutcracker on Ice" motion picture.

Baiul said in her complaint that she was a minor "who could not read or write in the English language, and with a limited understanding of spoken English language" at the time when

NBC argued in August that Baiul had **failed to state a viable claim** for unjust enrichment, and that the suit was time-barred.

In response, Baiul said that her complaint was sufficient to go forward. She said it would be “shocking news” if a company could profit from her performance and deny her royalties “simply because the network or studio failed to provide a written agreement when it has promised to do so.”

Baiul has also moved to remand the suit on the grounds that OII didn’t consent to its removal. NBC has **argued that the company is defunct**, and therefore represents only a nominal defendant, but Baiul was **disputed that characterization**.

Edward W. Pilot, an attorney for the Mendelson defendants, told Law360 on Thursday that Baiul was trying to win a judgment on non-contract-based claims after failing on contract-based claims.

“Her primary right here was to get paid for her performance,” Pilot said. “That does not entitle her, over a period of several years, to sue different people on different theories.”

Baiul is represented by Peter M. Hoffman.

NBCUniversal Media is represented by Enoch H. Liang, Damian J. Martinez and Danielle R. Claxton of Lee Tran & Liang LLP and by in-house counsel Avi Braz of NBC Universal Television Group.

The Mendelson defendants are represented by Edward W. Pilot.

The case is Oksana Baiul v. NBC Sports et al., case number 2:15-cv-05163 in the U.S. District Court for the Central District of California.

— Additional reporting by Matthew Perlman.

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