

THE CONSEQUENCES OF NBA COMMISSIONER ADAM SILVER ARBITRATING THE
DISPUTE BETWEEN THE NEW YORK KNICKS AND THE TORONTO RAPTORS

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Back in August 2023, the New York Knicks sent a letter addressed to the owner of the Toronto Raptors Larry Tanenbaum claiming the Raptors are engaging in illegal activity involving a former Knicks employee whom they just hired.¹ They claimed that Ikechukwu Azotam, who at the time of his employment with the Knicks was an assistant video coordinator, “had illegally provided the Raptors with more than 3,000 confidential files.”² Several days after the letter was sent the Knicks filed a lawsuit in the U.S. Southern District Court of New York against Maple Leaf Sports & Entertainment (Toronto Raptors), Darko Rajakavic, Noah Lewis, Ikechukwu Azotam, and 10 unnamed John Does, requesting damages and asking the court to order the defendants to refrain from using, altering, sharing, reviewing, and copying any of the Knicks confidential information.³

Soon after, the Toronto Raptors filed a motion to dismiss based on the “all-encompassing arbitration clause in the parties’ governing agreement”⁴ which comes from the NBA constitution.⁵ The NBA constitution “sets forth how the league is going to be governed, creates the Board of Governors, and establishes the powers of the Commissioner.”⁶ One of the primary

¹ Baxter Holmes, ‘*This Isn’t the 11 Herbs and Spices*’: Inside this Unprecedented Knicks-Raptors Lawsuit, ESPN (Nov. 30, 2023, 8:00 AM), https://www.espn.com/nba/story/_/id/39007136/this-11-herbs-spices-unprecedented-knicks-raptors-lawsuit [<https://perma.cc/AUZ9-2SYW>].

² *Id.*

³ N.Y. Knicks, LLC v. Maple Leaf Sports & Ent. LTD., No. 23-CV-7394, 2023 WL 9316068, at *20 (S.D.N.Y. Nov. 20, 2023).

⁴ Zach Braziller & Stefan Bondy, *Raptors Slam Knicks Lawsuit as ‘Public Relations Stunt,’ Push for Dismissal*, N.Y. POST (Oct. 16, 2023, 10:19 PM), <https://nypost.com/2023/10/16/raptors-call-for-knicks-baseless-lawsuit-to-be-dismissed/> [<https://perma.cc/FB2M-H6MX>].

⁵ Jeffrey A. Mishkin, *Dispute Resolution in the NBA: The Allocation of Decision Making Among the Commissioner, Impartial Arbitrator, System Arbitrator, and the Courts*, 35 VAL. U. L. REV. 449 (2001).

⁶ *Id.*

powers of the “Commissioner is to decide . . . any disputes . . . among NBA teams.”⁷ Therefore the Raptors argue that their respective issue with the Knicks should be settled outside of court using arbitration.⁸ However, the Knicks allege that engaging in dispute resolution by the Commissioner, Adam Silver would be inadequate due to his conflict of interest.⁹ Specifically, Larry Tanenbaum, chairman of Maple Leaf Sports and Entertainment, which owns the Toronto Raptors, is Adam Silver’s boss therefore he exerts heavy influence over his salary and employment as NBA Commissioner.¹⁰ Furthermore, Tanenbaum and Silver have been linked together in the past, so much so that Silver has publicly said that he views Tanenbaum as more than just a boss but rather as a friend and role model.¹¹ Thus, their relationship could influence a decision during arbitration since there seems to be a conflict of interest present.

Typically, NBA teams do not sue each other because they are members of the same organization and therefore “accept the authority of a league [C]ommissioner to privately arbitrate their disputes.”¹² Specifically, since NBA teams generally value party autonomy and

⁷ *Id.*

⁸ Mike Vorkunov, *Raptors Raise Possibility of Countersuit Against Knicks ‘For Defamatory Public Statements’*, THE ATLANTIC (Dec. 12, 2023), <https://theathletic.com/5131200/2023/12/12/raptors-knicks-lawsuit-nba/> [https://perma.cc/MF6Y-KKAY].

⁹ *Raptors Accuse Knicks of ‘Dragging Out’ Confidential File Lawsuit*, SPORTS BUS. J. (Dec. 12, 2023), <https://www.sportsbusinessjournal.com/Articles/2023/12/12/toronto-raptors-new-york-knicks-lawsuit#:~:text=The%20Knicks%20also%20referenced%20Silver's,Raptors%20%E2%80%9Cthousands%20of%20confidential%20files%20%E2%80%9D> [perma.cc/2JJM-Z5A4].

¹⁰ Wenzell Ortiz, *Kicks Request Adam Silver Not Arbitrate Raptors Case, Argue Conflict of Interest*, YAHOO!SPORTS (Nov. 20, 2023), https://sports.yahoo.com/knicks-request-adam-silver-not-arbitrate-raptors-case-argue-conflict-of-interest-231737696.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2x1LmNvbS8&guce_referrer_sig=AQAAAMtDyH9fo610_1Dy2nlpYXMT6tFqnp0HE00LV576DU18ira-GDg3jv9Rfj1H_xtP1Bij8jksR9Aj_DCiQRYORdqXzaHj3FB7_W0nTM70gUMXCT8sUv6Nvrsv7z6ywoAo80BZKWtuRlIybvmyVG5NjzUHjuB5oblQtcsEYWgFuHtg [https://perma.cc/5R38-KHCV].

¹¹ *Id.*; See also Kari Anderson, *Knicks Seek \$10 Million in Damages from Raptors in Lawsuit That Claims Former Employee Shared Confidential Information with Toronto*, THE MESSENGER SPORTS. (Nov. 20, 2023, 5:47 PM), <https://themessenger.com/sports/knicks-seek-10-million-in-damages-from-raptors-in-lawsuit-that-claims-former-employee-shared-confidential-information-with-toronto> [https://perma.cc/X2BZ-C947].

¹² Michael McCann, *Knicks-Raptors Growing Legal Fight Could Ripple Through Pro Sports*, SPORTICO (Nov. 21, 2023, 12:54 PM), <https://www.sportico.com/law/analysis/2023/knicks-raptors-lawsuit-adam-silver-1234747642/> [https://perma.cc/YUA8-E968].

confidentiality,¹³ they rely on arbitration since it is a confidential process,¹⁴ unlike litigation, in which a complaint is filed with a court and then is publicly available.¹⁵ Arbitration is completely shielded from the public view because dispute resolution happens behind closed doors and typically confidentiality agreements that bar both sides from discussing the arbitration, including details regarding the resolution and award.¹⁶ Thus, allowing for sensitive documents such as emails, reports, videos, and more to stay out of the public purview and ensures that fans aren't sucked into the long litigation process.¹⁷ Additionally, if the Knicks are successful in their attack on Silver and the NBA they could potentially “diminish the authority of the Commissioner, [and the authority of the arbitration clause] a result which would serve as a negative precedent moving forward and which the players could seek to exploit.”¹⁸

However, if this case were to be forced into arbitration, we may never again see a public dispute arise between two professional basketball teams in the NBA and it would solidify Silver's position as an arbitrator for all further disputes.¹⁹ This could be potentially harmful because if Silver is perceived as a biased party, his arbitrating can pose significant conflicts. Since the American Bar Association views arbitration as a “private process where disputing parties agree that one or several individuals can make a decision about the dispute after receiving

¹³ Vani Shrivastava, *Advantages of Arbitration Over Litigation*, VIA MEDIATION & ARB. CTR., <https://viamediationcentre.org/readnews/Mjcz/Advantages-of-Arbitration-over-Litigation> [https://perma.cc/BT5N-3ASX] (last visited Feb. 26, 2024).

¹⁴ Vanessa Naish & Elizabeth Kantor, *Privacy and Confidentiality of Arbitration-Related Court Proceedings: a Culture Class*, THOMSON REUTERS (Feb. 4, 2022), <http://arbitrationblog.practicallaw.com/privacy-and-confidentiality-of-arbitration-related-court-proceedings-a-culture-clash/> [https://perma.cc/K6UG-KACU].

¹⁵ Cynthia Estlund, *The Black Hole of Mandatory Arbitration*, 96 N.C. L. REV. 679, 680 (2018).

¹⁶ *Id.*

¹⁷ McCann, *supra* note 12.

¹⁸ Chris Deubert, *Knicks Launch Unprecedented Attack on Commissioner Authority*, LINKEDIN (Dec. 19, 2023), https://www.linkedin.com/pulse/knicks-launch-unprecedented-attack-commissioner-chris-deubert-qa9me/?trk=article-ssr-frontend-pulse_more-articles_related-content-card [https://perma.cc/UR4N-X4FE].

¹⁹ McCann, *supra* note 12; *see also Sports and Trade Secrets: Are Analytics a Secret in the NBA?*, MCGUIREWOODS (Dec. 21, 2023), <https://www.mcguirewoods.com/client-resources/alerts/2023/12/sports-and-trade-secrets-are-analytics-a-secret-in-the-nba/> [https://perma.cc/52AN-3VZB].

evidence and hearing arguments” an arbitrator’s role is similar to that of judges so they must be a neutral party to the dispute.²⁰ Specifically being a non-biased party is especially important because when parties agree to arbitration “the decision is legally binding.”²¹ Consequently, “there is a very limited right to appeal arbitration judgments:²² “arbitration can be appealed only in very limited circumstances, and the underlying reasons for appeal may change from one arbitration provider to the next.”²³ Therefore, such finality could be harmful to the losing party.²⁴ So if the Knicks were to be unhappy with the outcome essentially becoming the ‘losers’ of the dispute it would be difficult to appeal the Commissioner’s decision.²⁵

However, according to 9 U.S.C. § 10, a court can vacate an award of arbitration if “there was evident partiality . . . in the arbitrator.”²⁶ Therefore, the Knicks who seem to strongly feel that there is bias in Silver acting as the arbitrator, would likely try to appeal and continue their action which would lead to the case being dragged out longer than intended. Litigation is expensive and time-consuming²⁷ so both parties would be significantly disadvantaged. Thus, the consequence of Adam Silver arbitrating the dispute between the New York Knicks and the Toronto Raptors could have significant consequences for not just the two teams but for the entire NBA as well.

²⁰ Iris (Yeonjae) Lim, *What Happens When the Arbitrator is Biased?*, ARIZ. ST. L. J. (Oct. 21, 2020), <https://arizonastatelawjournal.org/2020/10/21/what-happens-when-the-arbitrator-is-biased/> [<https://perma.cc/4LKU-G4NT>].

²¹ *Arbitration Defined: What is Arbitration?*, JAMS, <https://www.jamsadr.com/arbitration-defined/> [<https://perma.cc/67XP-FHWW>] (last visited Feb. 20, 2024).

²² Emily Holland, *Disadvantages of Arbitration*, ADR TIMES (Dec. 14, 2022), <https://www.adrtimes.com/disadvantages-of-arbitration/> [<https://perma.cc/Y4XS-CAPY>].

²³ *Id.*

²⁴ *Id.*

²⁵ McCann, *supra* note 12.

²⁶ 9 U.S.C. § 10.

²⁷ *The Pros and Cons of Mediation and Litigation for Your Case*, SBEMP ATTORNEYS, <https://sbemp.com/the-pros-and-cons-of-mediation-and-litigation-for-your-case/#:~:text=The%20Cons%20of%20Litigation&text=First%20and%20foremost%2C%20the%20legal,the%20outcome%20of%20the%20case> [<https://perma.cc/5556-SUH9>] (last visited Feb. 20, 2024).