



August 2014

Resigned Members: It's the Same Category

Spikes v. Hamilton Farms Golf Club (D. NJ 2014)

Meiselman v. Hamilton Farms Golf Club (D. NJ 2011)

Clubs that resell resigned memberships generally have separate "sell lists" for each membership category. Therefore, if a club sells memberships in a different membership category, those sales do not trigger resales of resigned memberships and the corresponding refund payments to the resigned members. When clubs issue memberships in "new" categories, the question arises as to whether the new category is truly a different membership category. In two separate cases (one decided in August 2011 and the other in January 2014), resigned members of Hamilton Farms Golf Club challenged the club's determination that membership sales in what the club called a new membership category did not count toward reissuing resigned memberships. In both cases, the club moved to dismiss the cases, and the court denied the motions, allowing the cases to proceed.

The court did dismiss the resigned members' breach of contract claims because the membership documents gave the Club the right to create new membership categories. However, the court allowed the breach of good faith and fair dealing claims to proceed. The members alleged the new membership category had the same rights and privileges as the resigned members' category, and the Club created the category for the sole purpose of avoiding its obligation to refund membership deposits from membership sales. In allowing the claim to proceed, the court explained that a party breaches the duty of good faith and fair dealing if that party exercises its discretionary authority arbitrarily, unreasonably or capriciously

with the objective of preventing the other party from receiving the reasonably expected fruits from the contract. In the 2011 case, the court noted that the new membership category could render the resigned members' categories unsalable, given that no prospective member would choose a more expensive membership with privileges identical to those offered under the cheaper alternative.

Whenever a club with a refundable membership waiting list issues a new membership category, the club and its counsel should carefully consider whether the membership category truly differs from the memberships on the waiting list. "New" isn't always different.

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