

Court Tosses Journalist's Lawsuit Against Hollywood Foreign Press Association for Denying Her Admission

By Lauren Russell

A California federal court dismissed a Norwegian journalist's complaint against the Hollywood Foreign Press Association over the organization's repeated rejection of her application for membership. [Flaa v. Hollywood Foreign Press Association](#), (C.D. Cal. Nov. 20, 2020). Plaintiff was permitted to file an amended complaint as to her antitrust claims against the defendants.

Background

According to her complaint, plaintiff Kjersti Flaa is a Norwegian journalist who reports on entertainment and lifestyle news from the U.S. for Norwegian outlets. She first moved to New York in 2007, and she moved to Southern California in 2015. She then founded her own production company, which produces entertainment series and segments for foreign streaming services and networks, and has a YouTube channel with a high number of views.

The Hollywood Foreign Press Association, which has been in existence since 1943, is a 501(c)(6) tax-exempt trade organization under the Internal Revenue Code, and is most famous for administering the annual Golden Globes award show. According to Flaa, Hollywood caters to HFPA members and provides them more access because of their control of the Golden Globes. To become a member, applicants must submit proof of success as a reporter on the motion picture industry, including proof the applicant has been paid for news reports and is a member of the Motion Picture Association of America, as well as two letters of sponsorship from HFPA members. Applicants then must be approved by a majority vote by the members. There are currently 87 HFPA members.

After having applied and been denied membership with HFPA in 2018, 2019, and 2020, Flaa sued HFPA and several members, alleging they conspired to prevent her from becoming part of HFPA. In her complaint she lodged unfair procedure and antitrust claims and requested declaratory relief that HFPA's bylaws are unlawful given its tax-exempt status. The defendants then brought a motion to dismiss, which the court granted.

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Court Decision

California's fair procedure cause of action is derived from common law and applies to "quasi-public" organizations. Such organizations can be dissolved if membership decisions "affect the fundamental right to work for a living." Dismissing Flaa's claim, the court heavily relied on *Yari v. Producers Guild of Am., Inc.*, 161 Cal. App. 4th 172, 175 (2008), a case holding that the Academy of Motion Picture Arts & Sciences and the Producers Guild of America are not quasi-public entities and their failure to give the plaintiff producer credit for his film nominated for an industry award did not foreclose his work in the motion picture industry.

The court rejected Flaa's argument that HFPA was a quasi-public entity because it held tax exempt status, and instead relied on case law holding quasi-public entities must "operate in the public interest," about which courts "are not talking about public diversion." The court also excerpted portions of Flaa's complaint highlighting her success as an entertainment journalist, stating this "could not have been achieved if she were denied the ability to practice her profession." Flaa's request that the court declare some of HFPA's bylaws not compliant with section 501(c)(6) was also dismissed, because Flaa lacked standing to bring the claim.

On the antitrust claims, the court held Flaa failed to state a geographically sustainable market or a facially sustainable product market, which are required for an antitrust claim. Flaa's "own allegations demonstrate that entertainment news is created and consumed throughout the country, if not the world." And her success working outside of Southern California demonstrated she did not need to be in Southern California or have access to the Golden Globes to succeed.

Flaa had defined the product as "entertainment news," which was too ambiguous, and her attempt to narrow it to "reporting on motion pictures" in her opposition to the motion to dismiss could not cure the pleading defect. However, the court noted "[t]he complaint makes analysis of the antitrust claims challenging, and the Court is not willing to deny leave to amend—especially in light of the liberal standard—when Plaintiff's antitrust theory is difficult to comprehend."

The court dismissed Flaa's motion for leave to amend as to the fair procedure and declaratory judgment claims with prejudice, but granted her motion for leave to file an amended complaint as to the antitrust claims. On December 4, Flaa filed an amended complaint alleging state and federal antitrust law violations. Rosa Gamazo Robbins, another LA-based foreign journalist with dual Spanish and U.S. citizenship, joined the lawsuit. The defendants' motion to dismiss the amended complaint is now pending before the court.

Plaintiffs Kjersti Flaa and Rosa Gamazo Robbins are represented by David Quinto and Joanna Ardalan of One LLP in Beverly Hills. Defendants are represented by Christopher Yates, Marvin Putnam and Robert Ellison of Latham and Watkins, LLP.