

PCA Case No. 2016-17

**IN THE MATTER OF AN ARBITRATION UNDER THE DOMINICAN REPUBLIC-
CENTRAL AMERICA-UNITED STATES FREE TRADE AGREEMENT,
SIGNED ON AUGUST 5, 2004 (“CAFTA-DR”)**

– and –

**THE UNCITRAL ARBITRATION RULES (AS ADOPTED IN 2013)
(the “UNCITRAL Rules”)**

– between –

MICHAEL BALLANTINE AND LISA BALLANTINE

(the “Claimants”)

– and –

THE DOMINICAN REPUBLIC

(the “Respondent”, and together with the Claimants, the “Parties”)

PROCEDURAL ORDER NO. 16

Tribunal

Prof. Ricardo Ramírez Hernández (Presiding Arbitrator)
Ms. Marney L. Cheek
Prof. Raúl Emilio Vinuesa

Registry

Permanent Court of Arbitration
Mr. Julian Bordaçahar

October 2, 2018

A. PROCEDURAL HISTORY

1. In accordance with the Procedural Calendar, as modified by Procedural Order No. 6, the Tribunal fixed the date of the Hearing (the “**Hearing**”) on Monday, September 3, to Friday, September 7, 2018, keeping Saturday, September 8, 2018, reserved should it be necessary.
2. As stipulated in Procedural Order No. 12, the Tribunal heard the Parties’ opening arguments on September 3, 2018. Immediately thereafter, on September 4, 2018, the Parties proceeded with the examination of witnesses and experts. Accordingly, the Claimants’ fact witnesses would go first and, more precisely, Mr. Michael Ballantine would be the first witness to testify.
3. In the context of Mr. Ballantine’s cross-examination, and as a result of a question posed to him by the Respondent,¹ it was brought to the Tribunal and the Respondent’s attention that the Claimants are receiving external funding for the pursuit of their claims in this arbitration.
4. In light of the foregoing, the Respondent expressed certain concerns to the Tribunal. The Respondent contended that it wished to know (i) the identity of the third party funder for the purposes of checking conflict of interest with the Tribunal and the Parties; (ii) the date on which the agreement between the Claimants and the funder was concluded; (iii) the reasons why the Claimants had not disclosed earlier in the proceedings that they are being funded by a third party; and (iv) whether the execution of the funding agreement was in any way related to the switch in the Claimants’ counsel to Baker & McKenzie, or the reassessment of the Claimants’ requested damages.
5. In reply, the Claimants maintained that the issue of how the Claimants are funding their claim is completely irrelevant to the claims that are being brought. Moreover, they argued that they are not aware of any duty that requires a claimant to disclose attorney-client privilege matters related to the issue of the funding of claims.
6. The Tribunal reflected on the Parties’ positions and decided to order the Claimants to disclose only to the Tribunal the contract that the Claimants had concluded with the third party funder. Once that happened, the Tribunal would assess which following steps to take.
7. At the end of the second Hearing day, the Claimants sent to the Tribunal a full copy of the agreement that they signed with the company [REDACTED] on December 22, 2015 (the “**Funding Agreement**”).

¹ Mr. Di Rosa on behalf of the Respondent asked: “So let me just ask Mr. Ballantine one final question, which is the following: Mr. Ballantine, do you have any type of external financing or third-party funding for this arbitration?” (Hearing Transcript Day 2 (September 4, 2018), p. 499, lines 13-16).

8. After reviewing the Funding Agreement, on the next Hearing day, September 5, 2018, the Tribunal informed the Parties that, to the best of their knowledge, none of the Tribunal members had any conflict of interest with the funder. The Tribunal members confirm their impartiality and independence in this proceeding.
9. Moreover, the Tribunal also decided that the Claimants should disclose to the Respondent, by the end of the day, the identity of the third party funder as well as the date on which the Funding Agreement had been concluded.

Place of Arbitration: Washington, D.C., United States of America



Ricardo Ramírez Hernández
(Presiding Arbitrator)

On behalf of the Tribunal