



CENTER ON INTERNATIONAL
COMMERCIAL ARBITRATION

TENTH LL.M. INTERNATIONAL COMMERCIAL ARBITRATION COMPETITION
Washington, D.C., March 24 - 25, 2023

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MOCK PROBLEM

Tosa Inu Kennel, LLC. (Transylvania)

v.

Brian Franchot, Respondent (Canania)

August 15, 2022

BY EXPRESS MAIL

The Secretariat of the Japan Commercial Arbitration Association (JCAA)
3F, Hirose Bldg, 3-17, Kanda Nishiki-cho
Chiyoda-ku
Tokyo 101-0054
Japan

Re: Request for Arbitration

Dear Secretariat:

I represent Tosa Inu Kennel, LLC and hereby submit five copies of a Request for Arbitration against Brian Franchot. I enclose a copy of my power of attorney to represent Tosa Inu Kennel, LLC in this arbitration.

The total claimed is USD \$40,000 plus interest and costs. The filing fee and advance on costs have been transferred to the appropriate bank.

The contract giving rise to this arbitration provides that the seat of arbitration is Washington, D.C. in the United States and that the arbitration will be in English.

The required documents are attached to the Request for Arbitration.

Respectfully,

/s/ Justice Star Advocate
Justice Star Advocate

Tosa Inu Kennel, LLC, Claimant

v.

Brian Franchot, Respondent**Request for Arbitration**

1. Claimant: Tosa Inu Kennel, LLC, a company incorporated under the laws of Transylvania. Registered at 55 City Center, Capital City, Transylvania; Tel: (0) 123-5432; Fax: (0) 123-5342; Email: office@commandcentral.com.
2. Respondent: Brian Franchot, a person living in and conducting sales from Canania. Address: 21 Dog Street, Doggia, Canania; Tel: (0) 334-4444; Fax: (0) 334-4443; Email: office@Canania.com.
3. The Request for Arbitration relies upon the arbitration clause in Article 8 of the Contract for the sale of Samurai (Claimant's Exhibit 1), a dog from Mr. Franchot's farm. The relevant clause states that "[a]ll disputes, controversies or differences arising out of or in connection with this contract shall be finally settled by arbitration in accordance with the Commercial Arbitration Rules of The Japan Commercial Arbitration Association. The place of the arbitration shall be Maintown, Rosalandia. The arbitration shall be in the English language. The tribunal shall be composed of three arbitrators."
4. Claims:
 - a. The Respondent shall pay the Claimant USD \$40,000 in damages, representing: (i) \$30,000 for the cost of Samurai; and (ii) \$10,000 for lost competition earnings and medical examinations.
 - b. The Respondent shall pay the costs of arbitration, including Claimant's expenses for legal representation, the arbitration fee paid to the Secretariat and any additional expenses of the arbitration.
 - c. The Respondent shall pay the Claimant interest on the amounts set forth above from the date those expenditures were made by Claimant to the date of payment by Respondent.

Facts

5. In early 2022, Tosa Inu Kennel, a small company that owns rare dogs for breeding and competitions located in the nation of Transylvania, decided to expand its collection of dogs in advance of the 2023 dog competition season. The Kennel's development and acquisition manager, Piero Alessandro, was asked to identify and acquire a new dog that could be competed in the World Dog Show in Transylvania in March 2023 and used for breeding purposes. Mr. Lessandro had years of experience in acquiring dogs from Transylvania and neighboring countries, but Tosa Inu Kennel directed Mr. Alessandro to prioritize emerging regions of dressage competition in order to

diversify the Kennel's Tosa Inu genetic stock and build new relationships within the international dog competition industry.

6. Through his connections in the industry, Mr. Alessandro heard of Brian Franchot, a billionaire industrialist and dog enthusiast from the country of Canania. Although Mr. Franchot had only been involved in dog competition for about five years, his dogs had already shown great promise in competitions in Canania and the surrounding region of Canania by winning multiple awards. Mr. Franchot had invested a large amount of money in a selection of rare dogs and was said to might be willing to sell one of his best Tosa Inu, equally with the goal of diversifying and expanding its stock.

7. On April 11, 2022, Mr. Alessandro called Mr. Franchot and briefly outlined the goals of Tosa Inu Kennel and its interest in the growing Canania dog industry. Mr. Franchot, in turn, promoted the quality of both his own dogs and the general stock of dogs in Canania. The conversation concluded with a request from Mr. Alessandro that Mr. Franchot search his kennel and select any dogs he thought could compete at the World Dog Show in March 2023 for Tosa Inu Kennel.

8. On April 15, 2022, Mr. Alessandro was notified by Mr. Franchot's staff that Mr. Franchot had identified a beautiful Tosa Inu named Samurai that could satisfy the needs of Tosa Inu Kennel. In a subsequent phone conversation on April 29, 2022, Mr. Franchot assured Mr. Alessandro that this dog had "immense natural talent" and was already a "champion several times over" in regional competitions.

9. Mr. Franchot was so eager to demonstrate Samurai's suitability that he offered to front the cost of the examination by a veterinarian designated by Mr. Alessandro. Mr. Alessandro accepted that offer and the veterinarian's report, issued on June 15, 2022, confirmed that Samurai was in excellent physical characteristics and condition, and moved extremely well. Upon reading the veterinarian's report, Mr. Alessandro received approval from the owners of the Tosa Inu Kennel to move ahead with the purchase of Samurai.

10. On June 28, 2022, Mr. Franchot received a signed contract from Mr. Alessandro for the purchase of Samurai. The contract stated that Samurai was being acquired for "competition in national and international dog competitions under the guidance of Tosa Inu Kennel professionals" and "subsequent breeding stock." The contract contained a clause that specified the CISG as the substantive law governing the transaction and an arbitration clause that specified the revised JCAA rules as the choice of procedure for any arbitration.

11. On July 4, 2022, Mr. Franchot called Mr. Alessandro to discuss some issues relating to the handling and shipment of Samurai to Tosa Inu Kennel. After a brief conversation, Mr. Franchot told Mr. Alessandro that "I accept the terms of your offer." The following day, Mr. Franchot's staff initiated correspondence with Mr. Alessandro about the specific shipping and quarantine arrangements.

12. Shortly after receiving Samurai at Tosa Inu Kennel on August 13, 2022, the trainers noticed that the dog was not properly responding to the normal commands of the Kennel's dog trainers. A phone call with Samurai's former trainers back in Canania soon revealed that Samurai had been socialized and trained under a set of commands used in Canania, but different from that used by

Tosa Inu Kennel and most dog trainers in Transylvania and the surrounding region. Despite being used English as the dog training language in both countries, Tosa Inu Kennel's trainers noticed that different orders and procedures were used with Samurai.

13. Tosa Inu Kennel immediately sought to retrain Samurai to respond to Transylvania commands, but encountered considerable difficulties. It became clear that it would take years to do so properly. Tosa Inu Kennel was forced to scratch Samurai from the World Dog Show and would miss the opportunity to show his talent and garner buyers for his breeding capabilities.

14. On August 27, 2022, Tosa Inu Kennel wrote to Mr. Franchot stating that they could not accept the dog as he was not suited for the purpose they had described. Mr. Franchot did not return the correspondence.

Applicable Law

15. The choice of law clause in the contract provides for application of the law of Transylvania. Both Transylvania and Canania are party to the United Nations Convention on Contracts for the International Sale of Goods ("CISG"). The contract also adopted the JCAA Commercial Arbitration Rules as revised. Transylvania and Canania are party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention).

Appointment of Arbitrator

16. The Claimant appoints the following individual as its party-appointed arbitrator:

Sylvania Condesa de Torre Cuadrado
321 High Street
Second City, Transylvania
Tel: 0 223 9955
Fax: 0 223 4445

Conclusion

17. Mr. Franchot did not deliver a dog that conformed with the contract. Mr. Alessandro had clearly specified the purpose for which Tosa Inu Kennel sought to purchase the dog and Mr. Franchot sold them a dog that was incapable of performing in Transylvania as required by the contract. The inability of the dog to perform at the World Dog Show destroyed any chance of garnering breeding stock income.

18. The tribunal should, accordingly, hold Mr. Franchot to pay the damages set out in paragraph 4 above.

Respectfully Submitted,

/s/ Justice Star Advocate

Justice Star Advocate

August 15, 2022

Claimant's Exhibit No. 1

Tosa Inu Kennel, LLC
15 City Center, Capital City, Transylvania
Tel: (0) 123-5432
Fax: (0) 123-5342
Email: office@commandcentral.com

April 12, 2022

Mr. Brian Franchot
21 Dog Street
Doggia, Canania;

Re: Dog Prospect – Tosa Inu

Dear Mr. Franchot:

It was great talking with you yesterday about your dogs and how you might be able to help out our program. As I mentioned, we are looking for a real quality Tosa Inu dog of medium age to add to the mix here. Ideally, we would compete the dog at the upcoming World Dog Show in March 2023 which is one of the biggest dog fairs around. We would get a lot of attention there, especially bringing in new blood to the region. That would really increase our chances of gaining interest in any offspring and allow us to up the medical examinations quite a bit.

By the sounds of it, you have exactly what we are looking for in terms of quality and proven performance. If you would be so kind as to search your kennel for something of that variety that you would be willing to part with, we would sure be interested.

I look forward to hearing from you soon.

Sincerely,

/s/ Piero Alessandro
Piero Alessandro

Claimant's Exhibit No. 2

Brian Franchot
21 Dog Street
Doggia, Canania
Tel: (0) 334-4444
Fax: (0) 334-4443
Email: office@Canania.com.

April 15, 2022

Mr. Piero Alessandro
Tosa Inu Kennel, LLC
15 City Center
Capital City, Transylvania

Mr. Piero Alessandro:

On behalf of Mr. Franchot we write to inform you that we have found a Tosa Inu that matches your needs perfectly. While Mr. Franchot would be sad to see him go, he is interested in seeing his dogs get exposure in Transylvania and would be willing to make a special deal for this one. A picture is attached below. Mr. Franchot will be in touch shortly.



Sincerely,

/s/ Franchot Staff
Franchot Staff

Claimant's Exhibit No. 3**Contract Excerpts**

1. Tosa Inu Kennel hereby agrees to purchase Samurai for the amount of USD \$30,000. The price is to be paid by letter of credit issued by the Transylvania National Bank.
2. Samurai is being acquired for competition in national and international dog competition events under the guidance of Tosa Inu Kennel professionals and for his subsequent breeding stock.

8. All disputes, controversies or differences arising out of or in connection with this contract shall be finally settled by arbitration in accordance with the Commercial Arbitration Rules of The Japan Commercial Arbitration Association. The place of the arbitration shall be Maintown, Rosalandia. The arbitration shall be in the English language. The tribunal shall be composed of three arbitrators.

/s/ Piero Alessandro _____
Piero Alessandro

Brian Franchot

Claimant's Exhibit No. 4

Brian Franchot
21 Dog Street
Doggia, Canania
Tel: (0) 334-4444
Fax: (0) 334-4443
Email: office@Canania.com.

July 5, 2022

Mr. Piero Alessandro
Tosa Inu Kennel, LLC
15 City Center
Capital City, Transylvania

Mr. Piero Alessandro:

Congratulations! You will not be sorry. Samurai is a wonderful dog and an easy keeper. I will myself drop him off at the airport and have him board the Delta airline flight as they are known for their quality care. Once he arrives in Transylvania he will be quarantined for three weeks at Capital City Quarantine. That facility will contact you as soon as he is available for retrieval.

We hope you enjoy Samurai as much as we did. He eats about 2 Kg meat daily, ideally freshly cut. He prefers beef over pork, ideally medium rear cooked. As special treat you can give him also fish, especially fresh mackerel. He eats fish with bones included. He accepts dry and wet food. He likes treats, of course, but don't give him too many, as he should not put on more fat than strictly needed for the climate and shelter he has at your facilities. He does not like the sound from radios or television, and he always barks when someone snaps with their fingers.

Please do not hesitate to contact us if you have any questions about him upon his arrival.

Sincerely,

/s/ Franchot Staff
Franchot Staff

Claimant's Exhibit No. 5

Tosa Inu Kennel, LLC
15 City Center, Capital City, Transylvania
Tel: (0) 123-5432
Fax: (0) 123-5342
Email: office@commandcentral.com

July 27, 2022

Mr. Brian Franchot
21 Dog Street
Doggia, Canania

Re: Dog Prospect

Dear Mr. Franchot:

With deepest regret I have to ask you to make arrangements to take back Samurai and refund our money. Although he is an incredible specimen, we cannot train him. It seems you use entirely different commands in Canania. We have tried to retrain Samurai, but as I am sure you can understand, dog training is not that fast. Samurai will most certainly not be ready for the World Dog Show.

Sincerely,

/s/ Piero Alessandro
Piero Alessandro



September 6, 2022

Claimant: Tosa Inu Kennel LLC
Re: Notice of Arbitration for Case No. WEF20220915

Dear Sir,

This letter acknowledges receipt of your Request for Arbitration submitted on August 15, 2022, which named Brian Franchot as the Respondent. Additionally, we received your remittance for the arbitration fee.

The Secretariat hereby notifies you that we have taken cognizance of this case based on the arbitration clause contained in the Contract between you and the Respondent. The Arbitration Rules of our organization in force as from January 1, 2021 shall apply.

We are sending the Request for Arbitration to Mr. Franchot and will enclose your request and all attachments as well as our Arbitration Rules. We will ask Mr. Franchot to respond in accordance with the Arbitration Rules.

The Secretariat appreciates the nature of arbitration and seeks to provide both parties with efficient and cost-effective services in these proceedings. The Secretariat encourages the parties to proceed in a similar fashion and endeavor to arbitrate cooperatively and in an expedient manner.

Yours sincerely,

The Secretariat
Japan Commercial Arbitration Association

Tosa Inu Kennel, LLC, Claimant

v.

Brian Franchot, Respondent

Case No. JCAA/2022/03

Statement of Defense

I. Facts

1. Claimant states that Samurai does not react to Claimant's commands and could not be entered in the World Dog Show. These factual conclusions are without merit.
2. Samurai is an incredible Tosa Inu dog that has proven himself in dog competitions many times over. In 2021 alone, Samurai won first place at the king level in the following competitions: Westminster Dog Festival; Hobe Dog Show; Canania Country Championships; Canania Regional Country Championships, and the Hungarian Dog Contest. Samurai rarely scores below 75 percent and is considered a rising star.
3. Further, Samurai passed the scrutiny of the Claimant's veterinarian of choice in both Canania and upon arrival in Transylvania. Samurai is in the peak of his physical prime and neither veterinarian was able to find any flaws in his superior characteristics. Samurai's natural talent was enhanced by Respondent's professional dog trainers.
4. There is nothing about Samurai's physique or training that makes him unresponsive or unfit for entrance in the World Dog Show. Nothing in the contract stipulated that Samurai must be trained to fit the competence (or lack thereof) of the Tosa Inu Kennel trainers. The training techniques used by Canania are notably superior to those used in Transylvania as they focus on working with a dog's natural talent to foster the most dynamic and expressive movement.
5. Further, Respondent brings to the attention of the tribunal that there is no binding arbitration clause between the parties. Therefore, the Tribunal lacks jurisdiction over the dispute.

II. Applicable Law and Alleged Arbitration Clause

6. Respondent agrees that the sales contract would be governed by the United Nations Convention on Contracts for the International Sale of Goods ("CISG").
7. The arbitration clause that is alleged to give this tribunal jurisdiction is found in paragraph 8 of a contract that Respondent never signed. Accordingly, Respondent did not agree to arbitrate disputes with Tosa Inu Kennel. At the very least, Respondent is entitled to raise this issue before its own local courts.

8. Even if the tribunal were to find it had jurisdiction, any such award would be unenforceable under the New York Convention. Transylvania, Canania, and the seat of arbitration are all party to the New York Convention.

9. In addition, the state of Rosalandia has just passed a law prohibiting the ownership, sale, breeding, and transport of Tosa Inu dogs, because they are considered a risk to public safety due to their aggressive character. For this reason, arbitrating this case in Rosalandia, as required by the arbitration clause, is against public policy, and any resulting arbitral award would be null and void under the law of Rosalandia. For this case, only the courts of Canania may be competent, as this was the place of the sale of the dog and the sale of Tosa Inu dogs is not prohibited under Canania law.

10. Accordingly, Respondent respectfully requests that:

With regard to the jurisdiction of the tribunal:

- No arbitration agreement was entered into between Tosa Inu Kennel and Mr. Franchot; and
- Even if the tribunal held that a valid arbitration agreement existed this agreement cannot be executed due to public policy concerns with the law of Rosalandia;
- Consequently, the tribunal has no jurisdiction to consider the dispute.

With regard to the claim that Respondent fundamentally breached the contract:

- Mr. Franchot sold Tosa Inu Kennel a dog that fit the purpose for which it was intended;
- Consequently, Tosa Inu Kennel should not be able to declare the contract avoided.

III. Appointment of Arbitrator

11. The Respondent appoints the following individual as its party-appointed arbitrator:

Johann Georg Faust
43 Study Shack
Palm City, Canania
Tel: 0 721 0091
Fax: 0 212 2334

IV. Relief

12. Respondent, Brian Franchot requests this Tribunal to:

- Stay any proceedings until a Local Court of Canania has ruled on the existence (or not) of an arbitral agreement;

- If this tribunal shall not stay the proceedings, to dismiss the claim brought by Tosa Inu Kennel as unfounded.
- To order Tosa Inu Kennel to pay all costs of the arbitration, including the costs of legal representation incurred by Mr. Franchot.

/s/ Counsel to Brian Franchot
Counsel to Brian Franchot

September 13, 2022



JCAA
The Japan Commercial
Arbitration Association

September 17, 2022

Tosa Inu Kennel, LLC, Claimant

v.

Brian Franchot, Respondent

Case No. JCAA/2022/03

Procedural Order No. 1

1. This arbitration is between Tosa Inu Kennel, LLC and Mr. Brian Franchot. On September 15, 2022, the tribunal conferred with the parties by means of a conference call as to the procedure that should be followed in this arbitration.
2. Mr. Franchot continues to insist that the tribunal has no jurisdiction to consider the dispute because no arbitration agreement had been concluded between the parties and that public policy prevents the arbitral tribunal to exercise jurisdiction over the sale and transport of a dog that is classified as dangerous in Rosalandia. Tosa Inu Kennel insisted, on the other hand, that it was for the tribunal to determine whether there was an arbitration agreement and that there are no public policy concerns that prevent the tribunal from exercising its jurisdiction.
3. The tribunal has decided that there would be no immediate stay of the arbitral proceedings until both the Claimant and the Respondent had presented their arguments to the Tribunal. Because there are no anticipated witnesses, the Tribunal will combine the jurisdictional and merits arguments to increase the efficiency of the arbitration proceedings.
4. It is not expected that extensive factual development will be necessary at this first stage of arbitration. Those factual issues that may need development, however, will be determined in accordance with the Rules of the Tenth LL.M. Arbitration Moot Competition at the Center on International Commercial Arbitration of the American University Washington College of Law. In accordance with those rules, questions may be submitted to the Competition Committee, before midday EST, February 3, 2023, by e-mail to arbitration@wcl.american.edu. Answers will be provided to all the parties by February 17, 2023.
5. It was agreed that oral argument will take place in Washington, D.C. on March 24-25, 2023. Oral argument should discuss the following issues:

- Whether a stay of the arbitral proceedings should be granted awaiting a decision of the Local Court of Canania;
 - Whether the arbitral tribunal is barred from hearing this case due to public policy concerns because Tosa Inu dogs are considered dangerous to the public and the sale, breeding and transport are prohibited by law in Rosalandia;
 - Whether Claimant and Respondent concluded an agreement to arbitrate disputes between them and whether an arbitration award would be enforceable under the New York Convention;
 - Whether Samurai was fit for the particular purpose that had been made known to Respondent.
6. Oral argument should not discuss the remedies claimed by Claimant nor should there be a discussion of the allocation of the costs of arbitration. Those issues will be considered at a later stage of the arbitration if they are necessary.

/s/ President of the Tribunal
President of the Tribunal