

6th Circ. Sinks Ohio Atty's NBA Agent Dreams

By **Eric Heisig**

Law360 (January 3, 2023, 7:06 PM EST) -- A previously suspended Cleveland attorney who sued the NBA and the players union after he was denied the ability to become an agent has lost his appeal, with the Sixth Circuit saying he failed to state a viable antitrust claim.

Rosel C. Hurley III did not properly allege that either the league or the National Basketball Players Association violated the Sherman Act, the three-judge panel **ruled Friday**. Most importantly, Congress has broadly exempted labor unions from the antitrust law's provisions, the judges said.

The lawyer, who represented himself, fared no better by alleging conspiratorial behavior between the organizations, with the Cincinnati-based Sixth Circuit noting that the Supreme Court said that anti-competitive effects of a collective bargaining agreement are also excluded from antitrust scrutiny.

"Applied in this setting, that exception encompasses the NBPA's agreement with the NBA," Judge Chad A. Readler wrote for the panel. "By all accounts, the parties' collective bargaining was standard fare, done for the purpose of protecting players from unscrupulous agent behavior. In the absence of plausible allegations that the bargaining was not conducted in self-interested ways, there is little basis to find liability under the Sherman Act."

The panel, however, noted that Hurley was required to bring any challenges to his denial before an arbitrator, and said Hurley still has those rights.

The appeal is the latest turn in a more than two-year saga that began in 2020 with Hurley trying to get into the basketball agent game.

He applied to take the required online exam. His law license was suspended at the time and he disclosed this to the union, according to the opinion. The players' association told Hurley he was approved to take the exam but reversed course and rescinded its approval in February 2021.

The players' association wrote in its brief that it denied Hurley's application because he "is a convicted felon who had his law license repeatedly suspended — most recently for 'misrepresent[ing] his status as an Ohio lawyer in an attempt to mislead and intimidate small businesses into paying him money.'"

Hurley has multiple felony convictions from 2013 stemming from his improper use of a law enforcement computer network when he worked at the Cuyahoga County Prosecutor's Office. State records show his license was reinstated in April 2021.

Regardless, Hurley "cried foul" and said the NBA and players association did not want him to be an agent "for reasons unstated," according to the opinion. He sued in 2021, arguing the players' union was in cahoots with the NBA to ensure his exclusion. A trial judge dismissed his lawsuit, saying the associations' alleged actions were exempted from the Sherman Act.

While Hurley noted in his appeal that the union and agreement exemptions do not cover situations where unions are aiding organizations to create business monopolies, the Sixth Circuit said that he pointed to nothing to suggest that was what happened in his situation.

"All he can muster is the assertion that 'a reasonable person would assume that,' in view of the NBPA's eleventh-hour reversal and ensuing denial of his application, the NBPA and NBA must have impermissibly conspired to restrain trade," the opinion said. "We need not credit this conclusory

statement as true."

Sean L. McGrane, an attorney with Squire Patton Boggs LLP representing the players' association, said in an email Tuesday that his client was pleased with the Sixth Circuit's decision. Neither the NBA nor an attorney representing it did not immediately respond to messages seeking comment.

Hurley said in an email Wednesday that "I really appreciate the court taking time to consider my position on the issue and I completely respect the decision of the court."

U.S. Circuit Judges Eugene E. Siler Jr., John K. Bush, and Chad A. Readler sat on the panel for the Sixth Circuit.

Hurley represents himself.

The National Basketball Players Association is represented by Frederick R. Nance, Sean L. McGrane, Kristin L. Bryan and James M. Brennan of Squire Patton Boggs LLP.

The NBA is represented by Michael Shuster and Gregory Dubinsky of Holwell Shuster & Goldberg LLP and Lynn Rowe Larsen of Taft Stettinius & Hollister LLP.

The case is Rosel C. Hurley III v. National Basketball Players Association et al., case number 22-3038, in the U.S. Court of Appeals for the Sixth Circuit.

--Editing by Marygrace Anderson.

Update: This story has been updated to include a comment from Hurley and an attorney representing the National Basketball Players Association.