


Arbitrability Order

, an individual,
Claimant,

v.

STEVEN R. KALDI, an individual; and
DOES 1 through 10, inclusive

Respondents.

Procedural History

This matter originated with Claimant's *Demand For Arbitration Before JAMS*, dated April 29, 2005 and received by JAMS on or about May 16, 2005. Claimant's *Demand For Arbitration Before JAMS* specifies the various claims alleged against the Respondent as: INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS; INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE; INTENTIONAL or FRAUDULENT MISREPRESENTATION; DEFAMATION; INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS; HARASSMENT; and ABUSE OF PROCESS. Claimant requests injunctive relief and unspecified money damages IN EXCESS OF ONE HUNDRED THOUSAND DOLLARS (\$100,000),

Subsequently, JAMS issued a *Commencement of Arbitration* on May 24, 2005. A pre-arbitration conference call was scheduled for June 28, 2005 but did not occur due to Respondent's jurisdictional question regarding the arbitrability of this matter (Respondent's letter of June 21, 2005 alleged no "contractual jurisdiction" and advised his unavailability for the pre-arbitration conference call),

Claimant furnished a supplementary memorandum regarding this arbitrability issue on June 28, 2005. The Arbitrator did not receive a memorandum of position from the Respondent but was forwarded an email dated July 5, 2005, briefly outlining Respondent's objection to jurisdiction.

Jurisdiction

Quixtar's DRP provides the jurisdiction for this matter to be decided by an arbitrator at Section 11.5A:

Jurisdictional and arbitrability disputes, including disputes over the existence, validity interpretation or scope of the agreement under which Arbitration is sought, may be submitted to and ruled by the Arbitrator, unless the relevant law requires that a court make such determinations.

Findings of Fact

Respondent asserts in his email that Respondent's agreement with Quixtar has terminated and thus this matter is not arbitrable due to a lack of jurisdiction. In fact, Claimant's *Demand For Arbitration Before JAMS* states that on May 25, 2004, Respondent filed a request for Informal Conciliation with Quixtar, pursuant to Quixtar's IBO Rules of Conduct, but that on August 2, 2004, Respondent advised Quixtar that he would not participate in the requested process and terminated his agreement with Quixtar effective August 3, 2004, prior to any further proceedings or hearings.

in Claimant's supplemental memorandum of June 28, 2005, coimseil argues that notwithstanding the jurisdictional objection by Respondent, Claimant is still contractually bound to utilize the dispute resolution procedures outlined in the Quixtar agreement and that a finding of non-arbitrability would essentially deprive the Claimant of the benefit of her contract with Quixtar. The Arbitrator cannot agree with this interpretation. The Claimant still has the option of the Eighth Judicial District Court of Nevada, as counsel for the Claimant makes reference in his supplemental memorandum.

Accordingly, it is the finding of the arbitrator that the issues raised by the Claimant are not arbitrable, due to the termination of the contract, as Respondent alleges.

Dated

Hon. Samuel A. Thompson (Ret.)
Arbitrator