

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

**MARK AND PATRICIA
MIDDLETON, et. al,**

Plaintiffs,

vs.

4:06-CV-083-SPM

QUIXTAR, INC.,

Defendant.

_____ /

**ORDER DISMISSING COMPLAINT FOR DECLARATORY JUDGMENT,
MOTION TO COMPEL ARBITRATION AND REQUEST FOR EMERGENCY
STAY**

THIS CAUSE comes before the Court upon the “Complaint for Declaratory Judgment or, in the Alternative, to Compel Arbitration Before a Neutral Arbitration Body and Request for Emergency Stay” (doc. 1) filed February 16, 2006; the “Motion to Dismiss” filed by Defendant (doc. 13) filed February 24, 2006; and all exhibits, attachments, and associated materials. For the reasons set forth below, the Court finds the motion to dismiss must be granted.

FACTUAL AND PROCEDURAL BACKGROUND:

Quixtar¹ is a corporation engaged in a multilevel marketing scheme wherein independent business owners (IBO’s, also known as “distributors”) solicit orders for

¹ Quixtar is the successor in interest to the widely-known Amway corporation.

Quixtar merchandise from customers throughout the country. Those orders are filled by Quixtar and shipped to either the IBO or directly to the retail customer. Quixtar considers its “line of sponsorship” (LOS) one of its most valuable assets. The LOS is composed of the linkage between all IBO’s in the organization created by “sponsoring” individuals (recruiting others to become IBO’s) and selling merchandise to members. The more individuals an IBO “sponsors”, and the more sales he generates, the more he can earn in bonuses. Quixtar defines the LOS as “not only a list of Quixtar customers, but also the architecture and structure of the organization of Quixtar’s independent sales force, its sales commission structure and its key customers.”

Believing that a number of particular Quixtar IBO’s were actively participating in a competing multilevel marketing program—an action specifically prohibited by a non-compete clause in Quixtar’s Rules of Conduct²—Quixtar filed two documents: 1) an “Amended Statement of Claims and Request for Injunctive Relief” and 2) a “Verified Motion for Immediate Interim Award Granting Temporary and Preliminary Injunctive Relief” These documents were filed with Judicial Arbitration and Mediation Service (“JAMS”), which is the organization specifically authorized by the Rules of Conduct to arbitrate disputes arising between Quixtar and its IBO’s.

The IBO’s filed the instant complaint in this Court seeking to enjoin arbitration, claiming that the arbitration clauses are unconscionable and that JAMS

² See Quixtar, Inc. Rule of Conduct 6.5 (doc. 1-4 at 18).

“has a long-standing contractual relationship with Quixtar and cannot be impartial in the administration of the arbitration, or otherwise in selection of arbitrators and submission of the case to arbitration.” See doc. 1-7 at 2. Plaintiff IBO’s seek a declaratory judgment as to whether they are required to arbitrate, and if so, whether that arbitration must be with JAMS. In the alternative, Plaintiffs seek to enjoin the current JAMS arbitration and instead arbitrate with a neutral body such as the American Arbitration Association.

ANALYSIS:

“[A] court should inquire into whether it has subject matter jurisdiction at the earliest possible stage in the proceedings.” Univ. of South Alabama v. Am. Tobacco Co., 168 F.3d 405, 410 (11th Cir. 1999). “[O]nce a federal court determines that it is without subject matter jurisdiction, [it] is powerless to continue.” Id.

Although Plaintiffs bring the instant action pursuant to the Federal Declaratory Judgment Act³ and the Federal Arbitration Act,⁴ neither of those laws confers an independent basis for federal jurisdiction. See Bussey v. Harris, 611 F.2d 1001, 1005 n.7 (11th Cir. 1980)(stating that “the Declaratory Judgment Act . . . does not confer an independent basis of subject-matter jurisdiction”) and Household Bank v. JFS Group, 320 F.3d 1249, 1253 (11th Cir. 2003)(stating that “[t]he Federal Arbitration Act . . . does not provide an independent basis for a

³ 28 U.S.C. § 2201 *et. seq.*

⁴ 9 U.S.C. § 1 *et. seq.*

federal court's subject-matter jurisdiction"). Because the claims in the underlying dispute involve solely state law,⁵ the only remaining basis for jurisdiction would lie in 28 U.S.C. § 1332 (setting forth requirements for diversity jurisdiction). However, Defendant contends that neither the amount-in-controversy nor the diversity of citizenship requirement is met. Each requirement is discussed in turn.

Amount in Controversy

28 U.S.C. § 1332(a) requires that the amount in controversy exceed \$75,000. This amount, in a suit for declaratory or injunctive relief, is "measured by the value of the object of the litigation." Ericsson GE Mobile Communications, Inc. v. Motorola Communications and Electronics, Inc., 120 F.3d 216, 218 (11th Cir. 1997). This value is determined from the perspective of the plaintiff. Id. at 220. In other words, "the value of the requested injunctive relief is the monetary value of the benefit that would flow to the plaintiff if the injunction were granted." Cohen v. Office Depot, 204 F.3d 1059, 1077 (11th Cir. 2000).

In attempting to determine the value of these benefits, the Eleventh Circuit noted, "Although a diversity suit should not be dismissed unless 'it is apparent, to a legal certainty, that the plaintiff cannot recover [the requisite amount in controversy],' this liberal standard for jurisdictional pleading is not a license for conjecture." Morrison v. Allstate Indemnity Co., 228 F.3d 1255, 1268 (11th Cir. 2000)(internal citation omitted). Accordingly, the burden is on the plaintiff to show

⁵ Count I alleges breach of contract; Count II alleges tortious interference with existing contracts; Count III alleges tortious interference with advantageous business relationships; and Count IV alleges misappropriation of trade secrets. See doc. 1-2.

“that the benefit to be obtained from the injunction is ‘sufficiently measurable and certain to satisfy the . . . amount in controversy requirement.’” *Id.* (*quoting Ericsson*, 120 F.3d at 221).⁶

If the declaratory judgment and injunctive relief were granted, Plaintiffs would not be required to arbitrate their claim with Quixtar, presumably freeing them to litigate in a court of law. Alternatively, Plaintiffs would be required to arbitrate their claim under the auspices of the American Arbitration Association.

It is difficult, if not impossible, to place a value on these benefits. Indeed, one of the main attractions of arbitration is that it is more efficient and less costly than litigation. Even if another arbitration association were assigned to the case, and even assuming, without deciding, that Plaintiffs would be found by that other arbitration association not to have violated the non-compete clause, Plaintiffs make no allegations as to the value of this benefit: Would it be the present value of commissions and bonuses earned from the competing multilevel marketing company? Future value? At what point in time would a future value be calculated? What length of time would be included in these computations? It is completely unknowable how many individuals an IBO could sponsor, or how many sponsors those new IBO's could in turn recruit, or which products will be purchased and at what prices. Such conjecture and speculation is simply unable

⁶ Plaintiffs do not allege a single title or right in which they have an undivided interest; instead, it appears that they were joined for purposes of convenience and efficiency. Thus, each named plaintiff must individually satisfy the amount in controversy, which is the benefit that would flow to each plaintiff individually if the injunction were granted.

to provide a certain and measurable amount which would satisfy the requirements of § 1332.

Diversity of Citizenship

Defendant alleges that two Michigan respondents, who were included in the arbitration proceedings, were deliberately omitted from the instant suit in order to preserve diversity. As Quixtar is a Michigan corporation, the existence of a Michigan plaintiff would destroy diversity and divest this Court of jurisdiction. See, e.g., Anderson v. Moorner, 372 F.2d 747 (5th Cir. 1967).⁷ Defendant argues that these two respondents are necessary and indispensable parties and that their absence renders the complaint fatally defective under Federal Rule of Civil Procedure 19.

Rule 19 defines a party as necessary if 1) in his absence complete relief cannot be accorded among the current parties, or 2) disposition of the action would either impair or impede his ability to protect his interest or subject any of the current parties to a substantial risk of incurring multiple or inconsistent obligations. Because the named Plaintiffs in this action are not claiming a single right in which they have a common and undivided interest, it stands to reason that the absence of the Michigan respondents would have no effect, either positive or negative, on the relief awarded to the remaining Plaintiffs. The fact that the Michigan respondents may have requested relief identical to that of the other plaintiffs does

⁷ Decisions of the Fifth Circuit rendered after October 1, 1981 are binding on the Eleventh Circuit. Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981).

not militate a finding of necessity. Even without the respondents being named in the complaint, the remaining parties will still be accorded complete relief and will not be subject to multiple or inconsistent obligations. The Court finds no danger of the “whipsawing” referred to by Defendant in Owens-Illinois, Inc. v. Meade, 186 F.3d 435 (4th Cir. 1999), which involved simultaneous proceedings in both state and federal courts. Here, there is a single federal suit seeking to enjoin a scheduled arbitration. The Michigan parties are listed as respondents in the arbitration case and will be entitled to challenge the arbitrator’s decision in state court if they so choose. Thus, the absence of the Michigan respondents in the instant case is not a fatal defect under Rule 19.⁸

Failure to State a Claim Under Rule 12(b)(6)

Even if this Court possessed subject-matter jurisdiction over the instant case, Plaintiffs have still failed to state a claim upon which relief could be granted. The Federal Arbitration Act contemplates that any actions taken by a court, other than determining whether there is a valid agreement to arbitrate, occur only after the arbitration is complete and an award has been made. At that point, the parties are free to raise the issue of “evident partiality or corruption in the arbitrators.” 9 U.S.C. § 10(a)(2). As the Second Circuit Court of Appeals noted, “It is well established that a district court cannot entertain an attack upon the qualifications or partiality of arbitrators until after the conclusion of the arbitration and the rendition

⁸ Plaintiffs filed a certification that the “Michigan respondents” actually reside in Lansing, Illinois (doc. 11), but at the time of this order, residence has not yet been verified.

of an award.” Michaels v. Mariform Shipping, S.A., 624 F.2d 411, 414 n.4 (2d Cir. 1980).

Similarly, Plaintiffs’ unconscionability claim (which is, in essence, a claim that JAMS is an unfair forum)⁹ is premature. Plaintiffs argue that because 1) JAMS arbitrators are “trained” by Quixtar, and 2) JAMS arbitrators have a financial interest in the success of JAMS, they are not truly neutral and will not be able to render an impartial decision.

The arbitration clause does not leave Plaintiffs without options. As to the training issue, JAMS first provides a “Roster of Neutrals” which consists of JAMS arbitrators who have attended an orientation conducted by JAMS and Quixtar. See doc. 1-5 at 10. If the parties are unable to agree on an arbitrator from that list, an “Alternative Roster of Neutrals” is provided. Id. This alternative list contains the names of arbitrators who satisfy the same standards as those on the original roster but who have not attended a Quixtar orientation session. Id.

The arbitrator in this case, retired circuit judge Richard Neville (doc. 13 at 6), has neither heard of nor attended any Quixtar orientations. See doc. 1-7 at 13. He filed a disclosure to that effect and also confirmed that he “has no relationship or prior professional contact with any of the Respondents, nor with the Claimant, nor with any of the attorneys who have appeared on this case.” Id. at 14.

⁹ Plaintiffs provide no argument on either procedural or substantive unconscionability, instead referring the Court to an order entered by the United States District Court for the Northern District of Missouri which found the Quixtar arbitration unconscionable in both aspects. See doc. 1-6 at 18-26.

Alternatively, Plaintiffs ask to proceed under the secondary proceeding set out in the arbitration clause: “If for any reason JAMS is unable or unwilling to perform its responsibilities as Administrator, the parties agree that they will invite the American Arbitration Association to administer the arbitration in accordance with these Rules, selecting the arbitrator from among AAA arbitrators who satisfy the Standards of Experience, Impartiality and Diversity in Rules 11.5.15 and 11.5.16.” See doc. 1-5 at 7. Failing that, the parties are permitted to jointly select an independent arbitrator.

Even AAA arbitrators may not be completely neutral. Canon VII of the AAA’s Code of Ethics for Arbitrators in Commercial Disputes states that party-appointed arbitrators “may be predisposed towards the party who appointed them but in all other respects are obligated to act in good faith and with integrity and fairness.” See Sunkist Soft Drinks, Inc. v. Sunkist Growers, Inc., 10 F.3d 753, 759 (11th Cir. 1993).

The key, then, is whether the arbitrator treats both parties fairly and in good faith. Plaintiffs have pointed to no decisions by Arbitrator Neville that would evidence bias toward Quixtar, and they have presented no evidence that Neville would be unable or unwilling to remain neutral and impartial. Their “lack of confidence” in Arbitrator Neville is not sufficient to warrant injunctive relief. If Plaintiffs believe the result of the arbitration to be unlawfully biased in favor of Quixtar, the proper remedy is to move to vacate or set aside the award.

Finally, to the extent that Plaintiffs complain about clauses in the contract

other than those relating specifically to arbitration (e.g., the allegation that Plaintiffs never agreed to the non-compete clause), such complaints are properly heard by the arbitrator, not the court. Challenges to the substance of a contract containing an arbitration clause, rather than to the existence of a contract containing an arbitration clause, should be resolved in the arbitration itself. See Buckeye Check Cashing, Inc. v. Cardegna, 2006 WL 386362, No. 04-1264, slip op. at 5 (Feb. 21, 2006); Bess v. Check Express, 294 F.3d 1298, 1305-06 (11th Cir. 2002).

CONCLUSION:

As noted *supra*, a court without subject-matter jurisdiction is powerless to act. Plaintiffs' claim of diversity jurisdiction, the sole jurisdictional ground alleged, fails because the conclusory assertion that the amount exceeds \$75,000 is not measurable to a degree of legal certainty. It has not been shown that any Plaintiff would benefit monetarily (and if so, to what extent) from a favorable decision regarding either declaratory judgment or injunctive relief. Without a measurable and certain benefit, the amount in controversy requirement is not met.

Even if subject-matter jurisdiction existed, the claim is not ripe. An enforceable arbitration clause exists. Complaints or fears about the propriety or fairness of that arbitration process are cognizable in a motion to vacate or set aside the award once the arbitration is complete.

Accordingly, it is

ORDERED AND ADJUDGED as follows:

1. The motion to dismiss (doc. 13) is hereby *granted*.

2. The complaint, motion, and request for stay (doc. 1) is *dismissed* in its entirety.

DONE AND ORDERED this first day of March, 2006.

s/ Stephan P. Mickle

Stephan P. Mickle
United States District Judge

/pao