

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
ENTERED
MAY 20 2005
Michael N. Milby, Clerk of Court

DR. JOE & DAWN MORRISON, *et al.*,
Plaintiff(s)

v.

AMWAY CORPORATION, *et al.*,
Defendant(s)


CIVIL ACTION NO. H-98-0352

ORDER GRANTING PLAINTIFFS' REQUEST FOR DISCOVERY

Pending before the Court are Plaintiffs' motion to vacate arbitration award and reinstate the case (Doc. 89) and Defendants' motion to confirm and enter judgment on final arbitration award (Doc. 98). The parties extensively briefed the issues and the Court held a hearing on the motions on 20 May 2005. After considering the record, the applicable law, and the arguments of counsel, the Court has concluded that discovery is needed before the motions can be ruled on. Under *Commonwealth Coatings* and its progeny, an arbitrator bears an affirmative duty to disclose any relationship that might create an appearance of bias. 393 U.S. 145, 149 (1968). A party challenging an arbitration award for evident partiality or corruption is entitled to discovery when the question posed cannot be gauged from the face of the arbitral record. *See Legion Insurance Co. v. Insurance General Agency, Inc.*, 822 F.2d 541, 542-43 (5th Cir. 1987). The Court concludes that such is the case here: the current record is insufficient to allow the Court to determine the precise nature of the contacts between Jody Victor and Anne Gifford, as well as the precise nature of the relationship between Defendant Amway Corporation and JAMS. Furthermore, the Court finds that Plaintiffs have not waived their objections to Arbitrator Gifford's alleged bias, in particular with respect to the alleged contacts with Mr. Victor. Accordingly, it is **ORDERED** that Plaintiffs may conduct discovery in support of their motion to vacate arbitration award and reinstate the case (Doc. 89). Defendants shall cooperate with Plaintiffs' discovery requests and in particular shall produce to Plaintiffs all discovery produced to the plaintiffs in *Nitro Distributing, Inc. et al. v. Alticor, Inc. et al.*, No. 03-3290-CV-S-RED, pending in the United States District Court for the Western District

of Missouri, Southern Division. The Court advises the parties that it expects that discovery on this issue can and should proceed in a professional and expeditious manner. Any discovery disputes should be brought to the immediate attention of the Court, and the parties must follow these special procedures: (1) a courtesy copy of the motion relating to the dispute must be sent directly to chambers, along with a 3 ½ inch diskette containing the underlying Word or Wordperfect file of the motion's text (though the text of any attachments need *not* be included on the diskette); (2) responses to any such motions must be filed within **FIVE DAYS** of the entry of the relevant motion, and must be filed in the same manner (*i.e.*, with a courtesy copy and diskette being sent directly to chambers); and (3) any replies must be filed within **THREE DAYS** of the entry of the relevant response and in the same manner as described above, though the Court notes that it may rule on the underlying motion immediately after receiving only the response. In accordance with the Local Rules of this Court, all of these filings (motions, responses, replies) must contain appropriate Proposed Orders setting forth in detail the precise relief requested and the precise legal and factual bases supporting such relief. Assuming full cooperation from Defendants, the Court believes the discovery contemplated by Plaintiffs can be conducted in approximately two months. Accordingly, the Court tentatively sets a discovery cutoff date of **01 AUGUST 2005**. The parties may extend this deadline by agreement, and Plaintiffs may move the Court to extend the deadline for cause. Once discovery is complete the parties shall file a joint status report informing the Court of the following: (1) a summary of what each side believes discovery revealed; (2) a statement of what matters remain, at that time, for the Court to rule on; and (3) a statement of whether a hearing is required to resolve those matters. The Court will rule on the motion to vacate (Doc. 89) and motion to confirm arbitration award (Doc. 98) after receiving the joint status report.

SIGNED at Houston, Texas, this 20th day of May, 2005.


MELINDA HARMON
UNITED STATES DISTRICT JUDGE