

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

The Honorable Edgar W. Dickson
Circuit Court Judge

Case No. 2011-CP-38-00853
Appellate Case No. 2014-000459

RECEIVED
MAR 25 2015
SC Court of Appeals

Directory Assistants, Inc., ... Appellant,

v.

Dennis Shay, d/b/a Marsch Chiropractic Center, ... Respondent.

RECORD ON APPEAL

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rec'd 3/4/2014
36358/01500

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF ORANGEBURG

FIRST JUDICIAL CIRCUIT

Directory Assistants, Inc.,

2011-CP-38-00853

Plaintiff,

Dennis Shay, d/b/a Marsch
Chiropractic Center,

Defendant.

ATTEST: TRUE COPY

Wingia B. Clark

CLERK OF COURT

ORANGEBURG COUNTY, SC

FILED FOR RECORD
WINGIA B. CLARK
CLERK OF COURT
ORANGEBURG COUNTY, SC

2014 FEB 26 AM 12: 57

**ORDER DENYING PLAINTIFF'S
MOTION TO ALTER OR AMEND JUDGMENT**

On September 30, 2013 this Court entered an Order granting Defendant relief from Plaintiff DAI's filing of a Connecticut judgment against them in South Carolina. DAI now moves to Alter or Amend the Order granting relief. The Court declines to alter or amend its previous ruling, and finds that Plaintiff's motion should be denied.

FACTS & PROCEDURAL HISTORY

The Plaintiff, Directory Assistants, Inc., (DAI) is a Connecticut corporation. In 2009, DAI obtained an arbitration award for \$34,582.00 against "Dennis Shay, d/b/a Marsch Chiropractic Center" from the "American Dispute Resolution Center," also based in Connecticut. After converting the award to a judgment in Connecticut Superior Court, DAI filed it in this Court on July 20, 2011.

After receiving notice of filing, Defendant timely filed an objection in this Court and moved to amend or vacate the judgment as provided by §15-35-940 (Uniform Enforcement of Foreign Judgments Act).

On September 30, 2013, following a hearing on the matter, the Court found Defendant Shay was entitled to relief from filing the Judgment under the Act (as adopted in both South Carolina and Connecticut) under Rule 60 SCRPC. *Erickson v. Boykin*, 383 S.C. 497 (2009). Specifically, the Court found that the intended beneficiary of the "Consulting Contract" relied upon by DAI was not Dennis Shay individually, but a wholly separate legal entity, "Dennis J. Shay, PA d/b/a Marsch Chiropractic." DAI's contract expressly identified Marsch as the "Advertiser", referred repeatedly DAI's providing "business" services, and referenced Shay only as the "Person Authorized to Contract for advertiser." It was clear Shay was not himself a party to the contract, and that the actual party to the contract was Dennis J. Shay, PA. Accordingly, the Court found that Shay was entitled to relief under Rule 60 on

1/4 *ED*

grounds of mistake.

As an additional ground for relief, the Court found that no court had ever determined whether a valid arbitration agreement existed *before* the arbitration took place. Prior to arbitration, Shay protested he had not entered into any agreement with DAI. In such cases, both Connecticut and South Carolina law are clear: a court – not an arbitrator – must determine the existence of a valid arbitration agreement *before* a party can be compelled to arbitrate. See, *Reiss v. Chase Bank USA, N.A.*, 2008 Conn. Super. LEXIS 1959 (Conn. Super. Ct. July 30, 2008); *MBNA Am. Bank, N.A. v. Christianson*, 377 S.C. 210 (S.C. Ct. App. 2008; *aff'd* Feb. 1, 2010).¹ In Shay's case, the arbitrator ignored this requirement and proceeded with arbitration.²

As more specifically set forth in the Court's prior Order, Defendant's Motion for Relief was granted, and DAI's South Carolina judgment was vacated. On October 10, 2013, Plaintiff DAI moved to Alter or Amend this Order.

DISCUSSION

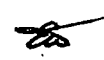
DAI contends in its motion that the Federal Arbitration Act (FAA) prevents this Court from providing relief from the Connecticut judgment. To support this argument DAI relies on *e.spire Communications, Inc. v. CNS Communications*, 39 Fed. Appx. 905 (4th Cir. 2002). The Court disagrees. While the FAA is applicable in this situation, the decision in *e.spire* is distinguishable.

In *e.spire*, two telecommunications firms entered into a series of agreements, including a Master Services Agreement (MSA). The MSA contained an arbitration clause. A dispute later arose between the parties. In this dispute, CNS contested arbitration, contending the MSA was not a "final" contract. This dispute was resolved, however, by the parties' entry into a Settlement Agreement. In the latter Settlement Agreement the parties expressly agreed to arbitrate their dispute before the American Arbitration Association.

After signing the Settlement Agreement, however, a new dispute arose over the location where the arbitration would be held. CNS refused to attend the

¹ (FN — likewise, the Federal Arbitration Act, upon which DAI's instant motion is based, expressly provides for court determination when one party disputes the existence of an agreement to arbitrate. See, 9 USC Section 4, which states: A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court ... for an order directing that such arbitration proceed.... If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded by the party alleged to be in default ..., the court shall hear and determine such issue.... [If a jury trial is demanded and] the jury find[s] that no agreement in writing for arbitration was made ... the proceeding shall be dismissed.

² Of further concern to the Court is the fact that there is no record of an arbitration hearing for the Court to review. Thus, while the arbitration record shows that Shay appeared in the arbitration proceeding through counsel and objected to the jurisdiction of the arbitrator, it is unclear if even the arbitrator himself considered Shay's objection.

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arbitration and an award was entered against it in its absence. CNS moved to vacate the award, relying on its original argument that "no valid agreement to arbitrate" existed under the MSA.

The Court found that CNS's reliance on its original argument over the meaning of the MSA was misplaced, as CNS could not dispute it entered knowingly into the later Settlement Agreement, which expressly provided for arbitration. Under such circumstances, the Court found CNS was not entitled to relief. 39 Fed. Appx. 905 (4th Cir. 2002).

The present case is distinguishable. In contrast to *e.spire*, the present case involved a dispute as to whether a valid arbitration agreement ever existed (in Connecticut or elsewhere). No agreement was reached on this issue and it was never put before a Court. Rather, the evidence presented by Shay, which the court found credible, demonstrated he did not knowingly enter into an agreement to arbitrate (particularly on his own behalf) and that he expressly disputed the arbitration. There was no determination by any court – including a South Carolina Court (which would have otherwise had jurisdiction over this dispute) – that a valid arbitration agreement existed.

Contrary to DAI's argument, the requirement for prior judicial review fully follows the requirements of the FAA. See, 9 U.S.C.A. § 4. Despite the fact that FAA procedure for prior review was not complied with (in any court) DAI nevertheless argues that the FAA precludes this Court from providing relief under Rule 60. The Court disagrees. While the FAA allows for review by a District Court, "general contract principles of state law apply in a court's evaluation of the enforceability of an arbitration clause" even if same is governed otherwise by the FAA. *Munoz v. GreenTree*, 343 S.C. at 539, 542 S.E.2d at 364. See also, *Christianson*, *supra*. This issue was properly before the Court on Shay's motion for relief.³

In summary, the Court reaffirms its finding that this case was submitted to a Connecticut arbitrator without prior judicial review, and with no showing that Shay had agreed to forfeit access to the judicial system in the state where he resides and where the contract was entered into and was to be performed.

ORDER

Based on the foregoing, the Court DENIES DAI's Motion to Alter or Amend its prior Order granting relief to Shay.

³ As an additional matter, the Court notes that traditionally, a Defendant has the right to defend himself in his home state. There is nothing in the record that indicates Shay received any bargained-for consideration under the contract to give up this constitutional right. The contract was executed in South Carolina, to be performed in South Carolina, for business done in South Carolina. There are no "minimum contacts" with Connecticut apart from the arbitration clause in the contract. This Court will not deprive Defendant of his right to defend himself against these claims in the courts based on these facts.

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AND IT IS SO ORDERED.



Edgar W. Dickson, Judge
1st Judicial Circuit

January 31, 2017

4/4 

ROA_0004

McD 10/11/2013
36358/01500

STATE OF SOUTH CAROLINA

) COURT OF COMMON PLEAS

COUNTY OF ORANGEBURG

) FIRST JUDICIAL CIRCUIT

Directory Assistants, Inc.,

) 2011-CP-38-00853

Plaintiff,

Dennis Shay, d/b/a Marsch
Chiropractic Center,

Defendant.

FILED FOR RECORD
CLERK OF COURT
ORANGEBURG COUNTY, SC

2013 SEP 30 PM 2:07

**ORDER GRANTING DEFENDANT'S MOTION
FOR RELIEF FROM FOREIGN JUDGMENT**

This case is before the Court on Defendant's Objection to the Plaintiff's filing of a foreign Judgment against him, and his related motions under Rules 59 and 60, SCRCF. After considering the pleadings, affidavits and exhibits stipulated into evidence, and hearing argument of counsel, the Court finds that Defendant's Motions should be Granted.

FACTS

The Plaintiff, Directory Assistants, Inc., (DAI) is a Connecticut corporation. In 2009, DAI obtained an arbitration award for \$34,582.00 against Defendant "Dennis Shay, d/b/a Marsch Chiropractic" from the American Dispute Resolution Center, also based in Connecticut. DAI filed the arbitration award in the Connecticut Superior Court, and obtained a judgment confirming it. DAI then filed its judgment in this Court on July 20, 2011. Besides the judgment and interest, DAI claims entitlement to fees and costs totaling \$13,935.00 for filing the judgment and attempting to collect the debt in South Carolina (Aff. Of Fees, 1/28/2013).

Defendant, Dennis Shay (Shay) is a chiropractor who practices in Orangeburg. After receiving notice that DAI had filed its judgment in South Carolina, Shay filed an objection in this Court and moved to amend or vacate the judgment as provided by §15-35-940. Shay maintains that that the judgment mistakenly was entered against him individually, rather than his chiropractic business. He also points out that that no court has ever ruled of whether DAI's claims were subject to arbitration, as required by both the laws of South Carolina and Connecticut.

1/5 *SS*

ATTEST: TRUE COPY

Wingja B. Clark

CLERK OF COURT
ORANGEBURG COUNTY, SC

ISSUES

The issues before the Court are thus as follows:

- 1) whether Shay is entitled to have the entry of judgment in South Carolina vacated under §15-35-940, and
- 2) whether DAI is entitled to fees and costs for its South Carolina filing and collection activities.

DISCUSSION

A. Entitlement to Relief Under Rule 60

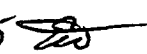
The filing and enforcement of foreign judgments is governed by the Uniform Enforcement of Foreign Judgments Act (the Act). Both Connecticut and South Carolina have adopted the Act. See, Connecticut Code Sec. 52-604, et. seq., and S.C. Code §15-35-900, et. seq. The Act sets forth the procedure for filing a foreign judgment in South Carolina. The intent of the Act is that each state treat the judgments of its fellow states as it would its own judgments. This includes not only giving the same "full faith and credit" to the foreign judgment as it would to its own judgments, but giving the judgment debtor the same "defenses, proceedings for reopening, vacating or staying the judgment" as well. Conn. Code Sec. 52-605; S.C. Code §15-35-940.

The Act, as adopted by both states, provides that a judgment debtor against whom a foreign judgment is filed may move for relief from the judgment "on any other ground for which relief from a judgment of *this* state is allowed." §15-35-940. (Emphasis added). The South Carolina Supreme Court has held that this relief allows for a post-judgment motion under Rule 60, SCRPC. *Erickson v. Boykin*, 383 S.C. 497 (2009). Shay now presents such a motion. Thus, if Shay is entitled to relief under Rule 60, DAI's Connecticut judgment must be vacated in South Carolina.

Under Rule 60, the court may relieve a party from a judgment, inter alia, where the judgment is the product of mistake or where it is otherwise void.

1. Relief Based on Mistake

Viewing the entire record and the extrinsic evidence stipulated in by the parties, I find that Dr. Shay is entitled to relief under Rule 60(b) on the grounds of mistake. The mistake lies in the false premise that the party to whom DAI's consulting contract provided services for was "Dennis Shay d/b/a Marsch Chiropractic."

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It is clear from the evidence stipulated into the record the chiropractic business is not a "d/b/a" but a professional corporation. According to its Articles of Incorporation, "Dennis J. Shay, PA" was incorporated in South Carolina on March 31, 1994. (Articles of Incorporation).

The fact that the professional corporation is the actual party for whom DAI was to provide its services is evidenced by DAI's Consulting Contract. First, the Contract expressly identifies Marsch as the "Advertiser." Second, it refers repeatedly to DAI's providing "business" services. (Contract, p. 1-2). Third, the business services offered revolve solely around yellow page advertising, which by definition is business advertising. Fourth, the contract references Shay only as the "Person Authorized to Contract for Advertiser" indicating Shay and the "advertiser" were not one and the same. (Contract, p. 2).¹

In summary, it is clear that any services to be provided were to be provided to the corporation, Dennis J. Shay, PA, not to Dennis Shay individually. Rule 60(b) expressly provides relief on grounds of mistake, regardless of whether the mistake is the moving party's or not.² I therefore find that Shay is entitled to relief from judgment on the grounds of mistake. Rule 60, SCRPC. *BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 502-03 (2006)(decision to grant or deny a motion for relief from judgment lies within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion).

2. Relief based on Validity of Connecticut Judgment

Although a finding of "mistake" alone is a sufficient basis for relief, the Court will briefly address Dr. Shay's additional argument that the Connecticut judgment is void because no court ever determined whether he had to arbitrate before the arbitration actually took place. The Court finds this argument persuasive as well.

Both Connecticut and South Carolina law require that a court – not an arbitrator – must determine the existence of a valid arbitration agreement before a party can be compelled to arbitrate. See, *Reiss v. Chase Bank USA, N.A.*, 2008 Conn. Super. LEXIS 1959 (Conn. Super. Ct. July 30, 2008) (a party who contests making a contract containing an arbitration provision cannot be compelled to arbitrate the threshold issue of agreement to arbitrate); *MBNA Am. Bank, N.A. v. Christianson*, 377 S.C. 210 (S.C. Ct. App. 2008; (aff'd Feb. 1, 2010) (if there is a

¹ Shay's actual signature does not appear on the contract.

² Rule 60(b) is substantially the same as Code § 15-27-130. There are two differences. First, existing State law provides for relief from a "judgment taken against him through his mistake." Rule 60(b) deletes "his" and thus there may be a motion for relief from other mistakes.

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challenge to an arbitration, it is for the courts, not the arbitrator, to decide whether the agreement to arbitrate exists).

In the present case, Dr. Shay contested the validity of the arbitration agreement. However, no court determination of arbitrability has ever been sought or made.

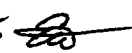
The record reflects, and the parties do not dispute, that DAI filed a demand for Arbitration with the American Dispute Resolution Center, Inc., in the Spring of 2009. The arbitrator then set a hearing in Connecticut. Prior to the hearing, Dr. Shay's counsel made a written objection to the arbitrator challenging the validity of the arbitration provision. This letter, stipulated into evidence by the parties, stated:

"The contract was made in South Carolina. Under South Carolina law and the Federal Arbitration Act, the party asserting the existence of an arbitration agreement (i.e., DAI) is required to seek court intervention to determine whether there is an agreement to arbitrate before proceeding through arbitration. See, 9 USC §4 (2000); MBNA America Bank v. Christianson, Slip Op. 4349 (Ct. App. March 4, 2008)." (P. 2, Shay Obj. Letter).³

Despite this objection, the matter proceeded to arbitration on September 17, 2009 with no prior court determination of arbitrability. After getting its award, DAI then applied for confirmation with the Connecticut Court, which it received. Although Dr. Shay obtained counsel in Connecticut to object to confirmation, the Connecticut court did not determine the validity of the arbitration agreement in any proceeding. A careful review of the orders shows that the Connecticut court expressly considered no "disputed factual claim" because Dr. Shay would not appear personally in Connecticut. (Conn. Order 6/7/2011).

In short, it is clear from the record no court has determined the threshold issue of arbitrability. Not even the Arbitrator's findings address Shay's challenge in his Award. As the judgment that DAI seeks to enforce is predicated wholly on the

³ Although not stated in Shay's letter, the Court notes that the arbitration provision contained in the consulting contract does not meet the requirements for validity under South Carolina's Uniform Arbitration Act, § 15-48-10, which provides that "notice that a contract is subject to arbitration pursuant to this chapter shall be typed in underlined capital letters, or rubber-stamped prominently, on the first page of the contract and unless such notice is displayed thereon the contract shall not be subject to arbitration."

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Award, it cannot stand. Dr. Shay is therefore entitled to be relieved from the effect of this judgment in South Carolina. Rule 60, SCRPC; *Christianson*, supra.⁴

B. DAI's Request for Attorney's Fees

Lastly, DAI requests it be awarded \$13,495.00 for attorney's fees and \$440.00 in costs for its South Carolina filing and collection activities.⁵ This request is beyond the scope of DAI's action to enroll its judgment. Such claims must be based on either statute or contract. The Uniform Enforcement of Foreign Judgments Act provides for no such relief. If this claim is based on the consulting contract, DAI would (by its own argument) be required to arbitrate this claim.⁶

Based on the above, and on the granting of relief to Defendant, DAI's request is denied.

ORDER

Based on the foregoing, the Court GRANTS Shay's Motion for Relief, and denies DAI's request for attorney's fees.

The Clerk of Court is thus directed to vacate the judgments filed by DAI on July 20, 2011 as against Shay and/or Shay d/b/a Marsch Chiropractic.

AND IT IS SO ORDERED.



Edgar W. Dickson, Judge
1st Judicial Circuit

9/20

, 2013

Oranburg, S.C.

⁴ This Court takes no position on the viability of the judgment in Connecticut, but relieves Shay of the prospective effect of the judgment in South Carolina. The Court notes further that, while DAI characterizes the issue as one of personal jurisdiction over Shay, Rule 60 applies in numerous cases where there is no challenge to personal jurisdiction.

⁵ The Affidavit of Fees discloses neither the number of hours expended by DAI's counsel nor the hourly rate; thus, the Court could not make a determination of whether same were reasonable even if such fees could be awarded.

⁶ The Act itself, §15-35-960, provides that judgments that are contrary to public policy may not be given effect. The purpose of DAI's consulting contract on its face was to simply assist the business in making choices about its yellow page advertising. (See, consulting contract). The fact that this service turned into a claim for more than \$50,000.00 (the majority of which is liquidated damages and fees) troubles the court. Also troubling is the fact that, despite the absence of any forum selection clause or choice of laws provision in the consulting contract, DAI filed the arbitration in its home state and thereby obtained relief against Shay. Absent his physical appearance, Shay was not permitted to contest any of the above.

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ATTEST: TRUE COPY



CLERK OF COURT
ORANGEBURG COUNTY, SC

DOCKET NO: HHDCV095033765S

DIRECTORY ASSISTANTS

V.
SHAY, DENNIS

SUPERIOR COURT

JUDICIAL DISTRICT OF HARTFORD
AT HARTFORD

ORDER 419022

6/7/2011

ORDER

ORDER REGARDING:
06/01/11 121.00 MOTION TO REARGUE/RECONSIDER.

The foregoing, having been considered by the Court, is hereby:

ORDER: GRANTED

The court has reconsidered its order confirming the arbitrator's award in this matter in light of the defendant's objection. However, the court previously indicated that if the defendant wished the court to consider the factual claims set forth in his objection and affidavit he must be present to testify and be subject to cross examination. He did not do so. Therefore the court has considered the objection but not the disputed factual claims made therein. The order of the court confirming the arbitration award stands.

419022

Judge: JANE S SCHOLL

DOCKET NO: HHDCV095033765S

SUPERIOR COURT

ORDER 419022

DIRECTORY ASSISTANTS

JUDICIAL DISTRICT OF HARTFORD
AT HARTFORD

V.
SHAY, DENNIS

5/25/2011

ORDER

ORDER REGARDING:
10/22/09 100.31 APPLICATION

The foregoing, having been considered by the Court, is hereby:

ORDER: GRANTED

The arbitration award is confirmed, absent objection.

419022

Judge: JANE S SCHOLL

DO NOT CERTIFIED
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JUDICIAL DISTRICT OF
HARTFORD
STATE OF CONNECTICUT

HHDCV095033765S 5/25/2011

Page 1 of 1

Kimberly Reid, Administrative Assistant

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DOCKET NO: HHDCV095033765S

SUPERIOR COURT

ORDER 419022

DIRECTORY ASSISTANTS

V.
SHAY, DENNIS

JUDICIAL DISTRICT OF HARTFORD
AT HARTFORD

10/25/2010

ORDER

ORDER REGARDING:
09/24/10 112.00 OBJECTION

The foregoing, having been considered by the Court, is hereby:

ORDER:

If the defendant wishes the court to consider the factual claims set forth in his objection and affidavit, he must be present to testify and be subject to cross examination. This matter is continued to November 22, 2010 on calendar #3. If the defendant does not appear at that time, the court will consider the matter on the papers but will not consider the defendant's affidavit.

419022

Judge: JANE S SCHOLL

DIRECTORY ASSISTANTS, INC.

SUPERIOR COURT

v.

JUDICIAL DISTRICT OF HARTFORD

DENNIS SHAY d/b/a MARSCH
CHIROPRACTIC CENTER

OCTOBER 22, 2009

ORDER TO SHOW CAUSE

The plaintiff in the above-entitled action, having applied for an order confirming an arbitration award pursuant to Conn. Gen. Stat. § 52-417 to issue forthwith, it is hereby ORDERED that the defendant, Dennis Shay d/b/a Marsch Chiropractic Center having a last known business address at 235 Elliot Street, Orangeburg, South Carolina 29115, appear before the undersigned or other judge of the SUPERIOR COURT in and for the Judicial District of Hartford on the 16th day of November 2009, at 9:30 in the fore noon, then and there to show cause, if any, why the Court should not issue the order as prayed for in said application, and it is

FURTHER ORDERED, that notice of said motion and of this Order be given to said defendant by a proper officer leaving with said defendant a true and attested copy of said motion and of this Order on or before November 9, 2009.

Adam Bulewicz, Jr.
Judge of the Superior Court

Hearing at 95 Washington St. Hartford CT
in Courtroom 3.

1 STATE OF SOUTH CAROLINA)
2) IN THE COURT OF COMMON PLEAS
3 COUNTY OF ORANGEBURG)

4 DIRECTORY ASSISTANTS,)
5 INC.,)
6) TRANSCRIPT OF RECORD
7) 2010-CP-38-00853

8 -vs-) JULY 31, 2012
9) ORANGEBURG, SOUTH CAROLINA
10 DENNIS SHAY, D/B/A)
11 MARSCH CHIROPRACTIC)
12 CENTER,)

13 DEFENDANT.

14 B E F O R E:

15 THE HONORABLE E.W. DICKSON, JUDGE.

16 A P P E A R A N C E S:

17 BRIAN A. CALUB, ESQUIRE
18 ATTORNEY FOR THE PLAINTIFF

19 DAVID ANDREW MAXFIELD, ESQUIRE
20 ATTORNEY FOR THE DEFENDANT

21 MICHAEL R. WATTS
22 CIRCUIT COURT REPORTER
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WITNESSES

PAGE

(NO WITNESSES CALLED)

EXHIBITS

	NO.	DESCRIPTION	ID.	EV.
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1 (PROCEEDINGS, JULY 31, 2012)

2 THE COURT: The next matter up it looks like is
3 Directory Assistants, Inc., versus Dennis Shay, number six
4 and seven on my docket.

5 MR. MAXFIELD: That's correct, Your Honor.

6 Actually number seven has been resolved. There is
7 nothing to be litigated there.

8 I believe the only thing in question is number
9 six, which is a 2011 notice of filing foreign judgment.

10 THE COURT: All right, sir.

11 And your name please, sir?

12 MR. CALUB: Your Honor, my name is Brian Calub for
13 the plaintiff Directory Assistants, Incorporated.

14 THE COURT: All right. And you said seven was
15 resolved?

16 MR. CALUB: That is correct, Your Honor.

17 We have actually vacated that judgment and notice
18 of judgment. We can leave that vacated.

19 There is a second judgment that was entered in the
20 case. That is the one that's being enforced.

21 THE COURT: Okay. All right.

22 Sir, I need -- so 2011-853.

23 Okay. This is 2011-CP-38-853 is Directory
24 Assistants, Inc., plaintiff, versus Dennis Shay, doing
25 business as Marsch Chiropractic Center, defendant.

1 And Mr. Calub, you represent the plaintiffs.

2 And you are Mr. Maxfield?

3 MR. MAXFIELD: Yes, sir, I am.

4 THE COURT: Hey, Mr. Maxfield.

5 MR. MAXFIELD: Good morning.

6 THE COURT: And you represent Dr. Shay?

7 MR. MAXFIELD: I do, Your Honor. This is my
8 motion.

9 THE COURT: Okay. All right.

10 MR. MAXFIELD: So I'll be starting off.

11 The bailiff has been kind enough to offer to get
12 the lights. I have got a projector, as the court can see.
13 Hopefully the court can see.

14 THE COURT: Yes, sir.

15 MR. MAXFIELD: Your Honor, can you see that okay?

16 THE COURT: Yes, sir.

17 MR. MAXFIELD: Okay.

18 Judge, as I mentioned, this is my motion.

19 As Mr. Calub has mentioned, DAI has filed a
20 Connecticut judgment in South Carolina and I filed an
21 objection to it.

22 And if I could start off --

23 And, judge, if I may, would it be okay if I sat
24 down while I'm doing this and projected this?

25 THE COURT: Sure.

1 MR. MAXFIELD: I don't mean any disrespect.

2 THE COURT: Sure.

3 MR. MAXFIELD: Thank you.

4 Let me start off with just kind of the background
5 of how we got where we were.

6 THE COURT: And I don't mean to interrupt you.

7 MR. MAXFIELD: Yes, sir.

8 THE COURT: Do you happen to have, Mr. Maxfield,
9 something, like a handout or anything?

10 MR. MAXFIELD: I do. Yeah, let me -- if I may
11 approach, I'll hand that out. I'm going to approach and
12 hand up an affidavit of Dr. Shay.

13 THE COURT: Okay.

14 MR. MAXFIELD: And also the relevant case law.

15 THE COURT: Okay.

16 MR. MAXFIELD: And I can maybe shorten this --

17 THE COURT: Have you given Mr. Calub a copy?

18 MR. MAXFIELD: I have. Mr. Calub and I --

19 And Brian, if you want to kind of address what the
20 stipulation we have with respect to that affidavit going
21 into the record.

22 MR. CALUB: Your Honor, I have no problem with his
23 affidavit on the record, with my reservation or right to
24 move to strike. I don't mind him building his case and
25 presenting his case to you, but I don't believe it's

1 unnecessary to relitigate issues that were resolved in the
2 Connecticut court, those questions being personal
3 jurisdiction and the merits of the arbitration award.

4 THE COURT: Uh-huh.

5 MR. CALUB: I just -- I think that if Mr. Maxfield
6 going is to go down that path, I would like to reserve my
7 right to strike all what he presents, because I don't think
8 it's proper for this court to reconsider the matters that
9 have already been addressed for the judgment, but,
10 nevertheless, he has a right to present his case.

11 THE COURT: Oh, no, he can do his --

12 MR. CALUB: So I'm just going to --

13 THE COURT: But normally speaking, and y'all
14 correct me, whether or not this judgment is good or not
15 depends upon whether or not your proper -- if they had
16 jurisdiction over him, is that correct?

17 MR. MAXFIELD: It would depend on personal
18 jurisdiction. It would depend on subject matter
19 jurisdiction as well.

20 THE COURT: Right.

21 MR. MAXFIELD: Yes, sir.

22 THE COURT: So that's what I'm assuming you are
23 addressing here.

24 MR. MAXFIELD: That's part of it, yes, sir.

25 THE COURT: Why would you be addressing anything

1 else?

2 MR. MAXFIELD: Anything else?

3 The Supreme Court -- there is a case called
4 Erickson, which I have handed up.

5 THE COURT: Yes, sir.

6 MR. MAXFIELD: And the way that they address
7 this -- this all falls under the Uniform Enforcement of
8 Foreign Judgments Act.

9 THE COURT: Yes, sir.

10 MR. MAXFIELD: And the way that the Supreme Court
11 has addressed that in this Erickson case is to say that
12 there is really kind of two -- a couple of ways that you can
13 oppose a judgement.

14 Once the judgment gets brought down and filed,
15 it's filed as of record. An objection, which I have filed,
16 stops any kind of a supplemental proceeding on it until --

17 THE COURT: Yes, sir.

18 MR. MAXFIELD: -- the court can hear that.

19 The Supreme Court in Erickson says that an
20 objection is really -- it can be in the nature of a 12(b)
21 Motion with respect to jurisdiction, but it can also be, and
22 it generally is, basically in the nature of a Rule 60(b)
23 Motion.

24 So the way the court hears a case like this is to
25 say that you have a judgment that's now been entered as of

1 record, and the court, you, would hear this, just like if it
2 were a South Carolina judgment and you would decide a Rule
3 60 Motion.

4 THE COURT: Right.

5 MR. MAXFIELD: That's what Erickson says.

6 So really it's not just a jurisdictional issue.
7 There is an issue of, you know, if it's a mistake, that
8 would be a ground for relief under Rule 60.

9 If there is misconduct, that would be a ground for
10 relief under Rule 60 as well.

11 So I'll quickly hit those points.

12 THE COURT: But, I mean, but just -- but it would
13 mistake, inadvertence, surprise, or excusable neglect,
14 right?

15 MR. MAXFIELD: The standard Rule 60 -- and I have
16 actually handed up Rule 60, just that it has a laundry list
17 of things it could be.

18 THE COURT: Right, I mean, but in getting into
19 whether it was a mistake or anything like that, we don't
20 need to get into the merits of that, right?

21 MR. MAXFIELD: Not really.

22 THE COURT: Okay.

23 MR. MAXFIELD: Let me address that, and I can kind
24 of come to that in the court's mind.

25 THE COURT: Okay.

1 MR. MAXFIELD: And let me just do that --

2 THE COURT: Yes, sir.

3 MR. MAXFIELD: -- and I'll kind of take the
4 court through it.

5 THE COURT: Yes, sir.

6 MR. MAXFIELD: There would be two exhibits that I
7 would need to enter into evidence. One of them I don't --
8 is just the consulting -- the contract that's at issue here
9 itself -- which I can mark, Brian, if we need to. It's
10 actually affixed --

11 MR. CALUB: It's actually part of my memorandum
12 that I submitted to the court earlier as well, so that's
13 fine.

14 THE COURT: Hold on a minute.

15 MR. CALUB: I will say that I do believe I
16 disagree --

17 THE COURT: I have got it right here. Thank you,
18 sir. You did good.

19 MR. CALUB: I do believe I disagree with Mr.
20 Maxfield's characterization of the question of a Rule 60(b)
21 being the same as addressing inadvertence, neglect, or
22 anything.

23 I believe that the law indicates that because of
24 full faith and credit he would simply be limited to
25 asserting a 60(b) as if the judgment is void for lack of

1 personal jurisdiction or subject matter jurisdiction, but --
2 but that would be it. We wouldn't go into any issues that
3 there was no arbitration agreement, or there was, because
4 that would be based upon the merits of the arguments raised
5 in Connecticut that I have already been ruled upon by the
6 Connecticut court.

7 THE COURT: Okay.

8 MR. CALUB: I just -- I mean, I understand he's
9 got to build his case, but I disagree with him on the point
10 that it's an open Rule 60 case where you get to basically do
11 a Rule 60 decision --

12 THE COURT: Right.

13 MR. CALUB: -- and reconsider what's been
14 determined in Connecticut.

15 And I will also note that as part of my case I
16 will present a record that indicates he -- Mr. -- the
17 defendant actually filed a motion to reconsider in
18 Connecticut. It was granted by the court and the court said
19 you lose on this point.

20 THE COURT: Okay.

21 MR. CALUB: So that's --

22 THE COURT: All right.

23 MR. MAXFIELD: And again --

24 THE COURT: Thank you, Mr. Calub.

25 MR. MAXFIELD: Just to clarify, I'm not making a

1 Rule 59(e) motion. I'm making a post-judgment Rule 60
2 motion.

3 THE COURT: All right.

4 MR. MAXFIELD: And judge, do I need -- again, the
5 contract itself, which I'll show as part of the record, and
6 then the other thing that I would actually need to mail to
7 the court and supplement is a letter, which I can project up
8 here, but I don't have the physical copy, which I understand
9 Brian is okay with, that going into evidence too, subject to
10 his right to strike.

11 THE COURT: Okay.

12 MR. MAXFIELD: All right.

13 Just to give you a little background, judge, Dr.
14 Shay operates a business called Marsch Chiropractic. He's a
15 chiropractor here in Orangeburg. The business itself is
16 actually a professional corporation. It's designated Dennis
17 Shay, doing business as Marsch Chiropractic.

18 There is a company called DAI, which Mr. Calub
19 represents. It's out of Connecticut. And what DAI does
20 extensively is to provide kind of a liaison service between
21 a business and the Yellow Pages.

22 I'll show the contract in a second.

23 Long story short, DAI and Dr. Shay got into a
24 dispute. DAI sent the dispute to the American Dispute
25 Resolution Center, which is also in Connecticut. And then

1 the American Dispute Resolution Center entered the award
2 against Dennis Shay individually, not professional
3 corporation, which was the party that had the contract with
4 DAI, or allegedly had the contract with DAI. DAI then takes
5 that judgment to the -- excuse me, the arbitration award and
6 confirms that in sort of a form order in the court in
7 Connecticut. And now, as Mr. Calub has mentioned to you,
8 DAI has filed this Connecticut judgment in South Carolina.
9 That's the 2011 case that we are here on now.

10 If I could have the court look at the contract for
11 a second. There's a couple of things that are --

12 THE COURT: Mr. Calub, that is -- which exhibit
13 would that be?

14 MR. CALUB: That would be Exhibit No. 1, I
15 believe, Your Honor.

16 THE COURT: How appropriate.

17 MR. MAXFIELD: Exhibit 1. And I have it up on the
18 screen, too, judge. And I can --

19 THE COURT: Okay, I got you.

20 MR. MAXFIELD: The court has maybe seen situations
21 like this before with, you know, commercial contracts with,
22 you know, well drafted forum selection clauses, choice of
23 laws clauses, arbitration clauses. And the reason I wanted
24 to show the contract is to show what's not in there, because
25 it's not maybe what the court would normally expect to see

1 in a situation like this.

2 A couple of things in there.

3 One of the things is that to arbitrate in this
4 case, here is what the contract actually says. This is on
5 the top of page two. And I'll -- it says, "if we are unable
6 to come to a mutual agreement, or if one of us refuses to
7 participate in choosing the arbitrator, the pilot party
8 filing the demand will have the right to make the choices
9 unilaterally."

10 But then it says, "as long as the filing party
11 made good faith effort to come to a mutual agreement and the
12 non-choosing non-participating party expressly consents to
13 and waives any and all objections to the choices made."

14 So what the contract says is that if we don't
15 agree -- from DAI's perspective, if we don't agree on who
16 the arbitrator is going to be, then we choose it, but you
17 got to agree with it. Well, the problem in this case is
18 that Dr. Shay never agreed with that at all.

19 The other things that are missing from this, as
20 the court would review the contract, is there is no
21 reservation in this case, as there usually is, of the
22 arbitrator's right to decide whether or not it has the power
23 to arbitrate. And I'll kind of come to that in a second.

24 As I mentioned, there is no choice of laws
25 provision that sets this in Connecticut, and there is no

1 forum selection clause that says if we have a dispute, it
2 has to be litigated in Connecticut. All it says is that if
3 we get an arbitration award, we can enter it in your home
4 state or our home state, so there is no true forum selection
5 clause.

6 So the standard that the court judges these, as we
7 alluded to at the beginning, was this is under the Uniform
8 Enforcement of Foreign Judgments Act, which is 15-35-940.

9 And that Erickson case, which I mentioned a minute
10 ago, the Act itself says "the judgment debtor may file a
11 motion for relief on any ground for which relief from a
12 judgment of this state is allowed."

13 And, again, Erickson, the Supreme Court, Erickson
14 v. Boyle, which I have handed up, says that's a Rule 60
15 Motion, basically, or part of that is a Rule 60 motion.

16 So in this case, judge, mistake, misconduct of an
17 adverse party. If the judgment is void, that's a ground for
18 relief under Rule 60; or, if it's otherwise inequitable that
19 judgment should have perspective application.

20 So, if I could, let me talk very briefly about
21 each of those. And this I think gets into the court's
22 jurisdictional question that you asked me about
23 jurisdiction, about the validity of the judgment in
24 Connecticut.

25 The rule is that if there is a question about

1 whether something should be arbitrated, that that has to go
2 to a court. Only a court can decide whether something
3 should be arbitrated, unless the contract itself says if
4 there is any dispute about whether something should be
5 arbitrated, that's something for the arbitrator to decide,
6 then the court has to decide.

7 The case I have handed up is Christiansen -- MBA
8 v. Christensen, which stands for that proposition. And
9 that's the law in South Carolina. And not only is that the
10 law in South Carolina, that's the law everywhere, because
11 under the Federal Arbitration Act, if -- that's what it
12 says. It says if there is a dispute about whether something
13 you should go to an arbitrator, you can't go to the
14 arbitrator until the court decides whether it should. And
15 because this involves interstate commerce, this is the Munoz
16 case in South Carolina, and this is the law everywhere,
17 because this involves interstate commerce, it's subject to
18 the Federal Arbitration Act. So that, again, a court has to
19 decide if it can be arbitrated before, or if it goes to
20 arbitration. In this case, judge, that never happened.

21 When arbitration was proposed, Dr. Shay objected
22 to it. He said there "shouldn't be an arbitration. I don't
23 agree to this. I never agreed to this." And I sent a
24 letter, and this is with the Exhibit 2 that I'll supplement
25 on Dr. Shay's behalf, which I'm projecting, that says

1 exactly that. "My client disputes the validity of this
2 provision of the contract and disputes -- and, again, I'll
3 mail this to the court, but specifically references the
4 Federal Arbitration Act and the fact that the court -- or
5 the arbitrator can't make that decision, because it doesn't
6 have jurisdiction. Only a court can make that decision.

7 Is that legible, judge?

8 THE COURT: Yes, sir.

9 MR. MAXFIELD: Okay. So getting back to this
10 case, getting back to the case, not only has the South
11 Carolina court --

12 Really the proper procedure would have been,
13 because there is no choice of laws provision, because there
14 is no forum selection clause, what DAI had to do was to come
15 to this court, or a court in South Carolina, and say "we
16 allege there is an agreement to arbitrate. Court, you have
17 to decide that, because you are the only one that can decide
18 it."

19 And not only did that not happen, never before
20 arbitrating this case did DAI go to the court in Connecticut
21 and say "Dr. Shay objects to this. You know, you need to
22 decide, Connecticut court, whether this should be
23 arbitrated."

24 And in all the orders that Ms. Calub has
25 submitted, there has never -- that's never a determination.

1 No court ever makes that determination. That's invalid
2 under the FAA. It's invalid under South Carolina law, which
3 again, because there is no choice of laws provision in this
4 contract, that's the law that applies. So the result under
5 Rule 60 would be that the court has to vacate this judgment
6 in South Carolina.

7 What I'm not asking the court to do is to go
8 behind the Connecticut order and invalidate that order,
9 which, of course, the court can't do.

10 What the court does have the power to do under
11 Rule 60 is to say this order is vacated in South Carolina.

12 So, you know, as far as DAI's ability to get a
13 Connecticut judgment and have that be a record, they have
14 that. The question here is, you know, can that be indexed
15 and enrolled in South Carolina.

16 I mentioned that another ground was misconduct,
17 and I'm just going to touch on that very briefly. And this
18 is referenced in the affidavit.

19 What happened in this case, judge, the story in
20 this case is that some sales representative drops in and is
21 selling this service, which, you know, I would -- Mr. Calub
22 can explain exactly what -- and no disrespect to Mr. Calub,
23 who I consider a friend, but he can explain what this
24 company actually does and what benefit it provides. I would
25 love to hear it, because basically what Dr. Shay's business

1 got was an hour meeting, a couple of letters, and they wound
2 up with almost a \$35,000 arbitration award under a
3 liquidated damages clause.

4 If the court were to survey around the country and
5 look at court cases where DAI has sold some service, almost
6 immediately brought some kind of an arbitration proceeding
7 against somebody and had that confirmed in Connecticut with
8 this same ADR company up there, the court would find many
9 cases like that.

10 THE COURT: Well, that's how they can afford Mr.
11 Calub.

12 MR. MAXFIELD: Well, how else could they afford
13 Mr. Calub?

14 THE COURT: We know -- we know why they are doing
15 it now, right?

16 MR. MAXFIELD: Yes, sir, and that would be an
17 excellent motive.

18 But that aside, the story of this case is the
19 story of misconduct. That -- this is something that should
20 never have happened.

21 If we look, you know, back at this contract for a
22 second, we look how it's executed -- again, this is Exhibit
23 1, judge. I mean, what Dr. Shay's affidavit says is that
24 the only thing that the sales representative said initially
25 here as to which one of these you would like. And if you

1 look at the contract here is Dr. Shay's initials. These are
2 his initials, but there is no signature. It's not even
3 signed. And what Dr. Shay has said in his affidavit is, and
4 what he's testified to, they just said they needed my
5 information, and this was completely a trial -- this was
6 just all on a trial basis.

7 So the other thing that's important about this, as
8 I get into my last point is, that the advertiser, this is
9 Marsch Chiropractic Center. If the court looks at the
10 bottom of the contract, Marsch Chiropractic Center. Dennis
11 Shay has only signed as the authorized agent of Marsch
12 Chiropractic Center, yet there is nothing in this that
13 indicates that he's signed that he's individually personally
14 liable for this. It's just like if the president of General
15 Motors signs something, he wouldn't be personally on the
16 hook for that contract. This is a company contract and the
17 advertiser in this is Marsch Chiropractic, which is a
18 professional corporation. That's who is getting the
19 service. That's who -- if there is a contract, that's who
20 the contract is with, between DAI and the professional
21 corporation.

22 And so when we talk about mistake, you know, we
23 have a mistaken party, you know, the rule obviously is a
24 representative signs for a corporation, they are not
25 personally liable for a contract.

1 The application in this case is the services were
2 to be relied to Marsch as the advertiser. Dr. Shay just,
3 you know, to the extent he even signed it, which he didn't.
4 His name is just printed, but if he initialed it, he's
5 initialing for the corporation.

6 And what DAI has done here is, you know -- and
7 this really kind of speaks to the whole, you know,
8 sloppiness of this arbitration process, is that they have
9 just -- everybody has ignored that the whole way through and
10 just said well, we will just give you a judgment personally
11 against this guy.

12 The result here is that, you know, the court has
13 the power under Rule 60 to change things, or to vacate a
14 judgment, or give relief from judgment, if there is a
15 mistake. That's a patent mistake. That is absolutely
16 contrary to what the contract itself says and intends.

17 And if the court feels like it can't outrightly
18 leave -- grant relief from that judgment, the court still
19 has the power that sort of the equity provisions of Rule 60
20 to say well, if nothing else, we are going to make this
21 against the party that the contract is with.

22 So if the court is going to index the judgment or
23 allow the judgment to be indexed, then we would ask that it
24 be indexed against Dennis J. Shay, P.C., which is the party
25 with whom DAI actually had the contract.

1 So those are the grounds for our relief, Your
2 Honor.

3 THE COURT: So the correct name of -- the
4 corporate name of Marsch Chiropractic is Dennis Shay, P.C..?

5 MR. MAXFIELD: Yes, sir. I actually have the --
6 here is the Articles of Incorporation, which I can project.

7 THE COURT: Okay.

8 MR. MAXFIELD: Dennis J. Shay, E.C.P.A., a
9 professional corporation.

10 THE COURT: And Mr. Maxfield --

11 MR. MAXFIELD: Yes, sir.

12 THE COURT: -- I know that you -- I appreciate the
13 projections. Do you have anything -- a hard copy of that?

14 MR. MAXFIELD: If I may, I would submit that. I
15 mean, it's a public record. I would assume that the court
16 could receive that into evidence without any problem. And
17 if that's okay with Mr. Calub, I will just mail that down.

18 THE COURT: I just want to see what we actually --
19 what he actually has.

20 Mr. Calub, you got any objection to that?

21 MR. CALUB: Your Honor, just with the reservation
22 right that I think it's unnecessary to delve into that
23 question, because that question was addressed on the merits
24 in Connecticut, but I realize if he wants to make it part of
25 the record, I don't have a problem --

1 THE COURT: Okay.

2 MR. CALUB: -- with the court looking at that.

3 THE COURT: Thank you, sir. I appreciate it.

4 MR. MAXFIELD: Thank you, Your Honor.

5 THE COURT: Mr. Calub?

6 MR. CALUB: Your Honor, I appreciate the case that
7 Mr. Maxfield has presented, but effectively what he has
8 given you is a re-litigation of matters that were actually
9 addressed and should have been raised in the litigation up
10 in Connecticut.

11 You know, I dispute the fact that South Carolina
12 courts have the ability on a Rule 60 Motion to simply say we
13 are not going to enforce a judgment and we need to reexamine
14 the judgment and the merits of it under South Carolina Rule
15 60 laws. I don't think that's what this case that Mr.
16 Maxfield has presented addresses. And, in fact, it's my
17 understanding it simply addresses the limited question of
18 who has the burden of showing the regularity of judgment
19 whenever a foreign judgment is enforced in South Carolina.

20 And it's my understanding that the South Carolina
21 Supreme Court, in reversing the Court of Appeals,
22 effectively said the judgment debtor always bears that
23 burden of challenging the presumption of propriety for a
24 foreign judgment, and nothing more.

25 I think it's in conflict -- his position and his

1 arguments conflict with applicable South Carolina state law
2 and also the United States Constitution, in that we have a
3 duty here in South Carolina, or South Carolina courts would,
4 to give full faith and credit to judgments that are properly
5 decided with proper jurisdiction over the parties in foreign
6 jurisdictions.

7 And to that extent, the application of South,
8 Carolina law, and I know Mr. Maxfield made mention of the
9 Christiansen case here in South Carolina, South Carolina
10 wouldn't really apply in this instance, in that the case was
11 properly before a Connecticut court and the Connecticut
12 court actually had personal jurisdiction over the defendant
13 through waiver. He actually -- the record that's developed
14 in my memorandum will show that on September 9, 2010, Mr.
15 Shay -- Mr. Shay's counsel, Joshua Cohen, appeared on his
16 behalf in Connecticut for the purpose of challenging the
17 merits of confirming the arbitration award that Mr. Maxfield
18 has done a second time. And I'll provide a copy, Your
19 Honor. That appearance should be in my memo number 10,
20 Exhibit No. 10, but if you need a copy, I have got --

21 THE COURT: Hold on just one second.

22 MR. CALUB: Okay.

23 THE COURT: I have got -- Exhibit 11 was an
24 objection to appearance for confirmation of award?

25 MR. CALUB: Right, Exhibit 10 is the appearance of

1 his counsel.

2 THE COURT: Yes. 9 -- September 9, 2010,
3 appearance in court?

4 MR. CALUB: Correct, Your Honor.

5 THE COURT: Record for appearance, is that what
6 the parties --

7 MR. CALUB: I actually have a copy of the formal
8 Superior Court appearances, if that would be helpful.
9 That's a document that actually indicates the appearance of
10 Mr. Joshua Randall Cohen for Mr. Shay, but I also have the
11 formal appearance notice that was filed in court.

12 THE COURT: Okay.

13 MR. CALUB: Okay.

14 THE COURT: Is that here?

15 MR. CALUB: Yes, Your Honor.

16 THE COURT: I have got it.

17 MR. CALUB: Okay.

18 THE COURT: Thank you, sir.

19 It's just one page?

20 MR. CALUB: That is correct.

21 THE COURT: Okay.

22 MR. CALUB: So that signifies the appearance of
23 Mr. Shay in the Connecticut forum through counsel, Joshua
24 Cohen.

25 Now, as a matter of Connecticut law, special

1 appearances to challenge jurisdiction are no longer
2 recognized. In Connecticut any general appearance counsel
3 is appearing before the court, but those who wish to
4 challenge personal jurisdiction have thirty days to do so
5 upon the filing of an appearance on their behalf in the
6 case. And that is the Connecticut law that I cited to you
7 in my memorandum.

8 But, at any rate, so to that end the record of the
9 Connecticut court indicates that Mr. Shay never challenged
10 the personal jurisdiction of the Connecticut court within
11 thirty days of his counsel appearing in the case.

12 And, in fact, rather than filing a motion, or a
13 motion to quash this application to confirm the arbitration
14 award, Mr. Shay's counsel litigated the merits of it and
15 effectively questioned and raised the same issues, or
16 similar issues, that Mr. Maxfield has raised, and I believe
17 the objection that was filed in the Connecticut court case
18 is attached to my memorandum as Exhibit No. 11; objection to
19 application for confirmation of award.

20 THE COURT: I got you.

21 MR. CALUB: So on the merits that question went up
22 to the Connecticut court. And on May 25th, 2011, the court
23 denied the motion. And the order that denies the objection
24 and confirms the award is an order dated May 25, 2011. That
25 is not part of my memorandum, but that is the order that is

1 attached to the notice of filing for judgment that is on
2 record with the court.

3 THE COURT: That is the order filed with the --

4 MR. CALUB: That's the order that you should
5 have --

6 THE COURT: Filed award, dated 17 September 2009.

7 MR. CALUB: It's May 25 --

8 Oh, I'm sorry, Your Honor, yes, the notice --

9 I'm sorry. The order that the Connecticut court
10 issued resolving the merits of the confirmation of
11 arbitration award is attached to my July 20th, 2011 notice
12 of filing foreign judgment. That's the judgment that we are
13 trying to enforce here.

14 THE COURT: It says September 17th, 2009, is that
15 correct?

16 MR. CALUB: The order says May 25, 2011 up in the
17 top corner.

18 It says order regarding application October 22,
19 2009 application. It says the arbitration award is
20 confirmed.

21 THE COURT: Okay.

22 MR. CALUB: Now, the merits of this objection were
23 determined and ruled by the Connecticut court. And the
24 Connecticut court did have personal jurisdiction over Mr.
25 Shay, based upon his appearance through counsel in

1 Connecticut and litigating the merits of the confirmation of
2 award.

3 And all the other arguments that have been raised
4 by Mr. Maxfield should have been raised in that existing
5 litigation, if they are going to fully litigate the merits.
6 Otherwise, we just go back and re-litigate all the
7 judgments, foreign judgments, that need to be presented in
8 South Carolina. And I think as a matter of full faith and
9 credit res judicata and collateral estoppel, he cannot do
10 that today, so that's why I would like to move to strike his
11 presentation.

12 And it was presented, because really the questions
13 that we need to answer today is did the Connecticut court
14 have jurisdiction over him. It did. Mr. Shay actually did
15 make an appearance and litigate the merits.

16 And I cite to you the case of Colonial Pacific v.
17 Taylor. It is a Court of Appeals case from 1997. And
18 effectively the key language that is my client's position is
19 that "if a judgment debtor appears in a foreign state and
20 loses, then the courts exercising jurisdiction over him is
21 not subject to collateral attack."

22 THE COURT: Which case is that?

23 MR. CALUB: This is -- I have copies of it, Your
24 Honor. This is the case of Colonial Pacific Leasing
25 Corporation v. Taylor, 326 S.C. 529, 484 S.E. 2d 595.

1 THE COURT: I would appreciate a copy.

2 MR. CALUB: I have a copy right here also.

3 THE COURT: Okay. And have you given a copy to
4 Mr. Maxfield?

5 MR. CALUB: Yes, Your Honor.

6 THE COURT: Okay.

7 MR. CALUB: Now, this case is very close on our
8 facts here, in that the defendant in this case actually made
9 an appearance and filed an answer in litigation in Oregon.
10 And in his answer he did reserve the right and say, you
11 know, this Oregon court lacks personal jurisdiction over me
12 and effectively defaulted and never appeared again after
13 filing his answer. I won't say he defaulted, because he did
14 file an answer, but he never litigated the question for
15 personal jurisdiction that he raised with the Connecticut
16 court. Effectively the Connecticut court issued a judgment
17 against the defendant and the plaintiff sought to enforce
18 the judgment here in South Carolina.

19 One of the things that the defendant raised was a
20 challenge to personal jurisdiction of the Oregon court. And
21 in the court here, the Court of Appeals recognized well, you
22 made an appearance in Oregon by filing an answer. And
23 although you questioned personal jurisdiction, you did
24 nothing more to have that question determined on the merits.
25 So effectively it was determined against the defendant in

1 the Oregon court and the judgment was issued and the court
2 found it proper to enforce the judgment here in South
3 Carolina.

4 Actually let me rephrase that. It effectively
5 said based on principles of res judicata, full faith and
6 credit, and collateral estoppel, the questions of personal
7 jurisdiction were barred. They cannot even raise it as an
8 issue in the South Carolina court.

9 So that gets to my point as to why I believe the
10 personal jurisdiction arguments that have been raised by Mr.
11 Maxfield should be stricken from the record as well, based
12 upon this authority here in Colonial Pacific Leasing
13 Corporation v. Taylor.

14 THE COURT: All right.

15 Mr. Calub, do you mind if I ask you a couple of
16 questions?

17 MR. CALUB: Sure, Your Honor.

18 THE COURT: Just the contract itself.

19 MR. CALUB: Yes, Your Honor.

20 THE COURT: Just -- where did he sign the
21 contract, or where is it you believe he signed the contract?

22 MR. CALUB: Your Honor, I believe he's -- that's
23 his signature at the bottom. I don't think we need to get
24 into that question, because that question was part of his
25 allegations in the --

1 THE COURT: That was addressed in --

2 MR. CALUB: Addressed in the Connecticut --
3 actually I'll provide you a copy with his Connecticut
4 objection --

5 THE COURT: Okay.

6 MR. CALUB: -- or I'll quote from it. He actually
7 says --

8 THE COURT: I would rather see it. If I have got
9 it, you don't have to give it to me --

10 MR. CALUB: Okay.

11 THE COURT: -- but tell me is that in the notice?
12 Is that in Exhibit 11?

13 MR. CALUB: Yes, Your Honor.

14 THE COURT: Okay.

15 MR. CALUB: Yes, Your Honor.

16 He actually says the arbitrator lacked
17 jurisdiction because his signature on the contract was part
18 of the fraud, the wrong party has been named, and the
19 arbitration provisions of the disputed contract were not
20 complied with.

21 THE COURT: Okay.

22 MR. CALUB: Now, he is specifically attacking the
23 ability to confirm this award there.

24 And the additional arguments that Mr. Maxfield has
25 identified today should have been raised at this moment,

1 but --

2 THE COURT: And I hadn't had a chance to read
3 that, but I -- just so -- I mean, it does look like Marsch
4 Chiropractic is the company's name. I mean, those are
5 things that concern me. I just want to make sure you are
6 aware of that.

7 MR. CALUB: They are. Those questions were
8 actually, as you -- those questions, however, have been
9 addressed by the Connecticut court.

10 THE COURT: Okay.

11 MR. CALUB: And so in that instance --

12 THE COURT: Okay.

13 MR. CALUB: -- because they were decided against
14 Mr. Shay, we need not go back to the propriety of what the
15 Connecticut court did to re-litigate that issue.

16 THE COURT: Okay. Well, I'll read that order
17 over.

18 Yes, sir, what else?

19 MR. CALUB: And, Your Honor, I just think that the
20 other questions about re-litigating the questions of proper
21 signatures, what the agreement was among the parties, those
22 are questions that this court should not delve into, because
23 those have been decided as a matter of res judicata by the
24 Connecticut court. Those were part and parcel of the case,
25 an objection that should have been addressed by Mr. Shay's

1 counsel, Mr. Cohen, up in Connecticut --

2 THE COURT: And you --

3 MR. CALUB: -- and not to re-litigate it here now.

4 THE COURT: And you said he brought that issue to
5 the Connecticut court's attention?

6 MR. CALUB: The objection is here.

7 THE COURT: Uh-huh.

8 MR. CALUB: Now, if he didn't bring specific
9 objections there, then they would be deemed waived.

10 That would effectively provide any litigant an
11 opportunity to litigate in a foreign jurisdiction and not
12 have full resolution of the case, because they could always
13 come back, if a judgment was asserted in another
14 jurisdiction, to re-litigate the questions that they wished
15 they litigated before the jurisdictional court that issued
16 the judgment.

17 THE COURT: All right.

18 MR. CALUB: So to the extent there are new
19 arguments not addressed in the objection here, I would say
20 those are also barred by collateral estoppel and res
21 judicata..

22 The parties here are the same parties that were
23 the parties in the Connecticut litigation, Directory
24 Assistants, Inc., and Dennis Shay personally.

25 THE COURT: Uh-huh.

1 MR. CALUB: And he made an appearance in that
2 case.

3 And to the extent these additional arguments that
4 Mr. Maxfield has raised were not raised before the
5 Connecticut court, they have been waived under the
6 principles of res judicata, collateral estoppel.

7 I just think that there is a lot of full faith and
8 credit that needs to be recognized here.

9 And if there is still process for Mr. Shay to
10 litigate on a Rule 60 question, there is nothing barring him
11 from going to Connecticut and litigating those questions
12 with the court there, to reconsider its order.

13 And actually the issue there is there was a
14 reconsideration of the confirmation award that was filed by
15 Mr. Shay's counsel, and the court in Connecticut actually
16 issued an order saying we have heard your motion to
17 reconsider, we effectively deny it and the order confirming
18 the award stands.

19 And if Mr. Maxfield could put it up on his
20 projector, this will also be part of the supplementation of
21 the record as well.

22 THE COURT: Okay.

23 MR. CALUB: I do not have a form copy with me,
24 but --

25 THE COURT: Okay.

1 MR. CALUB: But their record does establish that
2 he did seek a motion to reconsider in Connecticut and that
3 order was -- that matter was addressed.

4 THE COURT: Okay.

5 MR. CALUB: And that's it there.

6 THE COURT: Motion to reconsider?

7 MR. CALUB: He did file a motion to reconsider and
8 re-argued it.

9 THE COURT: Okay.

10 MR. CALUB: But he also did not file an appeal
11 within a period of time to appeal the judgment in
12 Connecticut.

13 THE COURT: Okay.

14 MR. MAXFIELD: Your Honor, if I may briefly
15 address those points?

16 THE COURT: Mr. Calub, are you through?

17 MR. CALUB: Yes, Your Honor.

18 THE COURT: Okay.

19 All right, Mr. Maxfield.

20 MR. MAXFIELD: First of all, it's sort of a minor
21 opening point. Again, this isn't -- collateral estoppel,
22 res judicata, that has no application to a Rule 60 motion.
23 That's a post-trial motion. That would be like, you know,
24 we had a South Carolina case, trial, trial is finished and I
25 made a Rule 60 Motion and then somebody came in and said

1 well, the jury has already decided that. You don't get to
2 make a Rule 60 Motion. That's absolutely not the law
3 anywhere that res judicata or collateral estoppel would
4 apply to a post-judgment motion.

5 The real elephant in the room is this, the idea
6 that Connecticut ever heard this on the merits. The order
7 that I just put up, that Mr. Calub referred to, says that
8 "the court has reconsidered its order confirming the
9 arbitrator's award in this matter in light of the
10 defendant's objection. However, the court previously
11 indicated that if the defendant wished the court to consider
12 the fact the plaintiff set forth an objection and affidavit,
13 he must be present to testify and subject to
14 cross-examination. He did not do so. Therefore, the court
15 has considered the objection, but not the disputed factual
16 claims made therein. The order of the court confirming the
17 arbitration award stands."

18 There is no order that Mr. Calub has that he can
19 put before the court where the merits of this argument are
20 ever considered. There is never an order where the court
21 decides in Connecticut, or anywhere, that this is subject to
22 arbitration. That's a threshold issue under the FAA. That
23 has to be done before there can be an arbitration award.

24 Every order that the court has is -- I mean, this
25 is the longest one, probably, and it's just, you know,

1 confirmed. And there is no -- you know, judge, as you
2 decide nonjury matters, you have to put your findings of
3 fact in. You have to put your conclusions of law in. There
4 is nothing like that, so this was never on the merits.

5 I disagree with the --

6 And as far as what happened in Connecticut, yes,
7 Mr. Shay hired a lawyer. He never actually went up there.
8 It's sort of a darned if you do, darned if you don't
9 situation. It's -- you know, Mr. Calub is in here now
10 arguing "well, you kind of messed up by going to
11 Connecticut." But before it was "you have got to come to
12 Connecticut. You have got to come to Connecticut," and Dr.
13 Shay said, "I don't have -- "Connecticut has no jurisdiction
14 over me." Then when he finally does, it's "gotcha." That
15 in and of itself is inequitable under Rule 60.

16 Again, there being no merit sort of this never
17 being addressed, this isn't a personal jurisdiction issue in
18 any event. It's a subject matter jurisdiction issue, and
19 that can never be waived and that can never be conferred by
20 agreement.

21 And the court doesn't have subject matter because
22 the arbitration award itself -- the court can never reach --
23 no court has ever decided that it has to be arbitrated, and
24 that's federal law.

25 Lastly, on full faith and credit, I don't dispute

1 that the court has to give a foreign judgment full faith and
2 credit. It has to treat it just like it treats a South
3 Carolina judgment. And as the Supreme Court said in
4 Erickson, that means you got to take the bitter with the
5 sweet. And the bitter is you get to make post-judgment
6 motions on it, and that's what we are doing here.

7 The court has the authority to vacate this. The
8 court has the authority to grant relief from this.

9 And importantly, as the court has recognized, it
10 has the authority, if nothing else, to correct the party. I
11 mean, Dr. Shay individually never made a contract with
12 anybody. That's manifestly unjust. The court has the power
13 to fix that, if nothing else.

14 THE COURT: Okay.

15 MR. MAXFIELD: Thank you.

16 THE COURT: Thank you, sir.

17 Thank you, Mr. Calub.

18 Oh, Mr. Calub, you got something?

19 MR. CALUB: On my last.

20 THE COURT: Yes, sir, no problem.

21 MR. CALUB: My last point, I do disagree that we
22 are effectively going to reopen a judgment, change parties
23 that are subject to the Connecticut judgment and effectively
24 alter the rights of my client under this Connecticut
25 judgment as to Rule 60. I don't think that's appropriate

1 here under full faith and credit.

2 And also the res judicata issues I have mentioned
3 before.

4 I guess on my final point all I could say is that
5 the judgment issued in Connecticut are entitled to
6 presumption of irregularity, in that there has been no
7 challenge to the jurisdiction of the court over these
8 issues.

9 I will also note that the question of subject
10 matter jurisdiction is statutorily established under the
11 Uniform Enforcement of Arbitration Act that Connecticut
12 recognizes that questions of confirmation of arbitration
13 awards go to the Connecticut Superior Courts, and I'll
14 supplement the record with at least the statute citing that
15 to indicate that there was a prior proper subject matter
16 jurisdiction over these issues throughout the Connecticut
17 process.

18 And to that end, that's all we are asking for,
19 Your Honor, is that there was a process in Connecticut that
20 Mr. Shay participated in. He had counsel. The judgment was
21 rendered against him. And, you know, the judgment is now
22 being enforced in South Carolina.

23 The only other thing that I would ask, Your Honor,
24 as part of my motion is an award of fees and costs, and I'm
25 just going to submit an affidavit that leaves it to the

1 discretion of the court to interpret whether that's
2 warranted or not.

3 The contractual obligations under the consulting
4 contract that's in the record does provide for the
5 collection of attorneys fees for pursuing amounts owed, and
6 that's the authority under which I submit these fees and
7 costs affidavits for. That's always left up to the
8 discretion of the court.

9 THE COURT: We are always glad we have some
10 instruction.

11 MR. MAXFIELD: Just on that fees and costs
12 affidavit, I don't know in light of the rest of the
13 argument --

14 THE COURT: Have you got a copy for me?

15 MR. CALUB: I do. This is the formal affidavit
16 that I could make -- I could file this with the court, if
17 that would be easier and you could take a copy, or would you
18 rather have the original?

19 THE COURT: A copy is fine.

20 MR. CALUB: Okay. And I'll file these with the
21 court.

22 THE COURT: Okay.

23 Mr. Calub, could I just ask you a hypothetical
24 question?

25 MR. CALUB: Sure, Your Honor.

1 THE COURT: Just so you address it.

2 Okay. According to Directory Assistants, they
3 came down here and entered into a contract with Dr. Shay
4 here in Orangeburg in September of '08, is that correct?

5 MR. CALUB: That is correct. I believe that is
6 also reflected in the -- let me just make sure I cite the
7 record properly.

8 THE COURT: Okay.

9 MR. CALUB: In the Connecticut arbitration
10 award --

11 THE COURT: I'm not holding you to any of those.

12 MR. CALUB: It does. It just says "did respondent
13 breach his contract with the complainant, the contract."
14 Defendant Shay is identified as the arbitration defendant.

15 THE COURT: Okay. Okay.

16 But, I mean, to enter into a contract -- that's
17 okay. They entered into a contract here in Orangeburg.

18 MR. CALUB: Okay.

19 THE COURT: They got a salesman down here.

20 MR. CALUB: All right.

21 THE COURT: Right?

22 MR. CALUB: I imagine that would be the case as to
23 why they --

24 THE COURT: There is nothing in the record to
25 indicate he went to Connecticut to do this, did he?

1 MR. CALUB: Other than the contractual choice of
2 law provisions that provide with consent, that was it.

3 THE COURT: There is a choice of law provision?

4 MR. CALUB: Or in the contract. Let me look here.

5 THE COURT: Yeah, he's --

6 MR. CALUB: I'm sorry, let's see here.

7 I'm sorry. If we look at the exhibit number -- I
8 have the record here, Your Honor.

9 THE COURT: Okay.

10 MR. CALUB: I apologize.

11 If we look at Exhibit No. 2.

12 THE COURT: Okay.

13 MR. CALUB: The application for confirmation of
14 arbitration award order to show cause.

15 THE COURT: Uh-huh.

16 MR. CALUB: It says "on or about September 8th,
17 2008, DAI and Shay, the defendant, entered into a written
18 agreement that required all disputes to be resolved through
19 binding arbitration. A copy of that agreement is attached
20 as Exhibit A to the application."

21 I do not have that Exhibit A attached to this
22 application.

23 THE COURT: Yeah. Can you send me that?

24 MR. CALUB: I will. I will, Your Honor.

25 THE COURT: Okay. Because the only thing I have

1 is the contract.

2 MR. CALUB: The application is -- you are right.

3 The application now that's -- the demand for arbitration --

4 I'm sorry, this is application for confirmation of

5 arbitration award, Exhibit No. 2, and I'll provide you a

6 full copy of that with the Exhibit A where --

7 THE COURT: Okay.

8 MR. CALUB: -- that question was raised in

9 Connecticut that Mr. Shay signed the agreement personally

10 and was at issue in the litigation for --

11 THE COURT: I mean --

12 MR. CALUB: -- confirmation arbitration award.

13 THE COURT: It just seems -- I was always told you

14 had to bring an action where the defendant resides. That's

15 always been to me a general rule of law. I understand that

16 they can contract it away and like that, but you have to

17 bring it not only in your state, but you got to bring it in

18 your county. Isn't that basic rule?

19 MR. CALUB: It would be basic rule if this was

20 just South Carolina law question. It's a Connecticut law

21 question that Mr. Shay never raised or addressed in the

22 Connecticut forum, which would be a wonderful argument to

23 have made, maybe this thing might have turned out

24 differently there, but he did appear and didn't litigate

25 that issue --

1 THE COURT: Okay.

2 MR. CALUB: -- specifically, but he should have,
3 and now it's waived.

4 THE COURT: Okay.

5 MR. CALUB: As a question of res judicata.

6 THE COURT: I understand. Okay. Thank you, sir.
7 All right.

8 MR. MAXFIELD: Thank you, Your Honor.

9 THE COURT: Thank you, y'all.

10 MR. CALUB: Appreciate your time.

11 MR. MAXFIELD: Your Honor, I'm sorry. One thing.
12 The affidavit -- Mr. Calub just submitted an affidavit of
13 fees for \$12,546.

14 THE COURT: Uh-huh.

15 MR. MAXFIELD: In light of his arguments, you
16 know, I would object to that and question how everything
17 else that Mr. Calub says is correct, how the court could
18 possibly have jurisdiction to enter a fee award. I don't
19 see any basis for that anywhere.

20 THE COURT: Okay.

21 MR. MAXFIELD: I would point out, too, that Mr.
22 Calub said that the contract contains a choice of laws
23 provision. It does not contain a choice of laws provision
24 anywhere. It does not --

25 THE COURT: He mentioned that earlier.

1 MR. MAXFIELD: Yes, sir.

2 THE COURT: I'm going to read the contract.

3 MR. MAXFIELD: Thank you, Your Honor.

4 THE COURT: Thank y'all both. Appreciate it.

5 MR. CALUB: Thank you.

6 (END OF REQUESTED TRANSCRIPT OF RECORD)

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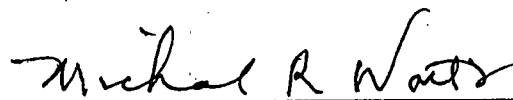
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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Orangeburg County, South Carolina, on the 31st day of July, 2012.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

May 23, 2014



Michael R. Watts
Circuit Court Reporter

American Dispute Resolution Center, Inc.

Demand for Arbitration Form

Date: May 26, 2009

Respondent: Name: Dennis Shay dba Marsch Chiropractic Center

Type of Business or Occupation Chiropractor

Address 235 Elliott St.

City, State and Zip Code Orangeburg, SC 29115

Telephone (803) 536-1635

Fax (803) 536-1604

Name of Attorney or Representative

Name of Firm or Company

Address

City, State and Zip Code

Telephone

Fax

Claimant: Name: Directory Assistants, Inc.

Type of Business or Occupation Consulting

Address 500 Winding Brook Drive

City, State and Zip Code Glastonbury, CT 06033

Telephone (860) 633-0122

Fax (860) 633-2900

Name of Attorney or Representative David M. Ford

Name of Firm or Company Directory Assistants, Inc.

Address 500 Winding Brook Dr.

City, State and Zip Code Glastonbury, CT 06033

Telephone (860) 633-0122 **Fax** (860) 633-2900

Claimant(s), is a party to a written contract containing an arbitration agreement, dated, September 9, 2008 which, provides for arbitration under the rules of American Dispute Resolution Center, Inc., is demanding arbitration as stated below.

Nature of the Dispute:

Breach of Contract, a copy of which is attached hereto.

Amount of Claim or Relief Sought:

Claim Not to Exceed \$ 75,000.00 Exclusive of costs, interest and legal fees.

Location of Hearing: New Britain, Connecticut

Signed

Title General Manager (Claimant or Representative)

In order to initiate the arbitration, Claimant must submit a copy of the contract and two copies of the demand with the proper filing fee, which is listed in the rules, to the ADR CENTER. Send the original demand form to the Respondent.

Agreed Upon Rules of Procedure:

☒ ADR CENTER

☐ Other: _____

If the Claimant is interested in submitting this matter to mediation, please indicate by marking a check here ☐. The ADR CENTER will contact the Respondent(s) to determine if they would agree to attempt mediation prior to arbitration.

2012 JUL 27 PM 4:37

FILED FOR RECORD
WINNIE CLARK
CLERK OF COURT
ORANGEBURG, SC

HDD-CV-09-5033765-S

: SUPERIOR COURT

DIRECTORY ASSISTANTS, INC.

: J.D. OF HARTFORD

v.

:

DENNIS SHAY d/b/a

:

MARSCH CHIROPRACTIC CENTER

:

SEPTEMBER 24, 2010

OBJECTION TO APPLICATION FOR CONFIRMATION OF ARBITRATION AWARD¹

The Defendant hereby objects to Plaintiff's application for confirmation of the arbitration award. The arbitrator lacked jurisdiction because the signature on the contract was acquired through fraud, the wrong party has been named, and the arbitration provisions of the disputed contract were not complied with. Because the arbitrator lacked jurisdiction, no arbitration could have occurred. As a result, the arbitration award cannot be confirmed.

The question raised, whether the dispute is subject to arbitration, is one of law and the court's review is de novo. MBNA Amercia Bank N.A. v. Teofil Boata, 283 Conn. 381, 386; 926 A.2d 1035 (2007) (citing Welch Group, Inc. v. Creative Drywall, Inc., 215 Conn. 464, 467, 576 A.2d 153(1990).) This motion is the proper vehicle to attack an arbitration award and the arbitrator's jurisdiction. "A claim that a dispute is not subject to arbitration is an attack on the power of the arbitrator to decide the underlying dispute." *Id.* at 392 (citing Bennett v. Meader 208 Conn. 352, 364 (1988).) "Such a claim may be raised through ...a motion to vacate the arbitration award or through an objection to the confirmation of the arbitration award." *Id.* at 393 (citing International Brotherhood of Teamsters v. Shapiro, 138 Conn. 57, 65 (1951).) Because

¹ Defendant filed a Motion to Vacate Arbitration Award contemporaneously with this Objection as the reasoning for this objection also supports a motion to vacate. Defendant did this to allow the Court to rule on each issue separately.

ORAL ARGUMENT NOT REQUESTED
TESTIMONY NOT REQUIRED

the question at issue whether an agreement to arbitrate exists, it is not subject to the time limits of Conn. Gen. Stat. § 52-420(b). *Id.* at 395.

"It is well established that arbitration is a creature of contract...a person can be compelled to arbitrate a dispute only if, to the extent that, an in the manner which, he has agreed so to do." *Id.* at 386 (citing Nussbaum v. Kimberly Timbers, Ltd., 271 Conn. 65, 72, 856 A.2d 364 (2000)). "[T]he arbitration provision in an agreement is effectively an agreement that is separate and distinct from the broader contract, and a court of law may enforce only those agreements that the parties actually make." *Id.* at 386.

As stated in Defendant's affidavit (*See Exhibit A*), he was unaware that he was entering into a contract and consequently did not assent to arbitration. In a similar matter in New York, the president of a company denied in an affidavit that he ever entered into a contract and did not agree to arbitrate any disputes. Princeton Rayon Corporation v Gayley Mill Corporation, 309 N.Y. 13 (1955), cited by Two Sisters, Inc. v Gosch & Co. 171 Conn. 493 (1976). Two Sisters referenced Princeton Rayon as an example of a defense to an enforcement of arbitration where a party denies the existence of a contract. Because there is a factual issue as to the validity of the contract itself, the arbitration award cannot be confirmed.

Further, because the named Defendant is not a party to the contract, there is no way he could have consented to arbitrate. In a case recently decided by this very court (Judge Peck), the issue of principle and agent was raised in Yellow Book Sales & Distribution Company v. David Valle, 2010 WL 3326845 (Conn. Super.)-Docket No. HHD-CV-09-6003820-S (pending appeal). Here, Yellow Book sued Mr. Valle, the president and agent for a company that had entered into a

contract for advertising services with Yellow Book. Mr. Valle's defense was that he was not a party to the contract, that his signature was that as agent for his company. Judge Peck agreed with this defense.

It is well established that an agent, by making a contract only on behalf of a competent disclosed or partially disclosed principal whom he has power so to bind, does not thereby become liable for its nonperformance ... If a contract is made with a known agent acting within the scope of his authority for a disclosed principal, the contract is that of the principal alone...Whitlock's, Inc. v. Manley, 123 Conn. 434, 437, 196 A. 149 (1937). When these two principles are read together, the law presumes that where a writing contains the signature of a duly authorized agent, the "party to be charged" is the principal and not the agent because the agent individually is not a party to the agreement. See Warren-Connolly Co. v. Saphin, 283 App.Div. 391, 939 128 N.Y.S.2d 272 (1958). Instead, the principal is the party to the agreement. Cf. Tolk v. Williams, 75 Conn.App. 546, 558, 817 A.2d 142 (2003), quoting 1 Restatement (Second) Agency § 157, p. 373 (1958). Otherwise, every agreement signed by an agent on behalf of his principal would be admissible as a promise by the agent individually to answer for the debt of his principal. *Id.* at *3.

The Yellow Book contract contained a single clause that the signer would be held personally liable for any breach, however the Judge Peck disallowed this singular clause when the contract was clearly between Yellow Book and the principal and not the agent, citing public policy reasons. The contract in dispute in this particular matter does not even contain such a clause and thus there is no reason to attach the contract to the Defendant. The Defendant is not a party to the contract and consequently did not consent to arbitration.

An application for order to proceed with arbitration was denied on the court's finding that, "The contract provides for consensual arbitration. Both parties have not consented."

Appleby & Cutone, Inc. v Town of Chester, 1993 WL 540214 (Conn. Super.). Here the contract states:

If we are unable to come to a mutual agreement, or if one of us refuses to participate in choosing, the party filing a demand will have the right to make the choices unilaterally, as long as the filing party made a good faith effort to come to a mutual agreement, and the non-choosing/non-participating party expressly consents to and waives any and all objections to the choices made. Emphasis added.

On June 16, 2009, Mr. Shay wrote to the arbitration forum, American Dispute Resolution Center, objecting to the hearing being located in Connecticut. This in itself is proof that he did not expressly consent to the choices made. Further, Plaintiff's "good faith effort to come to a mutual agreement" was in the form of giving the Defendant three days to decide how he wanted to handle the dispute. Three days is hardly a good faith effort. Note that the arbitration demand was filed on May 26, 2010.

Because the Defendant did not assent to arbitration, because the Defendant is not a party to the contract, and because the terms of the arbitration clause were not adhered to, the court may not confirm the arbitration award.

**DEFENDANT, DENNIS SHAY d/b/a
MARSCH CHIROPRACTIC CENTER**

By: /s/429059
Joshua R.I. Cohen
Law Office of Joshua R.I. Cohen, LLC
2074 Park Street, 2nd Floor
Hartford, CT 06106
Tel. (860) 233-0338 Fax (860) 233-0339
Juris No. 429059

ORDER

The foregoing Objection having been presented to the Court, it is hereby Ordered:

SUSTAINED/OVERRULED

BY THE COURT,

Judge/Clerk

Date: _____

CERTIFICATION

I hereby certify that a copy of the foregoing Objection was served via first class mail, postage pre-paid, this 24th day of September, 2010, to all counsel and/or pro se parties of record, as follows:

Brett Boskiewicz
Robinson & Cole, LLP
280 Trumbell Street
Hartford, CT 06103-3597

/s/429059
Joshua R.I. Cohen

HDD-CV-09-5033765-87 PM 4:37

SUPERIOR COURT

DIRECTORY ASSISTANTS, INC.

J.D. OF HARTFORD

v.

WILLIAM F. CLARK
CLERK OF COURT
ORANGEBURG, SC

DENNIS SHAY d/b/a

MARSCHE CHIROPRACTIC CENTER

SEPTEMBER 23, 2010

AFFIDAVIT OF DENNIS SHAY

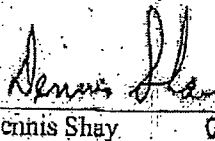
STATE OF SOUTH CAROLINA

COUNTY OF

The undersigned, having been duly sworn, hereby declares of his own personal knowledge that:

1. I am over eighteen years of age, and I believe in the obligations of an oath.
2. I am a resident of the State of South Carolina and a licensed chiropractor.
3. I am an agent for Dennis J. Shay D.C., P.A., which operates under the name Marsch Chiropractic Center.
4. As named above, I am being sued personally.
5. Directory Assistants attempted to solicit the business of Marsch Chiropractic Center.
6. Directory Assistant's sales person spoke to me and another person, however, only I was an authorized agent for Marsch Chiropractic Center.
7. I do not recall if the handwriting on the contact is mine, with the exception of my initials which I admit are mine.
8. I initialed the "Advertiser Acceptance" section after the representative told me to initial what I would consider after a trial basis IF I were to enter into a trial basis with Directory Assistance. I never entered into a trial basis.

9. I furnished my name and business name on the bottom of the contract without being told it was a contract, rather I was told my contact information was needed.
10. I was never allowed to hold or review the contract and did not know it was a contract until six months later when I disputed the existence of a contract.
11. I did not knowingly sign or enter into this contract.
12. I did not knowingly agree to arbitrate any disputes under the contract.
13. I never expressly consented to and waived any objections to the arbitration choices made, as is required by the contract.
14. Nothing in the contract language says I am personally liable for the contract, nor was any representation every made to me by the representative.


Dennis Shay

Subscribed and sworn to before me
this 27th day of September, 2010.

Notary Public My Commission Expires: 12-27-11



DOCKET NO.: HHD-CV09-5033765-S

DIRECTORY ASSISTANTS, INC.

V.

DENNIS SHAY d/b/a

MARSCH CHIROPRACTIC CENTER

SUPERIOR COURT

JUDICIAL DISTRICT OF HARTFORD

OCTOBER 20, 2010

**OPPOSITION TO DEFENDANT'S
OBJECTION TO APPLICATION FOR CONFIRMATION OF ARBITRATION AWARD**

Dennis Shay d/b/a Marsch Chiropractic Center ("Shay") and Directory Assistants, Inc. ("DAI") entered into a written contract in September 2008. The contract document confirms this fact. An arbitration award (the "Award") confirms this fact. Even Shay's affidavit confirms this fact – notwithstanding his conclusory, self-serving claims to the contrary. Shay admits that he initialed the "Advertiser Acceptance" section of the contract – a section that confirms his choice of "payment options." But now – for the very first time – Shay claims that he did not know that he was entering into a contract with DAI, that he was not permitted to read the contract, and that he did not know that he agreed to arbitrate any disputes with DAI. His actions and statements during the arbitration, however, show otherwise. He knew that he had a contract with DAI. And, he knew that he agreed to arbitrate any disputes with DAI. Shay's objection is nothing more than a desperate attempt to shirk his contractual obligations. His objection should be denied.

A. Shay failed to preserve his right to challenge the existence of an arbitration agreement.

Shay claims that he "did not knowingly sign or enter into this contract" with DAI and "did not knowingly agree to arbitrate any disputes under the contract." (Shay Aff. at ¶¶ 11-12.) Shay also claims that he is not personally liable because he signed the contract as a representative of the business entity Dennis J. Shay D.C., P.A. (Br. at 2-3; Shay Aff. at ¶¶ 4-6.)¹ Shay never raised these issues with the arbitrator and therefore has not preserved them for judicial review.

A trial court cannot confirm an arbitration award if the parties have not agreed to arbitrate their dispute. See *MBNA America Bank, N.A., v. Bonta*, 283 Conn. 381, 396 (2007). Therefore, the nonexistence of an arbitration agreement is a defense to an application to confirm an arbitration award. *Id.* But, a party cannot sit on its hands and wait for the matter to proceed to court before raising this issue. A party must preserve this issue for judicial review by raising it during the arbitration proceedings. *Id.* See also *Bacon Constr. Co., Inc. v. Dept. of Public Works*, 294 Conn. 695, 709-10 (2010); *MBNA America Bank, N.A. v. Bailey*, 104 Conn.App. 457, 467 (2007) ("a party must preserve its arbitrability claim by asserting such claim during the underlying arbitration proceedings.") Inaction is not

¹ Notably, Shay has not provided any objective evidence of this claim. He relies solely on his self-serving affidavit, the credibility of which, as demonstrated below, is seriously questionable.

sufficient to preserve the issue of the existence of an arbitration agreement. *Id.* A party "must engage in affirmative conduct at an appropriate time" to preserve the issue for judicial review. *Id.*

In *Boata*, the defendant challenged the existence of an arbitration agreement with a credit card company. *Boata*, 283 Conn. at 383. The defendant, Boata, responded to the plaintiff's arbitration by claiming that he "was never informed that there [was] an [a]rbitration [c]lause" and that he "never agreed under any contractual relationship to arbitrate his disputes with [the plaintiff] ... [and] is not bound by the [arbitration] [a]greement presented by the [plaintiff]" *Id.* at 384. Boata asked the arbitrator to dismiss the plaintiff's claims against him on this basis. *Id.* The Connecticut Supreme Court held that this action adequately preserved for judicial review the issue of whether an arbitration agreement existed. *Id.* at 396.

Bailey also involved a challenge to the existence of an arbitration agreement with a credit card company. *Bailey*, 104 Conn. App. at 459. But, unlike *Boata*, the defendant, Bailey, "did not participate, in any way, in the arbitration proceedings." *Id.* at 465. Bailey "did not challenge the arbitrability of the dispute before the arbitrator, either before or after the arbitrator issued his award." *Id.* Bailey raised the issue of the existence of the arbitration agreement for the first time in his objection to the plaintiff's application to

confirm the award. *Id.* at 465-66. The Appellate Court noted that Bailey "could have preserved his claim that an agreement to arbitrate did not exist by, inter alia, compelling a judicial determination of the issue of arbitrability or raising the issue for determination by the arbitrator." The court held that Bailey, "by his inaction, did not preserve his right to challenge the arbitrability of the plaintiff's claim."

Like the defendant in *Bailey*, Shay did not preserve his claim that an arbitration agreement did not exist between him or Marsch Chiropractic Center and DAI. Shay had the opportunity to raise this issue to the arbitrator, but he did not. Shay wrote the ADR Center on June 16, 2009 and requested that the arbitration be held in South Carolina. A true and correct copy of that letter is attached as Exhibit A. Shay did not object to the arbitrability of the dispute with DAI or challenge the existence of an agreement to arbitrate in his June 16, 2009 letter. In fact, Shay reiterated his agreement to arbitrate the dispute when he stated: "... I believe that the arbitration should be held in South Carolina."

(Ex. A.)

Shay sent another letter to the ADR Center on July 30, 2009. A true and correct copy of that letter is attached as Exhibit B. In the July 30th letter, Shay stated: "... I have sent Directory Assistants a check for the amount due. I hope that this will bring end to this

matter." (Ex. B.) Again, Shay did not object to the arbitrability of the dispute with DAI or challenge the existence of an agreement to arbitrate.

Shay's attorney sent a letter to the ADR Center on August 25, 2009. A true and correct copy of that letter is attached as Exhibit C. In this letter, Shay's attorney indicated that Shay disputed the validity of the arbitration "provision of the contract" and disputed the location and choice of law for the arbitration.² (Ex. C.) Shay's attorney, however, did not claim that Shay never entered into a contract with DAI or that Shay did not agree to arbitrate any disputes with DAI, which Shay now contends. In fact, Shay's attorney claimed - without providing any proof - that Shay terminated his contract with DAI, which suggests that a contract existed at least at some point in time. (*Id.*) Shay's attorney also claimed that South Carolina law applied to this dispute because "[t]he contract was made in South Carolina." (*Id.*) This statement shows that Shay did not dispute the existence of a contract with DAI - a contract that included an arbitration clause.

Again, like the defendant in *Bailey*, Shay claims that he did not enter into a contract with DAI or agree to arbitration for the very first time in his objection to DAI's application to confirm its arbitration award. Shay did not raise these issues with the arbitrator and therefore failed to preserve them for judicial review. *See Bonta*, 283 Conn. at 396; *Bailey*, 104

² The arbitrator considered these objections and denied them on September 4, 2009. (See Arbitration Award at ¶3, attached as Exhibit E.)

Conn.App. at 467 (... "a party must preserve its arbitrability claim by asserting such claim during the underlying arbitration proceedings."). His objection should be denied.

B. Shay's claim that he did not know that he entered a contract with DAI is not credible.

Shay claims that he was not aware that he was entering into a contract with DAI and did not agree to arbitrate any disputes with DAI. (Br. at 2; Shay Aff. at ¶¶11-12.) He claims that he "did not knowingly sign or enter into this contract." (Shay Aff. at ¶11.) He claims that he "furnished [his] name on the bottom of the contract without being told it was a contract...." (Id. at ¶9.) He claims that he "was never allowed to hold or review the contract [sic] and did not know that it was a contract until six months later when [he] disputed the existence of a contract." (Id. at ¶10.) Shay makes these claims in a self-serving affidavit rather than appear in court for cross-examination. Shay's conduct and statements made during the arbitration, however, call the credibility of his affidavit into serious question.

Shay admits that he initialed the "Advertiser Acceptance" section of the contract. (Shay Aff. at ¶¶7-8.) This section of the contract indicates which payment option that the advertiser - in this case, Shay - chose. A true and correct copy of the contract is attached hereto as Exhibit D. It is inconceivable that a business owner would sign and accept a contract and select a four-year payment option without reading the document -

particularly if he or she was not allowed to hold or review it as Shay alleges. A mere glance at the contract would inform a person of reasonable business prudence that the document was a contract. The words "Consulting Contract" are typed in large, bold print at the top of both pages of the contract. (Ex. D.) The word "contract" is referenced in the document in numerous locations. (*Id.*) The contract includes a termination right for the advertiser. (*Id.* at p. 1.) The contract describes the services that DAI was to provide, optional services, payment options, performance guarantees, dispute resolution through arbitration, and other terms that are hallmarks of a contract. (*Id.*) Thankfully, the law guards against such attempts escape contractual liability by presuming that a party who signs a contract has read it. *See First Charter Nat'l Bank v. Ross*, 29 Conn. App. 667, 671 (Conn. App. Ct. 1992) ("The general rule is that where a person of mature years and who can read and write, signs or accepts a formal written contract affecting his pecuniary interests, it is [that person's] duty to read it and notice of its contents will be imputed to [that person] if [that person] negligently fails to do so....")

Shay's actions during the arbitration proceedings also show that he knew that he had executed a contract with DAI and agreed to arbitrate any disputes that arose from that contract. Shay wrote the ADR Center on June 16, 2009 and requested that the arbitration be held in South Carolina. (Ex. A.) Shay did not object to the arbitrability of the dispute with

DAI or challenge the existence of an agreement to arbitrate in his June 16, 2009 letter. In fact, Shay reiterated his agreement to arbitrate the dispute when he stated: "... I believe that the arbitration should be held in South Carolina." (Ex. A.)

Shay sent another letter to the ADR Center on July 30, 2009. (Ex. B.) In the July 30th letter, Shay stated: "... I have sent Directory Assistants a check for the amount due. I hope that this will bring end to this matter." Again, Shay did not object to the arbitrability of the dispute with DAI or challenge the existence of an agreement to arbitrate. Instead, Shay indicated that he paid DAI what he considered the "amount due." (Ex. B.) This letter further undermines his current claims that he did not know that he was entering into a contract with DAI.

Shay's attorney sent a letter to the ADR Center on August 25, 2009. (Ex. C.) In this letter, Shay's attorney indicated that Shay disputed the validity of the arbitration "provision of the contract" and disputed the location and choice of law for the arbitration.³ (Ex. C.) Shay's attorney, however, did not claim that Shay never entered into a contract with DAI or that Shay did not agree to arbitrate any disputes with DAI, which Shay now contends. In fact, Shay's attorney claimed - without providing any proof - that Shay terminated his contract with DAI, which suggests that a contract existed at least at some

³ The arbitrator considered these objections and denied them on September 4, 2009. (See Arbitration Award at ¶3, attached as Exhibit E.)

point in time. (*Id.*) Shay's attorney also claimed that South Carolina law applied to this dispute because "[t]he contract was made in South Carolina." This statement shows that Shay did not dispute the existence of a contract with DAI - a contract that included an arbitration clause. Shay's attorney did not claim fraud in the inducement or any other of the alleged defenses that Shay has asserted in this proceeding. The absence of these claims in the August 25, 2009 letter from Shay's attorney seriously undermines the credibility of his current claims.

Finally, the Arbitrator made certain findings of fact in the Award that preclude Shay's current objections. A true and correct copy of the Award is attached as Exhibit E. The Arbitrator expressly found that DAI and Shay "entered into a contract." (Ex. E at ¶8.) Shay cannot re-litigate this issue now in this forum. Shay had the opportunity to raise this issue in the arbitration in Connecticut, by demanding a separate arbitration, or seeking preliminary judicial review. He chose not to. His objection to DAI's application to confirm the Award should be denied.

C. Shay's objection is an untimely motion to vacate the Award

General Statutes § 52-418 sets forth the grounds for vacating an arbitration award:

Upon the application of any party to an arbitration, the superior court for the judicial district in which one of the parties resides or, in a controversy concerning land, for the judicial district in which the land is situated or, when the court is not in session, any judge thereof, shall make an order vacating the

award if it finds any of the following defects: (1) If the award has been procured by corruption, fraud or undue means; (2) if there has been evident partiality or corruption on the part of any arbitrator; (3) if the arbitrators have been guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown or in refusing to hear evidence pertinent and material to the controversy or of any other action by which the rights of any party have been prejudiced; or (4) if the arbitrators have exceeded their powers or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made.

"[A] party who objects to an arbitration award on the basis of a ground specified in § 52-418 must do so within thirty days from notice of the award." *MBNA Am. Bank N.A. v. Bonta*, 283 Conn. 381, 393 (2007) (emphasis added); *see also* Gen. Stat. § 52-420(b) ("No motion to vacate, modify or correct an award may be made after thirty days from the notice of the award to the party to the arbitration who makes the motion."); *Town of Bloomfield v. United Elec., Radio & Mach. Workers of Am.*, 285 Conn. 278, 290-93 (2008); *Wu v. Chang*, 264 Conn. 307, 311 (2003).

A motion to vacate is the only appropriate method of challenging the authority of an arbitrator who did not comply with or disregarded the limits in the parties' agreement with respect to arbitration. *See Bonta*, 283 Conn. at 395. Such a challenge falls squarely within Section 52-418(a)(4)'s "if the arbitrators have exceeded their powers..." language. *Id.*

Therefore, any claim that the arbitrator did not comply with the arbitration agreement must be brought within thirty days of notice of the award. *Id.* at 393.⁴

Shay claims that the contract language required Shay to consent to the choices that DAI made concerning the arbitration provider, location, and choice of law and that Shay did not consent to those choices. (Br. at 4.) The contract, however, does not require Shay's express consent. The contract reads, in relevant part:

Should a dispute arise we both agree to try and resolve it with the other party. If we cannot, we both want to resolve it quickly and cost effectively. To achieve that, we both agree to resolve any dispute arising out of or relating to this contract through confidential binding arbitration and agree to mutually choose an arbitration service, location, and choice of law forum. If we are unable to come to a mutual agreement, or if one of us refuses to participate in choosing, the party filing a demand will have the right to make the choices unilaterally, as long as the filing party made a good faith effort to come to a mutual agreement, and then non-choosing/non-participating party expressly consents to and waives any and all objections to the choices made.

(Ex. D at p. 2.) This clause allows the filing party to make those choices "unilaterally" if the parties cannot agree or if the non-filing party does not participate in making those choices.

It prevents one party from stonewalling the arbitration by refusing to communicate with the other party about the details of the arbitration. The plain language proves this fact.

⁴ A party, may, however raise the existence of an arbitration agreement as a defense to an application to confirm an arbitration award even after Section 52-420(b)'s 30-day time period expires. *Bonta*, 283 Conn. at 396. DAI does not challenge the timeliness of the Shay's challenge to the existence of the arbitration agreement.

How can a party proceed "unilaterally" if the contract requires the other party's express consent and waiver, as Shay claims? It can't. Shay's interpretation is incorrect and would render the term "unilaterally" meaningless, which the law does not permit. *See Hilb Rogal & Hobbs Co. v. Randall*, 115 Conn. App. 89, 96 (2009) ("The law prefers an interpretation which gives effect to all parts of the contract rather than one which leaves a portion of the contract ineffective or meaningless.").

Moreover, Shay's argument is really a challenge to the means by which DAI procured the arbitration award - i.e. whether DAI complied with the terms of the arbitration agreement. The contract language shows that the parties unequivocally agreed to arbitrate "any dispute arising out of or relating to this contract through confidential binding arbitration and agree[d] to mutually choose an arbitration service, location, and choice of law forum." (Ex. D.) The conjunction "and" shows that the parties (1) agreed to arbitrate, and (2) agreed to mutually choose an arbitration service, location, and choice of law. The agreement to mutually decide the arbitration details is a separate agreement, not a condition precedent to arbitration or part of the agreement to arbitrate. Whether DAI complied with the agreement to mutually decide the arbitration details is a challenge to the means by which DAI procured the arbitration award. This challenge could have only been raised in a motion to vacate, which Shay did not file within the thirty-day time period. *See*

Gen. Stat. § 52-418(a)(1) ("...(1) If the award has been procured by corruption, fraud or undue means..."). Shay's objection should be denied. *See Boata*, 283 Conn. at 393. ("[A] party who objects to an arbitration award on the basis of a ground specified in § 52-418 must do so within thirty days from notice of the award.").

Shay failed to preserve his current objections to arbitrability for judicial review by raising them with the arbitrator. His self-serving affidavit cannot cure this defect. And, Shay failed to raise his other objections to confirming the Award within statutory time limit for vacating an arbitration award. His objection should be denied and the Award confirmed.

PLAINTIFF,
DIRECTORY ASSISTANTS, INC.

By: Brett Boskiewicz

Frank F. Coulom, Jr. (fcoulom@rc.com)
Brett J. Boskiewicz (bboskiewicz@rc.com)
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103-3597
Tel: (860) 275-8200
Fax: (860) 275-8299
Juris No.: 50604

ORDER

The foregoing OPPOSITION having been presented to the Court, it is hereby
GRANTED / DENIED.

Dated: _____, 2010. THE COURT

By: _____
Judge/Assistant Clerk

EXHIBIT A



June 16, 2009

American Dispute Resolution Center
CBA Law Center
Laura McNaughton
30 Bank Street
New Britain, CT 06051

RE: Directory Assistances, Inc. and Dennis J. Shay dba Marsch
Chiropractic Center 35-0262-09 L

Dear Ms. McNaughton,

Thank you for the week extension to file a response.

As per our phone call, I am requesting that the arbitration take place in South Carolina. Directory Assistants came to me in South Carolina, all preliminary discussions were in South Carolina, contracts were signed in South Carolina and I believe that arbitration should be held in South Carolina.

Thank you for this consideration.

Sincerely,

Dennis J. Shay

DJS

EXHIBIT B



July 30, 2009

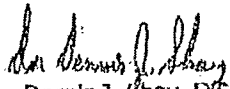
ADR Center
CBA Law Center
30 Bank Street, 3rd Floor
New Britain, CT 06051

Ms. Laura McNaughton,

In response to your letter dated July 21, 2009 requesting possible dates for the scheduling of hearings by July 30, 2009, I have sent Directory Assistants a check for the amount due. I hope that this will bring end to this matter.

I have enclosed a copy of that letter for your records.

Sincerely,


Dennis J. Shay, DC

DJS/cb

TROTTER & MAXFIELD

Attorneys at Law

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Columbia, South Carolina 29201

GENE TROTTER

DAVE MAXFIELD

Telephone (803) 799-6000

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Writer's e-mail:

dave@trotterandmaxfield.com

August 25, 2009

VIA FACSIMILE 860-223-1846

& US Mail

American Dispute Resolution Center

ATTN: Laura McNaughton

CBA Law Center

30 Bank Street - 3rd Floor

New Britain, CT 06051

RE: 35-0262-09 L

Directory Assistants, Inc.

Our Client: Dr. Dennis Shay

Dear Ms. McNaughton:

Please be advised that our office represents Dr. Shay with respect to the above matter. Your letter dated June 23, 2009 (and various e-mail correspondence) has been provided to me by Dr. Shay. This letter is submitted for the limited purpose of advising of my client's position with respect to the jurisdiction of this forum in the above matter. It should not be construed as an appearance for purposes of jurisdiction.

In your letter, you state that "the ADR Center has considered the contentions of the parties and has determined that the locale for hearings in this matter will be New Britain, Connecticut under Connecticut Law." I am presuming that this "determination" was made based on the arbitration language contained in the "Consulting Contract" which DAI relies upon (since there is no separate arbitration agreement).

My client disputes the validity of this provision of the contract. Moreover, prior to the demand for arbitration by DAI, Dr. Shay exercised his right to terminate the contract as provided in DAI's "Performance Guarantee." The contract having been voided, any basis that might otherwise have existed for arbitration ended.

The contract was made in South Carolina. Under South Carolina law and the Federal Arbitration Act, the party asserting the existence of an arbitration agreement (i.e., DAI) is required to seek court intervention to determine whether there is an agreement to arbitrate before proceeding through arbitration. See, 9 U.S.C. § 4 (2000); MBNA America Bank vs. Christianson, Slip Op. 4349 (Ct. App. March 4, 2008). In other words, under applicable law, the ADR Center cannot make the initial determination as to whether a claim can be arbitrated, as this determination is exclusively for a South Carolina Court.

For the above reasons, this forum does not have jurisdiction to render any determination, including a determination about arbitrability or location. Based on the above, my client will not participate in any proceeding, as same would be invalid and without effect. By copy of this letter to Joseph A. Wellington, I am advising of the foregoing. Additionally, by copy of this letter to Mr. David Ford of DAI, I am placing him on notice that any action brought in South Carolina to enforce an award or contract will be defended, and accompanied by multiple counterclaims against DAI. Respectfully, I am,

Sincerely,



Dave Maxfield

DM/aa

Cc: Dr. Dennis Shay
Joseph A. Wellington, Esquire
Mr. David Ford

EXHIBIT D



CONSULTING CONTRACT

Directory Assistants, Inc.

500 Winding Brook Drive • Glastonbury, CT 06033
Tel: 860-633-0122 • Fax: 860-633-2900

page 1 of 2

WHAT WE DO FOR YOU:

We will take you through our Strategic Process to help you determine whether you should make cost saving changes to your baseline yellow page program or renew it as is.

DAI'S STRATEGIC PROCESS:

Step One: We will help you identify your specific business factors and understand how those factors should be considered before making a yellow page purchase.

Step Two: We will educate you on various yellow page options and strategies by disclosing information, cost saving suggestions, theories, options and advice. This may include advice on directories, sizes, strategies, the use of free listings, copy, concepts, colors, market plans, discounts, rates, removal of placements, etc. We are not going to assume what your yellow page knowledge or experience is. We will cover yellow page options and strategies including basic yellow page fundamentals, some of which may seem "common sense" after the rationale is explained.

This is an interactive process, so the more you participate, the better the result. We understand your time is valuable and we will spend as much or as little time explaining our Strategic Process as you feel necessary. During this contract, if you ever want us to review our Strategic Process again, or in more detail, we will do that as many times as you deem necessary. Once we review Steps One and Two you will be in a position to decide whether to implement some, none or all of our strategies, modify our strategies in any way you deem appropriate, use our strategies to create your own cost saving changes or retain your baseline program at its full renewal cost. We will only earn a fee if savings are actually enjoyed.

At your request, and at no cost to you, we will provide ad design services, assistance with implementing any yellow page decisions, review/verify all yellow page placements after publication, review/verify all yellow page charges and forecast future costs. If you would like, we will also assist and advise you on additional ads or enhancements to existing ads at no cost to you. Please know that if you decide to spend money on additional ads or enhancements to any existing ads it will not offset our fee.

PERFORMANCE GUARANTEE:

We are so sure we will be able to show you how to achieve gross savings of at least 40% on your yellow page costs, that if we cannot, you will have the right to terminate this contract. All we ask is you give us ten days written notice at least ten days before the first close date of your baseline program for us to try again.

HOW WE ARE COMPENSATED:

There are three different fee options you may choose from:

- a) 75% of any yearly yellow page savings for two (2) years;
- b) 50% of any yearly yellow page savings for three (3) years;
- c) 37.5% of any yearly yellow page savings for four (4) years.

Any fee in year one is due on the date the first book in your baseline program closes. The fees in subsequent years shall be due on the respective anniversary dates of that first close date.

Our Strategic Process is educational in nature. Once we begin sharing information there is no way to get it back or to determine why you made any future cost saving changes. To eliminate any disputes, once we disclose any information, you waive any claim to the origin of any future cost saving changes not identified on this contract as "pre-disposed changes" and you agree to pay us for any future savings.

We want you to understand that you are under no obligation to implement any savings, even after hearing our information. You may also avoid any fee in any year by implementing your original baseline program at the full renewal cost. We will even help you do that.

DEFINITIONS:

The following definitions apply throughout this contract: "Yellow page" is defined as all yellow page, white page and publisher internet advertising. "Savings" are defined as that year's full renewal cost of the baseline program minus that year's revised cost (excluding any additional ads or enhancements to any existing ads). Each year, we will recalculate the savings by taking that year's full renewal cost of the baseline program and subtracting that year's revised costs (excluding any additional ads or enhancements to any existing ads). "Baseline program" is defined as your yellow page program (on an ad by ad basis) in effect as of the date of this contract, per directory publisher's contracts. A "year" is defined as the complete publication cycle for each next available directory in your baseline program. "Full renewal cost" is defined as that particular year's cost of the baseline program calculated at the standard Yellow Page Association ("YPA") rates.

Consulting Contract Jan 2008

CONSULTING CONTRACT

page 2 of 2

HOW WE RESOLVE DISPUTES:

Should a dispute arise we both agree to try and resolve it with the other party. If we cannot, we both want to resolve it quickly and cost effectively. To achieve that, we both agree to resolve any dispute arising out of or relating to this contract through confidential binding arbitration and agree to mutually choose an arbitration service, location and choice of law forum. If we are unable to come to a mutual agreement, or if one of us refuses to participate in choosing, the party filing a demand will have the right to make the choices unilaterally, as long as the filing party made a good faith effort to come to a mutual agreement, and the non-choosing/non-participating party expressly consents to and waives any and all objections to the choices made.

To streamline this process, we both agree to limit discovery as follows: Within two weeks of a demand being filed, we will give you your complete paper file and you agree to give us all your yellow page contracts/confirming orders for the past three years. If you do not give us these, we will have no way to accurately calculate the baseline or savings and you will automatically and expressly waive any objection to our damage calculation.

If we did not disclose any information you should not have to pay us anything. If you breached the contract, we should not be paid any less than you agreed. To be fair to both of us, we both agree the arbitrator will have no authority to award any "middle ground", "compromise" or "punitive damages" awards to either of us. Either of us may obtain judgment upon an arbitration award in any court in either our home state or your home state, and both of us expressly consent to and waive any objection to the jurisdiction of the court selected by the prevailing party for purposes of seeking confirmation and/or judgment on any arbitration award.

TERMS:

Both of us agree we will not disclose the other's information to any third party. We both understand that yellow page effectiveness is not guaranteed, and we cannot be responsible for any white page, directory assistance or yellow page errors. Setting up or correcting white page/directory assistance listings is not included in our services, but will be handled for an additional cost. If a directory is renamed or rescope, the closest directory(s) having the largest distribution will be used to determine the baseline for that directory. We both agree that our Strategic Process and our disclosure of information is intellectual property and that this contract will be binding on any successors and/or assigns, branches, holding companies, affiliates, future purchaser(s) of assets (in whole or in part) or subsidiaries. Both of us acknowledge that we have read this contract and have had the opportunity to review it with counsel of our choice before signing it, and waive any objections to its terms. If any term(s) of this contract is unenforceable, the remainder of the contract shall remain in full force and effect.

If you do not pay us as agreed, you will incur a monthly fee of 1.5% from the date the first book in your baseline program closed. We both agree this contract represents a complete understanding and overrides any verbal or other understandings or assurances.

If you breach this contract, we both agree to accelerate fees due to a liquidated damages amount equal to 40% of the year one full renewal cost of the baseline program multiplied by three. We both understand that this amount may be more or may be less than what is ultimately actually owed by the end of the contract. However, we cannot determine that until the end of the contract. We both agree that this calculation was fair at the time this contract was entered into and waive any objection to this liquidated damage provision. As far as late fees, the liquidated damages will be considered to have been due on the date the first book in the baseline program closed.

If you prove we did not disclose any information, you will be entitled to all your legal fees (at least \$350 per hour) and all your arbitration costs. If we prove that you breached this contract, we will be awarded all our costs of collection including our legal fees (at least \$350 per hour), all arbitration costs and all estimated future legal fees to confirm the award/domesticate the judgment.

If either one of us prevails defending any judicial action resisting arbitration or resisting confirmation of an award or resisting domesticating a judgment, that prevailing party shall be entitled to all costs incurred, including legal fees of at least \$350 per hour.

ADVERTISER ACCEPTANCE: (Circle and initial)

The advertiser has chosen the: Two Year-Option A

Three Year-Option B

Four Year-Option C

PREDISPOSED CHANGES: (Leave Blank if None)

DENNIS SHAY

DENNIS SHAY

9-9-08

Person Authorized to Contract for Advertiser

Print Name

Date

MARSH CHIROPRACTIC CENTER

Company Name / Advertiser

Directory Assistants, Inc.

Date

Consulting Contract Jan 2003

EXHIBIT E

AMERICAN DISPUTE RESOLUTION CENTER

In the Matter of Arbitration Between:

Directory Assistants, Inc.

And

September 17, 2009

Dennis Shay d/b/a Marsch Chiropractic Center

Case Number: 35-0262-09L

AWARD

I, THE UNDERSIGNED, as the duly appointed Arbitrator in the foregoing matter, which was submitted to the American Dispute Resolution Center ("ADR Center") for resolution by arbitration, having been duly sworn and having duly heard the allegations and proofs of the Complainant, FIND and AWARD as follows:

ISSUES PRESENTED

1. Did the Respondent breach his contract with the Complainant (the "Contract")?
2. If a breach occurred, to what extent is the Complainant entitled to recover liquidated damages, interest thereon, arbitration attorney fees and other arbitration fees pursuant to the terms of the Contract?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Rule 18 of the American Dispute Resolution Center, Inc. Rules of Commercial Arbitration provides that a hearing will proceed ex parte and an award entered where a party fails to appear after due notice of the date, time and place of the hearing.

(W1741103)

2. The Respondent was provided timely notice of the date, time and place of the hearing in this matter by means of a Formal Notice of Hearing dated August 24, 2009.
3. The Respondent objected to the hearing proceeding in this matter through counsel by means of a letter dated August 25, 2009 which objection was denied by the undersigned's order dated September 4, 2009 (the "Order").
4. The Respondent was provided timely notice of the Order.
5. The Respondent did not appear at the hearing in this matter after being given timely notice thereof by the Formal Notice of Hearing and the Order.
6. The hearing in the above captioned matter was held on September 11, 2009 ex parte at the date, time and place previously set therefor.
7. The law of Connecticut applies to the resolution of the issues in this matter.
8. The Complainant and the Respondent entered into the Contract on September 8, 2008.
9. The Respondent breached the Contract.
10. The effective date of the breach is October 3, 2008.
11. The Complainant is entitled to an award of Liquidated Damages and Interest thereon from the date of said breach through the date of this Award as well as its Arbitration Attorney Fees and other arbitration fees pursuant to the terms of the Contract.

LIQUIDATED DAMAGES, INTEREST AND FEES

1. The Respondent shall pay the Complainant:
 - a. Liquidated Damages in the amount of \$22,860.
 - b. Interest in the amount of \$3,392.
 - c. Arbitration Attorney Fees in the amount of \$5,320.

c. Arbitrator's fee in the amount of \$1,960.

d. ADR Center fees in the amount of \$1,050.

for a total award of \$34,582 (the "Monetary Award") through the date hereof.

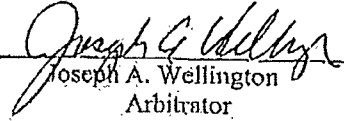
2. The Respondent shall pay the Monetary Award to the Complainant in full not later than thirty days (30) days from the date of Respondent's receipt of a copy of this Award.
3. If the Respondent fails to pay the Complainant the Monetary Award as required by Paragraph 2 immediately above, interest shall accrue on the unpaid balance of the Liquidated Damages component of said Monetary Award at the rate of 1.5% per month from the date of this Award until such time as said damages are paid in full.
4. The Complainant has pre-paid the Arbitrator's Fees in the amount of \$1,960 on behalf of the Respondent.
5. The Complainant has pre-paid ADR Center fees in the amount of \$1,050 on behalf of the Respondent.
6. The Respondent shall reimburse the Complainant for the amount of Arbitrator's fees and ADR Center fees in full within thirty (30) days of receiving a copy of this Award.
7. If the Respondent fails to pay the Complainant the aforesaid Arbitrator's Fees and ADR Center Fees in full as required by Paragraph 6 immediately above, interest shall accrue on the unpaid balance of said fees at the rate of 1.5% per month until such time as said fees are paid in full.

(continued on next page)

FINAL AWARD

THIS AWARD is final and is immediately effective without the necessity of further hearing and may be confirmed in any court having jurisdiction thereover.

DATED, this Seventeenth day of September 2009.


Joseph A. Wellington
Arbitrator



Instructions: Additional information about this transaction is provided below. Use the browser's print function to print a copy of this Confirmation. Then, select the "Back to E-Filing Menu" or "Logout".

[Print](#)[Back to E-Filing Menu](#)[Logout](#)

Confirmation of E-Filing

Docket Number:	HHD-CV-09-5033765-S
Case Name:	DIRECTORY ASSISTANTS v. SHAY, DENNIS DBA
Type of Transaction:	Pleading/Motion/Other
Date Filed:	Oct-20-2010
Motion/Pleading by:	ROBINSON & COLE LLP Juris# 050604
Document Filed:	OBJECTION to Def's Obj to App for Confirm of Arb Award
Date and Time of Transaction:	Wednesday, October 20, 2010 11:49:55 AM

[E-File Another Pleading/Motion/Other on this Case](#)

DIRECTORY ASSISTANTS VS.
SHAY, DENNIS HHD-CV-09-5033765S (PJR)

MOTION 112
OBJECTION

ORDER:
IF THE DEFENDANT WISHES THE COURT TO CONSIDER
THE FACTUAL CLAIMS SET FORTH IN HIS OBJECTION
AND AFFIDAVIT, HE MUST BE PRESENT TO TESTIFY
AND BE SUBJECT TO CROSS EXAMINATION. THIS
MATTER IS CONTINUED TO NOVEMBER 22, 2010 ON
CALENDAR #3. IF THE DEFENDANT DOES NOT APPEAR
AT THAT TIME, THE COURT WILL CONSIDER THE
MATTER ON THE PAPERS BUT WILL NOT CONSIDER THE
DEFENDANT'S AFFIDAVIT.

SCHOLL, J
10/25/10

SUPERIOR COURT	ROBINSON & COLE LLP
95 WASHINGTON STREET	280 TRUMBULL STREET
P.O. BOX DRAWER N	
HARTFORD, CONNECTICUT	06106 HARTFORD CT 06103

DATED: OCT 26, 2010
HHDC

ROA_0097

STATE OF SOUTH CAROLINA)

COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

Directory Assistants, Inc.,)

Plaintiff,)

vs.)

Dennis Shay, d/b/a Marsch Chiropractic
Center,)

Defendant.)

Civil Action No. 2011-CP-~~38~~ 853

NOTICE OF FILING OF
FOREIGN JUDGMENT

FILED FOR RECORD
WINTER 2011
CLERK OF COURT
ORANGEBURG COUNTY, SC

2011 JUL 20 P 3 16

TO: Dennis Shay d/b/a Marsch Chiropractic Center

NOTICE IS HEREBY GIVEN that a judgment creditor, Directory Assistants, Inc., located at 500 Winding Brook Drive, Glastonbury, CT 06033 and represented by the undersigned, has filed in the Office of the Clerk of Court Orangeburg County, South Carolina, a judgment and order from the Superior Court of Hartford County, Connecticut (Docket No. HHD-CV-09-5033765-S & Order No. 419022). A true and accurate exemplified copy of the judgment and order from the Superior Court of Hartford County, Connecticut is attached to an affidavit¹ in support of this notice and incorporated herein.

The judgment and order confirm an arbitration award to the judgment creditor against the defendant, Dennis Shay d/b/a Marsch Chiropractic Center ("Defendant"). The arbitration award is also attached to the affidavit in support and incorporated herein. The Defendant has thirty (30) days from the date of service of this Notice to seek relief from the enforcement of the judgment, and if said judgment is not satisfied, or relief

¹ The affidavit is attached as Exhibit A to this Notice.

ATTEST: TRUE COPY

Wynne B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

sought within thirty (30) days, the judgment will be enforced in the State of South Carolina in the same manner as a judgment of this State.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: Brian A. Calub

D. Larry Kristinik, Esq.

Email: Larry.Kristinik@nelsonmullins.com

Brian A. Calub, Esq.

Email: Brian.Calub@nelsonmullins.com

1320 Main Street / 17th Floor

Post Office Box 11070 (29211)

Columbia, SC 29201

(803) 799-2000

Attorneys for Directory Assistants, Inc.

Columbia, South Carolina
July 19, 2011

Exhibit A

STATE OF SOUTH CAROLINA)

COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

Directory Assistants, Inc.,)

Plaintiff,)

vs.)

Dennis Shay, d/b/a Marsch Chiropractic
Center,)

Defendant.)

Civil Action No. 2010-CP-42-_____

AFFIDAVIT

FILED FOR RECORD
WINTERA D. CLARK
CLERK OF COURT
ORANGEBURG COUNTY, SC

2011 JUL 20 P 3:16

PERSONALLY APPEARED before me, the undersigned, upon being duly sworn,
deposes and states as follows:

The undersigned is the Vice President for the Plaintiff, Directory Assistants, Inc., and has served in that capacity at all times in connection with the judgment awarded to the Plaintiff, in the Superior Court for the County of Hartford, State of Connecticut, in the case Directory Assistants, Inc. vs. Dennis Shay d/b/a Marsch Chiropractic Center, Docket No. HHD-CV-09-5033765-S, as follows: Judgment entered by Superior Court Judge Jayne S. Scholl, assigned Order No. 419022 and which is dated May 25, 2011.

The Judgment and Order confirm an arbitration award dated September 17, 2009. The arbitration award grants the Plaintiff an amount of damages to be paid by the Defendant, Dennis Shay, d/b/a Marsch Chiropractic Center, in the total sum of Thirty Four Thousand Five Hundred Eighty-Two and No/100 (\$34,582.00) Dollars plus post-award interest. An exemplified copy of the Judgment and Order along with a copy of the Arbitration Award is attached and incorporated herein. To the best of his knowledge, the judgment is final, it is unsatisfied and, as of the date of this affidavit below, the amount

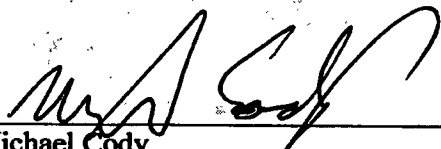
ATTEST TRUE COPY
Winters B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

remaining unpaid is Thirty Four Thousand Five Hundred Eighty-Two and No/100 (\$34,582.00) Dollars plus post-award interest as required by the Arbitration Award until paid in full.

Upon information and belief, as of the date set forth below, the Defendant has not filed any post-trial motions, nor a notice of appeal, and the judgment is not further contested.

FURTHER AFFIANT SAYETH NOT.

Dated this 7th day of July, 2011.


Michael Cody
Vice President, Directory Assistants, Inc.

SWORN to and subscribed before me

this 7th day of July, 2011

 (L.S.)
Notary Public for Connecticut

My Commission Expires: March 31, 2015

(SEAL)

CARL STAGGERS
NOTARY PUBLIC
MY COMMISSION EXPIRES MAR. 31, 2015

State of Connecticut

STATE OF CONNECTICUT)

COUNTY OF HARTFORD)

ss. HARTFORD

I, **Joy Gordon, Assistant Clerk**

of the Superior Court of said State, within and for said County of Hartford, do hereby certify that the foregoing is a true copy of record

JUDGMENT, in the matter of Directory Assistants, Inc. v. Dennis Shay d/b/a Marsch Chiropractic Center Docket #CV09-5033765-S, all as appears of record.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Superior Court at Hartford, in said County on this 27th day of June, A.D. 2011

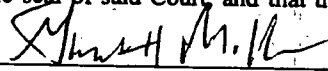

Joy Gordon, Assistant Clerk

STATE OF CONNECTICUT)

COUNTY OF HARTFORD)

ss. HARTFORD

I, **Grant H. Miller**, a Judge of said Superior Court, do hereby certify that **Joy Gordon**, whose name is subscribed to the above certificate is the Assistant Clerk of the Superior Court of the Judicial District of Hartford; that the seal affixed to the above certificate is the genuine seal of said Court, and that the foregoing attestation is in due form.


Grant H. Miller, a Judge of the Superior Court

STATE OF CONNECTICUT)

COUNTY OF HARTFORD)

ss. HARTFORD

I, **Joy Gordon, Assistant Clerk** of the Superior Court of said State, within and for said Judicial District of Hartford, do hereby certify that whose name is subscribed to the foregoing certificate, **Grant H. Miller**, is a Judge of the Superior Court of said State, duly appointed and qualified, and that all his acts as such are entitled to full faith and credit.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Superior Court at Hartford, in said County, this 27th day of June, A.D. 2011


Joy Gordon, Assistant Clerk

DOCKET NO: HHDCV095033765S

DIRECTORY ASSISTANTS
V.
SHAY, DENNIS

SUPERIOR COURT

JUDICIAL DISTRICT OF HARTFORD
AT HARTFORD

ORDER 419022

5/25/2011

ORDER

ORDER REGARDING:
10/22/09 100.31 APPLICATION

The foregoing, having been considered by the Court, is hereby:

ORDER: GRANTED

The arbitration award is confirmed, absent objection.

419022

Judge: JANE S SCHOLL

RECEIVED
JUN 27 4 53
JUDICIAL DISTRICT OF
HARTFORD
STATE OF CONNECTICUT

HHDCV095033765S 5/25/2011

Page 1 of 1

Kimberly Reid, Administrative Assistant

ROA_0104



CBA Law Center
30 Bank Street
New Britain, CT 06051
Telephone: (860) 832-8060
Fax: (860) 223-1846
www.adrcenter.net

FAX

Number of Pages: 5 Date: 9-22-09
(Including Cover Sheet)

To: David Ford Fax: _____

To: _____ Fax: _____

To: _____ Fax: _____

Cc: _____ Fax: _____

From: Tanner Fax: (860)-223-1846

Re: Director's asst - vs March

☐ Urgent ☐ For Review ☐ Reply ☐ Please Comment ☐ Please Recycle

Comments:

Copy of award as requested

AMERICAN DISPUTE RESOLUTION CENTER

In the Matter of Arbitration Between:

Directory Assistants, Inc.

And

September 17, 2009

Dennis Shay d/b/a Marsch Chiropractic Center

Case Number: 35-0262-09L

AWARD

I, THE UNDERSIGNED, as the duly appointed Arbitrator in the foregoing matter, which was submitted to the American Dispute Resolution Center ("ADR Center") for resolution by arbitration, having been duly sworn and having duly heard the allegations and proofs of the Complainant, FIND and AWARD as follows:

ISSUES PRESENTED

1. Did the Respondent breach his contract with the Complainant (the "Contract")?
2. If a breach occurred, to what extent is the Complainant entitled to recover liquidated damages, interest thereon, arbitration attorney fees and other arbitration fees pursuant to the terms of the Contract?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Rule 18 of the American Dispute Resolution Center, Inc. Rules of Commercial Arbitration provides that a hearing will proceed ex parte and an award entered where a party fails to appear after due notice of the date, time and place of the hearing.

(W1741103)

2. The Respondent was provided timely notice of the date, time and place of the hearing in this matter by means of a Formal Notice of Hearing dated August 24, 2009.
3. The Respondent objected to the hearing proceeding in this matter through counsel by means of a letter dated August 25, 2009 which objection was denied by the undersigned's order dated September 4, 2009 (the "Order").
4. The Respondent was provided timely notice of the Order.
5. The Respondent did not appear at the hearing in this matter after being given timely notice thereof by the Formal Notice of Hearing and the Order.
6. The hearing in the above captioned matter was held on September 11, 2009 ex parte at the date, time and place previously set therefor.
7. The law of Connecticut applies to the resolution of the issues in this matter.
8. The Complainant and the Respondent entered into the Contract on September 8, 2008.
9. The Respondent breached the Contract.
10. The effective date of the breach is October 3, 2008.
11. The Complainant is entitled to an award of Liquidated Damages and Interest thereon from the date of said breach through the date of this Award as well as its Arbitration Attorney Fees and other arbitration fees pursuant to the terms of the Contract.

LIQUIDATED DAMAGES, INTEREST AND FEES

1. The Respondent shall pay the Complainant:
 - a. Liquidated Damages in the amount of \$22,860.
 - b. Interest in the amount of \$3,392.
 - c. Arbitration Attorney Fees in the amount of \$5,320.

c. Arbitrator's fee in the amount of \$1,960.

d. ADR Center fees in the amount of \$1,050.

for a total award of \$34,582 (the "Monetary Award") through the date hereof.

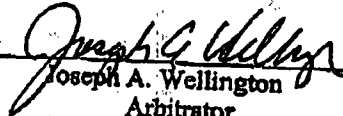
2. The Respondent shall pay the Monetary Award to the Complainant in full not later than thirty days (30) days from the date of Respondent's receipt of a copy of this Award.
3. If the Respondent fails to pay the Complainant the Monetary Award as required by Paragraph 2 immediately above, interest shall accrue on the unpaid balance of the Liquidated Damages component of said Monetary Award at the rate of 1.5% per month from the date of this Award until such time as said damages are paid in full.
4. The Complainant has pre-paid the Arbitrator's Fees in the amount of \$1,960 on behalf of the Respondent.
5. The Complainant has pre-paid ADR Center fees in the amount of \$1,050 on behalf of the Respondent.
6. The Respondent shall reimburse the Complainant for the amount of Arbitrator's fees and ADR Center fees in full within thirty (30) days of receiving a copy of this Award.
7. If the Respondent fails to pay the Complainant the aforesaid Arbitrator's Fees and ADR Center Fees in full as required by Paragraph 6 immediately above, interest shall accrue on the unpaid balance of said fees at the rate of 1.5% per month until such time as said fees are paid in full.

(continued on next page)

FINAL AWARD

THIS AWARD is final and is immediately effective without the necessity of further hearing and may be confirmed in any court having jurisdiction thereover.

DATED, this Seventeenth day of September 2009.


Joseph A. Wellington
Arbitrator

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	FIRST JUDICIAL CIRCUIT
	)	
Directory Assistants, Inc.,	)	
	)	
Plaintiff,	)	
	)	2011-CP-38-00853
	)	
Dennis Shay, d/b/a Marsch	)	
Chiropractic Center,	)	
Center,	)	
	)	
Defendant.	)	
	)	

**SECOND NOTICE OF OBJECTION & OBJECTION TO
FILING OF FOREIGN JUDGMENT**

TO: The Plaintiff above-named:

You will please take notice that the Defendant, via the undersigned, gives notice of his Objection to the Notice of Filing of Foreign Judgment, and his intent to move ten (10) days after service of this Motion, or as soon thereafter as this matter can be heard, for an Order vacating the Filing of Foreign Judgment, denying any enforcement of said Judgment, and otherwise relieving Defendant from the effect of the filing as provided by applicable law.

This Motion is based on the following:

1. Defendant, Dennis Shay, is a natural person residing in South Carolina.
2. Marsch Chiropractic Clinic is the business name of Dennis J. Shay, D.C. PA, which is a Professional Corporation organized under the laws of South Carolina, in good standing.

3. The Foreign Judgment that Plaintiff, DAI, seeks to file is a Connecticut judgment confirming an Arbitration Award against "Dennis J. Shay d/b/a Marsch Chiropractic Center."
4. In or around 2008 a representative approached Marsch Chiropractic about using DAI's yellow page consulting services; the representative produced a "Consulting Contract" which Defendant Dennis Shay did not sign, either individually or in a representative capacity for Dennis J. Shay d/b/a Marsch Chiropractic Center.
5. DAI thereafter demanded payment from Defendant. Defendant disputed that any sum was due DAI, but paid certain sums to DAI before refusing to make further payment.
6. In 2009, DAI initiated an Arbitration proceeding in Connecticut against based upon the arbitration clause contained in the purported contract.
7. Despite the fact that the alleged contract contemplates DAI's providing services to Marsch Chiropractic Clinic, DAI brought the proceeding individually against "Dennis Shay d/b/a Marsch Chiropractic Center."
8. Defendant, through counsel, contested the jurisdiction of the arbitrator designated by DAI, the "American Dispute Resolution Center" and denied that a valid arbitration agreement existed.
9. Rather than seek court determination of whether an agreement to arbitrate existed prior to arbitrating (as required by the Federal Arbitration Act) the American Dispute Resolution Center simply declared that it had jurisdiction, and proceeded to render an arbitration award in

favor of DAI. There being no valid agreement to arbitrate, and no prior determination as to the arbitrability of the claims, the "American Dispute Resolution Center" and its arbitrator lacked jurisdiction to enter any award. See, 9 U.S.C. § 4 (2000); MBNA America Bank vs. Christianson, Slip Op. 4349 (Ct. App, March 4, 2008).

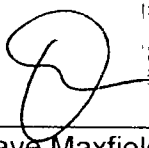
10. Thereafter, DAI caused the judgment to be confirmed in Connecticut. Upon objection by legal counsel on Defendant's behalf, the Connecticut Court reaffirmed its initial Order Confirming Arbitration on the grounds that Defendant declined to appear in Connecticut, in a foreign court *which had no personal jurisdiction over him*.
11. Based on Shay's non-appearance, the Court did not consider the fact that Shay did not sign any Agreement to arbitrate any dispute; nor did he consent to jurisdiction in Connecticut. This issue remains un-litigated before any body having proper jurisdiction. Until this issue is resolved, any entry of Judgment against Defendant in South Carolina is inappropriate.

For the foregoing reasons, Defendant Dennis Shay is entitled to an Order vacating the Filing of Foreign Judgment, denying any enforcement of said Judgment, and otherwise relieving Defendant from the effect of the filing.

RESPECTFULLY SUBMITTED,

TROTTER & MAXFIELD, ATTORNEYS

By:



Dave Maxfield, Esquire
1701 Richland Street
Columbia, South Carolina
(803) 799-6000

DATED: July 29, 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	FIRST JUDICIAL CIRCUIT
Directory Assistants, Inc.,	)	
Plaintiff,	)	
	)	2011-CP-38-00853
Dennis Shay, d/b/a Marsch	)	
Chiropractic Center,	)	
Center,	)	
Defendant.	)	

**DEFENDANT SHAY'S OF MOTION & MOTION TO VACATE ORDER OF
JUDGMENT & STAY EXECUTION**

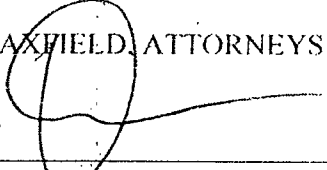
TO: Attorneys for Plaintiff, herein:

YOU WILL PLEASE TAKE NOTICE that pursuant to South Carolina Civil Procedure Rules 55, 59(c) and 60, and such other law as is applicable, the undersigned will move ten days after service of this Motion, or as soon thereafter as this matter can be heard, for an alteration, amendment or vacation of the Entry of Foreign Judgment filed against Defendant in this matter.

The basis for this motion is that the Clerk of Court filed this matter as Judgment of Record, notwithstanding the timely Notice of Objection filed by Defendant herein (attached as Exhibit "A"). Based on the timely filing of a defense pursuant to S.C. Code 15-35-920, this matter may not be indexed or enforced pending the Court's final disposition of this matter, including the determination of the defenses raised herein.

For the foregoing reasons, Defendant requests that any indexed judgment be vacated and/or stayed, and that any attempt to enforce the judgment be stayed pending determination of the Defendant's Objection and defenses in this matter.

TROTTER & MAXFIELD ATTORNEYS

By: 

Dave Maxfield
1701 Richland Street
Columbia, SC 29201
(803) 799-6000

February 2, 2012

4831-3932-8008, v. 1

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	FIRST JUDICIAL CIRCUIT
Directory Assistants, Inc.,	)	
	)	
Plaintiff,	)	
	)	2011-CP-38-00853
Dennis Shay, d/b/a Marsch	)	
Chiropractic Center,	)	
Center,	)	
	)	
Defendant.	)	

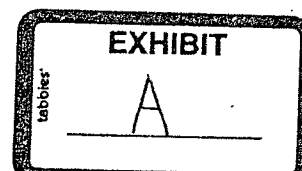
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TO: The Plaintiff above-named:

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2. Marsch Chiropractic Clinic is the business name of Dennis J. Shay, D.C. PA, which is a Professional Corporation organized under the laws of South Carolina, in good standing.



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5. DAI thereafter demanded payment from Defendant. Defendant disputed that any sum was due DAI, but paid certain sums to DAI before refusing to make further payment.
6. In 2009, DAI initiated an Arbitration proceeding in Connecticut against Marsch Chiropractic based upon the arbitration clause contained in the purported contract.
7. Despite the fact that the alleged contract contemplates DAI's providing services to Marsch Chiropractic Clinic, DAI brought the proceeding individually against "Dennis Shay d/b/a Marsch Chiropractic Center."
8. Defendant, through counsel, contested the jurisdiction of the arbitrator designated by DAI, the "American Dispute Resolution Center" and denied that a valid arbitration agreement existed.
9. Rather than seek court determination of whether an agreement to arbitrate existed prior to arbitrating (as required by the Federal Arbitration Act) the American Dispute Resolution Center simply declared that it had jurisdiction, and proceeded to render an arbitration award in

favor of DAI. There being no valid agreement to arbitrate, and no prior determination as to the arbitrability of the claims, the "American Dispute Resolution Center" and its arbitrator lacked jurisdiction to enter any award. See, 9 U.S.C. § 4 (2000); MBNA America Bank vs. Christianson, Slip Op. 4349 (Ct. App, March 4, 2008).

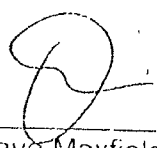
10. Thereafter, DAI caused the judgment to be confirmed in Connecticut. Upon objection by legal counsel on Defendant's behalf, the Connecticut Court reaffirmed its initial Order Confirming Arbitration on the grounds that Defendant declined to appear in Connecticut, in a foreign court *which had no personal jurisdiction over him*.

11. Based on Shay's non-appearance, the Court did not consider the fact that Shay did not sign any Agreement to arbitrate any dispute; nor did he consent to jurisdiction in Connecticut. This issue remains un-litigated before any body having proper jurisdiction. Until this issue is resolved, any entry of Judgment against Defendant in South Carolina is inappropriate.

For the foregoing reasons, Defendant Dennis Shay is entitled to an Order vacating the Filing of Foreign Judgment, denying any enforcement of said Judgment, and otherwise relieving Defendant from the effect of the filing.

RESPECTFULLY SUBMITTED,

TROTTER & MAXFIELD, ATTORNEYS

By: 

Dave Maxfield, Esquire
1701 Richland Street
Columbia, South Carolina
(803) 799-6000

DATED: July 29, 2011

STATE OF SOUTH CAROLINA)

COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

Directory Assistants Inc.,)

Plaintiff,)

vs.)

Dennis Shay d/b/a Marsch Chiropractic
Center,)

Defendants.)

Civil Action No. 2011-CP-38-00853

**MEMORANDUM IN SUPPORT OF
DOMESTICATING PLAINTIFF'S
FOREIGN JUDGMENT**

Plaintiff Directory Assistants Inc. (DAI) files this memorandum in support of its Notice of Filing of Foreign Judgment. The Full Faith and Credit Clause of the United States Constitution requires domestication of DAI's Connecticut judgment that confirms an arbitration award of \$34,582.00 plus any post-award interest. Further, in light of the following, the Objection to Foreign Judgment filed by the Defendant Dennis Shay (Defendant)—doing business as Marsch Chiropractic Center—should be overruled.

BACKGROUND FACTS & PROCEDURAL HISTORY

I. Defendant's Consulting Contract with DAI and DAI's Arbitration of Dispute.

DAI is a Connecticut corporation with a principal place of business in Glastonbury, Connecticut. Defendant resides in South Carolina doing business as Marsch Chiropractic Center. On September 8, 2008, DAI and Defendant entered into a written Consulting Contract.¹ Under the Consulting Contract, DAI and Defendant agreed to resolve all their disputes through binding arbitration. On May 26, 2009, DAI filed a

¹ Exhibit 1, Consulting Contract.

demand for arbitration with the American Dispute Resolution Center, Inc.² Defendant received notice of the arbitration hearing pursuant to the American Dispute Resolution Center's rules. On September 17, 2009, the arbitrator issued a written award (Award)³ that requires Defendant to pay DAI \$34,582.00 by October 17, 2009. The Award further provides that if Defendant fails to pay by October 17, 2009, then DAI is entitled to collect interest of 1.5% per month on the Award's unpaid balance.

II. Confirmation of the Arbitration Award by Connecticut Superior Court and Defendant's Active Litigation during Confirmation Process.

On October 22, 2009, DAI filed an Application for Confirmation of Arbitration Award and Order to Show Cause (Application) with the Connecticut Superior Court for the Hartford Judicial District (Connecticut Court). By filing the Application, DAI opened a special proceeding before the Connecticut Court under case number HHD-CV09-5033765-S.⁴ On October 22, 2009, the Connecticut Court issued an Order to Show Cause that required Defendant to appear and explain why the Application should not be granted.⁵ DAI's counsel, however, did not serve Defendant with the Order to Show Cause. Therefore, although the Connecticut Court granted the Application on January 4, 2010, DAI filed a Motion to Open and Vacate Judgment to litigate confirmation of the Award with Defendant. The Connecticut Court granted the Motion to Open and Vacate,⁶ and it issued a second Order to Show Cause.⁷ The second Order to Show Cause required the Defendant to appear before the Connecticut Court on September 27, 2010.

² Exhibit 2, Demand for Arb.

³ Exhibit 3, Arb. Award.

⁴ Exhibit 4, Conn. Court Case Docket.

⁵ Exhibit 5, 1st Order to Show Cause (Conn. Super. Ct. Oct. 22, 2009).

⁶ Exhibit 6, Order Granting Mot. to Open & Vacate Judg. (Conn. Super. Ct. Aug. 2, 2010).

⁷ Exhibit 7, 2d Order to Show Cause & Notice Regarding Hearing (Conn. Super. Ct. Sep. 2010).

The Order to Show Cause and a notice were served on Defendant by certified mail, return receipt requested at his address of 235 Elliot Street, Orangeburg, SC 29115.⁸ On September 8, 2010, the Application to Confirm Award, Order to Show Cause, and other exhibits were served on Defendant by certified mail, return receipt requested at his address of 235 Elliot Street, Orangeburg, SC 29115.⁹ On September 9, 2010, Defendant's Connecticut counsel, Joshua Randolph Cohen, filed an Appearance with the Connecticut Court to appear on Defendant's behalf.¹⁰ On September 24, 2010, Defendant's counsel filed an Objection to Application for Confirmation of Arbitration Award (Objection to Application).¹¹ Defendant argued that the arbitrator lacked personal jurisdiction over him because (a) Defendant's signature on the Consulting Contract was fraudulently acquired, (b) Defendant was not a party to the Consulting Agreement, and (c) the terms of the arbitration agreement were not followed. Critically, Defendant failed to state any argument that the *Connecticut Court* lacked personal jurisdiction over the Defendant. Furthermore, Defendant failed to file any motion to dismiss or quash DAI's Application for lack of personal jurisdiction within the 30-days after his Connecticut counsel filed an Appearance on Defendant's behalf.

DAI filed an Opposition to the Defendant's Objection to Application. On October 25, 2010, the Connecticut Court issued an order continuing the merits hearing for the Application to November 22, 2010. Furthermore, the Connecticut Court notified Defendant that he needed to appear and testify if he wanted the Connecticut Court to

⁸ Exhibit 8, Ret. of Service.

⁹ Exhibit 9, Ret. of Service.

¹⁰ Exhibit 10, Appearance & Court Rec. for Appearance.

¹¹ Exhibit 11, Obj. to App. for Confirmation of Award.

consider the statements in his affidavit supporting the Objection to Application.¹² On May 25, 2011, the Connecticut Court issued an order confirming the Award. Defendant filed a Motion to Reargue/Reconsider on June 1, 2011. On June 7, 2011, the Connecticut Court issued an order affirming the prior order confirming the Award after considering Defendant's Objection to Application without his factual claims.

On July 20, 2011, DAI filed a Notice of Filing of Foreign Judgment with this court, and Defendant filed an objection (Objection to Notice). This court scheduled a hearing for the parties' dispute for July 31, 2012.

ARGUMENT

I. The Connecticut Court Had Personal Jurisdiction over Defendant because Defendant Failed to File a Timely Motion to Dismiss for Lack of Personal Jurisdiction after Appearing in the Connecticut Court through Counsel.

South Carolina law expressly recognizes that "[t]he validity and effect of a foreign judgment must be determined by the laws of the state which rendered the judgment." *Minorplanet Systems USA Ltd. v. American Aire, Inc.*, 368 S.C. 146, 149, 628 S.E.2d 43, 45 (2006); *see also Financial Federal Credit, Inc. v. Brown*, 384 S.C. 555, 568, 683 S.E.2d 486, 493 (2009) (J. Kitteredge concurring). Therefore, Connecticut law determines the validity of the Connecticut judgment that DAI wants to domesticate. Under the Full Faith and Credit Clause of the United States Constitution, personal jurisdiction is presumed when a foreign judgment appears on its face to be a record of a court of general jurisdiction. *See Law Firm of Paul L. Erickson, P.A. v. Boykin*, 383 S.C. 497, 501, 681 S.E.2d 575, 577 (2009). To this end, "the burden of undermining the decree of a sister state rests heavily upon the assailant...who can overcome the

¹² Exhibit 12, Ord. Continuing Hearing (Conn. Super. Ct. Oct. 25, 2010).

presumption of jurisdiction and validity afforded the judgment by the Full Faith and Credit Clause only by extrinsic evidence or by the record itself.” *Id.* at 504, 383 S.E.2d at 579 (quoting *Cook v. Cook*, 342 U.S. 126, 128 (1951) (internal quotations and brackets omitted)). In this case, Defendant cannot carry his burden of challenging the Connecticut judgment.

Pursuant to the Connecticut rules of practice, “[a]ny defendant, wishing to contest the court’s jurisdiction, may do so even after having entered a general appearance, but must do so by filing a motion to dismiss within thirty days of the filing of an appearance.” *Pitchell v. City of Hartford*, 722 A.2d 797, 802 (Conn. Sup. Ct. 1998) (citing *Conn. Practice Book* § 10-30); *Schrobenhauser v. Bielmatick-Leuze GmbH & Co.*, No. CV020818905S, 2003 Conn. Super. LEXIS 701, at *11 (Conn. Super. Ct. Mar. 6, 2003) (“The 30-day deadline for filing motions to dismiss based on alleged lack of personal jurisdiction is a mandatory deadline that must be complied with or the defendant will be deemed to waive all challenges he might have to the Court’s jurisdiction over his person.”).¹³ The Connecticut Court had personal jurisdiction over the Defendant through waiver because Defendant never filed a motion to dismiss for lack of personal jurisdiction within 30-days after Defendant’s counsel filed an appearance with the Connecticut Court. *See Pitchell v. City of Hartford*, 722 A.2d at 802 (“Pursuant to the rules of practice, a waiver of personal jurisdiction defects occurs if a timely motion to dismiss is not filed.”).

Defendant’s counsel filed an appearance with the Connecticut Court on September 9, 2010. Defendant and his Connecticut counsel, however, never filed a motion to dismiss with the Connecticut Court for lack of personal jurisdiction within 30-

¹³ UnPublished Opinion.

days of September 9, 2010. In the Objection to Application, Defendant's counsel never articulates arguments to dismiss for *the Connecticut Court's* lack of personal jurisdiction. The only relief that Defendant pursued from the Connecticut Court was denial of DAI's Application based on the arbitrator's alleged lack of jurisdiction and the absence of an enforceable arbitration agreement. Defendant's appearance before the Connecticut Court through counsel and his failure to file a motion to dismiss for *the Connecticut Court's* lack of personal jurisdiction within 30-days of his counsel's appearance establishes the Connecticut Court's personal jurisdiction over Defendant by waiver. *See Pitchell v. City of Hartford*, 722 A.2d at 803 (noting that defendant's right to challenge personal jurisdiction of Connecticut Court was waived 31-days after his attorneys filed their initial appearance in the case); *Schrobenhauser*, No. CV020818905S, 2003 Conn. Super. LEXIS 701, at *12 (denying motion to dismiss for lack of personal jurisdiction because defendant failed to file motion within 30-days of his counsel's appearance in case). Accordingly, because the Connecticut Court had personal jurisdiction over Defendant when it confirmed the Award, Defendant's objection to the Notice of Filing of Foreign Judgment should be overruled.

II. The Full Faith and Credit Clause, *Res Judicata*, and Collateral Estoppel Bar All of the Arguments Asserted in Defendant's Objection to DAI's Notice of Filing of Foreign Judgment.

Even though the Connecticut Court issued an order confirming the Award over the Objection to Application, Defendant repeats the arguments in the Objection to Application in his Objection to Notice. Because the Connecticut Court has already ruled on those arguments, Defendant is precluded from re-litigating those issues under the Full

Faith and Credit Clause of the United States Constitution, *res judicata*, and collateral estoppel.

The Full Faith and Credit Clause of the United States Constitution generally requires “every State to give a judgment at least the *res judicata* effect which the judgment would be accorded in the State which rendered it.” *Aaron v. Mahl*, 382 S.C. 585, 592, 674 S.E.2d 482, 485 (S.C. 2009). “Where a judgment rendered by a court having jurisdiction of the cause and the parties is challenged in another state, the full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based.” *Hamilton v. Patterson*, 236 S.C. 487, 492 (S.C. 1960) (quoting *Miliken v. Meyer*, 311 U.S. 457, 462 (U.S. 1940)). To this end, “because there is a full faith and credit clause a defendant may not a second time challenge the validity of a plaintiff’s right which has ripened into judgment.” *Id.* (quoting *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430, 439-40 (U.S. 1943)). The Objection to Application and Objection to Notice challenge the enforceability of the arbitration agreement between Defendant and DAI. The Connecticut Court has already rejected that argument by confirming the Award. Accordingly, the Full Faith and Credit Clause precludes Defendant’s re-litigation of those issues in this case.

The principles of *res judicata* and collateral estoppel also apply. Under South Carolina law, “*res judicata* bars subsequent actions by the same parties when the claims arise out of the same occurrence that was the subject of a prior action between those parties.” *Aaron v. Mahl*, 381 S.C. at 592, 674 S.E.2d at 486. “Collateral estoppel

prevents a party from re-litigating an issue in a subsequent suit which was actually and necessarily litigated and determined in the prior action.” *Id.*

In the Objection to the Application, Defendant challenged the jurisdiction of the arbitrator issuing the Arbitration Award and challenged the existence of an arbitration agreement. In his Objection to Notice, Defendant repeats those arguments along with questioning the Connecticut Court’s personal jurisdiction over him. Here, DAI and Defendant are the same parties in this case and the Connecticut litigation. The validity of the arbitration agreement and the arbitrator’s jurisdiction has already been addressed by the Connecticut Court. Furthermore, Defendant waived his right to challenge the Connecticut Court’s personal jurisdiction over him by making a general appearance in the Connecticut litigation through counsel and failing to file a timely motion to dismiss for lack of personal jurisdiction. To this end, the doctrines of *res judicata* and collateral estoppel preclude Defendant from challenging the validity of the Award here in South Carolina and the Connecticut Court’s personal jurisdiction over him. *See Colonial Pacific Leasing Corp. v. Taylor*, 326 S.C. 529, 532, 484 S.E.2d 595, 597 (Ct. App. 1997) (“If a judgment debtor appears in a foreign state and loses, then that court’s exercise of jurisdiction over him is not subject to collateral attack.”).

CONCLUSION

In light of the foregoing, Defendant’s objection to DAI’s Notice of Filing of Foreign Judgment should be overruled, and DAI’s Connecticut judgment in the amount of \$34,582.00 plus accrued interest should be enrolled in the court’s records. Additionally, DAI asks that its reasonable attorney’s fees and costs for this matter be awarded pursuant to Defendant’s obligations under the Consulting Contract.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: Brian A. Calub

D. Larry Kristinik
Brian A. Calub
1320 Main Street / 17th Floor
Post Office Box 11070 (29211)
Columbia, SC 29201
(803) 799-2000

Attorneys for Plaintiff Directory Assistants, Inc.

Columbia, South Carolina
July 26, 2012

EXHIBIT 1

(Consulting Contract)



CONSULTING CONTRACT

Directory Assistants, Inc.

500 Winding Brook Drive • Glastonbury, CT 06033
Tel 860-633-0122 Fax 860-633-2900

page 1 of 2

FILED FOR RECORD
WINIFRED CLARK
CLERK OF COURT

WHAT WE DO FOR YOU:

We will take you through our Strategic Process to help you determine whether you should make cost saving changes to your baseline yellow page program or renew it as is.

DAI'S STRATEGIC PROCESS:

Step One: We will help you identify your specific business factors and understand how those factors should be considered before making a yellow page purchase.

Step Two: We will educate you on various yellow page options and strategies by disclosing information, cost saving suggestions, theories, options and advice. This may include advice on directories, sizes, strategies, the use of free listings, copy, concepts, colors, market plans, discounts, rates, removal of placements, etc. We are not going to assume what your yellow page knowledge or experience is. We will cover yellow page options and strategies including basic yellow page fundamentals, some of which may seem "common sense" after the rationale is explained.

This is an interactive process, so the more you participate, the better the result. We understand your time is valuable and we will spend as much or as little time explaining our Strategic Process as you feel necessary. During this contract, if you ever want us to review our Strategic Process again, or in more detail, we will do that as many times as you deem necessary. Once we review Steps One and Two you will be in a position to decide whether to implement some, none or all of our strategies, modify our strategies in any way you deem appropriate, use our strategies to create your own cost saving changes or retain your baseline program at its full renewal cost. We will only earn a fee if savings are actually enjoyed.

At your request, and at no cost to you, we will provide ad design services, assistance with implementing any yellow page decisions, review/verify all yellow page placements after publication, review/verify all yellow page charges and forecast future costs. If you would like, we will also assist and advise you on additional ads or enhancements to existing ads at no cost to you. Please know that if you decide to spend money on additional ads or enhancements to any existing ads it will not offset our fee.

PERFORMANCE GUARANTEE:

We are so sure we will be able to show you how to achieve gross savings of at least 40% on your yellow page costs, that if we cannot, you will have the right to terminate this contract. All we ask is you give us ten days written notice at least ten days before the first close date of your baseline program for us to try again.

HOW WE ARE COMPENSATED:

There are three different fee options you may choose from:

- a) 75% of any yearly yellow page savings for two (2) years;
- b) 50% of any yearly yellow page savings for three (3) years;
- c) 37.5% of any yearly yellow page savings for four (4) years.

Any fee in year one is due on the date the first book in your baseline program closes. The fees in subsequent years shall be due on the respective anniversary dates of that first close date.

Our Strategic Process is educational in nature. Once we begin sharing information there is no way to get it back or to determine why you made any future cost saving changes. To eliminate any disputes, once we disclose any information, you waive any claim to the origin of any future cost saving changes not identified on this contract as "pre-disposed changes" and you agree to pay us for any future savings.

We want you to understand that you are under no obligation to implement any savings, even after hearing our information. You may also avoid any fee in any year by implementing your original baseline program at the full renewal cost. We will even help you do that.

DEFINITIONS:

The following definitions apply throughout this contract: "Yellow page" is defined as all yellow page, white page and publisher internet advertising. "Savings" are defined as that year's full renewal cost of the baseline program minus that year's revised cost (excluding any additional ads or enhancements to any existing ads). Each year, we will recalculate the savings by taking that year's full renewal cost of the baseline program and subtracting that year's revised costs (excluding any additional ads or enhancements to any existing ads). "Baseline program" is defined as your yellow page program (on an ad by ad basis) in effect as of the date of this contract, per directory publisher's contracts. A "year" is defined as the complete publication cycle for each next available directory in your baseline program. "Full renewal cost" is defined as that particular year's cost of the baseline program calculated at the standard Yellow Page Association ("YPA") rates.

Consulting Contract Jan 2008

CONSULTING CONTRACT

page 2 of 2

HOW WE RESOLVE DISPUTES:

If a dispute arise we both agree to try and resolve it with the other party. If we cannot, we both want to resolve it quickly and cost effectively. To achieve that, we both agree to resolve any dispute arising out of or relating to this contract through confidential binding arbitration and agree to mutually choose an arbitration service, location and choice of law forum. If we are unable to come to a mutual agreement, or if one of us refuses to participate in choosing, the party filing a demand will have the right to make the choices unilaterally, as long as the filing party made a good faith effort to come to a mutual agreement, and the non-choosing/non-participating party expressly consents to and waives any and all objections to the choices made.

To streamline this process, we both agree to limit discovery as follows: Within two weeks of a demand being filed, we will give you your complete paper file and you agree to give us all your yellow page contracts/confirming orders for the past three years. If you do not give us these, we will have no way to accurately calculate the baseline or savings and you will automatically and expressly waive any objection to our damage calculation.

If we did not disclose any information you should not have to pay us anything. If you breached the contract, we should not be paid any less than you agreed. To be fair to both of us, we both agree the arbitrator will have no authority to award any "middle ground", "compromise" or "punitive damages" awards to either of us. Either of us may obtain judgment upon an arbitration award in any court in either our home state or your home state, and both of us expressly consent to and waive any objection to the jurisdiction of the court selected by the prevailing party for purposes of seeking confirmation and/or judgment on any arbitration award.

TERMS:

Both of us agree we will not disclose the other's information to any third party. We both understand that yellow page effectiveness is not guaranteed, and we cannot be responsible for any white page, directory assistance or yellow page errors. Setting up or correcting white page/directory assistance listings is not included in our services, but will be handled for an additional cost. If a directory is renamed or rescope, the closest directory(s) having the largest distribution will be used to determine the baseline for that directory. We both agree that our Strategic Process and our disclosure of information is intellectual property and that this contract will be binding on any successors and/or assigns, branches, holding companies, affiliates, future purchaser(s) of assets (in whole or in part) or subsidiaries. Both of us acknowledge that we have read this contract and have had the opportunity to review it with counsel of our choice before signing it, and we have no objections to its terms. If any term(s) of this contract is unenforceable, the remainder of the contract shall remain in full force and effect.

If you do not pay us as agreed, you will incur a monthly fee of 1.5% from the date the first book in your baseline program closed. We both agree this contract represents a complete understanding and overrides any verbal or other understandings or assurances.

If you breach this contract, we both agree to accelerate fees due to a liquidated damages amount equal to 40% of the year one full renewal cost of the baseline program multiplied by three. We both understand that this amount may be more or may be less than what is ultimately actually owed by the end of the contract. However, we cannot determine that until the end of the contract. We both agree that this calculation was fair at the time this contract was entered into and waive any objection to this liquidated damage provision. As far as late fees, the liquidated damages will be considered to have been due on the date the first book in the baseline program closed.

If you prove we did not disclose any information, you will be entitled to all your legal fees (at least \$350 per hour) and all your arbitration costs. If we prove that you breached this contract, we will be awarded all our costs of collection including our legal fees (at least \$350 per hour), all arbitration costs and all estimated future legal fees to confirm the award/domesticate the judgment.

If either one of us prevails defending any judicial action resisting arbitration or resisting confirmation of an award or resisting domesticating a judgment, that prevailing party shall be entitled to all costs incurred, including legal fees of at least \$350 per hour.

ADVERTISER ACCEPTANCE: (Circle and Initial)

The advertiser has chosen the: Two Year-Option A

Three Year-Option B

Four Year-Option C

PREDISPOSED CHANGES: (Leave Blank if None)

DENNIS SHAY

DENNIS SHAY

9-9-08

Person Authorized to Contract for Advertiser

Print Name

Date

MARSH CHIROPRACTIC CENTER

Company Name / Advertiser

Directory Assistants, Inc.

9/9/08

Date

Consulting Contract Jan 2008

EXHIBIT 2

(Demand for Arbitration)

State of Connecticut
Post Date: 10/22/2009
Payfile: 0929440-1

Docket: CV0950337655
Receipt Nbr: 0407641
Amount: \$300.00

List Total: 001 \$300.00

2012 JUL 27 PM 4: 36

FILED FOR RECORD
WINNIEA H. CLARK
DIRECTOR, COURT
CLERK, SUPERIOR COURT
HARTFORD, CT

DIRECTORY ASSISTANTS, INC. : SUPERIOR COURT

v.

JUDICIAL DISTRICT OF HARTFORD

DENNIS SHAY d/b/a MARSCH
CHIROPRACTIC CENTER

OCTOBER 22, 2009

**APPLICATION FOR CONFIRMATION OF
ARBITRATION AWARD AND ORDER TO SHOW CAUSE**

The plaintiff Directory Assistants, Inc. ("DAI") hereby applies to this Court pursuant to Conn. Gen. Stat. § 52-417 et seq. for an order confirming a certain arbitration award involving matters between DAI and the defendant Dennis Shay d/b/a Marsch Chiropractic Center ("Shay") and an Order to Show Cause related to said application. In support of this Application, DAI complains and says:

1. DAI is a Connecticut corporation with a principal place of business in Glastonbury, Connecticut.
2. Shay is an individual residing in the State of South Carolina and doing business as Marsch Chiropractic Center.
3. On or about September 8, 2008, DAI and Shay, entered into a written agreement that required all disputes to be resolved through binding arbitration. A copy of that Agreement is attached as Exhibit A.

FILED
2009 OCT 22 P 1:34
OFFICE OF THE CLERK
SUPERIOR COURT
HARTFORD, CT

D
P
101
CV09-5033765

4. On or about May 26, 2009, DAI filed a demand for arbitration with the American Dispute Resolution Center, Inc. A copy of that demand is attached hereto as Exhibit B.

5. Shay received due notice of the arbitration hearing, pursuant to the Expedited Commercial Arbitration Rules of the American Dispute Resolution Center.

6. On September 17, 2009, the arbitrator, pursuant to the agreement, made a written award in favor of DAI (the "Award"), a copy of which is attached hereto as Exhibit C.

7. The Award requires Shay to pay DAI \$34,582.00. The Award requires Shay to pay this amount to DAI no later than October 17, 2009. If Shay does not pay this amount by October 17, 2009, the Award entitles DAI to late fees in the amount of 1.5% per month on the unpaid principal sums set forth in the terms of the Award.

8. On or about September 22, 2009, Shay was duly notified of the Award.

9. More than 30 days have passed since Shay was given notice of the award, and Shay has not made an application pursuant to Conn. Gen. Stat. §§ 52-418 to 52-419 to vacate or modify the award.

10. As a result of the Shay's failure to make timely application to vacate the award, the award is entitled to confirmation in accordance with Conn. Gen. Stat. §§ 52-417 and 52-420(b).

DAI also requests that the Court issue an Order to Show Cause to Shay to requiring him to appear and show why the Court should not confirm the Award as requested in this application.

WHEREFORE, DAI prays that Court confirm the Award and enter judgment in favor of DAI in accordance with Conn. Gen. Stat. § 52-420(b).

**PLAINTIFF,
DIRECTORY ASSISTANTS, INC.**

By Brett J. Boskiewicz
Frank F. Coulom, Jr. (fcoulom@rc.com)
Brett J. Boskiewicz (bboskiewicz@rc.com)
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103-3597
Tel: (860) 275-8200
Fax: (860) 275-8299
Juris No.: 50604

ORDER

The foregoing application to confirm arbitration award having been presented to the Court, it is hereby ordered GRANTED/DENIED on this day of , 2009.

Judgment shall enter in favor of Directory Assistants, Inc. against Dennis Shay d/b/a Marsch Chiropractic Center \$34,582.00 plus late fees as set forth in the award issued by the American Dispute Resolution Center Arbitration on September 17, 2009.

BY THE COURT

Judge/Clerk

EXHIBIT 3

(Arbitration Award)

AMERICAN DISPUTE RESOLUTION CENTER 4:36

FILED FOR RECORD
WILLIAM J. CLARK
CLERK OF COURT
ORANGE COUNTY, CAIn the Matter of Arbitration Between:Directory Assistants, Inc.And

September 17, 2009

Dennis Shay d/b/a Marsch Chiropractic CenterCase Number: 35-0262-09LAWARD

I, THE UNDERSIGNED, as the duly appointed Arbitrator in the foregoing matter, which was submitted to the American Dispute Resolution Center ("ADR Center") for resolution by arbitration, having been duly sworn and having duly heard the allegations and proofs of the Complainant, FIND and AWARD as follows:

ISSUES PRESENTED

1. Did the Respondent breach his contract with the Complainant (the "Contract")?
2. If a breach occurred, to what extent is the Complainant entitled to recover liquidated damages, interest thereon, arbitration attorney fees and other arbitration fees pursuant to the terms of the Contract?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Rule 18 of the American Dispute Resolution Center, Inc. Rules of Commercial Arbitration provides that a hearing will proceed ex parte and an award entered where a party fails to appear after due notice of the date, time and place of the hearing.

(W1741103)

2. The Respondent was provided timely notice of the date, time and place of the hearing in this matter by means of a Formal Notice of Hearing dated August 24, 2009.
3. The Respondent objected to the hearing proceeding in this matter through counsel by means of a letter dated August 25, 2009 which objection was denied by the undersigned's order dated September 4, 2009 (the "Order").
4. The Respondent was provided timely notice of the Order.
5. The Respondent did not appear at the hearing in this matter after being given timely notice thereof by the Formal Notice of Hearing and the Order.
6. The hearing in the above captioned matter was held on September 11, 2009 ex parte at the date, time and place previously set therefor.
7. The law of Connecticut applies to the resolution of the issues in this matter.
8. The Complainant and the Respondent entered into the Contract on September 8, 2008.
9. The Respondent breached the Contract.
- ~~10. The effective date of the breach is October 3, 2008.~~
11. The Complainant is entitled to an award of Liquidated Damages and Interest thereon from the date of said breach through the date of this Award as well as its Arbitration Attorney Fees and other arbitration fees pursuant to the terms of the Contract.

LIQUIDATED DAMAGES, INTEREST AND FEES

1. The Respondent shall pay the Complainant:
 - a. Liquidated Damages in the amount of \$22,860.
 - b. Interest in the amount of \$3,392.
 - c. Arbitration Attorney Fees in the amount of \$5,320.

c. Arbitrator's fee in the amount of \$1,960.

d. ADR Center fees in the amount of \$1,050.

for a total award of \$34,582 (the "Monetary Award") through the date hereof.

2. The Respondent shall pay the Monetary Award to the Complainant in full not later than thirty days (30) days from the date of Respondent's receipt of a copy of this Award.
3. If the Respondent fails to pay the Complainant the Monetary Award as required by Paragraph 2 immediately above, interest shall accrue on the unpaid balance of the Liquidated Damages component of said Monetary Award at the rate of 1.5% per month from the date of this Award until such time as said damages are paid in full.
4. The Complainant has pre-paid the Arbitrator's Fees in the amount of \$1,960 on behalf of the Respondent.
5. The Complainant has pre-paid ADR Center fees in the amount of \$1,050 on behalf of the Respondent.
6. The Respondent shall reimburse the Complainant for the amount of Arbitrator's fees and ADR Center fees in full within thirty (30) days of receiving a copy of this Award.
7. If the Respondent fails to pay the Complainant the aforesaid Arbitrator's Fees and ADR Center Fees in full as required by Paragraph 6 immediately above, interest shall accrue on the unpaid balance of said fees at the rate of 1.5% per month until such time as said fees are paid in full.

(continued on next page)

FINAL AWARD

THIS AWARD is final and is immediately effective without the necessity of further hearing and may be confirmed in any court having jurisdiction thereover.

DATED, this Seventeenth day of September 2009.

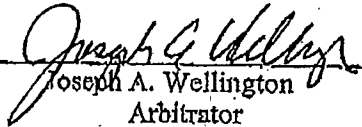

Joseph A. Wellington
Arbitrator

EXHIBIT 4

(Conn. Court Case Docket)



State of Connecticut Judicial Branch


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[Case Look-up](#)

HHD-CV09-5033765-S DIRECTORY ASSISTANTS v. SHAY, DENNIS DBA

Prefix/Suffix: [none]

Case Type: M40

File Date: 10/22/2009

Return Date: 10/22/2009

[Case Detail](#)
[Notices](#)
[History](#)
[SCHEDULED COURT DATES](#)
[E-Services Login](#)
[Screen Section Help](#)

Data Updated as of: 07/26/2012

Case Information

Case Type: M40 - MISC - ARBITRATION

Court Location: HARTFORD

List Type: REMOVED FROM TRIAL LIST (00)

Trial List Claim:

Referral Judge or Magistrate:

Last Action Date: 06/13/2011 (Last Action Date is a data entry date, not actual date)

Disposition Information

Disposition Date:

Disposition:

Judge or Magistrate:

Parties & Appearances

Party

No Fee Party

P-01

DIRECTORY ASSISTANTS INC

 Attorney: ROBINSON & COLE LLP (050604)
 280 TRUMBULL STREET
 HARTFORD, CT 061033597

File Date: 10/22/2009

D-50

DENNIS SHAY DBA

 Attorney: JOSHUA RANDOLPH COHEN (429059)
 35 COLD SPRING ROAD
 SUITE 514
 ROCKY HILL, CT 06067

File Date: 09/09/2010

Viewing Documents on Civil Cases: Order Documents and Judicial Notices that are *electronic* on this case can be accessed on this website.* Pleadings and other documents that are *electronic* can be viewed at any Judicial District courthouse and at many Geographical Area courthouses during normal business hours.* Documents that are *not electronic* can be viewed at the Clerk's Office in the Judicial District where the case resides.*

* unless otherwise restricted

Motions / Pleadings / Documents / Case Status

Entry No	File Date	Filed By	Description	Arguable
	12/22/2009		CLAIM/RECLAIM Claim/Reclaim	
	09/09/2010	D	APPEARANCE Appearance	
100.30	10/22/2009	P	SUMMONS	No
100.31	10/22/2009	P	APPLICATION RESULT: Granted 1/4/2010 HON GRANT MILLER	No
100.32	10/22/2009	P	PRE-SERVICE ORDER FOR HEARING AND NOTICE	No
101.00	10/22/2009	P	ORDER TO SHOW CAUSE	Yes
102.00	01/04/2010	C	ORDER RESULT: Granted 1/4/2010 HON GRANT MILLER	No

103.00	01/04/2010		JUDGMENT WITHOUT TRIAL-GENERAL RESULT: 1/4/2010 HON GRANT MILLER	No
104.00	07/22/2010	P	MOTION TO OPEN AND VACATE JUDGMENT	No
104.86	08/02/2010	C	ORDER  Order granting motion to open and vacate RESULT: Granted 8/2/2010 HON GRANT MILLER	No
105.00	08/02/2010	C	REPLACE RECORD TO PLEADING STATUS (KEYPOINT 2) AND ERASE ALL HIGHER KEYPOINT DATES	No
106.00	09/02/2010	P	APPLICATION For Order to Show Cause RESULT: Continuance 10/26/2010	No
107.00	09/03/2010	C	ORDER HEARING AND NOTICE	No
108.00	09/10/2010	P	RETURN OF SERVICE of Order to Show Cause	No
109.00	09/10/2010	P	RETURN OF SERVICE of Application for Confirmation of Arb Award	No
110.00	09/24/2010	P	SUPPLEMENTAL RETURN Application for Confirmation of Arbitration Award	No
111.00	09/24/2010	P	SUPPLEMENTAL RETURN Order to Show Cause	No
112.00	09/24/2010	D	OBJECTION to Application for Confirmation of Arb. Award RESULT: Continuance 10/26/2010	No
112.50	10/25/2010	C	ORDER  Order on objection Last Updated: Additional Description - 10/26/2010	No
113.00	10/20/2010	P	OBJECTION to Defs Obj to App for Confirm of Arb Award	No
114.00	10/25/2010	D	EXHIBITS supplemental exhibit to Objection #112	No
115.00	11/19/2010	D	EXHIBITS	No
116.00	05/11/2011	P	CASEFLOW REQUEST Ruling / Order re App to Confirm Arb Award #112.50 RESULT: Order 5/12/2011 HON JANE SCHOLL	No
116.86	05/12/2011	C	ORDER  RESULT: Order 5/12/2011 HON JANE SCHOLL	No
117.00	05/18/2011	P	WITHDRAWAL OF MOTION Caseflow Request (Dkt. #116.00)	No
118.00	05/18/2011	P	CASEFLOW REQUEST Ruling/Order re App to Confirm Arb Award #112.50 RESULT: Order 5/19/2011 HON JANE SCHOLL	No
118.86	05/19/2011	C	ORDER  RESULT: Order 5/19/2011 HON JANE SCHOLL	No
119.00	05/25/2011	P	EXHIBITS Per Judge's Order (Dkt. 118.86)	No
120.00	05/25/2011	P	CASEFLOW REQUEST Re-Filing Exhibits to App for Confirm Arb Award RESULT: Granted 5/25/2011 HON JANE SCHOLL	No
120.86	05/25/2011	C	ORDER  RESULT: Granted 5/25/2011 HON JANE SCHOLL	No
121.00	06/01/2011	D	MOTION TO REARGUE/RECONSIDER RESULT: Granted 6/7/2011 HON JANE SCHOLL	No
121.86	06/07/2011	C		No

ORDER

RESULT: Granted 6/7/2011 HON JANE SCHOLL

Individually Scheduled Court Dates as of 07/25/2012				
HHD-CV09-5033765-S - DIRECTORY ASSISTANTS v. SHAY, DENNIS DBA				
#	Date	Time	Event Description	Status
No Events Scheduled				

Note: Other court activity may be separately scheduled on short calendars.

Periodic changes to terminology may be made which do not affect the status of the case.

Disclaimer: For civil and family cases statewide, case information is displayed and is available for inquiry on this website for a period of time, one year to a maximum period of ten years, after the disposition date. To the extent that Connecticut Practice Book Sections 7-10 and 7-11 provide for a shorter period of time, this information will be displayed for the shorter period. In accordance with the Federal Violence Against Women Act of 2005, cases for relief from physical abuse, foreign protective orders, and motions that would be likely to publicly reveal the identity or location of a protected party may not be displayed and may be available only at the courts.

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EXHIBIT 5

**(Conn. Super. Ct. 10/22/09 –
1st Order to Show Cause)**

DOCKET NO: HHDCV095033765S

DIRECTORY ASSISTANTS
V.
SHAY, DENNIS

2012 JUL 27 PM 4:30
FILED FOR RECORD
WINNIEA V. CLARK
CLERK OF COURT
ORANGEBURG, SC
1/4/2010

SUPERIOR COURT
JUDICIAL DISTRICT OF HARTFORD
AT HARTFORD

ORDER 422394

ORDER

ORDER REGARDING:
10/22/09 100.31 APPLICATION

The foregoing, having been considered by the Court, is hereby:

ORDER: GRANTED

The application is granted, absent objection, and the award is hereby confirmed.

422394

Judge: GRANT MILLER, J

DIRECTORY ASSISTANTS, INC.

SUPERIOR COURT

v.

JUDICIAL DISTRICT OF HARTFORD

DENNIS SHAY d/b/a MARSCH
CHIROPRACTIC CENTER

OCTOBER 22, 2009

ORDER TO SHOW CAUSE

The plaintiff in the above-entitled action, having applied for an order confirming an arbitration award pursuant to Conn. Gen. Stat. § 52-417 to issue forthwith, it is hereby ORDERED that the defendant, Dennis Shay d/b/a Marsch Chiropractic Center having a last known business address at 235 Elliot Street, Orangeburg, South Carolina 29115, appear before the undersigned or other judge of the SUPERIOR COURT in and for the Judicial District of Hartford on the 16th day of November 2009, at 9:30 in the fore noon, then and there to show cause, if any, why the Court should not issue the order as prayed for in said application, and it is

FURTHER ORDERED, that notice of said motion and of this Order be given to said defendant by a proper officer leaving with said defendant a true and attested copy of said motion and of this Order on or before November 9, 2009.

Adam Bulewicz, Jr.
~~Judge of the Superior Court~~

Hearing at 95 Washington St. Hartford CT
in Courtroom 3.

EXHIBIT 6

**(Conn. Super. Ct. 8/2/10 - Order
granting Motion to Open and Vacate
Judgment)**

DOCKET NO: HHDCV095033765S

SUPERIOR COURT

ORDER 422394

DIRECTORY ASSISTANTS
V.
SHAY, DENNIS

2012 JUL 27 PM 11:36
JUDICIAL DISTRICT OF HARTFORD
AT HARTFORD

FILED FOR RECORD
WINNIEA S. LASKY
CLERK OF COURT
ORANGEBURG, SC
8/2/2010

ORDER

ORDER REGARDING:
07/22/10 104.00 MOTION TO OPEN AND VACATE JUDGMENT

The foregoing, having been considered by the Court, is hereby:

ORDER: GRANTED

422394

Judge: GRANT H MILLER

EXHIBIT 7

**(Conn. Super. Ct. 9/2009 – 2nd Order
to Show Cause & Notice regarding
hearing)**

DOCKET NO.: HHD-CV09-5033765-S

2012 JUL 27 PM 4:36

DIRECTORY ASSISTANTS, INC.

SUPERIOR COURT

FILED FOR RECORD
WINNIFER B. CLARK
CLERK OF COURT
ORANGEBURG, SC

JUDICIAL DISTRICT OF HARTFORD
AT HARTFORD

V.

DENNIS SHAY d/b/a MARSCH
CHIROPRACTIC CENTER

ORDER TO SHOW CAUSE

The plaintiff in the above-entitled action, having applied for an order confirming an arbitration award pursuant to Conn. Gen. Stat. § 52-417 to issue forthwith, it is hereby ORDERED that the defendant, Dennis Shay d/b/a Marsch Chiropractic Center having a last known business address at 235 Elliot Street, Orangeburg, South Carolina 29115, appear before the undersigned or other judge of the SUPERIOR COURT in and for the Judicial District of Hartford on the 27 day of September 2010, at 7:30 in the fore noon, then and there to show cause, if any, why the Court should not issue the order as prayed for in said application, and it is

FURTHER ORDERED, that notice of said motion and of this Order be given to said defendant by a proper officer leaving with said defendant a true and attested copy of said motion and of this Order on or before 9/20, 2010.

Adam Bulewicz, Jr.
Judge of the Superior Court

Hearing at 95 Washington St. Hartford CT in
Courtroom 3.

107.00

NOTICE REGARDING HEARING
JD-CL-105 Rev. 11/09

STATE OF CONNECTICUT
OFFICE OF THE CLERK
SUPERIOR COURT
www.jud.ct.gov



Notice Regarding Hearing

A hearing has been scheduled for this case on the date and time shown on the attached order, which has been signed by the judge or a clerk of the court. You must come to court, or your attorney must come to court, on the date and time shown in the order if you want to be heard in this matter.

On the first hearing date, the Court will conduct a status/settlement conference. **The Court will not take evidence at this first hearing date.** If the case is not resolved at the status/settlement conference, the Court will schedule the case for a hearing where it will take evidence, usually within two weeks of the status/settlement conference.

If you do not come to court, or your attorney does not come to court, on the date and time shown on the attached order, the Judge will make a decision based on the papers submitted by the applicant.

EXHIBIT 8

**(Return of Service – Order to Show
Cause)**

STATE OF CONNECTICUT)

SS: HARTFORD, SEPTEMBER 7, 2010
COUNTY OF HARTFORD) PM 4:36

Then and by virtue hereof and by direction of the plaintiff's attorney, I left a verified true and attested copy of the original Order to Show Cause, and Notice at the office of Susan Bysiewicz, Secretary of State, 30 Trinity Street, in the said Town of Hartford, Agent for Service for the within named non-resident defendant **MARSCH CHIROPRACTIC CENTER** (per Connecticut General Statutes 52-59b).

And afterwards on the 7th day of September 2010, I deposited in the post office at Hartford, postage pre-paid, certified mail, return receipt requested a verified true and attested copy of the original Order to Show Cause, and Notice addressed to the within named non-resident defendant **DENNIS SHAY d/b/a MARSCH CHIROPRACTIC CENTER**, 235 Elliot Street, Orangeburg, SC 29115 (per Connecticut General Statutes 52-59b).

SUPPLEMENTAL RETURN TO FOLLOW

The within is the original Order to Show Cause, and Notice with my doings hereon endorsed.

Service:	\$30.00
Verification:	4.00
Ends.:	1.20
10 Miles:	5.00
Fee:	50.00
Postage:	6.55
	<u>\$96.75</u>

ATTEST:


Abraham Glassman
Connecticut State Marshal
Hartford County

STATE OF CONNECTICUT
COUNTY OF HARTFORD

) SS: SOUTH WINDSOR, 9/20/10

SUPPLEMENTAL RETURN

re: Directory Assistants, Inc.

v.
Dennis Shay d/b/a Marsch Chiropractic Ctr.

On the day 20, Sept. 2010, the Post Office returned to me the enclosed return receipt, CLAIMED AND SIGNED.

ATTEST:

Abraham Glassman

Abraham Glassman
OT State Marshal
Hartford County

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature ☒ <i>Wendy Huff</i> ☐ Agent ☐ Addressee B. Received by (Printed Name) <i>Wendy Huff</i> C. Date of Delivery <i>9/20/10</i> D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☒ No	
1. Article Addressed to: <i>Dennis Shay d/b/a Marsch Chiropractic Center 235 Elliot Street Orangeburg, SC 29115</i>		3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D. 4. Restricted Delivery? (Extra Fee) ☐ Yes	
2. Article Number (Transfer from service label)		7009 2820 0002 4838 0605	

STATE OF CONNECTICUT
COUNTY OF HARTFORD

)
) SS: SOUTH WINDSOR, CT 9/20/10
)

SUPPLEMENTAL RETURN

re; Directory Assistants, Inc.

^{v.}
Dennis Shay d/b/a Marsch Chiropractic Ctr.

On the day 20, Sept. 2010 the Post Office returned to me the enclosed return receipt, CLAIMED AND SIGNED.

ATTEST:



Abraham Glassman
CT State Marshal
Hartford County

SENDER: COMPLETE THIS SECTION

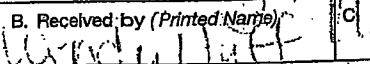
- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Dennis Shay d/b/a
Marsch Chiropractic Center
235 Elliot Street
Orangeburg, SC 29115

2. Article Number
(Transfer from service label)

COMPLETE THIS SECTION ON DELIVERY

- A. Signature ☒ Agent
 ☐ Addressee
- B. Received by (Printed Name) C. Date of Delivery
 9/20/10
- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type
- | | |
|--|---|
| ☒ Certified Mail | ☐ Express Mail |
| ☐ Registered | ☐ Return Receipt for Merchandise |
| ☐ Insured Mail | ☐ C.O.D. |

4. Restricted Delivery? (Extra Fee) ☐ Yes

7009 2820 0002 4838 0605

ROA_0157

DOCKET NO.: HHD-CV09-5033765-S

DIRECTORY ASSISTANTS, INC.

V.

DENNIS SHAY d/b/a MARSCH
CHIROPRACTIC CENTER

SUPERIOR COURT

JUDICIAL DISTRICT OF HARTFORD
AT HARTFORD

ORDER TO SHOW CAUSE

The plaintiff in the above-entitled action, having applied for an order confirming an arbitration award pursuant to Conn. Gen. Stat. § 52-417 to issue forthwith, it is hereby ORDERED that the defendant, Dennis Shay d/b/a Marsch Chiropractic Center having a last known business address at 235 Elliot Street, Orangeburg, South Carolina 29115, appear before the undersigned or other judge of the SUPERIOR COURT in and for the Judicial District of Hartford on the 27 day of September 2010, at 9:30 in the fore noon, then and there to show cause, if any, why the Court should not issue the order as prayed for in said application, and it is

FURTHER ORDERED, that notice of said motion and of this Order be given to said defendant by a proper officer leaving with said defendant a true and attested copy of said motion and of this Order on or before 9/20, 2010.

Adam Bulewicz, Jr.
Judge of the Superior Court

Hearing at 95 Washington St. Hartford CT in
Courtroom 3.

NOTICE REGARDING HEARING
JD-CL-105 Rev. 11/09

STATE OF CONNECTICUT
OFFICE OF THE CLERK
SUPERIOR COURT
www.jud.ct.gov



Notice Regarding Hearing

A hearing has been scheduled for this case on the date and time shown on the attached order, which has been signed by the judge or a clerk of the court. You must come to court, or your attorney must come to court, on the date and time shown in the order if you want to be heard in this matter.

On the first hearing date, the Court will conduct a status/settlement conference. **The Court will not take evidence at this first hearing date.** If the case is not resolved at the status/settlement conference, the Court will schedule the case for a hearing where it will take evidence, usually within two weeks of the status/settlement conference.

If you do not come to court, or your attorney does not come to court, on the date and time shown on the attached order, the Judge will make a decision based on the papers submitted by the applicant.

EXHIBIT 9

**(Return of Service – 9/8/10
Application to Confirm Award, Order
to Show Cause and exhibits)**



2012 JUL 27 11:11 AM

FILED FOR RECORD
WINNIE D. CLARK
CLERK

Instructions: Additional information about this transaction is provided below. Use the browser's print function to print a copy of this Confirmation. Then, select the "Back to E-Filing Menu" or "Logout".

[Print](#)[Back to E-Filing Menu](#)[Logout](#)**Confirmation of E-Filing**

Docket Number: HHD-CV-09-5033765-S
Case Name: DIRECTORY ASSISTANTS v. SHAY, DENNIS DBA
Type of Transaction: Pleading/Motion/Other
Date Filed: Sep-10-2010
Motion/Pleading by: ROBINSON & COLE LLP Juris# 050604
Document Filed: RETURN OF SERVICE
of Order to Show Cause
Date and Time of Transaction: Friday, September 10, 2010 2:19:24 PM

[E-File Another Pleading/Motion/Other on this Case](#)

STATE OF CONNECTICUT)

) SS: HARTFORD, SEPTEMBER 8, 2010

COUNTY OF HARTFORD)

Then and by virtue hereof and by direction of the plaintiff's attorney, I left a verified true and attested copy of the original Application for Confirmation of Arbitration Award and Order to Show Cause, unsigned Order, Order to Show Cause, and Exhibits at the office of Susan Bysiewicz, Secretary of State, 30 Trinity Street, in the said Town of Hartford, Agent for Service for the within named non-resident defendant **DENNIS SHAY d/b/a MARSCH CHIROPRACTIC CENTER** (per Connecticut General Statutes 52-59b).

And afterwards on the 8th day of September 2010, I deposited in the post office at Hartford, postage pre-paid, certified mail, return receipt requested a verified true and attested copy of the original Application for Confirmation of Arbitration Award and Order to Show Cause, unsigned Order, Order to Show Cause, and Exhibits addressed to the within named non-resident defendant **DENNIS SHAY d/b/a MARSCH CHIROPRACTIC CENTER**, 235 Elliot Street, Orangeburg, SC 29115 (per Connecticut General Statutes 52-59b).

SUPPLEMENTAL RETURN TO FOLLOW

The within is the original Application for Confirmation of Arbitration Award and Order to Show Cause, unsigned Order, Order to Show Cause, and Exhibits with my doings hereon endorsed.

Service:	\$ 30.00
Verification:	24.00
Ends.:	2.00
8 Miles:	4.00
Fee:	50.00
Postage:	7.00
	<u>\$117.00</u>

ATTEST:


Abraham Glassman
Connecticut State Marshal
Hartford County

)

9/20/10

)

Dennis Shay ^{v.} d/b/a Marsch Chiropractic Ctr

ATTEST:


Abraham Glassman
CT State Marshal
Hartford County

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.	A. Signature ☒ Agent ☐ Addressee
1. Article Addressed to:	B. Received by (Printed Name) ☐ Date of Delivery
Dennis Shay, d/b/a marsch chiropractic center 235 Elliotts Road Orangeburg, SC 29115	D. Is delivery address different from item 1? If YES, enter delivery address below: ☐ Yes ☐ No
2. Article Number (transfer from service label)	3. Service Type ☒ Certified Mail ☐ Registered ☐ Insured Mail ☐ Express Mail ☐ Return Receipt for Merchandise ☐ C.O.D.
2. Article Number (transfer from service label)	4. Restricted Delivery? (Extra Fee) ☐ Yes
7007 1490 0003 8345 1664	



Instructions: Additional Information about this transaction is provided below. Use the browser's print function to print a copy of this Confirmation. Then, select the "Back to E-Filing Menu" or "Logout".

[Print](#)[Back to E-Filing Menu](#)[Logout](#)

Confirmation of E-Filing

Docket Number: HHD-CV-09-5033765-S
Case Name: DIRECTORY ASSISTANTS v. SHAY, DENNIS DBA
Type of Transaction: Pleading/Motion/Other
Date Filed: Sep-10-2010
Motion/Pleading by: ROBINSON & COLE LLP Juris# 050604
Document Filed: RETURN OF SERVICE
of Application for Confirmation of Arb Award
Date and Time of Transaction: Friday, September 10, 2010 2:21:24 PM

[E-File Another Pleading/Motion/Other on this Case](#)

EXHIBIT 10

**(9/9/10 Appearance & Court Rec. for
Appearance)**

APPEARANCE

JD-CL-12 Rev. 7/10

P.B. §§ 3-1 thru 3-6, 3-8, 10-13, 25A-2

STATE OF CONNECTICUT
SUPERIOR COURT

www.jud.ct.gov

NOTICE TO SELF-REPRESENTED PARTIES (PRO SE)

A self-represented party is a person who represents himself or herself. You must let the Clerk's Office know if you change your address by filling out this form.

2012 JUL 27 PM 4:37

Instructions — See Back/Page 2

Docket number CV-09-5033765-S
Return date Oct 22 2009
Scheduled court date (Criminal/Motor Vehicle Matters)
☒ Judicial District ☐ Housing Session ☐ Geographic Area ☐ Small Claims

Note: If you are a self-represented party and you filed an appearance before and you are filing this only to let the court know that you have changed your address, check the box below:

☐ I am filing this appearance only to let the court know that I have changed my address. My new address is below.

Name of case (Plaintiff vs. Defendant)

DIRECTORY ASSISTANTS v. SHAY, DENNIS DBA

Address of court (Number, street, town, zip code)

95 WASHINGTON STREET, P.O. DRAWER D, STATION A Hartford, CT 06106**Please Enter the Appearance of**

Juris number of attorney or firm 429059	Name of self-represented party (See "Notice to Self-Represented Parties" at top), or name of official, firm, professional corporation, or individual attorney JOSHUA RANDOLPH COHEN			
Mailing Address (Number, street) (Notice to attorneys and law firms - The address to which papers will be mailed from the court is the one registered or affiliated with your juris number. That address cannot be changed in this form.) 2074 PARK STREET 2ND FLOOR				
City/town HARTFORD	State CT	Zip code 06106	Fax number (Area code first) 860-233-0339	Telephone number (Area code first) 860-233-0338
E-mail address jcohen@debtorslawfirm.com				

in the case named above for: ("x" one of the following parties; if this is a Family Matters case, indicate the scope of your appearance)

- ☐ The Plaintiff (includes the person suing another person).
☐ All Plaintiffs.
☐ The following Plaintiff(s) only: _____
☒ The Defendant (includes the person being sued or charged with a crime).
☐ The Defendant for the purpose of the bail hearing only (in criminal and motor vehicle cases only).
☐ All Defendants.
☐ The following Defendant(s) only: _____
☐ Other (Specify): _____
☐ This is a Family Matters case and my appearance is for: ("x" one or both)
☐ matters in the Family Division of the Superior Court ☐ Title IV-D Child Support matters

Note: If other counsel or a self-represented party have already filed an appearance for the party or parties "x'd" above, put an "x" in 1 of these 2 boxes:

☐ This appearance is in place of the appearance of the attorney or firm or self-represented party on file (P.B. Sec. 3-8) OR

(Name and Juris Number)

☐ This appearance is in addition to an appearance already on file.

and, I agree to accept papers (service) electronically in this case under Practice Book Section 10-13 ☒ Yes ☐ No

Signed (Individual attorney or self-represented party)

► **429059**

Name of person signing at left (Print or type)

JOSHUA RANDOLPH COHEN

Date signed

Sep 09 2010**Certification**

This certification has to be filled out only in eviction cases; for "in place of" appearances; in criminal cases; and in small claims matters.

I certify that I mailed or delivered a copy of this Appearance form to:

- ☐ All counsel and self-represented parties of record as listed below and on any additional sheet(s). (For evictions (P.B. Sec. 3-5(a)), criminal actions (P.B. Sec. 3-5(c)) and small claims matters)
☐ Counsel or the party whose appearance is to be replaced as listed below and on additional sheet(s). (For appearances in place of another attorney or firm (P.B. Sec. 3-8))

Signed (Individual attorney or self-represented party)

►

Date copies mailed or delivered

Name of each party copy was mailed or delivered to *

Address which copy was mailed or delivered to

For Court use only

* If necessary, attach an additional sheet or sheets with the name of each party and the address which the copy was mailed or delivered to.

APPEARANCE

ROA_0166

***** P L A I N T I F F *****

ROBINSON & COLE LLP
280 TRUMBULL STREET

HARTFORD CT 06103
DIRECTORY ASSISTANTS INC 10/22/2009

***** D E F E N D A N T *****

JOSHUA RANDOLPH COHEN
2074 PARK STREET
2ND FLOOR

HARTFORD CT 06106
DENNIS SHAY DBA 09/09/2010

DIRECTORY ASSISTANTS

VS.

SHAY, DENNIS

DOCKET NUMBER CV 09 5033765S

HARTFORD CIVIL
SUPERIOR COURT
P.O. BOX DRAWER N
95 WASHINGTON STREET
HARTFORD, CONNECTICUT 06106

THE ABOVE INFORMATION
REFLECTS THE STATUS OF
APPEARANCES FOR THIS
CASE AS OF 09/09/2010.

FIND CASE INFORMATION
ON OUR WEBSITE
VISIT WWW.JUD.CT.GOV

PAGE 01 OF 01

ROBINSON & COLE LLP
280 TRUMBULL STREET

HARTFORD CT 06103

428/1598

ROA_0167

EXHIBIT 11

**(9/24/10 Objection to Appearance for
Confirmation of Award)**

2012 JUL 27 PM 4: 37

FILED FOR RECORD
WINNIE K. CLARK
CLERK OF COURT
ORANGEBURG, SC

HDD-CV-09-5033765-S : SUPERIOR COURT
DIRECTORY ASSISTANTS, INC. : J.D. OF HARTFORD
v. :
DENNIS SHAY d/b/a :
MARSCH CHIROPRACTIC CENTER : SEPTEMBER 24, 2010

OBJECTION TO APPLICATION FOR CONFIRMATION OF ARBITRATION AWARD¹

The Defendant hereby objects to Plaintiff's application for confirmation of the arbitration award. The arbitrator lacked jurisdiction because the signature on the contract was acquired through fraud, the wrong party has been named, and the arbitration provisions of the disputed contract were not complied with. Because the arbitrator lacked jurisdiction, no arbitration could have occurred. As a result, the arbitration award cannot be confirmed.

The question raised, whether the dispute is subject to arbitration, is one of law and the court's review is de novo. MBNA Amercia Bank N.A. v. Teofil Boata, 283 Conn. 381, 386, 926 A.2d 1035 (2007) (citing Welch Group, Inc v. Creative Drywall, Inc., 215 Conn. 464, 467, 576 A.2d 153(1990).) This motion is the proper vehicle to attack an arbitration award and the arbitrator's jurisdiction. "A claim that a dispute is not subject to arbitration is an attack on the power of the arbitrator to decide the underlying dispute." *Id.* at 392 (citing Bennett v. Meader 208 Conn. 352, 364 (1988).) "Such a claim may be raised through ...a motion to vacate the arbitration award or through an objection to the confirmation of the arbitration award." *Id.* at 393 (citing International Brotherhood of Teamsters v. Shapiro, 138 Conn 57, 65 (1951).) Because

¹ Defendant filed a Motion to Vacate Arbitration Award contemporaneously with this Objection as the reasoning for this objection also supports a motion to vacate. Defendant did this to allow the Court to rule on each issue separately.

**ORAL ARGUMENT NOT REQUESTED
TESTIMONY NOT REQUIRED**

the question at issue whether an agreement to arbitrate exists, it is not subject to the time limits of Conn. Gen. Stat. § 52-420(b). *Id.* at 395.

“It is well established that arbitration is a creature of contract...a person can be compelled to arbitrate a dispute only if, to the extent that, an in the manner which, he has agreed so to do.” *Id.* at 386 (citing Nussbaum v. Kimberly Timbers, Ltd., 271 Conn. 65, 72, 856 A.2d 364 (2000)). “[T]he arbitration provision in an agreement is effectively an agreement that is separate and distinct from the broader contract, and a court of law may enforce only those agreements that the parties actually make.” *Id.* at 386.

As stated in Defendant’s affidavit (*See Exhibit A*), he was unaware that he was entering into a contract and consequently did not assent to arbitration. In a similar matter in New York, the president of a company denied in an affidavit that he ever entered into a contract and did not agree to arbitrate any disputes. Princeton Rayon Corporation v Gayley Mill Corporation, 309 N.Y. 13 (1955), cited by Two Sisters, Inc. v Gosch & Co. 171 Conn. 493 (1976). Two Sisters referenced Princeton Rayon as an example of a defense to an enforcement of arbitration where a party denies the existence of a contract. Because there is a factual issue as to the validity of the contract itself, the arbitration award cannot be confirmed.

Further, because the named Defendant is not a party to the contract, there is no way he could have consented to arbitrate. In a case recently decided by this very court (Judge Peck), the issue of principle and agent was raised in Yellow Book Sales & Distribution Company v. David Valle, 2010 WL 3326845 (Conn. Super.)-Docket No: HHD-CV-09-6003820-S (pending appeal). Here, Yellow Book sued Mr. Valle, the president and agent for a company that had entered into a

contract for advertising services with Yellow Book. Mr. Valle's defense was that he was not a party to the contract, that his signature was that as agent for his company. Judge Peck agreed with this defense.

It is well established that an agent, by making a contract only on behalf of a competent disclosed or partially disclosed principal whom he has power so to bind, does not thereby become liable for its nonperformance ... If a contract is made with a known agent acting within the scope of his authority for a disclosed principal, the contract is that of the principal alone...Whitlock's, Inc. v. Manley, 123 Conn. 434, 437, 196 A. 149 (1937). When these two principles are read together, the law presumes that where a writing contains the signature of a duly authorized agent, the "party to be charged" is the principal and not the agent because the agent individually is not a party to the agreement. See Warren-Connolly Co. v. Saphin, 283 App.Div. 391, 939 128 N.Y.S.2d 272 (1958). Instead, the principal is the party to the agreement. Cf. Tolk v. Williams, 75 Conn.App. 546, 558, 817 A.2d 142 (2003), quoting 1 Restatement (Second) Agency § 157, p. 373 (1958). Otherwise, every agreement signed by an agent on behalf of his principal would be admissible as a promise by the agent individually to answer for the debt of his principal. *Id.* at *3.

The Yellow Book contract contained a single clause that the signer would be held personally liable for any breach, however the Judge Peck disallowed this singular clause when the contract was clearly between Yellow Book and the principal and not the agent, citing public policy reasons. The contract in dispute in this particular matter does not even contain such a clause and thus there is no reason to attach the contract to the Defendant. The Defendant is not a party to the contract and consequently did not consent to arbitration.

An application for order to proceed with arbitration was denied on the court's finding that, "The contract provides for consensual arbitration. Both parties have not consented."

Appleby & Cutone, Inc. v Town of Chester, 1993 WL 540214 (Conn. Super.). Here the contract states:

If we are unable to come to a mutual agreement, or if one of us refuses to participate in choosing, the party filing a demand will have the right to make the choices unilaterally, as long as the filing party made a good faith effort to come to a mutual agreement, and the non-choosing/non-participating party expressly consents to and waives any and all objections to the choices made. Emphasis added.

On June 16, 2009, Mr. Shay wrote to the arbitration forum, American Dispute Resolution Center, objecting to the hearing being located in Connecticut. This in itself is proof that he did not expressly consent to the choices made. Further, Plaintiff's "good faith effort to come to a mutual agreement" was in the form of giving the Defendant three days to decide how he wanted to handle the dispute. Three days is hardly a good faith effort. Note that the arbitration demand was filed on May 26, 2010.

Because the Defendant did not assent to arbitration, because the Defendant is not a party to the contract, and because the terms of the arbitration clause were not adhered to, the court may not confirm the arbitration award.

**DEFENDANT, DENNIS SHAY d/b/a
MARSCH CHIROPRACTIC CENTER**

By: /s/429059
Joshua R.I. Cohen
Law Office of Joshua R.I. Cohen, LLC
2074 Park Street, 2nd Floor
Hartford, CT 06106
Tel. (860) 233-0338 Fax (860) 233-0339
Juris No. 429059

ORDER

The foregoing Objection having been presented to the Court, it is hereby Ordered:

SUSTAINED/OVERRULED

BY THE COURT,

Judge/Clerk

Date: _____

CERTIFICATION

I hereby certify that a copy of the foregoing Objection was served via first class mail, postage pre-paid, this 24th day of September, 2010, to all counsel and/or pro se parties of record, as follows:

Brett Boskiewicz
Robinson & Cole, LLP
280 Trumbell Street
Hartford, CT 06103-3597

/s/429059
Joshua R.I. Cohen

EXHIBIT A

HDD-CV-09-50337-87 PM 4:37

SUPERIOR COURT

DIRECTORY ASSISTANTS, INC.

J.D. OF HARTFORD

v.

WINNIE A. STARK
CLERK OF COURT
OFFICE BUREAU, SC

DENNIS SHAY d/b/a

MARSCHE CHIROPRACTIC CENTER

SEPTEMBER 23, 2010

AFFIDAVIT OF DENNIS SHAY

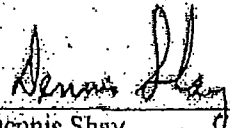
STATE OF SOUTH CAROLINA

COUNTY OF _____

The undersigned, having been duly sworn, hereby declares of his own personal knowledge that:

1. I am over eighteen years of age, and I believe in the obligations of an oath.
2. I am a resident of the State of South Carolina and a licensed chiropractor.
3. I am an agent for Dennis J. Shay D.C., P.A., which operates under the name Marsch Chiropractic Center.
4. As named above, I am being sued personally.
5. Directory Assistants attempted to solicit the business of Marsch Chiropractic Center.
6. Directory Assistant's sales person spoke to me and another person, however, only I was an authorized agent for Marsch Chiropractic Center.
7. I do not recall if the handwriting on the contact is mine, with the exception of my initials which I admit are mine.
8. I initialed the "Advertiser Acceptance" section after the representative told me to initial what I would consider after a trial basis IF I were to enter into a trial basis with Directory Assistance. I never entered into a trial basis.

9. I furnished my name and business name on the bottom of the contract without being told it was a contract, rather I was told my contact information was needed.
10. I was never allowed to hold or review the contract and did not know it was a contract until six months later when I disputed the existence of a contract.
11. I did not knowingly sign or enter into this contract.
12. I did not knowingly agree to arbitrate any disputes under the contract.
13. I never expressly consented to and waived any objections to the arbitration choices made as is required by the contract.
14. Nothing in the contract language says I am personally liable for the contract, nor was any representation ever made to me by the representative.


Dennis Shay.

Subscribed and sworn to before me
this 27th day of September, 2010.



EXHIBIT 12

**(Conn. Super. Ct. 10/25/10 Order
Continuing Hearing)**

DOCKET NO: HHDCV095033765S

DIRECTORY ASSISTANTS
2012 JUL 27 PM 4:37

V.
SHAY, DENNIS

FILED FOR RECORD
WILLIAM R. CLARK
CLERK OF COURT
GRAND JUROR, SC

SUPERIOR COURT

JUDICIAL DISTRICT OF HARTFORD
AT HARTFORD

10/25/2010

ORDER 419022

ORDER

ORDER REGARDING:
09/24/10 112.00 OBJECTION

The foregoing, having been considered by the Court, is hereby:

ORDER:

If the defendant wishes the court to consider the factual claims set forth in his objection and affidavit, he must be present to testify and be subject to cross examination. This matter is continued to November 22, 2010 on calendar #3. If the defendant does not appear at that time, the court will consider the matter on the papers but will not consider the defendant's affidavit.

419022

Judge: JANE S SCHOLL

EXHIBIT 13

(UnPublished Opinon)



LexisNexis®

2012 JUL 27 PM 4: 37

RECORD
VINNIE P. CLARK
CLERK OF COURT
ORANGEBURG, SC

Peter Schrobenauser v. Bielmatik-Leuze GmbH & Co. et al.

CV020818905S

SUPERIOR COURT OF CONNECTICUT, JUDICIAL DISTRICT OF
HARTFORD, AT HARTFORD

2003 Conn. Super. LEXIS 701

March 6, 2003, Decided

March 7, 2003, Filed

NOTICE: [*1] THIS DECISION IS, UNREPORTED AND MAY BE SUBJECT TO FURTHER APPELLATE REVIEW. COUNSEL IS CAUTIONED TO MAKE AN INDEPENDENT DETERMINATION OF THE STATUS OF THIS CASE.

DISPOSITION: Instant motion DENIED.

JUDGES: Michael R. Sheldon, J.

OPINION BY: Michael R. Sheldon

OPINION

**MEMORANDUM ORDER RE MOTION TO DISMISS BY
DEFENDANT ADOLF LEUZE**

Upon considering all materials presented to the Court in support of and in opposition to the Motion to Dismiss filed by defendant Adolf Leuze on November 26, 2002, the Court hereby rules, for the following reasons, that said Motion must be DENIED:

1. This is an action by plaintiff Peter Schrobenauser, a resident of Connecticut who maintains his business in West Hartford, Connecticut, to recover money damages from three defendants: bielomatik-Leuze GmbH & Co. ("bielomatik-Leuze"), a German limited partnership with an address in Neuffen, Germany, which owns a division in Enfield, Connecticut; Bielomatik, Inc., a Delaware corporation with its principal place of business in Michigan; and Mr. Adolf Leuze, a citizen of Germany and former managing director of bielomatik-Leuze who, at the time this action was commenced, was both a member of bielomatik-Leuze's board of advisors and [*2] a partner

of R&M Leuze OHG, the German partnership which is the ultimate owner of bielomatik-Leuze.

1 The materials submitted include: defendant Leuze's initial Memorandum of Law dated November 25, 2002 and attached personal Affidavit dated November 20, 2002; plaintiff Schrobenauser's Objection dated December 19, 2002 and attached personal Affidavit dated December 18, 2002; defendant Leuze's Reply Memorandum of Law dated February 6, 2003; defendant Leuze's Supplemental Memorandum of Law dated February 21, 2003; and plaintiff Schrobenauser's Reply to Supplemental Brief dated March 4, 2003.

2. Upon being served with process on August 15, 2002, the three defendants appeared in this case by and through their present counsel, Frederic P. Rickles, Esq. of Greenwich, Connecticut, on September 27, 2002.

3. On October 25, 2002, defendant Leuze moved the Court for an extension of time until November 27, 2002 "to file a pleading responsive to plaintiffs Complaint, including but not limited to a motion to dismiss." [*3] Motion for Extension of Time to Plead of Defendant Adolf Leuze (10/24/02), p. 1. As grounds for this Motion, defendant Leuze's counsel represented that the extra time was "needed in order to fully investigate the issues in this lawsuit as they pertain to Leuze's motion to dismiss, as well as to communicate between counsel and Defendant Leuze, who resides in Germany." *Id.*

3. On October 31, 2002, the plaintiff objected in writing to defendant Leuze's Motion for Extension of Time to Plead insofar as it sought to extend the 30-day deadline established by the Practice Book for filing a

motion to dismiss. The 30-day deadline, claimed the plaintiff, is expressly made mandatory by the following language in *Practice Book* § 10-30: "Any defendant wishing to contest the court's jurisdiction . . . must do so by filing a motion to dismiss *within thirty days of filing an appearance*." (Emphasis added.) Failure to comply with that deadline, the plaintiff argued, is fatal to a defendant's jurisdictional challenge under *Practice Book* § 10-32, which provides that: "Any claim of lack of jurisdiction over the person . . . is waived if not raised by a motion to dismiss filed . . . within the [*4] time provided by § 10-30."

4. The defendants have replied to the plaintiff's Objection by citing several Superior Court cases in which individual trial judges reached the merits of defendants' late-filed motions to dismiss because the defendants had moved for extensions of time to file responsive pleadings. See *Bartron v. Ferry*, 33 Conn. L. Rptr. 87, 2002 WL 31255761 (Conn.Super., Sept. 11, 2002, Scholl, J.) (wherein the Court observed in dictum that defendants' motion to dismiss was filed four days before the deadline set upon the granting of their motion for extension of time to file a responsive pleading); *Smith v. McKeough*, 2002 WL 31125259 (Conn.Super., Aug. 19, 2002, Hurley, J.T.R.) (wherein the Court, before denying the defendant's motion on the merits, "agreed," without discussion, "that . . . the granting of the continuance for 'Extension of Time to Plead,' i.e., [to] file a responsive pleading . . . , made the motion to dismiss . . . timely[.]" *McNamara v. Tournament Players Club of Connecticut, Inc.*, 2001 WL 1187091 (Conn.Super., Sept. 10, 2001, Gilardi, J.) (wherein the Court observed in a footnote that, notwithstanding [*5] the 30-day filing requirement of *Practice Book* § 10-30, it would "treat the [defendants' late-filed] motion to dismiss as timely" because they "also filed . . . a motion for an extension of time to file a responsive pleading."))

5. On November 26, 2002, sixty days after counsel filed his appearance for the defendants, including defendant Leuze, but one day short of the extended deadline he had requested in his Motion for Extension of Time to Plead, which had not yet been adjudicated, the defendant filed his pending Motion to Dismiss on the ground that "this Court lacks personal jurisdiction over him because he lacks sufficient contacts with Connecticut to make the exercise of personal jurisdiction statutorily and constitutionally permissible." The defendant, as previously noted, supported his Motion to Dismiss with a Memorandum of Law and a personal Affidavit dated November 20, 2002.

6. On December 19, 2002, the plaintiff objected in writing to the defendant's Motion to Dismiss on two principal grounds. First, he claimed that the defendant had waived his right to challenge the Court's jurisdiction over his person by failing to file his Motion to Dismiss within

thirty days of filing [*6] an appearance in this case. Second, he claimed that this Court's exercise of personal jurisdiction over him is both statutorily and constitutionally permissible. As support of his Objection--indeed, as part thereof--the plaintiff filed an opposing memorandum of law and his own personal Affidavit dated December 18, 2002.

7. In further support of his claim that the defendant's Motion to Dismiss was untimely filed, and thus that he had waived his right to contest this Court's jurisdiction over his person under *Practice Book* §§ 10-30 and 10-32, the plaintiff has called to this Court's attention to the case of *Knowles v. Institute for Diabetes, LLC*, 32 Conn. L. Rptr. 139, 2002 WL 1335653 (Conn.Super., May 13, 2002, Robinson, J.). There, the Court addressed the apparent inconsistency between the mandatory 30-day post-appearance deadline for the filing of motions to dismiss, as established by *Practice Book* § 10-30, and the general requirement of *Practice Book* § 10-8 that pleadings be advanced within thirty days of the return date. Attempting to construe the two rules in such a way "that, if possible, the intent of both will be carried out," the *Knowles* Court ruled [*7] as follows:

Section 10-8 of the Practice Book requires that the pleadings be advanced within thirty days of the return date. *Section 10-6(2) of the Practice Book* provides that the next pleading filed after the complaint is the motion to dismiss. *Section 10-30 of the Practice Book* provides that a motion to dismiss must be filed within thirty days of the filing of the movant's appearance, therefore, in those situations wherein the defendant does not file its appearance on or before the return day, in order to file a motion to dismiss pursuant to § 10-30, within thirty days of the filing of the appearance, but subsequent to the thirty-day period after the return day, the movant must file a motion for extension of time to file a motion to dismiss. Said extension of time could be for a period of up to thirty days after the movant filed its appearance, but the movant of course is still required to file the motion to dismiss within thirty days of its appearance.

Id. On the basis of that analysis, the Court set aside a default for failure to plead which had been entered more than thirty days after the return date but less than thirty days after the defendants filed their appearance [*8] in the case.

8. Though the foregoing rulings are surely of interest, their significance is diminished, if not completely undermined, by our Supreme Court's recent decision in *Pitchell v. Hartford*, 247 Conn. 422, 722 A.2d 797 (1999). In *Pitchell*, the Supreme Court was asked to decide if a defendant had waived his right to challenge the Court's jurisdiction over his person under *Practice Book* § 10-30 by failing to file his motion to dismiss within thirty days

of the original appearance of his counsel, where counsel's intent to represent him, and ethical ability to do so without a conflict of interest, was called into question within three days of the filing of the original appearance. The defendant seeking dismissal was a former Hartford police officer, Gregory Sargis, who had been sued for money damages in connection with the shooting of the plaintiff by a different Hartford police officer, James Callan, whom defendant Sargis allegedly failed to control. Counsel for the City, from a prominent Hartford law firm, originally filed an appearance for "all defendants"--the two police officers as well as the City. Three days later, however, the law firm filed an "amended [*9] appearance" for the City only. In the four months that followed, the law firm did nothing to represent defendant Sargis. Among other things, it failed to file a motion to dismiss on his behalf. Later, since the Court continued to treat the law firm as legal counsel for "all defendants," the firm moved successfully to withdraw its appearance on behalf of the individual defendants on the ground of conflict of interest.

9. Notwithstanding these extenuating circumstances, the *Pitchell* Court rejected the defendant's argument that he was functionally unrepresented from the date of counsel's amended appearance forward, and thus that he should not be deemed to have waived his jurisdictional challenge because of counsel's failure to move to dismiss within the 30-day filing period established by *Practice Book* § 10-30. To the contrary, ruled the Court, the defendant's original counsel properly remained his counsel for all purposes from the date of his original appearance forward until the date of the granting of his motion to withdraw. The Court therefore ruled as follows that the defendant had waived his jurisdictional challenge by failing to move to dismiss within thirty days of the filing [*10] of counsel's original appearance:

The filing of an appearance on behalf of a party, in and of itself, does not waive that party's personal jurisdiction claims. Nevertheless, "any defendant, wishing to contest the court's jurisdiction, may do so even after having entered a general appearance, but must do so by filing a motion to dismiss within thirty days of the filing of an appearance . . ." *Practice Book* § 10-30. The rule specifically and unambiguously provides that any claim of lack of jurisdiction over the person is waived unless it is raised by a motion to dismiss filed within thirty days . . . Thus, thirty-one days after the filing of an appearance . . . a party is 'deemed to have submitted to the jurisdiction of

the court.' Any claim of [lack of personal jurisdiction] is waived if not sooner raised.

Pitchell, supra, 247 Conn. at 432-33. "The rules of practice," the *Pitchell* Court continued,

are unambiguous. Its provisions create evenhanded, easy to follow procedures that all litigants must follow. As the plaintiff argues, to allow a party to compromise these well established, unambiguous Practice Book provisions would lead to a case-by-case analysis [*11] by the courts, which would lead to uncertainty of application.

Pitchell, supra, 247 Conn. at 436.

10. The upshot of *Pitchell* could hardly be clearer. The 30-day deadline for filing motions to dismiss based on alleged lack of personal jurisdiction is a mandatory deadline that must be complied with or the defendant will be deemed to have waived all challenges he might have to the Court's jurisdiction over his person. Extension of the deadline for any reason, on a motion for extension of time to file a responsive pleading or otherwise, would be completely inconsistent with the relevant language of the Practice Book, which makes no provision whatsoever for such extensions. Granting extensions to some defendants and not others, moreover, would surely lead to the very result that the *Pitchell* Court sought to avoid by issuing its strongly worded decision, to wit:

[a] compromise [of] these well established, unambiguous Practice Book provisions[, and with it] . . . a case-by-case analysis by the courts, which would lead to uncertainty of application.

Pitchell, supra, 247 Conn. at 436.

11. Bound, as it is, by our Supreme Court's decision in [*12] *Pitchell*, this Court must conclude that the instant Motion to Dismiss was untimely filed because it was not filed within thirty days of the filing of counsel's appearance herein. Accordingly, because the failure to file a timely motion to dismiss on the ground of lack of jurisdiction over the person constitutes a waiver of one's jurisdictional challenge as a matter of law, under *Practice Book* § 10-32, the instant motion must be DENIED.

IT IS SO ORDERED this 6th day of March 2003.

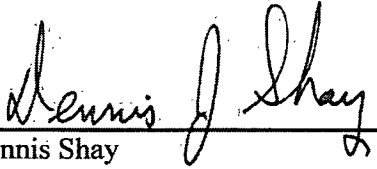
Michael R. Sheldon, J.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	FIRST JUDICIAL CIRCUIT
	)	
Directory Assistants, Inc.,	)	
	)	
Plaintiff,	)	
	)	Case No. 2011-CP-38-00853
	)	
Dennis Shay, d/b/a Marsh	)	
Chiropractic Center,	)	AFFIDAVIT OF DENNIS SHAY
Center,	)	
	)	
Defendant.	)	

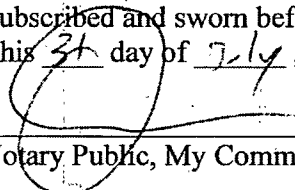
The undersigned, having been duly sworn, hereby declares of his own personal knowledge that:

1. I am over eighteen years of age, and I believe in the obligations of an oath.
2. I am a resident of the State of South Carolina and a licensed chiropractor.
3. I am an agent for Dennis J. Shay D.C., P.A. which operates under the name "Marsh Chiropractic Center." This corporation is in good standing.
4. In 2008, Directory Assistants attempted to solicit the business of Marsh Chiropractic Center.
5. Directory Assistant's sales person spoke to me and another person, an office assistant. However, I was the only one authorized to enter into contracts behalf of Marsh.
2. I have reviewed the alleged contract between Marsh and DAI. I believe that only the initials that appear on the contract are mine. I did not sign my signature on behalf of Marsh or otherwise.
3. I initialed the "Advertiser Acceptance" section after the representative told me to initial which plan I "would consider" after a trial basis IF I were to enter into a trial basis with Directory Assistance.
4. I furnished my name and business name on the bottom of the contract without being told it was a contract, rather I was told my contact information was needed.

5. I was never allowed to hold or review the contract and did not know it was a contract until six months later when I disputed the existence of a contract. I did not knowingly sign or enter into this contract.
6. I did not knowingly agree to arbitrate any disputes under the contract. Further, I never expressly consented to arbitration, to the application of Connecticut law, or to the forum of Connecticut.
7. After DAI demanded thousands of dollars in payment, I disputed that there was any contract. Marsh certainly received no benefit from this contract whatsoever.
8. When DAI's representatives demanded an arbitration, I (and later an attorney I hired) disputed that there was any agreement to arbitrate. This dispute was made to DAI in writing.
9. Nevertheless an arbitration proceeded in Connecticut, over my objection and in my absence, which resulted in a roughly \$35,000.00 arbitration award to DAI under the "liquidated damages" clause of the contract. This award was then confirmed into a Judgment by a court in Connecticut.
10. At no time did I personally appear in Connecticut. To this day no court in South Carolina (or Connecticut) has ever determined that a valid arbitration agreement existed.


Dennis Shay

Subscribed and sworn before me
This 31 day of July, 2012


Notary Public, My Commission Expires: 4/13/2016

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS

Directory Assistants Inc.,

Plaintiff,

vs.

Dennis Shay d/b/a Marsch Chiropractic
Center,

Defendant.

Civil Action No. 2011-CP-38-00853

**PLAINTIFF'S MOTION TO ALTER
OR AMEND JUDGMENT**

YOU WILL PLEASE TAKE NOTICE that, pursuant to Rule 52(b) of the South Carolina Rules of Civil Procedure, the Plaintiff, Directory Assistants Inc., by and through its undersigned attorneys, will move before the Court of Common Pleas for the First Judicial Circuit on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an Order altering and amending the Order entered by this Court and which granted the Defendant relief from judgment.

This motion is based on the grounds that the Defendant failed to offer any valid objection to the domestication of the Connecticut judgment, nor did the Defendant offer any valid basis for obtaining relief from the Connecticut judgment. The Defendant bears the burden of showing entitlement to relief from the judgment. *See Law Firm of Paul L. Erickson, P.A. v. Boykin*, 383 S.C. 497, 681 S.E.2d 575 (S.C. 2009). The specific grounds for this motion are as follows:

(1) In its Order, the Court seeks to grant relief from judgment under Rule 60 of the South Carolina Rules of Civil Procedure. The remedies under Rule 60, however, are not available in this situation because there is an arbitration award underlying the judgment and the Federal Arbitration Act ("FAA") provides the exclusive means of seeking to vacate an

arbitration award. See *E.Spire Communications, Inc. v. CNS Communications*, 2002 U.S. App. LEXIS 14196, *18 (4th Cir. July 15, 2002) (“Because the FAA contains exclusive procedures for vacating arbitration awards, Rule 60(b)(1) is inapplicable.”). The FAA is applicable (and trumps South Carolina law) because interstate commerce was involved with the parties’ contract. The contract involved parties residing in different states and performance necessarily occurred across state lines. Accordingly, the Defendant is not entitled to relief under Rule 60, and the Court should therefore overrule his objections to the domestication of the Connecticut Judgment.

(2) The Court ruled that the Defendant was entitled to relief from judgment under Rule 60(b)(1) on the ground of mistake. Reliance on the mistake prong of Rule 60(b)(1) is misplaced for several reasons.

a. The Court found that a mistake had been made when the judgment was entered because the judgment named Dennis Shay in his individual capacity, but, according to the Defendant, should have been in the name of the professional corporation that Mr. Shay supposedly had formed in South Carolina. This is not the type of mistake that would entitle the Defendant to relief from the judgment. Courts applying the “mistake” prong of Rule 60(b)(1) uniformly apply it to procedural mistakes, not purportedly erroneous factual determinations. See Moore’s Federal Practice § 60.41. Examples include mistakes by counsel, missed deadlines, misinterpretation of local rules, and *pro se* procedural errors. This is consistent with the view of the South Carolina appellate courts as to the type of mistake that would entitle a defendant to relief under Rule 60(b)(1). See *Williams v. Watkins*, 384 S.C. 319, 681 S.E.2d 914 (Ct. App. 2009) (relief allowed based on good faith mistake when defendant erroneously relied on court roster).

b. Rule 60(b)(1) does not contemplate relief from a judgment based on the collateral attack of a disputed fact. Whether Dennis Shay signed in his individual capacity or in his capacity as a representative of a professional corporation is a question of intent to be determined from a review of the execution page of the parties' agreement and from other evidence. Nowhere on the signature page does the name of Mr. Shay's professional corporation appear. Nowhere do the letters "PA" or "PC" appear. It was incumbent on the Defendant to put some designation on the signature line indicating he was signing for a professional corporation rather than his individual capacity. Indeed, he indicated that his business operated as "Marsh Chiropractic Center," rather than the name of his purported professional corporation. The way that the Defendant signed the contract suggested that he was operating as an unincorporated sole proprietorship, not a professional corporation. This was also consistent with the fact that many businesses purchase yellow page advertising under a "d/b/a" name. The Court's finding in the Order required extrapolation and a factual determination that the Defendant was not signing in his individual capacity. This issue had already been resolved in favor of the Plaintiff when the arbitrator issued the award against "Dennis Shay" and when that award was confirmed by the Connecticut Court. That finding became *res judicata* against the Defendant and is not appropriate for collateral attack in this domestication proceeding. The Full Faith and Credit Clause does not permit courts in sister states to relitigate the intent of a signatory to a contract or any other factual determination underlying a judgment.

c. "In determining whether to grant relief under Rule 60(b)(1), the court must consider the following factors: '(1) the promptness with which relief is sought; (2) the reasons for the failure to act promptly; (3) the existence of a meritorious defense; and (4) the prejudice to the other party.'" *Rouvet v. Rouvet*, 388 S.C. 301, 310, 696 S.E.2d 204, 208 (Ct. App. 2010).

Thus, “[a] meritorious defense is necessary in order for a judgment to be set aside under Rule 60(b).” *McClurg v. Deaton*, 395 S.C. 85, 87, 716 S.E.2d 887, 888 (2011). The Defendant has failed to argue the existence of a meritorious defense, nor would the record support a finding of a meritorious defense. Indeed, a letter from the Defendant to the Plaintiff dated July 30, 2009 admits liability and includes a check for payment. (7/30/09 Letter from Shay to Ford) [Exh. “A”]. This letter was sent by the Defendant to the arbitral forum and made part of the arbitration record. When the Defendant is conceding in writing his liability under the contract, there cannot be a showing of a meritorious defense.

(3) The Court ruled that the judgment is void because there has been no judicial finding of the existence of an enforceable arbitration agreement. This is not a valid basis for relief under the situation presented in this case.

a. The existence of the arbitration agreement had already been litigated during the confirmation proceedings in the Connecticut Court. The Defendant had counsel appear on his behalf and argue that there was no valid arbitration agreement. This argument was made in a formal “Objection to Application for Confirmation of Arbitration Award” and was accompanied by an affidavit from the Defendant. [Exh. “B”]. The Connecticut Court issued an Order stating that the Defendant needed to appear before the Court on November 22, 2012 to present his testimony and to be subject to cross examination in order to support his objection. [Exh. “C”]. The Defendant failed to appear, and the Court confirmed the arbitration award. Thus, the Defendant chose to raise this objection before the Connecticut Court, and then abandoned the objection by not appearing. The Connecticut Court’s confirmation order brings to a final conclusion the issue as to whether there is a valid arbitration agreement. The Defendant

cannot now relitigate the issue on a collateral attack. This is precisely what *res judicata* is intended to prevent.

b. In Connecticut and under the FAA, once an arbitration has been initiated, there are two ways to challenge the existence of an arbitration agreement. First, the defendant can initiate a separate legal action seeking to stay the arbitration. Second, if preserved during the arbitration proceedings and not waived, the defendant can raise the challenge in the court in which the plaintiff seeks to confirm the award. The Defendant in this case chose the latter, but then abandoned his challenge. The Defendant argued before this Court that it was necessary for the Plaintiff to first seek and obtain a judicial finding that an arbitration agreement existed. This is not the law. The cases upon which the Defendant relies and which the Court cites in the Order do not stand for the proposition that the Defendant bears the burden of obtaining a judicial finding that there is an enforceable arbitration agreement. It is the Defendant that bears the burden of raising and prosecuting this challenge, and, absent the Defendant doing so, there is nothing that would prevent a Court from confirming an arbitration award.

c. The South Carolina Arbitration Act illustrates that arbitration claimants do not bear the burden of securing judicial findings that an enforceable arbitration agreement exists. The Act specifies that the purported absence of an enforceable arbitration agreement can be made in a motion to vacate. *See* S.C. Code Ann. § 15-48-130(a)(5). The motion to vacate, however, must be made within ninety days of delivery of the arbitration award. *Id.* § 15-48-130(b). If a motion to vacate is not timely filed, the Arbitration Act provides that “the court shall confirm an award.” *Id.* § 15-48-120. Thus, the South Carolina Arbitration Act clearly contemplates that if the defending party does not challenge the existence of the arbitration agreement in post-award judicial proceedings, then the award is valid and must be confirmed.

Nothing in these statutes can be construed as requiring a claimant to seek and *actually obtain* a judicial finding of the existence of an arbitration agreement before an award can be confirmed and reduced to a judgment. The case cited by the Court and the Defendant, *MBNA America Bank v. Christianson*, 377 S.C. 210, 659 S.E.2d 209 (Ct. App. 2008), stands only for the proposition that a court, and not the arbitrator, must be the one that determines whether an enforceable arbitration agreement exists after a challenge is raised. Indeed, the facts in *MBNA* illustrate the proper procedure for raising and litigating this challenge—in a motion to vacate the arbitration award filed by the defending party. In the present case, it was a court, the Connecticut Court, that addressed the Defendant's challenge, but the challenge was subsequently abandoned leading to the Connecticut Court confirming the award. This was the only judicial involvement necessary to convert the arbitration award into a valid judgment.

d. There is an additional reason why the Defendant's challenge to the arbitration agreement cannot form the basis for relief at this point in time. As stated on page 3 of the Order, the Defendant argued that the Connecticut Judgment is "void" because of the purported absence of an arbitration agreement. Thus, the Defendant attempts to implicate Rule 60(b)(4), which allows for relief where "the judgment is void." S.C. R. Civ. P. 60(b)(4). However, "[t]he definition of void under the rule only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction." *Universal Benefits, Inc. v. McKinney*, 349 S.C. 179, 183, 561 S.E.2d 659, 661 (Ct. App. 2002). The question as to the existence of an arbitration agreement does not go to whether due process was afforded by the Connecticut Court, nor does it implicate whether the Connecticut Court had personal or subject matter jurisdiction. The Defendant's argument, therefore, cannot form the basis for relief under Rule 60(b)(4).

(4) The Court also ruled that there was no legal authority on which the Plaintiff could request its attorneys' fees and costs incurred in pursuing the domestication of the judgment. The contract, however, allows for the recovery of fees and costs incurred in pursuing collection of amounts due under the contract and even specifies that this includes "legal fees to confirm the award/domesticate the judgment." (Consulting Contract at 2) [Exh. "D"]. Additionally, the amount of these fees are not subject to arbitration. It was contemplated by the parties that judicial involvement is necessary during efforts to enroll a judgment and for collection. It would be illogical that every time a court became involved in collection proceedings (for example, supplementary proceedings), the Plaintiff would then have to initiate an arbitration to determine the fees and costs related to the judicial activity. In footnote 5 of its Order, the Court also indicates that he would like to have had additional details about the fees and costs incurred by the Plaintiff in pursuing domestication of the judgment. The Plaintiff therefore submits as Exhibit "E" a supplemental affidavit outlining the number of hours spent, the names of the professionals involved, and their hourly rates.

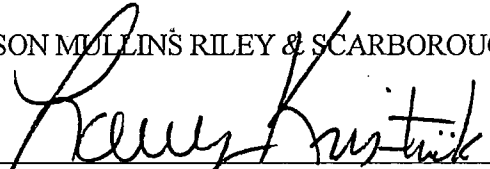
(5) The Defendant in this case had his opportunity to appear in Connecticut in both the arbitration proceeding and during the judicial review proceedings, and, in fact, did appear in those proceedings. The Defendant, however, chose not to fully prosecute his arguments and objections in Connecticut. The doctrine of *res judicata* and the Full Faith and Credit Clause prevent the Defendant from appearing and raising issues in Connecticut, then trying to relitigate the issues again in South Carolina after a judgment has been entered. The effect of the Defendant's choices and his decision to relitigate the issues in South Carolina is that the Plaintiff has been forced to incur additional legal fees. While the judgment amount now exceeds the original amount due, much of the additional sum is a result of the Defendant's own decision to

challenge the validity of the arbitration award and the judgment. These legal fees and costs are actual expenses that have been paid by the Plaintiff and which have negatively affected the Plaintiff.

Based on the foregoing reasons, the Court should amend its judgment to (a) overrule the Defendant's objections to the domestication of the Connecticut judgment, (b) deny the Defendant's request for relief from judgment under South Carolina rules and statutes, (c) find that the Connecticut judgment is valid and enforceable in the State of South Carolina under the Full Faith and Credit Clause of the United States Constitution, and (d) increase the amount of the judgment by the attorneys' fees and costs incurred by the Plaintiff in domesticating the judgment and by the interest that has continued to accrue.

This motion is based on the record before the Court and the applicable rules, statutes, case law, and attached exhibits and will be further supported by such other memoranda, exhibits, and oral argument as may be provided prior to a ruling on the motion. To ensure the record is complete, the Plaintiff also attaches to this motion as Exhibit "F" the documents provided to the Court via email dated July 22, 2013.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

D. Larry Kristinik
Kristen E. Horne
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Plaintiff Directory Assistants Inc.

Columbia, South Carolina

10/10, 2013

EXHIBIT "A"
(7/30/13 Letter from Shay to Ford)

ATTEST:
Wing
CLERK OF COURT
ORANGEBURG DISTRICT

235 Elliott Street, Orangeburg, SC, 29115
803.536.1635 803.536.1604 Fax

**FAX COVER SHEET**

Date 7/30/2009 Time 2:02 AM/PM PM Pages 4 Including Cover Sheet
From Crystal

DELIVER TO:

Name Laura McNaughton
Company ADR
City _____ FAX # 860.832.8060

CONFIDENTIALITY NOTICE: THE INFORMATION IN THIS FACSIMILE MESSAGE MAY BE PRIVILEGED AND CONFIDENTIAL INFORMATION AND IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE.

COMMENTS: _____

RE: 35-0262-09 L

IF YOU DID NOT RECEIVE ALL PAGES, PLEASE CALL BACK AS SOON AS POSSIBLE.



July 30, 2009

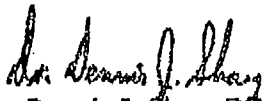
ADR Center
CBA Law Center
30 Bank Street, 3rd Floor
New Britain, CT 06051

Ms. Laura McNaughton,

In response to your letter dated July 21, 2009 requesting possible dates for the scheduling of hearings by July 30, 2009, I have sent Directory Assistants a check for the amount due. I hope that this will bring end to this matter.

I have enclosed a copy of that letter for your records.

Sincerely,


Dennis J. Shay, DC

DJS/cb



Mr. David Ford
Directory Assistants
500 Winding Brook Drive
Glastonbury, CT 06033

Dear Mr. Ford,

We have gone round and round with this and you have revised your fees somewhat. However, actual change in cost from this year verses last year are:

BellSouth

2008 - \$1,181.00/month

2009 - \$886.92/month

The difference is \$294.08. Multiply that by twelve months equals \$3,528.96 per year.

Community PhoneBook

2008 - \$4,028.00/year

2009 - \$3,300.00/year

The difference is \$728.00 per year.

Total Savings for all advertising \$ 4,256.96

37.5% of Total Savings is \$1,596.36.

Every week in Rotary meetings, I pledge to do what is "fair to all concerned". I have included a check in the amount that should be due. I do not consider this "fair to all", just fair to you.

Sincerely,

Dennis J. Shay

DJS/cb

D. J. SHAY, D.C., P.A. MARSCH CHIROPRACTIC CLINIC 235 ELLIOTT ST SE ORANGEBURG, SC 29115 803-536-1635		FIRST CITIZENS BANK		4688
		67-148-532		
		30 July 2009		
		DATE	AMOUNT	
PAY TO THE ORDER OF	One Thousand Five Hundred Ninty Six Dollars and 36/100 * * * * *		\$ 1,596.36	
	Directory Assistants 500 Winding Brook Drive Glastonbury, CT 06033		DR. D. J. SHAY	
		 AUTHORIZED SIGNATURE		

Security Features, Details on back

EXHIBIT "B"
(Defendant's Objection to Application to Confirm Award)

2013 OCT 10 PM 4:38
CLERK OF COURT
GRANGERBURG COUNTY

ATTEST: TRUE COPY
[Signature]
CLERK OF COURT
GRANGERBURG COUNTY

HDD-CV-09-5033765-S : SUPERIOR COURT
DIRECTORY ASSISTANTS, INC. : J.D. OF HARTFORD
v. :
DENNIS SHAY d/b/a :
MARSCH CHIROPRACTIC CENTER : SEPTEMBER 24, 2010

OBJECTION TO APPLICATION FOR CONFIRMATION OF ARBITRATION AWARD¹

The Defendant hereby objects to Plaintiff's application for confirmation of the arbitration award. The arbitrator lacked jurisdiction because the signature on the contract was acquired through fraud, the wrong party has been named, and the arbitration provisions of the disputed contract were not complied with. Because the arbitrator lacked jurisdiction, no arbitration could have occurred. As a result, the arbitration award cannot be confirmed.

The question raised, whether the dispute is subject to arbitration, is one of law and the court's review is de novo. MBNA Americia Bank N.A. v. Teofil Boata, 283 Conn. 381, 386, 926 A.2d 1035 (2007) (citing Welch Group, Inc. v. Creative Drywall, Inc., 215 Conn. 464, 467, 576 A.2d 153(1990).) This motion is the proper vehicle to attack an arbitration award and the arbitrator's jurisdiction. "A claim that a dispute is not subject to arbitration is an attack on the power of the arbitrator to decide the underlying dispute." *Id.* at 392 (citing Bennett v. Meader 208 Conn. 352, 364 (1988).) "Such a claim may be raised through ...a motion to vacate the arbitration award or through an objection to the confirmation of the arbitration award." *Id.* at 393 (citing International Brotherhood of Teamsters v. Shapiro, 138 Conn 57, 65 (1951).) Because

¹ Defendant filed a Motion to Vacate Arbitration Award contemporaneously with this Objection as the reasoning for this objection also supports a motion to vacate. Defendant did this to allow the Court to rule on each issue separately.

ORAL ARGUMENT NOT REQUESTED
TESTIMONY NOT REQUIRED

the question at issue whether an agreement to arbitrate exists, it is not subject to the time limits of Conn. Gen. Stat. § 52-420(b). *Id.* at 395.

“It is well established that arbitration is a creature of contract...a person can be compelled to arbitrate a dispute only if, to the extent that, an in the manner which, he has agreed so to do.” *Id.* at 386 (citing Nussbaum v. Kimberly Timbers, Ltd., 271 Conn. 65, 72, 856 A.2d 364 (2000).) “[T]he arbitration provision in an agreement is effectively an agreement that is separate and distinct from the broader contract, and a court of law may enforce only those agreements that the parties actually make.” *Id.* at 386.

As stated in Defendant’s affidavit (*See Exhibit A*), he was unaware that he was entering into a contract and consequently did not assent to arbitration. In a similar matter in New York, the president of a company denied in an affidavit that he ever entered into a contract and did not agree to arbitrate any disputes. Princeton Rayon Corporation v Gayley Mill Corporation, 309 N.Y. 13 (1955), cited by Two Sisters, Inc. v Gosch & Co. 171 Conn. 493 (1976). Two Sisters referenced Princeton Rayon as an example of a defense to an enforcement of arbitration where a party denies the existence of a contract. Because there is a factual issue as to the validity of the contract itself, the arbitration award cannot be confirmed.

Further, because the named Defendant is not a party to the contract, there is no way he could have consented to arbitrate. In a case recently decided by this very court (Judge Peck), the issue of principle and agent was raised in Yellow Book Sales & Distribution Company v. David Valle, 2010 WL 3326845 (Conn. Super.)-Docket No. HFD-CV-09-6003820-S (pending appeal). Here, Yellow Book sued Mr. Valle, the president and agent for a company that had entered into a

contract for advertising services with Yellow Book. Mr. Valle's defense was that he was not a party to the contract, that his signature was that as agent for his company. Judge Peck agreed with this defense.

It is well established that an agent, by making a contract only on behalf of a competent disclosed or partially disclosed principal whom he has power so to bind, does not thereby become liable for its nonperformance ... If a contract is made with a known agent acting within the scope of his authority for a disclosed principal, the contract is that of the principal alone...Whitlock's, Inc. v. Manley, 123 Conn. 434, 437, 196 A. 149 (1937). When these two principles are read together, the law presumes that where a writing contains the signature of a duly authorized agent, the "party to be charged" is the principal and not the agent because the agent individually is not a party to the agreement. See Warren-Connolly Co. v. Saphin, 283 App.Div. 391, 939 128 N.Y.S.2d 272 (1958). Instead, the principal is the party to the agreement. Cf. Tolk v. Williams, 75 Conn.App. 546, 558, 817 A.2d 142 (2003), quoting 1 Restatement (Second) Agency § 157, p. 373 (1958). Otherwise, every agreement signed by an agent on behalf of his principal would be admissible as a promise by the agent individually to answer for the debt of his principal. *Id.* at *3.

The Yellow Book contract contained a single clause that the signer would be held personally liable for any breach, however the Judge Peck disallowed this singular clause when the contract was clearly between Yellow Book and the principal and not the agent, citing public policy reasons. The contract in dispute in this particular matter does not even contain such a clause and thus there is no reason to attach the contract to the Defendant. The Defendant is not a party to the contract and consequently did not consent to arbitration.

An application for order to proceed with arbitration was denied on the court's finding that, "The contract provides for consensual arbitration. Both parties have not consented."

Appleby & Cutone, Inc. v Town of Chester, 1993 WL 540214 (Conn. Super.). Here the contract states:

If we are unable to come to a mutual agreement, or if one of us refuses to participate in choosing, the party filing a demand will have the right to make the choices unilaterally, as long as the filing party made a good faith effort to come to a mutual agreement, and the non-choosing/non-participating party expressly consents to and waives any and all objections to the choices made. Emphasis added.

On June 16, 2009, Mr. Shay wrote to the arbitration forum, American Dispute Resolution Center, objecting to the hearing being located in Connecticut. This in itself is proof that he did not expressly consent to the choices made. Further, Plaintiff's "good faith effort to come to a mutual agreement" was in the form of giving the Defendant three days to decide how he wanted to handle the dispute. Three days is hardly a good faith effort. Note that the arbitration demand was filed on May 26, 2010.

Because the Defendant did not assent to arbitration, because the Defendant is not a party to the contract, and because the terms of the arbitration clause were not adhered to, the court may not confirm the arbitration award.

**DEFENDANT, DENNIS SHAY d/b/a
MARSCH CHIROPRACTIC CENTER**

By: /s/429059
Joshua R.I. Cohen
Law Office of Joshua R.I. Cohen, LLC
2074 Park Street, 2nd Floor
Hartford, CT 06106
Tel. (860) 233-0338 Fax (860) 233-0339
Juris No. 429059

ORDER

The foregoing Objection having been presented to the Court, it is hereby Ordered:

SUSTAINED/OVERRULED

BY THE COURT,

Judge/Clerk

Date: _____

CERTIFICATION

I hereby certify that a copy of the foregoing Objection was served via first class mail, postage pre-paid, this 24th day of September, 2010, to all counsel and/or pro se parties of record, as follows:

Brett Boskiewicz
Robinson & Cole, LLP
280 Trumbell Street
Hartford, CT 06103-3597

/s/429059
Joshua R.I. Cohen

EXHIBIT A

2013 OCT 10 PM 4:37
FILED FOR RECORD
WINDY V. BROWN
CLERK OF COURT
GEORGETOWN, MD

ATTEST: TRUE COPY
Wingy B. Lee
CLERK OF COURT
GEORGETOWN, MD

HDD-CV-09-5033763-S

: SUPERIOR COURT

DIRECTORY ASSISTANTS, INC.

: J.D. OF HARTFORD

v.

DENNIS SHAY d/b/a

MARSCHE CHIROPRACTIC CENTER

:

SEPTEMBER 23, 2010

AFFIDAVIT OF DENNIS SHAY

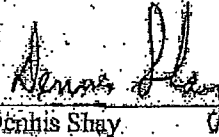
STATE OF SOUTH CAROLINA

COUNTY OF _____

The undersigned, having been duly sworn, hereby declares of his own personal knowledge that:

1. I am over eighteen years of age, and I believe in the obligations of an oath.
2. I am a resident of the State of South Carolina and a licensed chiropractor.
3. I am an agent for Dennis J. Shay D.C., P.A., which operates under the name Marsch Chiropractic Center.
4. As named above, I am being sued personally.
5. Directory Assistants attempted to solicit the business of Marsch Chiropractic Center.
6. Directory Assistant's sales person spoke to me and another person, however, only I was an authorized agent for Marsch Chiropractic Center.
7. I do not recall the handwriting on the contact is mine, with the exception of my initials which I admit are mine.
8. I initialed the "Advertiser Acceptance" section after the representative told me to initial what I would consider after a trial basis IF I were to enter into a trial basis with Directory Assistance. I never entered into a trial basis.

9. I furnished my name and business name on the bottom of the contract without being told it was a contract, rather I was told my contact information was needed.
10. I was never allowed to hold or review the contract and did not know it was a contract until six months later when I disputed the existence of a contract.
11. I did not knowingly sign or enter into this contract.
12. I did not knowingly agree to arbitrate any disputes under the contract.
13. I never expressly consented to and waived any objections to the arbitration choices made as is required by the contract.
14. Nothing in the contract language says I am personally liable for the contract, nor was any representation ever made to me by the representative.


Dennis Shay

Subscribed and sworn to before me
this 27th day of September, 2010.



EXHIBIT "C"
(10/25/10 Order of the Connecticut Court)

2013 OCT 10 PM 4:37
FILED FOR RECORD
WINTERVILLE, OR
CLERK OF COURT
ORANGEBURG, SC 29153

ATTEST TRUE
Wingia B. Lee
CLERK OF COURT
ORANGEBURG, SOUTH CAROLINA

DOCKET NO: HHDCV095033765S

SUPERIOR COURT

ORDER 419022

DIRECTORY ASSISTANTS

JUDICIAL DISTRICT OF HARTFORD
AT HARTFORD

V.
SHAY, DENNIS

10/25/2010

ORDER

ORDER REGARDING:
09/24/10 112.00 OBJECTION

The foregoing, having been considered by the Court, is hereby:

ORDER:

If the defendant wishes the court to consider the factual claims set forth in his objection and affidavit, he must be present to testify and be subject to cross examination. This matter is continued to November 22, 2010 on calendar #3. If the defendant does not appear at that time, the court will consider the matter on the papers but will not consider the defendant's affidavit.

419022

Judge: JANE S SCHOLL

EXHIBIT "D"
(Consulting Contract Between the Parties)

FILED FOR RECORDED
MAY 13 2013
CLERK OF COURT
ORANGEBURG, SOUTH CAROLINA

2013 OCT 10 PM 4:37

ATTEST: TRUE COPY

Wynne B. Clark

CLERK OF COURT
ORANGEBURG, SOUTH CAROLINA

CONSULTING CONTRACT

page 2 of 2

HOW WE RESOLVE DISPUTES:

Should a dispute arise we both agree to try and resolve it with the other party. If we cannot, we both want to resolve it quickly and cost effectively. To achieve that, we both agree to resolve any dispute arising out of or relating to this contract through confidential binding arbitration and agree to mutually choose an arbitration service, location and choice of law forum. If we are unable to come to a mutual agreement, or if one of us refuses to participate in choosing, the party filing a demand will have the right to make the choices unilaterally, as long as the filing party made a good faith effort to come to a mutual agreement, and the non-choosing/non-participating party expressly consents to and waives any and all objections to the choices made.

To streamline this process, we both agree to limit discovery as follows: Within two weeks of a demand being filed, we will give you your complete paper file and you agree to give us all your yellow page contracts/confirming orders for the past three years. If you do not give us these, we will have no way to accurately calculate the baseline or savings and you will automatically and expressly waive any objection to our damage calculation.

If we did not disclose any information you should not have to pay us anything. If you breached the contract, we should not be paid any less than you agreed. To be fair to both of us, we both agree the arbitrator will have no authority to award any "middle ground", "compromise" or "punitive damages" awards to either of us. Either of us may obtain judgment upon an arbitration award in any court in either our home state or your home state, and both of us expressly consent to and waive any objection to the jurisdiction of the court selected by the prevailing party for purposes of seeking confirmation and/or judgment on any arbitration award.

TERMS:

Both of us agree we will not disclose the other's information to any third party. We both understand that yellow page effectiveness is not guaranteed, and we cannot be responsible for any white page, directory assistance or yellow page errors. Setting up or correcting white page/directory assistance listings is not included in our services, but will be handled for an additional cost. If a directory is renamed or rescoped, the closest directory(s) having the largest distribution will be used to determine the baseline for that directory. We both agree that our Strategic Process and our disclosure of information is intellectual property and that this contract will be binding on any successors and/or assigns, branches, holding companies, affiliates, future purchaser(s) of assets (in whole or in part) or subsidiaries. Both of us acknowledge that we have read this contract and have had the opportunity to review it with counsel of our choice before signing it, and we have no objections to its terms. If any term(s) of this contract is unenforceable, the remainder of the contract shall remain in full force and effect.

If you do not pay us as agreed, you will incur a monthly fee of 1.5% from the date the first book in your baseline program closed. We both agree this contract represents a complete understanding and overrides any verbal or other understandings or assurances.

If you breach this contract, we both agree to accelerate fees due to a liquidated damages amount equal to 40% of the year one full renewal cost of the baseline program multiplied by three. We both understand that this amount may be more or may be less than what is ultimately actually owed by the end of the contract. However, we cannot determine that until the end of the contract. We both agree that this calculation was fair at the time this contract was entered into and waive any objection to this liquidated damage provision. As far as late fees, the liquidated damages will be considered to have been due on the date the first book in the baseline program closed.

If you prove we did not disclose any information, you will be entitled to all your legal fees (at least \$350 per hour) and all your arbitration costs. If we prove that you breached this contract, we will be awarded all our costs of collection including our legal fees (at least \$350 per hour), all arbitration costs and all estimated future legal fees to confirm the award/domesticate the judgment.

If either one of us prevails defending any judicial action resisting arbitration or resisting confirmation of an award or resisting domesticating a judgment, that prevailing party shall be entitled to all costs incurred, including legal fees of at least \$350 per hour.

ADVERTISER ACCEPTANCE: (Circle and initial)

The advertiser has chosen the: Two Year-Option A

Three Year-Option B

Four Year-Option C

PREDISPOSED CHANGES: (Leave Blank if None)

DENNIS SHAY

DENNIS SHAY

9-9-08

Person Authorized to Contract for Advertiser

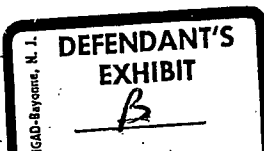
Print Name

Date

MARSH CHIROPRACTIC CENTER

Company Name / Advertiser

Directory Assistants, Inc.



9/9/08

Date

Consulting Contract Jan 2008

ROA_0210



CONSULTING CONTRACT

Directory Assistants, Inc.

page 1 of 2

500 Winding Brook Drive • Glastonbury, CT 06033

Tel 860-633-0122 • Fax 860-633-2900

WHAT WE DO FOR YOU:

We will take you through our Strategic Process to help you determine whether you should make cost saving changes to your baseline yellow page program or renew it as is.

DAI'S STRATEGIC PROCESS:

Step One: We will help you identify your specific business factors and understand how those factors should be considered before making a yellow page purchase.

Step Two: We will educate you on various yellow page options and strategies by disclosing information, cost saving suggestions, theories, options and advice. This may include advice on directories, sizes, strategies, the use of free listings, copy, concepts, colors, market plans, discounts, rates, removal of placements, etc. We are not going to assume what your yellow page knowledge or experience is. We will cover yellow page options and strategies including basic yellow page fundamentals, some of which may seem "common sense" after the rationale is explained.

This is an interactive process, so the more you participate, the better the result. We understand your time is valuable and we will spend as much or as little time explaining our Strategic Process as you feel necessary. During this contract, if you ever want us to review our Strategic Process again, or in more detail, we will do that as many times as you deem necessary. Once we review Steps One and Two you will be in a position to decide whether to implement some, none or all of our strategies, modify our strategies in any way you deem appropriate, use our strategies to create your own cost saving changes or retain your baseline program at its full renewal cost. We will only earn a fee if savings are actually enjoyed.

At your request, and at no cost to you, we will provide ad design services, assistance with implementing any yellow page decisions, review/verify all yellow page placements after publication, review/verify all yellow page charges and forecast future costs. If you would like, we will also assist and advise you on additional ads or enhancements to existing ads at no cost to you. Please know that if you decide to spend money on additional ads or enhancements to any existing ads it will not offset our fee.

PERFORMANCE GUARANTEE:

We are so sure we will be able to show you how to achieve gross savings of at least 40% on your yellow page costs, that if we cannot, you will have the right to terminate this contract. All we ask is you give us ten days written notice at least ten days before the first close date of your baseline program for us to try again.

HOW WE ARE COMPENSATED:

There are three different fee options you may choose from:

- a) 75% of any yearly yellow page savings for two (2) years;
- b) 50% of any yearly yellow page savings for three (3) years;
- c) 37.5% of any yearly yellow page savings for four (4) years.

Any fee in year one is due on the date the first book in your baseline program closes. The fees in subsequent years shall be due on the respective anniversary dates of that first close date.

Our Strategic Process is educational in nature. Once we begin sharing information there is no way to get it back or to determine why you made any future cost saving changes. To eliminate any disputes, once we disclose any information, you waive any claim to the origin of any future cost saving changes not identified on this contract as "pre-disposed changes" and you agree to pay us for any future savings.

We want you to understand that you are under no obligation to implement any savings, even after hearing our information. You may also avoid any fee in any year by implementing your original baseline program at the full renewal cost. We will even help you do that.

DEFINITIONS:

The following definitions apply throughout this contract: "Yellow page" is defined as all yellow page, white page and publisher internet advertising. "Savings" are defined as that year's full renewal cost of the baseline program minus that year's revised cost (excluding any additional ads or enhancements to any existing ads). Each year, we will recalculate the savings by taking that year's full renewal cost of the baseline program and subtracting that year's revised costs (excluding any additional ads or enhancements to any existing ads). "Baseline program" is defined as your yellow page program (on an ad by ad basis) in effect as of the date of this contract, per directory publisher's contracts. A "year" is defined as the complete publication cycle for each next available directory in your baseline program. "Full renewal cost" is defined as that particular year's cost of the baseline program calculated at the standard Yellow Page Association ("YPA") rates.

EXHIBIT "E"
(Supplemental Affidavit in Support of Fee Request)

2013 OCT 10 PM 4:37
FILED FOR RECORD
WINTERA 2300 ASK
CLERK OF COURT
ORANGEBURG COUNTY, SC

ALTHEA TRUE CLERK
Wingy B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS

Directory Assistants Inc.,)

Civil Action No. 2011-CP-38-00853

Plaintiff,)

vs.)

Dennis Shay d/b/a Marsch Chiropractic)
Center,)

Defendants.)

**SUPPLEMENTAL AFFIDAVIT
REGARDING ATTORNEYS' FEES**

PERSONALLY APPEARED BEFORE me, D. Larry Kristinik, who, being first duly sworn, deposes and says that:

1. He is a member of the law firm of Nelson Mullins Riley & Scarborough LLP and is one of the attorneys representing the Plaintiff, Directory Assistants Inc.

2. The following professionals were engaged in the representation of the Plaintiff in its efforts to domesticate the Connecticut judgment against the Defendant:

a.	Larry Kristinik (partner)	12.6 hours at \$355.00 per hour
b.	Brian Calub (associate)	31.5 hours at \$245.00 per hour
c.	Melissa Axson (paralegal)	.9 hours at \$145.00 per hour .9 hours at \$150.00 per hour .3 hours at \$175.00 per hour
d.	Meredith Keane (paralegal)	1.1 hours at \$165.00 per hour 4.6 hours at \$175.00 per hour

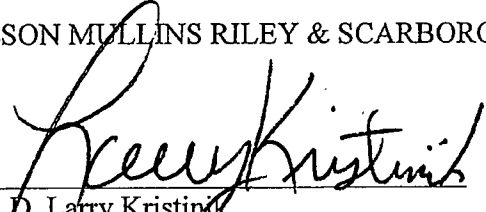
3. The total of these fees is THIRTEEN THOUSAND FOUR HUNDRED NINETY-FIVE AND NO/100S (\$13,495.00) DOLLARS. The work reflected by these fees was necessitated

ATTEST: TRUE COPY
Wingja B. Clark
CLERK OF COURT
ORANGEBURG COUNTY

by the many objections and legal and factual issues raised by the Defendant in his effort to avoid the domestication of the Connecticut judgment.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By:


D. Larry Kristinik
Meridian Building, Suite 1700
1320 Main Street
Post Office Box 11070 (29211)
Columbia, SC 29201
(803) 799-2000

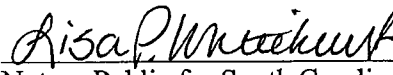
Attorneys for Directory Assistants Inc.

Columbia, South Carolina

10/10, 2013

SWORN to and subscribed before me

This 10th day of October, 2013

 (L.S.)
Notary Public for South Carolina

My Commission Expires: 10/11/2021

EXHIBIT "F"

(7/23/13 Email from Kristinik to Court with Documents)

2013 JUL 23 PM 3:37
FILED
CLERK OF COURT
ORANGEBURG COUNTY, SC

ATTEST TRUE COPY
Wingy B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

Larry Kristinik

From: Larry Kristinik
Sent: Monday, July 22, 2013 9:00 AM
To: 'edicksonsc@sccourts.org'
Cc: Dave Maxfield (dave@consumerlawsc.com); Dave Maxfield (dmaxfld@bellsouth.net); Meredith Keane; Lisa Whitehurst (lspw1982@icloud.com)
Subject: FW: Directory Assistants, Inc. v. Dennis Shay d/b/a Marsch Chiropractic Center (Case No. 2011-CP-38-00853)
Attachments: Directory Assistants v Shay.pdf

Ms. Smith, I am forwarding this to you. I received a return email from Mr. Dickson saying that he has moved to another job.

--Larry

D. Larry Kristinik | Partner | NELSON MULLINS RILEY & SCARBOROUGH LLP
Columbia, South Carolina | 803.255.9531

From: Larry Kristinik
Sent: Monday, July 22, 2013 8:54 AM
To: 'Dickson, Edgar W. Law Clerk (Andrew C. Evans)'
Cc: 'Dave Maxfield'; 'Dave Maxfield'; Meredith Keane; Lisa Whitehurst
Subject: RE: Directory Assistants, Inc. v. Dennis Shay d/b/a Marsch Chiropractic Center (Case No. 2011-CP-38-00853)

Drew,

This is to respond to your below email asking about whether there was a record of the arbitration hearing. I have contacted Connecticut counsel and inquired about the hearing. The hearing was not recorded, and so there is no transcript of the hearing. I was provided, however, with copies of correspondence showing notice of the hearing provided to Mr. Shay, the letter from Mr. Shay's counsel in which he lodges his client's objections to jurisdiction, and the arbitrator's award overruling those objections. I have provided a copy of those documents with this email.

--Larry

D. Larry Kristinik | Partner | NELSON MULLINS RILEY & SCARBOROUGH LLP
Columbia, South Carolina | 803.255.9531

From: Dickson, Edgar W. Law Clerk (Andrew C. Evans) [<mailto:edicksonlc@sccourts.org>]
Sent: Thursday, June 27, 2013 4:14 PM
To: Larry Kristinik
Cc: 'Dave Maxfield'; 'Dave Maxfield'; Meredith Keane; Lisa Whitehurst
Subject: RE: Directory Assistants, Inc. v. Dennis Shay d/b/a Marsch Chiropractic Center (Case No. 2011-CP-38-00853)

Counsel,

The Court is still in the process of deliberating on this matter.

I've been asked to inquire whether there is a record of the arbitration hearing and whether the Court can get a copy.

Please let me know.

Thank you. Kind regards,

Drew Evans

Andrew C. Evans
Law Clerk, Hon. Edgar Warren Dickson
First Judicial Circuit
P. O. Box 1949
Orangeburg, S. C. 29116
803-535-2187 (phone)
803-535-2188 (fax)

From: Larry Kristinik [<mailto:larry.kristinik@nelsonmullins.com>]
Sent: Thursday, June 20, 2013 1:14 PM
To: Dickson, Edgar W. Law Clerk (Andrew C. Evans)
Cc: 'Dave Maxfield'; 'Dave Maxfield'; Meredith Keane; Lisa Whitehurst
Subject: Directory Assistants, Inc. v. Dennis Shay d/b/a Marsch Chiropractic Center (Case No. 2011-CP-38-00853)

Andrew,

I wanted to let you and Dave Maxfield know that Brian Calub has left Nelson Mullins and moved his practice to another firm in Charlotte. I will be the attorney representing Directory Assistants going forward. Please let me know if the Court has any questions regarding this matter as it prepares the Order ruling on Mr. Shay's objection to the domestication of the foreign judgment.

Thank you.

--Larry

D. Larry Kristinik | Partner | NELSON MULLINS RILEY & SCARBOROUGH LLP
Columbia, South Carolina | 803.255.9531

Confidentiality Notice

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure.

If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (800-237-2000) or reply to this e-mail and delete all copies of this message.

To ensure compliance with the requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including the attachments) is not intended or written to be used, for the purpose of (a) avoiding penalties under the Internal Revenue Code or (b) promoting, marketing or recommending to another party any transaction or tax-related matter[s]. To provide you with a communication that could be used to avoid penalties under the Internal Revenue Code will necessarily entail additional investigations, analysis and conclusions on our part.

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature <i>Wendy Huff</i> B. Received by (Printed Name) <i>Wendy Huff</i> C. Date of Delivery <i>8:28</i> D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
1. Article Addressed to: Dennis Shay d/b/a Marsch Chiropractic Center 235 Elliott Street Orangeburg, SC 29115		3. Service Type ☐ Certified Mail ☐ Express Mail ☐ Registered ☒ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.	
2. Article Number (Transfer from service label) 7008 3230 0001 2041 9455		4. Restricted Delivery? (Extra Fee) ☐ Yes	

PS Form 3811, February 2004

Domestic Return Receipt

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7008 3230 0001 2041 9455

U.S. Postal Service TM	
CERTIFIED MAILTM RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage \$	<i>8-24-07</i> Postmark Here
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees \$	
Sent To <i>P2</i> Street, Apt. No., or PO Box No. City, State, ZIP+4	
PS Form 3800, August 2006 See Reverse for Instructions	



August 24, 2009

Brett J. Boskiewicz, Esq.
Robinson & Cole LLP
280 Trumbull Street

Dennis Shay (Via Facsimile & Certified Mail)
d/b/a Marsch Chiropractic Center
235 Elliott Street
Orangeburg, SC 29115

Re: 35-0262-09 L
Directory Assistants, Inc.
and
Dennis Shay d/b/a Marsch Chiropractic Center

To the Parties:

Enclosed you will find a Formal Notice of Hearing with regard to the above referenced matter scheduled for September 11, 2009.

Also enclosed is an Invoice for each party's portion of the fees and expenses involved in the scheduling of this hearing. Please remit immediate payment.

The Respondent has indicated, by their failure to contact us with regard to the hearing date, that they do not intend to participate in this matter. Please refer to Section 18 of the Rules pertaining to ex-parte hearings.

Very truly yours,

Laura McNaughton
Case Manager

Encl.

cc: Joseph A. Wellington, Esq. (Arbitrator)

CBA Law Center
30 Bank Street - 3rd Floor • New Britain, CT 06051
phone 860-832-8060 • fax 860-223-1846
www.adrcenter.net

American Dispute Resolution Center, Inc.
Formal Notice of Hearing

Date: August 24, 2009

In the Arbitration Matter Case Number: 35-0262-09 L

Between: Directory Assistants, Inc.
and
Dennis Shay d/b/a Marsch Chiropractic Center

To: Brett J. Boskiewicz, Esq.
and
Dennis Shay

The Arbitration Hearing in the above referenced matter will be held as follows:

Place: American Dispute Resolution Center
(Conference Room 3B on third floor)
CBA Law Center
30 Bank Street
New Britain, CT 06051

Date: September 11, 2009

Time: 10:00 AM

Before Arbitrator: Joseph A. Wellington Esq.

Case Manager: Laura McNaughton

Notice: The parties and witnesses are expected to attend the hearings on time and be ready to present their cases. The arbitrator(s) have set aside their time to attend the hearing dates listed above therefore the parties should be prepared to attend the scheduled hearing date(s). If an emergency should occur that makes it impossible to attend the hearing, the party requesting a postponement should contact the other party and attempt to obtain an agreement. If the parties cannot agree, the arbitrator(s) will make the final determination. All communications should be made through your Case Manager; there shall be no direct communication between the parties and the arbitrator(s). Please note that the party requesting the continuance may be subject to cancellation fees by the ADR Center or by the arbitrator(s). Please refer to the Rules in regard to stenographic records, which is the sole responsibility of the parties.

TROTTER & MAXFIELD

Attorneys at Law

1701 Richland Street

Columbia, South Carolina 29201

GENE TROTTER

DAVE MAXFIELD

Telephone (803) 799-6000

Telefax (803) 799-6947

Writer's e-mail:

dave@trotterandmaxfield.com

August 25, 2009

VIA FACSIMILE 860-223-1846

& US Mail

American Dispute Resolution Center

ATTN: Laura McNaughton

CBA Law Center

30 Bank Street - 3rd Floor

New Britain, CT 06051

RE: 35-0262-09 L

Directory Assistants, Inc.

Our Client: Dr. Dennis Shay

Dear Ms. McNaughton:

Please be advised that our office represents Dr. Shay with respect to the above matter. Your letter dated June 23, 2009 (and various e-mail correspondence) has been provided to me by Dr. Shay. This letter is submitted for the limited purpose of advising of my client's position with respect to the jurisdiction of this forum in the above matter. It should not be construed as an appearance for purposes of jurisdiction.

In your letter, you state that "the ADR Center has considered the contentions of the parties and has determined that the locale for hearings in this matter will be New Britain, Connecticut under Connecticut Law." I am presuming that this "determination" was made based on the arbitration language contained in the "Consulting Contract" which DAI relies upon (since there is no separate arbitration agreement).

My client disputes the validity of this provision of the contract. Moreover, prior to the demand for arbitration by DAI, Dr. Shay exercised his right to terminate the contract as provided in DAI's "Performance Guarantee." The contract having been voided, any basis that might otherwise have existed for arbitration ended.

The contract was made in South Carolina. Under South Carolina law and the Federal Arbitration Act, the party asserting the existence of an arbitration agreement (i.e., DAI) is required to seek court intervention to determine whether there is an agreement to arbitrate before proceeding through arbitration. See, 9 U.S.C. § 4 (2000); MBNA America Bank vs. Christianson, Slip Op. 4349 (Ct. App, March 4, 2008). In other words, under applicable law, the ADR Center cannot make the initial determination as to whether a claim can be arbitrated, as this determination is exclusively for a South Carolina Court.

For the above reasons, this forum does not have jurisdiction to render any determination, including a determination about arbitrability or location. Based on the above, my client will not participate in any proceeding, as same would be invalid and without effect. By copy of this letter to Joseph A. Wellington, I am advising of the foregoing. Additionally, by copy of this letter to Mr. David Ford of DAI, I am placing him on notice that any action brought in South Carolina to enforce an award or contract will be defended, and accompanied by multiple counterclaims against DAI. Respectfully, I am,

Sincerely,



Dave Maxfield

DM/aa

Cc: Dr. Dennis Shay
Joseph A. Wellington, Esquire
Mr. David Ford

Sandy Dineen

From: "David Ford" <DFord@dalagency.com>
To: <dave@trotterandmaxfield.com>; "Laura McNaughton" <lmcnaughton@adrcenter.net>
Cc: <bbosklewicz@RC.com>; "Michael Cody" <mcody@dalagency.com>
Sent: Monday, August 31, 2009 9:14 AM
Attach: Ltr from Trotter & Maxfield to ADR Ctr.pdf
Subject: FW: Marsch Chiropractic Center

Mr. Maxfield:

We are in receipt of your letter dated August 25, 2009.

It is highly inappropriate for you to have sent your letter directly to the arbitrator. Per the ADRC center rules, all communications are to go through the case administrator. In this matter, that person is Laura McNaughton. We ask that you refrain from sending any further communications directly to the arbitrator and abide by the rules of this proceeding.

As for the content of your letter, we respectfully disagree with you.

Mr. Shay's latest story is that he "terminated the contract prior to the demand for arbitration" (filed on May 26, 2009). You will find this, too, is another in a long line of Mr. Shay's fabrications. You should know that in August 2009, Mr. Shay sent us a check he said was "in the amount that should be due." The check was returned. If Mr. Shay had terminated the contract prior to May, he would not have stated there was any "amount that should be due" in August. Mr. Shay neither terminated the contract nor had any basis for doing so.

These types of stories do nothing to help this matter. There are a few things you may not be aware of. For instance, on December 9, 2008, Mr. Shay wrote that DAI performed its obligations under the contract to his "complete satisfaction." In May, Mr. Shay told us he understood there is a contract.

We can resolve any matter when people are honest and upfront. Your client has been neither. If he decides to change his tune, please feel free to contact me via email only at any time. Until then, Mr. Shay has left us no choice but to proceed with the arbitration as per the agreement of the parties.

David Ford- President
Directory Assistants, Inc.

From: Linda Lukachek
Sent: Monday, August 31, 2009 8:07 AM
To: David Ford
Subject: Marsch Chiropractic Center

Rec'd in Saturday's mail - attached to file

Linda Lukachek
Directory Assistants, Inc.
500 Winding Brook Dr.
Glastonbury, CT 06033
Direct Dial (860) 895-6806
Fax (860) 895-6833

This e-mail message has been scanned for Viruses and Content and cleared by MailMarshal

8/31/2009

ROBINSON & COLE LLP

BRETT J. BOSKIEWICZ

280 Trumbull Street
Hartford, CT 06103-3597
Main (860) 275-8200
Fax (860) 275-8299
bboskiewicz@rc.com
Direct (860) 275-8289

Also admitted in Massachusetts

Via Facsimile - 803-799-6947

September 1, 2009

Dave Maxwell, Esq.
Trotter & Maxfield
Attorneys at Law
1701 Richland Street
Columbia, South Carolina 29201

Re: Directory Assistants, Inc. v. Marsch Chiropractic, 35-0262-09 L

Dear Attorney Maxwell:

This firm represents Directory Assistants, Inc. ("DAI") in this matter. Please direct all future correspondence to my attention.

I have reviewed your August 25, 2009 letter to the American Dispute Resolution Center. I disagree with your position and the authority that you cite.

Your client has acknowledged the existence of its contract – and therefore the agreement to arbitrate – with DAI several times in written and verbal communications. That contract includes an agreement to arbitrate all disputes arising from the contract. The arbitration clause required your client to work with DAI to mutually select an arbitration service, location for the arbitration, and any choice of law issues. Your client failed to engage in such discussions. As a result, DAI exercised its contractual right to unilaterally choose the arbitration service, location, and applicable law. DAI chose the ADR Center in Connecticut and elected Connecticut law as the governing law.

Your letter indicates that your client disputes the validity of the arbitration agreement. This claim "is an attack on the power of the arbitrator to decide the underlying dispute." *MBNA Am. Bank, N.A. v. Bonta*, 283 Conn. 381, 392-



Law Offices

BOSTON

HARTFORD

NEW LONDON

STAMFORD

WHITE PLAINS

NEW YORK CITY

SARASOTA

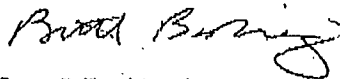
www.rc.com

ROBINSON & COLE_{LLP}

Dave Maxwell, Esq.
September 1, 2009
Page 2

393 (Conn. 2007). "Such a claim may be raised through a collateral judicial action prior to the arbitration, through an application or motion to vacate the arbitration award or through an objection to the confirmation of the arbitration award." *Id.* We are not aware of any collateral judicial action in which your client has challenged the arbitrability of DAI's claims. Accordingly, DAI intends to proceed with the arbitration scheduled for September 11, 2009.

Sincerely,



Brett J. Boskiewicz

Copy to: Ms. Laura McNaughton, ADR Center



Main Identity (SANDY)

From: "Sandy LaBella" <slabella@adrcenter.net>
To: <bbowklewcz@rc.com>; <dave@trotterandmaxfield.com>
Cc: <jwellington@carmodylaw.com>
Sent: Friday, September 04, 2009 12:08 PM
Attach: Directory Assistants, Inc. and Dennis Shay (W1735403).PDF
Subject: Fw: Directory Assistants, Inc. and Dennis Shay

Directory Assistants
and
Dennis Shay d/b/a Marsch Chiropractic Center

RE: 35-262-09 L

Gentlemen:

Attached is Arbitrator Wellington's Ruling. Pursuant to said Ruling the September 11th hearing will proceed as scheduled.

Sandy LaBella
American Dispute Resolution Center
CBA Law Center
30 Bank Street - 2nd Floor
New Britain, CT 06051

(860) 832-8060
Fax (860) 223-1846

www.adrcenter.net

----- Original Message -----

From: Rose M. Loomis
To: slabella@adrcenter.net
Sent: Friday, September 04, 2009 10:32 AM
Subject: Directory Assistants, Inc. and Dennis Shay

The attached Order is being e-mailed to you on behalf of Joseph A. Wellington ...

Rose Loomis
Legal Assistant
Carmody & Torrance LLP
50 Leavenworth Street
P.O. Box 1110
Waterbury, Connecticut 06721-1110
Tel: (203) 578-4231
Fax: (203) 575-2600
E-mail address: rloomis@carmodylaw.com

IRS Circular 230 Notice

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication is not intended or written to be used, and cannot be used by any taxpayer, for the purpose of avoiding U.S. tax penalties.

9/4/2009

AMERICAN DISPUTE RESOLUTION CENTER

In the Matter of Arbitration Between:

Directory Assistants, Inc.

and

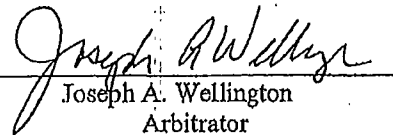
Dennis Shay d/b/a Marsch Chiropractic Center

Case Number: 35-0262-09L

ORDER

The RESPONDENT'S objections to the previously set time and place set for the hearing in this matter are DENIED. The hearing will proceed as scheduled.

SO ORDERED, this Fourth day of September 2009.


Joseph A. Wellington
Arbitrator

(W1735379)

September 11, 2009



Via Facsimile & First Class Mail

Brett J. Boskiewicz, Esq.
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103-3597

Dave Maxfield, Esq.
Trotter & Maxfield
1701 Richland Street
Columbia, SC 29201

Re: 35-0262-09 L
Directory Assistants, Inc.
and
Dennis Shay d/b/a Marsch Chiropractic Center

To the Parties:

This will serve to confirm that a hearing was held on September 11, 2009 in the above referenced matter before Arbitrator Joseph A. Wellington. The hearing was held in accordance with the Rules and the Hearing Notice sent to the parties on August 24, 2009.

By determination of the Arbitrator, and in accordance with the Rules, the hearing proceeded in the absence of the Respondent. The Arbitrator heard testimony and received the evidence of the Claimant.

The arbitrator has requested, on or before Friday, September 18, 2009, that Claimant forward to this office, with a copy to opposing counsel, an affidavit for attorney fees and a post hearing submission with regard to damages computations.

Upon the arbitrators receipt and review of the above noted documents, he will contact the ADR Center to advise if the hearings will then be declared closed.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Laura McNaughton
Case Manager

cc: Joseph A. Wellington, Esq. (Arbitrator)

CBA Law Center
30 Bank Street - 3rd Floor • New Britain, CT 06051
phone 860-832-8060 • fax 860-223-1846
www.adrcenter.net

ROA_0228



September 14, 2009

Via Facsimile Only

Brett J. Boskiewicz, Esq.
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103-3597

Dave Maxfield, Esq.
Trotter & Maxfield
1701 Richland Street
Columbia, SC 29201

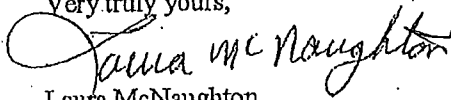
Re: 35-0262-09 L
Directory Assistants, Inc.
and
Dennis Shay d/b/a Marsch Chiropractic Center

To the Parties:

This will serve to confirm receipt of Claimant's affidavit of attorney's fees and post-hearing submission concerning the proposed damages award, copy of which we note was forwarded to the Respondent and copy of which is enclosed for the arbitrator.

In accordance with the arrangements made at the hearing, and my letter to the parties of September 11, 2009, the arbitrator will contact me after receipt and review of the enclosed submission to advise if the hearings may now be declared closed.

Very truly yours,


Laura McNaughton
Case Manager

Encl.

cc: Joseph A. Wellington, Esq. (Arbitrator)

CBA Law Center
30 Bank Street - 3rd Floor • New Britain, CT 06051
phone 860-832-8060 • fax 860-223-1816
www.adrcenter.net

ROA_0229

AMERICAN DISPUTE RESOLUTION CENTER

DIRECTORY ASSISTANTS, INC.

Claimant,
V.

CASE NO. 35-0262-09 L

MARSCH CHIROPRACTIC Center

Respondent.

SEPTEMBER 11, 2009

AFFIDAVIT OF BRETT J. BOSKIEWICZ, ESQ.

I, Brett J. Boskiewicz, depose and say:

1. I am over the age of eighteen years and understand the obligations of an oath.
2. I am an attorney with the law firm of Robinson & Cole, LLP. I have been involved in and am familiar with the legal services that we have provided to Directory Assistants, Inc. ("DAI") in this matter and have reviewed the records of our timekeeping and billing systems for this matter.
3. We have provided legal services and counseling concerning the dispute that forms the basis for this arbitration. These services included reviewing DAI's contract with the Respondent, reviewing DAI's business records concerning the Respondents' account;

discussing these records and the history of DAI's business relationship with the Respondent with DAI's Vice President, Michael Cody, and preparing for and conducting the arbitration that occurred on September 11, 2009.

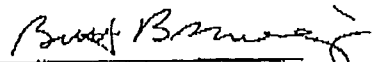
4. I personally provided the majority of the legal services identified in paragraph 3. My standard hourly rate is \$265. To date, I have provided 15.2 hours of services for this matter for a total of \$4,028.00. The following is a summary of the services that we provided, the date on which we provided the services, and the amount of time spent:

- 7/14/09 - (.2 hours): attention to scheduling the arbitration hearing; communications with DAI regarding scheduling and the hearing
- 8/24/09 - (4.8 hours): review DAI's records and prepare for the arbitration hearing; meet with DAI's Vice President Michael Cody and employee Adam Carrington to prepare for arbitration
- 8/27/09 - (.4 hours): review letter received from Respondent's attorney; telephone conferences with the ADR Center re: responding to same
- 9/1/09 - (1.6 hours): respond to letter from Respondent's attorney re: arbitration; review Connecticut law re: challenges to arbitrability
- 9/10/09 - (.8 hours): review notes and prepare for arbitration hearing

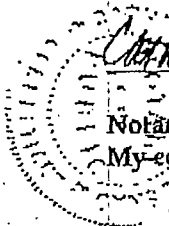
- 9/11/09 - (7.4 hours): prepare for and attend arbitration hearing; telephone conferences with David Ford re: same; draft attorneys' fees affidavit and post-hearing submissions

[THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK]

Dated at Hartford, Connecticut, this 11th day of September, 2009.


By: Brett J. Boskiewicz, Esq.

Subscribed and sworn to
this 11th day of September, 2009


Catherine A. Budauskas
Notary Public
My commission expires: 7-31-2010

AMERICAN DISPUTE RESOLUTION CENTER

DIRECTORY ASSISTANTS, INC.

Claimant,
V.

CASE NO. 35-0262-09 L

MARSCH CHIROPRACTIC Center

Respondent.

SEPTEMBER 11, 2009

POST-HEARING SUBMISSION CONCERNING PROPOSED DAMAGES AWARD

The Claimant Directory Assistants, Inc. ("DAI") offers the following as a proposed damages award based on the evidence presented during the arbitration hearing.

1. The Claimant is awarded damages in the amount of \$22,860.40. The calculation of this amount is set forth in Claimant's Exhibit 11.
2. The Claimant is awarded late fees in the amount of \$11.27 per day, accruing as of October 3, 2008. The late fees accrue at 1.5% per month and are calculated as set forth in the contract between the parties: $(1.5\% \text{ per month} \times \$22,860.40 \text{ (the liquidated damages)} \times 12 \text{ months/year}) / 365 \text{ days} = \$11.27 \text{ per day}$. As set forth in the contract, the late fees accrue on the date on which the first yellow page directory of the Respondent's baseline

yellow page program closed, which in this case was October 3, 2008. Late fees will continue to accrue until the Respondent satisfies the terms of this award.

3. The Claimant is awarded \$4,028.00 for the attorneys' fees that it incurred in this arbitration proceeding.

4. The Claimant is awarded all future costs and attorneys' fees that it incurs in connection with collecting the sums due pursuant to this Award.

5. Respondent shall bear the administrative fees and expenses of the American Dispute Resolution Center, Inc. totaling _____, which had been advanced by the Claimant. Therefore, Respondent shall pay such fees and expenses associated with the arbitration to the Claimant.

6. The compensation of the Arbitrator totaling _____ shall be borne by the Respondent. Therefore, Respondent shall pay to the Claimant that sum for the arbitrator compensation previously advanced to the ADR Center by the Claimant.

7. This Award is a final award in full and final settlement of any and all claims submitted to this Arbitration. It is effective immediately upon execution, without the necessity of further hearing and can be confirmed in any court having jurisdiction.

Directory Assistants, Inc.

By Brett Boskiewicz
Brett Boskiewicz
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103-3597
Tel. No.: (860) 275-8200
Fax No.: (860) 275-8299
E-mail: bboskiewicz@rc.com

CERTIFICATION

This is to certify that a copy of the foregoing was sent via first class mail on this 11th
day of September 2009 to:

Dave Maxwell, Esq.
Trotter & Maxfield
Attorneys at Law
1701 Richland Street
Columbia, South Carolina 29201

Brett Boskiewicz
Brett Boskiewicz

September 15, 2009

Brett J. Boskiewicz, Esq.
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103-3597

Dave Maxfield, Esq.
Trotter & Maxfield
1701 Richland Street
Columbia, SC 29201

Re: 35-0262-09 L
Directory Assistants, Inc.
and
Dennis Shay d/b/a Marsch Chiropractic Center

To the Parties:

This is to confirm receipt of the arbitrators Closing of Hearing ruling. Therefore, in accordance with the ADR Center Expedited Commercial Rules of Arbitration, the award will be due within fifteen (15) days of the close of hearing, or on or before September 30, 2009.

Very truly yours,

Laura McNaughton
Case Manager

Encl.
cc: Joseph A. Wellington, Esq. (Arbitrator)

AMERICAN DISPUTE RESOLUTION CENTER

In the Matter of Arbitration Between:

Directory Assistants, Inc.

and

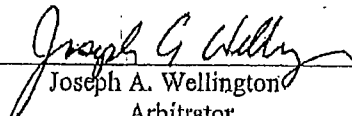
Dennis Shay d/b/a Marsch Chiropractic Center

Case Number: 35-0262-09L

CLOSING OF HEARING

The hearing in the above captioned matter is closed as of this date. Notice hereof shall be given to Complainant and Respondent.

SO ORDERED, this Fifteenth day of September 2009.



Joseph A. Wellington
Arbitrator

{W1741098}

September 22, 2009

Brett J. Boskiewicz, Esq.
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103-3597

Dave Maxfield, Esq.
Trotter & Maxfield
1701 Richland Street
Columbia, SC 29201

Re: 35-0262-09 L
Directory Assistants, Inc.
and
Dennis Shay d/b/a Marsch Chiropractic Center

To the Parties:

In accordance with the Rules, and by the direction of the Arbitrator, enclosed please find the duly executed Award for the above referenced matter.

This matter has now concluded therefore we will now close our file.

Very truly yours,

Laura McNaughton
Case Manager

w/encl

AMERICAN DISPUTE RESOLUTION CENTER

In the Matter of Arbitration Between:

Directory Assistants, Inc.

And

September 17, 2009

Dennis Shay d/b/a Marsch Chiropractic Center

Case Number: 35-0262-09L

AWARD

I, THE UNDERSIGNED, as the duly appointed Arbitrator in the foregoing matter, which was submitted to the American Dispute Resolution Center ("ADR Center") for resolution by arbitration, having been duly sworn and having duly heard the allegations and proofs of the Complainant, FIND and AWARD as follows:

ISSUES PRESENTED

1. Did the Respondent breach his contract with the Complainant (the "Contract")?
2. If a breach occurred, to what extent is the Complainant entitled to recover liquidated damages, interest thereon, arbitration attorney fees and other arbitration fees pursuant to the terms of the Contract?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Rule 18 of the American Dispute Resolution Center, Inc. Rules of Commercial Arbitration provides that a hearing will proceed ex parte and an award entered where a party fails to appear after due notice of the date, time and place of the hearing.

{W1741103}

2. The Respondent was provided timely notice of the date, time and place of the hearing in this matter by means of a Formal Notice of Hearing dated August 24, 2009.
3. The Respondent objected to the hearing proceeding in this matter through counsel by means of a letter dated August 25, 2009 which objection was denied by the undersigned's order dated September 4, 2009 (the "Order").
4. The Respondent was provided timely notice of the Order.
5. The Respondent did not appear at the hearing in this matter after being given timely notice thereof by the Formal Notice of Hearing and the Order.
6. The hearing in the above captioned matter was held on September 11, 2009 ex parte at the date, time and place previously set therefor.
7. The law of Connecticut applies to the resolution of the issues in this matter.
8. The Complainant and the Respondent entered into the Contract on September 8, 2008.
9. The Respondent breached the Contract.
10. The effective date of the breach is October 3, 2008.
11. The Complainant is entitled to an award of Liquidated Damages and Interest thereon from the date of said breach through the date of this Award as well as its Arbitration Attorney Fees and other arbitration fees pursuant to the terms of the Contract.

LIQUIDATED DAMAGES, INTEREST AND FEES

1. The Respondent shall pay the Complainant:
 - a. Liquidated Damages in the amount of \$22,860.
 - b. Interest in the amount of \$3,392.
 - c. Arbitration Attorney Fees in the amount of \$5,320.

c. Arbitrator's fee in the amount of \$1,960.

d. ADR Center fees in the amount of \$1,050.

for a total award of \$34,582 (the "Monetary Award") through the date hereof.

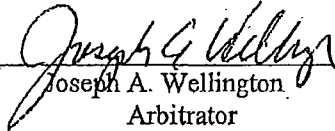
2. The Respondent shall pay the Monetary Award to the Complainant in full not later than thirty days (30) days from the date of Respondent's receipt of a copy of this Award.
3. If the Respondent fails to pay the Complainant the Monetary Award as required by Paragraph 2 immediately above, interest shall accrue on the unpaid balance of the Liquidated Damages component of said Monetary Award at the rate of 1.5% per month from the date of this Award until such time as said damages are paid in full.
4. The Complainant has pre-paid the Arbitrator's Fees in the amount of \$1,960 on behalf of the Respondent.
5. The Complainant has pre-paid ADR Center fees in the amount of \$1,050 on behalf of the Respondent.
6. The Respondent shall reimburse the Complainant for the amount of Arbitrator's fees and ADR Center fees in full within thirty (30) days of receiving a copy of this Award.
7. If the Respondent fails to pay the Complainant the aforesaid Arbitrator's Fees and ADR Center Fees in full as required by Paragraph 6 immediately above, interest shall accrue on the unpaid balance of said fees at the rate of 1.5% per month until such time as said fees are paid in full.

(continued on next page)

FINAL AWARD

THIS AWARD is final and is immediately effective without the necessity of further hearing and may be confirmed in any court having jurisdiction thereover.

DATED, this Seventeenth day of September 2009.



Joseph A. Wellington
Arbitrator

AMERICAN DISPUTE RESOLUTION CENTER, INC.

Date: May 29, 2009

Case Number: 35-0262-09 L

Case Name: Directory Assistants, Inc.
and
Dennis Shay d/b/a Marsch Chiropractic Center

List of Potential Arbitrator(s)

The parties may each have one peremptory strikes and unlimited factual for cause strikes. The parties must submit any for cause reasons in writing. You may number the acceptable names in order of preference and return the list to this office on or before June 11, 2009. In the absence of a response we will assume that all names are acceptable and an arbitrator will be appointed. Enclosed is a biography for each arbitrator. You may mail or fax your selections to the address and number listed below.

Ian E. Bjorkman Esq.
Morris J. Busca Esq.
James G. Green Esq.
Phillip S. Walker Esq.
Joseph A. Wellington Esq.

List returned for Party: SEE - ATTACHED

Signed by: Dennis J. Shay

Dated: 6-16-09

Mail To: American Dispute Resolution Center, Inc.
CBA Law Center
30 Bank Street -- 2nd Floor
New Britain, CT 06051

Fax To: (860) 223-1846

May 29, 2009

Mr. David Ford
Directory Assistants, Inc.
500 Winding Brook Drive
Glastonbury, CT 06033

Mr. Dennis Shay (Via First Class & Certified Mail)
d/b/a Marsch Chiropractic Center
235 Elliott Street
Orangeburg, SC 29115

Re: 35-0262-09 L
Directory Assistants, Inc.
and
Dennis Shay d/b/a Marsch Chiropractic Center

To the Parties:

This is to confirm receipt of a Demand for Arbitration dated May 26, 2009, filed by Directory Assistants, Inc. involving a controversy between the above named parties containing an arbitration clause. Please note this matter will be administered under the Expedited Procedures of the American Dispute Resolution Center's Commercial Rules which may be viewed on www.adrcenter.net.

In accordance with the Rules, enclosed is a list of neutrals, along with their biographies, for your review. The parties may each have one peremptory strike and unlimited factual for cause strikes. After you have appropriately made your selections, please return your list to this office on or before June 11, 2009. The Case Manager shall thereafter select the arbitrator from the remaining acceptable names. Should the parties be unable to agree upon an arbitrator, the Case Manager shall have the authority to appoint the arbitrator.

If the Respondent wishes to file an answer and/or counterclaim, please file with this office in duplicate, with the appropriate filing fee, within ten (10) calendar days after receipt of this letter, with a copy to opposing counsel.

Also enclosed is a Conflict Check form. We request that the party's list the names of all witnesses, firms, companies, or persons involved with or who may be involved with this matter. The form must be returned to our offices within ten (10) calendar days for distribution to the arbitrator.

If you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,

Laura McNaughton
Case Manager

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Dennis Shay
d/b/a Marsch Chiropractic Center
235 Elliott Street
Orangeburg, SC 29115

COMPLETE THIS SECTION ON DELIVERY

A. Signature

Christina Evans ☐ Agent ☒ Addressee

B. Received by (Printed Name)

Christina Evans 6/2/07

C. Date of Delivery

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☒ No

3. Service Type

☐ Certified Mail☒ Express Mail☐ Registered☒ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number

(Transfer from service label)

7008 3230 0001 2039 8927

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

U.S. Postal Service™

CERTIFIED MAIL™ RECEIPT

(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage

\$

Certified Fee

Return Receipt Fee
(Endorsement Required)Restricted Delivery Fee
(Endorsement Required)

Total Postage & Fees

\$

Postmark
Here

5-29-09

Sent To

Street, Apt. No.,
or PO Box No.

City, State, ZIP+4

PS Form 3800, August 2006

See Reverse for Instructions

7008 3230 0001 2039 8927

APPEARANCE

JD-CL-12 Rev. 7/10

P.B. §§ 3-1 thru 3-6, 3-8, 10-13, 25A-2

STATE OF CONNECTICUT
SUPERIOR COURT

www.jud.ct.gov

NOTICE TO SELF-REPRESENTED PARTIES (PRO SE)

A self-represented party is a person who represents himself or herself. You must let the Clerk's Office know if you change your address by filling out this form.

2012 JUL 27 PM 4:37

Instructions — See Back Page 2

Docket number CV-09-5033765-S
Return date Oct 22 2009
Scheduled court date (Criminal/Motor Vehicle Matters)
☒ Judicial District ☐ Housing Session ☐ Geographic Area ☐ Small Claims

Note: If you are a self-represented party and you filed an appearance before and you are filing this only to let the court know that you have changed your address, check the box below:

☐ I am filing this appearance only to let the court know that I have changed my address. My new address is below.

Name of case (Plaintiff vs. Defendant)

DIRECTORY ASSISTANTS v. SHAY, DENNIS DBA

Address of court (Number, street, town, zip code)

95 WASHINGTON STREET, P.O. DRAWER D, STATION A Hartford, CT 06106**Please Enter the Appearance of**

Juris number of attorney or firm 429059	Name of self-represented party (See "Notice to Self-Represented Parties" at top), or name of official, firm, professional corporation, or individual attorney JOSHUA RANDOLPH COHEN
Mailing Address (Number, street) (Notice to attorneys and law firms - The address to which papers will be mailed from the court is the one registered or affiliated with your Juris number. That address cannot be changed in this form.) 2074 PARK STREET 2ND FLOOR	Post office box 860-233-0338
City/town HARTFORD	State CT
Zip code 06106	Fax number (Area code first) 860-233-0339
E-mail address jcohen@debtorslawfirm.com	

In the case named above for: ("x" one of the following parties; if this is a Family Matters case, indicate the scope of your appearance)

- ☐ The Plaintiff (includes the person suing another person).
☐ All Plaintiffs.
☐ The following Plaintiff(s) only: _____
☒ The Defendant (includes the person being sued or charged with a crime).
☐ The Defendant for the purpose of the bail hearing only (in criminal and motor vehicle cases only).
☐ All Defendants.
☐ The following Defendant(s) only: _____
☐ Other (Specify): _____
☐ This is a Family Matters case and my appearance is for: ("x" one or both)
☐ matters in the Family Division of the Superior Court ☐ Title IV-D Child Support matters

Note: If other counsel or a self-represented party have already filed an appearance for the party or parties "x'd" above, put an "x" in 1 of these 2 boxes:

- ☐ This appearance is in place of the appearance of the attorney or firm or self-represented party on file (P.B. Sec. 3-8) OR
☐ This appearance is in addition to an appearance already on file.

(Name and Juris Number)

and, I agree to accept papers (service) electronically in this case under Practice Book Section 10-13 ☒ Yes ☐ No

Signed (Individual attorney or self-represented party) ▶ 429059	Name of person signing at left (Print or type) JOSHUA RANDOLPH COHEN	Date signed Sep 09 2010
Certification This certification has to be filled out only in eviction cases; for "in place of" appearances; in criminal cases; and in small claims matters. I certify that I mailed or delivered a copy of this Appearance form to: ☐ All counsel and self-represented parties of record as listed below and on any additional sheet(s). (For evictions (P.B. Sec. 3-5(a)), criminal actions (P.B. Sec. 3-5(c)) and small claims matters) ☐ Counsel or the party whose appearance is to be replaced as listed below and on additional sheet(s). (For appearances in place of another attorney or firm (P.B. Sec. 3-8))		For Court use only
Signed (Individual attorney or self-represented party) ▶	Date copies mailed or delivered	
Name of each party copy was mailed or delivered to *	Address which copy was mailed or delivered to	

* If necessary, attach an additional sheet or sheets with the name of each party and the address which the copy was mailed or delivered to.

APPEARANCE

ROA_0246

***** P L A I N T I F F *****

ROBINSON & COLE LLP
280 TRUMBULL STREET

HARTFORD CT 06103
DIRECTORY ASSISTANTS INC 10/22/2009

***** D E F E N D A N T *****

JOSHUA RANDOLPH COHEN
2074 PARK STREET
2ND FLOOR

HARTFORD CT 06106
DENNIS SHAY DBA 09/09/2010

DIRECTORY ASSISTANTS

VS.

SHAY, DENNIS

DOCKET NUMBER CV 09 5033765S

HARTFORD CIVIL
SUPERIOR COURT
P.O. BOX DRAWER N
95 WASHINGTON STREET

HARTFORD, CONNECTICUT 06106

THE ABOVE INFORMATION
REFLECTS THE STATUS OF
APPEARANCES FOR THIS
CASE AS OF 09/09/2010.

FIND CASE INFORMATION
ON OUR WEBSITE
VISIT WWW.JUD.CT.GOV

PAGE 01 OF 01

ROBINSON & COLE LLP
280 TRUMBULL STREET

HARTFORD CT 06103

428/1598

ROA_0247

STATE OF SOUTH CAROLINA
COUNTY ORANGEBURG

AFFIDAVIT OF SERVICE
DOCKET# 11-CP-38-0853

DIRECTORY ASSISTANTS, INC.,

Plaintiff (S)

DENNIS SHAY, d/b/a MARSCH
CHIROPRACTIC CENTER

Defendant (S)

The undersigned, Claude O. Gillion, III, being duly sworn, says he served the
CIVIL COVERSHEET; AFFIDAVIT;

NOTICE OF FILING FOREIGN JUDGEMENT Docket# 11-CP-38-0853

in this action on the person of:

DENNIS SHAY, d/b/a MARSCH
CHIROPRACTIC CENTER

By delivering same to: XXX Served personally

DENNIS SHAY, d/b/a MARSCH
CHIROPRACTIC CENTER

() _____, A person of age and
discretion residing at address of person to be served

() _____ the _____
(person served, if corporate or business, at it's place of business)

MARSCH CHIROPRACTIC CENTER
235 ELLIOTT STREET

And leaving with them one copy of same at

ORANGEBURG, SOUTH CAROLINA 29115 on the 20th Day of JULY

A.D. 20 11 at 3:45 A.M. / P.M. and the deponent knows the person so served to be
the person mentioned and described in the pleadings served, and the deponent is not a
party to, nor interested in the action.

Sworn to before me this

20th Day of JULY A.D. 20 11

Notary Public (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA

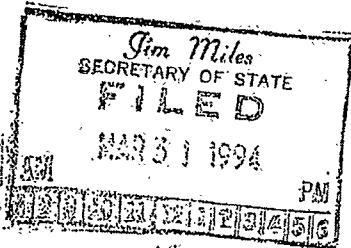
My Commission Expires November 3, 2018

Claude O. Gillion, III
Claude O. Gillion, III Process Server
Gillion's Process Service
P.O. Box 25292
Columbia, South Carolina 29224

TRUE COPY
CLERK OF COURT
ORANGEBURG COUNTY, SC

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

ARTICLES OF INCORPORATION
FOR A
PROFESSIONAL CORPORATION



1. The name of the proposed corporation is DENNIS J. SHAY,
D.C., P.A..

Choose one of the following: ☐ Professional Corporation, ☐ P.C., ☐ PC, ☐ Professional Association, ☒ P.A., ☐ PA, ☐ Service Corporation, ☐ Chartered

2. This corporation is a Professional Corporation governed by Chapter 19, Title 33, of the 1976 South Carolina Code, as amended.

This corporation is also a Statutory Close Corporation governed by Chapter 18, Title 33 of the 1976 South Carolina Code, as amended.

3. The corporation's purpose shall be to render the following professional services:

CHIROPRACTIC

4. The initial registered office of the corporation is:

235 ELLIOTT STREET
ORANGEBURG, SC 29115

ORANGEBURG COUNTY

and the initial registered agent at such address is:

DENNIS J. SHAY

5. The corporation is authorized to issue shares of stock as follows:

- a. ☒ The corporation is authorized to issue a single class of shares, the total number authorized is:

ONE THOUSAND (1000) SHARES, COMMON

- b. ☐ If the corporation is authorized to issue more than one class of shares, complete the following:

Class of Shares

Authorized No. of Each Class

Date
CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE.

SECRETARY OF STATE OF SOUTH CAROLINA

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas
The Honorable Edgar W. Dickson

Case No. 2011-CP-38-00853

Directory Assistants, Inc., ... Appellant,
v.
Dennis Shay, d/b/a Marsch Chiropractic Center, ... Respondents.

NOTICE OF APPEAL

Directory Assistants, Inc. appeals the attached two (2) Orders of the Honorable Edgar W. Dickson filed on September 30, 2013, and on February 26, 2014. Appellant received written notice of entry of the order filed February 26, 2014 on March 4, 2014.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Michael J. Anzelmo

SC Bar No. 72933

E-Mail: michael.anzelmo@nelsonmullins.com

D. Larry Kristinik

SC Bar No. 064983

E-Mail: larry.kristinik@nelsonmullins.com

1320 Main Street / 17th Floor

Post Office Box 11070 (29211-1070)

Columbia, SC 29201

(803) 799-2000

Attorneys for Appellant

Columbia, South Carolina

MARCH 11, 2014

ncid 10/11/2013
363 58/01 500

STATE OF SOUTH CAROLINA

) COURT OF COMMON PLEAS

COUNTY OF ORANGEBURG

) FIRST JUDICIAL CIRCUIT

Directory Assistants, Inc.,

) 2011-CP-38-00853

Plaintiff,

Dennis Shay, d/b/a Marsch
Chiropractic Center,

Defendant.

FILED FOR RECORD
CLERK OF COURT
ORANGEBURG COUNTY, SC
SEP 30 PM 2:07

ORDER GRANTING DEFENDANT'S MOTION FOR RELIEF FROM FOREIGN JUDGMENT

This case is before the Court on Defendant's Objection to the Plaintiff's filing of a foreign Judgment against him, and his related motions under Rules 59 and 60, SCRCF. After considering the pleadings, affidavits and exhibits stipulated into evidence, and hearing argument of counsel, the Court finds that Defendant's Motions should be Granted.

FACTS

The Plaintiff, Directory Assistants, Inc., (DAI) is a Connecticut corporation. In 2009, DAI obtained an arbitration award for \$34,582.00 against Defendant "Dennis Shay, d/b/a Marsch Chiropractic" from the American Dispute Resolution Center, also based in Connecticut. DAI filed the arbitration award in the Connecticut Superior Court, and obtained a judgment confirming it. DAI then filed its judgment in this Court on July 20, 2011. Besides the judgment and interest, DAI claims entitlement to fees and costs totaling \$13,935.00 for filing the judgment and attempting to collect the debt in South Carolina (Aff. Of Fees, 1/28/2013).

Defendant, Dennis Shay (Shay) is a chiropractor who practices in Orangeburg. After receiving notice that DAI had filed its judgment in South Carolina, Shay filed an objection in this Court and moved to amend or vacate the judgment as provided by §15-35-940. Shay maintains that that the judgment mistakenly was entered against him individually, rather than his chiropractic business. He also points out that that no court has ever ruled of whether DAI's claims were subject to arbitration, as required by both the laws of South Carolina and Connecticut.

1/5 *[Signature]*

ATTEST: TRUE COPY

Wingia B. Clark
CLERK OF COURT

ORANGEBURG COUNTY, SC

ISSUES

The issues before the Court are thus as follows:

- 1) whether Shay is entitled to have the entry of judgment in South Carolina vacated under §15-35-940, and
- 2) whether DAI is entitled to fees and costs for its South Carolina filing and collection activities.

DISCUSSION

A. Entitlement to Relief Under Rule 60

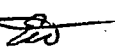
The filing and enforcement of foreign judgments is governed by the Uniform Enforcement of Foreign Judgments Act (the Act). Both Connecticut and South Carolina have adopted the Act. See, Connecticut Code Sec. 52-604, et. seq., and S.C. Code §15-35-900, et. seq. The Act sets forth the procedure for filing a foreign judgment in South Carolina. The intent of the Act is that each state treat the judgments of its fellow states as it would its own judgments. This includes not only giving the same "full faith and credit" to the foreign judgment as it would to its own judgments, but giving the judgment debtor the same "defenses, proceedings for reopening, vacating or staying the judgment" as well. Conn. Code Sec. 52-605; S.C. Code §15-35-940.

The Act, as adopted by both states, provides that a judgment debtor against whom a foreign judgment is filed may move for relief from the judgment "on any other ground for which relief from a judgment of *this* state is allowed." §15-35-940. (Emphasis added). The South Carolina Supreme Court has held that this relief allows for a post-judgment motion under Rule 60, SCRPC. *Erickson v. Boykin*, 383 S.C. 497 (2009). Shay now presents such a motion. Thus, if Shay is entitled to relief under Rule 60, DAI's Connecticut judgment must be vacated in South Carolina.

Under Rule 60, the court may relieve a party from a judgment, inter alia, where the judgment is the product of mistake or where it is otherwise void.

1. Relief Based on Mistake

Viewing the entire record and the extrinsic evidence stipulated in by the parties, I find that Dr. Shay is entitled to relief under Rule 60(b) on the grounds of mistake. The mistake lies in the false premise that the party to whom DAI's consulting contract provided services for was "Dennis Shay d/b/a Marsch Chiropractic."

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It is clear from the evidence stipulated into the record the chiropractic business is not a "d/b/a" but a professional corporation. According to its Articles of Incorporation, "Dennis J. Shay, PA" was incorporated in South Carolina on March 31, 1994. (Articles of Incorporation).

The fact that the professional corporation is the actual party for whom DAI was to provide its services is evidenced by DAI's Consulting Contract. First, the Contract expressly identifies Marsch as the "Advertiser." Second, it refers repeatedly to DAI's providing "business" services. (Contract, p. 1-2). Third, the business services offered revolve solely around yellow page advertising, which by definition is business advertising. Fourth, the contract references Shay only as the "Person Authorized to Contract for Advertiser" indicating Shay and the "advertiser" were not one and the same. (Contract, p. 2).¹

In summary, it is clear that any services to be provided were to be provided to the corporation, Dennis J. Shay, PA, not to Dennis Shay individually. Rule 60(b) expressly provides relief on grounds of mistake, regardless of whether the mistake is the moving party's or not.² I therefore find that Shay is entitled to relief from judgment on the grounds of mistake. Rule 60, SCRPC: *BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 502-03 (2006)(decision to grant or deny a motion for relief from judgment lies within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion).

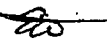
2. Relief based on Validity of Connecticut Judgment

Although a finding of "mistake" alone is a sufficient basis for relief, the Court will briefly address Dr. Shay's additional argument that the Connecticut judgment is void because no court ever determined whether he had to arbitrate before the arbitration actually took place. The Court finds this argument persuasive as well.

Both Connecticut and South Carolina law require that a court – not an arbitrator – must determine the existence of a valid arbitration agreement before a party can be compelled to arbitrate. See, *Reiss v. Chase Bank USA, N.A.*, 2008 Conn. Super. LEXIS 1959 (Conn. Super. Ct. July 30, 2008) (a party who contests making a contract containing an arbitration provision cannot be compelled to arbitrate the threshold issue of agreement to arbitrate); *MBNA Am. Bank, N.A. v. Christianson*, 377 S.C. 210 (S.C. Ct. App. 2008; aff'd Feb. 1, 2010) (if there is a

¹ Shay's actual signature does not appear on the contract.

² Rule 60(b) is substantially the same as Code § 15-27-130. There are two differences. First, existing State law provides for relief from a "judgment taken against him through his mistake." Rule 60(b) deletes "his" and thus there may be a motion for relief from other mistakes.

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challenge to an arbitration, it is for the courts, not the arbitrator, to decide whether the agreement to arbitrate exists).

In the present case, Dr. Shay contested the validity of the arbitration agreement. However, no court determination of arbitrability has ever been sought or made.

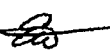
The record reflects, and the parties do not dispute, that DAI filed a demand for Arbitration with the American Dispute Resolution Center, Inc., in the Spring of 2009. The arbitrator then set a hearing in Connecticut. Prior to the hearing, Dr. Shay's counsel made a written objection to the arbitrator challenging the validity of the arbitration provision. This letter, stipulated into evidence by the parties, stated:

"The contract was made in South Carolina. Under South Carolina law and the Federal Arbitration Act, the party asserting the existence of an arbitration agreement (i.e., DAI) is required to seek court intervention to determine whether there is an agreement to arbitrate before proceeding through arbitration. See, 9 USC §4 (2000); MBNA America Bank v. Christianson, Slip Op. 4349 (Ct. App. March 4, 2008)." (P. 2, Shay Obj. Letter).³

Despite this objection, the matter proceeded to arbitration on September 17, 2009 with no prior court determination of arbitrability. After getting its award, DAI then applied for confirmation with the Connecticut Court, which it received. Although Dr. Shay obtained counsel in Connecticut to object to confirmation, the Connecticut court did not determine the validity of the arbitration agreement in any proceeding. A careful review of the orders shows that the Connecticut court expressly considered no "disputed factual claim" because Dr. Shay would not appear personally in Connecticut. (Conn. Order 6/7/2011).

In short, it is clear from the record no court has determined the threshold issue of arbitrability. Not even the Arbitrator's findings address Shay's challenge in his Award. As the judgment that DAI seeks to enforce is predicated wholly on the

³ Although not stated in Shay's letter, the Court notes that the arbitration provision contained in the consulting contract does not meet the requirements for validity under South Carolina's Uniform Arbitration Act, § 15-48-10, which provides that "notice that a contract is subject to arbitration pursuant to this chapter shall be typed in underlined capital letters, or rubber-stamped prominently, on the first page of the contract and unless such notice is displayed thereon the contract shall not be subject to arbitration."

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Award, it cannot stand. Dr. Shay is therefore entitled to be relieved from the effect of this judgment in South Carolina. Rule 60, SCRCP; *Christianson*, supra.⁴

B. DAI's Request for Attorney's Fees

Lastly, DAI requests it be awarded \$13,495.00 for attorney's fees and \$440.00 in costs for its South Carolina filing and collection activities.⁵ This request is beyond the scope of DAI's action to enroll its judgment. Such claims must be based on either statute or contract. The Uniform Enforcement of Foreign Judgments Act provides for no such relief. If this claim is based on the consulting contract, DAI would (by its own argument) be required to arbitrate this claim.⁶

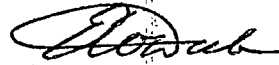
Based on the above, and on the granting of relief to Defendant, DAI's request is denied.

ORDER

Based on the foregoing, the Court GRANTS Shay's Motion for Relief, and denies DAI's request for attorney's fees.

The Clerk of Court is thus directed to vacate the judgments filed by DAI on July 20, 2011 as against Shay and/or Shay d/b/a Marsch Chiropractic.

AND IT IS SO ORDERED.



Edgar W. Dickson, Judge
1st Judicial Circuit

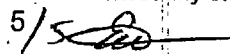
9/20, 2013

Orangeburg, S.C.

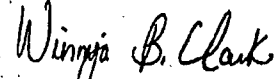
⁴ This Court takes no position on the viability of the judgment in Connecticut, but relieves Shay of the prospective effect of the judgment in South Carolina. The Court notes further that, while DAI characterizes the issue as one of personal jurisdiction over Shay, Rule 60 applies in numerous cases where there is no challenge to personal jurisdiction.

⁵ The Affidavit of Fees discloses neither the number of hours expended by DAI's counsel nor the hourly rate; thus, the Court could not make a determination of whether same were reasonable even if such fees could be awarded.

⁶ The Act itself, §15-35-960, provides that judgments that are contrary to public policy may not be given effect. The purpose of DAI's consulting contract on its face was to simply assist the business in making choices about its yellow page advertising. (See, consulting contract). The fact that this service turned into a claim for more than \$50,000.00 (the majority of which is liquidated damages and fees) troubles the court. Also troubling is the fact that, despite the absence of any forum selection clause or choice of laws provision in the consulting contract, DAI filed the arbitration in its home state and thereby obtained relief against Shay. Absent his physical appearance, Shay was not permitted to contest any of the above.

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ATTEST: TRUE COPY



CLERK OF COURT
ORANGEBURG COUNTY, SC

EXHIBIT

B

lec'd 3/4/2014
36358/01500

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Directory Assistants, Inc.,

Plaintiff,

Dennis Shay, d/b/a Marsch
Chiropractic Center,

Defendant.

COURT OF COMMON PLEAS

FIRST JUDICIAL CIRCUIT

2011-CP-38-00853

ATTEST: TRUE COPY

Wingja B. Clark

CLERK OF COURT

ORANGEBURG COUNTY, SC

FILED FOR RECORD
WITH SOUTH A. CLARK
CLERK OF COURT
ORANGEBURG, SC

2014 FEB 26 AM 12:57

**ORDER DENYING PLAINTIFF'S
MOTION TO ALTER OR AMEND JUDGMENT**

On September 30, 2013 this Court entered an Order granting Defendant relief from Plaintiff DAI's filing of a Connecticut judgment against them in South Carolina. DAI now moves to Alter or Amend the Order granting relief. The Court declines to alter or amend its previous ruling, and finds that Plaintiff's motion should be denied.

FACTS & PROCEDURAL HISTORY

The Plaintiff, Directory Assistants, Inc., (DAI) is a Connecticut corporation. In 2009, DAI obtained an arbitration award for \$34,582.00 against "Dennis Shay, d/b/a Marsch Chiropractic Center" from the "American Dispute Resolution Center," also based in Connecticut. After converting the award to a judgment in Connecticut Superior Court, DAI filed it in this Court on July 20, 2011.

After receiving notice of filing, Defendant timely filed an objection in this Court and moved to amend or vacate the judgment as provided by §15-35-940 (Uniform Enforcement of Foreign Judgments Act).

On September 30, 2013, following a hearing on the matter, the Court found Defendant Shay was entitled to relief from filing the Judgment under the Act (as adopted in both South Carolina and Connecticut) under Rule 60 SCRCP. *Erickson v. Boykin*, 383 S.C. 497 (2009). Specifically, the Court found that the intended beneficiary of the "Consulting Contract" relied upon by DAI was not Dennis Shay individually, but a wholly separate legal entity, "Dennis J. Shay, PA d/b/a Marsch Chiropractic." DAI's contract expressly identified Marsch as the "Advertiser", referred repeatedly DAI's providing "business" services, and referenced Shay only as the "Person Authorized to Contract for advertiser." It was clear Shay was not himself a party to the contract, and that the actual party to the contract was Dennis J. Shay, PA. Accordingly, the Court found that Shay was entitled to relief under Rule 60 on

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grounds of mistake.

As an additional ground for relief, the Court found that no court had ever determined whether a valid arbitration agreement existed *before* the arbitration took place. Prior to arbitration, Shay protested he had not entered into any agreement with DAI. In such cases, both Connecticut and South Carolina law are clear: a court – not an arbitrator – must determine the existence of a valid arbitration agreement *before* a party can be compelled to arbitrate. See, *Reiss v. Chase Bank USA, N.A.*, 2008 Conn. Super. LEXIS 1959 (Conn. Super. Ct. July 30, 2008); *MBNA Am. Bank, N.A. v. Christianson*, 377 S.C. 210 (S.C. Ct. App. 2008; *aff'd* Feb. 1, 2010).¹ In Shay's case, the arbitrator ignored this requirement and proceeded with arbitration.²

As more specifically set forth in the Court's prior Order, Defendant's Motion for Relief was granted, and DAI's South Carolina judgment was vacated. On October 10, 2013, Plaintiff DAI moved to Alter or Amend this Order.

DISCUSSION

DAI contends in its motion that the Federal Arbitration Act (FAA) prevents this Court from providing relief from the Connecticut judgment. To support this argument DAI relies on *e.spire Communications, Inc. v. CNS Communications*, 39 Fed. Appx. 905 (4th Cir. 2002). The Court disagrees. While the FAA is applicable in this situation, the decision in *e.spire* is distinguishable.

In *e.spire*, two telecommunications firms entered into a series of agreements, including a Master Services Agreement (MSA). The MSA contained an arbitration clause. A dispute later arose between the parties. In this dispute, CNS contested arbitration, contending the MSA was not a "final" contract. This dispute was resolved, however, by the parties' entry into a Settlement Agreement. In the latter Settlement Agreement the parties expressly agreed to arbitrate their dispute before the American Arbitration Association.

After signing the Settlement Agreement, however, a new dispute arose over the location where the arbitration would be held. CNS refused to attend the

¹ (FN — Likewise, the Federal Arbitration Act, upon which DAI's instant motion is based, expressly provides for court determination when one party disputes the existence of an agreement to arbitrate. See, 9 USC Section 4, which states: *A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court ... for an order directing that such arbitration proceed.... If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded by the party alleged to be in default ..., the court shall hear and determine such issue.... [If a jury trial is demanded and] the jury find[s] that no agreement in writing for arbitration was made ... the proceeding shall be dismissed.*

² Of further concern to the Court is the fact that there is no record of an arbitration hearing for the Court to review. Thus, while the arbitration record shows that Shay appeared in the arbitration proceeding through counsel and objected to the jurisdiction of the arbitrator, it is unclear if even the arbitrator himself considered Shay's objection.

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arbitration and an award was entered against it in its absence. CNS moved to vacate the award, relying on its original argument that "no valid agreement to arbitrate" existed under the MSA.

The Court found that CNS's reliance on its original argument over the meaning of the MSA was misplaced, as CNS could not dispute it entered knowingly into the later Settlement Agreement, which expressly provided for arbitration. Under such circumstances, the Court found CNS was not entitled to relief. 39 Fed. Appx. 905 (4th Cir. 2002).

The present case is distinguishable. In contrast to *e.spire*, the present case involved a dispute as to whether a valid arbitration agreement ever existed (in Connecticut or elsewhere). No agreement was reached on this issue and it was never put before a Court. Rather, the evidence presented by Shay, which the court found credible, demonstrated he did not knowingly enter into an agreement to arbitrate (particularly on his own behalf) and that he expressly disputed the arbitration. There was no determination by any court – including a South Carolina Court (which would have otherwise had jurisdiction over this dispute) – that a valid arbitration agreement existed.

Contrary to DAI's argument, the requirement for prior judicial review fully follows the requirements of the FAA. See, 9 U.S.C.A. § 4. Despite the fact that FAA procedure for prior review was not complied with (in any court) DAI nevertheless argues that the FAA precludes this Court from providing relief under Rule 60. The Court disagrees. While the FAA allows for review by a District Court, "general contract principles of state law apply in a court's evaluation of the enforceability of an arbitration clause" even if same is governed otherwise by the FAA. *Munoz v. GreenTree*, 343 S.C. at 539, 542 S.E.2d at 364. See also, *Christianson*, *supra*. This issue was properly before the Court on Shay's motion for relief.³

In summary, the Court reaffirms its finding that this case was submitted to a Connecticut arbitrator without prior judicial review, and with no showing that Shay had agreed to forfeit access to the judicial system in the state where he resides and where the contract was entered into and was to be performed.

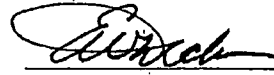
ORDER

Based on the foregoing, the Court DENIES DAI's Motion to Alter or Amend its prior Order granting relief to Shay.

³ As an additional matter, the Court notes that traditionally, a Defendant has the right to defend himself in his home state. There is nothing in the record that indicates Shay received any bargained-for consideration under the contract to give up this constitutional right. The contract was executed in South Carolina, to be performed in South Carolina, for business done in South Carolina. There are no "minimum contacts" with Connecticut apart from the arbitration clause in the contract. This Court will not deprive Defendant of his right to defend himself against these claims in the courts based on these facts.

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AND IT IS SO ORDERED.



Edgar W. Dickson, Judge
1st Judicial Circuit

January 31, 2014

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

The Honorable Edgar W. Dickson
Circuit Court Judge

Case No. 2011-CP-38-00853
Appellate Case No. 2014-000459

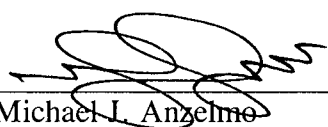
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SC Court of Appeals

Directory Assistants, Inc., ... Appellant,
v.
Dennis Shay, d/b/a Marsch Chiropractic Center, ... Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Record on Appeal contains all material
proposed to be included by any of the parties and not any other material

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Columbia, South Carolina

March 10, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

MAR 10 2015

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas
The Honorable Edgar W. Dickson

SC Court of Appeals

Case No. 2011-CP-38-00853

Directory Assistants, Inc., ... Appellant,

v.

Dennis Shay, d/b/a Marsch Chiropractic Center, ... Respondents.

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins
Riley & Scarborough LLP, attorneys for Directory Assistants, Inc., do hereby certify
that I have served all counsel in this action with a copy of the pleading(s) hereinbelow
specified by mailing a copy of the same by United States Mail, postage prepaid, to the
following address(es):

Pleadings:

RECORD ON APPEAL

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Jennifer B. Lee
Administrative Assistant

March 10, 2015