IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

ERIC SCHEIBELER,	**: No. 06-01,338**
Plaintiff	**:**
	: CIVIL ACTION - LAW
vs.	**: Motion for Preliminary Injunction**
	: filed by Scheibeler & Petition to Stay
QUIXTAR, INC. and	**: and Compel Arbitration filed by**
AMWAY CORPORATION,	**: Quixtar, Inc. & Amway Corporation**
Defendant	**:**

OPINION AND ORDER

I. Statement of Facts

Plaintiff Eric N. Scheibeler filed a Motion for Preliminary Injunction and a Civil Complaint in Law and Equity with three counts: Count I, Declaratory Judgment; Count II, Harassment and Count III, Invasion of Privacy, on or about June 30, 2006. Defendant is Quixtar, Inc., a parent company Amway Corporation. Defendants Quixtar and Amway, on or about July 24,2006, filed a Petition to Stay and Compel Arbitration pursuant to 9 U.S.C. Section 3 and 42 Pa. C.S.A Section 7314(d)

Hearings on these matters were held on September 28, 2006 and October 24, 2006. With agreement by the parties, the Court hearings were to decide and resolve the Plaintiff's Preliminary Injunctive request and Declaratory Judgment action (Count I in his Complaint) and Defendants' Petition to Stay and Compel Arbitration.

The issue presented in the above matter is a common issue raised by all parties and revolves around whether Plaintiff, who was a former Amway product distributor, is restricted to litigating any matter relating to his past association with Amway in the Amway Arbitration system.

The relevant facts follow:

Plaintiff was recruited in 1989 to become a distributor of Amway products. Plaintiff signed a distributor agreement on November 15, 1989. By 1997, the profits from Plaintiff's distribution of Amway products were Plaintiff's sole income.

On or about October 4, 1997, Plaintiff renewed his distribution agreement and he signed an acknowledgment of distribution changes. See Plaintiff Exhibit 1. The acknowledgment contained a significant change to the distribution agreement which included an agreement to submit any disputes to binding arbitration. Plaintiff testified he had to sign the acknowledgment of this change and if he would not have signed, he would have lost his sole income because he would not have been able to distribute Amway products.

Plaintiff's Exhibit 1, the "Acknowledgment of Distributor Changes", purports to require arbitration of "any claim or dispute arising out of or relating to any Amway Distributorship, or the Amway Sales and Marketing Plan or Rules of Conduct". The binding arbitration rules contain a provision, ll.5.31, entitled "Confidentiality of Proceedings and hearings," which indicates that the arbitration process shall remain confidential and that no party to a claim should disclose to any third party the substance of or basis for a claim on any matters involved in the dispute subject to the arbitration. See Plaintiff's Complaint, Exhibit 1.3, Section 11.5.31.

Plaintiff continued to work as an Amway Distributor until March 1999 when he went inactive. Plaintiff testified he went inactive and gave up his distributorship because he discovered massive systemic fraud in the Amway business system and that all the people he recruited lost money in the Amway process.[1] Plaintiff reported the alleged

[1] The Court is reporting the claims of Plaintiff to develop the history behind the events in question. This opinion does not seek to determine the veracity of the allegations.

fraud to the President of Amway, Dick Devois. Plaintiff testified that the response of Amway was to shut off his income and that he was told not to make disparaging remarks about his up-line distributor. Plaintiff testified that he and his family received death threats from his Amway king pin distributor. Plaintiff testified that as a result of Amway's actions he suffered serious economic hardship and he ultimately had to file for bankruptcy. Plaintiff formally terminated his distributorship on August 8, 2003. See Plaintiff Exhibit 1. Plaintiff claimed he did this because he had discovered deceptive trade practices by Amway, which resulted in an almost 100% loss rate for consumers recruited into the Amway scheme.

Plaintiff testified that subsequent to his departure from Amway he became a vocal public critic of Amway business practices. He wrote a book about his experiences entitled, "Merchants of Deceptions" Plaintiff's Exhibit 5. Plaintiff works pro bono as a consumer advocate for alleged victims of Amway–Quixtar fraud.[2] Plaintiff has also given several interviews to the media about the purported business practices of Amway-Quixtar. Plaintiff collects what he calls victim testimonials by email and telephone. Plaintiff is also on the Board of Directors of several consumer protection organizations. Plaintiff feels he has a public obligation to expose what he feels are the corrupt and deceptive business practices of Amway-Quixtar.

On November 1, 2000 Mr. Scheibeler filed a civil action in Lycoming County against Amway Corporation, et al to case No. 00-01,715. As in this case, Defendants Amway and Quixtar filed a Petition to stay the action pending arbitration. A hearing on this issue was scheduled by this Court on February 9, 2001. However, that

[2] Amway changed its name domestically from Amway to Quixtar in 1999. The Court believes the Amway name is still used overseas. There was significant domestic litigation against Amway when they changed their corporate name.

hearing was cancelled when Plaintiffs, Eric and Patricia Scheibeler, stipulated on February 8, 2001 to an Order that Plaintiffs proceed on their claims "only in arbitration."[3] The prior action then proceeded into the Amway arbitration system. The arbitrator ruled against Scheibelers dismissing all their claims by a final award entered October 21, 2003, based on a finding that the applicable statute of limitations barred their claims.[4] Plaintiffs then filed a Motion to Set Aside the Arbitrators' Award before this Court, claiming they were denied the opportunity for a hearing. This Court, by the Honorable Dudley N. Anderson's Opinion and Order of March 3, 2004, denied the Motion to Set Aside the Arbitrator's Award and granted a Motion to Confirm the Final Arbitration Award. Judge Anderson noted in his Opinion that once Plaintiffs agreed to submit their claims to arbitration under the contract, they foreclosed any subsequent challenge to the validity of that contract.

Plaintiff in the instant case contends that the matters raised in his new Complaint are different than what they sought to litigate in 2001. Plaintiff also contend that collateral estoppel cannot apply because they stipulated to arbitration in 2001 and the Lycoming County Court never reached the merits of the issue before the Court today as to whether Amway can compel arbitration for actions of the Plaintiff which have occurred long after the termination of their distributorship and association with Amway-

[3] Plaintiff Eric Scheibeler and his wife Patricia have testified before this Court on September 28, 2006, that the reason they stipulated to arbitrate their prior civil action is that shortly before the scheduled February 9, 2001 hearing Mrs. Scheibeler received a telephone call threatening her family. She immediately called her husband they decided it was not worth risking their families' safety so they consented to arbitration at that time.

[4] The Amway arbitration system was criticized by a Federal District Court in the case of ***NITCO Dist. Inc. v. Alticor, Inc.*** (Alticor is the parent company of Amway), 03-3290 CV-S-Rod CW.D Mo, September 16, 2005, a copy of this decision is attached as Plaintiff's Ex. 4, to their Motion for Preliminary Injunction. The Federal District Court found the Amway arbitration system "un-conscionable." Amway-Quixtar in its testimony before this Court in this proceeding contends that the defects found by the Federal District Court have now been substantially remedied in the arbitration system.

Quixtar. Though inactive in 2001 Plaintiff did not formally terminate his distributorship with Amway until August 8, 2003.

Plaintiff contends that Defendants' action to compel arbitration is simply an effort to silence Plaintiff in his public speech and criticism of Defendants' business practices.

On April 14, 2006 Defendants Amway-Quixtar filed a Demand for Arbitration under the Quixtar/IBOAI Arbitration Rules. ***See*** Exhibit 3 to Plaintiffs' Complaint. The demand for arbitration requested a hearing at Grand Rapids, Michigan. Quixtar and Amway in their demand asserted claims against Plaintiff for "defamation, business defamation under Michigan common law, injurious falsehood under Michigan State law, tortious interference with existing contracts, and tortious interference with advantageous business relationships." Defendants are seeking damages in excess of $10,000.

Plaintiff then filed his civil Complaint in Lycoming County on June 30, 2006. Defendants filed their Petition to Stay and Compel Arbitration on July 24, 2006.

Hearings held on these actions on September 28, 2006 and October 24, 2006, heard testimony from Eric and Patricia Scheileber, and from Ron Mitchell of Amway. Mr. Mitchell has been employed by Amway since 1998, and he is the manager of the Business Conduct and Rules Department. He testified that Amway sells health, beauty and home care products. The products are manufactured by a sister company. Amway has approximately 7,000 distributions of their catalog products. Their annual sales in the United States are 1 billion and 5-6 billion world wide. Alticor is the parent company.

Mr. Mitchell has been involved in business conduct and rules since 1995. The Rules of Conduct set out the responsibilities of the business owners and governs the contractual relations between the parties. The rules can change by amendment, and the distributors have a voice in this process by being on a board called IBOA, Individual Business Owners Association. The rules become effective when they are printed in corporate literature. The rules indicate the perimeters and protections for the distributors. Mr. Mitchell testified that Plaintiffs' Exhibit 1, the acknowledgement of distributor changes signed by Plaintiffs signifies Plaintiffs' agreement to arbitrate matters related to their distributorship. Mr. Mitchell agreed Plaintiffs formally terminated their distributorship in August 2003.

Mr. Mitchell also testified to some of the changes in the arbitration procedures. Originally arbitrators had to go through an Amway orientation process. Now arbitrators who have not been in this process may serve. Mr. Mitchell noted that arbitration saves some of the high costs associated with civil litigation.

Mr. Mitchell testified the corporation arbitrates disputes it may have with distributors, including defamation claims and allegations of fraud. The parties can agree to where the arbitration hearing is held and if they cannot agree the location is determined by the arbitrators. Mr. Mitchell testified the majority of arbitrations do not take place in Michigan, the corporate home of Amway/Quixtar. Mr. Mitchell claims the confidentiality provisions of arbitration protect the corporation and the distributors. Rule 11.5.4 allows the arbitrator to determine if the matter is an appropriate subject for arbitration.

Amway has sent an arbitration demand to Plaintiff. See Defendants' Exhibit 25. Mr. Mitchell believes that the matters in question which concern statements and actions by Plaintiff, long after he has terminated his distributorship, are subject to Amway arbitration because the issues deal with the operation of the Amway business structure.

Mr. Mitchell acknowledged that Amway never signed Plaintiff's Exhibit 21, the acknowledgment of distributions to inclusion of arbitration. Mr. Mitchell also agreed that if Mr. Scheibeler had not signed the acknowledgment of distributions for arbitration, he would not have been able to continue to do business as an Amway distributor.

Mr. Mitchell in his testimony agreed that the claims made by the corporation against Mr. Scheibeler in its arbitration demand concern statements made by Mr. Scheibeler to media sources after Mr. Scheibeler left his distributorship. In the statement of arbitration claim filed by Amway, Amway seeks to enjoin Mr. Scheibeler from disparaging Amway. ***See*** Plaintiff's Exhibit 13, Defendants' Exhibit 26.

Mr. Scheibeler testified that he had no choice but to sign the arbitration agreement or he would have had his business and income shut off by Amway. He also testified that the arbitration provision was added by Amway in response to civil actions filed against Amway alleging business fraud by Amway all around the United States. Mr. Scheibeler contends that arbitration, with its confidentiality provision, serves as a gag order against former Amway distributors. He claims when he complained to Amway while a distributor, he was charged with violating Amway rules of conduct.

II. Discussion

The Court has reviewed Plaintiff's Exhibit 3 to the Complaint and Plaintiff's Exhibit 13 at the hearing before the Court. This Exhibit is the demand for arbitration claim filed by Defendant Amway. When the statement of Defendants' claim is examined in a section entitled "Respondents misconduct," it can be seen that much of the claim against Plaintiff is based on his conduct after he terminated his relationship with Amway including his publicity of a book critical of Amway in 2004, currently available to the public in free downloads from Plaintiffs' website, along with conduct in year 2006 where Plaintiff allegedly contacted newspapers and online postings concerning Amway. The Defendant in its arbitration demand seeks to permanently enjoin Plaintiff from these activities. Defendants also seek compensatory damages from Plaintiff.

The Court does not believe that the agreement to arbitrate applies to the matters which Defendants now seek to compel into the Amway Quixtar arbitration system. Mr. Scheibeler has long since left his role as an Amway distributor. Plaintiff become inactive as a distributor in 1999 and he formally terminated his distributorship and his connection with Amway on August 8, 2003. He is now three years removed from any formal association with Amway. Logically, an Amway arbitration system should be a way to resolve disputes between parties working within the Amway system. It makes no sense that an agreement to arbitrate disputes arising out of or relating to an Amway distributorship signed in 1997 would forever prohibit the free speech rights of an individual who is simply voicing criticisms of Amway nine years after signing an agreement to arbitrate. Nowhere in the agreement to arbitrate does it say that an individual such as Mr. Scheibeler will forever give up his rights to offer criticism of Amway or its practices. The Court believes the interpretation of Defendant Amway-

Quixtar that the arbitration agreement would somehow still apply to public comment is far too expansive an interpretation of their arbitration system and the logical purpose and role of the system.

The Court does not see the agreement to arbitration as a contract which would apply to or be enforced in the circumstances presented in this case. If the arbitration agreement was meant to apply to public criticism of Amway long after an individual has left the Amway system it should have clearly said so. The Court does not believe the arbitration agreement can be reasonably construed to do this.

The Court also does not believe that the doctrine of collateral estoppel based on Plaintiff's 2001 submission to arbitration would apply to this case. The claims presented in the earlier action are different than the claims which are the subject of this action. This action revolves around statements and conduct of Plaintiff centered around 2005-2006. The Defendants' claims at this time are in essence defamation and business disparagement claims. This is different subject matter than the earlier claims.

Also, the Lycoming County Court in the 2001 action never ruled on the merits as to whether the Plaintiff could not litigate his complaint in the state civil court system. Rather, Plaintiff at that time, perhaps unwisely, agreed to submit the matter to Amway arbitration. Once they did this they had no good basis to complain about the matter being decided in arbitration and Judge Anderson so found in his opinion and order of March 3, 2004, denying Plaintiff's request to set aside the arbitration. See Logan v. Marks, 75 Pa.Comwlth.. 574, 579 (1983)("Of more importance, however, is the requisite for collateral estoppel that the issue before us now must have been actually decided in the prior case and a final judgment entered on the merits….An issue is not actually litigated

if it is the subject of a stipulation between the parties."); Restatement 2d of Judgments §2, comment e ("A judgment is not conclusive in a subsequent action as to issues which might have been but were not litigated and determined in the prior action…. An issue is not actually litigated… if it is the subject of a stipulation between the parties.").

Plaintiff has not so consented to arbitration in this case. We do not believe the doctrine of collateral estoppel would apply to the current case.

In conclusion, this Court does not believe the arbitration agreement entered into by plaintiff on October 4, 1997, still binds Plaintiff almost ten years later when Plaintiff has long ago given up his distributorship and association with Amway. To so find would mean Plaintiff's rights to speak about this matter would forever be gone but for confidential arbitration in the Amway system. Amway-Quixtar will have the same remedies as any other party would have to file a civil action to address the torts in which they claim Plaintiff has engaged. They are not left without a remedy.

The Court thus grants Plaintiff's Declaratory Judgment request in Count 1 of his complaint and declares that the arbitration agreement is not applicable to the action brought against Plaintiff.

Likewise, the Court will deny the Petition to Stay and Compel Arbitration filed by Quixtar, Inc. and Amway Corporation.

O R D E R

AND NOW, this _____ day of December, 2006, the Court **GRANTS** Plaintiff's Declaratory Judgment request in Count 1 of the Complaint and **DENIES** Defendants' Petition to Stay and Compel Arbitration.

By the Court,

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Kenneth D. Brown, P.J.

cc: Benjamin Landon, Esquire
William Carlucci, Esquire
Work file
Gary Weber, Esquire (Lycoming Reporter)