

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JOHN KIEHL and VITTORIA KIEHL,	:	NO. 15 - 3047
Plaintiffs	:	
vs.	:	CIVIL ACTION - LAW
	:	
AQUA VANTAGE POOLS & SPAS,	:	
WILKES POOL OF MIFFLIN, POOL TECH OF	:	
MIFFLIN, INC., JOHN BARRERA and POOL	:	
TECH, INC., individually and t/a AQUA VANTAGE,	:	
Defendants	:	Motion for Reconsideration

OPINION AND ORDER

Before the court is a motion for reconsideration filed by Defendant John Barrera on March 23, 2016. Reconsideration was granted on March 24, 2016 and argument was held May 16, 2016.

After a hearing which was duly noticed, on December 10, 2015 an arbitrator acting under the auspices of the American Arbitration Association entered an Award in favor of Plaintiffs and against all above-named defendants¹ in the amount of \$28,000.00 plus \$1,225.00 fees. It was noted that none of the defendants had appeared at the arbitration hearing. Plaintiffs then filed a petition to confirm this award and enter judgment, on December 16, 2015. On January 19, 2016, Defendant John Barrera filed an Answer to that petition and also filed a petition to vacate or modify the award. Mr. Barrera contended the arbitration panel did not have personal jurisdiction over him because he did not sign the agreement to arbitrate. Plaintiffs disputed that position, and also asserted that Mr. Barrera had waived his right to raise a jurisdictional objection.

While noting that arbitration cannot be compelled in the absence of an express agreement to arbitrate, *See Bair v. Manor Care of Elizabethtown*, 108

¹ Plaintiffs' claim was denied as against one Mary Price, who is not named herein.

A.3d 94 (Pa. Super. 2015), the court found in the instant case there *was* an express agreement to arbitrate, and further determined that under agency principles, Mr. Barrera could be held to that agreement even though he did not personally sign it. The court relied on Pritzker v. Merrill Lynch, Pierce, Fenner & Smith, 7 F.3d 1110, 1121-22 (3rd Cir. 1993), wherein the Court rejected the argument that an individual (one Ms. Stewart, who was employed by Merrill Lynch as a financial consultant and who was alleged to have made unauthorized purchases of investments) was not subject to an arbitration agreement because she had not signed the agreement, reasoning that “[b]ecause a principal is bound under the terms of a valid arbitration clause, its agents, employees, and representatives are also covered under the terms of such agreements.” Because Mr. Barrera is the President of the corporate entity, and was alleged to have taken part in the conduct which was the subject matter of the claim, the court believed he should be bound by the agreement to arbitrate.

Upon further consideration, however, it appears that the holding in Pritzker has been applied only in the situation where the agreement to arbitrate was signed by a party seeking to *avoid* arbitration on the basis that it was not signed by the other party, and that other party wished to take advantage of the agreement to arbitrate as an agent of a party which did sign it. In the instant situation, where a party who signed the agreement to arbitrate seeks to compel arbitration against a party who did not sign the agreement and who refuses to arbitrate, the Courts have refused to apply the holding of Pritzker and have held that arbitration against a non-signatory may not be compelled except under certain circumstances, which have no relevance here. *See, e.g.,* Bel-Ray Company, Inc. v. Chemrite (Pty) Ltd.,

181 F.3d 435 (3rd Cir. 1999). Therefore, this court erred in granting Plaintiff's Petition to Confirm Arbitration Award against Mr. Barrera.

With respect to the issue of waiver, it appears the court was also in error in holding that Mr. Barrera waived his objection to personal jurisdiction by failing to appear at the hearing. Failure to appear does *not* comprise a waiver of an objection to the arbitrator's personal jurisdiction. Langlais v. Pennmont Benefit Services, Inc., 2012 U.S. Dist. LEXIS 95897 (E.D. Pa. 2012).

Thus, the issue properly before this court, and the court having determined that Mr. Barrera was not subject to the arbitration process, the following is entered:

ORDER

AND NOW, this 17th day of May 2016, for the foregoing reasons, the Petition to Vacate and/or Modify Arbitration Award is GRANTED. The Petition to Confirm Arbitration Award is GRANTED in part and denied in part. The Award entered December 10, 2015, is hereby entered as a judgment in favor of Plaintiffs and against Aqua Vantage Pools and Spas, Wilkes Pool of Mifflin, Pool Tech of Mifflin, Inc. and Pool Tech, Inc., individually and t/a Aqua Vantage, jointly and severally in the amount of \$29,225.00 plus interest at the legal rate and costs of suit.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Suzanne Fedele, Prothonotary
William Carlucci, Esq.
Eric Mahler, Esq., 1043 Wyoming Ave., 1st floor, Forty Fort, PA 18704
Gary Weber, Esq.
Hon. Dudley Anderson