

US DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FILED

MAR 28 2011

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
HARRISON DIVISION

CHRIS R. JOHNSON, Clerk
By
Deputy Clerk

DAVID STEBBINS

PLAINTIFF

vs.

Civ. No. 11-3025

NET-ARB, INC.

DEFENDANTS

BRIEF IN SUPPORT OF MOTION

Comes now David Stebbins, who respectfully submits the following brief in support of his motion:

1. On the date of March 21, 2011, I sent an email to Net-ARB, Inc.'s email address, containing a counter-offer to their existing terms. See Exhibit A.
2. The email contained a link to a youtube video. I quote the opinion of *Hubbert v. Delll Corp* when I say "Common sense dictates that because the plaintiffs were purchasing computers online, they were not novices when using computers. A person using a computer quickly learns that more information is available by clicking on a blue hyperlink."
3. The counter-offer was accepted if they cancel my next case registration and inform me of it. To reject the contract, they must cancel my case registration, but not tell me about it. See Exhibit B.
4. This is a valid acceptance method, as a matter of law. See the Restatement of Contracts, Sec. 30(1). ("An offer may invite or require acceptance to be made by an affirmative answer in words, or by **performing or refraining from performing a specified act**, or may empower the offeree to make a selection of terms in his acceptance.") The website of www.lexinter.net provided a comment: "The offeror is the master of his offer.... The

form of acceptance is less likely to affect the substance of the bargain than the identity of the offeree, and is often quite immaterial. But the offeror is entitled to insist on a particular mode of manifestation of assent.”

5. On the date of March 24, 2011, the defendants performed the actions that signified their acceptance. See Exhibit C.
6. This contract has a meeting of the minds because the contractual terms are clear and unambiguous. That is all Arkansas law requires. See *Shelton v. Kennedy Funding, Inc.*, 8th Cir. Case No. 09-1670.
7. The counter-offer contains subject matter and legal consideration because it contains an arbitration provision. The subject-matter and legal consideration in an arbitration agreement is so blatant, it can stand alone as its own contract. See 9 U.S.C. Sec. 9.
8. Mutuality of obligation is not required in federal court, regarding arbitration provisions. See *Southeastern Stud & Components, Inc. v. American Eagle Design Build Studios, LLC*, 8th Cir. Case No. 08-3448.
9. There are no other essential elements of a contract, in Arkansas law. See *The Money Place, LLC v. Barnes*, Supreme Court of Arkansas, Case No. 01-1361. Therefore, the contract “is valid, irrevocable, and enforceable, save for such grounds as exist at law or in equity for the revocation of any contract.” See 9 U.S.C. Sec. 9.
10. The Defendants might argue that Georgia law applies. However, it is my belief that I would have won, even if Georgia law applied. Therefore, the Court is required to disregard that. See *Cicle v. Chase Bank*, 8th Cir. 08-1362.
11. On the date of March 24, 2011, after the Defendants performed actions that signified their acceptance to the contract, I sent them a Submission to Arbitration form, for the

American Arbitration Association, explaining how they were legally required to accept it.

See Exhibit D.

12. The relief I requested was a specific performance, since the counter-offer stated that they cannot refuse to accept any case that I file with them, using their services. I sought a specific performance to force them to adhere to that provision of the counter-offer. See Exhibit E.
13. The defendants responded to me, confirming that they received the submission form. See Exhibit F.
14. The defendants did not accept the arbitration invitation within the allotted time, and have therefore lost automatically, via the forfeit victory clause.

Wherefore, for all of the above-stated reasons, I respectfully pray that you confirm this arbitration award, award costs incurred, and other relief that the court finds appropriate.

It is so requested on this 26th day of March, 2011.



David Stebbins
1407 N Spring Rd, APT #5
Harrison, AR 72601
Phone: 870-204-6024

Gmail Calendar Documents Photos Reader Web more -

Search Mail Search the Web Show search options Create a filter

Mail
Contacts
Tasks

G Series for All Athletes - Prime, Perform & Recover with Gatorade G Series. Now Available. - www.YouTube.com/WhatsG

« Back to Sent Mail Archive Report spam Delete Move to inbox Labels More actions

Exhibit A

Compose mail
Inbox
Buzz
Starred
Sent Mail
Drafts
Personal
Travel
6 more v

Check this out. It's not spam.

from Read the email to find out <readtheemailtofindout@gmail.com>
to support@net-arb.com
date Mon, Mar 21, 2011 at 10:35 AM
subject Check this out. It's not spam.
mailed-by gmail.com

hide details Mar 21 (4 days ago) Rep

<http://www.youtube.com/watch?v=VFPR10DFPzQ>

YouTube - Videos from this email



Reply Forward

Read the email to find out
Search, add, or invite
Invite a friend
Give Gmail to:
Send invites 50 left
Preview invite

G Series for All Athletes - Prime, Perform & Recover with
Gatorade G Series. Now Available.
www.YouTube.com/WhatsG

« Back to Sent Mail Archive Report spam Delete Move to inbox Labels More actions

Compose a message in a new window by pressing "Shift" while clicking Compose Mail or Reply.

You are currently using 0 MB (0%) of your 7565 MB.

Last account activity: 55 minutes ago on this computer. Details

Gmail view: standard | turn on chat | turn off buzz | older contact manager | basic HTML Learn more

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Exhibit B

OVERVIEW

This is a contract between David A. Stebbins of Harrison, AR (I) and the arbitration firm of Net-ARB, Inc. (you). I will be raising an arbitration claim, soon, and this constitutes a counter offer to your current terms of service. This counter-offer, if accepted, will only apply to relations with me. You accept this counter offer by either A) allowing me to file this arbitration claim, or B) telling me that the case is being rejected. To avoid accepting this counter-offer, you must close the case, but not tell me about it. This counter-offer shall be entered into if you contact me in any way, shape, or form, including, but without limitation, telephone, email, snail mail (whether U.S. Postal Service, United Parcel Service, Fedex, or any other method of physical delivery), in-person conversation, etc.

ARBITRATION

All disputes between us – even those not related to this contract – shall be held to binding arbitration, using the applicable rules of the American Arbitration Association. The award may be confirmed in the United States District Court for the district in which I reside at the time. I may send you the demand for arbitration over email. If I cannot afford to pay the arbitration, you must pay it for me. If you even so much as attempt to litigate a case with me, even if that attempt is unsuccessful, you automatically lose that case. This arbitration clause will extend to all disputes that we could ever pursue against each other.

FORFEIT VICTORY CLAUSE

If you do not accept my invitation to arbitrate within 24 hours of receiving it, I automatically win the relief requested, regardless of the merits. No actual arbitration award need be entered; I simply win, automatically, without having to go to arbitration. However, this will only apply to me. If you attempt to arbitrate with me, and I do not accept it, you must obtain an order to compel arbitration.

YOUR SERVICES

Section M of your current version of the terms of service is hereby revoked. The following is inserted in its place.

“M. OBLIGATION TO HEAR: net-ARB will not refuse to arbitrate any case, for any reason. Net-ARB will respect all the first amendment rights of the parties. All issues submitted to net-ARB must have an award issued.”

Section J of your current version is hereby revoked. The following is inserted in its place.

“J. GOVERNING STATE LAW: Services performed by net-ARB are governed by the laws of the state in which David Stebbins currently resides.”

OTHER

You hereby agree to allow me to use, distribute, and sell the rights to your name, physical likeness, and any intellectual property that you may own, throughout the universe, for no fee, for all eternity.

You hereby agree to not request, nor accept any offer for, any third party to remove any material that I use.

Exhibit B

You hereby agree that, for all eternity, in the event that I ask you a question, you must answer it promptly, accurately, and truthfully.

You hereby agree to never

1. Interrupt me when I am speaking, for all eternity.
2. Hang up on me in any phone call, for all eternity.
3. Block my attempts to communicate with you, for any reason, for all eternity.
4. Ask me a question that I have previously answered, for all eternity.
5. Demonstrate any rudeness, annoyance, or disrespect, however petty, against me, for all eternity.
6. Accuse me of lying, or any variation thereof, for all eternity.
7. Defame me, in any way, even if no actual injury occurs from it, for all eternity.
 - A) "Defame," in this case, includes, but is not limited to, any statements about me which are true as written, but misleading to the point that a reasonable person – as defined by common law – would interpret it differently than what is actually true.

You hereby agree that no information that you obtain during your endeavor while contacting me will be used in any way, shape, or form without my express, written consent.

You hereby agree to waive all quasi-judicial immunity that you may have, and consent to suit. Furthermore, you agree to waive your immunity from all collection attempts, including wage garnishment and seizure of property.

If you do not accept my invitation to arbitrate within 24 hours after receiving it, then I automatically win the amount I request, regardless of the merits of the case.

No actual arbitration award needs to be entered for this clause to be validly enforced. If you don't accept the arbitration invitation within 24 hours after I send it to you, I just win, no fuss no muss, without even having to go to arbitration.

You hereby agree to reimburse me any costs that I expend in suing you for anything, including, but not limited to, travel expenses, expert witness fees, attorneys' fees, court fees, etc., even if these fees would normally be deemed "unreasonable" in normal litigation, all else being equal.

You hereby agree to never use any defenses in any legal disputes, including, but without limitation, absolute defenses or affirmative defenses, that are, ultimately, not held up in court, or arbitration.

You agree to never

1. Discriminate against me because of the content of this contract,
2. Retaliate against me for enforcing this contract.
3. Affiliate yourself with any entity – business or individual alike – who commits any of the above two provisions.

REMEDIES

If I win any suit against you, you agree to reimburse me all costs incurred, including, but

Exhibit B

not limited to, the following:

1. All costs specified in Fed. R. Civ. P. Rule 54(d).
2. All applicable attorneys fees, including those that would not otherwise be deemed "reasonable."
3. Lost wages that I incur by having to miss work to pursue this claim.
4. Travel expenses, even those not considered "reasonable," such as first class flights.

EXEMPTIONS

You will be exempt from all of the above provisions if one or more of the following conditions are met:

1. If you have a warrant, duly enacted in accordance with the 4th Amendment to the United States Constitution (or the equivalent state constitutional provision), to search this property, any property located on this premises, or the physical person of any person located on this premises, or if you have a warrant for the arrest of any individual located on this property. However, this exception shall be null and void in the event that the person you arrest is acquitted of the crime you arrest him or her for.
2. If you are contacting me to formally offer me a job (invitations to job interviews does not count).
3. If you may be convicted of a crime for *not* contacting me (remember, you must actually be subjected to criminal prosecutions to meet this exception. Merely getting fired, getting sued, or any other monetary loss not stemming directly from criminal fines, does not meet this exception, as you may still, without unconscionability, choose the entering into of this contract over any other civil or private monetary loss).

From: support@net-ARB.com (support@net-ARB.com)
To: garywallman@gmail.com;
Date: Thu, March 24, 2011 10:16:56 AM
Cc: stebbinsd@yahoo.com; anonymousxx12345xx@gmail.com; stebbinsd@gmail.com;
Subject: Online Arbitration

Exhibit C

To whom it may concern,

Regarding the notices you may have received concerning arbitration initiated by Mr. David Stebbins, be advised that you are only the latest in a long list of people and business entities that he has tried to bring to arbitration. We have advised Mr. Stebbins repeatedly that we will not do business with him, yet he defiantly continues to abuse our free filing system to harass others.

Please be advised that registration for this case and any others filed by Mr. Stebbins have been cancelled. Should you need more information about Mr. Stebbins and the cases he has filed, please let us know.

We sincerely apologize for any inconvenience.

Best regards,

net-ARB Support
internet-ARBitration
<http://www.net-ARB.com>

Every civil contract should have an Arbitration Clause! Arbitration assures fair, expedient and economical solutions to contract disputes. Non-appearance arbitration with net-ARB is literally as easy as answering your email. Construct an arbitration clause personalized for you at: http://www.net-ARB.com/arbitration_clause/

Exhibit D

From: David Stebbins (stebbinsd@yahoo.com)
To: support@net-ARB.com;
Date: Thu, March 24, 2011 11:42:46 AM
Cc:
Subject: Re: Online Arbitration

Hello,

As you may have gathered, by now, I am not taking this sitting down. I asked you for a simple explanation of why you don't want me using your services, or anything I could do to make you more willing to accept me. You wouldn't dignify that with an answer, so, let's fight each other over it.

Attached is a submission to arbitration, using the American Arbitration Association. See, a few days ago, I sent you a counter-offer for your services. This counter-offer was accepted when you actually contacted me to tell me that you are canceling this arbitration registration. To avoid accepting the counter-offer, you had to close the case, but not tell me about it.

Is that a legally valid acceptance method? Yeah, it is! From a legal standpoint, it is the same thing as a browse wrap agreement on a website (where simply browsing the website signifies your acceptance). What I mean is, the action - however subtle - is a valid method of accepting a contract; the main controversy involves whether or not the offeree actually received the contract offer.

However, to that end, I have a return email where you confirmed having received the blasted thing. If you didn't read it, that's your fault.

So, you accepted my counter-offer, which, among other things, requires us to arbitrate legal disputes, using the AAA. Furthermore, you have to pay for it, because I can't.

So, go ahead and fill this out, sign it, scan it, email that back to me, and I'll print it out and sign it, and mail it to you (I don't have a scanner), so you can send it to the AAA, along with your check.

Thank you. Have a nice day.

Sincerely,
David Stebbins

From: "support@net-ARB.com" <support@net-ARB.com>
To: garywallman@gmail.com
Cc: stebbinsd@yahoo.com; anonymousxx12345xx@gmail.com; stebbinsd@gmail.com
Sent: Thu, March 24, 2011 10:16:56 AM
Subject: Online Arbitration

To whom it may concern,

Regarding the notices you may have received concerning arbitration initiated by Mr. David Stebbins, be advised that you are only the latest in a long list of people and business entities that he has tried to bring to arbitration. We have advised Mr. Stebbins repeatedly that we will not do business with him, yet he defiantly continues to abuse our free filing system to harass others.



American Arbitration Association
Dispute Resolution Services Worldwide

Exhibit E

Please visit our website at www.adr.org if you would like to file this case online.
AAA Customer Service can be reached at 800-778-7879

SUBMISSION TO DISPUTE RESOLUTION

The named parties hereby submit the following dispute for resolution, under the rules of the American Arbitration Association.					
To be completed and signed by all parties (attach additional sheets if necessary).					
Rules Selected: <input checked="" type="checkbox"/> Commercial <input type="checkbox"/> Construction <input type="checkbox"/> Employment <input type="checkbox"/> Other (please specify) _____					
Procedure Selected: <input checked="" type="checkbox"/> Binding Arbitration <input type="checkbox"/> Mediation <input type="checkbox"/> Other (please specify) _____					
NATURE OF DISPUTE: Breach of contract; specific performance requested; request reinstatement into clientel.					
Dollar Amount of Claim \$ _____			Other Relief Sought: <input type="checkbox"/> Attorneys Fees <input type="checkbox"/> Interest <input checked="" type="checkbox"/> Arbitration Costs <input type="checkbox"/> Punitive/ Exemplary <input type="checkbox"/> Other _____		
PLEASE DESCRIBE APPROPRIATE QUALIFICATIONS FOR ARBITRATOR(S) TO BE APPOINTED TO HEAR THIS DISPUTE: Arbitrator well-versed in Contract law.					
Amount Enclosed \$ _____ In accordance with Fee Schedule: <input type="checkbox"/> Flexible Fee Schedule <input type="checkbox"/> Standard Fee Schedule					
HEARING LOCALE REQUESTED: <u>Desk arbitration</u>			Estimated time needed for hearings overall: _____ hours or <u>1.00</u> days		
We agree that, if arbitration is selected, we will abide by and perform any award rendered hereunder and that a judgment may be entered on the award.					
Name of Party David A. Stebbins			Name of Party net-ARB, Inc.		
Address: 1407 N Spring Rd,			Address: 3560 EAGLEROCK DRIVE		
APT #5					
City: Harrison	State AR	Zip Code 72601	City: Atlanta	State GA	Zip Code 30340
Phone No. 870-204-6024		Fax No.	Phone No.		Fax No.
Email Address: stebbinsd@yahoo.com			Email Address: support@net-arb.com		
Signature (required):		Date:	Signature (required):		Date:
Name of Representative: not applicable			Name of Representative:		
Name of Firm (if applicable) not applicable			Name of Firm (if applicable)		
Address (to be used in connection with this case) 1407 N Spring Rd, APT #5			Address (to be used in connection with this case)		
City: Harrison	State AR	Zip Code 72601	City:	State	Zip Code
Phone No. 870-204-6024		Fax No.	Phone No.		Fax No.
Email Address: stebbinsd@yahoo.com			Email Address:		
To begin proceedings, please send a copy of this Demand and the Arbitration Agreement, along with the filing fee as provided for in the Rules, to: American Arbitration Association, Case Filing Services, 1101 Laurel Oak Road, Suite 100 Voorhees, NJ 08043. Send the original Demand to the Respondent.					

From: support@www.net-ARB.com (support@www.net-ARB.com)
To: stebbinsd@yahoo.com;
Date: Thu, March 24, 2011 11:42:48 AM
Cc:
Subject: We received your email to net-ARB

Exhibit F

This is an automated message letting you know we received your email. We strive to provide personal assistance to each client and if your email requires a response, a real person will reply to you within 2 business days (although generally much sooner). If you do not hear from us within 2 business days, please re-send your email and change the Subject line to: Arbitration Question

Thank you.

David Stebbins
1407 N Spring Rd
APT # 5
Harrison, AR 72601

U.S. District
35 E. Mount
Room 510
Fayetteville