

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

CORNELIUS B. PRIOR, JR.,

Plaintiff,

v.

TRUSTEES OF THE COLLEGE OF THE
HOLY CROSS,

Defendant.

Case No. 4:23-cv-40116

**DEFENDANT’S MOTION TO COMPEL MEDIATION AND ARBITRATION,
TO APPOINT A MEDIATOR AND ARBITRATOR,
AND TO STAY FURTHER PROCEEDINGS**

Defendant Trustees of the College of the Holy Cross (the “College”) hereby moves to compel mediation and arbitration pursuant to the Federal Arbitration Act (“FAA”), 9 U.S.C. § 4; to establish a process for appointing a mediator and arbitrator, pursuant to the FAA, 9 U.S.C. § 5, and Local Rule 16.4; and to stay further proceedings in this Court pending the outcome of mediation and/or arbitration pursuant to the FAA, 9 U.S.C. § 3. Mediation and arbitration of the disputes raised in this action are required by the College’s binding and enforceable contract with plaintiff Cornelius B. Prior, Jr. (“Plaintiff” and, together with the College, the “parties”). The College requests that the stay include, but not be limited to, suspension of all deadlines for filing further pleadings or motions and conducting scheduling conferences, with the lone exception of establishing a prompt process for choosing (1) a mediation forum/venue and a mediator and (2) an arbitration forum/venue and arbitrator, should mediation fail.

The FAA mandates enforcement of binding agreements such as the one contained in the parties’ contract, see Biller v. S-H OpCo Greenwich Bay Manor, LLC, 961 F.3d 502, 508 (1st

Cir. 2020) (“the court has to send the dispute to arbitration” if movant demonstrates applicability of FAA), and provides complementary means of doing so by way of compelling arbitration and staying litigation for such purpose, 9 U.S.C. §§ 3-4. Motions to compel mediation are analyzed under the same framework, according to the same contract principles. See RGOI ASC, LTD v. General Electric Co., No. CV 18-12624-RGS, 2019 WL 1992436 *2 (D. Mass. May 6, 2019). Because all or virtually all of the issues raised by Plaintiff’s Complaint are subject to mandatory mediation and/or arbitration, the FAA “require[s]” that the Court stay this action pending the completion of those procedures. Large v. Conseco Fin. Servicing Corp., 292 F.3d 49, 52 (1st Cir. 2002) (emphasis added) (quoting Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395, 400 (1967) (quoting 9 U.S.C. § 3)).

Thus, for the reasons set forth in the College’s accompanying Memorandum, the College respectfully requests that this Court issue an order:

- (1) Compelling mediation and arbitration of the issues and claims raised in Plaintiff’s Complaint in accordance with the parties’ binding and enforceable contract, per 9 U.S.C. § 4;
- (2) Establishing a prompt process for choosing and appointing (i) a mediation forum/venue and a mediator and (ii) an arbitration forum/venue and arbitrator, should mediation fail, per 9 U.S.C. § 5 (requiring appointment of arbitrator where not set forth in arbitration contract) and Local Rule 16.4;
- (3) Requiring the parties to confer regarding item (2), above, and to file a joint report with the Court after a 14-day period summarizing the parties’ agreements, disagreements, and/or a narrowed list of mutually acceptable options for mediator, arbitration forum/venue, and arbitrator, from which the Court may choose and make appropriate referral orders; and

(4) Staying this proceeding in all other respects (including, without limitation the suspension of all deadlines for filing further pleadings or motions and conducting scheduling conferences) pending the completion of mediation and/or arbitration, per 9 U.S.C. § 3.

REQUEST FOR ORAL ARGUMENT

The College believes oral argument on this motion will assist the Court and wishes to be heard on the same. It therefore respectfully requests a hearing on this motion at the Court's earliest convenience pursuant to Massachusetts District Court Local Rule 7.1(d).

LOCAL RULE 7.1(a)(2) CERTIFICATION

Defendant's counsel hereby certifies that he has conferred with Plaintiff's counsel and has attempted in good faith to resolve or narrow the issues presented by this motion.

CERTIFICATION OF DEMAND FOR MEDIATION AND ARBITRATION

Defendant's counsel hereby certifies that he has made multiple written demands upon Plaintiff to engage in mediation and arbitration and that Plaintiff has rejected the same.

[signature block on following page]

Respectfully submitted,

TRUSTEES OF THE COLLEGE OF THE
HOLY CROSS,

By its Attorneys,

/s/ Joseph L. Bierwirth, Jr.

Joseph L. Bierwirth, Jr. (#BBO 564071)

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Dated: September 29, 2023

CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2023, I filed the foregoing document using the CM/ECF system, which sent notification of such filing to counsel of record in this matter.

/s/ Joseph L. Bierwirth, Jr.

Joseph L. Bierwirth, Jr.