

UNITED STATES DISTRICT COURT  
Middle District of Florida  
Jacksonville Division

BRUCE AND WENDY ANDERSON, ) Case No.: 3:07-cv-844-J-25JRK  
(in propria persona) )  
Plaintiffs, )  
v. )  
AMWAY/QUIXTAR, INC., a )  
corporation; )  
MICHAEL YOUNG McCORMICK, )  
DONALD E. CHRISTOPHER, )  
HAL GOOCH, )  
Defendants, )

---

ORIGINAL

**MEMORANDUM OF LAW**

**IN SUPPORT OF PLAINTIFFS' MOTION TO VACATE**

**ARBITRATION AWARD**

PLAINTIFFS, BRUCE ANDERSON and WENDY ANDERSON (the Andersons), On behalf of themselves (in propria persona) state as follows:

**Background**

On January 3<sup>rd</sup>, 2008, the Andersons filed a MOTION TO VACATE ARBITRATION AWARD in the record asking for relief provided for in Title 9 USC Sec. 10.

## MEMORANDUM OF LAW

Title 9 USC, The Federal Arbitration Act (FAA), is the authority to acquire, enforce and vacate arbitration awards. The FAA provides clear and concise directions (1) to validate the arbitration agreement/contract, (2) to fairly challenge the agreement/contract and to provide a court order to either enforce or dismiss arbitration, (3) to vacate any award acquired in violation of these procedures.

### 1. to validate the arbitration agreement/contract

#### *Section 2. Validity, irrevocability, and enforcement of agreements to arbitrate*

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, **save upon such grounds as exist at law or in equity for the revocation of any contract.**

Courts have favored arbitration as a means of dispute resolution but the FAA has placed limits on its use. Like any agreement/contract, the law provides for challenge and validation before enforcement and the FAA is no different.

Notice in Section 2 of the FAA the last statement is **“save upon such grounds as exist at law or in equity for the revocation of any contract”**.

Therefore: The agreement to arbitrate cannot be legally forced by one side on the other but rather has to pass the test of “revocation”. One of the conditions that destroy contracts is fraud. **37 Am Jur 2d at section 8** states, in part: **“Fraud vitiates every transaction and all contracts. Indeed, the**

principle is often stated, in broad and sweeping language, that fraud destroys the validity of everything into which it enters.

2. to fairly challenge the agreement/contract and to provide a court order to either enforce or dismiss arbitration

9 U.S.C Sec. 4. Failure to arbitrate under agreement; petition to United States court having jurisdiction for order to compel arbitration; notice and service thereof; hearing and determination

**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 which, save for such agreement, would have jurisdiction under Title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by the Federal Rules of Civil Procedure. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearing and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed. 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**, or if the matter in dispute is within admiralty jurisdiction, the court shall hear and determine such issue. Where such an issue is raised, the party alleged to be in default may, except in cases of admiralty, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury in the manner provided by the Federal Rules of Civil Procedure, or may specially call a jury for that purpose. If the jury find that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury find that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.**

The FAA is specific in section 4 to provide the procedure to validate and enforce, or to dismiss a demand for arbitration.

Either way, it is obvious that the FAA is putting the authority in the hands of a court and/or jury, not an arbitrator, to decide. The FAA does not provide for arbitration to be used by

one side to attack the other without a valid agreement or court order.

3. **to vacate any award acquired in violation of these procedures**

*Section 10. Same; vacation; grounds; rehearing*

(a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration

(1) Where the award was procured by corruption, fraud, or undue means.

(2) Where there was evident partiality or corruption in the arbitrators, or either of them.

(3) Where the arbitrators were 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 misbehavior by which the rights of any party have been prejudiced.

(4) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

It is obvious the legislators added these provisions to provide relief from well funded creative misuses of arbitration. Whether the law-makers witnessed the corruption of arbitration, or anticipated it, they have done their job well in providing checks and balances.

Amway/Quixtar has now attacked the Andersons with two arbitrations with total disregard for these procedures.

Quixtar's out-of-bounds arbitration technique has acquired over \$800,000 in awards against the Andersons alone. One award for \$784,000 now has been collected illegally from the Andersons and one award pending appeal.

## Conclusion

Amway/Quixtar has become proficient at arbitrating against victims without a valid agreement and getting around the FAA's requirements. Amway/Quixtar has numerous arbitrations to their credit and has won millions in awards. Amway/Quixtar has numerous arbitrations going on at the current time, and not once has the contract been challenged by a jury trial as per Title 9 USC section 4. Or, maybe we just haven't heard about it. Either way, Amway/Quixtar's miraculous ability to acquire awards in arbitration and avoid compliance with the procedures in the Federal Arbitration Act is fraud sufficient to void any contract/agreement and/or vacate this award.

Dated this 11<sup>th</sup> day of January, 2008

---

Bruce Anderson

---

Wendy Anderson

11211 Portside Dr

Jacksonville, Florida 32225

904 236 8615