

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, )

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**Original**

**SECOND 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.

On January 11<sup>th</sup>, 2008, the Andersons filed a MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION TO VACATE ARBITRATION AWARD.

### MEMORANDUM OF LAW

This MEMORANDUM will address case law in support of the MOTION TO VACATE ARBITRATION AWARD filed January 3<sup>rd</sup>, 2008.

#### The Existence of an Agreement to Arbitrate

Notwithstanding the FAA's underlying policy favoring arbitration, it is important to understand that the policy does not override the fundamental determination of whether there is a valid agreement to arbitrate in the first instance. **Will-Drill Res., Inc. v. Samson Res. Co., 352 F.3d 211, 214 (5th Cir. 2003). "Because the FAA is at bottom a policy guaranteeing the enforcement of private contractual arrangements, we look first to whether the parties agreed to arbitrate a dispute, not to general policy goals, to determine the scope of the agreement." In determining whether an agreement to arbitrate exists, we apply "ordinary contract principles." Id.**

It is clear that Amway/Quixtar knowingly and willingly avoids putting all arbitration agreements and contracts signed by Amway/Quixtar IBOs to the test of Sect 4 of Title 9 USC. Signed contract agreements are destroyed time and time again for fraud whether it be known at the time of signing or not.

There exists two obvious reasons that Amway/Quixtar does not comply with Title 9 USC Section 4, and go anywhere near a

court/jury to decide if their contract or arbitration agreement is valid.

1. Around 1998 time frame, G. Robert Blakey, an authority on racketeering and organized crime in the United States, drafted a report on Amway/Quixtar. [**See Procter & Gamble Co. v. Amway Corp (5th Cir. 2001)**]. The report revealed Amway/Quixtar to be structured as an organized crime family and involved in racketeering.
2. On Friday September 16, 2005 Missouri Federal District Court Judge Richard E. Dorr ruled on the Amway/Quixtar arbitration after looking closely at the facts.

**a. On "procedural unconscionability":**

***"In this case, the Amway arbitration provision was offered in a "take it or leave it" manner. The hallmark of "unequal bargaining position" is clear - to continue to be an Amway distributor, the agreement must be accepted. While Defendants contend that distributors had ample time to review the arbitration provisions before renewing or allowing the automatic renewal to occur, they do not refute that the arbitration provisions were given in a manner that required the distributors to accept the arbitration agreement as written or to quit the business all together.***

*There was no other entity with which Plaintiffs could contract to participate in a similar business.*

*Moreover, negotiation of the arbitration clause was unheard of. Defendants admit that a distributor could not sign the distribution agreement without the arbitration provision.*

*Defendants' position is that there was only one contract with all of its distributors . . . The above discussion concerns the procedural unconscionability based on the "take it or leave it" option presented to Amway distributors. The plaintiff tools businesses are one step removed from this procedure as their involvement is vicarious at best. Thus, if Plaintiffs were held to be bound by Amway's arbitration agreement, it would be the result of a procedure where Plaintiffs never had a choice. Accordingly, the arbitration requirement is procedurally unconscionable".*

**b. On "substantive unconscionability":**

*"Plaintiffs in this case have raised grave doubts as to the fairness of the hearing they would receive if in arbitration with JAMS and the neutrality of the arbitrators that would be chosen. Mainly, Plaintiffs*

oppose the selection of the arbitrators by Defendants and the training Defendants provide to the arbitrators. Plaintiffs have submitted videos and DVD's of Defendants' training sessions with the arbitrators and these exhibits show Defendants counseling the arbitrators on the nature of their business. It is this Court's opinion that the procedure utilized by Defendants to screen, train and ultimately hand-pick their panel of arbitrators does not come close to passing any reasonable test of fairness and neutrality required for a legitimate arbitration proceeding.

Amway's "training" covered a two day period and then a third day of "interviews." The training covered subjects including profiles of the people who started and now run Amway, the benevolent and independent culture of Amway, procedures to be utilized in arbitration, and a summary of various complaints the arbitrators could anticipate. The arbitrator candidates even participated in some "role playing" as successful Amway distributors. Also included throughout the two days were assurances that Amway was not a pyramid scheme and that the business was legitimate. Defendants claim, however, that the training was not out of the ordinary nor improper as

*the panel was not specifically told how to resolve possible issues they would see. On the videos, the Defendants state they will not discuss the meaning of the Rules of Conduct that are not absolutely "black and white."*

*It was most interesting that the issue presently before this court was included in a particular "training" discussion at one point, complete with diagrams from Defendants' counsel regarding what was appropriate and inappropriate in the scenario. The videos run almost ten (10) hours, but suffice it to say that it appears clear to this court that the training atmosphere and content of the discussions was designed to produce a very favorable view of Defendants. Coupled with the training session was the selection process being utilized by Defendants, both to select its initial group for training, then after personal interviews, to pick the final panel of arbitrators from which all arbitrators for Amway disputes would be chosen.*

*While there can be basic education of arbitrators regarding specialized subject matter, there is a point where basic education can be extended to subtle manipulation on issues which could be expected to be*

*considered by the arbitrators. This limit has been passed by Amway's preparation of the arbitrators at JAMS. While JAMS may be a respected organization, the Defendants have called the neutrality of this particular arbitration arrangement into question. Also telling is the fact that Defendants have never lost in arbitration, with the exception of a few counterclaims". . .(note: the Andersons could not find these "few counterclaims" lost by Amway/Quixtar in arbitration.)*

*"While the parties are allowed to choose their own arbitrators, the pool of candidates for this choice is limited by Defendants to those arbitrators whom Defendants have already pre-selected in a process that involves an initial screening, then training with a heavy dose of goodwill for Defendants and their manner of operation, then after personal interviews, being hand-picked to be on the list of arbitrators (so long as Defendants deem them to be acceptable). Arbitrators are to be neutral, and allowing such training and influence over the arbitrators as Defendants have in this situation is both unreasonable and unfair.*

*Although this court has found that none of the*

*Plaintiffs have submitted to arbitration, the court also finds that, in the alternative, arbitration with pre-selected JAMS arbitrators as presently set up by Defendants is unconscionable".*

It is obvious the majority of people who sign into the Amway/Quixtar business as IBOs have no idea that it is organized crime involved in racketeering and they have highly trained (wined and dined) arbitrators standing by.

**In *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 83 (2002), the Supreme Court reiterated the principal that "arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit."**

It would be obvious that Amway/Quixtar has become reckless in their arbitration enforcement. It would also be obvious that organized crime and racketeering organizations should have no legal ability to enforce contracts on unsuspecting victims of those contract clauses. One of the deceptions Amway/Quixtar uses to avoid 9 USC sec.4 is to claim both parties have agreed to "submit" claims to arbitration. This could not happen if one has an attorney that actually knows the law and represents you.

Donald E. Christopher, a defendant in this case would be a good example. The Andersons hire him in 1996 and in 2003 he notices them that he has been working for Amway/Quixtar in his spare

time and that you will be on you own in arbitration **(see Exhibit ONE)**. Another example is Michael Y. McCormick, a defendant in this case. He came highly recommended by Jody Victor (the Amway/Quixtar arbitrator trainer) and claimed he had no conflict taking me on as a client, when in fact it became evident that he was representing Rich DeVos (the owner of Amway/Quixtar) at that current time **(see Exhibit TWO)**. This hidden conflict of interest sets up a situation where these lawyers positioned the Andersons to be attacked by an arbitrator by not challenging the agreement/contract IAW Title 9 USC sec.4.

Why would these attorneys do such a thing, you ask?

When Amway/Quixtar showed up with money, trained arbitrators and they claim to have a valid signed agreement to arbitrate, it then becomes obvious to the lawyers that the Andersons' assets would be the easiest to acquire. So they succumb to the scheme and begin to misinform. This is a textbook example of racketeering.

**(quoting Steelworkers v. Werner & Gulf Nav. Co., 363 U.S. 574, 582 (1960).**

**This “gateway” inquiry as to whether the parties are bound by a given arbitration clause raises the “question of arbitrability,” which is an issue for the court, not the arbitrator, to decide.**

Once again, Amway/Quixtars' “make the rules as we go” arbitration technique is displayed in their trained arbitrator's ruling granting her own jurisdiction. **(see Exhibit THREE)**

**Samson, 352 F.3d at 217 (citing -9- Howsam, 537 U.S. at 84 (stating that the “question of arbitrability” is an issue for judicial determination unless the parties clearly provide otherwise)). In short, when there is a dispute as to the very existence of an agreement that contains an arbitration provision, such as where a party contends an agreement was not signed, or the signature was forged, or that an agent lacked authority to bind a principal, the court must resolve at the outset whether an agreement was reached between the parties by applying state law principles of contract. Samson, 352 F.3d at 218-19.**

In the most recent of the two arbitration attacks on the Andersons, Amway/Quixtar showed up with documents claiming to be the agreement the Andersons signed to arbitrate. It was also accompanied with an initial request to file these exhibits under seal **(see Exhibit FOUR)**.

It drew unprecedented suspicion when my last attorney refused to even show them to me. Needless to say, he did not last much longer. I finally acquired the documents to discover what Amway/Quixtar was trying to hide. There were four documents total and three appear to be obvious forgeries. The first dated 1984, is the only legitimate one **(see Exhibit FIVE)**. The other three **(see Exhibit SIX)** span a time of around ten years and it would appear whoever signed for Bruce Anderson, did so all at one time in the same day. Even though the Andersons were denied the originals to be examined, it would not take an

expert to figure out just what Amway/Quixtar was trying to hide.

### **Conclusion**

Title 9 USC section 10 holds many different provisions to vacate an arbitration award. Violation of any one would be grounds to vacate an award. Amway/Quixtar has, in this case, violated nearly every provision in Section 10 of Title 9 USC and the Andersons respectfully ask for this award to be vacated.

Dated this 14<sup>th</sup> day of January, 2008

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Bruce Anderson

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Wendy Anderson

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