

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

YARDIS CORPORATION AND : CIVIL ACTION
THE LEADERSHIP CLUB, INC. :
 :
v. :
 :
PERRY SILVER AND RECIPROCAL :
MERCHANDISING SERVICES : NO. 88-7211

MEMORANDUM ORDER

Presently before the court is the renewed request by correspondence of October 14, 2000 from plaintiffs' president, Raymond Rosenberg, to compel arbitration in view of defendants' failure to honor its commitment to the appointment of an independent accountant to effectuate the parties' agreement by which initial arbitration proceedings were terminated.

A corporation must appear in federal court through counsel. For any represented party to communicate with the court directly is unorthodox and generally unwise. For any party or its representative to communicate with the court ex parte is inappropriate. Nevertheless, the statements in the letter, which essentially mirror averments in earlier filings, appear to be well-grounded if somewhat hyperbolic. The court will direct the Clerk to docket this letter and provide a copy to defense counsel.

The parties executed a valid arbitration agreement which encompasses the instant dispute. Their obligation to arbitrate is enforceable by the court. A party cannot reasonably expect to evade its obligation to arbitrate by truncating arbitration proceedings with an unkept promise to resolve a

dispute in an alternative manner. In their verified Motion to Compel Arbitration, this is what plaintiffs aver defendants have done and they have not refuted this or otherwise responded to the Motion despite the direction in the court's order of May 30, 2000.

It is thus uncontroverted that defendants have failed to honor the commitment made during the court hearing of January 14, 2000 to the appointment of an independent accountant to conduct the audit of defendants' financial statements on which the adjournment of arbitration proceedings was predicated. Defense counsel's suggestion of February 23, 2000 that an audit be limited to a determination of whether a judgment in a particular amount would be collectible from Mr. Silver without a determination of the reason he had become judgment-proof during the pendency of this case, the critical issue in dispute, does not represent a good faith effort to proceed with the promised audit. Moreover, defense counsel apparently has never conveyed the response of Mr. Silver promised on February 23, 2000 to the current proposal for proceeding with the independent audit.

It is impossible to reconvene the arbitration panel initially selected. One of the three arbitrators has retired and another is deceased. Unless the parties certify in writing to the court by December 19, 2000 that an independent accountant has been engaged and given access to all information necessary to determine how Mr. Silver, who allegedly transferred \$2 million to

family controlled limited partnerships during the pendency of this case, became judgment proof, defendants will be required to arbitrate to conclusion the underlying dispute in this case. It will be for the new arbitrators to determine what, if any, effect is to be given to matters of record in the prior truncated proceedings before the initial panel was disbanded.

ACCORDINGLY, this day of November, 2000, upon consideration of plaintiffs' Motion to Compel Arbitration (Doc. #41) and in the absence of any opposition or other response by defendants thereto, **IT IS HEREBY ORDERED** that said Motion is **GRANTED** in that the parties shall by December 21, 2000 each select an arbitrator and proceed forthwith to arbitrate their dispute pursuant to the rules and procedures of the American Arbitration Association which shall select a third neutral arbitrator if the parties' arbitrators have failed to do so from an Association list by January 22, 2001, unless by December 19, 2000 all parties have certified in writing to the court that they have engaged an independent accountant who has been given access by defendants to all information necessary successfully to conduct an audit to determine defendant Silver's ability to satisfy a judgment and, if none, the reason he became judgment-proof during the pendency of this case.

BY THE COURT:

JAY C. WALDMAN, J.