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

MARY KAY STEWART, et al., Plaintiffs,	CIVIL ACTION
v.	NO. 96-CV-0441
STATE FARM FIRE & CASUALTY CO., Defendant.	

ROBERT F. KELLY, J. FEBRUARY 26, 2001

MEMORANDUM

Before the Court are two Motions filed by the appointed arbitrator: (1) to Compel Plaintiffs' Counsel to Pay the Arbitrator's Fee and Attorneys Fees; and (2) to Intervene Pursuant to Federal Rule of Civil Procedure 24. For the reasons that follow, the Motion to Intervene is granted and the Motion to Compel is granted in part and denied in part.

I. FACTS.

D. Michael Emuryan, Esquire ("Mr. Emuryan") was appointed arbitrator for the uninsured motorist portion of this case on October 2, 1996. After a series of delays, the arbitration was ultimately scheduled for February 11, 2000. On February 10, 2000, the day before the arbitration, the case settled. Mr. Emuryan forwarded his arbitrator's bill to both Plaintiffs' and Defendant's counsel on February 11, 2000, charging a total of $4950.00 for 22 hours of work at $225.00 per hour for reviewing correspondence, sending correspondence, and

preparing his bill. On February 22, 2000, a check in the amount of $2475.00 was received by Mr. Emuryan from the Defendant, State Farm. However, Plaintiffs' counsel, Allen Feingold, Esquire ("Mr. Feingold"), contests the accuracy of Mr. Emuryan's bill and insists that he will tender a reasonable fee to Mr. Emuryan upon completion of the entire case.

Mr. Emuryan, in an attempt to collect his fee from the Plaintiffs, threatened to file a separate lawsuit against Mr. Feingold in Delaware County, Pennsylvania. Instead, Mr. Emuryan filed the present Motion to Compel on September 29, 2000, and Motion to Intervene on January 17, 2001. Through the Motions, Mr. Emuryan seeks, in addition to the $2475.00 outstanding arbitrator's fee, additional money for 2.5 hours of time spent researching and preparing the Motion to Compel, 2.0 hours spent preparing the Motion to Intervene, and additional money for any correspondence or necessary court appearances.

II. DISCUSSION.

Mr. Emuryan moves to intervene in this action pursuant to Federal Rule of Civil Procedure 24.[1] He correctly argues that

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[1]Although Mr. Emuryan moves pursuant to FED. R. CIV. P. 24(a), this Court, after reviewing Rule 24, believes that the circumstances of this case actually place Mr. Emuryan under section (b) of Rule 24. Thus, his claim for relief will be analyzed pursuant to FED. R. CIV. P. 24(b). That section provides, in pertinent part:

> [u]pon timely application anyone may be permitted to intervene in an action: (1) when

the purpose of intervention is to enable persons to assert their interest in pending aspects of a lawsuit for the limited purpose imposed by intervention. (Mem. Law Supp. Mot. Intervene at 1) (citing Miller v. Amusement Enters., 426 F.2d 534 (5th Cir. 1970)). Mr. Feingold, on behalf of the Plaintiffs, opposes the Motion to Intervene on the bases that Mr. Emuryan is not a party, is not diverse from the Plaintiffs, and has no justiciable controversy in the litigation. Because Mr. Emuryan lacks standing in this lawsuit absent status as an intervenor, this Court will first address the Motion to Intervene.

In his Motion to Intervene, Mr. Emuryan cites Local 144, Hotel, Hospital, Nursing Home & Allied Services Union v. Sands, No. CIV.A.87-2778, 1992 WL 15154 (S.D.N.Y. Jan. 21, 1992), a case where, as here, an arbitrator sought leave of court to intervene and compel payment of his past due arbitration and attorney fees. In Sands, however, the case actually went to arbitration and the arbitrator sought leave of court to intervene under Federal Rules of Civil Procedure 24(b) or 71, or under the

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> a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. . . . In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

FED. R. CIV. P. 24(b).

All Writs Act, 28 U.S.C. section 1651(a). Id. at *1. Mr. Feingold attempts to distinguish Sands on the basis that the arbitration in that case was actually held. (Mem. Law Opp'n Mot. Intervene at 2.)

Because the Sands court had, by Order, appointed the arbitrator, it examined Rule 71 which provides that "[w]hen an order is made in favor of a person who is not a party to the action, that person may enforce obedience to the order by the same process as if a party." Sands, 1992 WL 15154, at *1 (quoting FED. R. CIV. P. 71). The appointment of Mr. Emuryan, as in Sands, was made by this Court's Order, and although Mr. Emuryan is "not a party to the present action, implicit in any order of reference to an arbitrator is that the parties will pay the arbitrator's fees." Id. Thus, just as the Sands arbitrator was entitled to seek to compel obedience of that court's order, Mr. Emuryan is also entitled to seek to compel obedience of this Court's Order. Indeed, as the Sands court stated:

> [d]enying [the arbitrator] the opportunity to intervene in this action would frustrate this Court's original order referring the matter to him for arbitration and undermine the entire tradition of arbitration . . . . Not allowing an arbitrator to seek enforcement of arbitration fees in the very court that ordered the reference would unnecessarily damage a vital cog in the wheels of justice. This Court therefore has the power to compel the present parties to pay the arbitrator's fees. Cf. Raff v. Maggio, 734 F. Supp. 592, 594 (E.D.N.Y. 1990)([finding that] section 301 of Labor Management Relations Act confers

> jurisdiction upon federal courts to ensure [an] arbitrator is paid for services rendered); Western Employers Ins. Co. v. Merit Ins. Co., 492 F. Supp. 53, 54 (N.D.Ill. 1979)([stating that] 'whenever a federal court properly orders or directs that arbitration be commenced, it out of necessity retains authority to enforce related arbitration procedures such as subpoenas duces tecum').

Sands, 1992 WL 15154, at *2. Mr. Emuryan may, therefore, intervene in this action in order to seek payment of his arbitrator's fee.

In support of his Motion to Compel, Mr. Emuryan cites just one case, Cunningham v. Prudential Property & Casualty Insurance Co., 489 A.2d 875 (Pa. Super. 1985), for the proposition that when the parties have agreed to arbitration, they must proceed with arbitration. Mr. Emuryan states that "it is clear that under the contractual agreement between the parties, the parties have agreed to pay the arbitrators as provided by the contract." (Mem. Law Supp. Mot. Compel at 1.) The arbitration clause of the insurance contract states, in pertinent part, that "[t]he cost of the . . . arbitrator and other expenses of arbitration shall be shared equally by both parties." (Mot. Compel, Ex. C.)

In response, Mr. Feingold contends that payment of any arbitrator's fee is contingent upon completion of the case and that this Court "has no jurisdiction to grant the relief sought by the arbitrator and consequently the arbitrator is not entitled

to any fees for seeking relief in a forum incapable of awarding such relief." (Id. at ¶ 13.) Mr. Feingold attacks the accuracy of Mr. Emuryan's bill and denies that it "accurately reflects the amount of time spent by the arbitrator in this case, as there is no itemization of the specific events or activities claimed to be undertaken and plaintiffs cannot therefore gauge the accuracy of the hours alleged." (Reply Mot. Compel at 2, ¶ 4.) He further denies that "twenty-two hours is a reasonable amount of time to spend as a neutral arbitrator in a matter which does not even require a hearing" and . . . "it is believed that much of the claimed time relates to matters upon which the arbitrator had no authority to deliberate, such as unpermissible discovery." (Id. at ¶ 5.)

Like Mr. Emuryan, Mr. Feingold cites one case, Trott v. Paciolla, 748 F. Supp. 305 (E.D. Pa. 1990), for support, contending that Trott limits this Court's authority to compel arbitration of the underlying dispute. Mr. Feingold asserts that, under Trott, "[c]learly, the matter of Mr. Emuryan's entitlement to his claimed fees is beyond the limits of such authority. As such, there is no jurisdiction in this Court to grant the relief which Mr. Emuryan seeks." (Mem. Law Opp'n Mot. Compel at 1.) In Trott, however, the Court merely stated that a district court's inquiry on a motion to compel arbitration is limited to ascertaining the existence and validity of an

agreement to arbitrate. Trott, 748 F. Supp. at 308. Therefore, Trott is inapplicable to the matter before this Court.

This case is, however, similar to Raff v. Irving Berlin, Inc., NO. CIV.A.91-2027, 1992 WL 77592 (S.D.N.Y. Mar. 23, 1992), where the plaintiff, a designated arbitrator in a union grievance before the American Arbitration Association, moved for summary judgment on the issue of payment of his fee. The defendant company refused to pay its share of the arbitrator's fee, alleging that the arbitrator's behavior at a hearing constituted "gross misconduct" and that his bill was "inflated." Id. at *3. The Raff court granted summary judgment in favor of the arbitrator on the basis that the defendant company's mere assertion that it was overcharged was insufficient, and the defendant was required to submit some evidence that the arbitrator did not perform the work as charged in his bill. Id. The court found that the defendant "provide[d] no legal support for the proposition that it [was] not obligated to pay . . . the cost of the arbitration it participated in." Id. at *4. Similarly, Mr. Feingold provides no legal support for his proposition that his clients are not obligated to pay the arbitrator's fee.[2] Thus, his clients remain liable for their

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[2]Plaintiff specifically argues, without legal support, that:

> [w]here or when does an attorney receive $225.00 for talking on the phone for a few minutes here and there or for reading

portion of the arbitrator's fees.

III. CONCLUSION.

Mr. Emuryan is permitted leave to intervene in this action in accordance with this Court's original order referring the matter to him for arbitration. Because the Plaintiffs have not proven that the circumstances of this case relieve them of their obligation to pay Mr. Emuryan's fee, however, the Motion to Compel Payment of the Arbitrator's Fee is granted. This Court, however, declines to award the additional attorney's fees or costs incurred by Mr. Emuryan as a result of filing the instant

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> correspondence and sending out correspondence. Plaintiff's counsel has worked on this case, for many years, . . . and did not receive, for all those years of work, much more than Mr. Emuryan. Plaintiff's counsel has probably received about $10.00 an hour for the time he has worked on this matter while Mr. Emuryan, without one hearing, no trial, no arbitration, no arguments, etc., want [sic] $225.00 an hour. Considering that Mr. Emuryan sat one or two seats from plaintiff's counsel throughout law school, their years of experience are each substantial and when the arbitrator makes almost as much money as the attorney handling the whole case, then something would seem to be wrong. It does not seem possible that an arbitrator, without the appropriate time sheets, can charge more than most attorneys charge for Court hearings, just to read correspondence or make phone calls.

(Mem. Law Opp'n Mot. Compel at 2.) Although Mr. Emuryan's bill lacks specificity with respect to minutes spent on various tasks, Plaintiffs' counsel fails to recognize that the 22 hours expended by the arbitrator was spent over a three year period.

Motions.

An Order follows.

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MARY KAY STEWART, et al.,	:	CIVIL ACTION
Plaintiffs,	:	
v.	:	NO. 96-CV-0441
STATE FARM FIRE & CASUALTY CO.,	:	
Defendant.	:	

ORDER

AND NOW, this 26th day of February, 2001, upon consideration of the Motion to Intervene (Dkt. No. 113) and the Motion to Compel Payment of Arbitrator's Fee and Attorney's Fees Seeking Payment From Plaintiffs' Counsel (Dkt. No. 104), and the Responses thereto, it is hereby ORDERED that:

1. the Motion to Intervene is GRANTED;

2. the Motion to Compel is GRANTED with respect to payment of the arbitrator's fee, and Plaintiffs shall pay $2475.00 to D. Michael Emuryan, Esquire, within ten (10) days of the date of this Order; and

3. the Motion to Compel is DENIED with respect to payment of Mr. Emuryan's attorney's fees and costs.

BY THE COURT:

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Robert F. Kelly, J.