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July 5, 2019

BY EMAIL

Mr. Jonathan Weed
Director of ADR Services
American Arbitration Association
1301 Atwood Ave., Suite 211N
Johnston, RI 02919
jonathanweed@adr.org

Re: Denson v. Donald J. Trump for President, Inc., Case No. 01-19-0000-5505

Dear Mr. Weed:

Thank you for your email of June 24, 2019, acknowledging that Jessica Denson has withdrawn her class action arbitration demand in the above-captioned matter. At the time Ms. Denson withdrew her class arbitration, she also requested a refund of the $3,350 filing fee she paid to the AAA. You acknowledge in your email that refunds are appropriate in "unusual circumstances" in AAA class action arbitrations. The circumstances of this case are highly unusual, and it would be fundamentally unjust for the AAA to retain Ms. Denson's filing fee.

As you know, Ms. Denson filed this arbitration against Donald J. Trump for President, Inc. (the "Campaign") pursuant to federal court order obtained by the Campaign. *Denson v. Donald J. Trump for President, Inc.*, 18-cv-2690 (JMF), 2018 U.S. Dist. LEXIS 148395 (S.D.N.Y. Aug. 30, 2018) (the "Federal Action") (copy attached as Exhibit A). Ms. Denson filed the Federal Action in March 2018 seeking to invalidate a non-disparagement and nondisclosure agreement ("NDA") the Campaign required all its staff to sign.

The Campaign moved in the Federal Action to compel arbitration of Ms. Denson's invalidity claims pursuant to an arbitration clause in the NDA. On August 30, 2018 the federal court granted the Campaign's motion and dismissed the Federal Action.[1]

Accordingly, pursuant to the federal court's order, on February 20, 2019, Ms. Denson filed the above-captioned class action arbitration to invalidate the NDA on behalf of herself and all individuals similarly situated. Her arbitration demand expressly referenced the federal court's decision. *See* Demand at ¶26. Ms. Denson paid the requisite $3,350 filing fee at that time.

[1] The Campaign had also initiated an unrelated arbitration against Ms. Denson in December of 2017, prior to her federal lawsuit, captioned *Donald J. Trump for President, Inc. v. Denson,* AAA Case No. 01-17-0007-6454 (the "Kehoe Arbitration"). Ms. Denson refused to participate in the Kehoe Arbitration, in which the Campaign claimed Ms. Denson had violated the NDA by filing an action for sex discrimination and harassment, and other common law violations. Neither party raised the issue of the NDA's validity in the Kehoe Arbitration.

The AAA acknowledged the arbitration demand in correspondence dated February 25, 2019 and March 4, 2019. On March 12, 2019, the AAA conducted a conference call laying out the next steps in the arbitration. On March 18, 2019, the Campaign sent a letter to the AAA demanding a stay of the arbitration pending a ruling from Arbitrator Kehoe over whether his Awards in the Kehoe Arbitration blocked Ms. Denson from pursuing the class action arbitration. The AAA rejected the Campaign's request, and Arbitrator Kehoe found he lacked jurisdiction to decide whether his awards had any preclusive effect on Ms. Denson's class claims (copy attached as Exhibit B).

In another conference call, on March 29, 2019, held moments before the Campaign filed its motion for a preclusion order from Arbitrator Kehoe, the Campaign raised, for the first time, the concept that the arbitration clause in the NDA was unilateral, and arbitration could only be carried out at the option of the Campaign. In an unrelenting effort to prevent any tribunal from making a decision on the NDA's validity on a fully developed record, the Campaign adopted a scenario under which if it prevailed on its preclusion motion before Arbitrator Kehoe, it would continue litigating in the AAA, but if it lost, it would force Ms. Denson – notwithstanding its prior motion in the Federal Action to compel arbitration – to return with her class action to federal court.

Although assuring the parties on the March 29, 2019 conference call that it would continue processing Ms. Denson's class claims, the AAA did not move this arbitration forward. We followed up repeatedly by email and telephone call, but we received no arbitrator list or reason for not providing it.

On May 29, 2019, after Arbitrator Kehoe denied its preclusion motion, the Campaign finally reversed the position that it had held since moving, in the Federal Action, to compel arbitration of Ms. Denson's NDA invalidity claims. It instead stated that the Campaign "does **not** consent to the AAA's jurisdiction over the Second Arbitration" (in which Ms. Denson raised multiple legal grounds for invalidation of the NDA) (emphasis in original). A copy of the Campaign's email is attached as Exhibit C.

The unusual circumstance that compels the refund of Ms. Denson's $3,350 fee is that the Campaign first forced Ms. Denson to arbitration by its motion in the Federal Action, and then refused to allow such arbitration in May 2019, thus compelling Ms. Denson to return her case to federal court after a year and a half of delay to no purpose. Moreover, the AAA failed to process Ms. Denson's class action arbitration in any manner following the March 29, 2019 conference call despite its promise on the call that it would do so, thereby playing into the Campaign's strategy of delaying, for as long as possible, any decision on the merits of the validity of its ubiquitous NDAs.

In sum, the Campaign's turnabout on arbitrability of Ms. Denson's NDA invalidity claims, after obtaining a federal court order directing arbitration and causing Ms. Denson to incur the AAA's filing fee, coupled with the AAA's inaction on her class claims, have turned this arbitration into a nullity and unjustly delayed her effort to litigate the NDA's invalidity for over a year.

Moreover, Ms. Denson's claims of NDA validity are brought in the public interest, and she paid the filing fee with funds raised from small contributions by individual donors who support such public interest litigation. Now that the Campaign has succeeded in forcing that action back into federal court, with no processing of the case by the AAA beyond initial form correspondence, those funds should be returned so that they can be used for their intended purpose – for litigation over the NDA's validity and not for administrative fees in a proceeding in which there was no significant administrative action.

Respectfully submitted,

David K. Bowles /by MBJ

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Cc: Maury B. Josephson, Esq. (via email)