

**DEPARTMENT 52 LAW AND MOTION RULINGS**

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**Case Number:** 22STCV21852    **Hearing Date:** August 18, 2023    **Dept:** 52

**Plaintiff Dylan Yeiser-Fodness's Motion to Vacate Order Compelling Case to Arbitration**

Plaintiff Dylan Yeiser-Fodness moves to vacate the court's order compelling arbitration of this action. "[I]f the fees or costs to initiate an arbitration proceeding are not paid within 30 days after the due date the drafting party is in material breach of the arbitration agreement, is in default of the arbitration, and waives its right to compel arbitration." (CCP § 1281.97(a)(1).) If the drafting party does not timely pay, the employee may "[w]ithdraw the claim from arbitration and proceed in" court. (CCP § 1281.97(a)(2).)

"[T]he Legislature intended courts to apply the statute's payment deadline strictly." (*Espinoza v. Superior Court* (2022) 83 Cal.App.5th 761, 771.) "[T]he triggering event is nothing more than nonpayment of fees within the 30-day period—the statute specifies no other required findings, such as whether the nonpayment was deliberate or inadvertent, or whether the delay prejudiced the nondrafting party." (*Id.* at p. 776.) The statute makes no exceptions for "clerical error" (*id.* at p. 775) or other "minor errors" by the drafting party (*id.* at p. 777).

Defendants 5 Star K-9 Academy, Inc. dba Master Dog Training and Ekaterina Korotun did not pay the arbitration fees within 30 days of the due date. On May 30, 2023, the American Arbitration Association (AAA) issued an invoice to defendants for \$2,100, due upon receipt. (Ryu Decl., ¶ 9, Ex. C.) On July 5, 2023, AAA closed the file because defendants had not paid the invoice. (*Id.*, ¶ 10, Ex. D.) Defendants therefore materially breached the arbitration agreement and waived their right to compel arbitration.

Defendants did not file an opposition, per se. On August 10, only six court days before this hearing, defendants 5 Star K-9 Academy, Inc. dba Master Dog Training and Ekaterina Korotun filed a document labeled "notice of status of arbitration and request for court order to arbitrate with ADR Services Inc." This document makes various factual assertions, but no arguments based on legal authority. It concedes defendants did not pay the invoice within 30 days but asserts they "were on vacation" at the time. (Notice of Status, p. 2.) Code of Civil Procedure section 1281.97 has no exception for delay caused by being on vacation.

*Sanctions*

In his motion, plaintiff seeks \$16,605.65 in sanctions against defendants. "The court shall impose a monetary sanction against a drafting party that materially breaches an arbitration agreement pursuant to subdivision (a) of Section 1281.97 or subdivision (a) of Section 1281.98, by ordering the drafting party to pay the reasonable expenses, including attorney's fees and costs, incurred by the employee or consumer as a result of the material breach." (CCP § 1281.99(a).)

Plaintiff seeks excessive sanctions. Plaintiff claims \$6,000 (Ryu Decl., ¶ 12) for eight hours of attorney fees incurred opposing defendants' motion to compel arbitration. He did not incur those fees as a result of the material breach. He incurred those fees when he unsuccessfully opposed the motion to compel arbitration. That was before defendants breached the agreement by failing to pay.

For this motion, plaintiff seeks \$10,500 in attorney fees (14 hours of fees at \$750 hourly), plus \$105.65 in other expenses. (Ryu Decl., ¶ 13.) Plaintiff did not reasonably incur 14 hours of fees making this motion. Plaintiff's estimate of 14 hours includes two hours reviewing the opposition and three hours preparing the reply and attending the hearing. Defendants filed something that was not quite an opposition and did not reasonably require two hours to review. Plaintiff did not file a reply. This motion was simple. It required little more than identifying the applicable statutes (Code of Civil Procedure sections 1281.97 to 1281.99) and authenticating copies of the letters from AAA showing that defendants did not timely pay the arbitrator's fee. It should not have reasonably required more than six hours of work at \$750 hourly. The court therefore finds plaintiff reasonably incurred \$4,605.65 in expenses as a result of defendants' material breach of the arbitration agreement.

### *Disposition*

Plaintiff Dylan Yeiser-Fodness's motion to vacate order compelling case to arbitration is **granted**. The court hereby **vacates** its order compelling arbitration issued on May 4, 2023. The court hereby **lifts** the stay of this action.

Defendants 5 Star K-9 Academy, Inc. dba Master Dog Training and Ekaterina Korotun are hereby **ordered** to pay plaintiff Dylan Yeiser-Fodness \$4,605.65 in sanctions within 20 days.

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