

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

INTERNATIONAL UNION OF PAINTERS &
ALLIED TRADES, DISTRICT COUNCIL
NO. 11, et al.

v.

C.A. No. 04-145 ML

KEITH ROBINSON PAINTING, INC.

v.

O. AHLBORG & SONS, INC.

RONALD M. COIA, et al.

v.

C.A. No. 04-267 ML

ROYAL DRYWALL & CONSTRUCTION
CO., INC.

v.

O. AHLBORG & SONS, INC.

MEMORANDUM AND ORDER

These cases are before the Court on the motions to compel arbitration of the respective defendants, Royal Drywall & Construction Co, Inc. (“Royal Drywall”) and Keith Robinson Painting, Inc. (“Keith Robinson”).¹ Although the motions are styled as motions to compel third

¹The defendants in both actions are represented by the same counsel, who filed motions and accompanying memoranda that are almost indistinguishable from one another. Similarly, the objections and accompanying memoranda filed by Ahlborg’s counsel are remarkably alike.

party defendant O. Ahlborg & Sons, Inc. (“Ahlborg”) to submit to arbitration, the relief that the defendants seek is both a general order compelling arbitration, as well as a more specific order relieving them from arbitration before the American Arbitration Association (“AAA”) and granting their request for arbitration before a mutually agreeable, non-AAA arbitrator. Ahlborg objects to these motions, asserting that the parties’ arbitration agreements expressly provide for arbitration before a AAA arbitrator.

I. Background

Both actions share nearly identical factual backgrounds. In each, the plaintiffs filed suit for union contributions that the defendants allegedly owe and failed to pay. The defendants, in turn, filed third party complaints against Ahlborg, in which they assert that Ahlborg is responsible for any union contributions that the defendants owe to the plaintiffs.

Ahlborg then moved to dismiss or, in the alternative, stay the third party complaints pending arbitration. Ahlborg argued that an arbitration clause contained in the agreements between itself and the defendants required the parties to submit to arbitration. Both agreements contain the same arbitration clause, which states:

Any controversy or Claim arising out of or related to the Contract, or the breach thereof involving \$250,000 or less, shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction thereof.... Claims or disputes in excess of \$250,000 shall, at Owner’s sole option, be decided by arbitration as set forth above or by litigation.

(Ahlborg’s Memoranda Supp. Obj. Mot. Compel Arb., Ex. A.) On November 16, 2004, the Court denied Ahlborg’s motions to dismiss, but granted its motions to stay the third party actions

pending arbitration.

The defendants consequently filed the instant motions to compel arbitration. In their motions, the defendants ask the Court to compel arbitration before a local, mutually agreeable arbitrator who would apply the AAA Construction Industry Arbitration Rules, rather than before a AAA arbitrator, “[i]n the interest of justice and to promptly and fairly resolve the issues in dispute between the parties....” (Royal Drywall’s Mem. Supp. Mot. Compel Arb. at 3; Keith Robinson’s Mem. Supp. Mot. Compel Arb. at 2.) The defendants ask that a non-AAA arbitrator be utilized due to the \$6,000 filing fee that each must pay in order to initiate its respective claim with the AAA. These fees, which the defendants say they cannot afford because they both are in “severe financial straits[,]” would be lower according to the defendants if the parties used a local arbitrator approved by the Court. (Royal Drywall’s Mem. Supp. Mot. Compel Arb. at 2; Keith Robinson’s Mem. Supp. Mot. Compel Arb. at 2.) The defendants do not object to the use of the AAA Construction Industry Arbitration Rules, as required by the agreements.

Ahlborg objects to the defendants’ motions, claiming that the arbitration clauses of the contracts, which refer to AAA Construction Industry Arbitration Rules, require the employment of a AAA arbitrator. Additionally, Ahlborg notes that Royal Drywall’s purported financial misfortune is an insufficient reason to deviate from the parties’ agreements, as the AAA Construction Industry Arbitration Rules provide for the reduction or deferral of administrative fees in cases of hardship.

II. Discussion

The Federal Arbitration Act, 9 U.S.C. § 1-16 (2004), strongly favors the rigorous enforcement of arbitration agreements. KKW Enters., Inc. v. Gloria Jean's Gourmet Coffees Franchising Corp., 184 F.3d 42, 49 (1st Cir. 1999) (citing Perry v. Thomas, 482 U.S. 483, 490, 107 S.Ct. 2520, 96 L.Ed.2d 426 (1987)). “When presented with a question of contract interpretation, [the court’s] ‘task is to ascertain the intentions of the parties, consistent with state law principles and with due regard for the federal policy favoring arbitration.’” HIM Portland, LLC v. DeVito Builders, Inc., 317 F.3d 41, 43 (1st Cir. 2003) (quoting DiMercurio v. Sphere Drake, Ins. PLC, 202 F.3d 71, 74 (1st Cir. 2000)).

The parties do not dispute that the arbitration clauses contained in the agreements between Ahlborg and the defendants require arbitration of the matters at issue here. What is in dispute is the proper arbitral forum to hear these disputes.

The arbitration clauses provide that claims arising out of the agreements “shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association[.]” (Ahlborg’s Memoranda Supp. Obj. Mot. Compel Arb., Ex. A.) In order to initiate an arbitration under the AAA Construction Industry Arbitration Rules, a claimant must “file at any office of the AAA two copies of the demand and two copies of the arbitration provisions of the contract, together with the appropriate filing fee....” American Arbitration Association Construction Industry Arbitration Rules and Mediation Procedures (Including Procedures for Large, Complex Construction Disputes) (Amended and Effective July 1, 2003), Rule R-4, available at <http://www.adr.org/sp.asp?id=22004> (last visited April 15, 2005). Additionally, the rules state that “[w]hen parties agree to arbitrate under these rules..., they thereby authorize the AAA to administer the arbitration.” Id. at Rule R-2. The AAA

Construction Industry Arbitration Rules therefore clearly and unambiguously require that arbitrations administered pursuant to these rules be conducted by the AAA. Consequently, it is Ahlborg's right under its agreements with the defendants to insist that any arbitration take place before the AAA.

III. Conclusion

For the reasons set forth above, Keith Robinson's Motion to Compel Arbitration and Royal Drywall's Motion to Compel Arbitration are granted in part and denied in part. These motions are granted to the extent that they seek a general order compelling the parties to enter arbitration. The motions are denied to the extent that they seek a specific order relieving the defendants from arbitration before the AAA.

SO ORDERED.

Mary M. Lisi
United States District Judge
April , 2005