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U.S. DISTRICT COURT
N.D. OF ALABAMA

AMERICAN DISPUTE RESOLUTION CENTER, INC.

IN THE MATTER OF:

DIRECTORY ASSISTANTS, INC.,
Claimant,

Arbitration Case No.

-and-

35-0321-13-S

DALTON JOHNSON D/B/A ALABAMA WOMEN'S CENTER, LLC and ALABAMA WOMEN'S CENTER FOR REPRODUCTIVE ALTERNATIVES, LLC
Respondents.

APRIL 21, 2014

DECISION AND AWARD

PROCEDURAL BACKGROUND

This matter was commenced by the Claimant's Demand for Arbitration dated November 1, 2013, submitted to the Alternate Dispute Resolution Center, Inc., pursuant to written contract between Claimant and Respondents dated August 21, 2009. Attached as Exhibit A to the Claimant's Demand was a copy of a written Consulting Contract, two pages in length (the "Contract"). The Contract contained within it a broad dispute resolution clause and arbitration clause on its second page.[1]

The parties to the Contract and to this arbitration proceeding are the Claimant, Directory Assistants, Inc., ("DAI") a corporation with offices and a principal place of business at 500

[1] The Contract provides :
Should a dispute arise, we both agree to try to resolve it with the other party. If we cannot, we both want to resolve it quickly, cost effectively and informally. To achieve that, we both agree to resolve any dispute arising out of or relating to this contract through confidential binding arbitration and agree to mutually choose the arbitration service, the location and which state's law will govern. If we are unable to come to a mutual agreement, or if one of us refuses to participate in choosing, the party filing the demand will have the right to make the choices unilaterally, as long as the filing party has made a good faith attempt to come to a mutual agreement. The non-filing party expressly consents to and waives any and all objections to the choices made.

Winding Brook Drive, Glastonbury, Connecticut 06033 and the Respondents, Dalton Johnson d/b/a Alabama Women's Center, LLC and Alabama Women's Center for Reproductive Alternatives, LLC, (hereinafter referred to as "Mr. Johnson" and "AWCRA"), respectively, with an office location at 612 Madison Street SE, Huntsville, Alabama 35801. Respondents were represented in this proceeding by legal counsel, Attorney Kimberly A. Ford, Fordumas LLC, 7800 Madison Boulevard, Suite 206, Huntsville, Alabama 35804.

Mr. Johnson purportedly signed the Contract on August 21, 2009, in the capacity of "Person Authorized to Contract for Advertiser." "Alabama Women's Center, LLC" was identified alongside Mr. Johnson's signature in his handwriting as the "Company Name / Advertiser."

DAI selected the Alternate Dispute Resolution Center, Inc. ("ADR Center") as the arbitration service, Connecticut as the forum, and the application of Connecticut law to this dispute. On November 21, 2013, the ADR Center notified the undersigned of his selection and appointment as the single arbitrator for this dispute to be held in New Britain, Connecticut pursuant to the parties' Contract and the ADR Center's Rules of Commercial Arbitration.[2]

PRELIMINARY MATTERS AND RULINGS

ANSWER AND COUNTERCLAIM

Initially, the Respondents sought and were granted an extension of time to file their Answer to the Claimant's Demand. With regard to Attorney Ford's request that Respondents receive an extension until December 13, 2013 to file their answer, counterclaim and conflict check form, the Arbitrator granted the requested extension, notwithstanding the Claimant's

[2] The undersigned accepted the appointment, executed a written Oath concerning his role and performance as the sole arbitrator for the dispute, and returned same to the ADR Center, Inc., along with his disclosure that he had no known conflicts, nor any contacts, professional or personal dealings, or relationship with the parties or with their counsel or prospective witnesses. The arbitrator had previously served as an arbitrator in a DAI matter and disclosed same.

objection. Thereafter on December 13, 2013, the Respondents filed an Answer and Counterclaim, denying the allegations of the Claimant's Demand. The Respondents' Answer alleged further that Dalton Johnson was an individual residing in Huntsville, Alabama and was the President and sole member of the Alabama Women's Center for Reproductive Alternatives, LLC, a/k/a Alabama Women's Center. Respondents' Answer objected to an arbitration utilizing the services of the American Dispute Resolution Center, Inc. in New Britain Connecticut for the arbitration service in this dispute, and maintained that any dispute resolution should be held in Madison County, Alabama and should apply Alabama law. Respondents' Answer alleged further that Claimant DAI had failed to engage in a "good faith effort" to come to mutual agreement with Respondents concerning the choice of arbitration service, the location or state's governing law, thereby negating Claimant's right to make a "unilateral" choice on such items. Respondents objected to Claimant's "unilateral" choices in this regard. Respondents asserted a counterclaim against DAI denominated as "fraud by misrepresentation, breach of contract and bad faith" and sought relief in the amount of $150,000.00 exclusive of punitive damages, costs interest and legal fees. The Respondents failed and neglected to pay the ADR Center the fees required by its rules for the assertion of a Counterclaim.

FIRST PRELIMINARY CONFERENCE

Pursuant to Rule 11of the ADR Center's Commercial Rules, the ADR Center and the Arbitrator convened a conference call on January 17, 2014 as a Preliminary Hearing in order to address preliminary issues raised by the Demand and by the Answer/Counterclaim. Attorney Kimberly A. Ford and Dalton Johnson participated on behalf of Respondents; Mr. David Ford participated on behalf of the Claimant. Because the parties had not come to mutual agreement on the selection of an arbitration service, the location of the arbitration, and the choice of law, the Arbitrator ordered that Claimant and Respondent address the issue of "good faith attempt" by the

filing party DAI "to come to mutual agreement" by way of simultaneous submission of relevant communications, letters, email exchanges and / or affidavits of telephone calls by January 31, 2014 to the ADR Center Case Manager. The Arbitrator scheduled a second preliminary hearing for February 7, 2014 by conference call. At or prior to the second preliminary hearing the Arbitrator would issue a preliminary ruling on the filing party's "good faith attempt" to reach mutual agreement under the DAI contract and address the issue of "unilateral choice" and "consent/ waiver of objection" by the non-filing party.

With respect to the Respondents' Counterclaim, the Arbitrator informed Respondents' counsel that Respondents had not paid the required filing fee to the ADR Center for the filing of a counterclaim of $150,000. The Counterclaim is set forth in paragraphs 11 and 12 of Respondent's Answer dated December 13, 2013. As such, the Counterclaim portion of the Respondent's Answer (paragraphs 11 and 12) was not properly filed or before the Arbitrator, and was not a part of this arbitration proceeding and would not be a grounds for relief or award. The Arbitrator advised counsel that Respondents' Answer would be interpreted as a denial of the Claimant's claim and as an objection to the unilateral selection by Claimant of the ADR Center as arbitration service provider, to New Britain, Connecticut as the place of arbitration, and to the application of Connecticut substantive law to the dispute.

As to narrowing the other issues, the Respondents admitted the execution and valid signature on the DAI contract appended to the Demand as that of Dalton Johnson. The Respondents maintained that Mr. Johnson signed in a representative capacity on behalf of a limited liability company of which he was the president and sole member and that he was authorized to do so. Respondents identified the Limited Liability Company as "Alabama Women's Center for Reproductive Alternatives, LLC" which also does business as or is known as "Alabama Women's Center." The Claimant questioned the legal existence of the entity

"Alabama Women's Center LLC" which was written in to the DAI Contract as the Company Name/ Advertiser and on behalf of which Dalton Johnson signed the Contract. The Claimant believed that "Alabama Women's Center, LLC" is not a legal entity but merely a d/b/a for Mr. Johnson as an individual.

Further orders regarding the parties' exchange of documentary discovery were addressed and the parties selected March 3 and March 4, 2014 as available for the Arbitration Hearing. (A copy of the Preliminary Hearing and Order of January 17, 2014 is attached to this Decision.)

RULING ON GOOD FAITH EFFORT/ UNILATERAL CHOICE

On February 4, 2014, following the submission of argument and documentary materials by the parties, the Arbitrator issued a Ruling on the question of whether the Claimant had engaged in a "good faith attempt to come to a mutual agreement" with the Respondents with respect to the selection of an arbitration service, the selection of an arbitration location, and which state's law should govern an arbitration proceeding between the parties. A copy of that Preliminary Ruling is attached hereto. The Ruling concluded that Claimant DAI had made a good faith effort or attempt to reach mutual agreement within the terms of the Contract:

> Thus in evaluating whether a good faith attempt to reach mutual agreement was made here by the filing party, Directory Assistants Inc., the inquiry is whether an honest attempt was made, faithful to the purpose of the underlying contract, free from any intent to defraud or mislead, and whether the charged party abstained from taking unconscientous advantage through form or technicality of the other party. Mr. Ford's communication of February 27, 2013 to Mr. Dalton Johnson, re-sent on February 28, 2013 to Attorney Ford, satisfies this standard of a good faith attempt. Mr. Ford expressed his company's preference as to arbitration particulars, but he also offered a potential alternative arbitration site. He invited Mr. Johnson or his legal counsel to respond and/or to suggest other alternative and equidistant sites for the arbitration. Mr. Ford's subsequent communications reminded the Respondents and their counsel of the need to respond to the arbitration particulars or that Directory Assistants Inc. would make the arbitration particulars choices per the contracts (*i.e.*, unilaterally).
>
> Given that Respondents and their counsel made no substantive response whatsoever between February 27, 2013 and April 22, 2013, despite promising to do so on several occasions, and given the Claimant's additional communications

after February 28, 2013, continuing to seek a substantive response from the Respondents, the documentary record satisfies the requirement that a "good faith effort to reach mutual agreement" was made here. Respondents were afforded and were solicited on numerous dates over a seven week period for their "response," but they simply chose to make no response.

SECOND PRELIMINARY CONFERENCE

On February 7, 2014 the Arbitrator convened a Second Preliminary Hearing via conference call in which Attorney Kimberly Ford participated on behalf of Respondents and Mr. David Ford participated on behalf of Claimant. The Second Preliminary Hearing addressed details of the parties' Hearing on March 3rd and 4th; the submission of pre-hearing memoranda; the form of award desired; the exchange of documentary materials, and the identification of potential witnesses. With respect to the Parties and their identities, Respondents' counsel represented that her documentary submissions and exchange with Claimant identified the Limited Liability Company at issue and as registered with State and Local authorities as "Alabama Women's Center for Reproductive Alternatives, LLC." Respondents identified the "Alabama Women's Center, LLC" as a d/b/a name for the "Alabama Women's Center for Reproductive Alternatives, LLC." The Claimant agreed to review the submitted materials that it had not yet received as of the call. The Claimant's position was that Mr. Dalton Johnson was personally responsible for damages to the Claimant because the entity "Alabama Women's Center, LLC" was not a legal entity and/or was fictitious or that the "Alabama Women's Center LLC" was a d/b/a for Mr. Johnson as an individual.

Ms. Sandy LaBella, the Case Coordinator at the ADR Center issued a Notice of Hearing, scheduling the dispute for a hearing on March 3rd and March 4th, 2014 at 9:00 a.m. at the Arbitrator's law offices in Avon, Connecticut. Copies of the Notice were sent to DAI and to Respondents' counsel, Attorney Ford. (A copy of the Second Preliminary Hearing and Order of February 7, 2014 is attached to this Decision.)

CONTINUANCE OF THE HEARING

On February 27, 2014, Respondents counsel requested a continuance of the Arbitration Hearing scheduled for the next week on March 3rd and 4th. The Arbitrator issued the following ruling:

The Second Preliminary Conference Call Order of February 07, 2014 read as follows:

ARBITRATION HEARING

The parties have scheduled their hearing for March 3 and March 4, 2014. The Arbitrator will host the hearing at his offices located at 111, Simsbury Road, 2nd Floor, Avon CT 06001. The hearings will commence at 9:00 am each day and shall run as long as both the parties and the Arbitrator may agree. The Arbitrator is mindful of the distance that the Respondents and their counsel are traveling and will address any postponement due to impending bad weather as near as possible to the hearing date.

The current weather forecast is for a significant and slow moving winter storm to move east out of the Midwest and to impact the Northeast between Sunday night and Tuesday, with Monday being the worst day. Given the size of the storm system and its likely impact upon airline travel schedules nationwide, I am inclined to grant Respondents' request for a postponement of the March 3rd and 4th hearing due to impending bad weather. However, I will not do so in the absence of new hearing dates being selected. Respondents' request for a postponement of the hearing and the accompanying communications offer no alternative dates for the hearing. The Arbitrator is mindful that Claimant, its legal counsel and the Arbitrator have adjusted their own schedules to accommodate the March 3rd and 4th hearing dates.

ORDER

Respondents shall submit immediately and simultaneously their proposed available dates for a postponed hearing of two consecutive days' duration in the period March 10. 2014 through April 25, 2014 to the ADR Center Case Manager and to the Claimant directly by email. Claimant shall respond immediately with its availability and its preferences based on the dates submitted by Respondents, and/ or respond with other consecutive dates in this time period based on Claimant's availability. The Arbitrator will do everything reasonably possible to accommodate the parties' selection of a new hearing date(s) in his schedule.

If a mutual and consensual selection of a new hearing date(s) by the Parties is not possible, the Arbitrator may (1) select a new hearing date, guided by the Parties' submissions, or (2) may deny the Respondents' request for postponement of the March 3rd and 4th hearing. See ADR Center Commercial Rules 14 and 17.

By the close of business today, February 27, 2014, the Arbitrator will issue a final ruling on the Respondents' Request for Postponement.

The Parties exchanged their available dates for a new hearing and the dates of April 14th and 15th were selected. The Arbitrator granted the Respondents' request for a continuance of the hearing to April 14th and 15, 2014. On February 27, 2014, Ms. Sandy LaBella, the Case Coordinator at the ADR Center issued a Formal Notice of Hearing, scheduling the dispute for a hearing on April 14th and 15th, 2014 at 9:00 a.m. at the Arbitrator's law offices in Avon, Connecticut. Copies of the Notice were sent to Claimant DAI and to Respondents' counsel, Attorney Ford. The Formal Notice specified that the Parties and their witnesses were expected to attend the hearings on time and be ready to present their cases. (A copy of the Formal Notice of Hearing is attached to this Decision).

RESPONDENTS' NOTICE OF NOT ATTENDING THE HEARING

On April 7, 2014, Ms. Sandy LaBella, the Case Coordinator at the ADR Center received a letter via email from Respondents' counsel, Attorney Kimberly A. Ford. Counsel's letter informed the ADR Center that neither Respondents nor their legal counsel would be attending the April 14th and 15th arbitration hearing sessions and that Respondents "are not able to continue with the arbitration of this matter." Respondents' letter did not request a postponement of the hearing but merely informed that the Respondents will not be attending the arbitration hearing or participating further in the arbitration of this matter. The Case Manager informed the Arbitrator that the Claimant DAI wished to proceed with the arbitration hearing scheduled for April 14, 2014. On April 8, 2014 the Arbitrator ruled that pursuant to Rule 18 of the ADR Center's Commercial Rules and pursuant to Section 52-414(b) Conn. Gen. Stat. that the arbitration hearing would proceed on Monday, April 14, 2014 for one half-day session, on an *ex parte* basis. The Arbitrator would have the authority to render an award based on the evidence and arguments submitted by Claimant at the hearing. The second day of hearing scheduled for

April 15, 2014 was canceled. Notice of this Ruling was sent to Respondents' counsel and to the Claimant.

HEARING

At approximately 9:00 a.m. on April 14, 2014 the hearing was convened. The Arbitrator took the oath specified in the ADR Center's Rules and in Section 52-414(d) Conn. Gen. Stat. Two witnesses were sworn and presented testimony; Monica Page and David Ford, both employees and managers for Claimant DAI. No witnesses or representative attended the hearing on behalf of Respondents.

Rule 18 of the ADR Center's Rules of Commercial Arbitration provides:

> If either a party or representative fails to appear or to request a postponement after due notice of the hearing, the hearing will proceed ex-parte and the arbitrator(s) shall have the authority to render an award.

Section 52-414(b) of the Connecticut General Statutes provides:

> If any party fails to appear before the arbitrators or an umpire after reasonable notice, the arbitrators or umpire may nevertheless proceed to hear and determine the controversy upon the evidence which is produced before them.

Claimant DAI's witnesses presented testimony on the factual assertions made in DAI's Claim and DAI's claims of damages. DAI presented two large notebooks of documentary exhibits to accompany their testimony, marked as DAI Exhibits Binder 1 and DAI Exhibits Binder 2. In addition, while at the hearing, an internet search was conducted of the online database of business entities maintained by the Secretary of State for the State of Alabama. That internet search on the Alabama Secretary of State's official website yielded no registered business entity named "Alabama Women's Center, LLC." Rather, the online search for the name "Alabama Women's Center" yielded an entry for "Alabama Women's Center for Reproductive Alternatives, LLC", Business ID 670 – 534; a domestic limited liability company with Registered Agent: Dalton C. Johnson; Address 612 Madison St., Huntsville AL 35801. The

members of the LLC were listed as Dalton C. Johnson and Carl L. Palmer. The nature of the business listed was "Operate Reproductive Health Care Facilities for Women."

The two DAI witnesses, Ms. Page and Mr. Ford, explained and amplified upon the exhibits and addressed DAI's consulting business methodology with respect to directory advertising in general and with respect to DAI's dealings with Mr. Dalton Johnson, Alabama Women's Center, LLC and AWCRA, in particular.

No documentary submissions or testimony from Respondents or from their counsel Attorney Kimberly A. Ford were submitted into evidence. On April 14, 2014 at approximately 1:00 p.m., the undersigned ceased taking evidence and declared the hearing closed. No provision was made or required for submission of post hearing briefs.

Both the ADR Center's Rules and the Contract contemplate the preparation of a written award, addressing a detailed breakdown of "each claim." See Rule 24, ADR Center Commercial Rules. Neither the Contract nor the Commercial Rules mandate a "reasoned award" or express factual findings or legal conclusions unless the parties request it or the arbitrator deems it necessary. In the Second Preliminary Hearing of February 7, 2014, both parties had requested that the Arbitrator prepare a detailed and reasoned award. Given the Respondents' failure to attend and participate in the hearing, I agree that it is necessary and advisable to issue a detailed and reasoned award in these circumstances. The Claimant DAI requested a reasoned award at the April 14, 2014 hearing.

AWARD

The Claimant's Demand asserts a breach of contract by the Respondents. "The elements of a breach of contract action are 'the formation of an agreement, performance by one party, breach of the agreement by the other party and damages.'" *Rosato v. Mascardo,* 82 Conn. App

396, 411 (2004)(quoting *Bouchard* v. *Sundberg*, 80 Conn. App. 180, 189, (2003)); *Chiulli v. Zola,* 97 Conn.App. 699, 706-707, 905 A.2d 1236 (2006).

> "Whether there was a breach of contract is ordinarily a question of fact.... We review the court's findings of fact under the clearly erroneous standard.... The trial court's findings are binding upon this court unless they are clearly erroneous in light of the evidence and the pleadings in the record as a whole.... We cannot retry the facts or pass on the credibility of the witnesses....A finding of fact is clearly erroneous when there is no evidence in the record to support it ... or when although there is evidence to support it, the reviewing [109 Conn.App. 754] court on the entire evidence is left with the definite and firm conviction that a mistake has been committed...." (Citation omitted; internal quotation marks omitted.)

Colliers, Dow & Condon, Inc. v. Schwartz, 77 Conn.App. 462, 471-72, 823 A.2d 438 (2003).

The credible evidence adduced at hearing established the following. The scope of DAI's consulting service is designed around helping an advertiser client reduce its directory costs by making informed yellow page, white page and publisher internet advertising buying decisions. By using DAI's expertise, services, recommendations and guidance, advertising clients can make more reasoned, economical, and efficient decisions with respect to their telephone directory advertising choices; can better integrate their directory advertising with other advertising media and methods; can save money in their gross advertising expenditures; can relieve themselves of much of the administrative time and overhead expense of dealing with the directory publishers and in composing appropriate and cost effective advertisements, monitoring the published directories themselves for follow through, and scrutinizing billings for accuracy. The advertiser client is free to avail itself of as much or as little of DAI's services as it might choose.

If the advertiser client was willing to engage DAI under a contract, DAI offers to evaluate the client's existing directory advertising program, bring its expertise to bear, and help the client identify the specific business factors and the advertising strategies and choices unique to the client's business needs, and evaluate the return on investment that should be considered when

purchasing yellow page directory advertising. The advertiser client remains free to accept, reject, modify, implement or ignore any or all of DAI's advice and recommendations.

As explained by DAI's witnesses, the yellow pages directory salesman might seek to sell the advertiser client on the largest, most colorful, and coincidentally most expensive advertising program, to be located in as many published directories as possible---and in doing so the salesman would maximize the publishing directory's revenues. Whether such an expense was a cost-effective business decision for a particular client's business is less readily apparent. Does the consumer choose a neurosurgeon based on the size, color and placement of his/her yellow page directory advertisement or based on informed professional referrals and other research? If a business's customers were entirely local, and if proximity mattered most to the consumers of those products or services, should that advertiser client business pay for ads in non-local directories?

Because what DAI was offering was its consulting know-how and expertise and the intellectual application of that know-how to a client's specific situation, DAI's witnesses testified that DAI would not begin to review the client's advertising program or to disclose its suggestions or recommendations to the prospective client in the absence a signed written consulting contract.

For its initial engagement with a new client, as in this case, Ms. Page and Mr. Ford explained how DAI uses a consulting contract (Claimant's Exhibit C-1) that will compensate DAI based upon a sliding contingent fee. DAI's fee is expressed as a percentage applied against the "gross savings" achieved by the advertiser client, when compared to the cost of simply renewing the client's existing directory advertising program at published renewal costs. The percentage fee is then multiplied out over the term of years of the contract, and accounts for publisher rate increases. If the advertising client receives DAI's consulting analysis, but the client makes no changes whatsoever, and simply renews its same advertising program at published

renewal costs, then no consulting fees are due to DAI. If, however, the advertising client does make changes in its advertising program, including potential removal of ads, dropping ads from certain directories, changing the size, color, or placement of ads, or otherwise availing itself of discounts, better rates, etc. after contracting with DAI and after receiving DAI's analysis and disclosure, and if those changes produce a gross cost savings to the client, then the contract presumes those gross savings to be the direct result of and attributable to DAI's involvement, and a percentage of the client's gross savings is due to DAI as its fee.

The Contract (Exhibit C-1) provides several protection mechanisms for the potential client. First, if the advertiser client was already contemplating changes in its advertising renewal program before it dealt with DAI, the client could list or itemize those changes as "Pre-disposed Changes" on page 2 of the Contract. DAI is not compensated for any savings attributable to listed "Pre-disposed Changes." As explained in testimony at hearing, if a prospective client was already intending to eliminate or remove it ads from certain yellow page directories or was already intending to downsize its ad, it had only to list those intended actions as "pre-disposed changes" to be relieved of any obligation to pay a fee based on savings associated with them. In the present case, no "pre-disposed changes" were listed or indentified on the Contract with Dalton Johnson, Alabama Women's Center, LLC and AWCRA.

Second, DAI offered a "performance guarantee." DAI "guaranteed" that it would show the advertiser client how to achieve a gross savings "of at least 40%" on its yellow page directory advertising costs. If DAI failed to do so, and failed to cure this problem within 10 days of notice, then the advertiser client had a right to terminate the contract. Third, as mentioned previously, if there were no "savings" achieved or if no changes were made by the advertiser client to its advertising programs after working with DAI, then no fees would be due.

DAI Exhibit C-3 collects and summarizes DAI's analysis and review of the then existing advertising program of Alabama Women's Center, LLC. Exhibit C-3 and -6 set forth DAI's recommendations for revisions to that directory advertising program. Even with the existing yellow page ads, some ads listed the client as "Alabama Women's Center" while others listed the client as "Alabama Women's Center, LLC" while still others listed the client as "Alabama Women's Clinic."

1. Was a Valid Contract Formed and If So, Who are the Parties to It?

Claimant's case is predicated on a breach of contract. Respondents admitted in their Answer and in the Preliminary Hearings that Dalton Johnson signed the Contract appended to the Claimant's Demand for Arbitration. Claimant offered an executed copy of the Consulting Contract, Exhibit C-1, into evidence and augmented the exhibit and additional exhibits with testimony from Ms. Monica Page. Based on the evidence submitted, I find Exhibit C-1 to be the parties' written contract and find that Mr. Johnson executed the consulting agreement with DAI on the terms expressed therein for an entity that he identified as "Alabama Women's Center, LLC" as the Company/Advertiser.

Ms. Page's testimony addressed how Dalton Johnson, Alabama Women's Center, LLC, and AWCRA appointed DAI as their "directory advertising consultant" in connection with the placement of directory advertising and all details of same. (See Exhibit C-2). The DAI Exhibits contain a strategic review of the current directory advertising of "Alabama Women's Center LLC"; comparisons to current advertisements from competing abortion service providers from both Huntsville, Alabama and from other geographic directories; and proposed changes and savings that could be made in the directory advertising program of "Alabama Women's Center, LLC" (See Exhibits C-3 & C-6) with directory services such as AT&T Yellow Pages, "Yellow Book" and other directories and internet listings.

Ms. Page further testified how DAI had calculated and billed for its fees and services in achieving advertising cost savings and how Alabama Women's Center, LLC paid DAI on its billed fees, albeit late and not in full. Ms. Page testified that DAI was mindful of Mr. Johnson's cash flow problems and extended his time for payment and accepted less than payment in full as an accommodation to the customer. Exhibit C-9 comprises 17 checks payable to DAI dated between April 21, 2010 and May 10, 2012 issued by "Alabama Women's Center for Reproductive Alternatives." Exhibit C-10 further addresses how DAI's invoices were normally due net 30 days per the Contract but how Mr. Johnson requested to pay DAI's fees due over an extended period. In addition, the Alabama Women's Center initiated a website and sought DAI's assistance and consulting advice on where and how he could get that website listed on various website directories.

The documents and testimony submitted by DAI establish that a valid contract was formed; that DAI advised Mr. Johnson, Alabama Women's Center, LLC and AWCRA on how to achieve costs savings in their directory advertising and in internet advertising; and that significant savings in directory advertising were in fact achieved. By way of example, for Year Two of the Contract, the Renewal Cost of the baseline yellow page program for Alabama Women's Center, LLC was $61,382.52; the revised costs of the advertising program based upon implementing DAI's recommendations was $25,033.90; the "Savings" achieved by Alabama Women's Center, LLC were $37,317.83; and the fees billed and due to DAI as a percentage of the "savings" were $13,999.19. (See Exhibit C-16). Based on the credible evidence submitted, there is no question that DAI performed its obligations under the Contract.

It appears, however, that the business and overall revenues of Alabama Women's Center, LLC were not increasing. Even as other competing abortion service providers closed and went out of business, the Alabama Women's Center, LLC was not increasing its patient census or

procedures performed and was struggling financially. (See Exhibit C-8 – transcription of July 6, 2012 Go to Meeting conference call between Peggy Ahern of DAI and Dalton Johnson.)

One question deserves additional consideration. Who are the parties to the Contract? DAI is clearly one party and of that there is no dispute. The Arbitration Demand identifies the Respondents as Dalton Johnson d/b/a Alabama Women's Center, LLC and Alabama Women's Center for Reproductive Alternatives, LLC. In the Contract, Exhibit C-1, the Company Name / Advertiser was identified by Dalton Johnson, in his own handwriting, as "Alabama Women's Center, LLC." Mr. Johnson did not specify the Alabama Women's Center for Reproductive Alternatives, LLC as the entity on whose behalf he was acting. Nor did Mr. Johnson's signature on the Contract carry with it any title or representative capacity. He did not sign the Contract as "President" or as "Member" or as "Manager" for any limited liability company, but merely as the "Person Authorized to Contract for Advertiser."

Respondents' Answer states that Dalton Johnson is an individual residing in Huntsville, Alabama and that he was and is the President and sole member of the Alabama Women's Center for Reproductive Alternatives, LLC, a/k/a Alabama Women's Center. The Answer suggests that the "Alabama Women's Center" is a trade name or d/b/a name for AWCRA. The Claimant DAI contends that "Alabama Women's Center, LLC" is a fictitious entity or name and not a legal entity or a registered limited liability company at all.

DAI's contention is supported by the discovery exchange. No trade name certificate for the "Alabama Women's Center, LLC" or for "Alabama Women's Center" was ever produced by Respondents. The Alabama Secretary of State's searchable business website contains no listing or registration for "Alabama Women's Center, LLC" as either a domestic or a foreign limited liability company.

The directory advertising copy itself, as placed in the various phone directories, and the Respondents' contracts with directory advertisers are conflicting on this score as well. In some "yellow page" ads, the entity is referred to as "Alabama Women's Center, LLC"; in others merely as "Alabama Women's Center", and in still others as "Alabama Women's Clinic." In each case, even when the name changed, the address of 612 Madison Street SE, Huntsville, Alabama and/or phone number of (866) 536-2231 remain the same. See Exhibit C-3.

In DAI Exhibit C-17, Respondents' advertising contracts for Year 2 are collected. Mr. Johnson's signature appears on these contracts, but in many different capacities using different titles. For example, on a September 28, 2011 contract with AT&T for listings in the Athens and Huntsville directories, Dalton Johnsons signs as "President" for ads in the name of Alabama Women's Center, LLC. On July 17, 2011, Mr. Johnson signed as "Administrator" for "Alabama Women's Center, LLC" on an AT&T contract for the Birmingham directory. On April 25, 2011, Mr. Johnson signed a contract with Yellowbook for "Alabama Women's Center, LLC" for Blount County and for Tullahoma Area Wide, with no title or capacity indicated. On May 11, 2011, Mr. Johnson signed a contract with Alabama Publishing Group on behalf of Alabama Women's Center, LLC as "Owner."

The parties' intent is to be discerned from the language of the agreement, interpreted in light of their actions and the surrounding circumstances, and not by some subjective declaration.

> The law governing the construction of contracts is well settled. When a party asserts a claim that challenges the . . . construction of a contract, we must first ascertain whether the relevant language in the agreement is ambiguous. . . . A contract is ambiguous if the intent of the parties is not clear and certain from the language of the contract itself. . . . Accordingly, any ambiguity in a contract must emanate from the language used in the contract rather than from one party's subjective perception of the terms. . . . When the language of a contract is ambiguous, the determination of the parties' intent is a question of fact. . . . If a contract is unambiguous within its four corners, intent of the parties is a question of law requiring plenary review. . . . Where the language of the contract is clear and unambiguous, the contract is to be given effect according to its terms. A court will not torture words to import ambiguity where the ordinary meaning

leaves no room for ambiguity. . . ." (Citation omitted; internal quotation marks omitted.) *O'Connor* v. *Waterbury,* 286 Conn. 732, 743-44, 945 A.2d 936 (2008).
O'Donnell v. City of Waterbury, 111 Conn. App 1, 8 (2008)

We construe a contract in accordance with what we conclude to be the understanding and intention of the parties as determined from the language used by them interpreted in light of the situation of the parties and the circumstances connected with the transaction. *McCann Real Equities Series XXII, LLC v. David McDermott Chevrolet, Inc.*, 93 Conn. App. 487, 502-03 (2006)(citations and quotations omitted)

Respondents Answer admits that Dalton Johnson executed the DAI Contract and that he had the authority to enter into the agreement with DAI on behalf of AWCRA, and that "Alabama Women's Center" was merely an a/k/a or d/b/a name for AWRCA. That might be so, but it is not expressed and not found in the language used in the Contract itself. It would only be Mr. Johnson's "subjective intent." The Contract language did not refer to AWCRA at all. The existing yellow page directory ads for the business did not refer to AWCRA. The checks and payments of DAI's invoiced fees were paid by "Alabaman Women's Center for Reproductive Alternatives", with no designation of a limited liability company on the checks.

A limited liability company is a legal entity separate from its members. *See* Connecticut General Statutes § 34-124. Labeling or calling a fictitious entity a "limited liability company" does not create a legal entity. As noted by the Connecticut Appellate Court in *Bauer v. Pounds,* 762 A.2d 499, 503, 61 Conn.App. 29, 36 (2000):

> It appears well settled that the use of a fictitious or assumed business name "does not create a separate legal entity ... [and that] [t]he designation [d/b/a] ... is merely descriptive of the person or corporation who does business under some other name." (Internal quotation marks omitted.) *Pinkerton's, Inc. v. Superior Court,* 49 Cal.App.4th 1342, 1348, 57 Cal.Rptr.2d 356 (1996), quoting *Providence Washington Ins. Co. v. Valley Forge Ins. Co.*, 42 Cal.App.4th 1194, 1200, 50 Cal.Rptr.2d 192 (1996); *see Duval v. Midwest Auto City, Inc.*, 425 F.Supp. 1381, 1387 (D.Neb.1977), aff'd, 578 F.2d 721 (8th Cir.1978); *Wood Mfg. Co. v. Schultz,* 613 F.Supp. 878, 884 n. 7 (W.D.Ark.1985); *Jaffe v. Nocera,* 493 A.2d 1003, 1008 (D.C.1985); *Southern Ins. Co. v. Consumer Ins. Agency,*

> *Inc.* 442 F.Supp. 30, 31 (E.D.La.1977); *Patterson v. V. & M Auto Body*, 63 Ohio St.3d 573, 575, 589 N.E.2d 1306 (1992); *Carlson v. Doekson Gross, Inc.*, 372 N.W.2d 902, 905 (N.D.1985); *see also American Express Travel Related Services Co. v. Berlye,* 202 Ga.App. 358, 360, 414 S.E.2d 499 (1991), *cert. denied*, 202 Ga.App. 905 (1992) ("The use of d/b/a or 'doing business as' to associate a tradename with the corporation using it does not create a legal entity separate from the corporation but is merely descriptive of the corporation").

The *Bauer* proposition is properly read "as saying that while a trade name does not create a separate legal entity, the entity doing business under the trade name, whether corporation or individual, remains liable for all of its obligations." *Simpson v. D&L Tractor Trailer School,* Docket No. CV 05 4008081S, Superior Court, Judicial District of Fairfield at Bridgeport (Dec. 19, 2007).

The credible evidence submitted at the hearing establishes that "Alabama Women's Center, LLC" was not a separate legal entity and was not a registered limited liability company in Alabama. At best, "Alabama Women's Center, LLC" was a trade name or a d/b/a name, either for Mr. Johnson individually or for AWCRA. Respondents contracted with DAI under this name "Alabama Women's Center, LLC"; ran the majority of their "yellow page" directory advertisements under this name; and contracted with the directory advertisers under this name.

Nor was there any evidence submitted to establish that "Alabama Women's Center" or "Alabama Women's Center, LLC" was a registered trade name with any state, city or county in Alabama. Connecticut law requires that entities doing business under an assumed or fictitious name register that name in the town where they do business. § 35-1, Conn. Gen. Stat. (legal entities doing business in this state under an assumed or fictitious name must file a trade name certification in the town in which such business is to be conducted prior to engaging in such business.); *See Coldwell Banker Manning Realty Inc. v Cushman and Wakefield,* 136 Conn.App. 683, 47 A.3d 394 (Conn.App. 2012).

Alabama law appears to be slightly more lenient in this regard:

> We affirmatively hold that a judgment entered against a trade name is a judgment against the individual doing business under that trade name, at least so long as the individual was personally served with the complaint. Absent a statute to the contrary, an individual has the right to be known by any name that he chooses, and a judgment entered for or against that individual in either an assumed name or a trade name is valid.

Hughes v. Cox, 601 So.2d 601 So.2d 465, 470-71 (Ala. 1992). *See also Wood Manufacturing Co., Inc. v. Schultz* (W.D. Ark. 1985) 613 F.Sup. 878, 884, fn.7 ['_"Doing business under another name does not create an entity distinct from the person operating the business. The individual who does business as a sole proprietor under one or several names remains one person, personally liable for all his obligations. So also with a corporation which uses more than one name.'_"];

If there is ambiguity on the issue of who Mr. Dalton Johnson was representing when he signed the DAI Contract, it is an ambiguity that Mr. Johnson himself created and caused by the manner in which he failed to identify his principal or his capacity in the Contract (Exhibit C-1). Mr. Dalton Johnson may have been acting in an individual or in a d/b/a capacity, and not solely on behalf of the Alabama Women's Center for Reproductive Alternatives, LLC when he executed the Contract, Exhibit C-1. He failed to explicitly reference AWCRA, the registered limited liability company, as his principal or to insert his title to indicate his representative capacity. He did not identify "Alabama Women's Center, LLC" as a d/b/a name or a trade name for the Alabama Women's Center for Reproductive Alternatives, LLC. In summary, the credible evidence supports the conclusion that Mr. Johnson individually d/b/a "Alabama Women's Center, LLC" and "Alabama Women's Center for Reproductive Alternatives, LLC are both parties to the Contract with DAI and that each of them are potentially jointly and severally liable under the Contract if there has been a breach and resulting damages.

2. Did Respondents Breach the Contract?

The remaining issues to be resolved are whether the evidence establishes a breach of the Contract by the Respondents and, if so, what measure and amount of damages does the Contract set forth and did the evidence establish. The Respondents' obligations under the Contract are few in number. The advertiser client such as the Respondents receives the analysis, work product and recommendations of DAI with respect to their existing directory advertising program and then is free to adopt as much or as little of the revised program as DAI has suggested, or to modify its advertising decisions based upon the principles and analysis that DAI has provided. The advertising client's only obligation is to pay contingent fees to DAI, as they become due, based upon the gross savings achieved by any changes or revisions that the advertising client enjoys after having received DAI's analysis and performance. Here, Respondents elected a Four Year Option, and both circled and initialed that selection. Respondents elected to pay DAI 37.5% of any yearly yellow page savings for four (4) years.

In order to evaluate whether cost saving changes exists and in order to understand when any fees might become due, one needs to resort to the express provisions of the Contract (Exhibit C-1). The Contract defines and calculates "Savings" as follows:

> "Savings" are defined as that year's full renewal cost of the baseline program minus that year's revised cost (excluding any additional ads or enhancements to existing ads). Each year, we will calculated the savings by taking that year's full renewal cost of the baseline program and subtracting that year's revised cost (excluding any additional ads or enhancements to existing ads).

"Baseline Program" was defined as the advertiser's "yellow page program (on an ad by ad basis) in effect as of the date of this contract, per directory publisher's contracts or books. Finally, the concept of the "year" was defined as the "complete publication cycle for each next available directory in your baseline program."

The Contract provides further "Any fee in year one is due on the date the first book in your baseline program closes. The fees in subsequent years shall be due on the respective

anniversary dates of that first close date." Ms Page testified that the first close date for Respondents' baseline program was February 10, 2010. Respondents fees due to DAI for Year One, representing the percentage of savings achieved over the baseline program were $13,011.98. Respondent did pay these fees, in part and late.

In Year Two, DAI continued to work with Respondents and billed Respondents for the percentage of savings achieved in the amount of $13,994.19. The amount was higher largely because the directory advertiser's fees for the baseline program had increased, thus the savings over baseline had increased. Respondents fell far behind their obligation to make payments of DAI's fees in Year Two. By Years Three and Four, Respondents were no longer using DAI services to place their yellow page advertising and DAI could not calculate the savings achieved and full fees owed. Based upon the credible evidence presented, Respondents have breached the Contract by their failure to pay timely DAI its fees due and earned based upon the directory advertising savings that Respondents achieved over their baseline program over the four years of the contract.

3. Damages

The Contract contains a liquidated damages clause in the event of an advertiser breach that provides as follows:

> We cannot determine what is owed in full until the last book in your baseline program publishes for the final time during the term of this contact. Therefore, if you breach the contract, we both agree to accelerate fees due to a liquidated damages amount equal to 40% of the full renewal cost of year one's baseline program multiplied by three, plus legal fees and costs. Any payments made will be subtracted from the liquidated damages amount. We both understand that this amount may be more or less than what is actually owed by the end of the contract. We both agree that this calculation was fair at the time this contract was entered into, is reasonably related to the expected value of the service and waive any objections to this liquidated damage provision. As far as fees, the liquidated damages will be considered to have been due on the date the first book in the baseline program closed.
>
> ...

> If we prove that you breached this contract, we will be awarded all our costs of collection including our legal fees (at least $350 per hour), all arbitration costs and all estimated future legal fees to confirm the award/domesticate the judgment.
>
> If we have to incur the expense of confirming the award, converting an award to a judgment, domesticating a judgment or defending any judicial action that seeks (in whole or in part) to avoid arbitrating any dispute, DAI will be awarded all costs incurred, including all legal fees (at least $350 per hour.)

Connecticut court permits enforcement of liquated damages clauses in consensual contracts if the court is satisfied that the clause is reasonable under the circumstances and is not penal in nature.

> A clause fixing damages for a contractual breach, however, may be a permissible liquidated damages clause, rather than an illegal penalty clause, if three conditions are satisfied: (1) The damage which was to be expected as a result of a breach of the contract was uncertain in amount or difficult to prove; (2) there was an intent on the part of the parties to liquidate damages in advance; and (3) the amount stipulated was reasonable in the sense that it was not greatly disproportionate to the amount of the damage which, as the parties looked forward, seemed to be the presumable loss which would be sustained by the contractee in the event of a breach of the contract.

American Car Rental, Inc. v. *Commissioner of Consumer Protection,* 273 Conn. 296, 307 (2005)(quoting *Berger* v. *Shanahan,* 142 Conn. 726, 731-32 (1955)); *See also, Kovacs Construction Co. v. WPCA of New Haven,* 120 Conn.App. 646, 662-63, 992 A.2d 1157 (2010).

In the present circumstances the Contract had a term of four years from its inception in August 2009. Year by year, the Respondents as the advertiser client could change the components or items within its yellow page directory advertising programs. Thus each year could differ in relation to the advertiser's "baseline" and the amount of "savings" achieved compared to the baseline. The amount of fees due to DAI could not be established with certainty until after the last book was published in the term of the Contract. The nature of the parties' Contract and its application to the underlying facts establishes that any potential damages caused by an advertiser breach would be "uncertain in amount and difficult to prove."

Ms. Page and Mr. Ford testified that the process of proving the full scope of the advertiser's actual advertising program and comparing it to the baseline program involved pouring over the printed directories themselves and internet directories to locate all advertisements and to discern all changes made, and then comparing that to published rate schedules. For future year's directories not yet published, it would be literally impossible to prove the full extent and the individual components of the advertiser's yellow page program. Thus, the exact measure of fees potentially due to DAI in future years under the Contract was not susceptible to definitive proof.

In this case, the Respondents did not allege that the liquidated damages provision in the contract was invalid and unenforceable as a penalty. Respondents presented no evidence at hearing to demonstrate that the amount assessed by DAI was unreasonable or penal in nature. Indeed, Respondents were specifically advised of the leading Connecticut case law on liquidated damages following the First Preliminary Hearing and were invited to submit any Alabama leading case law on the topic, just to assess whether the two state's laws differed to any significant degree. Respondents declined to submit any Alabama case law on the issue.

My own research suggests that the case law does not differ significantly.[3]

> The courts generally identify three criteria by which a valid liquidated damages clause may be distinguished from a penalty. First, the injury caused by the breach must be difficult or impossible to accurately estimate; second, the parties must intend to provide for damages rather than for a penalty; and, third, the sum stipulated must be a reasonable pre-breach [estimate] of the probable loss. *See,* C. Gamble and D. Corley, *Alabama Law of Damages,* § 5-4 (1982). Determining whether a liquidated damages provision is valid is a question of law to be determined by the trial court based on the facts of each case. *Cook v. Brown,* 408 So.2d 143 (Ala.Civ.App.1981).

[3] My purpose is not to apply Alabama law. The Claimant's unilateral choice was to apply Connecticut law to this dispute. Under the Contract's language the Respondents have consented and waived any objection to Claimant's unilateral choices. Rather, I have examined Alabama law to satisfy myself that the substantive laws of the two states are not materially different in these key legal areas, and that the outcome on this evidence would likely be the same regardless of which state's laws were applied.

Faulk v. Rhodes, 62 So.3d 517, 521-22 (Ala.Civ.App. 2010) (quoting *Sutton v. Epperson*, 631 So.2d 832, 835 (Ala.1993)).

The fact that the parties intended to liquidate their damages in the event of an advertiser breach is satisfied by their inclusion of this express clause in their agreement. The intent of the parties is best discerned by examining the language that they used in their agreement, and according it its usual and natural meaning. Because the Contract is silent on any other method of proving damages for a breach, I find that resort to a liquidated damages provision in the event of an advertiser breach was the intent of the parties.

Finally, as to the reasonableness of the provision, the court must examine whether the liquidated damages clause was disproportionate to the amount of damages that could be caused by an advertiser breach. Ms. Page and Mr. Ford testified that the liquidated damages provision, as applied in this case, produced the following calculation:

$58,970.05 (Cost of Respondents' Baseline Program) times 40% times 3 years = $70,764.06. From that figure, DAI deducted the total of Respondents' payments actually received of $18,764.70 to reach a final liquidated damages figure of $51,999.36. (See Exhibit C-12).

DAI's witnesses testified further that oftentimes DAI clients achieved greater than a 40% cost savings after using DAI's services and after employing its recommendations and strategies. DAI guaranteed its clients that they could demonstrate at least a 40% savings cost savings on their gross advertising expense. Many clients achieved more, and many applied these same strategies to other aspects of their advertising program beyond yellow page directories, including internet advertising and other media.

Using DAI's testimony and the billings to Respondents for Years One and Two of $13,011.98 and $13,994.19, respectively, Respondents incurred $27,000 in fees to DAI in these

first two years of the contract. Those fees were rising because the full renewal cost of the baseline program was itself rising per the directory publishers fee increases, from $58,970.05 in Year One to $61,382.52 in Year Two. Respondents saved $37,317.85 in Year Two by implementing DAI's suggestions and strategy from the renewal cost of Respondents' baseline yellow page program. DAI's fees for Year Two were 37.5% of those savings or $13,994.19. (See Exhibit C-16). If I projected those Year Two fees owed out over four years, an estimate of actual damages and actual fees owed would likely be in the range of $56,000 to $60,000 or more. However, as noted above until all directory contracts were in hand, and all books were published, and all the ads accounted for, one cannot know with certainty the exact amount of fees. Suffice it to say that the difference between by that $70,000 gross liquidated damages figure and my $56,000 to $60,000 "back-of-the- napkin" estimated fee calculation is not so disproportionate as to render it a penalty. In my estimated or projected fee calculation, the liquidated damages provision of the contract would produce only 16% more in "damages" than would my imperfect estimate of full and faithful performance of the contract by the advertiser.

If DAI's recommendations produced more than a 40% savings, the liquidated damages figure would be even closer to faithful performance and payment of fees. Even in the application of liquidated damages, the advertiser client has been shown by DAI how to reduce its gross advertising expense by at least 40%. The advertiser client that implements DAI's recommendations and strategies to achieve savings and that then breaches the agreement and pays liquidated damages is not "penalized" aside from the fact that the advertiser client is divested of the 40% savings. Certainly the application of the liquidated damages clause changes the tenor of the Contract from one where the non-breaching advertising client only pays fees as a percentage of "savings achieved" while the breaching client pays a fixed percentage of its baseline program as damages.

On the whole, I do not find the application of this liquidated damages clause to be "greatly disproportionate" to the actual damages that might be expected from a breach, as has been found in other cases where application of a liquidated damages clause produced a damages figure that was a high multiple of any actual damage. *See American Car Rental, Inc.* v. *Commissioner of Consumer Protection,* 273 Conn. 296, 309 (2005) (concluding that $150 per occurrence "speeding" fee was unreasonable when it "was more than 400 times the potential damage incurred" by a rental vehicle).

Finally, Connecticut's case law suggests that there is a presumption of reasonableness to liquidated damages clauses where proof of actual damages is difficult or uncertain. The burden of proof and of persuasion is upon the breaching party who seeks to invalidate such a clause as a penalty and against public policy. *American Car Rental, Inc.,* 273 Conn. at 314 ("A breaching party seeking to nullify a contract clause that fixes an amount as damages for the breach bears the burden of proving that the agreed upon amount so far exceeds any actual damages as to be in the nature of a penalty)(citing *Vines* v. *Orchard Hills, Inc.*, 181 Conn. 501, 513-14 (1980)); *see also*, *Kovacs Construction Co, v. WPCA of New Haven,* 120 Conn.App. 646, 662-63, 992 A.2d 1157 (2010).

Here, the Respondents have offered no evidence to carry this burden and have failed to establish that this liquidated damages clause so far exceeds any actual damages as to be in the nature of a penalty.

4. Application of the Liquidated Damages Clause

Using $58,970.05 as the Respondents' "baseline" program, the liquidated damages per the Contract are 40% of that baseline figure, or $23,588.02 per year, multiplied forward for three years, for a total damage of $70,764.06. From that calculation the Contract makes a deduction for the total of any payments made. Here, that deduction is $18,764.70. The net calculation

under the Contract is a final liquidated damages figure of $51,999.36. See Exhibit C-12. That is the sum of damages that I award to DAI under the Contract as liquidated damages. Therefore the Respondents shall pay to the Claimant the sum of $51,999.36 as liquidated damages under the Contract.

5. Other Items of Damage Claimed

DAI has claimed in addition to liquidated damages, late fees upon the damage award. The Contract provides that "If you do not pay us as agreed, you will incur a monthly late fee of 1.5% from the date of the first book in your baseline program closed." Ms Page testified that the first book close date was February 10, 2010.

Because the Contract's liquidated damages clause operates to accelerate future fees due and to commute them to a liquidated sum, the question arises of when such damages are due. Again, the express language of the Contract supplies the answer. "As far as late fees, the liquidated damages will be considered to have been due on the date the first book in the baseline program closed."

Using the first book close date of February 10, 2010, the late fee calculation is $51,999.36 times 1.5% per month or $780 per month. There have been 50 months from February 10, 2010 to April 10, 2014, so a late fee of $39,000 is due to DAI under the terms of the Contract based upon the liquidated damages figure. (See Exhibit C-12). Therefore the Respondents owe the Claimant the sum of $39,000 as late fees due under the Contract.

With respect to post judgment interest, other than the "late fees" the contract is silent. My award of liquidated damages in the amount of $51,999.36 commutes and accelerates the amount of damages due to a specific sum. My award of late fees of $39,000 addresses the delay in Claimant's receipt of its damages / fees per the Contract. These two items total $90,999.36.

Post-judgment interest upon that sum and upon all other monetary portions of this Award shall accrue from the date of filing of this Award until it has been paid at the rate of ten per cent per year simple interest, as provided in Conn. Gen. Stat. § 37-3a.

With respect to the costs and fees associated with the arbitration, the Contract provides that if a breach of the contract has been proved, DAI "will be awarded all our costs of collection including our legal fees (at least $350 per hour), all arbitration costs and all estimated future legal fees to confirm the award/domesticate the judgment."

As to attorney's fees, DAI did not appear through legal counsel in these proceedings, so no such legal fees are warranted.

As to arbitration costs, the Contract instructs me to award them as an additional cost against the Respondents, inasmuch as I have found that there was a valid contract between the parties and that the Respondents have breached that contract. The Claimant DAI has advanced all fees for this arbitration proceeding including fees paid to the ADR Center Inc., and for the services of the arbitrator.

The expenses of preparing the copies of the Exhibits and Binders for the Arbitration Hearing are covered by an Exhibit C-12 – an invoice from "The Legal Page" to DAI in the amount of $877.75.

The fees and expenses of the ADR Center totaling $1,859.09 are to be borne by the Respondents therefore Respondents shall pay to the Claimant the sum of $1,779.55 for that portion of the fees and expenses previously advanced by the Claimant.

The compensation and expenses of the Arbitrator totaling $6,015.75 are to be borne by the Respondents. Therefore the Claimant shall pay the sum of $4,015.75 for compensation still due and Respondents shall pay to the Claimant the sum of $6,015.75 advanced by the Claimant.

Lastly, DAI has claimed and prayed for an award of estimated legal fees at a rate of at least $350 per hour associated with confirming this award and /or domesticating a judgment upon this award or collecting the award. These would be anticipated future legal fees and costs associated with confirming this award, registering it as a judgment, and enforcing the judgment possibly in a foreign state. While recovery for these items is provided in the Contract they are uncertain to occur and speculative in amount at this stage.

Plainly, there have been no legal fees incurred to date by DAI to enforce or convert an arbitration award, this being the Award. There is the possibility that Respondents will pay the Award once it issues and that no action to confirm or to enforce it in a court will be necessary or required. Therefore, it is both premature and speculative for me to award any sums as legal fees incurred by DAI in confirming or enforcing this award or defending it.

That said, the Contract plainly and clearly states that DAI shall be made whole for such legal fees in the event that they do occur and that the Respondents shall pay them. That being the case, I award to DAI as prospective relief such future legal fees as it may actually incur at a rate not to exceed $350 per hour, to confirm this Award, to enforce or domesticate this arbitration Award to a judgment, or to defend any judicial action involving this arbitration award. DAI may present its application for an award of its legal fees actually incurred to any court in any action involving the Respondents in which DAI seeks to confirm or to enforce or domesticate a judgment or to enforce or defend this arbitration award, including collection upon any judgment. Said court shall have the power to calculate such legal fees, determine their amount, and award them to DAI as a future cost incident to this arbitration award, as provided for in the parties' Contract.

SUMMARY OF AWARD

On its claims of Breach of Contract, the Claimant DAI is awarded the following sums and prospective relief against the Respondents Dalton Johnson and Alabama Women's Center for Reproductive Alternatives, LLC, jointly and severally:

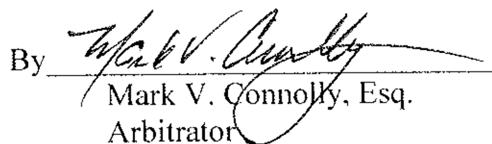
As Liquidated Damages Pursuant to the Contract	$51,999.36
As Late Fees Pursuant to Contract	$39,000.00
As Hearing Exhibit Expenses	$ 877.75
As Arbitration Costs and Fees	$ 7,795.30
Subtotal of Monetary Award	$ 99,672.41
As Post Judgment Interest	10% per annum ($ 9,967 / year being $ 27.69 per diem)

As Prospective Relief:

Pursuant to the parties' contract, DAI is entitled as prospective relief under this award to make application to any court and to receive from that court an award of its attorney's fees and costs actually incurred (up to $350 per hour) against the Respondents to confirm or to domesticate or to enforce or convert this arbitration award to a judgment in said court or to defend any judicial action in said court involving this arbitration award.

This Award of the Arbitrator is final as to all claims and counterclaims submitted in this Arbitration matter.

Dated: Avon, Connecticut
April 21, 2014

By 
Mark V. Connolly, Esq.
Arbitrator

ATTACHMENTS

DIRECTORY ASSISTANTS INC.

VS.

DALTON JOHNSON D/B/A ALABAMA WOMEN'S CENTER, LLC and ALABAMA WOMEN'S CENTER FOR REPRODUCTIVE ALTERNATIVES LLC

ADR CENTER CASE NO. 35-0321-13-S

PRELIMINARY HEARING January 17, 2014 CONFERENCE CALL 10:00 am to 11:10 am

PARTICIPANTS

FOR CLAIMANT—Mr. David Ford
FOR RESPONDENTS- Attorney Kimberly Ford and Mr. Dalton Johnson
ARBITRATOR—Mark V. Connolly

Report and Preliminary Hearing

CLARIFICATION OF ADR CENTER RULES APPLICABLE

DAI contract specifies "expedited rules" and limited discovery by exchange of documents within 2 weeks of demand. The ADR Center's expedited rules are only applicable for disputes less than 75K; for Hearings not to exceed One Day; do not provide for Prehearing Briefs; require an Award within 15 Days; and require a concise statement of award without explanation of basis of award. Claimant's Demand here is $150,000 and it does not appear that parties have exchanged documents or are in agreement on anything.

The Arbitrator and ADR Center Case Manager do not believe this case can be properly administered under Expedited Rules and that the ADR Center Commercial Rules shall therefore apply. The parties agree to apply the ADR Center's Commercial Rules, with Respondent maintaining its objection to the ADR Center serving as the arbitration service.

UNILATERAL CHOICE OF ARBITRATION BY CLAIMANT

The DAI Contract require a good faith attempt to mutually choose an arbitration service, the location of arbitration, and which state's law shall apply, and that failing mutual agreement or participation, the party filing the demand will have the right to make the choices unilaterally as long as the filing party has made a good faith attempt

to come to mutual agreement. The DAI Contract provides that the "non-filing party expressly consents to and waives any and all objections to the choices made."

No mutual agreement was reached here on the ADR Center as the arbitration service; on New Britain, Connecticut as the site of the arbitration; or on Connecticut substantive law as applicable to this dispute.

RESOLVED and ORDERED —The parties acknowledge that they did have communications, email exchanges and/or discussions aimed at a possible resolution of their dispute. The parties do not agree whether their prior communications prior to filing of the arbitration demand constitute "a good faith attempt" by the filing party "to come to mutual agreement" per the DAI Contract.

Claimant and Respondent shall address the issue of "good faith attempt" by the filing party DAI "to come to mutual agreement" by the simultaneous submission of relevant communications, letters, email exchanges and / or affidavits of telephone calls by January 31, 2014 to the ADR Center Case manager. If such communications also contain offers of compromise exchanged between the parties, such offers, counteroffers or responses shall be redacted from the submission.

The Arbitrator has scheduled a second preliminary hearing for Friday, February 7, 2014 at 10:00 a.m. by conference call. At the second preliminary hearing the Arbitrator will issue a preliminary ruling on the issue of the filing party's "good faith attempt" to reach mutual agreement under the DAI contract and address the issue of "unilateral choice" and "consent/ waiver of objection" by the non-filing party. If the Arbitrator feels that the documentary submissions are insufficient or inadequate to permit a preliminary ruling, then he will inform the parties on February 7, 2014 and the issues will be a part of the arbitration hearing augmented by witness testimony.

RESPONDENT'S COUNTERCLAIM

The Arbitrator was informed by the Case Manager that Respondent has not paid the required filing fee to ADR Center for the filing of a counterclaim of $150,000. The Counterclaim is set forth in paragraphs 11 and 12 of Respondent's Answer dated December 13, 2013. As such, the Counterclaim portion of the Respondent's Answer (paragraphs 11 and 12) are not properly filed or before the Arbitrator, and are not a part of this arbitration proceeding and shall not be a grounds for relief or award. The Respondent's Answer shall be interpreted as a denial of the Claimant's claim and as an objection to the unilateral selection by Claimant of the ADR Center as arbitration service provider, to New Britain, Connecticut as the place of arbitration, and to the application of Connecticut substantive law to the dispute.

ADMITTED FACTS

The Respondent admits the execution and valid signature on the DAI contract appended to claim as that of Dalton Johnson. The Respondent maintains that Mr. Johnson signed in a representative capacity on behalf of a limited liability company of which he was the president and sole member and that he was authorized to do so. Respondent identifies the Limited Liability Company as "Alabama Women's Center for Reproductive Alternatives LLC" which also does business as Alabama Women's Center.

The Claimant questions the legal existence of the entity "Alabama Women's Center LLC" which was written in to the DAI Contract as the Company Name/ Advertiser and on behalf of which Dalton Johnson signed the Contract. The Claimant believes that "Alabama Women's Center LLC" is a d/b/a for Mr. Johnson as an individual.

DISCOVERY AND DOCUMENTARY EXCHANGE

Claimant believes it has sent its "entire paper file" per the Contract to Respondent or to its legal counsel previously, but Claimant will resend that entire paper file to Attorney Kimberly Ford by January 31, 2014 and will advise the case manager of its compliance.

Respondent will copy and send all of its "Yellow Page" contracts and confirming orders for the period 2008 through 2013 to Claimant, attention to Mr. David Ford, by January 31, 2014. In addition, Respondent will produce a copy of its legal registration and/or certificate(s) as a registered limited liability company(ies) or of any "trade name certificates" or filings in Alabama by January 31, 2014 for "Alabama Women's Center for Reproductive Alternatives, LLC" and for "Alabama Women's Center" or "Alabama Women's Center, LLC", and will advise the case manager of its compliance.

Any additional document requests by the parties not covered by the above will be sent to the opposing party and copied to the ADR Center Case Manager by Friday, January 24, 2014. Any objections to additional document requests shall be served within 5 days of the service of the additional requests.

ANTICIPATED WITNESSES

Claimant anticipates at least 2 witnesses and a day for testimony. Claimant will identify these witnesses by the Second Preliminary Hearing Conference on Friday February 7, 2014.

Respondent anticipates at least 2 witnesses and a day of testimony. Respondent will identify these witnesses by the Second Preliminary Hearing Conference on Friday February 7, 2014.

HEARING

The Parties anticipate two hearing days will be required. The parties select March 3 and March 4, 2014 as available for the Arbitration Hearing. The Respondent maintains and does not waive its objection to the ADR Center as the arbitration service provider and to New Britain, Connecticut as the site of the arbitration hearing. If the Parties and the ADR Center agree, the Arbitrator may in the alternative host the hearing in his offices in Avon, Connecticut.

BRIEFS- STANDARD OR DETAILED AWARD- CHOICE OF LAW

The Parties will address these issues at the February 7, 2014, Second Preliminary Hearing. Regarding Choice of Law, the Claimant has identified Connecticut substantive law as applicable to the case and maintains that the Respondent has consented and/or has waived objection per the language of the Contract. The Respondent's Answer objects and maintains that Alabama substantive law should be applied to the case.

Based upon a claim of breach of contract and the potential legal issue of "liquidated damages," both Claimant and Respondent shall exchange legal citation(s) and / or copies of what they each contend to be the leading case(s) addressing an award of "liquidated damages" for breach of contract under their respective state's law by January 24, 2014. Copies of their submissions shall be sent to the ADR Center Case Manager.

Ordered and Adopted

January 17, 2014

s/Mark V. Connolly
Mark V. Connolly, Arbitrator

AMERICAN DISPUTE RESOLUTION CENTER, INC.

IN THE MATTER OF:	
DIRECTORY ASSISTANTS, INC., Claimant,	Arbitration Case No.
-and-	35-0321-13-S
DALTON JOHNSON D/B/A AND ALABAMA WOMEN'S CENTER LLC A/K/A ALABAMA WOMEN'S CENTER FOR REPRODUCTIVE ALTERNATIVES Respondents.	
	FEBRUARY 4, 2014

PRELIMINARY RULING

Pursuant to the Orders entered on January 17, 2014 at the First Preliminary Hearing, both Claimant and Respondents have submitted their arguments, positions and supporting materials on the question of whether the Claimant engaged in a "good faith attempt to come to a mutual agreement" with the Respondents with respect to the selection of an arbitration service, the selection of an arbitration location, and which state's law should govern an arbitration proceeding between the parties. If a good faith attempt to reach mutual agreement was made on these arbitration choices but was not successful in producing mutual agreement, the contract permitted the filing party to make these choices unilaterally and provided further that the non-filing party "expressly consents to and waives any objections to the choices made."

Claimant's position is that it engaged in a good faith attempt and in multiple attempts to reach mutual agreement on these arbitration particulars with the Respondents and their representative, but was not successful, such that as the filing party Claimant was entitled by contract to make the choices concerning arbitration

particulars unilaterally and that the Respondents have waived any objections to the choices so made. Respondents dispute that a good faith attempt was made by Claimant and further dispute and object to the propriety of the Claimants' unilateral choices of the American Dispute Resolution Center Inc. as the service; of Connecticut as the location of the arbitration; and of the application of Connecticut's substantive law to the parties' dispute. Respondents argue that Claimant's attempts and communications involved "threats and intimidation" or were otherwise "unprofessional" so as to be non-productive and should not be considered as a good faith attempt per the parties' contract.

The contract containing the requirement of a "good faith attempt to reach mutual agreement" on arbitration particulars has been offered by Claimant, Directory Assistants, Inc. The contract was admittedly signed by Respondents, Dalton Johnson on behalf of an entity identified as "Alabama Women's Center, LLC." Respondents have asserted that "Alabama Women's Center, LLC" is a D/B/A of "Alabama Women's Center for Reproductive Alternatives, LLC." Whether that identification and relationship is correct or accurate is not entirely material to this Preliminary Ruling and is not being decided here. The submitted correspondence between the parties on the topic of arbitration particulars, largely conducted though emails, was between Mr. David Ford for Claimant and Attorney Kimberly Ford representing Respondents.

In the parties' submissions, and based on the issues addressed at the Preliminary Hearing, it is evident and is not disputed that the Claimant and the Respondents, through their representatives, exchanged telephone calls and email communications in an effort to resolve their dispute. At the Arbitrator's request, the

parties have redacted from any documentary submissions any substantive details of any offers of compromise.

The Claimant's submission appends an email communication by Mr. David Ford to Mr. Dalton Johnson dated February 27, 2013, which communication asserted a claim of breach of the parties' contract and which paraphrased the pertinent contract language that required the parties to attempt to come to mutual agreement on the selection of an arbitration service, the location of arbitration proceedings, and the choice of which state's law was to be applied to the arbitration proceeding, inviting Mr. Dalton Johnson to respond. For its part, Claimant expressed its preferences and its reasoning in that February 27, 2013 email that the location of the arbitration should be in Connecticut and that Connecticut substantive law should be applied to the dispute. That same communication held out the prospect that an "equidistant" arbitration location such as Raleigh, North Carolina might also be suitable, and that mutual agreement on an arbitration service and on the choice of law could follow if that "equidistant" location was acceptable to the Respondents. That same communication advised that Claimant would give Respondents until March 5, 2013 to respond and that if Respondents did not respond, Claimant would "proceed in accordance with the contract and make the choices per the contract."

The next day, on February 28, 2013, Claimant's representative, Mr. Ford engaged in a telephone call and exchanged emails with Attorney Kimberly Ford, Respondents' attorney. Whether Mr. Ford's email of the prior day should have been sent to Attorney Ford and not to her client, Mr. Dalton Johnson, directly is not material to this issue. This is not a federal Fair Debt Collection Practices dispute and in any event

Mr. Ford is a principal of the Claimant, Directory Assistants Inc., not a third party debt collector. The content of David Ford's February 28, 2013 email with Attorney Ford made express reference to his prior day's email to her client, Mr. Dalton Johnson. While Mr. Ford's email asserted his substantive belief in the correctness of his company's claim and urged a compromise, offering an example of an Alabama entity that previously challenged a similar claim under the same contract and wound up paying significantly more in damages, it would not be correct to characterize Mr. Ford's email as threatening, intimidating or unprofessional. More important to then issue at hand, Mr. Ford concluded his February 28, 2013 email to Attorney Ford with a statement that her clients had "until March 5, 2013 to respond to our attempt to mutually agree on arbitration particulars."

Later on February 28, 2013, Attorney Ford advised Mr. Ford that Mr. Johnson and the Alabama Women's Center for Reproductive Alternatives were represented by her as legal counsel and that all communications should be directed to her. She concluded her message with the statement that she would "review your communication and discuss with my client. Then I will respond."

Claimant did not elect to make unilateral choices on arbitration particulars on the passing of the March 5, 2013 deadline. Instead, Mr. Ford emailed Attorney Ford on March 11, 2013 and again on April 1, 2013 to inquire when the Respondent's "response" would be forthcoming from Attorney Ford. As of April 22, 2013, with no substantive "response" having been received, Mr. Ford advised Attorney Ford by email that an arbitration demand would be filed that week against her client. In truth, the Claimant's arbitration demand was not filed until more than six months later with the

American Dispute Resolution Center Inc. on November 1, 2013. Neither party has submitted any communications dated after April 22, 2013 but prior to the filing of the demand.

Respondent's submission admits Attorney Ford's receipt of Mr. Ford's February 27, 2013 email to Dalton Johnson, referencing the obligation to attempt mutual agreement on arbitration particulars and expressing the Claimant's preferences. Nothing in Respondent's submission indicates that any substantive response on this topic was ever submitted or sent to Mr. Ford by Attorney Ford, despite his emails in March 2013 and in April 2013 seeking a "response" and despite Attorney Ford's emails that her "response" would be forthcoming

The Directory Assistants Inc. contract requires that the filing party make a "good faith attempt" to reach mutual agreement with the non-filing party concerning arbitration particulars prior to the filing party making unilateral choices. The Claimant correctly points out that the contract language is "attempt," in the singular—a "good faith attempt."

Under Connecticut law "good faith efforts" and "good faith" have a common and accepted legal meaning.

> Good faith ... in common usage ... has a well defined and generally understood meaning, being ordinarily used to describe that state of mind denoting honesty of purpose, freedom from intention to defraud, and, generally speaking, means being faithful to one's duty or obligation.... It has been well defined as meaning [a]n honest intention to abstain from taking an unconscientious advantage of another, even through the forms or technicalities of law, together with an absence of all information or belief of facts which would render the transaction unconscientious.... *The determination of good faith involves an inquiry into the party's motive and purpose as well as actual intent....*

Deas v. Diaz, 30 A.3d 23, 132 Conn.App. 146, 151-53 (2011). *See*

also, Phillipe v. Thomas, 3 Conn.App. 471, 474-76, 489 A.2d 1056 (1985)(contrasting "good faith efforts" with "reasonable efforts").

Thus in evaluating whether a good faith attempt to reach mutual agreement was made here by the filing party, Directory Assistants Inc., the inquiry is whether an honest attempt was made, faithful to the purpose of the underlying contract, free from any intent to defraud or mislead, and whether the charged party abstained from taking unconscientous advantage through form or technicality of the other party. Mr. Ford's communication of February 27, 2013 to Mr. Dalton Johnson, re-sent on February 28, 2013 to Attorney Ford, satisfies this standard of a good faith attempt. Mr. Ford expressed his company's preference as to arbitration particulars, but he also offered a potential alternative arbitration site. He invited Mr. Johnson or his legal counsel to respond and/or to suggest other alternative and equidistant sites for the arbitration. Mr. Ford's subsequent communications reminded the Respondents and their counsel of the need to respond to the arbitration particulars or that Directory Assistants Inc. would make the arbitration particulars choices per the contracts (*i.e.,* unilaterally).

Given that Respondents and their counsel made no substantive response whatsoever between February 27, 2013 and April 22, 2013, despite promising to do so on several occasions, and given the Claimant's additional communications after February 28, 2013, continuing to seek a substantive response from the Respondents, the documentary record satisfies the requirement that a "good faith effort to reach mutual agreement" was made here. Respondents were afforded and were solicited on numerous dates over a seven week period for their "response," but they simply chose to make no response.

To rule otherwise on this record would permit the non-filing party to simply "put its head in the sand" and defy the ability of the filing party to initiate an alternate dispute resolution mechanism agreed to in the underlying contract. The contract requires a good faith attempt to reach mutual agreement prior to the filing party making unilateral choices. An honest effort that does not deny the other party its ability to present its choices and its reasons is all that is required. The contract does not guarantee that the parties will reach mutual agreement, nor does it forbid the parties from attempting compromise of their underlying dispute in the same communications or from advocating the perceived correctness of their respective positions.

It is ORDERED and ADJUDGED that on this record the Claimant made a good faith attempt to reach mutual agreement with Respondents on the particulars of the arbitration process and that, failing mutual agreement, the Claimant as the filing party was empowered by contract to select unilaterally the arbitration service, the location of the arbitration, and the substantive law to be applied. By the terms of the parties' contract, the non-filing party, Respondents, have consented to the filing party's choices and have waived any objections thereto.

s/ Mark V. Connolly

Arbitrator

February 4, 2014

DIRECTORY ASSISTANTS INC.

VS.

DALTON JOHNSON D/B/A ALABAMA WOMEN'S CENTER, LLC and ALABAMA WOMEN'S CENTER FOR REPRODUCTIVE ALTERNATIVES LLC

ADR CENTER CASE NO. 35-0321-13-S

SECOND PRELIMINARY HEARING

February 7, 2014 CONFERENCE CALL 10:00 am to 10:50 am

PARTICIPANTS

FOR CLAIMANT—Mr. David Ford
FOR RESPONDENTS- Attorney Kimberly Ford
ARBITRATOR—Mark V. Connolly

Report and Second Preliminary Hearing

ARBITRATION HEARING

The parties have scheduled their hearing for March 3 and March 4, 2014. The Arbitrator will host the hearing at his offices located at 111, Simsbury Road, 2nd Floor, Avon CT 06001. The hearings will commence at 9:00 am each day and shall run as long as both the parties and the Arbitrator may agree. The Arbitrator is mindful of the distance that the Respondents and their counsel are traveling and will address any postponement due to impending bad weather as near as possible to the hearing date.

PRE-HEARING MEMORANDA

The parties each desire to submit Pre-Hearing Memoranda to the Arbitrator. It is ORDERED that the submission of Pre-Hearing Memoranda will be sent by each party by email to the ADR Center Case Manager on or before February 27, 2014 and exchanged between the parties.

DOCUMENTARY EXCHANGE

The Claimant has submitted its "paper file" to Respondents and their counsel. The Respondents sent out materials on or about February 3rd to Claimant and have provided a tracking number. Claimant will contact the ADR Center if the materials are

not received. Respondents have additional or supplemental materials to send and will scan and email them to Claimant today.

WITNESSES

Claimant believed that its case-in-chief might be covered by one witness and predominantly covered by introduction of the business records and communications between the parties. The identity of that particular witness was deemed not critical by the Respondent and the Arbitrator.

The Respondents anticipated offering the testimony of Mr. Dalton Johnson and possibly another witness. The Respondents identified Ms. Peggy Ahearn as a Senior Account Manager employed by Claimant whom Respondent would wish to examine. The Arbitrator suggested that Respondents identify Ms. Ahearn and the topics on which examination would be sought in a written communication to Claimant and urged that she be produced at hearing by mutual agreement, if she is still employed by Claimant. Failing mutual agreement, the Arbitrator would entertain a subpoena request from Respondents to compel Ms. Ahearn's presence as a testimonial witness at the hearing. Respondents are advised to allow sufficient lead time to permit issuance and personal service of a subpoena prior to the hearing.

SUMMARY OR DETAILED AWARD

The parties each requested that a Detailed Award be prepared and entered by the Arbitrator.

TRANSCRIPTION OF HEARING

The Arbitrator advised that no hearing transcript would be arranged or made as a matter of course, unless the parties made such arrangements themselves. Either party desiring a transcription of the hearing will give notice to the other party and to the ADR Center case manager and will be responsible for making arrangements directly with a stenographer or court reporter and for the costs of such transcript. *See* Rule 16 of the ADR Center's Commercial Rules.

ISSUES-- PARTIES AND CAPACITY

The Respondents' counsel represented that documentary submissions and exchange with Claimant identify the Limited Liability Company at issue and as registered with State and Local authorities as "Alabama Women's Center for Reproductive Alternatives, LLC." Respondents identify the Alabama Women's Center

LLC as a d/b/a name for the "Alabama Women's Center for Reproductive Alternatives, LLC." The Respondents maintain that Mr. Johnson signed the DAI contract in a representative capacity on behalf of a limited liability company of which he was the president and sole member and that he was authorized to do so, and that the limited liability company is "Alabama Women's Center for Reproductive Alternatives, LLC."

The Claimant will review the submitted materials that it has not yet received. The Claimant's present position is that Mr. Dalton Johnson is personally responsible for damages to the Claimant as it believes that the entity "Alabama Women's Center LLC" is not a legal entity and/or was fictitious or that the "Alabama Women's Center LLC" was a d/b/a for Mr. Johnson as an individual.

The Claim and Demand as framed is against Mr. Dalton Johnson d/b/a "Alabama Women's Center, LLC" and "Alabama Women's Center for Reproductive Alternatives, LLC" as Respondents. If Claimant wishes to continue its claim against Mr. Dalton Johnson personally, after its review of the documents exchanged, Claimant will address the issue in its pre-hearing memoranda and in its evidence and proofs presented at the hearing.

DAMAGES

Claimant will address whether it is seeking actual compensatory damages for breach of contract or is seeking liquidated damages per the parties' contract in its Pre-Hearing Memorandum. Claimant's present belief is that it will present a claim for liquidated damages for the alleged breach.

Ordered and Adopted

February 7, 2014

s/Mark V. Connolly
Mark V. Connolly, Arbitrator

American Dispute Resolution Center, Inc.

Formal Notice of Hearing

Date: February 27, 2014

In the Arbitration Matter Case Number: 35-0321-13 S

Between: Directory Assistants, Inc.
and
Dalton Johnson dba Alabama Women's Center, LLC; Alabama Women's Center for Reproductive Alternatives, LLC

To: David Ford
and
Kimberly Ford, Esq.

The Arbitration Hearing in the above referenced matter will be held as follows:

Place: Law Office of Mark Connolly
111 Simsbury Road – 2nd Floor
Avon, CT

Date: April 14, 2014
April 15, 2014

Time: 9:00 AM

Before Arbitrator: Mark V. Connolly Esq.

Case Manager: Sandy LaBella

Notice: The parties and witnesses are expected to attend the hearings on time and be ready to present their cases. The arbitrator(s) have set aside their time to attend the hearing dates listed above therefore the parties should be prepared to attend the scheduled hearing date(s). If an emergency should occur that makes it impossible to attend the hearing, the party requesting a postponement should contact the other party and attempt to obtain an agreement. If the parties cannot agree, the arbitrator(s) will make the final determination. All communications should be made through your Case Manager; there shall be no direct communication between the parties and the arbitrator(s). Please note that the party requesting the continuance may be subject to cancellation fees by the ADR Center or by the arbitrator(s). Please refer to the Rules in regard to stenographic records, which is the sole responsibility of the parties. Please note that the ADR Center will not be responsible for arranging for a stenographer.

Kimberly A. Ford, Esq.*
DIRECT: 256.886.6240
FACSIMILE: 800.408.1501
EMAIL: kimberly@fordumas.com
**Licensed in Alabama and Tennessee*

April 7, 2014

***Via First Class Mail* and E-mail to** slabella@adrcenter.net

Ms. Sandy LaBella, Case Manager
American Dispute Resolution Center, Inc.
30 Bank Street - 3rd Floor
New Britain, CT 06051

RE: Directory Assistants v. Dalton Johnson, Alabama Women's Center for Reproductive Alternatives, LLC, a/k/a Alabama Women's Center, LLC 35-321-13 S

Dear Ms. LaBella:

I regret to inform you that due to extraordinary circumstances and the current state of affairs surrounding his industry in the State of Alabama, my clients, Mr. Dalton Johnson and Alabama Women's Center for Reproductive Alternatives, LLC have determined that they are not able to continue with the arbitration of this matter. As such, Mr. Johnson and I will not be able to attend the arbitration scheduled for April 14-15, 2014.

I greatly apologize for any inconvenience and I thank you in advance for your attention to this matter.

Warmest regards,
/s/*Kimberly A. Ford*
Kimberly A. Ford, Esq.

KAF/qr

cc: File

David Ford at: DFord@daiagency.com

Mark V. Connolly

From: Mark V. Connolly [mvcllc@comcast.net]
Sent: Tuesday, April 08, 2014 1:45 PM
To: 'Sandy LaBella'; 'David Ford'; 'FORDUMAS LLC'
Subject: RE: Directory Assistants Inc. and Dalton Johnson, et al.

Directory Assistants Inc
And
Dalton Johnson et al
ADR Case No. Re: 35-321-13 S

NOTICE OF RULING AND ORDER

The ADR Center Case Manager has forwarded Respondents' counsel's letter of April 7, 2014 to the Arbitrator, stating Respondents' position that neither Respondents nor their legal counsel will be attending the April 14th and 15th arbitration hearing sessions and that Respondents "are not able to continue with the arbitration of this matter." Respondents' letter does not request a postponement of the hearing but merely informs that the Respondents will not be attending the arbitration hearing or participating further in the arbitration of this matter. The Case Manager has informed the Arbitrator that the Claimant wishes to proceed with the arbitration hearing on April 14, 2014, but that Claimant only requires one half-day session to present its case.

Pursuant to Rule 18 of the ADR Center's Commercial Rules, the arbitration hearing shall proceed on Monday, April 14, 2014 for one half-day session, on an *ex parte* basis. The Arbitrator will have the authority to render an award based on the evidence and arguments submitted by Claimant at the hearing. The second day of hearing scheduled for April 15, 2014 is canceled. The Claimant may address whether it still requests a "reasoned award" pursuant to Rule 24 by the conclusion of the April 14, 2014 hearing.

The Case Manager shall print out and file this Ruling as a part of the Arbitration of the matter.

So Ordered.

s/ Mark V. Connolly
Mark V. Connolly
Arbitrator
April 8, 2014

SENT VIA EMAIL
Sandy LaBella
David Ford
FORDUMAS LLC