

The Honorable Barbara J. Rothstein

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GERALD JACKSON, ROSLYN JACKSON,
DEAN MELLOM, JON PERRIN AND JULIE
PERRIN, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

THE ALIERA COMPANIES, INC., a Delaware
corporation; ALIERA HEALTHCARE, INC., a
Delaware corporation; TRINITY
HEALTHSHARE, INC., a Delaware
corporation,

Defendants.

NO. 2:19-cv-01281-BJR

**DECLARATION OF ELEANOR
HAMBURGER IN SUPPORT OF
PLAINTIFFS' MOTION TO LIFT
STAY**

I, Eleanor Hamburger, declare under penalty of perjury and in accordance with
the laws of the State of Washington and the United States that:

1. I am a partner at Sirianni Youtz Spoonemore Hamburger PLLC and am one
of Plaintiffs' counsel in this action.

2. On September 13, 2021, I participated in a "meet and confer" telephone call
with Alieras' counsel, Beth Shirley, regarding Defendant Alieras' position on Plaintiffs'

1 anticipated Motion to Lift Stay. Ms. Shirley informed me that Alieria did not consent to
2 lift the stay, as they considered the Motion to be premature and that they were
3 considering appealing the arbitration decision.

4 3. Attached are true and correct copies of the following documents:

Exhibit	Description	Date
A	In the Matter of the Arbitration between Case No. 01-21-0001-0892, <i>Gerald and Roslyn Jackson et al., v. The Alieria Companies, Inc.</i> , Arbitration Award	September 2, 2021
B	Excerpts of AAA Consumer Arbitration Rules	November, 2020

10 DATED: September 15, 2021, at Seattle, Washington.

11 /s/ Eleanor Hamburger

12 Eleanor Hamburger (WSBA #26478)
13 SIRIANNI YOUTZ SPOONEMORE HAMBURGER PLLC
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15 Seattle, WA 98121
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18 Attorneys for Plaintiffs

Exhibit A



AMERICAN
ARBITRATION
ASSOCIATION®

INTERNATIONAL CENTRE
FOR DISPUTE RESOLUTION®

AMERICAN ARBITRATION ASSOCIATION

In the Matter of the Arbitration between

Case Number: 01-21-0001-0892

Gerald and Roslyn Jackson,

Dean Mellom,

Jon and Julie Perrin

-vs-

The Alieria Companies, Inc.

f/k/a Alieria Healthcare, Inc.

and

Trinity Healthshare, Inc.

n/k/a Sharity Ministries, Inc.

ARBITRATION AWARD

This matter is in arbitration pursuant to the Orders of United States District Court Judge Barbara Rothstein. On April 13, 2021, the American Arbitration Association appointed the undersigned to serve as arbitrator.

Claimants enrolled in health care coverage plans offered by Respondents The Alieria Companies, Inc. (“Alieria”) and Trinity Healthshare, Inc. (“Trinity”). The parties dispute the enforceability of an arbitration clause in Respondents’ Member Guide which called for disputes to be resolved “in accordance with the Rules and Procedure of the American Arbitration Association.” Judge Rothstein’s Orders of August 18, 2020 and October 6, 2020 provide that Claimants’ challenge to the enforceability of the arbitration clauses must be decided by the arbitrator.

This matter has been stayed as to Trinity because of its Suggestion of Bankruptcy dated July 9, 2021.

Claimants’ Motion to Determine Jurisdiction provided evidence and legal authority to establish they never agreed to arbitrate disputes with Respondents. They asserted they signed enrollment forms which authorized Alieria to immediately bill their credit cards for the first monthly fees due and the one-time application fee. The forms provided that Alieria could collect the monthly amount as a “recurring monthly transaction.” The enrollment form did not mention arbitration. After enrolling and making their

initial payments, Claimants received an email which indicated a Member Guide would be mailed within 14 days of the plan's effective date. The disputed arbitration clause could be found near the end of the Member Guide.

The enrollment forms provide under the heading "Terms and Conditions" that "This is not a contract" and the Member Guide provides that the guidelines ". . . do not create a legally enforceable right on the part of any contributor."

Claimants' Motion cited legal authority to establish there is no mutual assent to an arbitration clause in an agreement if the clause is not provided until after the agreement is established. *Burnett v. Pagliacci Pizza, Inc.*, 196 Wn. 2d 38 (2020), *Norcia v. Samsung Telcoms. Am., LLC*, 845 F.3rd 129 (9th Cir. 2017). The motion asserted there was no evidence that the Claimants received, reviewed, or acknowledged the arbitration clause set out in the Member Guide prior to their enrollment in and payment for the Respondents' health care plans.

Aliera submitted two pleadings in response to Claimants' Motion to Determine Jurisdiction: The Aliera Companies Inc.'s Motion to Stay, or in the Alternative, Response, and in the Alternative Response to Claimants' Motion to Determine Jurisdiction, dated July 19, 2021 and The Aliera Companies Inc.'s Response in Opposition to Claimants' Motion to Determine Jurisdiction dated August 12, 2021.

Neither pleading, nor the exhibits attached to the pleadings, provided factual or legal authority to dispute the Claimants' assertion that they never agreed to arbitrate their disputes with Respondents. The July 19, 2021 pleading asserts Judge Rothstein "has already determined that there is an enforceable arbitration agreement among the Parties." Judge Rothstein did not order that the arbitration clause is valid and enforceable. Aliera's assertion misreads Judge Rothstein's Orders which state:

Claimants' "challenge to the arbitration clause . . . must be decided by the arbitrator" and ". . . the arbitrator must decide the threshold issue of whether the arbitration clause is enforceable" [August 18, 2020 page 7] and plaintiffs' ". . . challenge to the arbitration clause must be decided by the arbitrator." [October 6, 2020 pages 14-15]

Claimants' enrollment in and payment for Respondents plans was complete before they were presented with the arbitration clause. Aliera has submitted no evidence of an offer and acceptance by the Claimants or consideration for the alleged arbitration clause. At best, Respondents' presentation of the arbitration clause after Claimants enrolled was an offer which Claimants did not accept.

Claimants have established that I have no jurisdiction to hear this arbitration. Therefore, Claimants' Motion to Determine Jurisdiction is granted, this arbitration is dismissed, and this matter is returned to proceed in the United States District Court for the Western District of Washington.

Dated September 2, 2021



Charles Burdell, Arbitrator

Exhibit B

CONSUMER

Consumer Arbitration Rules



AMERICAN ARBITRATION ASSOCIATION®

Available online at adr.org/consumer

Rules Amended and Effective September 1, 2014

Costs of Arbitration Amended and Effective November 1, 2020

R-47. Modification of Award for Clerical, Typographical, or Mathematical Errors

- (a) Within 20 days after the award is transmitted, any party, upon notice to the opposing parties, may contact the AAA and request that the arbitrator correct any clerical, typographical, or mathematical errors in the award. The arbitrator has no power to re-determine the merits of any claim already decided.
- (b) The opposing parties shall be given 10 days to respond to the request. The arbitrator shall make a decision on the request within 20 days after the AAA transmits the request and any responses to the arbitrator.
- (c) If applicable law provides a different procedural time frame, that procedure shall be followed.