

The Honorable Barbara J. Rothstein

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

**PLAINTIFFS' MOTION
TO LIFT STAY**

I. RELIEF REQUESTED

Plaintiffs Gerald and Roslyn Jackson, Dean Mellom, and Jon and Julie Perrin move to lift the stays pending arbitration entered by this Court on August 18, 2020 (Dkt. No. 105), on October 6, 2020 (Dkt. No. 131), and on November 20, 2020 (Dkt. No. 137). On September 2, 2021, the arbitrator in *The Matter of the Arbitration between Gerald and Roslyn Jackson, et al. v. The Alieria Companies, Inc., et al.*, American Arbitration Association Case No. 01-21-0001-0892, entered an Arbitration Award dismissing the arbitration for lack of jurisdiction and returning it to proceed in this Court. Attached as *Exhibit A* to the Declaration of Eleanor Hamburger is a copy of the Arbitration Award. Accordingly,

1 Plaintiffs request that the stays entered in this matter be lifted, that the pending motions
2 be heard, and that the discovery proceed.

3 II. CERTIFICATION OF CONFERRAL

4 Consistent with the Court's standing order, Plaintiffs' counsel met and conferred
5 with defense counsel regarding this motion. See Hamburger Decl., ¶2. Defendants
6 declined to consent to Plaintiffs' Motion. *Id.*

7 III. BACKGROUND

8 Plaintiffs Gerald and Roslyn Jackson and Dean Mellom (the "Original Plaintiffs")
9 filed this putative class action against The Alera Companies, Inc., Alera Healthcare,
10 Inc., (collectively "Alera") and Trinity Healthshare, Inc., on August 14, 2019, alleging
11 that Defendants had sold them illegal health insurance and violated Washington's
12 Consumer Protection Act. Defendants moved to dismiss, claiming that the Original
13 Plaintiffs had not engaged in four levels of appeal and mediation. On April 20, 2020,
14 while the motion to dismiss was pending, Plaintiffs moved to amend the Complaint to
15 add Jon and Julie Perrins. Dkt. No. 40.

16 On May 26, 2020, this Court denied the Defendants' Motion to Dismiss. Dkt.
17 No. 47. Alera then moved, on June 4, 2020, to compel the Original Plaintiffs to arbitrate.
18 Dkt. No. 52. It argued that by including a reference to the AAA rules in the arbitration
19 clause, the parties agreed to delegate the question of arbitrability to the arbitrator. *Id.* at
20 11-12. This Court denied the motion to compel on July 20, 2020, holding that that Alera
21 had waived arbitration by earlier moving to dismiss. Dkt. No. 90. Alera appealed to the
22 Ninth Circuit. Dkt. No. 104.

23 Meanwhile, after the Court orally ruled the Motion to Amend would be granted
24 (Dkt. No. 56), Alera moved to compel the Perrins to arbitrate. Dkt. No. 61. Alera argued
25 that it had not waived arbitration against the Perrins, who were not yet a party when
26 Alera made its initial motion to dismiss, and that the arbitrator rather than the Court

1 should determine arbitrability. *Id.* On August 18, 2020, this Court granted the motion
2 with respect to the Perrins, holding that the arbitrator must decide in the first instance
3 whether it has jurisdiction. Dkt. No. 105, at 5.

4 On October 6, 2020, the Court *sua sponte* reversed its July 20 Order holding that
5 Alieria had waived arbitration as to the Original Plaintiffs, and held that the arbitration
6 issue must be decided by the arbitrator as to those Plaintiffs as well. Dkt. No. 131, at 14-
7 15 (“the challenge to the arbitration clause must be decided by the arbitrator.”) Because
8 Alieria had already filed a Notice of Appeal with the Ninth Circuit at the time this Court
9 entered its October 6 Order, Alieria sought a limited remand from the Ninth Circuit for
10 the purpose of allowing this Court to re-enter its October 6, 2020 Order, and this Court
11 re-entered that order on November 20, 2020. Dkt. No. 137.

12 Plaintiffs filed a Demand for Arbitration Pursuant to Court Order and Challenge
13 to Jurisdiction of the Arbitrator with the AAA on February 4, 2021. On April 13, 2021,
14 the American Arbitration Association appointed Hon. Charles Burdell to serve as
15 arbitrator. On June 28, 2021, Plaintiffs moved that Arbitrator Burdell determine that he
16 had no jurisdiction to hear the arbitration matter because, *inter alia*, the parties had not
17 agreed to arbitrate.

18 On July 8, 2021, while Plaintiffs’ jurisdiction motion was pending before the
19 Arbitrator, Defendant Trinity (now known as Sharity Ministries, Inc.) filed for
20 bankruptcy in the United States Bankruptcy Court for the District of Delaware, Case
21 No. 21-11001 (JTD). Although the bankruptcy filing automatically stayed the arbitration
22 action against Defendant Trinity, the automatic stay did not apply to non-debtor Alieria.
23 *See Chugach Timber Corp. v. N. Stevedoring & Handling Corp.*, 23 F.3d 241, 246 (9th Cir.
24 1994). Accordingly, Arbitrator Burdell denied Alieria’s motion to stay the action against
25 it.

1 After briefing, Arbitrator Burdell granted Plaintiffs' Motion to Determine
2 Jurisdiction, agreeing that he had no jurisdiction to hear the arbitration. Hamburger
3 Decl., *Exh. A*. He held that there was no legal or factual authority to dispute Plaintiffs'
4 claims that they never agreed to arbitrate. *Id.* He dismissed the arbitration and ordered
5 that the matter be returned to the District Court. *Id.*

6 IV. ARGUMENT

7 Alieria argued in its motions to compel that by incorporating the AAA rules into
8 the arbitration clause, the parties agreed to arbitrate arbitrability. *See, e.g.,* Dkt. No. 52 at
9 12. They relied on the AAA rule that provides:

10 the arbitrator shall have the power to rule on his or her own
11 jurisdiction, including any objections with respect to the
12 existence, scope, or validity of the arbitration agreement or to
the arbitrability of any claim or counterclaim.

13 AAA Consumer Rule 14. *See also, Henry Schein, Inc. v. Archer and White Sales, Inc.*, 139
14 S. Ct. 524, 528 (2019) (the AAA rules provide that "arbitrators have the power to resolve
15 arbitrability questions").

16 Arbitrator Burdell did precisely that: he ruled that he had no jurisdiction to hear
17 this dispute, because there was no valid agreement to arbitrate. That ruling fell directly
18 within his jurisdiction to rule whether an arbitration agreement existed. The ruling is
19 binding on Alieria. *Kyocera Corp. v. Prudential-Bache T Servs.*, 341 F.3d 987, 998 (9th Cir.
20 2003) (Congress provided for extremely limited authority to review arbitral awards).
21 The arbitrator has ruled that there was no arbitration agreement and there is nothing to
22 arbitrate. The arbitration has been dismissed and returned to this Court. The stay should
23 be lifted, and this matter should be allowed to proceed judicially.

24 At the "meet and confer" on September 13, 2021, Defense counsel indicated that
25 Alieria would not agree to lift the stay because the "appeals period" for the arbitrator's
26 decision had not run. Hamburger Decl., ¶2. Under the AAA consumer arbitration rules,

1 there is no appeals period. *Id.*, *Exh. B*, p. 29. R-47 expressly states that an arbitrator may
2 correct only “clerical, typographical or mathematical errors.” *Id.* “The arbitrator has no
3 power to re-determine the merits of any claim already decided.” *Id.* In sum, the
4 arbitrator’s decision that there is no jurisdiction to arbitrate the Plaintiffs’ claims as to
5 Alera is final. The stay cannot continue to be imposed on this basis.

6 **V. CONCLUSION**

7 For the reasons stated above, Plaintiffs request that the stay be lifted in this matter
8 and a new trial date and related dates be set.

9 DATED: September 15, 2021.

10 SIRIANNI YOUTZ
11 SPOONEMORE HAMBURGER PLLC

12 /s/ Eleanor Hamburger

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