

IN THE COMMON PLEAS COURT OF DARKE COUNTY, OHIO

MIDMARK CORPORATION	:	CASE NO. 11-CV-00432
	:	
Plaintiff,	:	
	:	
vs.	:	JONATHAN P. HEIN,
	:	Judge by Assignment
	:	
TOWE & ASSOCIATES, INC.	:	
	:	
Defendant.	:	JUDGMENT ENTRY: Defendant's
	:	Motion to Compel Arbitration

This matter came before the Court pursuant to the Defendant's motion filed August 2, 2011 to compel arbitration of issues arising under the contract involved herein. Plaintiff has filed its objections. The Plaintiff is represented by James L. Thieman, Esq. The Defendant is represented by Peter F. vonMeister, Esq.

The parties have fulfilled the requirements of the Briefing Schedule filed August 3, 2011 which set forth deadlines for the submission of briefs. The Court does not see the need for oral arguments, and the matter is adjudicated on the briefs.

Analysis

The parties voluntarily entered into an agreement wherein the common practice of arbitration is required to resolve disputes. If resolved in such an extra-judicial manner is used, this Court could still be called upon to determine whether the arbitration award was appropriate and fair and whether the award should be confirmed, vacated, modified or corrected. See R.C. Chapter

2711. See also *Jackson Cty. Sheriff v. Fraternal Order of Police Ohio Labor Council, Inc.*, 2004-Ohio-3535.

However, when considering the pleadings filed herein and the contract between the parties [Exhibit A to Plaintiff's Complaint], the Court finds that various ambiguities exist in the agreement such that arbitration is not only unfeasible, but likely to result in the parties seeking to invoke the Court's jurisdiction to interpret the vagaries, including: (1) what years are "open tax years" for purposes of the agreement; (2) whether the parties' duties under the contract were prospective or retrospective; (3) whether payments to Defendant were based on refunds for individual tax periods or the cumulative effect of the audit over the [ambiguous] term of the agreement.

The Court finds that the arbitration provision is unenforceable when applied to the vagaries of the agreement involved herein.

IT IS THEREFORE ORDERED AND DECREED that Defendant's request for arbitration is denied. Such motion may be reconsidered upon subsequent motion after ambiguities are resolved.

IT IS FURTHER ORDERED AND DECREED that this matter is scheduled for telephone conference call for scheduling purposes on **September 15, 2011 at 8:30 a.m.** The Court will initiate the call.

Jonathan P. Hein, Judge

cc: James L. Thieman, Attorney for Plaintiff (via fax)
Peter F. vonMeister, Attorney for Defendant (via fax).
jph/research/arbitration/denied