

JAMS ARBITRATION

No. 1425035790

No. 1200048968

CENTURY SPRINGS, INC.

Claimant,

and

**ACME INDUSTRIAL SPRINGS, INC.; BILL REDMOND; JUNIOR
REDMOND; ARTURO ANDERSON, CPA.,**

Respondents.

BILL REDMOND,

Claimant,

and

CENTURY SPRINGS, INC., Respondent.

**REPORT OF PRELIMINARY HEARING AND
SCHEDULING ORDER NO. 1**

A preliminary conference was conducted on March 3, 2017; the following order is made respecting the conduct of this arbitration:

1. Parties and Counsel. The parties to this arbitration are identified in the caption and are represented as follows:

Christopher W. Jones, Esq.
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Counsel for Claimant and Respondent Century

Jason H. Chan, Esq.
Gibson & Latham LLP
One Wilshire

Los Angeles, CA 90017
213/345-6789 213/234-7890 (fax)
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Counsel for Respondent and Claimant Redmond

Jane Adams, Esq.
Less and More, P.C.
12345 Ventura Boulevard
Encino Ca. 91345
818/333-4444 818/333-5555 (fax)
jadams@lessmore.com
Counsel for Acme, Junior and AA

2. Arbitrators. The parties have appointed the following neutral arbitrators:

Hon. George Jamison (Ret.)
JAMS
555 13th Street, N.W. Suite 400W
Washington, D.C. 20004
202/607-2752 202/751-4099 (fax) gjamison@jamsadr.com
Chair

David Robertson
JAMS
620 Eighth Avenue, 34th Floor
New York, NY 10018
212/607-2752 212/751-4099 (fax)
Neutral arbitrator appointed by Century

Sally Sussman
JAMS
555 West Fifth Street, 32nd Floor
Los Angeles, CA 90013
213/253-9790 213/620-0100 (fax)
rchernick@jamsadr.com
Neutral arbitrator appointed by all Respondents in Case 1425035790

3. Case Manager:

Fred Altman
JAMS
620 Eighth Avenue, 34th Floor

New York, NY 10018
212/607-2752 212/751-4099 (fax) rjoseph@jamsadr.com

4. Agreement to Arbitrate.

Century, Acme and Redmond are party to a Stock Purchase Agreement dated August 1, 2016 (“SPA”); Century and Redmond are party to an Employment Agreement dated August 1, 2016 (“Redmond Agreement”); and Century and Junior are party to an Employment Agreement dated August 1, 2016 (“Junior Agreement”). The SPA contains an arbitration provision at ¶ 15.11. The Redmond Agreement contains an arbitration Agreement at ¶ 5. Redmond and Century are party to an action filed in the Los Angeles Superior Court on January 3, 2017 (the “Action”). In the action the Court granted Century’s motion to compel arbitration.

5. Applicable Law and Rules.

The Arbitrators shall apply the Federal Arbitration Act (“FAA”). The applicable substantive law in the SPA and the Redmond Agreement is the law of the State of California. The JAMS Comprehensive Arbitration Rules and Procedures are specified in the SPA and the JAMS Employment Rules in the Redmond Agreement.

6. Claims of the Parties and Arbitrability.

(a) Century filed a Demand for Arbitration on or about February 10, 2017 in the NYC Resolution Center. Redmond filed a Demand for Arbitration on February 10, 2017 in the Los Angeles Resolution Center. JAMS provisionally consolidated these two proceedings and directed the parties to appoint arbitrators pursuant to the SPA, all subject to reconsideration of these threshold issues by the Panel. A preliminary Hearing was conducted on March 3, 2017; all parties appeared by counsel. The following issues were presented and argued, and the Panel made the following rulings:

(b) Should these two arbitrations be consolidated? JAMS Rule 6 gives the Panel power to determine this issue. Under California law, two agreements made at the same time and as part of the same transaction are to be taken together. Civ. Code § 1642. Here the SPA and the Redmond Agreement were part of the same transaction and were signed the same day. Certain provisions of the SPA (non-compete) depend on the continued employment of Redmond (non-compete is extinguished if Redmond is terminated not for cause). The issues of Redmond’s conduct under the SPA are intertwined with the issue of Redmond’s termination of employment. Efficiency and the risk of inconsistent rulings compel the conclusion that these arbitrations should be consolidated. The

Comprehensive Rules shall apply generally in this proceeding, except where a different rule is specifically required under the Employment Rules. Other aspects of the consolidated proceeding are addressed below.

(c) What should be the venue of the consolidated arbitrations? The SPA says NYC and the Redmond Agreement says Los Angeles. The Redmond Agreement is subject to the JAMS Employment Rules and Standards of Fairness and therefore requires a venue at or near Redmond's place of residence. Therefore the consolidated arbitrations shall be conducted in the JAMS Los Angeles Resolution Center.

(d) Tripartite or Sole Arbitration? The Employment Agreement calls for a sole arbitrator and the SPA specifies a tripartite panel. The Standards of Fairness do not compel following the choice of the sole arbitrator, but case law suggests that a tripartite panel, if required in one agreement, must be adhered to where that arbitration is consolidated with another arbitration which called for a sole arbitrator. *Parker v. McCaw*, 125 Cal. App. 4th 1494 (2005) (award vacated for denial of right to tripartite arbitration process). The Panel shall therefore serve in this consolidated proceeding.

(e) Is Junior a proper party? His employment agreement has no arbitration clause and he is not a party to the Redmond Agreement or the SPA. He is therefore not a proper party to either arbitration and is dismissed.

(f) Is AA a proper party? AA is not a party to the Redmond Agreement or the SPA. (It is mentioned in the SPA as Acme's accountant; that is not a sufficient basis to join it as a party. It is therefore dismissed as a party.)

(g) Acme has been dismissed as party by Century.

(h) Punitive Damages. Both Agreements exclude punitive damages:

The SPA provides at ¶ 15.11:

Limitation of Remedies. The arbitrators shall have no authority to award punitive or other damages not measured by the prevailing party's actual damages and may not, in any event, make any ruling, finding, or award that does not conform to the terms and conditions of the agreement.

The Redmond Agreement provides at ¶ 5:

Limitation of Remedies. The arbitrator shall have no authority to award punitive or other damages not measured by the prevailing party's actual damages and may not, in any event, make any ruling, finding, or award that does not conform to the terms and conditions of the agreement.

This provision in the SPA is enforceable as a term negotiated at arm's length in that commercial contract. The Arbitrators therefore have no power to consider an award of punitive damages as between those parties. The similar provision in the Redmond Agreement however is improper under the JAMS Standards of Fairness which forbid exclusion of a remedy which could be obtained if the matter were adjudicated in a court. *Armendariz v. Foundation Health Psychcare Services, Inc.*, 24 Cal. 4th 83 (2000). (The issue of an award of attorneys' fees under the Redmond Agreement may also be barred by applicable California law. This issue is deferred to the Hearing and the cost phase of the case.)

(i) Responses to the Demands for Arbitration may be filed by March 10, 2017. JAMS Rule 9. Subject to all of the foregoing, all remaining claims in this consolidated proceeding are arbitrable and shall be determined in this proceeding.

7. Discovery

(a) The parties may exchange requests for documents on or after March 3, 2017 and shall respond to any Request and produce all responsive, non-privileged documents within 20 days of service of the Request. The Arbitrator shall issue subpoenas to third parties for documents in their possession at the request of a party.

(b) Counsel shall meet and confer and establish a discovery plan for the taking of a reasonable number of depositions; execution of a stipulated protective order, if desired by either side; any other discovery; and an agreed procedure for the identification of expert witnesses and related discovery (unless the provisions of ¶¶ 8(a) and (b) are acceptable as to expert disclosure and discovery).

(c) The Arbitrator shall resolve all discovery disputes, including those relating to the failure to agree on a discovery plan, in accordance with the California Discovery Act and the Rules.

8. Exchange of Information.

(a) The parties shall exchange all documentary evidence, including reports of experts they intend to offer at the Hearing, excepting only documents to be offered solely for impeachment, not later than July 8, 2017. These document designations may be supplemented by July 15, 2017.

(b) Counsel shall identify all non-rebuttal percipient and expert witnesses expected to testify at the Hearing and shall indicate the manner in which each witness is expected to testify (in-person, telephonically or by video conference or by affidavit or

declaration), not later than July 8, 2017. These witness designations may be supplemented by July 15, 2017.

(c) Counsel shall file on the first hearing day a Joint Witness List including all witnesses expected to testify at the Hearing, in the approximate order in which they are anticipated to be called.

(d) The purpose of the exchanges in this paragraph is to provide fair notice to the parties of documents and witnesses expected to be offered at the Hearing. Witnesses or documents not identified in accordance with these provisions will not be permitted to be offered at the hearing except on a showing of good cause, and particularly a showing as to why they were not so identified.

9. Hearing Procedure.

(a) The Hearing shall be conducted on August 8 and 9, 2017 at the Los Angeles Resolution Center of JAMS. Hearings shall commence each day at 9:00 a.m. The parties are encouraged to stipulate to agreed or uncontested facts and shall provide any stipulation to the Arbitrator at the commencement of the hearing in hard copy and electronic form (formatted to "Word").

(b) Bifurcation of Issues. The issues of the amount of punitive damages under the Redmond Agreement, if any, and the award of attorneys' fees and costs to which any party may be entitled pursuant to either Agreement shall be bifurcated and determined subsequent to the Hearing. The entitlement, if any, to an award of attorneys' fees or punitive damages shall be determined as part of the Hearing.

(c) Prehearing briefs may be filed not later than August 1, 2017.

(d) Hearing exhibits shall be pre-marked with consecutive Arabic numerals and a Joint Exhibit List shall be prepared not later than the first day of the Hearing. The parties shall indicate on the Joint Exhibit List any objection to the introduction of any exhibit. The Joint Exhibit List and objections shall be furnished to the Arbitrator at the commencement of the hearing. Exhibits not objected to shall be deemed admitted at the commencement of the hearing. One set of exhibits shall be prepared for the Arbitrators and one for the witnesses in addition to copies for counsel. The Arbitrators also prefer to receive copies of all exhibits in electronic form as described below. All exhibits will be discarded 30 days after the issuance of the Final Award unless a party requests, in writing, that the exhibits be retained or returned.

(e) Form of electronically submitted Exhibits: Exhibits shall be provided to the Arbitrator on compact disk(s) in the following .pdf format:

- Adobe Acrobat XI Standard
- Searchable multi-page .pdf files,
- No password restrictions to access the document(s),
- Document Restriction for 'Printing' is set to 'Allowed,'
- Document Restriction for 'Changing the Document' is set to 'Allowed,'
- Document Restriction for 'Document Assembly' is set to 'Allowed,'
- Document Restriction for 'Content Copying or Extraction' is set to 'Allowed,'
- Document Restriction for 'Content Extraction for Accessibility' is set to 'Allowed,'
- Document Restriction for 'Commenting' is set to 'Allowed.'

(f) If a party intends to utilize the services of a court reporter at the hearing, notice of that intention shall be given to the other side not later than August 1, 2017.

(g) Award. The Interim and Final Awards shall be prepared in accordance with the Agreement, the California Arbitration Act and the Rules and may be served by regular mail.

10. Miscellaneous.

(a) Cancellation fee of the Arbitrators. The parties will be requested to deposit fees for the scheduled hearing 45 days in advance of the commencement of the hearing. If the hearing is cancelled within 30 days of the hearing date for any reason the deposit for the canceled days shall be deemed a cancellation fee and shall be immediately payable. Deposited fees shall be refunded for days which are rebooked to the extent of fees earned on those days.

(b) **JAMS Electronic Filing (Case Anywhere)**. The parties have confirmed their willingness to use the JAMS Electronic Filing (Case Anywhere) system. The costs are about \$40 per firm per month plus \$5 per filing. Hard copy filing and service costs (copying, postage and messenger fees) are avoided, as well as arbitrator fees for file organization and administration. Documents are easily submitted and filed from a computer with just a few key strokes. A highly-user friendly, accessible, reliable and authoritative file is created which greatly helps the arbitrators and saves the parties money. The system includes a convenient message board for easy informal communication between and among lawyers, arbitrators and Case Manager. It also features a capability for online storage of and access to deposition and hearing transcripts. (Hearing exhibits are the only documents not lodged on Case Anywhere--these will be submitted on a thumb drive, consistent with the instructions provided in ¶ 9 (e) and (f), above.)

(c) All deadlines herein shall be strictly enforced. This Order shall continue in effect unless and until amended by subsequent order of the Arbitrator.

DATED: March 3, 2017

George Jamison
Chair and for the Panel