

68303-9

68303-9

No. 68303-9-I

IN RE THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION I

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CHRISTINA LINDSTROM,

Respondent,

vs.

MARK EMERY and JANE DOE EMERY, Husband and Wife,  
and the community thereof,

Appellants.

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**BRIEF OF RESPONDENT**

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**the Eason Law Firm, PS**  
Rachelle Marie Eason, WSBA #29922  
Attorneys for Respondent

Address:

1229 Cleveland Avenue  
P.O. Box 1725  
Mount Vernon, WA 98273  
(360) 336-2221

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Plaintiff/Respondent Christina Lindstrom hereby responds to the  
Brief of Appellants:

**I. STATEMENT OF THE CASE**

This case arose out of a motor vehicle collision involving Plaintiff/Respondent Christina Lindstrom and Defendant/Appellant Mark Emery that occurred in Snohomish County on September 8, 2004. (CP 137). The parties agreed to present the case to an arbitrator who awarded Plaintiff/Respondent Lindstrom \$50,000.00 on June 1, 2010. (CP 126-28, 143). Defendant requested a trial de novo of the Arbitrator's decision and the matter was ultimately set for trial. (CP 123-25, 119-20).

By agreement, the parties continued the first two trial dates and the matter was ultimately rescheduled for trial to be held on January 10, 2012. (CP 115-16, 117-18, 113-14). No further requests for a continuance were made. Defendant/Appellant Emery failed to comply with the Snohomish County Superior Court's trial confirmation rule and the Court properly entered judgment on the arbitration award, including interest<sup>1</sup>, pursuant to the Snohomish County Superior Court's local mandatory arbitration court rule on January 5, 2012. (CP 93-95, 96-97).

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<sup>1</sup> Plaintiff/Respondent concedes that the correct interest rate would be 5.25% pursuant to RCW 4.56.110(3)(b) not 12% as indicated by the scrivener's error on the judgment.

On January 6, 2012, Defendant/Appellant filed, but failed to note for hearing, a motion to reconsider entry of the judgment. (CP 73-92). The morning of January 10, 2012, the trial court struck the trial on the basis that judgment had been entered and informed counsel that it did not have the authority to hear the motion for reconsideration. (CP 62; RP 3, 5). The Judge informed counsel that he had the option of noting his motion for reconsideration or filing a motion for revision. (RP 3). On January 23, 2012, the Defendant/Appellant abandoned his motion for reconsideration and filed a motion for revision eighteen days after such a motion was due, in violation of both court rules and applicable statutory authority. (CP 26-58). The trial Court properly denied the motion for revision based on Defendant/Appellant's failure to timely file. (CP 10-11).

## **II. RESPONSE TO ASSIGNMENT OF ERROR**

Defendant/Appellant has not identified any error that would justify reversing the Superior Court.

## **III. ARGUMENT**

A. THE COURT COMMISSIONER PROPERLY ISSUED FINDINGS OF FACT AND CONCLUSIONS OF LAW AND JUDGMENT IN THIS MATTER RELYING ON LOCAL COURT RULES THAT ARE CLEAR AND UNAMBIGUOUS

The Court interprets local rules by reference to rules of statutory construction. *Heaney v. Seattle Municipal Court*, 35 Wn. App. 150, 154, 665 P.2d 918 (1983), *rev. denied*, 101 Wn.2d 1004 (1984) (*citing* 3 C. Sands, *Statutory Construction* § 67.10 (4<sup>th</sup> ed. 1974)). Questions of statutory interpretation are reviewed de novo. *State v. Salavea*, 151 Wn.2d 133, 140, 86 P.3d 125 (2004). “The ‘plain meaning’ of a statutory provision is to be discerned from the ordinary meaning of the language at issue, as well as from the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.” *State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005). If after examination of a statute the Court finds that it is subject to more than one reasonable interpretation, the statute is ambiguous. *Id.* at 600-01. However, a statute is not ambiguous merely because more than one interpretation is conceivable. *Agrilink Foods, Inc. v. Dep't of Revenue*, 153 Wn.2d 392, 396, 103 P.3d 1226 (2005) (*citing State v. Hahn*, 83 Wn. App. 825, 831, 924 P.2d 392 (1996)). The trial court “is the best exponent of its own rules, and their use will not be disturbed ... unless the construction placed thereon is clearly wrong or an injustice has been done.” *Snyder v. The State of Washington*, 19 Wn. App. 631, 637, 577 P.2d 160 (1978) (*citing Burton v. Gilder*, 106 Ga. App. 494, 127 S.E.2d 328 (1962); *United States Fidelity & Guar. Co. v. Lawrenson*, 334 F.2d 464 (4<sup>th</sup> Cir. 1964)).

Snohomish County Local Rule 40(c)(1) provides that it shall be the duty of each attorney of record or party pro se in a case set for trial to jointly or separately confirm a case for trial. Specifically, the rule states as follows:

*Confirmation. It shall be the duty of each attorney of record or party pro se in a case set for trial to jointly or separately confirm, no sooner than 12 noon of the first court day of the week and no later than 12 noon of the last court day of the week two weeks prior to the trial date, in such written or electronic form as approved by the court. The court may strike the trial date and may impose sanctions and/or terms against the parties or counsel for failure to so confirm, including dismissal of the case.*

SCLCR 40(c)(1). *Emphasis added.*

This rule is clear, unambiguous, and not susceptible to two or more reasonable interpretations. The lack of ambiguity is crystallized when one reviews the trial confirmation form that is supplied by Snohomish County Superior Court for use by a party when confirming trial. (CP 114, 120, 122). The form contains a signature block for both attorneys. If you do not have the signature of opposing counsel then you are not jointly confirming trial, you are separately confirming the trial. It is undisputed that the parties did not *jointly* confirm the trial. There has been no allegation made by the appellant that any effort was made to work jointly with Plaintiff/Respondent to confirm the trial. Instead, the Defendant/Appellant has indicated that they were aware of the rule, as

they had complied with it in the past without any confusion or ambiguity, and simply failed to comply with the rule in this instance. (CP 59-60, 70-71, 73-74, 26-27).

Defendant/Appellant attempts to mislead the court by calling their failure to confirm the trial a “scrivener’s error.” A scrivener's error is an unintended error or omission made by the drafter of a legal document. *See, Snyder v. Peterson* 62 Wn. App. 522; 814 P.2d 1204 (1991) (finding that the attorney who drafted a deed and inadvertently leaving off the section, township, range, and meridian off the deed constituted a scrivener's error). Failing to file a trial confirmation because you thought you had is not a scrivener’s error nor does it show substantial compliance with a court rule.

While Plaintiff/Respondent did comply with the court rules and confirmed trial, Defendant/Appellant did not. The fact that Defendant/Appellant had previously confirmed a past trial date does not excuse the failure to comply with the rule on this occasion, but does demonstrate both knowledge of the rule and how to confirm the trial in compliance with the rule.

SCLMAR 7.2(b) provides that if the party who requested the trial de novo fails to confirm the trial, or fails to appear at trial, then the opposing party may obtain a judgment on the arbitrator’s award with no further notice. Specifically, the rule states as follows:

*If the party who requested the trial de novo fails to confirm the trial, or fails to appear at trial, then the opposing party may obtain a judgment on the arbitrator's award with no further notice.* If the party opposing the request for trial de novo fails to appear at trial, then the trial shall proceed as in any default.

SCLMAR 7.2(b). *Emphasis added.*

This rule is also clear and unambiguous. There are two instances wherein Plaintiff can obtain entry of a judgment on the arbitrator's award: 1) where Defendant fails to confirm the trial; or 2) where Defendant fails to appear for trial. In this case, Defendant/Appellant failed to confirm the trial. Plaintiff/Respondent at that point was entitled to entry of a judgment without having to give notice to the other party of her intent to do so.

Defendant/Appellant misconstrues the plain language of the rule. It states that *the opposing party may, not the court, obtain a judgment on the arbitrator's award with no further notice.* It was Plaintiff/Appellants option at that point to seek entry of the judgment and, once sought, for the court to grant the relief. The language is not permissive or ambiguous. Another option for the Plaintiff/Appellant may have been to proceed with trial and possibly be granted a more favorable outcome rather than be limited to the maximum award at arbitration which she received. Had the drafter's intended for the court to choose a less severe remedy, or even to require Plaintiff/Appellant to bring a motion, then the rule would have stated that course of action.

B. THE SNOHOMISH COUNTY LOCAL RULES AT  
ISSUE ARE NOT INCONSISTENT WITH STATE  
RULES

Under CR 83, superior courts may adopt local rules so long as they are not inconsistent with the Civil Rules. The Revised Code of Washington, Chapter 7.06, provides for the mandatory arbitration of civil action and instructs the Supreme Court to adopt the necessary procedures to implement this arbitration. *RCW 7.06.030*. “Under Washington case law, later legislation operates to repeal a prior legislative act where ‘the two acts are so clearly inconsistent with, and repugnant to, each other that they cannot by a fair and reasonable construction, be reconciled’” *Heaney at 154-55 (citing Tacoma v. Cavanaugh, 45 Wn.2d 500, 503 275 P.2d 933 (1954) (quoting State v. Becker 39 Wn.2d 94, 97, 234 P.2d 897 (1951))*. The court construed the word “inconsistent” to mean that it is impossible as a matter of law that they can both be effective. *Id at 155*.

In this case, there are no civil rules like the Snohomish County Local rules at issue. SCLMAR 7.2(b) is not a default rule, it is a procedural rule.

In *Heaney*, the Court was asked to determine whether a local rule that required a defendant to make a motion to object to trial setting that is not within the 60 day speedy trial limits within ten days from notice from the court of the trial date was inconsistent with the court rule that states

that the complaint must be dismissed if the defendant is not brought to trial within 60 days. *Id.* at 155. There, the Court found that the local rules in question merely required a procedural step be taken by a party wishing to assert a legal right. *Id.* Specifically, the court found that the local rule imposing a burden on both the State and the defendant to move the trial court to set a trial date within the 60-day period required by another local rule did not, as a matter of law, create an impossibility for both rules to be effective *Id.* at 157. The “local court rule providing for a waiver by inaction may coexist with a concurrent court rule requiring an accused be brought to trial within 60 days where the accused is aware of such right.” *Id.* at 155-56 (*citing Taylor v. United States*, 238 F.2d 259 (D.C. Cir. 1956)). The Court upheld the trial court’s ruling that the defendant failed to comply with the local rule requiring that he bring a motion to object to the trial date that was outside of the 60 days thereby waiving his right to the same. *Id.* 157.

Here, like in *Heaney*, Defendant/Appellant had a right to a trial but failed to follow the rule confirming the trial. SCLMAR 7.2(b) clearly states that “[i]f the party who requested the trial *de novo* fails to confirm the trial ... then the opposing party may obtain a judgment on the arbitrator's award with no further notice....” The burden was on Defendant/Appellant to confirm the trial else be subjected to the entry of

the arbitrator's award. Clearly, Defendant/Appellant was aware of the trial confirmation rule as he had properly confirmed a previous trial date and, by his own admission, states that he failed to confirm trial in this instance. (CP 59-60, 70-71, 73-74, 26-27). SCLMAR 7.2(b) is a mere procedural step required to assert a legal right.

Defendant/Appellant relies on *Sorenson v. Dahlen* 136 Wn. App. 844, 149 P.3d 394 (2006) wherein the Court held that perfection of the request for trial de novo did not depend on strict compliance with the local court rule in question. *Id.* at 858. There, Defendant/Appellant properly filed a request for trial de novo with the required note for trial assignment, but due to a scrivener's error, noted the hearing for trial assignment on the wrong date. *Id.* at 856. The Court found that the court clerk's failure to perform a ministerial duty<sup>2</sup> by not correcting the mistake imposed an unduly harsh result for which the local court rules did not expressly provide. *Id.* at 857.

In *Sorenson*, the Court was asked to determine whether the Kitsap County Superior Court local mandatory arbitration rule requiring a party requesting a trial de novo to note the case for trial at the time of the request was inconsistent with the State mandatory arbitration rules which

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<sup>2</sup> "Where the law prescribes and defines an official's duty with such precision and certainty as to leave nothing to the exercise of discretion or judgment, the performance of that duty is a ministerial act." *Sorenson* at 855 (quoting *City of Bothell v. Gutschmidt*, 78 Wn App. 654, 662, 898 P.2d 864 (1995)).

do not impose this additional step. *Id.* at 853. The Court held that there was no impermissible conflict “because “[t]he local rule merely requires a procedural step be taken by a party wishing to assert a legal right.”” *Id.* (citing *City of Seattle v. Marshall*, 54 Wn. App. 829, 833, 776 P.2d 174 (1989)). Further, that while MAR 7.1(a) creates the legal right to trial de novo, the local rule merely instructs a party to complete a form that aids the clerk in determining how a case should be assigned. *Id.* at 853-54. Once a party has requested the trial de novo with a note for trial assignment, scheduling the matter for trial assignment is a ministerial act of the clerk of the court and is beyond the discretion or judgment of the parties. *Id.* at 855. The court ruled that defendant/appellant’s failure to correctly note the date for trial assignment where he substantially complied with the rule did not dictate the harsh result of denying him his trial de novo where the local procedural requirements were not a condition that must be timely met in order for the court to conduct the trial de novo. *Id.*

Here, unlike in *Sorenson*, Defendant/Appellant did not substantially comply with the rules. He failed to comply with the rules altogether by not confirming the trial. While the result is harsh, it is not un-contemplated by the rules. SCLMAR 7.2(b) specifically states that if the party requesting the trial de novo fails to confirm the trial then the

opposing party is entitled to entry of judgment on the arbitrator's award without further notice. Confirmation of the trial is a mere procedural step imposed on the requesting party to assert his legal right.

C. ENTRY OF THE JUDGMENT AT EX PARTE DOES NOT VIOLATE THE DEFENDANT/APPELLANT'S DUE PROCESS AS CONSTITUTIONAL RIGHTS MAY BE WAIVED BY FAILING TO PRESERVE THEM

It is undisputed that a party has a right to a jury trial under the laws in the State of Washington, in this case, the Defendant/Appellant was not denied his right to a jury trial.

It is well established by the Washington State Constitution, statutes, and case law that Courts may promulgate rules to govern court procedures.

The Constitution grants courts to make rules as follows:

The judges of the superior courts, shall from time to time, establish uniform rules for the government of the superior courts.

CONST. art. IV, § 24.

This premise is reiterated by statute under RCW 2.08.230, which also states "[t]he judges of the superior courts shall, from time to time, establish uniform rules for the government of the superior courts." RCW 2.08.230. Moreover, RCW 2.04.190 states as follows:

The supreme court shall have the power to prescribe, from time to time, the forms of writs and all other process, the mode and manner of framing and filing proceedings and pleadings; of giving notice and serving writs and process of all kinds; of taking and

obtaining evidence; of drawing up, entering and enrolling orders and judgments; and generally to regulate and prescribe by rule the forms for and the kind and character of the entire pleading, practice and procedure to be used in all suits, actions, appeals and proceedings of whatever nature by the supreme court, superior courts, and district courts of the state. *In prescribing such rules the supreme court shall have regard to the simplification of the system of pleading, practice and procedure in said courts to promote the speedy determination of litigation on the merits.*

RCW 2.04.190 *emphasis provided.*

A rule requiring a party to take some action in order to preserve his or her right to trial does not deny that party due process when they fail to do so. Cases like *Heaney* demonstrate that a Constitutional right can be waived through inaction. *Heaney* at 155. The Court has upheld similar rules that imply waiver of the right to a jury trial by failure to act. For example, in *Sackett v Santilli*, the Court upheld a local civil rule that stated that a party's failure to serve and file a demand and pay the required fee for requesting a jury, constitutes a waiver of that party's right to a jury trial by finding that "[t]he authority of the legislature and the court is coextensive with respect to making provision for implied waiver of the right to a jury in civil cases. [The local rule] is constitutional exercise of the court's rule making authority." *Sackett v Santilli* 146 Wn.2d 498, 508, 47 P.3d 948 (2002). Similarly, in *State v. Kratzer*, the court stated that while "[t]he right to trial by jury shall be inviolate [under CONST. art. 1, § 21] ... [t]his right, along with most others, of course, may be waived, and

may even be waived by inaction where the law calls for specific acts by which the right is asserted.” *State v. Kratzer*, 70 Wn.2d 566 571, 424 P.2d 316 (1967).

The result in this case is not like a default. Here, the parties attended arbitration and the Plaintiff received an award and was entitled to entry of the arbitrator’s award when Defendant/Appellant failed to confirm the trial per court rules. The result here is more like missing a statute of limitations on a claim or a filing deadline for a notice of appeal.

In *Nevers v. Fireside*, the Court held that under the MAR rules, a party must file its written request for a trial de novo along with proof that a copy has been served upon all other parties within 20 days after the arbitration award is filed. *Nevers v. Fireside, Inc.* 133 Wn.2d 804, 947 P.2d 721 (1997). There, the aggrieved party, Nevers and Anderson, filed their request for a trial de novo within the 20 days but did not accompany the filing with proof of service nor could they show that Fireside actually received the notice within the 20 days. *Id.* at 811. The most that could be said was that they mailed the request on the day they filed. *Id.* Nevers and Anderson conceded that they did not strictly comply with the rule and asked that the court find they substantially complied because they mailed it within the 20 days. *Id.* Fireside argued that the rule required strict compliance and agreed that both steps, filing and service, must be

completed in order to preserve the right to trial de novo. *Id.* at 812. The result in *Nevers* is harsh, however, the court found that the rule is unambiguous and the party seeking relief must follow the rule and in light of their failure to do so, their request for trial de novo was properly denied. *Id.* at 815.

Defendant/Appellant has also argued that SCLMAR 7.2 is inconsistent with MAR 6.3 and SCLMAR 6.3, but these rules apply in two distinctly different contexts of litigation. MAR 6.3 and SCLMAR 6.3 apply before the case is transferred out of arbitration and back to the Superior Court for filing of trial. SCLMAR 7.2 applies when the case has already been transferred back to Superior Court for trial, the parties already have a court date, and puts in place a procedural rule that both parties must follow to preserve their legal rights. It is worth remembering that if the Plaintiff had not confirmed the trial, she risked dismissal of her action under the scheme of the local rules. SCLMAR 7.2 serves the purposes of mandatory arbitration which are to expedite cases and the primary goal of mandatory arbitration, which is to alleviate court congestion and reduce delay in hearing civil cases. *See, Fernandes v. Mockridge*, 75 Wn. App. 207, 211, 877 P.2d 719 (1994) (“RCW 7.06, authorizing mandatory arbitration in certain civil cases, is intended

primarily to alleviate court congestion and reduce delay in hearing civil cases.”) *rev. denied*, 126 Wn.2d 1005 (2005)).

The rule here, like in *Nevers*, is not ambiguous and requires strict compliance. To preserve his right to trial de novo, all the Defendant/Appellant had to do in this case was confirm trial in accordance with SCLCR 40(c)(1). It is undisputed that Defendant/Appellant failed to confirm the trial. Had he done so, then SCLMAR 7.2(b) would not have applied. A party’s failure to follow the court rules can lead to harsh results. Even if the Court finds that substantial compliance is the appropriate test, Defendant/Appellant cannot satisfy that standard as they did not comply with the trial confirmation rule at all.

D. THE TRIAL COURT PROPERLY DENIED  
DEFENDANT EMERY’S MOTIONS FOR  
RECONSIDERATION AND REVISION IN THIS  
MATTER

Motions for reconsideration are governed by CR 59(b) which states in pertinent part as follows:

... A motion for ... reconsideration shall be filed not later than 10 days after the entry of the judgment, order, or other decision. *The motion shall be noted at the time it is filed, to be heard or otherwise considered within 30 days after the entry of the judgment, order, or other decision, unless the court directs otherwise.* A motion for a new trial or for reconsideration shall identify the specific reasons in fact and law as to each ground on which the motion is based.

CR 59(b). *Emphasis added.*

SCLCR 59(3)(B), instructs a party as to Snohomish County's local requirements for a party seeking reconsideration

... At the time of filing a motion under this rule, the moving party *shall comply with CR 59(b) by filing a calendar note, setting the motion before the court which heard the motion.* Absent order of the court, the motion will be taken under advisement. Oral arguments will be scheduled only if the court requests the same.

SCLCR 59(3)(B). *Emphasis added.*

Defendant/Appellant did in fact file a motion for reconsideration within the 10 days as required by the court rules; however, they did not note that motion to be heard at the time they filed it nor did they note it to be heard later. At the trial call on January 10, 2012, the Judge basically instructed counsel as to how they should proceed as follows:

THE COURT: ...And you have a motion for reconsideration, but you haven't noted it.

MR. BIEMILLER: Correct.

THE COURT: And I guess from my perspective, I can't reconsider what a Commissioner has done. Your remedy at this point would be either a motion for reconsideration in front of the person that did the ruling which is the Commissioner, or a motion to revise.

(RP 3).

In Defendant/Appellant's Motion for Revision of Commissioner's Ruling Pursuant to SCLCR 7(b)(2)(K), counsel specifically plead as follows:

...[B]ut the court was unable to hear the motion for reconsideration because it was not brought before the commissioner that had stamped the order. The Court invited the defense to either bring the motion to reconsider there, or to bring a motion to the Superior Court to Revise the Commissioner's Order.

Defense now brings this motion under the latter option.

(CP 28).

SCLCR 7(b)(2)(K) states in pertinent part, as follows:

... A party seeking revision of a commissioner's ruling shall, within the time specified by statute, file and serve on all other parties a motion and completed calendar note. The filing of the written order of the commissioner shall commence the running of the time. ... The Motion for Revision shall be filed timely and shall be scheduled by the movant to be heard not more than 14 days after the motion is filed. ...

SCLCR 7(b)(2)(K).

Thus, we have to look at the RCWs for the statute dictating what time is specified for a motion for revision.

RCW 2.24.050 provides, as follows:

All of the acts and proceedings of court commissioners ... shall be subject to revision by the

superior court. Any party in interest may have such revision upon demand made by written motion, filed with the clerk of the superior court, ***within ten days*** after the entry of any order or judgment of the court commissioner. ... [U]nless a demand for revision is made within ten days from the entry of the order or judgment of the court commissioner, the orders and judgments shall be and become the orders and judgments of the superior court... *Emphasis added.*

RCW 2.24.050 - Revision by court.

This language clearly and unambiguously gives the party requesting superior court review of a commissioner's order only 10 days from the date of the commissioner's order to move for revision. *In re the Marriage of Robertson*, 113 Wn. App. 711, 714 (2002). The statute also clearly and unambiguously provides that a party who fails to act within 10 days must seek relief from the appellate court. *Robertson*, at 714, (*citing, State v. Mollici*, 132 Wn. 2d 80, 93 (1997)). The court does not have the inherent authority to ignore a clear statutory mandate such as the 10 day revision rule absent a finding that the statute is unconstitutional, and the statutory mandate is not subject to the substantial compliance rule. *Robertson*, at 714-715.

The Defendant/Appellant's Motion for Revision was properly denied and stricken for failure to meet the jurisdictional filing requirement of RCW 2.24.050. (CP 10-11)

Defendant/Appellant now asks this court to find that the Superior Court improperly denied his Motion for Revision on the basis of untimeliness because it should have related back to the date he filed his Motion for Reconsideration. This may have been the case had Defendant/Appellant ever noted his motion for reconsideration to be heard on shortened time before the Commissioner within the 30 days as was suggested by the trial court. (RP 4). However, at no time during these proceedings did he note their motion for reconsideration. In fact, he actually stated that he was choosing to file as a motion for revision instead. (CP 28). The motion for reconsideration was never ripe for review and Defendant/Appellant failed to file a motion for revision within the time frame allowed.

The trial court never declined to hear Defendant/Appellant's motion for reconsideration because he never noted it on the court's calendar to be heard in the first place. The trial court properly declined to hear Defendant/Appellant's motion for revision because he failed to file it within the 10 days as required by statute. (CP 10-11).

E. JUDGMENT ON THE ARBITRATION AWARD WAS PROPERLY ENTERED AND DEFENDANT HAS FAILED TO IMPROVE HIS POSITION THUS ATTORNEY FEES ARE APPROPRIATE PURSUANT TO MAR 7.3

MAR 7.3 provides that the Court shall assess costs and reasonable attorney fees against a party who appeals the award and fails to improve the parties position on the trial de novo. The judgment entered in this case is equal to the amount of the arbitration award, so the Defendant/Appellant has failed to improve his position. SCLCR 7.3 limits fees and costs to those incurred after the date the Defendant has requested a Trial De Novo.

#### **IV. CONCLUSION**

Any errors or deficiencies Defendant/Appellant Emery now claims are the result of his failure to properly follow the Court rules. The rules of mandatory arbitration are meant to expedite cases and the primary goal of mandatory arbitration is to alleviate court congestion and reduce delay in hearing civil cases. It is true that Plaintiff/Respondent was preparing for trial, and even confirmed the trial in accordance with local court rules. However, once she learned that Defendant/Appellant had failed to confirm the trial and that she was entitled to entry of Judgment on the Arbitrator's award pursuant to local mandatory arbitration court rule, trial preparations stopped and witnesses were called off. Plaintiff/Respondent has been prejudiced by the fact that she is entitled to resolution of her claim in reliance to the rules and procedures prescribed by the court. Plaintiff/Respondent Lindstrom therefore respectfully requests that the

Court affirm the findings of fact and conclusions of law and uphold the judgment in favor of Plaintiff/Respondent Lindstrom in this matter.

Respectfully submitted this 10 day of August, 2012.

**THE EASON LAW FIRM, PS**



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Rachelle Marie Eason, WSBA # 29922  
Attorney for Plaintiff/Respondent Lindstrom

**V. CERTIFICATE OF SERVICE**

The undersigned certifies under penalty of perjury under the laws of the State of Washington, that she is now, and at all times material hereto, was a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to, or interested in, the above-entitled action, and competent to be a witness herein. I caused to be served on the 10 day of August, 2012, a copy of the pleading entitled Brief of Respondent as follows:

Marilee Erickson  
Reed McClure  
604 Union Street, Suite 1500  
Seattle WA 98101

Michael N. Budelsky  
Attorney For Appellants  
601 Union Street, Suite 1500  
Seattle, WA 98101

Original plus one copy:

Richard D. Johnson, Clerk  
Court Of Appeals, Division I  
One Union Square  
600 University Street  
Seattle, WA 98101-1176

Copy mailed as follows:

Dietrick Biemiller  
Attorney at Law  
901 5<sup>th</sup> Ave Ste 830  
Seattle, WA 98164

Signed this 10 day of August, 2012 at Mount Vernon, Washington.

**THE EASON LAW FIRM, PS**

  
\_\_\_\_\_  
Olga Tikhonov, Paralegal