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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY
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COURT OF APPEALS FOR DIVISION II

STATE OF WASHINGTON

MICHAEL D. McPHEE d/b/a THE MICHAEL D. McPHEE COMPANY

Appellant,

v.

STEINHAUER FAMILY INVESTMENTS, LLC,
a Washington limited liability company

Respondent.

REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

<u>Description</u>	<u>Page No.</u>
I. ARGUMENT IN REPLY	1
A. The Stipulation is part of the Order	1
1. The Stipulation for Transfer to Private Arbitration is a single document	1
2. As a single document, the parties must have contemplated that the Stipulation would be part of the Order	2
B. The Stipulation is separately enforceable	2
C. Pursuant to RCW 7.04.030 the Court stayed the action	5
1. When the parties requested arbitration, the court stayed the proceedings	5
2. When parties enter into a stipulation, they waive the procedural requirements surrounding the issues in the stipulation	7
D. The Superior Court lacked jurisdiction to dismiss the case	9
1. Judicial Estoppel prevents the Respondent from asserting that the Superior Court has jurisdiction	9
2. <i>Tjart v. Smith Barney Inc</i> , 107 Wash.App. 885, 28 P.3d 823 (2001) does not apply to the present case	12
3. RCW 7.04 is not subject to judicial construction	16
4. The trial court's inquiry ends where the parties have entered into a valid arbitration agreement	19

E.	Mr. McPhee brought his CR 60(b) Motion within a reasonable time.	21
F.	The Respondent is not entitled to attorneys' fees	24
	1. The trial court dismissed both parties' claims in its Dismissal for Want of Prosecution.	24
	2. Neither party is the prevailing party.	25

TABLE OF AUTHORITIES

Cases

<i>Arkison ex rel. Carter v. Ethan Allen, Inc.</i> , 160 Wash.2d 535, 538, 160 P.3d 13 (2007).....	9, 10
<i>Burnside v. Simpson Paper Co.</i> , 66 Wash.App. 510, 517, 832 P.2d 537 (1992).....	20
<i>DeHeer v. Seattle Post Intelligencer</i> , 60 Wash.2d 122, 126, 372 P.2d 193 (1962).....	1, 17, 24
<i>Equity Group, Inc. v. Hidden</i> , 88 Wash.App. 148, 155, 943 P.2d 1167 (Div. 2, 1997).....	17
<i>Luckett v. Boeing Co.</i> , 98 Wash.App. 307, 311, 989 P.2d 1144 (1999) ...	22
<i>Mabe v. White</i> , 105 Wash.App. 827, 15 P.3d 681 (2001).....	14
<i>Markley v. Markley</i> , 31 Wash.2d 605, 614, 198 P.2d 486 (1948).....	9
<i>Plouffe v. Rook</i> , 135 Wash.App. 628, 147 P.3d 596 (Div. 1, 2006)	17
<i>Riss v. Angel</i> , 131 Wash.2d 612, 633, 934 P.2d 669 (1997).....	24
<i>Riss v. Angel</i> , 80 Wash.App. 553, 564, 912 P.2d 1028 (Div. 1, 1996).....	24
<i>Robinson v. Robinson</i> , 37 Wash.2d 511, 517, 225 P.2d 411 (1950).....	2
<i>Scott v. Cingular Wireless</i> , 160 Wash.2d 843, 161 P.3d 1000 (2007).....	4
<i>Smyth Worldwide Movers, Inc. v. Whitney</i> , 6 Wash.App. 176, 491 P.2d 1356 (1971).....	3, 7
<i>State v. Para</i> , 122 Wash.2d 590, 859, P.2d 1231 (1993).....	2,3,5
<i>The Heights at Issaquah Ridge Owners' Association v. Burton Landscape Group, Inc.</i> , No. 61604-8-1.....	20
<i>Tjart v. Smith Barney, Inc.</i> , 107 Wash.App. 885, 28 P.3d 823 (2001)	12
 Statutes	
RCW 7.04.030	5, 6, 8, 9

I. ARGUMENT IN REPLY

A. The Stipulation is part of the Order.

1. The Stipulation for Transfer to Private Arbitration and to Set Aside the Case Schedule is a single document.

There is no meaningful dispute that the Stipulation for Transfer to Private Arbitration and to Set Aside the Case Schedule is a single document. The Respondent acknowledges this in its brief.¹

The Respondent failed to provide any authority for its position that different sections of the same document must be incorporated into each other to have any effect (or that a document must be incorporated into itself). The case law that the Respondent did provide dealt with parties attempting to incorporate a separate document into a court order (or combine two separate documents).²

Since the Stipulation for Transfer to Private Arbitration and to Set Aside the Case Schedule is a single document, no part of it must be separately incorporated into another part. There is no meaningful dispute as to what the Court and the parties intended by this legal document.

2. As a single document, the parties must have contemplated that the Stipulation would be part of the Order.

¹ See Respondent's brief, page 8.

² Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none. *DeHeer v. Seattle Post Intelligencer*, 60 Wash.2d 122, 126, 372 P.2d 193 (1962).

When parties contemplate that a stipulation will become part of the Court's order, the stipulation has the "compelling power of the court behind it." See e.g. *Robinson v. Robinson*, 37 Wash.2d 511, 517, 225 P.2d 411 (1950).

The *Robinson* court held that: "*The parties must have contemplated that their property settlement, when it became part of the decree, would have the compelling power of the court behind it.*" *Id.* at 517.

It is clear from a review of the parties Stipulation for Transfer to Private Arbitration and to Set Aside the Case Schedule that the Stipulation and Order are one document. CP 34-36. Like the parties in *Robinson*, the parties contemplated that the Stipulation was part of the Order. Under *Robinson*, the parties' stipulation must have the "compelling power of the court behind it." 37 Wash.2d @517.

B. The Stipulation is separately enforceable.

A stipulation is an agreement between the parties to which there must be mutual assent. *Parra*, 122 Wash.2d at 601 (citing *State v. Alder*, 16 Wash.App. 459, 558 P.2d 817 (1976), review denied, 88 Wash.2d 1011 (1977)). To be effective, the terms of a stipulation must be definite and certain. *Parra*, 122 Wash.2d @ 601 (citing 73 Am.Jur.2d *Stipulations* §2 (1974)).

Stipulations are favored by the courts and will be enforced unless good cause is shown to the contrary. *Parra*, 122 Wash.2d @601 (citing *Smyth Worldwide Movers, Inc. v. Whitney*, 6 Wash.App. 176, 491 P.2d 1356 (1971)). **The courts will enforce all stipulations of parties or their attorneys for the government of their conduct or the control of their rights in the trial of a cause or the conduct of litigation**, if such stipulations are not unreasonable, not against good morals or sound public policy, are within the general scope of the case made by the pleadings, and are in such form as may be required by rule of court or statutory enactment. *Smyth Worldwide Movers, Inc.*, 6 Wash.App. at 178.

If the court refuses to accept a stipulation, the effect is generally to place the parties in their original positions regarding the matters affected by the stipulation. *Parra*, 122 Wash.2d @ 601.

The Respondent asserts that a stipulation is unenforceable if it is not incorporated into a court order. See Respondent's brief, page 9.

According to the Washington Supreme Court in *Parra*, in order for a stipulation to be enforceable, both parties must assent to the terms and those terms must be definite and certain. 122 Wash.2d at 601. In the present case it is undisputed that both Mr. McPhee and the Respondent mutually assented to the Stipulation's terms. CP 35.

The terms of the Stipulation are not only undisputed, but certain and definite. The Stipulation reads that the matter should be stayed pending private arbitration. CP 34-35.

The Washington Supreme Court held in *Parra* that the court is required to enforce the parties' Stipulation unless good cause is shown to the contrary. The *Smyth Worldwide Movers, Inc.* court requires the Stipulation to be enforced if it is reasonable, not against good morals or sound public policy, is within the general scope of the case made by the pleadings, and is in such form as may be required by rule of court or statutory enactment.

The parties' Stipulation is undeniably reasonable and sound in public policy. Washington state favors arbitration of disputes. *See e.g. Scott v. Cingular Wireless*, 160 Wash.2d 843, 161 P.3d 1000 (2007) (citations omitted).

The parties' Stipulation is also within the scope of the case made by pleadings. In his Complaint, Mr. McPhee states that the contract requires the parties to arbitrate. CP 7. The Respondent admitted the same in its Answer. CP 25. The Respondent also requested that the court grant a stay pending arbitration. CP 27. The very next pleading filed after the Complaint and Answers was the Stipulation to Transfer to Private Arbitration. CP 46-46.

It is also undisputed that the Stipulation is in the proper form. The Respondent has not provided this Court any good reason why the Stipulation should not be enforced.

The trial court clearly accepted the parties' Stipulation as it changed the parties' position regarding the stipulated matter (by transferring it into private arbitration). If the Court hadn't accepted the parties' Stipulation, under *Parra*, 122 Wash.2d @601, the case would have gone to trial on their original trial date, July 1, 2002.

Washington case law requires that the Court enforce the parties' Stipulation, even if it is not part of the Order, as the Respondent alleges. Even without the October 25, 2001 Order, the October 18, 2001 Stipulation is enforceable and controls this litigation.

C. Pursuant to RCW 7.04.030³ the Court stayed the action.

1. When the parties requested the arbitration, the Court stayed the proceedings.

The trial court stayed the action, evidenced, not only by the language in the Order, but by the (UAA's) statutory requirements. Pursuant to RCW 7.04.030, the trial court was required to stay the matter- it did not have discretion to do otherwise.

³ Mr. McPhee will concede that RCW 7.04.030 governs his arbitration. That does not substantively change his position or argument that the Court, pursuant to the statute, properly stayed the legal proceedings and that the case was stayed when the Clerk erroneously dismissed this action.

There is no dispute that the Respondent understood that the case was stayed and that Superior Court would not be adjudicating the case (or, that the Superior Court had halted its involvement in the proceedings).

Since October 21, 2001, the Court and all parties understood this matter to be stayed and acted accordingly.⁴ It is also undisputed that the Stipulation “requests [the trial court] to enter an order in accordance.” CP 35.⁵ The Respondent admits that the Court did “precisely what the parties asked it to do, and in doing so did not violate RCW 7.04.030.”⁶

Given that the parties properly requested (and intended) a stay, the parties agree that the court “did precisely what the parties asked it to do,”⁷ and RCW 7.03.040 requires the trial court to stay the matter upon any such request, the matter was clearly stayed when the trial court erroneously dismissed it.

2. When parties enter into a stipulation, they waive the procedural requirements surrounding the issues in the stipulation.

When a party enters into a stipulation, it waives the procedural

⁴ The Respondent acquiesces that the Stipulation asked the Court to stay the legal proceedings. See Respondent’s Brief, page 8 (“*It is also true that the Stipulation contains the following language: “[the parties] stipulate to the following: This matter should be set aside so that the parties may pursue private arbitration.*”).

⁵ Given that Mr. McPhee’s counsel drafted the Stipulation for Transfer...and obviously intended the Order to reflect the stay pending arbitration, the parties’ intent should be honored, as the Respondent argued in its October 2005 objection to transferring the case back to Superior Court. CP 58.

⁶ See Respondent’s Brief, page 11.

⁷ Respondent’s Brief, page 11

requirements (and objections) of the statute. *Smyth Worldwide Movers, Inc.*, 6 Wash.App. 176.

Respondent takes the position that the UAA does not require a stay of legal proceedings in situations where the parties stipulated to stay legal proceedings pending private arbitrate. See Respondent's brief, page 11.

In *Smyth Worldwide Moves, Inc.*, parties to a contract (via assignment) entered into a stipulation to modify a foreclosure decree to give a party redemption rights. *Id.* The trial court entered an order accordingly. *Id.* The property's purchaser asked the Court to reconsider its order modifying the foreclosure decree. *Id.* at 178.

The *Smyth* court found that purchaser's defense of the original order rested primarily on procedural grounds. *Id.* The court rejected the purchaser's argument that CR 60⁸ sets forth the exclusive procedure for vacating or modifying a judgment (specifically, bringing a motion) and that since this rule was not followed, the trial court lacked authority to vacate or modify its prior judgment. *Id.*

The court held that “[e]ven though the appellant, Master Mortgages, Inc. did not file a formal motion, pursuant to CR 60, the judgment creditor, by entering into the stipulation, waived the procedural requirements of the rules and thereby removed any

⁸ Like RCW 7.04.030, CR 60 directs the Court after a party brings a relevant motion.

procedural impediment from the entry of the order modifying the earlier decree.” *Id.* at 180.

The Respondent’s assertion that RCW 7.04.030 does not apply because the parties stipulated the transfer to private arbitration instead of bringing it as a motion, is purely procedural, since the Respondent is not objecting to the contents or the substantive effect of the Stipulation.

The Respondent is making exactly the same argument that the purchaser in *Smyth Worldwide Movers, Inc.*, unsuccessfully made. *Id.* at 178. The Respondent argues that RCW 7.04.030 sets forth an exclusive procedure: a party to bring a motion requesting a stay.⁹

Pursuant to *Smyth Worldwide Movers, Inc.*, when the Respondent entered into the Stipulation with Mr. McPhee, it waived the procedural requirements of the statute. **In other words, under *Smyth Worldwide Movers, Inc.*, when a litigation issue arises, parties cannot enter into a stipulation as to a litigation issue, and then object to it after the court has accepted the stipulation.** The Respondent compelled private arbitration, and stipulated to it. Pursuant to *Smyth Worldwide Movers, Inc.*, that Stipulation waives any procedural objections it may have to the transfer into private arbitration.

⁹ See Respondent’s Brief, page 11

According to Washington case law, since the Respondent's procedural objections are waived RCW 7.04.030 applies to the parties' stipulation as if it was a motion brought by the parties.

D. The Superior Court lacked jurisdiction to dismiss the case.

1. Judicial Estoppel prevents the Respondent from asserting that the Superior Court has jurisdiction.

Judicial Estoppel is an equitable doctrine that precludes a party from asserting one position in a court proceeding and later seeking an advantage by taking a clearly inconsistent position. *See e.g. Arkison ex rel. Carter v. Ethan Allen, Inc.*, 160 Wash.2d 535, 538, 160 P.3d 13 (2007) (quoting *Bartley-Williams v. Kendall*, 134 Wash.App. 95, 98, 138 P.3d 1103 (2006)).

The rule that a party will not be allowed to maintain inconsistent positions is applied in respect of positions in judicial proceedings. *See e.g. Markley v. Markley*, 31 Wash.2d 605, 614, 198 P.2d 486 (1948). It may be regarded not strictly as a question of Estoppel, but as a matter in the nature of a positive rule of procedure based in manifest justice and on considerations of orderliness, regularity, and expedition in litigation. *Id.*

a. The Respondent's new position satisfies the test for applying Judicial Estoppel.

Three core factors guide a determination of whether to apply the Judicial Estoppel doctrine: (1) whether a 'party's later position' is 'clearly

inconsistent with its earlier position’; (2) whether “judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or second court was misled; (3) whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped.” *Arkinson*, 160 Wash.2d at 538 (citations omitted).

i. The Respondent’s position that the Superior Court had jurisdiction to enter a dismissal for want of prosecution is inconsistent with its earlier position.

Mr. McPhee filed this case June 28, 2001. On September 5, 2001, in its Answer, **the Respondent denied that Pierce County Superior Court had jurisdiction**, alleging that only the American Arbitration Association could decide the case. CP 24. The Respondent went on to **request that the court stay the action pending arbitration**. CP 27.

On October 18, 2001, **the Respondent stipulated that the matter be stayed and that Pierce County Superior Court retain jurisdiction only to entry and enforce the judgment**. CP 34-35.

On October 26, 2005, **the Respondent objected to Mr. McPhee’s Motion to Remove the Case from Arbitration** arguing that the court should honor the parties’ intent to arbitrate. CP 58. The Respondent prevailed on the motion, and the case remained in arbitration. CP 79-81.

The Respondent did not object to arbitration until April 30, 2008. CP 135-139. The Respondent based its objection on the doctrine of laches. *Id.* The trial court did not find that the doctrine of laches applied. CP 285-286. The Respondent did not assert that the Superior Court had subject matter jurisdiction (necessary to dismiss the case), until it submitted its Response Brief on January 2, 2009. For seven and a half (7.5) years, the Respondent has maintained that Pierce County Superior Court did not have subject matter jurisdiction. For seven and a half (7.5) years, the Respondent has maintained that this case should be arbitrated and that the Superior Court should honor the parties' intent by keeping it in arbitration. Only when it is to the Respondent's procedural advantage for Pierce County Superior Court to have subject matter jurisdiction, does it do an "about face" and claim that this case should not be arbitrated and that Pierce County Superior Court has jurisdiction. The doctrine of Judicial Estoppel does not allow the Respondent to suddenly assert this inconsistent position.

ii. The acceptance of the Respondent's inconsistent position would create the perception that the trial court was misled.

The trial court accepted and ordered the parties' stipulation that the matter be stayed pending arbitration. It then denied Mr. McPhee's motion to remove the case from arbitration based on the Respondent's objections. If this Court accepts the position that the Superior Court retained subject

matter jurisdiction and did not effectively remove the case to arbitration, it will look as though the Respondent misled the Court as to the terms of the contract and to the intent of the parties, given the contract's terms and the parties' intent were the basis for the court's decision.

iii. The Respondent would impose an unfair detriment upon Mr. McPhee.

If this Court should accept the Respondent's new position, Mr. McPhee will never get his day in court. He will have lost over a \$150,000.00 on a construction contract he performed. He will have lost the money he paid to arbitrate the case in 2004 and all the attorneys' fees he had paid to date. The Respondent is very clearly abusing the legal system to get around litigating the matter on its merits.

2. Tjart v. Smith Barney, Inc, 107 Wash.App. 885, 28 P.3d 823 (2001) does not apply to the present case.

The Respondent cites *Tjart* as its sole support for its assertion that Pierce County Superior Court had jurisdiction over the present case to enter a CR 41(b)(2) dismissal. 107 Wash.App. 885. The Respondent misstates the facts and holding of *Tjart*, 107 Wash.App. 885. See Respondent's brief, pages 15-16.

The *Tjart* court did not dismiss the appellant's case for lack of prosecution. *Id.* The court dismissed the appellant's claims because she

had waived her right to a judicial forum.¹⁰ *Id.*

In *Tjart*, the appellant alleged that Smith Barney fired her for discriminatory reasons, in violation of Washington's Law against Discrimination and in violation of public policy, and that Smith Barney's conduct had constituted sexual harassment and created a hostile work environment. *Id.* She signed a trainee agreement and later signed an employment application. *Id.* Both the agreement and the application contained arbitration clauses. *Id.*

The appellant filed her action in King Superior Court. *Id.* Smith Barney asserted that the appellant was bound by her agreement to arbitrate. *Id.* The appellant opposed Smith Barney's position. *Id.* at 890. The trial court entered an order staying the proceedings and compelling arbitration. *Id.*¹¹ The appellant dismissed her counsel because she was dissatisfied with his work. *Id.* at 891.

On May 12, 1999, the Clerk's office sent the appellant a notice that her case would be dismissed for want of prosecution unless she provided

¹⁰ The Respondent states the trial court dismissed the case because the appellant had not shown good cause for not dismissing the case. This is a misstatement of the case. The Court of Appeals states in its holding that it is affirming the trial court's dismissal of the argument because the appellant waived her "ability to raise the issue in court."

¹¹ The relevant trial court pleadings of the *Tjart v. Smith Barney* case are set forth in the *Appendix to Appellant's Reply Brief* (containing Exhibits "A" to "I"). A true and correct copy of the trial court's order issuing a stay is attached hereto as "Exhibit "A."

good cause within forty-five (45) days of the notice. *Id.*¹² Twenty-three days later (June 4, 1999), the pro se appellant, assumed that her case had been dismissed (even though it had not). *Id.* She filed a motion asking the court to rescind the dismissal and for additional time to find an attorney. *Id.* She asserted that the law had changed and arbitration was no longer required. *Id.*¹³

On July 20, 1999, the court denied the appellant's motion.¹⁴ An order of dismissal had not yet been entered. *Id.*¹⁵

The appellant brought a Motion for Reconsideration.¹⁶ Under the *Relief Requested* section of the Motion for Reconsideration the appellant stated: "*I am requesting a positive decision by the court thereby lifting the stay proceedings pending arbitration, placing the matter in court by setting a court date to resolve my COMPLAINT...*" See **Exhibit "F."** The appellant went on to explain that she had not waived her right to a judicial forum and that the matter should not be arbitrated. In other words, as of

¹² A true and correct copy of the Clerk's Dismissal for Want of Prosecution is attached hereto as **Exhibit "B."** Note: In *Tjart* the Clerk's Dismissal for Want of Prosecution was pursuant to King County Local Rule 41(b)(2)(E). Mr. McPhee's case was dismissed pursuant to Washington civil Rule 41(B)(2). The Notices are substantively the same and local rules cannot conflict with statewide rules (*See e.g. Mabe v. White*, 105 Wash.App. 827, 15 P.3d 681 (2001)).

¹³ A true and correct copy of the Appellant's Motion is attached hereto as **Exhibit "C."**

¹⁴ A true and correct copy of the Order denying appellant's Motion is attached hereto as **Exhibit "D."**

¹⁵ *See also a true and correct copy of the court's docket reflecting that an order of dismissal had not been entered attached hereto as Exhibit "E."*

¹⁶ A true and correct copy of appellant's Motion for Reconsideration is attached hereto as **Exhibit "F."**

the date of appellant's Motion for Reconsideration, the case had not been dismissed and the case was stayed pending arbitration. On August 13, 1999, the court entered an order denying the appellant's Motion.¹⁷ Note the court had still not dismissed the case at this point.

Nothing further happened in this case until May 10, 2000 when the appellant filed a Reapplication of her Motion for Reconsideration.¹⁸ In the Reapplication, the appellant requested an "[o]rder granting relief lifting the Stay Proceedings Pending Binding Arbitration..." On May 22, 2000 the court entered an order denying Plaintiff's Reapplication and, for the first time, entered a dismissal.¹⁹

The trial court dismissed the case in July 19, 2000, on the grounds that the appellant had waived her rights to bring her claims in superior court. *Tjart*, 107 Wash.App. at 901.

The *Tjart* court determined two issues: (1) if the trial court's order was appealable; and (2) if the parties had to arbitrate the claims.

The *Tjart* court did not consider the Clerk's Notice for Dismissal for Want of Prosecution since the Notice did not result in a dismissal.

¹⁷ A true and correct copy of the Order denying appellant's Motion for Reconsideration is attached hereto as **Exhibit "G."**

¹⁸ A true and correct copy of the Affidavit of Arlene E. Tjart In Support of Reapplication of Plaintiff's Motion for Reconsideration of Order...is attached hereto as **Exhibit "H."**

¹⁹ A true and correct copy of the final order dismissing the case is attached hereto as **Exhibit "I."**

The *Tjart* court states that it dismissed the case because the appellant had waived her right to pursue her claims in court (by agreeing to arbitrate the same). In other words, the court dismissed the *Tjart* case because the plaintiff did not have right to file it in King County Superior Court in the first place.

To summarize, the trial court in *Tjart* did not dismiss the case for want of prosecution, and therefore, the Court of Appeals did not consider the issue if the trial court had the jurisdiction to dismiss a case that has been stayed pending arbitration. The Court of Appeals affirmed that the appellant had waived her right to bring her claims in superior court.

The Respondent has failed to provide any support for its position that a court that does not have the ability to adjudicate a case as a result of a court ordered stay can dismiss a case. Under *DeHeer*, the court can assume that no such authority exists. 60 Wash.2d 122.

3. **RCW 7.04 is not subject to judicial construction.**

An unambiguous statute is not subject to judicial construction and courts decline to insert words where language, taken as a whole, is clear and unambiguous. See e.g. *Plouffe v. Rook*, 135 Wash.App. 628, 147 P.3d 596 (Div. 1, 2006) (citing *Tenino Aerie v. Grand Aerie*, 148 Wash.2d 224, 239, 59 P.3d 655 (2002)). If a statute is unambiguous, courts are required to apply the statute as it is written and assume the legislature means

exactly what it says. *Plouffe*, 135 Wash.App. 628 (citing *State v. Radan*, 143 Wash.2d 323, 330, 21 P.3d 225 (2001)).

Washington courts do not subject UAA to judicial construction. See e.g. *Equity Group, Inc. v. Hidden*, 88 Wash.App. 148, 155, 943 P.2d 1167 (Div. 2, 1997).²⁰

The Respondent does not assert that the Uniform Arbitration Act (“UAA”) is ambiguous. It asserts only that the court must assume that the legislature meant to give the trial court greater jurisdiction than it provided in the Act, or, said another way, judicially construct the UAA.²¹ Since the UAA is unambiguous, this Court is required to apply it exactly as it is written. It is not subject to judicial construction.

In *Equity Group*, the parties’ contract, regarding a piece of real property in Oregon, forced them to submit the matter to private arbitration by the AAA. *Id.* at 151. Equity Group filed the arbitration award in Clark County Superior Court. *Id.* Hidden moved to dismiss the action for lack of subject matter jurisdiction, stating that to be filed in Clark County Superior Court, the arbitration had to take place in Washington State. *Id.*

²⁰ Respondent cites a non-controlling Texas Court of Appeals case. Since Washington Court of Appeals, Division 2 has already ruled on the issue of judicial construction of the UAA, the Texas court’s ruling is irrelevant and cannot even be considered persuasive authority.

²¹ See Respondent’s brief, page 17

The Court of Appeals, Division 2 held that Hidden was attempting to add language to the plain language of the UAA²² and that plain words do not require construction. *Id.* at 154 (citations omitted). The *Equity Group* court found that, while the Clark County Superior Court did not have had subject matter jurisdiction over the actual arbitration, but it had personal jurisdiction over the litigants and, therefore, the Clark County Superior Court could enter the judgment. *Equity Group*, 88 Wash.App. at 154.

The *Equity Group* held “**the rules pertaining to a civil court proceeding are held in abeyance where the court considering an arbitration award exercises its mere ministerial duty of entering judgment on the award.**” *Id.* at 154-155 (citation omitted).

The Respondent’s attempts at judicial construction must fail. *Equity Group* court confirms that the UAA is unambiguous and is not subject to judicial construction. It also confirms that a superior court in Washington’s jurisdiction is limited to the powers given to it in the UAA.

The *Equity Group* case is analogous to Mr. McPhee’s case. Neither the Clark County Superior Court in *Equity Group* nor the Pierce County Superior Court in the present case had subject matter jurisdiction

²² The *Equity Group* court was considering RCW 7.04.150.

over the disputes arising out of the respective contracts.²³ Like the Superior Court in *Equity Group*, the Pierce County Superior Court had jurisdiction only to enter and enforce the arbitrator's award.

The superior court has jurisdiction only to confirm, modify, correct, or vacate an arbitrator's award. RCW 7.04, et seq. Under the Act, the superior court does not have jurisdiction until after an arbitration has been had. The Respondent does not provide any valid authority to the contrary.²⁴ Since the Respondent's position requires judicial construction of the UAA, it must fail.

4. The trial court's inquiry ends where the parties have entered into a valid arbitration agreement.

Once a trial court determines that there is a valid arbitration agreement and that the parties' dispute is within the scope of that agreement, the court's authority is substantially constrained. *See The Heights at Issaquah Ridge, Owners' Association v. Burton Landscape*

²³ In *Equity Group* the Clark County Superior Court would not have jurisdiction even if the contract did not require the parties to arbitrate their claims in AAA since the dispute arose over real property located in Oregon.

²⁴ The Respondent cites *Burnside v. Simpson Paper Co.*, 66 Wash.App. 510, 517, 832 P.2d 537 (1992) for its position that if the Legislature has not shown an indication of its intention to limit jurisdiction, an act should be construed as imposing no limitation. The *Burnside* court was reviewing the statute prohibiting discrimination. *Id.* at 516. The Act the court was reviewing did not limit the powers of the trial court, but instead defined a class of people that the law protected. *Id.* The Respondent in *Burnside* argued that the Act did not apply to the plaintiff. *Id.*

Burnside is easily distinguishable from the present case since the discrimination statute did not unambiguously outline what powers the trial court held over a case that was to be adjudicated in an alternate forum.

Group, Inc., No. 61604-8-1 (Division 1, January 20, 2009). If the dispute can fairly be said to invoke a claim covered by an agreement, any inquiry by the courts must end. *Id.* at page 3.

Although it is the court's duty to determine whether the parties have agreed to arbitrate a particular dispute, the court cannot decide the merits of the controversy..." *Id.* at page 4 (quoting *Peninsula School District No. 401 v. Public School Employees of Peninsula*, 130 Wash.2d 401, 413, 924 P.2d 13 (1996) (quoting *Council of County & City Employees v. Spokane County*, 32 Wash.App. 422, 242-425, 647 P.2d 1-58 (1982))).

Whether or not time limits act as a bar to arbitration should be decided by an arbitrator as a threshold question. *Id.* at page 4. The arbitrator should decide allegations of waiver, delay, or a like defense to arbitrability. *Id.* at page 5 (citations omitted). An arbitrator must resolve all questions of procedural arbitrability. *The Heights at Issaquah Ridge, Owners Association*, 61604-8-1, page 5 (quoting *Yakima County Law Enforcement Officers Guild*, 133 Wash.App. at 288 (2006)).

There is no dispute that the parties entered into a valid arbitration agreement and that the parties' dispute is within the scope of that agreement. The trial court determined that the parties' contract contained a valid arbitration agreement. CP 36. When the court made that

determination, its authority was substantially constrained. Pursuant to Washington authority, the trial court's inquiry into the merits of this case ended on October 24, 2001. As of October 24, 2001, the trial court could no longer decide the merits of the controversy, or, said another way, no longer had subject matter jurisdiction over the case.

The Respondent agrees that in order for the trial court to have jurisdiction, it must have the power to hear and determine all matters, legal and equitable.²⁵ Washington courts hold that once the parties have a valid arbitration agreement, the trial court no longer has that power.

In addition, pursuant to Washington case law, all defenses that the Respondent might have regarding to waiver or delay must be decided by an arbitrator. The court cannot dismiss a case for failure to prosecute-once the court establishes a valid arbitration agreement, the arbitrator must resolve any procedural issues.

E. Mr. McPhee brought his CR 60(b) Motion within a reasonable time.

The Respondent dismisses Mr. McPhee's investigation after the court erroneously dismissed the case as being without good reason. Respondent's Brief, pages 24-25. The Respondent agrees that "reasonable time" for bringing a motion under CR 60(b) 'depends on the facts and

²⁵ Respondent's Brief, pages 14-15.

circumstances of each case. Respondent's Brief, page 24 (citing *Luckett v. Boeing Co.*, 98 Wash.App. 307, 311, 989 P.2d 1144 (1999)). To briefly summarize the facts and circumstances of the present case:

Mr. McPhee performed work on a contract for almost \$150,000.00 for which the Respondent refuses to pay him, so Mr. McPhee files a lien and a lawsuit to foreclose it. CP 9. The parties agree to move the case into arbitration. CP 34-36. Mr. McPhee pays his half of the AAA costs, totaling approximately \$1,500.00. CP 43. The Respondent does not pay any of its share of the AAA costs and the arbitration is canceled. CP 42.

Approximately four (4) years after initially bringing his Complaint, Mr. McPhee attempted to move the case out of arbitration, incurring additional attorneys' fees (a hardship considering all the money he lost on the job and the non-refundable arbitration fee). CP 40-44. The Respondent opposed Mr. McPhee's Motion and the trial court denies it. CP 79-81.

Almost six (6) years after Mr. McPhee had initially investigated and brought the claim, the court erroneously dismissed the case. Mr. McPhee has significant sums of money between the lost income, the non-refundable arbitration fees, and the attorneys' fees. Years had passed since Mr. McPhee initially brought his complaint and he needed to be certain that it would still be worth the money to pursue the case. After Mr.

McPhee consulted with an engineer²⁶, Mr. MCPhee determined that he could proceed with the case.²⁷ CP 198-199.

Considering that Mr. MCPhee, as the Plaintiff, has the burden of proof, judicial economy concerns (reopening a case, only to potentially dismiss it), and had lost well over \$150,000.00 on this case, it was not unreasonable for him to take precautionary measures before preparing his third legal battle against the Respondent. The Respondent fails to provide any authority, or any logical argument, how Mr. MCPhee's concerns to carry his burden of proof and for judicial economy has any relation at all to the Plaintiff's attorney in *Luckett*, "agonizing over the matter." 98 Wash.App. at 312. Certainly Mr. MCPhee ensuring that he could still prove his case before wasting the trial court's time and resources is different than an attorney that provided no reason at all for a delay that resulted from stress.

Moreover, the Respondent has failed to provide any case law or other authority that Mr. MCPhee's delay in bringing his CR 60(b) Motion was unreasonable. It further failed to provide any authority for its position that Mr. MCPhee's investigation into the claim he had filed seven (7) years before was not a triggering event. The Respondent did not provide any

²⁶ And the engineer conducts his investigation and gets back to Mr. MCPhee and counsel.

²⁷ Mr. MCPhee also acted in the interest of judicial economy. The principles of judicial economy suggest that Mr. MCPhee investigate before seeking to reopen the case, as opposed to reopening the case and then later dismissing it as the Respondent suggests.

Washington authority defining a “triggering event” as something other than what triggered Mr. McPhee to bring his Motion when he did. Under *DeHeer*, this Court can assume such authority does not exist. 60 Wash.2d at 126.

F. The Respondent is not entitled to attorneys’ fees

Generally, the prevailing party is the party who receives an affirmative judgment in his or her favor. *Riss v. Angel*, 80 Wash.App. 553, 564, 912 P.2d 1028 (Div. 1, 1996) (aff’d by *Riss v. Angel*, 131 Wash.2d 612, 633, 934 P.2d 669 (1997)).

1. The trial court dismissed both parties’ claims in its Dismissal for Want of Prosecution.

While the trial court dismissed Mr. McPhee’s claims against the Respondent, it also dismissed the Respondent’s counter claims against Mr. McPhee.

In their initial pleadings, both parties asked the trial court for an affirmative judgment in their favor while, at the same time, asking the court to dismiss all other claims. The trial court did not award an affirmative judgment and dismissed all claims.

2. Neither party is the prevailing party.

As stated above, only the prevailing party is entitled to attorneys’ fees under the contract. The prevailing party is the one with an affirmative

judgment in his or her favor. In the present case, neither party received an affirmative judgment in his favor. Both parties' claims were dismissed. The Dismissal for Want of Prosecution provided equal relief to both parties.

The Respondent argues that affirmance of the trial court will protect the Respondent once and for all from exposure to Mr. McPhee's claims and the costs of prosecuting a counterclaim. See Respondent's brief, page 30. However, the Respondent fails to recognize that Mr. McPhee will be afforded the same protections. Mr. McPhee will neither have potential exposure for the Respondent's claims, nor incur the costs of prosecuting his claims. Since the parties are in exactly the same position, neither party prevailed.

RESPECTFULLY SUBMITTED this 2nd day of February, 2009.

SNYDER LAW FIRM, LLC



KLAUS O. SNYDER, WSB# 16195
Of Attorneys for Appellant



KELLY J. FAUST, WSB# 38250
Of Attorneys for Appellant

APPENDIX

MICHAEL D. MCPHEE
V.
STEINHAUER FAMILY INVESTMENTS LLC

EXHIBIT A- *Tjart v. Smith Barney*, King County Superior No. 95-2-24890-0 SEA-ORDER STAYING PROCEEDINGS PENDING BINDING ARBITRATION

EXHIBIT B- *Tjart v. Smith Barney*, King County Superior No. 95-2-24890-0 SEA-NOTICE OF CLERK'S DISMISSAL FOR WANT OF PROSECUTION

EXHIBIT C- *Tjart v. Smith Barney*, King County Superior No. 95-2-24890-0 SEA-MOTION AND DECLARATION TO RESCIND DISMISSAL AND CONTINUE STAY

EXHIBIT D- *Tjart v. Smith Barney*, King County Superior No. 95-2-24890-0 SEA-ORDER DENYING MOTION TO RESCIND DISMISSAL AND CONTINUE STAY

EXHIBIT E- *Tjart v. Smith Barney*, King County Superior No. 95-2-24890-0 SEA-CASE DOCKET

EXHIBIT F- *Tjart v. Smith Barney*, King County Superior No. 95-2-24890-0 SEA-PLAINTIFF'S MOTION FOR RECONSIDERATION OF ORDER DENYING MOTION TO MOTION TO RESCIND DISMISSAL AND CONTINUE STAY

EXHIBIT G- *Tjart v. Smith Barney*, King County Superior No. 95-2-24890-0 SEA-ORDER DENYING RELIEF LIFTING THE STAY PROCEEDINGS PENDING BINDING ARBITRATION; COMPLAINT TO BE MOVED TO COURT; WITH COURT DATE BEING SET; A JUDGE ASSIGNED; TO MOVE TO STATUTORY COURT REMEDIES

EXHIBIT H- *Tjart v. Smith Barney*, King County Superior No. 95-2-24890-0 SEA-AFFIDAVIT OF ARLENE E. TJART IN SUPPORT OF REAPPLICATION OF PLAINTIFF'S MOTION FOR RECONSIDERATION OF ORDER DENYING MOTION (TO MOTION) TO RESCIND DISMISSAL AND CONTINUE STAY; and

EXHIBIT I- *Tjart v. Smith Barney*, King County Superior No. 95-2-24890-0 SEA-ORDER DENYING PLAINTIFF'S REAPPLICATION OF MOTION FOR RECONSIDERATION AND ENTERING DISMISSAL

FILED

MAR 5 9 15 AM '96

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

ARLENE E. TJART,

Plaintiff,

vs.

SMITH BARNEY, INC., a foreign corporation;
THOMAS O'NEAL and JANE DOE O'NEAL,
husband and wife and the marital community
composed thereof; RANDY SHIPLEY and ILA
SHIPLEY, husband and wife and the marital
community composed thereof; DEBERAH A.
FOX and WILLIAM FOX, wife and husband and
the marital community composed thereof,

Defendant.

NO. 95-2-24890-0SEA

ORDER STAYING PROCEEDINGS
PENDING BINDING ARBITRATION

THIS MATTER having come on for hearing before the undersigned judge of the above-entitled Court upon Defendants' Motion to Stay Proceedings Pending Arbitration; defendants Smith Barney, Inc., Thomas O'Neal and Jane Doe O'Neal, Randy Shipley and Ila Shipley, Deberah A. Fox and William Fox appearing by and through their attorneys, Hillis Clark Martin & Peterson and Eric D. Lansverk; plaintiff Arlene E. Tjart appearing by and through her attorney, Charles A. Kimbrough; the Court having reviewed Defendants' Motion and Memorandum to Stay Proceedings Pending Arbitration, the Declaration of Deberah A. Fox in Support of Defendants' Motion to Stay Proceedings Pending Arbitration, Plaintiff's Response to Defendants' Motion to Compel Arbitration and For a Stay, the Declaration of Arlene E. Tjart In Opposition To Stay, Defendants' Reply Memorandum in Support of Motion to Stay Proceedings Pending Arbitration, and the Supplemental Declaration of Deberah A.

*Order Staying Proceedings Pending Binding
Arbitration - Page 1 of 2*

Law Offices
▪ HILLIS CLARK MARTIN & PETERSON ▪
A Professional Service Corporation
500 Galland Building, 1221 Second Avenue
Seattle, Washington 98101-2925
(206) 623-1745 Facsimile (206) 623-7789

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EXHIBIT A

1 Fox, and the pleadings and records on file herein; and the Court having considered the arguments of
2 counsel and being fully advised on the premises; now, therefore, it is hereby

3 ORDERED, ADJUDGED, AND DECREED that Defendants' Motion to Stay Proceedings
4 Pending Arbitration is GRANTED, and it is further ^{and the date of filing the lawsuit is deemed to be the date}
_{of filing of a demand for arbitration. (23)}

5 ORDERED, ADJUDGED, AND DECREED that this action is STAYED pending binding
6 arbitration.

7 DONE IN OPEN COURT this ^{5th} ~~11th~~ day of MARCH, 1996.
8 (23)

9 Rebecca D. Eder
10 Judge/Court Commissioner

11 Presented by:

12 HILLIS CLARK MARTIN & PETERSON

13
14
15 By Eric D. Lansverk
16 Eric D. Lansverk, WSBA #17218
17 Attorneys for Defendants

18 Cory K. Kimbrough
Approved as to Form;

19 ~~Notice of Presentation Waived:~~

20 CHARLES A. KIMBROUGH & ASSOCIATES

21
22 By Charles A. Kimbrough
23 Charles A. Kimbrough, WSBA #0134
24 Attorneys for Plaintiff

25 #30616 12991-19 NMG011.DOC 3/04/96
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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

FILED

1999 MAY 12 PM 3:46

NO. 95-2-24890-0 SEA

TJART
Plaintiff/Petitioner
vs.
SMITH BARNEY INC ET AL
Defendant/Respondent.

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.

NOTICE OF CLERK'S DISMISSAL FOR
WANT OF PROSECUTION

I. BASIS

Pursuant to King County Local Rule 41(b)(2)(E), the court may dismiss any pending case wherein there has been no action of record during the 12 months past.

- 1.1 The Clerk has examined the record and determined that there has been no action of record since 3/21/96
- 1.2. As of this date, there has been no action by the parties to reset this matter before the trial court.

II. NOTICE

- 2.1 The above case will be dismissed by the Court for want of prosecution unless within 45 days after the notice is mailed; a) a dispositive document is filed, or b) a party makes written application to the Court showing good cause why the case should not be dismissed and the approximate date final dispositive documents will be entered.
- 2.2 If neither of these is received, the Clerk will enter an Order of Dismissal without further notice to the parties.
- 2.3 An invoice from the King County Office of Finance for a non-compliance fee will be mailed to you within 30 days of this Notice, pursuant to King County Ordinance 13330.

Mailed: MAY 12 1999

Assigned to Department 47

PAUL L. SHERFEY
KING COUNTY SUPERIOR COURT CLERK
By: Nestor Tamayao, Deputy Clerk
Case Management : (206) 296-7872

(NAMES AND ADDRESSES OF ALL PARTIES)

SCOTT, MICHAEL RAMSEY
1221 2ND AVE STE 500
SEATTLE, WA 98101-2925

TJART, ARLENE E
PO BOX 17547
SEATTLE, WA 98107

NOTICE OF CLERK'S DISMISSAL
rptDormantCasesNotices (199904)

SCOMIS CODE: CMDWP

00088

EXHIBIT B

FILED

HONORABLE RICHARD EADIE

99 JUN -4 PM 4: 17 SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

ARLENE E. TJART

Plaintiff

v.

SMITH BARNEY, INC., a foreign corporation
THOMAS O'NEAL and JANE DOE O'NEAL,
husband and wife and the marital community
composed thereof; DEBORAH A. FOX
and WILLIAM FOX, wife and husband and
the marital community composed thereof,

Defendants

NO. 95-2-24890-0 SEA

MOTION AND
DECLARATION TO
RESCIND DISMISSAL AND
CONTINUE STAY

I. MOTION

Based on the declaration below, the undersigned moves the court for an Order Rescinding the Dismissal dated May 12, 1999, and continuing the Stay of Proceedings dated March 5, 1996.

The basis for this motion is the declaration of the plaintiff below.

Dated: June 3, 1999

Arlene E. Tjart
Arlene E. Tjart, Plaintiff

II. DECLARATION

I ask the court to rescind the dismissal of this action because I still feel I have cause to proceed. Since the order of March 5, 1996 when the court ordered that the proceedings be stayed pending binding arbitration, I have not been able to find an attorney to represent me. The attorney who was representing me at the time of the Order Staying Proceedings Pending Binding Arbitration failed to keep appointments with me and did not properly work the case. After I terminated his contract with me, I found a second attorney who told me he would represent me. He set up a hearing for June 1998 but gave me a notice that he was withdrawing from the case two weeks before the hearing. I have tried to find representation since that time but have been unable to found counsel who were able to take my case due to the fact that they already had too many cases.

MOTION TO RESCIND DISMISSAL
AND CONTINUE STAY OF PROCEEDINGS

Page 1

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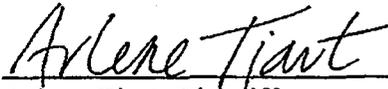
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1 Since the Order Staying Proceedings Pending Binding Arbitration was filed, the law has changed
2 and no longer requires binding arbitration in a case such as mine. I feel that I have cause for appeal
3 but still need an attorney to help me with the case.

4 For this reason, I ask the court to rescind the dismissal.

5 I declare under penalty of perjury under the laws of the State of Washington that the foregoing is
6 true and correct.

7 Signed at Seattle, Washington, on June 3, 1999.

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10 Arlene Tjart, Plaintiff

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28 MOTION TO RESCIND DISMISSAL
AND CONTINUE STAY OF PROCEEDINGS

Page 2

00090

COPY TO:

The Honorable J. Kathleen Learned

C/PLTF / C/DEF -

DATE: 7-20-99

IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

ARLENE E. TJART,

Plaintiff,

vs.

SMITH BARNEY, INC., a foreign corporation;
THOMAS O'NEAL and JANE DOE O'NEAL,
husband and wife and the marital community
composed thereof; RANDY SHIPLEY and ILA
SHIPLEY, husband and wife and the marital
community composed thereof; DEBERAH A.
FOX and WILLIAM FOX, wife and husband and
the marital community composed thereof,

Defendant.

NO. 95-2-24890-0SEA

ORDER DENYING MOTION TO
MOTION TO RESCIND DISMISSAL
AND CONTINUE STAY

FILED
KING COUNTY, WASHINGTON
JUL 20 1999
SUPERIOR COURT CLERK
BY VICTOR A. BIGORNIA
DEPUTY

THIS MATTER having come on for hearing before the undersigned judge of the above-entitled Court, upon the motion of plaintiff Arlene Tjart for reconsideration; defendants Salomon Smith Barney Inc., appearing by and through their attorneys, Hillis Clark Martin & Peterson, P.S. and Eric D. Lansverk; plaintiff appearing pro se; and all other parties having had the opportunity to appear; the Court having reviewed plaintiff's Motion and Declaration to Rescind Dismissal and Continue Stay, Affidavit of Arlene E. Tjart in Support of Revised Motion and Declaration to Rescind Dismissal and Continue Stay, and Salomon Smith Barney's Opposition to Motion and Declaration To Rescind Dismissal and Continue Stay; and the pleadings and records on file herein; and the Court having considered the arguments of counsel and being fully advised on the premises; and having determined that there is no genuine issue of any material fact and that defendants are entitled to judgment as a matter of law, now, therefore, it is hereby

*Order Denying Motion to Rescind Dismissal
and Continue Stay - Page 1 of 2*

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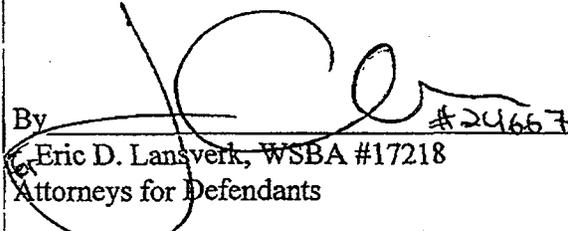
1 ORDERED, ADJUDGED, AND DECREED that plaintiff's Motion and Declaration to Rescind
2 Dismissal and Continue Stay is hereby DENIED.

3 DONE IN OPEN COURT this 19 day of July, 1999.

4
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6 
7 JUDGE OF THE ABOVE-ENTITLED COURT

8 Presented by:

9 HILLIS CLARK MARTIN & PETERSON, P.S.

10
11 By  #29667
12 Eric D. Lansverk, WSBA #17218
13 Attorneys for Defendants

14 #123240 12991-19 2N3C011.DOC 7/14/99

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*Order Denying Motion to Rescind Dismissal
and Continue Stay - Page 2 of 2*

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00161

CASE#: 95-2-24890-0 SEA CIVIL JUDGMENT# NO JUDGE ID: 047
 TITLE: TJART VS SMITH BARNEY INC ET AL
 FILED: 09/22/1995
 CAUSE: TTO TORT-OTHER
 RESOLUTION: DSM DATE: 05/25/2000 DISMISSAL WITHOUT TRIAL
 COMPLETION: JODF DATE: 05/25/2000 JUDGMENT/ORDER/DECREE FILED
 CASE STATUS: CMPL DATE: 03/18/2002 COMPLETED/RE-COMPLETED

OFF-LINE DATE: 09/19/2003

CONSOLIDATED:

NOTE1: *STAY PENDING BINDING ARB, SUB 17

NOTE2:

-----PARTIES-----

CONN	LAST NAME,	FIRST MI TITLE	LITIGANTS	DATE
PLA01	TJART,	ARLENE E		
DEF01	SMITH BARNEY INC			
DEF02	NEAL,	THOMAS		
DEF03	SHIPLEY,	RANDY		
DEF04	SHIPLEY,	ILA		
DEF05	FOX,	DEBERAH A		
DEF06	FOX,	WILLIAM		

-----ATTORNEYS-----

CONN	LAST NAME,	FIRST MI TITLE	LITIGANTS	DATE
WTP01	KIMBROUGH,	CHARLES A.		
ATD01	SCOTT,	MICHAEL RAMSEY		
WTP02	TJART,	ARLENE E		
ATP03	MELE,	JOHN PETER		

-----APPEARANCE DOCKET-----

SUB#	DATE	CD/CONN	DESCRIPTION	SECONDARY
-	09/22/1995	\$FFR	FILING FEE RECEIVED KIMBROUGH & ASSOC CHARLES A	110.00
1	09/22/1995	SMCMP	SUMMONS & COMPLAINT	
2	09/22/1995	*ORSCS	SET CASE SCHEDULE	02-21-1997ST
3	09/22/1995	CICS	CASE INFORMATION COVER SHEET	
4	12/27/1995	AFSR	AFFIDAVIT/DECLARATION OF SERVICE	
5	01/09/1996	NTAPR	NOTICE OF APPEARANCE FOR DEFENDANTS	
		ATD01	SCOTT, MICHAEL RAMSEY	
6	02/06/1996	MT	MTN TO STAY PROCEEDINGS/DEF	02-14-1996MS
7	02/06/1996	NTMTDK	NOTE FOR MOTION DOCKET	
-	02/06/1996	NOTE	P ATTY-CC NONE	02-14-1996MS
-	02/06/1996	NOTE	D ATTY-CC	02-14-1996MS
8	02/06/1996	DCLR	DECLARATION OF D A FOX	
9	02/07/1996	AFSR	AFFIDAVIT/DECLARATION OF SERVICE	
10	02/20/1996	MTC	MOTION TO CONTINUE HEARING/PLA	
11	02/20/1996	DCLR	DECLARATION OF CHARLES A KIMBROUGH	
12	02/21/1996	ORSTD	ORDER SETTING TRIAL DATE	02-24-1997ST
		JD647	JUDGE DEBORAH FLECK	
13	02/16/1996	AFSR	AFFIDAVIT/DECLARATION OF SERVICE	
13A	02/22/1996	RPY	REPLY MEMO /DEFS	
14	02/23/1996	RSP	RESPONSE /PLTF	
14A	02/23/1996	DCLR	DECLARATION OF PLTF	

E

CASE#: 95-2-24890-0 SEA CIVIL JUDGMENT# NO
 TITLE: TJART VS SMITH BARNEY INC ET AL

JUDGE ID: 047

-----APPEARANCE DOCKET-----

SUB#	DATE	CD/CONN	DESCRIPTION	SECONDARY
15	03/01/1996	DCLR	DECLARATION OF DEBERAH FOX	
16	03/01/1996	RPY	REPLY MEMO IN SPPT OF MTN TO STAY PROCEEDINGS	
17	03/05/1996	ORSP	ORDER FOR STAY OF PROCEEDINGS PENDG BINDING ARBITRATION	
18	03/05/1996	MTHRG	MOTION HEARING CR NOT REPORTED	
		JDG33	JUDGE RICHARD D. EADIE, DEPT 33	
19	03/05/1996	CRRSP	CORRESPOND/SNOHOMISH COUNTY CLERK	
20	03/06/1996	NTIWD	NOTICE OF INTENT TO WITHDRAW	
		WTP01	KIMBROUGH, CHARLES A.	
-	03/08/1996	SCS	STATUS CONFERENCE SETTING	03-15-1996CF
		ACTION	NO CJ FILED	
21	03/15/1996	HSTKNA	HEARING STRICKEN:IN COURT NONAPPEAR	
22	03/21/1996	ORTA	ORD TO APPEAR FAIL TO FOLL SCHEDULE	05-14-96
		ACTION	NO CJ FILED	
23	05/12/1999	CMDWP	CLKS MOT FOR DISMISS FR WNT OF PROS	
24	06/04/1999	MT	MOTION RESCIND DISMISSAL/CONT STAY	
25	06/23/1999	NTMTDK	NOTE FOR MOTION DOCKET	07-15-1999
		ACTION	MTN RESCIND DISMISSAL/CONT STAY	
* 25A	06/23/1999	OR	ORD RE STATUS OF CASE/NOT DISMISSED WILL RE ASSIGNED/CRT DATE TO BE SET	*
26	06/24/1999	NTHG	NOTICE OF HEARING	07-15-1999T1
		ACTION	RESCIND DISMISSAL/CONT STAY	
27	06/24/1999	MTAF	MOTION AND AFFIDAVIT /RESCIND DISMI	
28	07/14/1999	OB	OBJECTION / OPPOSITION /BARNEYS	
29	07/15/1999	AN	ANSWER /DEFS	
29A	07/15/1999	MTHRG	MOTION HEARING	
		JDG19	JUDGE J. KATHLEEN LEARNED DEPT19	
30	07/16/1999	AFSR	AFFIDAVIT/DECLARATION OF SERVICE	
31	07/20/1999	DCLR	DECLARATION KATHLEEN P CHAPMAN	
32	07/20/1999	MTHRG	MOTION HEARING	
		JDG19	JUDGE J. KATHLEEN LEARNED DEPT19	
33	07/20/1999	ORDYMT	ORDER DENYING MTN TO RESCIND DISMIS	
34	07/30/1999	NTHG	NOTICE OF HEARING /MTN RECONSIDER	08-12-1999T1
35	07/30/1999	MT	MOTION RECONSIDER/PLTFS	
36	08/13/1999	ORDYMT	ORDER DENYING MT RESCIND DISMISSAL	
37	05/10/2000	AF	AFFIDAVIT ARLENE E TJART	
38	05/10/2000	NTHG	NOTICE OF HEARING	05-18-2000
		ACTION	NTC HRG MTN REAPPLIC PLA MTN RECON	
38A	05/11/2000	NTHG	NOTICE OF HEARING	05-18-2000
		ACTION	NTC HRG MTN REAPPLIC PLA MTN RECON	
39	05/12/2000	AFSR	AFFIDAVIT/DECLARATION OF SERVICE	
40	05/16/2000	OB	OBJECTION / OPPOSITION /DEF	
41	05/17/2000	AN	ANSWER /SMITH BARNEY	
42	05/17/2000	AFSR	AFFIDAVIT/DECLARATION OF SERVICE	
43	05/22/2000	ORDSM	ORDER OF DISMISSAL &	
-	05/25/2000	ORDYMT	ORD DENY PLTF'S REAPP FR MT RE RECONSIDERTAION	
-	06/16/2000	\$FFR	FILING FEE RECEIVED	250.00
44	06/16/2000	NACA	NOTICE OF APPEAL TO COURT OF APPEAL	

CASE#: 95-2-24890-0 SEA CIVIL JUDGMENT# NO
TITLE: TJART VS SMITH BARNEY INC ET AL

JUDGE ID: 047

-----APPEARANCE DOCKET-----

SUB#	DATE	CD/CONN	DESCRIPTION	SECONDARY
45	08/03/2000	DSGCKP	DESIG CK'S PPRS-J.MELE/46857-0-I PGS 1-262	
46	08/03/2000	NTAPR	NOTICE OF APPEARANCE /PLTFS	
47	10/06/2000	INX	INDEX CK'S PPRS-J.MELE,RYAN	
-	10/06/2000	\$CLPA	CLERK'S PAPERS - FEE ASSESSED #00-2139CP	156.00
-	10/30/2000	\$CLPR	CLERK'S PAPERS - FEE RECEIVED	156.00
48	03/18/2002	MND	MANDATE/46857-0-I/AFFIRMED	

-----END COPY CASE-----

FILED
The Honorable J. Kathleen Learned
1999 JUL 30 PM 3:57

KING COUNTY
SUPERIOR COURT CLERK
SUPERIOR COURT OF WASHINGTON
COUNTY OF KING TLE. WA

ARLENE E. TJART

Plaintiff,

NO. 95 2 24890 OSEA

Vs.

SMITH BARNEY, INC., a foreign corporation;
THOMAS O'NEAL and JANE DOE O'NEAL,
husband and wife and the marital community
composed thereof; RANDY SHIPLEY and
ILA SHIPLEY, husband and wife and the
marital community composed thereof;
DEBERAH A. FOX and WILLIAM FOX,
wife and husband and the marital community
Composed thereof,

**PLAINTIFF'S MOTION
FOR RECONSIDERATION
OF ORDER DENYING
MOTION TO MOTION
TO RESCIND DISMISSAL
AND CONTINUE STAY**

Defendants.

ARLENE E. TJART moves the court as follows:

The defense counsel erred by filing their client's OPPOSITION TO MOTION AND DECLARATION TO RESCIND DISMISSAL AND CONTINUE STAY one day late--July 14, 1999 at 1:39 p.m.--instead of "no later than 12:00 noon two days before the date the motion is to be considered", as indicated in the Local Rules of the Superior Court: Washington State, LR 7(b)(3) (C). In plaintiff's case against Smith Barney, Inc. these opposing papers should have been filed no later than July 13, 1999 at 12:00 noon since the hearing date was July 15, 1999 to consider the REVISED MOTION AND DECLARATION TO RESCIND DISMISSAL AND CONTINUE STAY.

I. RELIEF REQUESTED

The plaintiff asks the court to reconsider the order made on July 19, 1997 (please note error, should be dated 1999), and entered on July 20, 1999, entitled **ORDER DENYING**

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MOTION TO MOTION TO RESCIND DISMISSAL AND CONTINUE STAY. I am requesting a positive decision by the court thereby *granting the relief requested, that is reversing the July 19, 1997 (1999) order and lifting the stay proceedings pending binding arbitration, placing the matter in court by setting a court date to resolve my COMPLAINT FOR EMPLOYMENT DISCRIMINATION AND WRONGFUL DISCHARGE, assigning a judge, all the necessary steps to not dismissing this case but rather moving on to statutory court remedies, according to Title VII and the laws of the state of Washington, to facilitate the healing process.* I still feel I have cause to proceed. Since March 5, 1996 when the court ordered that the proceedings be stayed pending binding arbitration, I have had great difficulty with the legal counsel I have paid money to, to represent me. The attorney who was representing me at the time of the Order Staying Proceedings Pending Binding Arbitration, not only failed to keep the appointments he had made with me, but neither did he give any explanation for why the appointments were cancelled, nor did he work the case properly. After I terminated my relationship with this attorney, I found a second attorney who told me he would represent me. He eventually set up a hearing for June, 1998, but told me to find other counsel when I requested quality legal counsel at that time, so he withdrew from the case two weeks before the hearing. I have tried to find representation since that time but have been unable to find counsel who were able to take my case due to the fact that they already had too many cases. The law has changed since March, 1996 and no longer requires binding or mandatory arbitration in a case such as mine. I feel that I have cause to proceed. I ask the court to rescind the dismissal.

II. STATEMENT OF FACTS

A. I did not know what I was signing when I signed the U4, the EF Hutton agreement, or the Shearson Lehman Brothers agreement. I did not understand what the nature of the agreements was that I had signed. I did not knowingly waive my right to a judicial forum.

B. The NASD Code of Arbitration Procedure Rule 10201 on page 11, as amended by SR-NASD-97-77 effective January 1, 1999, states " (b) A claim alleging employment

discrimination, including a sexual harassment claim, in violation of a statute is not required to be arbitrated." This rule change in no manner states nor does it imply that claims and filings such as mine are excluded.

C. In the 9th Circuit the law of the land pertaining to mandatory arbitration has been defined by three cases that have all moved through the U.S. Supreme Court *cert.denied*. between 1994 and 1998. These cases are *Duffield v. Robertson Stephens and Co.*(1998); *Renteria v. Prudential Ins. Co. of America*(1997); and *Prudential Ins. Co. of America v. Lai*(1994). The U.S. Supreme Court upheld the decisions of the lower courts in the 9th Circuit with these three cases. The Superior Court of Washington for King County, is governed by the laws of the 9th Circuit. Furthermore, the 1st Circuit has rendered a decision with *Rosenberg v. Merrill Lynch, Pierce, Fenner and Smith, Inc.* (2/25/99. No. 98-1246) containing material quite similiar to my situation here in Puget Sound.

D. In the March, 1996 hearing Judge Eadie was not informed of the context of the branch office where I was employed from March, 1987 through September, 1992. At the time I was employed by Shearson Lehman Brothers, now Salomon Smith Barney. I was the only woman financial consultant working with twenty-two male financial consultants. In certain areas, I had outproduced my male counterparts, my associates in that branch office. To illustrate the conduct in this office, on one occasion a female sales assistant was gifted a male stripper dressed as a law enforcement officer as a birthday present from one of the male financial consultants with whom she worked. The sales assistant was surprised during market hours one morning when hand cuffs were placed on her wrists by the supposed law enforcement officer: then she was led to the conference room and seated, while the supposed law enforcement officer stripped in front of her, with employees observing this. I spoke to the male branch manager of the office at that time about this incident very shortly after this happened. On several occasions I spoke with the managers and the Firm about the situation in my former branch office, both before my termination and after my termination. After my termination I submitted a Statement of Claims, as requested, to the regional legal officer of the Firm, located in San Francisco. I gave Smith Barney, Inc. the opportunity to put matters right, and this did not happen. At

the very time of my termination on September 25, 1992, I communicated to the manager of my former branch office in writing that "I do not want to be terminated. I think there is more to my termination than meets the eye."

E. The Plaintiff holds a master's degree in urban and regional planning and an undergraduate degree in English. I had worked as a teacher both in the United States and the Middle East, as an urban planner, and as an account executive in outside sales to gain business experience before moving to the securities industry where I had had no prior experience. In my fourth year as a financial consultant I brought a retirement plan having an asset pool of over \$30 Million to Shearson Lehman Brothers with an associate whom I had invited to join me to make this effort a success. Teamwork on portfolios of this size is essential. One year later I was terminated for "lack of production", just two months following my second best month in the business.

III. STATEMENT OF ISSUE

The issue here is my request for a court date so as to resolve my wrongful termination. I did not knowingly waive my right to a judicial forum by signing the U4 and the other two documents noting mandatory arbitration. The NASD has changed its rule on this matter. The SEC has approved that rule change. A body of precedent law exists in the 9th Circuit that addresses mandatory arbitration agreements and violation of statutory law in broker-dealers in the securities industry. My situation was not unlike the situations examined in *Duffield v. Robertson Stephens and Co.*, *Renteria v. Prudential Ins. Co. of America*, and *Prudential Ins. Co. of America v. Lai*. I did not know what I was signing. I did not know what mandatory arbitration was. In *Rosenberg v. Merrill Lynch, Pierce, Fenner and Smith, Inc.* (2/25/99, No. 98-1246) it is noted that "Persuant to a class action settlement in *Cremin v. Merrill Lynch, Pierce, Fenner and Smith, Inc.*, No.96C 3773 (N.D. Ill. Sept. 2, 1998), Merrill Lynch has agreed that, regardless of the language of the U-4 Form, employees who file discrimination claims after July 1, 1998 will be able to bring their claims in court." In light of its own class action lawsuit and the Rosenberg case, Merrill Lynch was responsive to the NASD's rule change shortly after the SEC had approved that

rule change on June 23, 1998, long before January 1, 1999. The Smith Barney class action lawsuit eventually included over 22,000 female employees. I tried to join the Smith Barney class action lawsuit, but not only does my time of employment with Shearson Lehman Brothers not come within the statute of limitations for the class action lawsuit, but now that this class action is being settled through arbitration, I choose not to participate. I am requesting that this stay be lifted, and that I am granted a court date to proceed to statutory court remedies of my wrongful termination and discrimination claims.

IV. EVIDENCE RELIED UPON

A. I did not know what I was signing when I signed the U4, the EF Hutton agreement, or the Shearson Lehman Brothers agreement. I did not know what the nature of the agreements was that I had signed. I did not knowingly waive my right to a judicial forum.

B. The NASD Code of Arbitration Procedure Rule 10201, on page 11, as amended by SR-NASD-97-77 effective January 1, 1999, states, "(b) A claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute is not required to be arbitrated." This rule change in no manner states nor does it imply that filings and claims such as mine are excluded.

C. The applicable law has been defined by the following cases in the 9th Circuit:

1. Duffield v. Robertson Stephens and Co., 144 F.ed 1182 (76 FEP Cases 1450) (9th Cir.). *cert.denied*. 67 U.S.L.W. 3113, 67 U.S.L.W. 1377 (78 FEP cases 1056) (U.S. Nov. 9, 1998) Nos. 98-237, 98-409).
2. Renteria v. Prudential Ins. Co. of America, 113 F.3d 1104, 1105-06 (73 FEP 1581) (9th Cir. 1997).
3. Prudential Ins. Co. of America v. Lai, 42 F.3d 1299, 1302 (66 FEP Cases 933) (9th Cir.1994).

It is a mathematical principle that three points establishes a straight line. In this matter this straight line leads us to a judicial forum in the Superior Court of Washington, County of King.

- D. The applicable law also has been defined by Rosenberg v. Merrill Lynch, Pierce, Fenner and Smith, Inc. (2/25/99. No. 98-1246). This is a case in the 1st Circuit.
- E. Complaint for Employment Discrimination and Wrongful Discharge.
No. 95 2 24890 OSEA.
- F. Order Staying Proceedings Pending Binding Arbitration, dated March 5, 1996.
- G. Revised Motion and Declaration to Rescind Dismissal and Continue Stay,
June 4, 1999 and June 24, 1999.
- H. Notice for Hearing, filed on June 24, 1999, for hearing date July 15, 1999.
- I. Affidavit of Arlene E. Tjart in Support of Revised Motion and Declaration to Rescind Dismissal and Continue Stay, dated July 12, 1999.
- J. Salomon Smith Barney's Opposition To Motion and Declaration to Rescind Dismissal and Continue Stay, filed July 14, 1999, at 1:39 p.m.
- K. Answer to Salomon Smith Barney's Opposition to Motion and Declaration to Rescind Dismissal and Continue Stay, filed July 15, 1999, before noon.
- L. Order Denying Motion to Motion to Rescind Dismissal and Continue Stay, ordered July 19, 1997(1999), and entered July 20, 1999.

V. AUTHORITY

The legal authority relied upon in support of this motion for reconsideration is detailed under EVIDENCE RELIED UPON, letters B through D, where precedent case law is detailed.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at Seattle, Washington, on July 30, 1999.

Arlene E. Tjart
Arlene E. Tjart, Plaintiff

RECEIVED
KING COUNTY, WASHINGTON

JUL 30 1999

DEPARTMENT OF
JUDICIAL ADMINISTRATION

RECEIVED
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JUL 20 1999

JUDGE
KATHLEEN LEARNED

COPY TO:

C/PLTF. C/DEF.

DATE: 8-12-99

~~PROPOSED ORDER~~

The Honorable J. Kathleen Learned

IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

ARLENE E. TJART,

Plaintiff,

vs.

SMITH BARNEY, INC., a foreign corporation; THOMAS O'NEAL and JANE DOE O'NEAL, husband and wife and the marital community composed thereof; RANDY SHIPLEY and ILA SHIPLEY, husband and wife and the marital community composed thereof; DEBERAH A. FOX and WILLIAM FOX, wife and husband and the marital community composed thereof,

Defendants.

NO. 95 2 24890

**ORDER GRANTING RELIEF
LIFTING THE STAY PROCEEDINGS
PENDING BINDING ARBITRATION;
COMPLAINT TO BE MOVED TO COURT;
WITH COURT DATE BEING SET;
A JUDGE ASSIGNED;
TO MOVE TO STATUTORY COURT REMEDIES**

DENYING

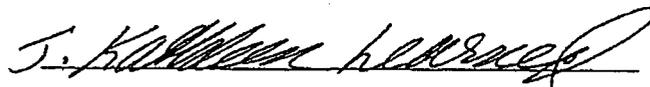
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SUPERIOR COURT, KING COUNTY, WASHINGTON
SEATTLE, WA

This matter having come for hearing before the undersigned judge of the above-entitled Court, upon the motion of plaintiff Arlene E. Tjart for reconsideration; ~~defendants Smith Barney, Inc., appearing by and through their attorneys, Hillis Clark Martin and Peterson, P.S. and Eric D. Lansverk, plaintiff appearing pro se;~~ the Court having reviewed plaintiff's Motion for Reconsideration of Order Denying Motion to Motion to Rescind Dismissal and Continue Stay; Complaint for Employment

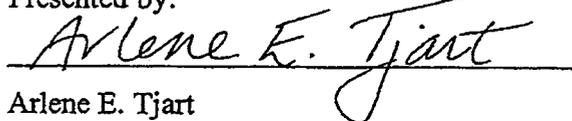
Discrimination and Wrongful Discharge; Order Staying Proceedings Pending Binding Arbitration; Revised Motion and Declaration to Rescind Dismissal and Continue Stay; Notice for Hearing date of July 15, 1999; Affidavit of Arlene E. Tjart in Support of Revised Motion and Declaration to Rescind Dismissal and Continue Stay dated July 12, 1999; Salomon Smith Barney's Opposition to Motion and Declaration to Rescind Dismissal and Continue Stay, filed July 14, 1999, at 1:39 p.m.; Answer to Salomon Smith Barney's Opposition to Motion and Declaration to Rescind Dismissal and Continue Stay, filed July 15, 1999 just before noon; and Order Denying Motion to Motion to Rescind Dismissal and Continue Stay, ordered July 19, 1997 (1999), and entered July 20, 1999; and the pleadings and records on file herein; and the Court having considered the arguments of counsel and being fully advised on the premises; and having determined that the plaintiff is entitled to judgement as a matter of law, now, therefore, it is hereby

ORDERED, ADJUDGED, AND DECREED that plaintiff's Motion for Reconsideration of Order Denying Motion to Motion to Rescind Dismissal and Continue Stay is hereby ~~GRANTED~~ ^{DENIED}.

DONE IN OPEN COURT this 12th day of August, 1999.


J. Kathleen Howard
JUDGE OF THE ABOVE-ENTITLED COURT

Presented by:



Arlene E. Tjart
Pro Se
300 Queen Anne Avenue North, #603
Seattle, Washington 98109-4599
206 284 5658

FILED

00 MAY 10 AM 10:48

The Honorable Linda Lau

KING COUNTY
SUPERIOR COURT CLERK
SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

ARLENE E. TJART

NO. 95-2-24890-0 SEA

Plaintiff,

Vs.

SMITH BARNEY, INC., a foreign corporation;
THOMAS O'NEAL and JANE DOE O'NEAL,
husband and wife and the marital community
composed thereof; RANDY SHIPLEY and ILA
SHIPLEY, husband and wife and the marital
community composed thereof; DEBERAH A. FOX
and WILLIAM FOX, wife and husband and
the marital community composed thereof,

AFFIDAVIT of
ARLENE E. TJART
In Support of
**REAPPLICATION of
PLAINTIFF'S MOTION
FOR RECONSIDERATION
OF ORDER DENYING
MOTION (TO MOTION)
TO RESCIND DISMISSAL
AND CONTINUE STAY**

Defendants.

ARLENE E. TJART, on oath, says:

1. I am the PLAINTIFF in the above entitled action and make this affidavit based on personal knowledge.
2. Referring to Rule LR7(b)(6), Superior Court Rules for King County, page 414, titled *Reapplication*, I am submitting the following documents for Judge Linda Lau to review, as I am seeking a different ruling:
 - a) Plaintiff's Motion for Reconsideration of Order Denying Motion to Motion to Rescind Dismissal and Continue Stay, received on July 30, 1999, in the Department of Judicial Administration and in Judge J. Kathleen Learned's Courtroom. **Taking out the extraneous words added by the defense attorney in July, 1999, this motion is now named in this instance, Plaintiff's Motion for Reconsideration of Order Denying Motion to Rescind Dismissal and Continue Stay.**
 - b) Order **Granting** Relief Lifting the Stay Proceedings Pending Binding Arbitration; Complaint to be Moved to Court; with Court Date Being Set; a Judge Assigned; to Move to Statutory Court Remedies, received on July 30, 1999, by both the Department of Judicial Administration and Judge J. Kathleen Learned's Courtroom;

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- c) Order **Denying Relief Lifting the Stay Proceedings Pending Binding Arbitration; Complaint to be Moved to Court; with Court Date Being Set; a Judge Assigned; to Move to Statutory Court Remedies**, entered August 12, 1999, by Judge J. Kathleen Learned. Hearing noted for 8/12/99.
 - d) Revised Motion and Declaration To Rescind Dismissal and Continue Stay, received by the Department of Judicial Administration on June 24, 1999, and in Judge J. Kathleen Learned's Courtroom on the same day. Hearing noted for July 15, 1999.
 - e) Order on Civil Motion, received on June 24, 1999, in Judge J. Kathleen Learned's Courtroom. Hearing date noted for 7/15/99.
 - f) Affidavit of Arlene E. Tjart In Support of Revised Motion and Declaration To Rescind Dismissal and Continue Stay, received by Judge J. Kathleen Learned on July 9, 1999..
 - g) Answer to Salomon Smith Barney's Opposition to Motion and Declaration to Rescind Dismissal and Continue Stay, received by the King County Superior Court Clerk, Seattle, WA., and Judge J. Kathleen Learned, on July 15, 1999.
 - h) Order Denying Motion (to Motion) to Rescind Dismissal and Continue Stay, entered July 20, 1999 by Judge J. Kathleen Learned.
3. By making reapplication, the undersigned moves the court for an **ORDER GRANTING RELIEF LIFTING THE STAY PROCEEDINGS PENDING BINDING ARBITRATION AND SETTING A COURT DATE TO MOVE TO STATUTORY COURT REMEDIES** pertaining to the above stated **ORDER DENYING RELIEF LIFTING THE STAY PROCEEDINGS PENDING BINDING ARBITRATION; COMPLAINT TO BE MOVED TO COURT; WITH COURT DATE BEING SET; A JUDGE ASSIGNED; TO MOVE TO STATUTORY COURT REMEDIES** entered August 12, 1999, by Judge J. Kathleen Learned. The **following new facts and other circumstances** justify seeking a different ruling:
- a) The damages resulting from my wrongful termination have not diminished. In fact, the damages have increased and gained momentum. I continue to carry my own debt load resulting from my wrongful termination from Shearson Lehman Brothers, Smith Barney, Inc. to site one critical circumstance. Interest rates are not low pertaining to my situation at present.
 - b) Nor have I been able to find an attorney to represent me yet, although I have spoken with quite a number of attorneys since last summer and concerning representation for the legal resolution to my wrongful termination. Still the response has been that these attorneys have full schedules of cases, or just do not know how to handle this case.

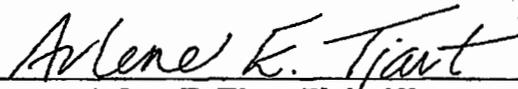
I am continuing to search for the appropriate legal counsel to represent my best interests, according to the NASD Code of Arbitration Procedure Rule 10201, amendment effective January 1, 1999, "(b)A claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute is not required to be arbitrated."

- c) I have also been very painfully placed in a position where I have had to consult with a number of attorneys—such as bankruptcy attorneys—regarding the damages ensuing from my wrongful termination from Shearson Lehman Brothers, Smith Barney, Inc. Damages squared.
- d) My ability to work has further been severely damaged since mid August, 1999. This has moved far beyond the limits of all human decency.
- e) My wrongful termination from Shearson Lehman Brothers, Smith Barney, Inc. has not been legally resolved. As a result of this, my career in investment services was destroyed.

For these new facts and other circumstances, I ask Judge Lau to GRANT RELIEF LIFTING THE STAY PROCEEDINGS PENDING BINDING ARBITRATION AND SETTING A COURT DATE TO MOVE TO STATUTORY COURT REMEDIES.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at Seattle, Washington, on May 10, 2000.



Arlene E. Tjart, Plaintiff

MAY 22 2000

Judge Suzanne Barnett

SUPERIOR COURT CLERK
BY PATRICIA J. NOBLE
DEPUTY

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COPY**

IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

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ARLENE E. TJART,

Plaintiff,

vs.

SMITH BARNEY, INC., a foreign corporation;
THOMAS O'NEAL and JANE DOE O'NEAL,
husband and wife and the marital community
composed thereof; RANDY SHIPLEY and ILA
SHIPLEY, husband and wife and the marital
community composed thereof; DEBERAH A.
FOX and WILLIAM FOX, wife and husband and
the marital community composed thereof,

Defendants.

NO. 95-2-24890-0SEA

**ORDER DENYING PLAINTIFF'S
REAPPLICATION OF MOTION FOR
RECONSIDERATION AND ENTERING
DISMISSAL**

[CLERK'S ACTION REQUIRED]

THIS MATTER having come on for hearing before the undersigned judge of the above-entitled Court, upon the plaintiff's "Reapplication" of plaintiff's motion for reconsideration; defendants appearing by and through their attorneys, Hillis Clark Martin & Peterson, P.S. and Eric D. Lansverk; plaintiff appearing pro se; the Court having reviewed the Affidavit of Arlene E. Tjart in Support of Reapplication of Plaintiff's Motion for Reconsideration of Order Denying Motion (to Motion) to Rescind Dismissal and Continue Stay (and attachments thereto) and Salomon Smith Barney's Opposition to Reapplication of Plaintiff's Motion for Reconsideration of Order Denying Motion (to Motion) to Rescind Dismissal and Continue Stay; and the pleadings and records on file herein; and the Court being fully advised on the premises; and having determined that there is no genuine issue of any material fact and that defendants are entitled to judgment as a matter of law, now, therefore, it is hereby

*Order Denying Plaintiff's Reapplication of Motion
for Reconsideration and Entering Dismissal
Page 1 of 2*

Law Offices
▪ HILLIS CLARK MARTIN & PETERSON ▪
A Professional Service Corporation
500 Galland Building, 1221 Second Avenue
Seattle, Washington 98101-2925
(206) 623-1745 Facsimile (206) 623-7789

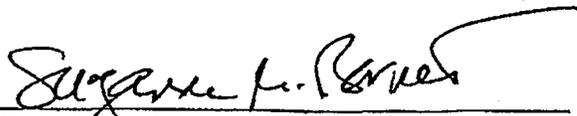
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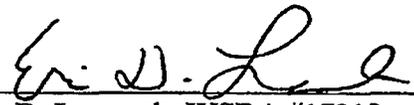
ORDERED, ADJUDGED, AND DECREED that plaintiff's Reapplication of Plaintiff's Motion for Reconsideration of Order Denying Motion (to Motion) to Rescind Dismissal and Continue Stay is hereby DENIED; and it is further

ORDERED, ADJUDGED, AND DECREED that this case is hereby DISMISSED.

DONE IN OPEN COURT this 19th day of May, 2000.


SUZANNE BARNETT
Superior Court Judge

Presented by:
HILLIS CLARK MARTIN & PETERSON, P.S.

By 
Eric D. Lansverk, WSBA #17218
Attorneys for Defendants

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[Faint, mostly illegible text and stamps, possibly including a date stamp and a signature stamp.]