

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
Eastern Division

IN RE: \

IN PROCEEDINGS UNDER CHAPTER 7

ARTER & HADDEN LLP,

CASE NO. 03-23293

Debtor.

MARC P. GERTZ, TRUSTEE,

Plaintiff,

ADV. PROC. NO. 06-1023

v.

ALDERM, NA LLC

Defendant.

JUDGE RANDOLPH BAXTER

MEMORANDUM OF OPINION AND ORDER

Plaintiff filed the above captioned adversary proceeding on January 9, 2006. This Court acquires jurisdiction over this proceeding pursuant to 28 U.S.C. § 1334, 28 U.S.C. § 157(c)(1) and General Order Number 84 of this District. On November 26, 2007, this Court issued a Pretrial Order requiring, *inter alia*, the parties to file the following: 1) a pretrial statement; 2) a trial brief; and 3) a bound set of original exhibits and two copies. The order also set a final pretrial conference for March 19, 2008 and required the pretrial statement to be filed no later than three days prior to the final pretrial conference and trial brief and exhibits no later than the final pretrial conference. Trial is set for March 26, 2008.

FILED
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U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
DAYTON, OHIO

In its answer to Plaintiff's complaint, Defendant alleges that this Court lacks subject matter jurisdiction over the instant proceeding because it is subject to California's Mandatory Fee Arbitration Act ("MFAA"). However, Defendant, in its Fourth Affirmative Defense, alleges that the Complaint is "barred, or offset, by the professional negligence committed by Arter & Hadden in abandoning its representation of defendant Alderm at a critical time in the litigation." Section 6201(d) of the MFAA states that:

(d) A client's right to request or maintain arbitration under the provisions of this article is waived by the client commencing an action or filing any pleading seeking either of the following:

- (1) Judicial resolution of a fee dispute to which this article applies.
- (2) Affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct.

The Defendant herein has sought affirmative relief against the Debtor because of its alleged malpractice, namely an offset of fees owed. Defendant further asks this Court to award it \$4,158.55 "that has been wrongly withheld and retained by Arter." Pursuant to the plain language of the MFAA, Defendant has waived its right to request or maintain arbitration under the MFAA. *Aguilar v. Lerner*, 32 Cal.4th 974, 987 (Cal. 2004). Thusly, this Court's jurisdiction of the instant proceeding is duly established.

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This Court's November 26, 2007 scheduling order states, in pertinent part:

8. Pursuant to Bankr.R. 7016(f), if a party or party's attorney fails to obey a scheduling or pre-trial order, . . . the Court, sua sponte, may impose sanctions on either party or the party's attorney, as provided in Bankr.R. 7037(b)(2)(B), (C), (D).
9. FAILURE OF COUNSEL TO COMPLY WITH THIS ORDER MAY RESULT IN SUMMARY DISPOSITION OF THE CASE. See, *National Hockey League, et. al. v.*

Metropolitan Hockey Club, 427 U.S. 639, 641-43 (1976); Link v. Wabash Railway, 370 U.S. 633-34 (1962).

To date, Defendant Alderm, NA LLC has failed to comply with this Court's Pretrial Order. Specifically, Alderm failed to appear at the March 19, 2008 pretrial conference and failed to file a pretrial statement, trial brief, or exhibits with the Court. Accordingly, it is hereby ordered that Defendant Alderm, NA LLC's answer is stricken from this Court's record for failure to comply with this Court's November 26, 2007 Pretrial Order and judgment is hereby entered by default against Alderm, NA LLC and in favor of Arter & Hadden, LLP, Plaintiff. See Bankr.R. 7016(f), 7037(b)(2)(C) and 7041(b).

IT IS SO ORDERED.

Dated, this 24th day of
March, 2008.


JUDGE RANDOLPH BAXTER
UNITED STATES BANKRUPTCY COURT