

SIGNIFICANT CASE LAW FOR ATTORNEYS AND MEDIATORS

John Fabing, Personal Representative of Estate of Lillian Mae Koch, deceased, v Sandra Mae Eaton, 31 Fla. L. Weekly D 2458 (Fla. 2nd DCA, Opinion Filed September 29, 2006): The personal representative appealed after a bench trial which pitted a daughter, Eaton, against her mother, Koch. He also appealed the denial of his motion for attorney's fees. The appellate court affirmed the final judgment, finding that the trial court's findings in the final judgment were supported by competent, substantial evidence in the record. However, because the trial court applied the incorrect law in denying the personal representative's motion for attorney's fees arising out of a failed mediation agreement, the Second District reversed and remanded for further proceedings on that single issue in light of the correct law: "If the mediation agreement existed but was rendered unenforceable by the acts of a third party, the prevailing party may be entitled to attorney's fees pursuant to the attorney's fees provision of the agreement. If, however, there was a mutual mistake in the making of the agreement, then the attorney's fee provision cannot be enforced."

PRACTICE TIP:

This case is instructive. The parties mediated the case and reached a settlement. Their mediation agreement specified how the parties were to divide certain assets, as well as the fact the parties' residence would be appraised by a specific appraiser. However, things went awry when the specified appraiser did not perform the appraisal but instead had an associate do it. It is important to be specific in the drafting of mediated settlement agreements. It is equally important that the parties abide by the specific terms and conditions of their mediated settlement agreements.

MY NEW WEBSITE IS UP AND RUNNING

After years of fear and procrastination, I have finally done it. I have my own website. You can find it at these addresses: www.BABMediate.com and www.BruceBlitman.com. The website contains past issues of mediation newsletters, as well as information about current mediation case law, ADR articles I've written and announcements about upcoming mediation seminars and presentations. Many thanks to Webmaster Gio Gutierrez for his invaluable expertise in designing this site. Please visit this site and let me know what you think. I hope you like it.

DISPUTE RESOLUTION IN THE NEWS PART 1

The February 21, 2007 issue of The Miami Herald reported that Carlos Zambrano of the Chicago Cubs agreed to a one-year, \$12.4 million contract, avoiding salary arbitration by striking the deal just before their scheduled hearing. Zambrano earned \$6.5 million last season while going 16-7 with a 3.41 ERA and 210 strikeouts. He asked for \$15.5 million in arbitration, while the Cubs countered with \$11,025,000-more than any player had ever been awarded.

DISPUTE RESOLUTION IN THE NEWS PART II

The December 22, 2006 issue of The Miami Herald reported that Bristol-Myers Squibb tentatively agreed to pay \$499 million to settle a longstanding probe by the Department of Justice into whether the company played a role in a pricing scheme that led insurers and government agencies to overpay for drugs. The company reduced its profit forecast to reflect the charges. In return, no criminal charges will be filed against the firm. The probe focused in part on wholesale pricing practices for several of its drugs from the 1990s through 2005.

DISPUTE RESOLUTION IN THE NEWS PART III

The December 16, 2006 issue of the Sun-Sentinel reported that a Boynton Beach, Florida landscaper agreed to pay \$150,000 to settle a race and national origin discrimination lawsuit brought by the Equal Employment Opportunity Commission, the federal agency said. The EEOC charged that the company deliberately segregated its black Haitian employees from its Hispanic employees and later fired all of its black Haitian workers, replacing them with Hispanic employees. The settlement requires the company to pay \$150,000 to five former employees who were discrimination victims. The company must also adopt distribute and train its employees on an anti-discrimination policy.

RECOMMENDED READING

Penn State University Dickinson School of Law and the Institute for Arbitration Law and Practice recently produced the *AAA Handbook on Mediation* (JurisNet, LLC, Huntington, New York, 2006). The Handbook contains a series of interesting articles written by authors recognized as specialists in the field of mediation. The Handbook assembles an extensive collection of articles which were recently published in the American Arbitration Association's flagship publication, *Dispute*

Resolution Journal. The contributions cover a wide array of topics that are of substantial interest in the field of mediation and provide thorough, professional and practical answers to problems that have emerged in this field. I am honored that one of my articles "10 Ingredients For an Effective Mediation" was selected for inclusion in this book (on page 65). To obtain a copy of this book, please call 1-631-351-5430 or 1-800-887-4064. You can also visit the web page at www.arbitrationlaw.com.

Did you resolve to get more organized in 2007? If so, Diane A. Hatcher's new book *Don't Agonize, Organize Your Office Now!* (BookSurge, LLC, North Charleston, South Carolina, 2007) is worth reading. This slender volume contains 85 pages of valuable information. It is written for busy professionals who don't have time for heavy reading. This book provides direct, simple and doable solutions to help harried individuals with their organizing needs. To place an order, contact www.timesaversusa.com or call (954) 252-7511. Books are also available from www.amazon.com.

FLORIDA SUPREME COURT REVISES LANGUAGE IN FLORIDA RULES FOR CERTIFIED & COURT – APPOINTED MEDIATORS EFFECTIVE AUGUST 1, 2006

Recently, there have been some changes in some of the Rules for Certified and Court-Appointed Mediators. Here are the changes for your review. The italicized language in bold print was adopted by the Florida Supreme Court and became effective August 1, 2006:

Rule 10.360. Confidentiality

(a) Scope. A mediator shall maintain confidentiality of all information revealed during mediation except where disclosure is required **or permitted by law or is agreed to by all parties.**

Rule 10.370. Advice, Opinions, **or information**

(c) Personal or Professional Opinion. A mediator shall not offer a personal or professional opinion intended to coerce the parties, **unduly influence the parties**, decide the dispute, or direct a resolution of any issue. Consistent with standards of impartiality and preserving party self-determination, however, a mediator may point out possible outcomes of the case and discuss the merits of a claim or defense. A mediator shall not offer a personal or professional opinion as to how the court in which the case has been filed will resolve the dispute.

Rule 10.420. Conduct of Mediation

(a) Orientation Session. Upon commencement of the mediation session, a mediator shall describe the mediation process and the role of the mediator, and shall inform the participants that: ... (3) communications made during the process are confidential, except where disclosure is required **or permitted by law.**

FLORIDA DEPARTMENT OF FINANCIAL SERVICES (DFS) AND COLLINS CENTER FOR PUBLIC POLICY HURRICANE MEDIATION CENTER IN DAVIE, FLORIDA IS STILL GOING STRONG

In previous issues, I've reported on The Collins Center's long history of assisting the State of Florida with hurricane recovery. The Collins Center, which has served as the administrator for the Florida Department of Financial Services (DFS) Hurricane Mediation Program, has concluded its 2004 hurricane mediation program. Mediation requests from consumers exceeded 12,000 and the program generated an overall settlement rate of 92%.

The DFS and Collins Centers 2005 hurricane mediation program is still fully operational. The Department of Financial Services opened its newest Hurricane Mediation Center in Davie (Broward County), Florida in mid-February 2006. This Center continues to mediate claims arising out of Hurricane Wilma as well as prior hurricanes, and is now operating Mondays through Fridays. Additional information about these programs is available at www.collinscenter.org or by calling the DFS at 1-800-22-STORM.

MEDIATION AND NEGOTIATION SEMINARS AVAILABLE FOR CONTINUING EDUCATION CREDITS

For years, I have written and spoken extensively about mediation and negotiation-related topics, including: "*Florida's Mediation Case Law*"; "*Ingredients For A Successful Mediation Process*"; "*The Alternative Dispute Resolution Continuum*"; "*What Is Your Negotiating Style?*"; and "*Effective Negotiating Tips And Tactics*". If you want to put on a seminar for your law firm, cents and/or staff, please contact me for details.

RECENT APPOINTMENTS

I have been appointed to the Mediation Program Panel for the initial American Arbitration Association/Cybersettle

mediation program (Zurich related program). Cases in this particular program will involve third-party claims against policyholders insured under Zurich Insurance Company policies as well as first-party disputes between policyholders and Zurich.

I have been appointed to serve on the City of Cooper City's newly created Education Advisory Board (EAB). The EAB makes recommendations to the City Commission on matters pertaining to the education of the City's public school students from elementary school through high school.

LITIGATION ALTERNATIVES COMMITTEE

I have previously reported on my appointment to the Litigation Alternatives Committee for the Florida Patient Safety Corporation. This Committee is charged with exploring alternative methods for resolving medical malpractice disputes. I continue to welcome your suggestions, ideas or recommendations on this matter. If you'd like to share, please contact me.

NOTABLE QUOTATIONS

"Failure is the condiment that gives success its flavor."

-Truman Capote

"I do not like work even when someone else does it."

-Mark Twain

"A man is a success if he gets up in the morning and goes to bed at night and in between does what he wants to do."

-Bob Dylan

"Most people work just hard enough not to get fired and get paid just enough not to quit."

-George Carlin

"If hard work were such a wonderful thing, surely the rich would have kept it to themselves."

-Lane Kirkland

"By working faithfully eight hours a day you may eventually get to be a boss and work twelve hours a day."

-Robert Frost

"Getting fired is God's way of telling you that you should be doing something else."

-Stephen Adly Guirgis

"Experience is the name everyone gives to their mistakes."

-Oscar Wilde

"Money's a horrid thing to follow, but a charming thing to meet."

-Henry James

"Bear in mind that your resolution to succeed is more important than any one thing."

-Abraham Lincoln

"Success, like happiness, cannot be pursued; it must ensue, and it only does so as the unintended side effect of one's dedication to a cause greater than oneself."

-Viktor Frankl, Auschwitz Survivor

"One's destination is never a place but rather a new way of looking at things."

-Henry Miller

SEMINAR PRESENTATION

I am an approved instructor for Florida Atlantic University's Small Business Development Center (FAU SBDC), based in Boca Raton. In May, 2007 I am presenting a two-hour seminar titled "The Mediation Advantage: Getting Ahead By Getting Along in Business" at the South Broward/Broward Community College Library in Pembroke Pines. These SBDC programs are free and the public is welcome to attend. Please visit my website for details about this presentation. Thank you.

NEW CD: TREY RYDER'S "EDUCATION-BASED MARKETING ENCYCLOPEDIA FOR LAWYERS"

For several years, I have been recommending that readers take a look at Trey Ryder's "Lawyer Marketing Alert", a weekly e-newsletter which is filled with valuable marketing information for professionals. Trey's recently produced CD contains 203 articles specifically about lawyer marketing. This CD is now available for immediate delivery at a special introductory price of \$129 (US). The regular price is \$199 (US). Please let Trey know that you read about his CD in this newsletter. For more information, send an e-mail to <mailto:trey@treyryder.com>trey@treyryder.com and put "203 Articles" in the subject line. You can call Trey at 1-888-873-9793. Trey's e-mail address is: Trey@TreyRyder.com.

MESSAGES OF THANKS TO OUR TROOPS

To remember our troops in Iraq and around the world who risk their safety every day on our behalf, messages of appreciation and support can be sent via

www.OperationDearAbby.net.

THANK YOU FOR 18 WONDERFUL YEARS AND COUNTING!

In February 2007, I celebrated my eighteenth anniversary as a Florida Supreme Court Certified County and Circuit Civil Mediator (I became a Certified Family Mediator in 1990). How quickly the years have passed. Many thanks for your patronage and generous support through the years. It is always an honor and privilege to be of service to you and your clients. I look forward to working with you for at least another 18 years.

WORTHY CAUSES

THE COOPERATIVE FEEDING PROGRAM: This 20 year-old agency, which dishes out more than a million meals a year, also provides free haircuts and other services to the needy, such as food stamp information and legal advice, with the help of volunteers. The agency also has an emergency food pantry that periodically supplies families with enough groceries to get them by for a few days. The program has seen a 25% increase in the demand for free food over the last year, but funding has been flat for the same period. Checks can be mailed to: The Cooperative Feeding Program, 1 NW 33 Terrace, Fort Lauderdale, Florida 33311. For more information, call (954) 792-2EAT (2328) or visit feedingbroward.org. Thank you.

THE GIFT OF LIFE: For information on how to become an organ donor, please visit www.organdonor.gov. Thank you.

UNIVERSITY OF MIAMI-NOVA SOUTHEASTERN UNIVERSITY CENTER FOR AUTISM & RELATED DISABILITIES (UM-NSU CARD): Is dedicated to optimizing the potential of people with autism, dual sensory impairment and related disabilities. In 1993, the legislature passed a statute that appropriated startup funds to establish the Center for Autism and Related Disabilities (CARD)

at sites throughout Florida, including the University of South Florida, the University of Miami, Florida State University, University of Florida at Gainesville and Jacksonville, and the University of Central Florida. Individuals of any age with autism, pervasive developmental disorder, dual sensory impairment or sensory impairment with other disabling conditions, their family members, friends and professionals are eligible to receive CARD's free service. For contributions or information, please contact UM-NSU CARD's main office at: 5655 Ponce de Leon Boulevard, Coral Gables, Florida 33125-0725, Telephone: (305) 284-6563, 1-800-9-AUTISM. Fax: (305) 284-6555 www.umcard.org. Thanks.

MAKE-A-WISH FOUNDATION: Since 1980, the Make-A-Wish Foundation has granted more than 144,000 wishes for children with life-threatening medical conditions. It is the largest wish-granting charity in the world, with 74 chapters across the United States and its territories and 28 international affiliates on five continents. For more information, please visit the Make-A-Wish web site at: www.wish.org or call (866) 880-1382 (toll-free). You can also support the Make-A-Wish Foundation by returning a generous tax-deductible contribution to the Gift Processing Center at: P.O. Box 97104, Washington, DC 20090-7104. Thank you.

NATIONAL CANCER FOUNDATION FOR CANCER RESEARCH: Founded in 1973 to support cancer research and public education relating to the prevention, early diagnosis, better treatments and ultimately, a cure for cancer. For more information, please visit www.NFCR.org or call 1-800-321-CURE. Thank you.

EASTER SEALS DISABILITY SERVICES: Easter Seals mission is to provide exceptional services to ensure that all people with disabilities or special needs and their families have equal opportunities to live, learn, work and play in their communities. For more information, please visit www.easterseals.com or call 1-800-221-6827. Thank you.

PACE CENTER FOR GIRLS, INC.: Provides girls and young women an opportunity for a better future through education, counseling, training and advocacy. PACE values all girls and young women, believing each one deserves an opportunity to find her voice, achieve her potential and celebrate life defined by responsibility, dignity, serenity and grace. Since its inception, PACE Center for Girls, Inc. has played a critical role in promoting gender responsive programming, influencing juvenile justice policy and changing the lives of over 12,000 at-risk girls. PACE is a not for profit, 501(c)(3) minority provider that has 22 locations in Florida (19 direct care centers and 3 outreach locations), with its headquarters in Jacksonville. For more information, please visit

the website at www.pacecenter.org or call Aggie Pappas, MSW, Executive Director of the PACE Center for Girls' Broward at (954) 561-6939. Thank you.

DO YOU HAVE A FAVORITE CHARITY?

I am always interested in informing our readers about worthy causes. If there is some cause you want me to share with our readers in future issues of this newsletter, please send me an e-mail or a brochure which describes the charitable organization and its mission, I will be pleased to help you share this information.

MAY I ASK A FAVOR?

IF YOU HAVE A QUESTION OR SUBJECT you'd like me to address in this newsletter, please send me an e-mail with your suggestion. Thanks.

PLEASE FORWARD: If you'd like to share this newsletter with your partners, associates, clients, friends and colleagues, feel free to forward this issue including the copyright notice.

ADDRESS CHANGES: If you want to continue to receive my newsletter, please make sure I have your current e-mail address.

QUESTIONS? COMMENTS? IDEAS? OPINIONS? I'm always happy to hear from you.

Spring is here. How can it be that the end of another school year is almost here? I hope you and the members of your family and staff are well. Best wishes for a Happy Easter, a Joyous Passover and a wonderful Mother's Day. I hope your favorite college basketball team fared well during the NCAA tournaments. Congratulations to the Florida Gators for winning their second consecutive national championship in men's basketball. The Ohio State University also deserves credit for reaching the championship games in both football and basketball. The Miami Heat are playoff bound again (hopefully with a healthy Dwyane Wade). The Masters golf tournament is over (Congratulations to Central Florida resident Zach Johnson on winning his first "major" championship), and another baseball season has begun. The Florida Marlins are playing well and were (briefly) unbeaten, winning their first two games. With the lengthy NBA basketball playoffs, doesn't it seem like the pro basketball and baseball seasons end at the same time? Enjoy the beauty and excitement of Spring. As always, Best wishes for much Good Health, Good Luck and Good Mediation in 2007 and beyond. May all your New Year's Resolutions still come true. And if they don't, so what!

BRUCE A. BLITMAN, ESQ.
Certified County, Family, Circuit Civil and Federal Mediator Qualified Arbitrator and Windstorm Insurance Network (WIN) Umpire
9050 Pines Boulevard, Suite 450
Pembroke Pines, FL 33024
Phone: (954) 437-3446
Fax: (954) 437-3446 (Please call first, before faxing)
E-Mail: BABmediate@aol.com
Full Bio: www.tfapm.org/biolistings.html
Website: www.BABMediate.com and www.BruceBlitman.com

Copyright 2007 By Bruce A. Blitman. All rights reserved. bmnspg7b