

STATE OF MINNESOTA

IN SUPREME COURT

C6-74-45550

OFFICE OF
APPELLATE COURTS

JUN 27 2008

FILED

Designation of the American
Arbitration Association as the No-Fault
Insurance Arbitration Program Administrator

ORDER

The National Arbitration Forum has filed a Petition seeking a stay of execution of the July 1, 2008-June 30, 2012 contract for administration of the Minnesota No-Fault Insurance Arbitration Program. For the reasons discussed herein, the Court denies the Petition.

Rule 1(c) of the Minnesota No-Fault Arbitration Rules provides that administration of arbitration under Minn. Stat. 65B.525 shall be by an arbitration organization designated by the No-Fault Standing Committee with the concurrence of the Supreme Court. The administration is subject to the continuing supervision of the Standing Committee.

The Supreme Court appoints an independent screening committee to review proposals submitted by prospective administrators, and to make recommendations to the Standing Committee. The 2003 screening committee included the chair of the Standing Committee, two other members of the Standing Committee, two members of the Minnesota State Bar Association familiar with solicitation and evaluation of business

proposals, a public member, and a trial court judge. The composition of the screening committee was intended to provide internal and external perspectives. See Order of August 5, 2003. Based in part on recommendation of the 2003 screening committee, the Standing Committee and the Court chose the American Arbitration Association to administer the No-Fault Arbitration Program for 2004-2008.

The 2008 screening committee had a composition similar to that of the 2003 committee. On January 11, 2008, the Court appointed the following members to the screening committee: Wilbur Fluegel, Chair;¹ Lynn M. Anderson (MSBA designation); Karen Kingsley (Standing Committee); Christopher J. Lake-Smith (public member); Hon Mary Leahy, (Third District Judge nominated by the District Judges Association); Roger W. Meyer (MSBA nominee); Michael D. Tewksbury (Standing Committee). Mr. Fluegel, Ms. Kingsley, and Mr. Tewksbury are members of the Supreme Court approved No-Fault Arbitration Panel.

A request for proposals was prepared, posted on the Supreme Court website and sent directly to the three organizations known to be interested in providing this service, American Arbitration Association, National Arbitration Forum, and Gilbert Mediation.

Two features of the Request for Proposal (RFP) are relevant to the issue now before the Court. The RFP provides:

¹ On December 14, 2007, the Court received notification that James Gilbert, the Chair of the Standing Committee, would resign effective January 1, 2008, because he was considering submitting a proposal on behalf of Gilbert Mediation. In the absence of a permanent chair, the service of Mr. Wilbur Fluegel was solicited for the screening committee. Mr. Fluegel had served previously on both the Standing Committee and the 2003 screening committee.

This is not a bid but a request for a proposal that could become the basis for negotiations leading to an exclusive designation * * *.

Neither the Supreme Court, the Standing Committee, nor the screening committee is obligated to respond to any proposal submitted nor is it legally bound in any manner whatsoever by the submission of a proposal * * *. The screening committee also reserves the right to reject any or all proposals, or parts of proposals, to waive any informalities therein, and to extend proposal due dates.

The criteria by which the proposals would be evaluated were contained in the solicitation.

Three entities—American Arbitration Association, National Arbitration Forum, and Gilbert Mediation (as ADRA Systems, Inc.)—submitted proposals. Each screening committee member received a full copy of the lengthy proposal of each organization, and had an opportunity to review them prior to the oral presentations by the organizations.

On March 14, 2008, representatives from each of the three organizations met with the screening committee. All members of the screening committee were present for the entire time and each participated actively in the discussions with the presenters and afterwards in evaluating the qualifications and presentations of the organizations. No proposer raised any objection to the composition of the screening committee.

The screening committee unanimously agreed to recommend the American Arbitration Association as the day-to-day administrator of the No-Fault Arbitration System in Minnesota for 2008-2012. On April 18, 2008, the screening committee Chair presented the screening committee report and recommendation to the Standing Committee. The Standing Committee agreed unanimously to accept the recommendation of the screening committee to redesignate the American Arbitration Association.

The Supreme Court subsequently considered the report of the screening committee and the Standing Committee and likewise approved the redesignation of the American Arbitration Association. On May 12, 2008, a notice announcing the selection of the American Arbitration Association was sent to each organization submitting a proposal. A contract has been signed by the Chair of the Standing Committee and by officers of the American Arbitration Association. The contract awaits final approval as to form, and execution by State Court Administration Senior Legal Counsel.

On June 11, 2008, the National Arbitration Forum filed a Petition with the Clerk of Appellate Courts seeking a stay of final execution of the contract. The petition alleges that an appearance of partiality and favoritism is created by the affiliation of some screening committee members, including the Chair, with the American Arbitration Association.

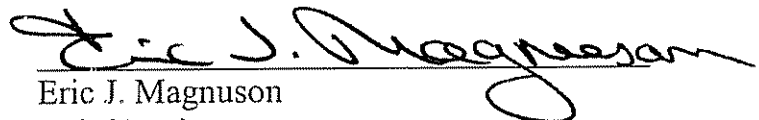
The Court has considered the allegations of the National Arbitration Forum, and concludes that they are without merit. The screening committee members were chosen to ensure a mix of experience and perspective. Its composition was chosen impartially and it acted in a like manner. There is nothing to suggest that the recommendation made by the committee was based on anything other than the merits of the respective proposals. Moreover, the screening committee's recommendation was reviewed and approved by the Standing Committee, and the final decision on the redesignation was approved by the Court.

Based on the foregoing,

IT IS HEREBY ORDERED that the Petition of the National Arbitration Forum for a stay of final execution of the contract is denied.

DATED: June 27, 2008

BY THE COURT:


Eric J. Magnuson
Chief Justice