

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF CONNECTICUT**

DOCTOR’S ASSOCIATES, INC.,	:
Plaintiff,	:
	:
-vs-	: Civil No. 3:03cv626(PCD)
	:
MARJORIE DILLENDER,	:
Defendant.	:

**RULING ON PETITION TO COMPEL ARBITRATION**

Plaintiff petitions for an order compelling arbitration. For the reasons set forth herein, the petition is **granted**.

**I. BACKGROUND**

Plaintiff and Defendant entered into a franchise agreement (“Agreement”) on June 17, 1996. (Pet. to Compel Arbitration at 2). The Agreement contains an arbitration clause which provides in relevant part “[i]f either party . . . commences any arbitration or litigation in any forum outside of Bridgeport, Connecticut . . . then that party is in violation of this agreement and must commence arbitration . . . in Bridgeport, Connecticut . . . or at any other location in Connecticut specified by the American Arbitration Association [‘AAA’].” On November 20, 2002, a dispute arose as to the abuse and misuse of the advertising trust fund by the Plaintiff, and Defendant initiated an arbitration with the AAA in Texas. (Doc. No. 8 at 2).

**II. DISCUSSION**

Plaintiff’s argues that Defendant should be ordered to proceed with arbitration in a manner consistent with their Agreement. Defendant argues that Plaintiff’s Petition should be denied because (1) arbitration proceedings have been initiated in Texas and (2) service of

process was defective.

#### **A. Standard for Granting Motion to Compel Arbitration**

“In the context of motions to compel arbitration brought under the Federal Arbitration Act (‘FAA’), 9 U.S.C., § 4, the court applies a standard similar to that applicable for a motion for summary judgment.” Bensadoun v. Jobe-Riat, 316 F.3d 171, 175 (2d Cir. 2003). A court is required to “grant a petition to compel arbitration except where a question of fact exists as to (1) the making of the arbitration agreement or (2) the failure, neglect, or refusal of another [i.e., the respondent to the § 4 petition] to arbitrate.” Doctor’s Assocs. v. Distajo, 66 F.3d 438, 454 (2d Cir. 1995) (internal quotation marks and citations omitted). Once the aggrieved party has substantiated the entitlement “by a showing of evidentiary facts, the party opposing may not rest on a denial but must submit evidentiary facts showing that there is a dispute of fact to be tried.” Doctors’s Assocs. v. Distajo, 944 F. Supp. 1010, 1014 (D. Conn.1996) (citation omitted). Upon being satisfied that a question of fact does not exist “the court shall make an order directing the parties to proceed with the arbitration in accordance with the terms [of the agreement].” 9 U.S.C., § 4 (emphasis added).

#### **B. Defendant’s Initiation of Arbitration Proceedings in Texas**

Defendant contends that her initiation of arbitration in Texas satisfies the terms of the Agreement and therefore cannot be compelled to arbitrate in Connecticut. Defendant’s claim fails, however, as this court’s authority under the FAA is to “*enforce* [the arbitration agreement] *in accordance with its terms.*” Gov’t of the United Kingdom of Great Britian v. Boeing Co., 998 F.2d 68, 72-73 (2d Cir. 1993) (emphasis omitted; citations omitted; internal

quotations omitted).

No question of fact exists as to either the making of the arbitration Agreement or more specifically its forum selection clause: the Agreement requires that “[a]ny dispute or claim arising out of or relating to this Agreement . . . is to be submitted directly to arbitration . . . at Bridgeport, Connecticut or other location . . . in Connecticut.” Plaintiff has thereby substantiated its entitlement to arbitration in Connecticut. Further, Defendant presents no evidence showing a factual dispute regarding the making of the Agreement.

Defendant’s argument that initiation of arbitration in Texas satisfies the Agreement fails, as arbitration is contrary to the express language of the Agreement. Therefore, no question of fact exists as to Defendant’s failure to arbitrate in Connecticut.

For the reasons set forth herein, the Plaintiff is entitled to arbitration in Connecticut in accordance with the terms of the Agreement.

### **C. Service of Process**

In her Memorandum of Law in Support of Motion to Dismiss the Petition, Defendant claims service of process was improper on two counts: (1) Plaintiff’s use of facsimile, and (2) serving Defendant’s attorney, rather than Defendant personally.<sup>1</sup>

The Agreement calls for settlement of any dispute in accordance with the Procedures of the Commercial Arbitration Rules of the American Arbitration Association (“CAR”). The CARs are procedural rules for arbitration proceedings. Rule 41 of the CAR states that “[a]ny

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<sup>1</sup> In its Opposition of Doctor’s Associates, Inc. (“DAI”) to Motion to Dismiss Petition to Compel Arbitration, Plaintiff claims to have also sent a copy of its petition directly to the Defendant.

papers, notices, or process necessary . . . for the initiation . . . of an arbitration . . . [or] *for any court action in connection therewith*, . . . may be served on a party or its *representative* . . . by *facsimile* transmission (fax). See Doctor's Assocs. v. Stuart, 85 F.3d 975, 982 (1996) (emphasis added) (ruling that undisputed receipt of service via facsimile transmission to defendant's counsel was valid under Rule 41).

As Defendant does not dispute receipt of service, she was served with the documents according to rule 41, service was proper.

### III. CONCLUSION

Plaintiff's Petition to Compel Arbitration (Doc. No. 4) is **granted**. The Clerk shall close the file.

SO ORDERED.

Dated at New Haven, Connecticut, August \_\_\_\_, 2003.

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Peter C. Dorsey  
United States District Judge