

1 **WO**

2

3

4

5

6

7

8

NOT FOR PUBLICATION
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

9

Pitts and Associates, LLC,

No. CV-09-2697-PHX-FJM

10

Plaintiff,

ORDER

11

vs.

12

13

Williams Industrial Services, LLC;

Williams Industrial Services, Inc.,

14

Defendants.

15

16

17

18

19

20

21

The court has before it defendants’ motion to dismiss (doc. 13), and plaintiff’s response (doc. 14). Defendants did not file a reply. We also have before us defendants’ unopposed motion for extension of time to file a responsive pleading to the complaint (doc. 10).

22

23

24

25

26

27

28

Plaintiff Pitts & Associates, LLC (“Pitts”), an Arizona limited liability company, alleges that on September 1, 2007, it entered into an agreement with defendant Williams Industrial Services (WIS), whereby Pitts agreed to perform consulting services in connection with a plant owned by WIS and located in Bay City, Texas (“2007 Agreement”). WIS agreed to pay a “success fee” in the amount of \$100,000 “for any transaction, whether it be to sell the Plant or fund development at the Plant location.” In November 2008, the parties entered into a second agreement, whereby WIS agreed to pay a success fee in the amount

1 \$150,000 “for any transaction on [the Plant] regardless of when the transaction occurs”
2 (“2008 Agreement”). Pitts contends that although WIS sold the Plant in June 2008,
3 triggering its obligation to pay the success fee, WIS has refused to pay.

4 WIS, a Delaware limited liability company with its principal place of business in
5 Pennsylvania, now contends that this case must be dismissed for lack personal jurisdiction.
6 With little factual or legal analysis, it claims that it did not avail itself of the privilege of
7 conducting business in Arizona.

8 The plaintiff bears the burden of establishing that a court has personal jurisdiction
9 over a defendant. Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 800 (9th Cir.
10 2004). However, a defendant can waive objections to personal jurisdiction by contractual
11 agreement. Dow Chemical Co. v. Calderon, 422 F.3d 827, 831 (9th Cir. 2005); S.E.C. v.
12 Ross, 504 F.3d 1130, 1149 (9th Cir. 2007) (“parties may consent to jurisdiction through a
13 forum selection clause in a contract”).

14 Pitts contends that WIS purposefully directed its activities to Arizona and availed
15 itself of Arizona laws when it entered into the 2007 and 2008 Agreements. The 2007
16 Agreement provided that “any dispute shall be governed by the laws of the State of Arizona
17 and any arbitration shall take place in Scottsdale, Arizona or such other place as the parties
18 may agree.” Response, exhibit 1. Moreover, WIS agreed to mail all payments due under the
19 Agreement to Pitts in Scottsdale, Arizona. Id., exhibit 2. Pitts contends that by agreeing to
20 submit to arbitration in Arizona, consenting to be bound by Arizona law, and agreeing to
21 make payments to an Arizona resident at an Arizona address, WIS has consented to the
22 personal jurisdiction of this court. We agree.

23 WIS does not respond to Pitts’ argument. Failure to respond to an argument serves
24 as an additional basis upon which to deny defendants’ motion. See LRCiv 7.2(i) (if a party
25 “does not serve and file the required answering memoranda, . . . such non-compliance may
26 be deemed a consent to the denial . . . of the motion and the Court may dispose of the motion
27 summarily”).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS ORDERED GRANTING defendants' motion for extension of time (doc. 10).

IT IS FURTHER ORDERED DENYING defendants' motion to dismiss (doc. 13).

DATED this 1st day of June, 2010.

Frederick J. Martone

Frederick J. Martone
United States District Judge