

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Christine M. Arguello**

Civil Action No. 09-cv-02142-CMA-MJW

WILLIAM A. RALSTON,
RICHARD L. RALSTON, and
SALBA SMART NATURAL PRODUCTS, LLC,

Plaintiffs,

v.

SALBA CORP N.A.,

Defendant.

**ORDER DENYING DEFENDANT'S MOTION TO SET ASIDE OR AMEND JUDGMENT
BASED UPON SCRIVENER'S ERROR IN COURTROOM MINUTES**

This matter comes before the Court on Defendant Salba Corp N.A.'s Motion to Set Aside or Amend Judgment Based Upon Scrivener's Error in Courtroom Minutes (Doc. #45).

On October 29, 2009, the Court held a hearing on Plaintiffs William A. Ralston, Richard L. Ralston, and Salba Smart Natural Products, LLC's Petition to Compel Arbitration and other related motions (hereinafter, the "October 29 Motions Hearing"). At the hearing's conclusion, the Court granted Plaintiffs' Petition to Compel Arbitration, finding that the underlying agreement and arbitration clause was valid and enforceable. See Reporter's Partial Transcript (Doc. # 37, at 10-11). The Court also "grant[ed] plaintiffs leave to file a motion for attorney fees and costs that they incurred in

association with their attempts to compel arbitration.” (*Id.* at 12:21-25). The Court further directed Plaintiffs to file “[t]hat motion, with supporting documentation . . . within 10 days of this order.” (*Id.* at 12:24-25). Following the hearing, Courtroom Minutes were filed. (Doc. #36). In pertinent part, the Minutes stated, “Plaintiffs’ Motion for Attorney’s Fees is granted.” (*Id.* at 2).

On November 9, the Clerk of Court issued a judgment (hereinafter, the “November 9 Judgment”) against Defendant which stated, in pertinent part, “Plaintiffs’ Petition to compel Arbitration is GRANTED” and “Plaintiffs . . . shall have their attorneys’ fees and costs incurred in association with their attempts to compel arbitration.” Because the Court’s order to compel arbitration terminated the judicial controversy, the November 9 Judgment’s entry was proper. *See Armijo v. Prudential Ins. Co. of America*, 72 F.3d 793 (10th Cir. 1995) (when an order compelling arbitration terminates the judicial controversy, it is an appealable decision and requires a judgment).

On November 10, Amended Courtroom Minutes were filed (Doc. #41). In pertinent part, the Minutes stated: “Plaintiffs’ Motion for Attorney’s Fees and [sic] is granted. Plaintiffs shall file their Brief and supporting documentation as to attorney’s fees and costs incurred in association with their attempts to compel arbitration within 10 days of today’s date.” (*Id.* at 2).

Defendant contends that the Courtroom Minutes and Judgment erroneously reflect the Court’s verbal orders at the October 29 Motions Hearing. Specifically, Defendant contends that the Court merely granted Plaintiffs leave to file a motion for

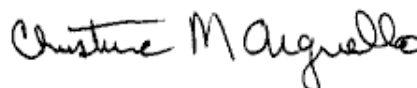
attorneys' fees. That the Court intended to award attorneys fees and costs to the prevailing Plaintiffs was implicit in the language used by the Court at the October 29 Hearing. The November 9 Judgment, which states that "Plaintiffs shall have their attorneys' fees and costs," accurately reflects the Court's intent and no modification to the Judgment is necessary. The Court has yet to determine the amount of fees and costs that should be awarded, *i.e.*, what would be a "reasonable" award. That was the Court's purpose in directing Plaintiffs to file a motion, with supporting documentation. Both sides will have the opportunity to brief the issue.

Accordingly, it is ORDERED that Defendant's Motion to Set Aside or Amend Judgment (Doc. # 45) is DENIED.

However, It is FURTHER ORDERED that the Amended Courtroom Minutes (Doc. # 41) be further amended to more accurately reflect the Court's intent and the November 9 Judgment. The Amended Minutes shall be amended as follows: "Plaintiffs shall have their attorneys' fees and costs. Plaintiffs shall file their Brief and supporting documentation as to attorney's fees and costs incurred in association with their attempts to compel arbitration within 10 days of today's date."

DATED: November 13, 2009.

BY THE COURT:



CHRISTINE M. ARGUELLO
United States District Judge