

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

A. DAVID CIAPPIO,

Plaintiff,

-vs-

HARRY E. DAVIS,

Defendant.

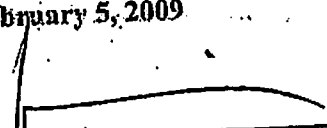
Civil Action No.:
5:05-CV-796 (FJS/GHL)


**STIPULATION OF DISMISSAL WITH
PREJUDICE**

WHEREAS, the plaintiff A. David Ciappio and defendant Harry E. Davis stipulated and agreed to resolve this matter pursuant to a binding high/low Arbitration Agreement, a copy of which is annexed hereto, and having participated in said arbitration, and a decision having been rendered, and the defendant having duly paid the award after receipt of required closing papers from plaintiff; it is hereby stipulated by and between the parties to the above-referenced action, pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure: (1) that the claims of plaintiff as against defendant be, and hereby are, dismissed with prejudice; and (2) defendant be, and hereby is, dismissed from the above-captioned action with prejudice.

This Stipulation may be executed in counterparts, each of which shall constitute an original and all of which together shall be deemed and may be filed as a single document.

DATED: February 5, 2009


MICHAEL J. REIMER
Bar Roll No.:
Attorney(s) for Plaintiff(s)
Office and Post Office Address
71 Valley Street
Suite 105
South Orange, New Jersey 07079
Telephone: (973) 313-0900


COSTELLO, COONEY & FEARON, PLLC
By: **MAUREEN G. FATCHERIC**
Bar Roll No.: 501680
Attorney(s) for Defendant(s)
Office and Post Office Address
205 South Salina Street
Syracuse, New York 13202-1307
Telephone: (315) 422-1152

SO ORDERED:



5/21/09

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

A. DAVID CIAFFIO,

Plaintiff,

Civil Action No.:
5:05-CV-796 (FJS/GHL)

-vs-

ARBITRATION AGREEMENT

HARRY E. DAVIS,

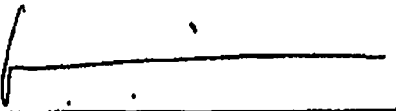
Defendant.

IT IS HEREBY STIPULATED AND AGREED, by the parties to the above-captioned matter, as follows:

1. The parties herein have agreed to submit this action to binding high/low arbitration in lieu of the Jury Trial currently scheduled in Federal Court (NDNY) on November 10, 2008.
2. Said arbitration will be heard and decided by a panel of one (1) arbitrator. The parties will split equally any arbitration costs, including any fees charged by the selected arbitrator.
3. If the parties are unable to agree on a particular person to serve as arbitrator, the parties hereby agree and authorize Magistrate Judge Lowe to select the neutral arbitrator, being an attorney who has personal injury tort law experience.
4. The parties agree the high/low parameters, which have already been negotiated and set, will not be disclosed to the arbitrator at any time. Further, prior settlement demands and offers will not be disclosed nor will defendant's insurance policy limits be disclosed. Should either party intentionally or inadvertently disclose such information, the sitting arbitrator will be dismissed and all costs and arbitrator fees for such failed arbitration will be paid by the disclosing party.
5. The arbitration will be held in Syracuse, New York. The parties intend to schedule and conclude said arbitration before November 17, 2008.

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Case 5:05-cv-00796-FJS-GHL Document 36-2 Filed 10/17/2008 Page 2 of 2

DATED:




MICHAEL J. REIMER
Bar Roll No.: 513441
Attorney(s) for Plaintiff(s)
Office and Post Office Address
71 Valley Street
Suite 105
South Orange, New Jersey 07079
Telephone: (973) 313-0900



COSTELLO, COONEY & FEARON, PLLC
By: **MAUREEN G. FATCHER**
Bar Roll No.: 01689 501-680
Attorney(s) for Defendant(s)
Office and Post Office Address
205 South Salina Street
Syracuse, New York 13202-1307
Telephone: (315) 422-1152

SO ORDERED ON CONSENT

SO ORDERED


FREDERICK J. SCULLIN, JR.
SENIOR U.S. DISTRICT JUDGE

10/20/08.