

**COPY**

CAUSE NO. 1999-41945

WILLIAM CRAIG FALBAUM  
and JENNIFER P. FALBAUM  
Plaintiffs  
  
V.  
  
HOUSTON VILLAGE BUILDERS, INC.  
Defendant

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IN THE DISTRICT COURT  
OF HARRIS COUNTY, TEXAS  
  
151<sup>st</sup> JUDICIAL DISTRICT

OCT 24 2001  
151<sup>st</sup> JUDICIAL DISTRICT  
CLERK OF COURT

**FINDINGS OF FACT  
AND CONCLUSIONS OF LAW**

Came on to be heard on August 14, 2001, Plaintiffs' Motion to Vacate Arbitration Award and Defendant's Motion to Enter Judgment and Adopt Arbitration Award. After hearing the arguments of counsel, the testimony of witnesses and reviewing the pleadings on file, on the 1st day of October, 2001, this Court granted Plaintiffs' Motion to Vacate Arbitration Award and denied Defendant's Motion to Enter Judgment and Adopt Arbitration Award. In support of its order, this Court enters the following findings of fact and conclusions of law:

*from 5-11-01  
Amicus*

**I. FINDINGS OF FACT**

1. The Plaintiffs made a demand for arbitration against the Defendants pursuant to an arbitration agreement and the June 22, 2000 order of this Court compelling arbitration.
2. Pursuant to the arbitration agreement, the American Arbitration Association (AAA) conducted the arbitration.
3. On or about the 24th day of December 2000, AAA submitted a proposed list of arbitrators to Plaintiffs and Defendant along with a biography of each potential arbitrator.

4. Mr. Stephen B. Paxson, a licensed attorney, was one of the listed potential arbitrators.

5. In his biography, Mr. Paxson referenced his membership in the Greater Houston Builders Association (GHBA).

6. Based on the biographies, Plaintiffs and Defendant made objections to the potential arbitrators. No party objected to Mr. Paxson.

7. On or about January 31, 2001, Mr. Paxson sent a letter to Mr. Glen Williams, the AAA case administrator, in which he made additional disclosures. This letter was sent to Plaintiffs and Defendant by AAA.

8. In that letter, Mr. Paxson again referenced his membership in the GHBA. He also indicated he had a passing social relationship with Mr. Don Klein, the president of Lennar Homes, the parent company of Defendant. He also indicated that he knew of no other additional information that would require disclosure.

9. Based on these additional disclosures, no party objected to Mr. Paxson's service as arbitrator and AAA appointed him the arbitrator.

10. The case was arbitrated before Mr. Paxson on April 25, 2001.

11. Mr. Paxson was the only arbitrator to hear the case and was intended to be a neutral arbitrator.

12. Mr. Paxson prepared his arbitration award dated May 17, 2001, which was provided to the parties on May 26, 2001.

13. None of the relief requested by Plaintiffs was granted.

14. Subsequent to the arbitration award, Plaintiffs' counsel learned that Mr. Paxson might be legal counsel for the GHBA.

15. Mr. Paxson has had a long-term attorney-client relationship with the GHBA.

16. Mr. Paxson did not disclose at any time that he has served as legal counsel to the GHBA.

17. In 2000, Mr. Paxson prepared and submitted an amicus brief to the Texas Supreme Court on behalf of the GHBA in *Centex Homes v. Buecher*, seeking a change in the law regarding implied warranties in home construction. Mr. Paxson was paid for his services.

18. The Falbaums were pursuing a cause of action for breach of implied warranties in the construction of their home, a cause of action that would be affected by the change of law sought in the amicus brief.

19. Mr. Paxson did not disclose at any time that he had prepared this brief.

20. During the pendency of the arbitration, Mr. Paxson was retained to prepare an amicus brief to the Texas Supreme Court on behalf of the GHBA in *Perry Homes v. Alwattari*, seeking a change in the law regarding the recovery of DTPA damages in home construction. The brief was submitted after the arbitration award was entered. Mr. Paxson was paid by the GHBA for his services.

21. Subsequent to the arbitration, Mr. Paxson did prepare and file the amicus brief.

22. During the pendency of the arbitration, Mr. Paxson, on his own behalf, testified before the Texas legislature, seeking a statutory change in the law regarding the recovery of DTPA damages in home construction.

23. The Falbaums were pursuing damages under the DTPA for defects in the construction of their home, and recovery thereof would be affected by the change of law sought in the amicus brief and in the statutory amendment. In pursuit of their claims, the Falbaums relied upon *Perry Homes v. Alwattari*.

24. Mr. Paxson did not disclose at any time that he had been asked to prepare this brief or that he testified before the Texas legislature.

25. The Falbaums sought to vacate the arbitration award based on Mr. Paxson's failure to disclose this information (as contained in Paragraphs 14-24 above).

## II. CONCLUSIONS OF LAW

1. An arbitrator is required to disclose to all parties any information that might cause the person's impartiality or independence to be questioned.

2. The duty to disclose is upon the arbitrator and the duty is ongoing.

3. Mr. Paxson's attorney-client relationship with the GHBA, his involvement in the preparing of amicus briefs relating to the changes in the law regarding causes of action plead by Plaintiffs and his testimony before the legislature on causes of action plead by Plaintiffs is information that should have been disclosed and was not.

4. Pursuant to TEX. CIV. PRAC. & REM. CODE ANN. § 171.088(a)(2)(A), the Court must vacate an arbitration award if evident partiality is shown.

5. Pursuant to *Burlington Northern Railroad Company v. Tuco, Inc.* 960 S.W.2d 629, 636 (Tex. 1997), evident partiality is shown if a neutral arbitrator fails to disclose facts which might, to an objective observer, create a reasonable impression of the arbitrator's partiality

6. Mr. Paxson's attorney-client relationship with the GHBA, his involvement in the preparing of amicus briefs relating to the changes in the law regarding causes of action plead by Plaintiffs and his testimony before the legislature on causes of action plead by Plaintiffs are facts which to an objective observer might create a reasonable impression of Mr. Paxson's partiality and, in this case, might have conveyed an impression of Mr. Paxson's partiality to a reasonable person.

7. The fact that a reasonable person could conclude that the facts as set forth in Paragraph 6 above might affect Mr. Paxson's impartiality triggers the duty to disclose. Mr. Paxson's failure to disclose the information as set forth in Paragraph 6 above creates evident partiality under TEX. CIV. PRAC. & REM. CODE ANN. § 171.088(a)(2)(A) and *Burlington Northern Railroad*, which requires the Court to vacate the arbitration award.

8. Plaintiffs did not know that Mr. Paxson failed to make these disclosures prior to or during the arbitration process and have not waived any right to complain or object to Mr. Paxson's service as arbitrator.

Furthermore, all findings of fact that could be considered conclusions of law are so deemed. All conclusions of law that could be considered findings of fact are so deemed.

Signed this 24<sup>th</sup> day of October, 2001.

Caroline Baker  
JUDGE PRESIDING