

WEST TEMPE JUSTICE COURT

KYRENE JUSTICE COURT
201 E CHICAGO ST STE 104
CHANDLER, AZ 85225

AZ 85284
usticecourts

Redacted by HELP Committee

Redacted by HELP Committee

CC 2007085262

CASE NUMBER:

PLAINTIFF:

Street:

City/State/Zip:

Phone:

DEFENDANT:

Street:

City/State/Zip:

Phone:

Remington College
875 W. ELLIOTT Rd Suite 126
Tempe, AZ 85284

Redacted by HELP Committee

ATTORNEY:

Street:

City/State/Zip:

Phone:

ATTORNEY:

Statutory Agent:

Street:

City/State/Zip:

Phone:

CIVIL COMPLAINT

Plaintiff alleges that this Court has jurisdiction over this matter. I am suing the Defendant because:

Completed all classroom class, needed 160 Extern, I complete 80 and asked to change sites, college avoided my calls + will not let me graduate w/ class because of a 2 week externship. College has been deceitful + violated they code of ethics. And did not return funds for loan as I was advised would be done. They [redacted] advised me the funds were being returned when they had no intention to do as they advised my mother. They also did not prepare me for the national exam (the reason I was going to school) and taught with expired course material (books) because they were closing.

THEREFORE, I am asking for Judgment against the Defendant in the principal sum of \$ 10,000.00 with court costs and interest at the legal rate from date of Judgment. I have paid 12,000.00 for nothing

Date: 5-4-07

Plaintiff: [redacted]

CIVIL SUMMONS ALIAS SUMMONS

THE STATE OF ARIZONA TO THE ABOVE-NAMED DEFENDANT:

1. You are to appear and file a written answer and the required filing fee in the Court named above. The Court will provide an answer form.
2. You have 20 calendar days from the date you were served to file your answer.
3. If the 20th day is a Saturday, Sunday or legal holiday, the time runs out at the end of the next working day.

IF YOU LIVE OUTSIDE OF ARIZONA YOU HAVE 30 DAYS TO FILE YOUR ANSWER FROM THE DATE OF SERVICE

IF YOU FAIL TO ANSWER, Judgment may be entered against you as requested in the complaint.

REQUESTS FOR REASONABLE ACCOMMODATION FOR PERSONS WITH DISABILITIES MUST BE MADE TO THE DIVISION ASSIGNED TO THE CASE BY PARTIES AT LEAST 3 JUDICIAL DAYS IN ADVANCE OF A SCHEDULED COURT PROCEEDING.

Date: _____

Judge _____

Alias Date: _____

Judge _____

2400-001A 9-00

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Attorneys for defendant Remington College

**KYRENE JUSTICE COURT
COUNTY OF MARICOPA**

[Redacted]

Plaintiff,

vs.

REMINGTON COLLEGE,

Defendant.

No. CC 2007-085262

MOTION TO DISMISS

Pursuant to Rules 12(b)(2), Arizona Rules of Civil Procedure (“A.R.C.P.”), and Arizona Revised Statutes (“A.R.S”) § 12-1501, defendant Remington College, whose true name is “Remington College – Denver Campus, Inc. d/b/a Remington College – Tempe Campus” (“Remington College” or the “College”) hereby moves to dismiss the Complaint of plaintiff [Redacted] for the reason that the Program Application and Enrollment Agreement (the “Enrollment Agreement”) she entered into with the College contains an arbitration clause, and that this Court therefore lacks subject matter jurisdiction.

This motion is supported by the following Memorandum of Points and Authorities, the attached exhibit, and the record in this case.

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1 In addition to the statutory mandate, Arizona case law also “favors arbitration, both
2 statutorily ... and by the courts as a matter of public policy.”⁴ Additionally, due to
3 Arizona’s public policy unquestionably supporting arbitration, “arbitration clauses should
4 be construed liberally and any doubts as to whether or not the matter in question is subject
5 to arbitration should be resolved in favor of arbitration.”⁵

6 The Enrollment Agreement plainly has an arbitration clause that [REDACTED] agreed
7 to, and both Arizona statute and case law favor arbitration. And although [REDACTED]
8 claims are not precisely articulated, they must sound either in tort or contract, and the
9 arbitration clause expressly covers both of those types of claims.⁶ This Court is therefore
10 bound to follow the law and dismiss this matter for lack of subject matter jurisdiction
11 pursuant to Rule 12(b)(2), A.R.C.P. and A.R.S. § 12-1501.

12 WHEREFORE, based upon all of the foregoing, defendant Remington College
13 respectfully requests that this Court dismiss the above-captioned action for lack of subject
14 matter jurisdiction. Remington College also requests its reasonable attorneys fees incurred
15 in having to file this motion in the face of a clear arbitration clause.

16 DATED this 7th day of June, 2007.

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[REDACTED] 20

Attorneys for defendant Remington College

⁴ *Foy v. Thorp*, 186 Ariz. 151, 153, 920 P.2d 31, 33 (App. 1996). See also, *Hallmark Industries, L.L.C. v. First Systech International, Inc.*, 203 Ariz. 243, 246, 52 P.3d 812, 815 (App. 2002) (quoting, *Foy v. Thorp*); *Einhorn v. Valley Medical Specialists*, 172 Ariz. 571, 572, 838 P.2d 1332, 1333 (App. 1992) and cases cited therein (“this state has had a long-standing public policy favoring arbitration”).

⁵ *U.S. Insulation, Inc. v. Hilro Construction Company, Inc.*, 146 Ariz. 250, 258, 705 P.2d 490, 498 (App. 1985).

⁶ Exhibit A, p.1.

1 Original filed this 7th day of June, 2007 with:

2 Clerk of the Kyrene Justice Court
3 201 East Chicago Street, Suite 104
4 Chandler, AZ 85225

5 Copy mailed this same date to:

6 [REDACTED]
7 [REDACTED]

8 Redacted by HELP Committee

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Maricopa County Justice Courts, State of Arizona

KYRENE JUSTICE COURT 201 East Chicago Street, Suite 104, Chandler, AZ 85225 602-372-3400

CASE NUMBER: CC2007085262

REMINGTON COLLEGE



Plaintiff(s) Name / Address

Defendant(s) Name / Address



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ATTORNEY for Plaintiff Name / Address

ATTORNEY for Defendant Name / Address

RULING ON MOTION

On this date 6/7/07 the [] Plaintiff [X] Defendant filed a motion requesting the following relief: MOTION TO DISMISS

The [X] Plaintiff [] Defendant [] filed a response to the motion; [X] No responsive pleading was filed;

The [] Plaintiff [] Defendant [] filed a reply to the response; [] No reply was filed;

The Court, has considered that which has been submitted by the parties;

IT IS ORDERED, [X] Granting said motion. [] Denying said motion.

IT IS FURTHER ORDERED,

Dismiss w/o Pre.

Redacted by HELP Committee

Date: 7/12/07

Justice of the Peace



I CERTIFY that I delivered / mailed a copy of this RULING ON MOTION to:

[X] Plaintiff at the above address or [] Plaintiff's attorney [] Defendant at the above address or [X] Defendant's attorney

Date: 7.13.07

By: S/K

Clerk

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (the "Agreement") is entered into by and between Remington College – Denver Campus, Inc. d/b/a Remington College – Tempe Campus (the "Company") and [REDACTED] ("Student") (collectively, the "Parties").

Recitals

WHEREAS, Student enrolled in and was dropped from the Company's Pharmacy Technician Program after Student failed to complete her externship program;

WHEREAS, a dispute has arisen between Student and the Company regarding Student being dropped from the Company's Pharmacy Technician Program;

WHEREAS, Student filed a Civil Complaint with the Kyrene Justice Court of the Maricopa County Justice Courts in the State of Arizona (Case No. CC2007085262), which was dismissed without prejudice by the Court on July 12, 2007 (the "Civil Action");

WHEREAS, Student desires the opportunity to continue and complete her educational training in the company's Pharmacy Technician Program, and the Company and Student desire to resolve this dispute in an amicable manner without either Student or the Company admitting to any liability whatsoever relative to the above-referenced dispute;

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Consideration. Subject to Student's compliance with the terms and conditions of this Agreement, the Company will re-enroll Student and allow Student an opportunity to continue her educational training in the Company's Pharmacy Technician Program. The Company will not assess any additional tuition or other charges to Student relative to her re-enrollment. Nonetheless, Student understands and agrees that she remains obligated to repay any financial assistance (*e.g.* federal loans, private loans, etc.) she received relative to her enrollment in the Company's Pharmacy Technician Program pursuant to the terms of the financial assistance received.
2. Program Completion. Student and the Company agree that for Student to successfully complete the externship portion of and graduate from the Company's Pharmacy Technician Program, Student must submit documentation that verifies she has worked 160 hours as a pharmacy technician. Student shall have her supervisor, [REDACTED], complete and sign copies of the time card (attached hereto as Exhibit A) for each week of externship training/employment completed, and Student must fax the signed time cards to [REDACTED], [REDACTED]. Additionally, Student understands and agrees that the Company may contact [REDACTED] and/or other supervisor to verify Student's hours worked and satisfactory performance of Student's job responsibilities.

Settlement and Release Agreement

Remington College – Tempe Campus / [REDACTED]

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3. Release of Claims. In consideration for the agreement of the Company to provide Student the consideration set forth above in Paragraph 1 of this Agreement, Student hereby releases, acquits and forever discharges: (a) the Company together with its directors, officers, employees, agents, successors and assigns; (b) all of the Affiliated Companies (as defined below) and all of their respective directors, officers, employees, agents, successors and assigns; and (c) all shareholders of the Company or the Affiliated Companies (collectively all of the foregoing in (a), (b), and (c), the “Released Parties”) of and from any and all actions, causes of action, claims, demands, damages, costs, accrued or paid interest, loss of service, expenses and compensation or rights to sue or to assert claims or causes of action against any of the Released Parties whatsoever, whether known or unknown, including but not limited to, any of the foregoing arising out of or in any way relating to Student’s enrollment in the Company’s Pharmacy Technician Program, including but not limited to, any of the foregoing that may arise from or be actionable under or related to any of the following: (a) any federal, state or local law/ordinance/rule/regulation, (b) any contract between the Company and Student or any of the Affiliated Companies and Student, whether express or implied, (c) any tort or negligence committed by the Company, any of the Affiliated Companies or any officer, director, or employee of the Company or any of the Affiliated Companies, (d) any misunderstanding or dispute between Student and the Company in any way related Student’s enrollment in and/or being dropped from the Company’s Pharmacy Technician Program, or (e) any violation of or failure to comply with any public policy connected in any way with Student’s affiliation with the Company, the Company’s Pharmacy Technician Program or any of the Affiliated Companies.

The term “Affiliated Companies” means Education America, Inc., an Arkansas corporation, and all corporations whose common or other voting stock is owned or controlled by Education America, Inc., EAI Realty LLC, EAI Realty of Texas LP, EAI Realty, Inc., any other entity that is controlled by Education America, Inc., and their respective successors and assigns.

4. No Other Claims. Student represents and warrants that, aside from the Civil Action referenced above, she has no disputes against the Company or any of the Affiliated Companies. Additionally, Student represents and warrants that she has not filed, and will not file in the future, any complaints with any governmental agencies, national or state accrediting bodies, federal or state court, or any other entity relative to any disputes she may have or have had with the Company, any of the Affiliated Companies or relative to her enrollment in the Company’s Pharmacy Technician Program, including but not limited to, filing an amended complaint in the Civil Action referenced above.

5. Confidentiality. Student acknowledges and understands that the terms of this Agreement and Student’s settlement with the Company are strictly confidential, and Student warrants and represents that neither she nor her agents will reveal to any person or entity (except for Student’s attorney, tax consultant or immediate family members, subject to their agreement to keep the terms of this Agreement and/or Student’s settlement with the Company confidential) the terms of this Agreement and/or Student’s settlement with the Company. Additionally, Student acknowledges and agrees that any breach of this provision by Student’s attorney, tax consultant

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Settlement and Release Agreement

Remington College – Tempe Campus / [REDACTED]

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or immediate family members will constitute a breach by Student as if Student had committed the breach.

6. Non-Disparagement. Student warrants and represents that she will not, directly or indirectly, herself or through any other person or entity, make any negative or disparaging remarks to any person or entity about the Company, any of the Affiliated Companies, or the Company's Pharmacy Technician Program.

7. Non-Solicitation. Student agrees not to, directly or indirectly, herself or through any other person or entity, solicit or induce, or in any manner attempt to solicit or induce, any prospective, current or former student of the Company or any of the Affiliated Companies: (a) to not enroll, not re-enroll, drop or otherwise discontinue their enrollment in any program offered by the Company or any of the Affiliated Companies; (b) to make any negative or disparaging remarks to any person or entity about the Company, any of the Affiliated Companies, or the Company's Pharmacy Technician Program; (c) to file a complaint with any governmental agencies, national or state accrediting bodies, federal or state court, or any other entity against the Company or any of the Affiliated Companies; or (d) to seek a refund or other relief from the Company or any of the Affiliated Companies.

8. Breach of Agreement. In the event Student breaches any of the terms of this Agreement, Student acknowledges and understands that the Company's obligations set forth in this Agreement shall immediately cease. Additionally, in the event Student breaches any of the terms of this Agreement, the Company shall have all remedies available to it under applicable law, including but not limited to, obtaining an injunction prohibiting any further breaches of the confidentiality, non-disparagement or non-solicitation provisions of this Agreement. Further, in the event Student, any person or entity acting on Student's behalf, or anyone to whom Student discloses the terms of this Agreement and/or Student's settlement with the Company, breaches this Agreement, Student agrees to indemnify and hold the Company harmless for/from any and all losses, costs, attorneys' fees, or other amounts paid to any person or entity resulting from such breach, including but not limited to, any amounts paid by the Company to any other current or former students of the Company, as well as any attorneys' fees incurred in defending against any claims asserted by any current or former students of the Company that resulted from or related in any way to a breach of this Agreement by Student, any person or entity acting on Student's behalf, or anyone to whom Student discloses the terms of this Agreement and/or Student's settlement with the Company, occurring on or after Student's receipt of this Agreement.

9. Arbitration. Except as necessary to obtain an injunction as set forth in Paragraph 8, Student and the Company agree that any and all claims, disputes, or controversies, whether in contract, tort, or otherwise, either Party has against the other arising under or out of this Agreement and any related damages will be submitted to binding arbitration. The arbitration shall be governed by the Federal Arbitration Act and the Rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrator may be entered by any court

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Settlement and Release Agreement
Remington College – Tempe Campus [Redacted]
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having jurisdiction. **ARBITRATION IS MANDATORY AND THE ARBITRATOR'S DECISION IS BINDING.**

10. Complete Agreement. This Agreement constitutes the final and complete Agreement of the parties and supercedes any oral or written agreements, representations, covenants or commitments of any kind pertaining to the aforementioned dispute or any claims Student may have or had relative to her enrollment in the Company's Pharmacy Technician Program, including without limitation, any misunderstanding or alleged misunderstanding between Student and the Company related to Student's enrollment in and/or being dropped from the Company's Pharmacy Technician Program.

11. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Arizona. The Company and Student agree that the venue for all arbitrations shall be in Tempe, AZ, unless otherwise mutually agreed upon in writing by the Parties.

Executed and entered into this 9 day of Feb, 2008.

Student
[Redacted] SSN: [Redacted]
[Redacted] DOB: [Redacted]

State of Arizona)
County of Pinal)

I, the undersigned Notary Public, certify that this Settlement and Release Agreement was executed before me by [Redacted], known to me personally (or) who produced the following as verification of her identity:

ID Type/Number: B14591145 AZDL

Redacted by HELP Committee

Redacted by HELP Committee

Notary Public (Signature)
Redacted by HELP Committee

Notary Public (Print Name)