

Notify

✓ 4/11
12-039-15

11

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2015-844-BLS1

TIBCO SOFTWARE, INC.

vs.

ZEPHYR HEALTH, INC. and KEVIN WILLOE

**ORDER ON THE PLAINTIFF'S EMERGENCY MOTION FOR TEMPORARY
RESTRAINING ORDER AND EMERGENCY MOTION FOR EXPEDITED
DISCOVERY AND DEFENDANTS' EMERGENCY MOTION FOR AN ORDER
REQUIRING ARBITRATION AND STAYING ALL ARBITRABLE CLAIMS**

2007
This case came before the court on the plaintiff's motions for a restraining order and expedited discovery and the defendants' motion to compel arbitration and to stay this action pending the outcome of that arbitration. In consideration of the parties' pleadings and oral argument, the court enters the following orders:

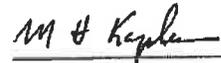
1. The parties shall submit the claims asserted in the complaint to arbitration pursuant to Article IX of the Employment Agreement between the plaintiff TIBCO Software, Inc., and the defendant Kevin Willoe to be conducted by the American Arbitration Association in California under the National Rules for the Resolution of Employment Disputes. The court finds that although defendant Zephyr Health, Inc. is not a signatory to the Employment Agreement it may enforce the arbitration clause against TIBCO under the reasoning announced in *Vassalluzzo v. Ernst & Young, LLP*, 2007 Mass. Super. LEXIS 263*6 (Gants, J.), as the claims that TIBCO asserts against

Notice in hand 4-1-15
-MLG
-VG

2

Zephyr arise directly out of the restrictions imposed on Willoe under Article V of his contract with TIBCO. See also *Walker v. Collyer*, 85 Mass. App. Ct. 311, 319 (2014). Zephyr and Willoe, through their counsel, both represented that they would submit to the arbitration and cooperate in the expeditious selection of the arbitrator[s], and they are ordered to do so.

2. The motions for preliminary relief and expedited discover are, accordingly, denied.
3. Further proceedings in this case are stayed pending the outcome of the arbitration.
4. Counsel for the defendants represented to the court that the rules governing the arbitration proceeding authorize the arbitrator[s] to issue preliminary injunctive relief; the court has therefore left the question of such relief to the arbitration. If, however, there is any delay in the selection of the arbitrator[s], the plaintiff may request an emergency hearing on its motion for a preliminary injunction, such orders, if entered, to be in force only until the arbitrator[s] is selected.



Mitchell H. Kaplan
Justice of the Superior Court

Dated: March 31, 2015