AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between

Case Number: 01-19-0003-5142

Acceleration Academies, LLC
-vs-
Charleston Acceleration Academy, Inc. aka
Charleston Advancement Academy High School

AWARD OF ARBITRATOR

THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into between the above-named parties and dated April 2, 2018, and after having been duly sworn, AWARDS as follows:

In this case, Charleston Acceleration Academy, Inc., aka Charleston Advancement Academy High School (hereinafter "Respondent") received a Charter School Contract from the South Carolina Public School District (hereinafter "SCPSD") on April 1, 2018. This contract allowed the Respondent to contract with an Education Management Organization or Charter Management Organization (hereinafter "EMO") to provide certain services for the Respondent. On April 2, 2018, pursuant to the express authority granted to it by its Charter, Respondent signed a written agreement (the "EMO contract") with Acceleration Academies, LLC (hereinafter the "Claimant") to become the EMO for the Respondent.

The purpose of this agreement was to create a school to "reengage and educate students who remain eligible to receive School services but who have dropped out of or are at risk of dropping out of school." Claimant was to manage the project and the Respondent was to oversee its management.

Three clauses in the contract are relevant to this dispute: the compensation clause, the audit clause and the termination clause. The compensation clause requires Respondent to pay for Claimant's services, upon receipt of monthly invoices containing proper documentation, an amount equal to 85% of the weighted per pupil funding available for each Acceleration Academy student for the regular school year (minus deductions for School employee costs paid directly by the School"). The termination agreements within both the EMO and Charter are similar. The EMO contract: (1) expressly incorporates language of the limitations of termination into the EMO contact; (2) provides either party may terminate at will after 180 day notice; and (3) provides the Respondent can terminate in its sole discretion without any notice for public health and safety threats. The contracts provide any exercise of the termination clauses by any party terminating the agreement do so in a manner so as to cause the "least" disruption to the students. The audit clause provides the Claimant "shall maintain all financial records of each educational service Acceleration Academies provides under this agreement" The agreement also provides the Respondent to audit Claimant's financial records at its "own expense."

The school opened on July 1, 2018. The Respondent regularly paid invoices submitted to it with little or minimal documentation from the beginning of the contract until September 2019. On July 29, 2019, the Board of Directors of the Respondent were notified $133,708.12 in grant funds previously awarded to the School had reverted to the State because they had not been claimed by June 15, 2019. About the same time, the Board became concerned the invoices submitted might be inadequate to meet their responsibilities under statutes for financial reporting. To examine this matter, the Board hired an outside accountant to investigate the accounting practices which had been used previously and make remedial recommendations.

Following conversations between the accountants for both parties, Claimant presented a proposed contract amendment to the Respondent's Board allowing the new accountant the ability to remedy, at the Board's expense, the accounting issues pursuant to the auditing clause of the EMO contract. It was rejected. The dispute escalated. As a result, the Respondent refused to pay the Claimant's September invoice until such time as it provided additional documentation. Although additional documentation was subsequently provided it failed to satisfy the Board. Respondent then provided a counteroffer to the Claimant containing new contract terms but reducing its compensation from 85% of the monthly payments from the State to 20% of 85%. This dispute was not resolved through negotiation.

On October 23, 2019, the Claimant then gave the Respondent notice it was terminating the contract under provisions of the agreement which provided the parties with a 180 day period in which the management by the Claimant would end and the Board would have time to make suitable arrangements to manage the school. Subsequent to the Claimant's notice of termination, the Board met and, based on incident reports of student misconduct, decided the Claimant's continued management of the school raised "public health and safety concerns" and terminated the contract in its "sole discretion" on November 1, 2019. The Respondent then refused to pay the Claimant's October invoice.

On November 4, 2019, the Claimant filed this arbitration. Claimant asserts Respondent breached the EMO Contract by failing to pay its monthly invoices for the months of September and October 2019 and by early wrongful termination of the contract. In addition, Claimant asserts entitlement to payments for November 2019 thru April 22, 2020, for breach of its contract based on theories of anticipatory repudiation of contract or breach of contract and violation of federal trademark laws. In addition, the Claimant sought sanctions for violation of a preliminary injunction order entered in this case as well as discovery violations.

Respondents through counterclaims and defenses assert Claimant breached the EMO Contract by not providing invoices with sufficient supporting documents to enable them to comply with South Carolina laws. In addition, Respondent asserts counterclaims for tortious interference with contract, breach of contract, breach of fiduciary duty, an accounting, unjust enrichment, and misrepresentation. Respondent also makes affirmative defenses and asks for monetary damages.

On January 4, 2020, the arbitrator awarded Claimant's motion for preliminary injunction ordering the parties to return to the *status quo ante.* On January 6, 2020, the Respondent made a partial payment to the Claimant of $57,875.91 on its September invoice.

Hearings were held on February 20 and 21, 2020. At the hearing, evidence showed that the Claimant, who was in charge of the management of the School during the July 2018 to July

2019 period, failed to claim $133,708.12 in grant funds available to the School. This failure was not justified under the Claimant's duties under the contract nor was a credible explanation tendered to explain this event. I find the Respondent is due a credit in this total amount for Claimant's breach of duties under the contract. In addition, because the contract language entitles the Respondent for an accounting at its own expense, I find the Respondent is entitled to the remedy of an accounting as ordered below.

At the hearing, evidence showed Claimant's invoices were regularly paid from the beginning of the contract until September 2019. I find this pattern was an accepted course of dealing by both parties in carrying out the contract performance. The failure of the Respondent to pay the September 2019 invoice was contrary to the established course of dealing between the parties and justifies the Claimant's termination of the contract. I find the failure to pay the September 2019 invoice and the presentation of a proposed contract amendment reducing the amount of compensation due to the Claimant to be evidence of anticipatory repudiation of the contract on the part of the Respondent entitling the Claimant to damages for anticipated profits.

Based in part upon the damage calculation prepared by the Claimant which I find credible, Claimant is entitled to damages in the gross amount of $992,850.53 (which already deducted the prior payment made in January 6, 2020), less $133,708.12 credit for Claimant's breach of contract or a total net amount of $859,142.41.

The language of the contract involving termination imposes an affirmative duty of the party terminating the contract to terminate the contract in a "manner least disruptive to the students." I find the manner in which the Claimant terminated the contract met this obligation. I find the manner in which the Respondent terminated the contract failed to meet this obligation. Further, I find there is no credible evidence of a threat to public health and safety which was proximately caused by the Claimant to justify immediate termination of the contract, given the affirmative obligation of the parties to terminate the contract in a manner least disruptive to the students.

Both parties have requested attorneys' fees be awarded in their claims for relief or for sanctions. I find no party forwarded a statutory basis for fees or credible evidence for an award of a specific amount of attorneys' fees. The requests for attorney fees are denied.

For the foregoing reasons, I award as follows:

1. Parties' mutual motions for summary judgment are DENIED.

2. Claimant's amended claim for violation of federal trademark laws was not arbitrable under the language of the contract and is dismissed without prejudice.

3. Claimant's claim for breach of contract from the Respondent is ALLOWED in part and DENIED in part.

4. Claimant's request for sanctions against the Respondent is DENIED.

5. Claimant's claim for breach of contract, breach of fiduciary duty and an accounting by the Claimant is ALLOWED in part and DENIED in part.

6. Respondent's claim for unjust enrichment and misrepresentation is DENIED.

7. The Claimant shall have and recover as damages for breach of contract the sum of $859,142.41.

8. The Respondent is entitled to an accounting from the Claimant as provided in the contract. Claimant is to provide Respondent's accountant with copies and reasonable access to all books and records of Acceleration Academies: to the extent such books and records relate to expenses made by Claimant on behalf of the Respondent from April 2, 2018 until April 22, 2020. Access to such books and records shall begin within 20 days of the payment of the above-said damages by the Respondent to the Claimant. The Respondent shall pay the costs of this accounting. The time and manner the accounting shall be conducted will be as provided for in the contract.

9. The administrative fees of the American Arbitration Association totaling $24,650.00 and the compensation and expenses of the arbitrator totaling $22,158.58 shall be borne equally by the parties.

10. The above sums for damages are to be paid on or before April 22, 2020.

11. This award is in full settlement of all claims and counterclaims submitted to this Arbitration, excepting the Federal Trademark claim by the Claimants. All claims and counterclaims not expressly granted herein are hereby denied.

March 16, 2020
Date

Hon. Robert N. Hunter, Jr., Arbitrator