

**JAMS ARBITRATION
NO. 1400017696**

**WESTIN HOTEL MANAGEMENT, LP,
d/b/a THE WESTON BOSTON WATERFRONT,
Claimant**

v.

**ARISIA, INC.,
Respondent**

DECISION AND AWARD

I. Introduction and Procedural Background

This arbitration involves a claim of breach of a group sales contract between the Claimant, Westin Hotel Management Group, LP, d/b/a The Westin Boston Waterfront (the “Hotel”) and the Respondent, Arisia, Inc. (“Arisia”) relating to a convention to be held by Arisia at the Hotel over multiple days. In January 2019, pursuant to the dispute resolution clause in their agreement, the parties submitted their dispute to binding arbitration at JAMS. In accordance with that agreement, the arbitration was governed by the JAMS Comprehensive Arbitration Rules & Procedures and the applicable evidentiary and substantive law of Massachusetts. The arbitral hearing was conducted on July 11, 2019. Steven M. Rudner, Esq. appeared for the Claimant and Daniel Casieri, Esq. appeared for the Respondent. Three witnesses testified: Paul Sullivan, Joe Mauro and Nicholas Schectman¹ and numerous documentary exhibits were presented by the parties. At the conclusion of the testimony of the final witness,

¹ I note the high level of civility that characterized the conduct of counsel and all other participants during these proceedings.

the parties stated that they had no further evidence to offer and, following closing arguments by counsel, I closed the hearing in accordance with Rule 22(h) on that date.

II. Discussion

The factual findings included in this Discussion are necessary to the Award. They are derived from the stipulation of facts by counsel and the testimony and exhibits presented at the hearing. To the extent that this recitation may differ from either party's position, that is the result of my determinations as to credibility and relevance, burden of proof considerations, legal principles and the weighing of the oral and written evidence.

In late November 2016, the Claimant and the Respondent executed a group sales contract for an event that Arisia was to hold at the Hotel from Thursday, January 17, 2019 through Tuesday, January 22, 2019.² The subject contract provided for Arisia's use of 2,423 room nights at rates ranging between \$172.00 and \$350.00, as well as certain complimentary suites. The contract, if performed, would thus have generated at least \$442,566 in room revenue for the Hotel.

In early October 2018, hotel workers at the Hotel went on strike.³ Arisia learned about the strike no later than October 3, 2018, when it was reported in the Boston Globe. The evidence establishes that, during the approximately six weeks of the strike, the Hotel remained open, accommodating individual guests as well as numerous scheduled group events, ranging from small to very large functions. On November 16, 2018, just hours before the strike ended, Arisia

² While the parties' stipulation of uncontested facts and other documents mistakenly recite the year as 2018, all the evidence establishes the year to be 2019. This mistake is likely the result of the multi-year identical contracts between the parties.

³ The strike impacted Marriot hotels in a number of cities nationwide. The strike in Boston ended on November 16, 2018.

notified the Hotel that it was “exercising its right to cancel [its] 2019 contracts with [the Hotel] without penalty under the *force majeure* clause due to strike.”⁴

The force majeure clause set out in the contract and invoked by Arisia permits either party to terminate for cause without liability “upon written notice to the other party within (5) days of, or receipt of notice of, any of [several] occurrences.” The applicable provision states:

The parties’ performance under this Agreement is subject to acts of God, war, government regulation, terrorism, disaster, **strikes**, civil disorder, curtailment of transportation facilities, or any other emergency of a comparable nature beyond the parties’ control, making it impossible, illegal or which materially affects a party’s ability to perform its obligations under this Agreement. (Emphasis added.)

There is no question that learning of the strike at the Hotel is a circumstance that could trigger Arisia’s right to terminate its obligations under the Agreement, upon notice *as specified* in the Agreement, namely, within five days of notice of one of the enumerated causes. Arisia was aware of the strike as of October 3, 2018 and provided notice of cancellation on November 16, 2018, forty-four days later. If the strike would materially affect Arisia’s ability to perform under the Agreement, the subject clause required Arisia to make that determination and give notice of cancellation *within five days of notice of the strike*. To interpret the clause otherwise would be to permit a party to make a unilateral determination *at any point following* an occurrence that *now* their ability to perform will be materially affected and they now have five days to give notice of

⁴ On November 20, 2018, the Hotel sent Arisia an invoice in the amount of \$50,000 representing the amount due as liquidated damages under the contract in the event either party is liable for a breach of the Agreement.

termination. Such an interpretation is generally not supportable, but particularly inapposite to the circumstances here.

The record is replete that Arisia had a number of concerns regarding attendance at the convention, only one of which related to the possible impact of the strike. Assuming that to be a major concern, it was easily ascertainable by Arisia that as of October 3rd and beyond, the Hotel was still open for business, receiving guests and holding events and conventions. If Arisia were to determine that, regardless of the ability of the Hotel to perform its obligations, its own ability to perform under the Agreement would be materially affected, it was required to make that determination and to so notify the Hotel within five days of notice of the strike. Instead, Arisia decided to have its proverbial “cake and eat it too” and did so by: setting up contingency plans and investigating, and then booking, other venues; taking the pulse of its membership; and dealing with internal strife that was rocking the organization, with staff resigning and members threatening to boycott the convention--all while holding on to its Agreement with the Hotel until it was ready to cut the Hotel out. (Ample support for this finding lies in the numerous communications among Arisia staff and others affiliated with Arisia.) I thus find and conclude that the Respondent’s defense under the force majeure clause is unsustainable.

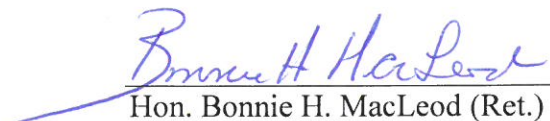
Finally, I find the Respondent’s defense of impracticability to be equally unavailing. Respondent bears the burden of establishing each element of impracticability and Arisia simply has not sustained that burden. Because counsel have ably addressed the legal paradigm of impracticability, I will limit my observation to one element, namely, whether the occurrence of the event made performance by Arisia unreasonably difficult. Given the totality of the evidence, I find that the strike did not make performance unreasonably difficult, but rather that it served as an expedient excuse for Arisia to take the focus off the serious organizational and other issues that

forecast that the convention might be in jeopardy. As one Board member wrote: “we started with a few too many vacancies and multiple-assignments before the dumpster fire. Now we’ve had a significant number of staff resignations. The strike gives us the **opportunity** to cancel Arisia 2019 with moderate financial consequences” (Emphasis added.) Notably, other than suggestions that there might be some attendees reluctant to cross a picket line, there is little, if any, discourse in the profuse email exchanges among Arisia staff and others of any unreasonable material difficulty that the strike might actually cause.

III. Award

Based on the foregoing findings, I conclude that the Claimant is entitled to an award of \$50,000 in liquidated damages. In addition, as the prevailing party, the Claimant is entitled to recover its attorneys’ fees and costs, including its arbitration costs, as well as interest. Accordingly, within fifteen (15) days, counsel is to provide a statement of those items for my consideration.

August 9, 2019
Date


Hon. Bonnie H. MacLeod (Ret.)
Arbitrator

SERVICE LIST

Case Name: Westin Hotel Management, LP dba the Westin Boston Waterfront vs. **Hear Type:** Arbitration
Reference #: 1400017696 **Case Type:** Business/Commercial
Panelist: MacLeod, Bonnie H.,

Daniel Casieri

L/O Daniel Casieri

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Party Represented:
Westin Hotels Management, LP dba the Westin
Boston Waterfront



PROOF OF SERVICE BY EMAIL & U.S. MAIL

Re: Westin Hotel Management, LP dba the Westin Boston Waterfront / Arisia, Inc.
Reference No. 1400017696

I, Gabrielle Thorp, not a party to the within action, hereby declare that on August 9, 2019, I served the attached Decision and Award on the parties in the within action by Email and by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Mail, at Boston, MASSACHUSETTS, addressed as follows:

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Parties Represented:

Arisia, Inc.

I declare under penalty of perjury the foregoing to be true and correct. Executed at Boston, MASSACHUSETTS on August 9, 2019.

A handwritten signature in blue ink, appearing to read "GThorp", is written over a horizontal line.

Gabrielle Thorp
GThorp@jamsadr.com