

**INTERNATIONAL CENTER FOR DISPUTE RESOLUTION**  
**American Arbitration Association**  
**International Expedited Procedures - By Agreement**

SENTIENT LASERS, LLC  
Claimant,

V.

NO. # \_\_\_\_\_

Claudis Andrew Martin,  
Respondent.

**CLAIMANT’S ARTICLE E-2 STATEMENT**

Claimant, Sentient Lasers, LLC (“Sentient”), by its Director of Business & Government Affairs, Michael Sweig, J.D., LL.M, complains as follows of Respondent Claudis “Andrew” Martin (“Martin”):

**Parties**

1. Sentient is a Colorado and Park City, Utah based-dealer and refurbisher of used, medical, aesthetic lasers. ([www.SentientLasers.com](http://www.SentientLasers.com)).
2. Martin is a Texas-based Nurse Practitioner.

**Jurisdiction**

3. Paragraph R.4 of the Sales Agreement dated October 15, 2019, attached hereto as Exhibit A and made a part hereof, contains the arbitration agreement that is signed by both parties and which enables this arbitration under ICDR Expedited Rules, without mediation, on written submission only with one arbitrator (in matters not exceeding \$250,000), which this is. The amount in controversy is \$115,000 plus attorneys’ fees (if retained) and costs.

### Common Allegations

4. Paragraph E.4 of the Sales Agreement makes 100% of the \$115,000 purchase price immediately due and payable upon its signing. Any deposit terms added to the contract (or unpaid deposits) do not change the obligation to pay 100% of the purchase price, and failure to comply with deposit or other payment terms does not relieve the Buyer of obligations to pay 100% of the purchase price.

5. After Sentient had billed Martin's lender as agreed, Martin - who had expressly represented before he signed, and again when he signed the Sales Agreement, that he had been pre-approved for \$100,000 - *renege*d.

6. After Martin signed the Sales Agreement, he repudiated and materially breached the Sales Agreement.

7. Article 31(3) of the International Dispute Resolution Procedures, "Applicable Laws and Remedies," which the parties have agreed governs here, states:

3. The tribunal shall not decide as amiable compositeur or ex aequo et bono unless the parties have expressly authorized it to do so.

Sentient will not so agree. To do so would permit Martin to rewrite the Sales Agreement. Martin should be accountable for the contract he signed, as written.

8. Sentient has made demand on Martin for \$115,000 but Martin has failed and refused to pay.

9. Paragraph E.6 states Martin's waiver of any right to insist that Sentient must mitigate its damages.

10. The Utah Uniform Commercial Code ("Utah UCC") imposes a covenant of good faith for all commercial contracts. Utah Code Ann. § 70A-1-203.

11. Under Utah common law, an implied covenant of good faith and fair dealing generally inheres to all contractual relationships, under which each party promises not to intentionally or purposely do anything which will destroy or injure the other party's right to receive the fruits of a contract; to comply, a party must act consistently with the agreed common purpose and the justified expectations of the other party.

12. Martin has acted and continues to act in abject bad faith, opposite of the duty of good faith and fair dealing, and 100% contrary to Sentient's justified expectation.

### **Count I**

#### **Claim for Specific Performance**

13. Sentient realleges paragraphs 1-11.

14. Sentient comes to this Arbitration with clean hands.

15. Martin has acted and continues to act inequitably, in abject bad faith, opposite of the duty of good faith and fair dealing, and contrary to Sentient's justified expectation.

16. The Sales Agreement contemplates purchase by Martin, for \$115,000, of a unique grouping of four used aesthetic, medical lasers and related accessories, together with a custom combination of training and warranties for which Martin represented he had already been approved by his lender for \$100,000; with arrangements made for Sentient to send its invoice to Martin's bank, which Sentient did before Martin reneged.

17. In the market place for used aesthetic medical lasers, it could take a lifetime - if ever - to find another buyer to purchase the unique combination of used lasers that Martin agreed

to buy on the terms he agreed to buy and pay for them, with pre-approved financing for almost 90% of the purchase price.

18. On information and belief, should the Arbitrator so order, Martin would be able to obtain the financing for \$100,000 that he represented to Sentient his lender(s) had already pre-approved before Martin signed the Sales Agreement; but, in any event, the Sales Agreement is not conditioned up Martin having obtained or being able to obtain *any* financing.

19. Sentient's traditional remedies for Martin's material, anticipatory breach of contract for the sale of goods are inadequate under Utah's adaptation of Article 2 of the Uniform Commercial Code, Sections 2-702 through 2-710.

20. The UCC and its various remedies do not supplant, but rather, supplement the Utah Common law.

21. Paragraph R.1 of the Sales Agreement states that Utah law applies without reference to conflict of law principles.

## **Count II**

### **Breach of Contract**

22. Sentient realleges paragraphs 1-12.

23. Sentient is ready, willing and able to deliver to Martin upon full payment as agreed, and has already performed all of its obligations that could be performed before Martin repudiated the Sales Agreement.

24. Martin repudiated the Sales Agreement and materially breach it, i.e., anticipatory breach, when he reneged and claimed he has no obligation to pay until the goods are delivered;

yet, Martin's full payment is an express condition precedent to Sentient's obligation to ship or deliver to Martin.

WHEREFORE, Sentient prays for the following relief:

- a. Entry of an Order specifically finding that in this particular case, on these particular facts, Sentient's remedies as a Seller under Utah UCC Sections 2-702 through 2-710 are inadequate legal remedies, and therefore, order Specific Performance by Martin, and for Martin to pay Sentient, forthwith, \$115,000 and to take delivery of the goods that are the unique subject matter of the Sales Agreement; or in the alternative;
- b. Money damages in the amount of \$115,000, plus contractual interest accruing until paid in full.
- c. Attorney's fees and costs;
- d. Such other relief as the Arbitrator may deem appropriate

Respectfully Submitted,

/ Michael Sweig /

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