

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TERRI HAYNES ROACH,

Plaintiff,

v.

TATE PUBLISHING & ENTERPRISES,
LLC, et al,

Defendants.

Case No. 1:15-cv-00917-SAB

ORDER GRANTING PLAINTIFF’S
MOTION TO LIFT THE STAY IN THIS
ACTION

(ECF No. 46)

Currently pending before the Court is Plaintiff Terri Haynes Roach’s motion to lift the stay in this action. For the reasons set forth below, Plaintiff’s motion to lift the stay is granted.

I.

BACKGROUND

On August 28, 2015, the Court granted Defendants Richard Tate, Tate Publishing & Enterprises, LLC, and Tate Music Group’s motion to compel arbitration and stay these proceedings. (ECF No. 24.) The Court also directed the parties to file a status report informing the Court of the status of the arbitration proceedings on or before February 29, 2016. On February 23, 2016, a status report was filed, and on February 24, 2016, the Court ordered the parties to continue to file a status report every ninety days until the stay in this action was lifted. (ECF No. 28.) On November 10, 2016, at the request of the parties, the Court set a telephonic status conference regarding the stay of this case for November 16, 2016. (ECF No. 34.) On

1 November 17, 2016, the Court issued an amended order requiring the parties to file the next
2 status report on or before December 15, 2016. (ECF No. 35.)

3 In the December 15, 2016 status report, Plaintiff indicated that the American Arbitration
4 Association (“AAA”) represented to Plaintiff’s counsel that Defendants have failed to pay their
5 arbitration dues. (ECF No. 37.) On December 16, 2016, the Court ordered the parties to appear
6 for a status conference. (ECF No. 38.) The parties appeared for a status conference on January
7 12, 2017, during which the parties indicated that motions were to be filed to address Defendants’
8 failure to comply with the arbitration provision of their agreement and Defendants’ counsel’s
9 intention to file a motion to withdraw as counsel for Defendants. (ECF No. 41.) On January 12,
10 2017, the Court issued an order setting a briefing schedule. (ECF No. 42.) On February 16,
11 2017, Defendants’ counsel filed a motion to withdraw as counsel.¹ (ECF No. 45.) On February
12 21, 2017, Plaintiff filed a motion to lift the stay. (ECF No. 46.) Defendants did not file an
13 opposition. On March 15, 2017, Plaintiff filed a status report. (ECF No. 49.) On March 16,
14 2017, the Court issued an order vacating the March 22, 2017 hearing on Plaintiff’s motion to lift
15 the stay and taking the matter under submission. (ECF No. 50.)

16 **II.**

17 **LEGAL STANDARD**

18 “[T]he federal law of arbitrability under the Federal Arbitration Act (“FAA”) governs
19 the allocation of authority between courts and arbitrators.” Cox v. Ocean View Hotel Corp., 533
20 F.3d 1114, 1119 (9th Cir. 2008) (citing Chiron Corp. v. Ortho Diagnostic Sys., Inc., 207 F.3d
21 1126, 1131 (9th Cir. 2000)). “[C]ourts must ‘rigorously enforce’ arbitration agreements
22 according to their terms.” Am. Express Co. v. Italian Colors Rest., 570 U.S. —, 133 S.Ct.
23 2304, 2309 (2013) (citing Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 221 (1985)).
24 Section 3 of Title 9 of the United States Code requires courts to stay court proceedings on issues
25 subject to arbitration on the application of one of the parties “until such arbitration has been had
26 in accordance with the terms of the agreement.” 9 U.S.C. § 3.

27
28

¹ Defendants’ counsel’s motion to withdraw as counsel has been continued to April 19, 2017.

1 **III.**

2 **DISCUSSION**

3 Plaintiff argues that the stay should be lifted so the action can proceed in this Court
4 because of Defendants' failure to pay the arbitration deposit. Plaintiff asserts that Defendants
5 were given notice on multiple occasions that payment was due, yet failed to make payment, and
6 therefore, have defaulted under the arbitration proceeding for all intents and purposes. Plaintiff
7 contends that the only reason that arbitration was not terminated was because Plaintiff requested
8 that it be suspended so that she would not be prejudiced by having to forfeit the \$3,250.00 that
9 she paid.

10 The Court finds that it is no longer appropriate to stay this action, because the arbitration
11 "has been had in accordance with the terms of the agreement." See Tillman v. Tillman, 825 F.3d
12 1069, 1071 (9th Cir. 2016) (citing 9 U.S.C. § 3; Lifescan, Inc. v. Premier Diabetic Servs., Inc.,
13 363 F.3d 1010, 1012-13 (9th Cir. 2004)).

14 In Tillman, Renee Tillman filed a claim for malpractice against a law firm that
15 represented her, and the law firm moved to compel arbitration, citing the arbitration clause in the
16 retainer agreement. Tillman, 825 F.3d at 1071-72. The district court granted the motion to
17 compel arbitration and stayed the federal court proceedings between Ms. Tillman and the firm.
18 Id. at 1072. Ms. Tillman was unable to pay the required deposit of \$18,562.50 the AAA asked
19 for as a condition of continuing the proceedings and the firm declined to cover the deposit, so the
20 arbitration was terminated due to the missing deposits. Id. The law firm asked the district court
21 to lift the stay and dismiss Renee Tillman's complaint pursuant to Federal Rule of Civil
22 Procedure 41(b) and the district court ultimately dismissed the case. Id. at 1072-73. The Ninth
23 Circuit held that the arbitration in the matter was "had" because the parties had engaged in
24 arbitration until the arbitrator terminated the proceedings. Id. at 1073. The Ninth Circuit
25 determined that because the arbitration terminated before the merits were reached or an award
26 issued, the claims will only be adjudicated by proceeding in district court. Id. at 1076. The
27 Ninth Circuit noted that the circumstances of Tillman would be different if Ms. Tillman had
28 sought the stay of court proceedings because that would frustrate the firm's attempts to have the

1 case heard in either the court or in arbitration. Id.

2 “One purpose of the FAA’s liberal approach to arbitration is the efficient and expeditious
3 resolution of claims.” Sink v. Aden Enterprises, Inc., 352 F.3d 1197, 1201 (9th Cir. 2003)
4 (citing H.R. Rep. No. 96, 68th Cong., 1st Sess., 2 (1924); Dean Witter Reynolds, Inc., 470 U.S.
5 at 219-20.

6 Here, on or about October 16, 2016, the AAA sent notice to Plaintiff’s counsel’s office
7 that the AAA had not received Defendants’ deposit of \$4,554.15 to cover the arbitrator’s fees.
8 (Samer A. Salhab’s Decl. (hereafter “Salhab Decl.”) ¶ 5, ECF No. 46 at 8-10.) The AAA stated
9 the arbitrator could proceed without the full deposits, resign, suspend, or terminate the
10 proceedings. (Salhab Decl. ¶ 5.) Plaintiff also had the option to pay the fee for Defendants.
11 (Salhab Decl. ¶ 5.) Plaintiff was not agreeable to paying Defendants’ portion of the fee. (Salhab
12 Decl. ¶ 6.) On or about November 8, 2016, AAA sent a notice to the parties that the matter
13 would be suspended if Defendants’ deposit was not received by November 11, 2016, and that the
14 matter would be terminated if Defendants’ deposit was not received by November 17, 2016.
15 (Salhab Decl. ¶ 6.) Defendants did not make a deposit prior to November 17, 2016. (Salhab
16 Decl. ¶ 7.) Shortly thereafter, Plaintiff’s counsel requested that the arbitration be suspended for
17 30 days so that Plaintiff could advise the Court of the status. (Salhab Decl. ¶ 8.) On or about
18 January 3, 2017, AAA agreed to place the matter in abeyance and advised Plaintiff’s counsel that
19 the AAA policy for abeyance was to place the matter on hold for up to one year. (Salhab Decl. ¶
20 9.) The arbitration matter remains in abeyance. (Salhab Decl. ¶ 10; ECF No. 49 at 1.)²

21 Defendants’ failure to pay the arbitration costs was a material breach of their obligations
22 in connection with the arbitration. See Sink, 352 F.3d at 1201. Defendants sought the stay of
23 this action while the matter was arbitrated, but Defendants’ actions have frustrated Plaintiff’s
24 attempts to have the case heard in this Court or in arbitration. See Tillman, 825 F.3d at 1076.

25 _____
26 ² The Court notes that on February 16, 2017, Defendants’ counsel, John Migliazzo, filed a declaration in support of
27 the motion to withdraw as counsel that states that counsel in the arbitration proceedings for Defendant Tate
28 Publishing withdrew from representation on January 4, 2017. (John Migliazzo’s Decl. (“Migliazzo Decl.”), ECF
No. 45-2.) Defendants’ counsel seeks to withdraw from representation in this matter because of Defendants’
inability to respond to counsel’s inquiries and Defendants’ breach of the attorney-client fee agreement. (Migliazzo
Decl. at ¶ 2-5.)

1 Defendants should not be allowed to indefinitely postpone litigation in this matter while they do
2 not comply with arbitration. Defendants' failure to pay the costs of arbitration has resulted in the
3 claims not having an expeditious resolution, and Plaintiff has been prejudiced by the delay. The
4 fact that Plaintiff actually paid her share of the costs is further prejudice that Plaintiff has
5 suffered.

6 Therefore, the Court finds that the arbitration "has been had in accordance with the terms
7 of the agreement" and the stay should be lifted. See Tillman, 825 F.3d at 1071. The Court notes
8 that since the arbitration proceedings were suspended at Plaintiff's request instead of being
9 terminated, Plaintiff should seek to terminate the arbitration proceedings.

10 **IV.**

11 **ORDER**

12 Accordingly, IT IS HEREBY ORDERED that:

- 13 1. Plaintiff's motion to lift the stay in this action is GRANTED;
- 14 2. The stay in this action is LIFTED;
- 15 3. Plaintiff is directed to seek termination of the arbitration proceedings within
16 fourteen (14) days of the date of service of this order;
- 17 4. Plaintiff shall file a status report within five (5) days of the date she seeks
18 termination of the arbitration proceedings; and
- 19 5. Plaintiff shall file a status report within five (5) days of the date that the
20 arbitration proceedings are terminated.

21 IT IS SO ORDERED.

22 Dated: March 20, 2017

23 
24 _____
25 UNITED STATES MAGISTRATE JUDGE
26
27
28