

No. 24-1007

In the Supreme Court of the United States

THOMAS J. AYERS,
PETITIONER

V.

JOSEPH MARKIEWICZ, ET AL., RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF INDIVIDUAL RESPONDENTS IN
OPPOSITION TO PETITION FOR A WRIT OF
CERTIORARI

Joseph W. Fulton
Martineau King PLLC
PO Box 241268
Charlotte, NC 28278

Luke A. Dalton
Counsel of Record
McAngus Goudelock &
Courie, PLLC
4130 Parklake Avenue,
Suite 550
Raleigh, NC 27612
Phone: (919) 719-8204
luke.dalton@mgclaw.com

*Attorneys for Respondents Douglas Weir, Marybeth
Markiewicz, and Joseph Markiewicz*

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	ii
INTRODUCTION	1
STATEMENT OF THE CASE.....	1
I. The Relevant Agreements	1
II. The Plaintiff's Complaint	2
III. The District Court's Dismissal of the Amended Complaint.....	4
REASONS FOR DENYING THE PETITION	5
I. The District Court Ruled on Only One of the Petitioner's Proposed Questions.	5
II. The Lower Courts Correctly Applied Well- Settled Law to Determine that the Petitioner's Claims are Subject to Arbitration.	7
CONCLUSION.....	10

TABLE OF AUTHORITIES

CASES

<i>Am. Heritage Life Ins. Co. v. Orr</i> , 294 F.3d 702, 711 (5th Cir. 2002)	9
<i>Commodity Futures Trading Com v. Schor</i> , 478 U.S. 833, 848-49 (1986)	9
<i>Cooper v. MRM Inv. Co.</i> , 367 F.3d 493, 506 (6th Cir. 2004)	9
<i>First Options of Chi., Inc. v. Kaplan</i> , 514 U.S. 938, 944 (1995)	8
<i>Harrington v. Atl. Sounding Co.</i> , 602 F.3d 113, 126 (2d Cir. 2010)	9
<i>Hawkins v. Aid Ass'n for Lutherans</i> , 338 F.3d 801, 808 (7th Cir. 2003)	9
<i>Muth v. United States</i> , 1 F.3d 246, 250 (4th Cir. 1993)	6
<i>Nw. Airlines, Inc. v. Air Line Pilots Asso., Int'l</i> , 373 F.2d 136, 142 (8th Cir. 1967)	9
<i>Perry v. Thomas</i> , 482 U.S. 483, 492 n.9 (1987)	10
<i>Rent-A-Center, W., Inc. v. Jackson</i> , 561 U.S. 63, 68-70 (2010)	8
<i>Sydnor v. Conseco Fin. Servicing Corp.</i> , 252 F.3d 302, 307 (4th Cir. 2001)	9
<i>United States v. United Foods, Inc.</i> , 533 U.S. 405, 417 (2001)	5

<i>Zobrest v. Catalina Foothills Sch. Dist.</i> , 509 U.S. 1, 8 (1993)	5
---	---

STATUTES

9 U.S.C. § 2.....	7, 9
-------------------	------

OTHER AUTHORITIES

https://www.congress.gov/bill/117th-congress/house-bill/963 (last visited Apr. 20, 2025).....	8
---	---

INTRODUCTION

This case involves a dispute over whether the Petitioner must pursue his claims against the Defendants in arbitration. The District Court held that he did. The Fourth Circuit Court of Appeals affirmed the District Court in a one paragraph, unpublished, per curiam decision.

Petitioner requests this Court's review of thirteen proposed questions—the first eight of these designated by roman numerals and the last five designated by letters. Of these thirteen issues, only one was raised to or passed upon by the District Court. And the District Court made the correct decision after applying well-established principles of law.

STATEMENT OF THE CASE

Petitioner made a myriad of inflammatory and unsupported assertions throughout this litigation. He does so again in his Petition to this Court. Because it unnecessary to address each of Petitioner's assertions for this Court's determination on the Petition, the Individual Respondents will address the lack of compelling reasons for the Court to address the merits.

I. The Relevant Agreements

Petitioner is a former Independent Business Owner ("IBO") affiliate of Amway Corporation ("Amway") and Leadership Development Team, Inc. ("LTD"). The Individual Respondents were also and remain IBO affiliates of Amway and LTD.

Amway is a direct selling company that sells products through IBOs. LTD provides business

support materials and services including marketing materials and training to IBOs. A typical IBO will have a working relationship with one or more other IBOs in hierarchical Line of Sponsorship. “Downline” IBOs typically receive training and other assistance from the “upline” IBOs in their Line of Sponsorship. Petitioner is a downline IBO of Respondent Douglas Weir. Mr. Weir is in turn a downline IBO of Respondents Joseph Markeiwicz and Mary Beth Markeiwicz.

Petitioner is a party to an agreement with Amway known as the Amway Rules of Conduct Agreement (the “Amway Agreement”) and a Business Support Materials Compensation Agreement with LTD (the “LTD Agreement”). Rule 11 of the Amway Agreement provides for the resolution of disputes by binding arbitration in accordance with rules promulgated by the American Arbitration Association or JAMS (the “Arbitration Agreement”). The LTD Agreement provides for resolution of disputes by optional voluntary mediation followed by arbitration in accordance with Rule 11 of the Amway Agreement, which is incorporated by reference.

II. The Plaintiffs Complaint

Petitioner filed a Complaint in the United States District Court for the Eastern District of North Carolina in the summer of 2023. Several months later, he filed an Amended Complaint. In his Amended Complaint, Plaintiff alleges that in June 2022 he was forced to resign from Amway and LTD. He alleges he was forced to resign because of the Individual Respondents’ reactions to Petitioner expressing concerns about activities he believed Amway and LTD were engaged in related to the 2020 election. These

reactions allegedly included approaching Petitioner's downline Amway IBOs to encourage them to stop working with the Petitioner, telling him to stop discussing his concerns, and removing him from an Amway/LTD messaging system.

Petitioner goes on to alleges that, about a month after he resigned from the organization, he went to an LTD/Amway event hosted at a baseball game and confronted the Individual Respondents before being asked to leave. Per Petitioner, after he refused to leave the LTD/Amway event, Mrs. Markiewicz grabbed his arm and told him to leave. She then called the police who asked Petitioner to leave. Petitioner claims police officers escorted Petitioner from the stadium who then allegedly assaulted Petitioner outside the stadium. Petitioner alleges the police officers charged Petitioner with disorderly conduct but the charges were later dropped.

Petitioner further alleges Mr. Markiewicz disparaged the Petitioner in an audio message to LTD/Amway IBOs in the wake of Petitioner's actions at the baseball event. Lastly, Petitioner alleges that someone posted signs at another Amway event instructing anyone who saw the Petitioner to notify security.

Petitioner asserted claims against the Individual Respondents for defamation, tortious interference with contract, civil conspiracy, intentional infliction of emotional distress, abuse of process, malicious prosecution, and battery. The Individual Respondents deny any misconduct alleged by the Petitioner and deny any liability.

III. The District Court's Dismissal of the Amended Complaint

Individual Respondents Joseph Markiewicz, Mary Beth Markiewicz, and Douglas Weir (collectively, the "Individual Respondents") moved the District Court to compel arbitration or, in the alternative to dismiss the Plaintiff's Complaint. The Petitioner opposed this motion. Defendants Leadership Team Development, Inc. and Amway Corporation (collectively, the "Corporate Defendants") also moved to compel arbitration. Petitioner did not oppose the Corporate Defendants' motion. The District Court granted the Defendants' motions, compelled the Petitioner to arbitrate his claims, and dismissed the Petitioner's Complaint without prejudice.

In its order, the District Court addressed three issues:

1. Could the arbitration agreement between the Plaintiff and the Corporate Defendants apply to the Plaintiff's claims against the Individual Defendants.
2. Whether the Plaintiff's claims against the Individual Defendants were within the scope of the arbitration agreement.
3. Whether the Plaintiff's complaint should be dismissed without prejudice in lieu of staying the case.

The District Court answered all three questions in the affirmative. The Petitioner appealed this ruling to the United States Court of Appeals for the Fourth Circuit. In a one paragraph unpublished per curiam opinion,

the Court of Appeals found no reversible error and affirmed the District Court's order.

REASONS FOR DENYING THE PETITION

This Court's review is unwarranted. First, Petitioner failed to present any compelling issue for review. In fact, Petitioner failed to present all but one of Petitioner's proposed questions to the District Court. The District Court applied well-established law under the Federal Arbitration Act when correctly finding that the Petitioner must submit his claims to arbitration.

I. The District Court Ruled on Only One of the Petitioner's Proposed Questions.

"A petition for a writ of certiorari will be granted only for compelling reasons." Sup. Ct. R. 10. Ordinarily, this Court will not review even compelling issues that were not properly presented to, or decided by, the courts below absent unusual circumstances. *See, e.g., United States v. United Foods, Inc.*, 533 U.S. 405, 417 (2001) (declining to "allow a petitioner to assert new substantive arguments attacking . . . the judgment [below] when those arguments were not pressed in the court [below]"); *Zobrest v. Catalina Foothills Sch. Dist.*, 509 U.S. 1, 8 (1993) ("Where issues are neither raised before nor considered by the Court of Appeals, this Court will not ordinarily consider them.").

The District Court addressed only three issues. First, whether the arbitration agreement was enforceable as to the Individual Defendants. Next, if so, whether the claims against the Individual Defendants were within the scope of that arbitration

agreement. Finally, whether the court should stay or dismiss the Plaintiff's lawsuit.

The first six of the Petitioner's proposed issues all relate to merits of his claims which the District Court never reached. The District Court decided the procedural issues raised by the Defendants' motion to dismiss. That is whether the Petitioner's claim should be compelled to arbitration. The Court answered in the affirmative and ordered the parties to arbitration. The District Court did not make any ruling with respect to the merits of the Petitioner's claims.

The next two, designated by roman numerals VII. and VIII., are whether the Arbitration Agreement is void for unconscionability and whether its enforcement violates Petitioner's right to a jury trial. Petitioner did not raise either of these issues before the District Court. The District Court expressly noted that Petitioner did not challenge the validity of the Arbitration Agreement. Pet. App. 17a. Because he did not challenge the validity of the Arbitration Agreement in the District Court, he should not be heard to do so now. Petitioner attempted to "swap-horses" at the Fourth Circuit and did raise these issues. The Fourth Circuit did not expressly review these newly raised issues and neither should this Court. *See Muth v. United States*, 1 F.3d 246, 250 (4th Cir. 1993).

Proposed Questions A. and C. are merely reworded statements of questions VII. and VIII. Proposed Questions D. and E. were likewise never raised with either the District Court or the Fourth Circuit.

None of the Proposed Questions save for question B. (the 10th question in Petitioner's Questions Presented), were raised to the District Court. Even if this Court were to consider a break with its ordinary course of declining to review questions not raised to the lower courts, there is no record on which this Court could base its review. For this reason, the Court should deny the Petitioner for Writ of Certiorari.

II. The Lower Courts Correctly Applied Well-Settled Law to Determine that the Petitioner's Claims are Subject to Arbitration.

Petitioner raised two issues to the District Court in opposing the Individual Defendants' motion to dismiss. The first was whether he could be compelled to arbitrate those claim where the Individual Defendants are not signatories to the relevant agreements including the Arbitration Provisions. The Petitioner is not seeking review of this issue.

The second issue was whether the authority to determine whether the Petitioner's claims against the Individual Defendants were within the scope of the Arbitration Provisions rested with the District Court or the arbitrator. In other words, whether the parties were required to "arbitrate arbitrability." The District Court correctly determined that the answer is "yes."

The Federal Arbitration Act ("FAA") provides that a written arbitration agreement "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. It is well settled under the FAA

that disputes over arbitrability are for the arbitrator where the agreement to arbitrate “clearly and unmistakably” provides as such. *See First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 944 (1995); *see also, Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 68-70 (2010).

The Arbitration Provisions at issue both contain a clear delegation provision. The LTD Agreement states that “an arbitrator shall have exclusive authority to resolve any disputes including . . . arbitrability disputes.” The Amway Agreement states that “[a]rbitrability [i]ssues [are] to [b]e [d]ecided [b]y [an] [a]rbitrator.” Thus, the parties agreed to arbitrate arbitrability and the District Court correctly determined under these provisions that the parties “clearly and unmistakably agreed to arbitrate arbitrability.” Pet. Appx. Thus, whether the Petitioners Claims are within the scope of the Arbitration Agreements are not worthy of review by this Court.

The Petitioner cites a House of Representatives Bill 963 titled The Forced Arbitration Injustice Real Act (FAIR Act) of 2022. He contends that it “eliminates the use of forced arbitration clauses in contracts related to employment, consumer issues, antitrust, and civil rights.” Pet. p 13. This proposed legislation was never enacted into law. *See* <https://www.congress.gov/bill/117th-congress/house-bill/963> (last visited Apr. 20, 2025). Thus, it is irrelevant to the Petition.

Although not raised by the Petitioner to the District Court, it is also well settled that enforcement of a valid arbitration provision does not violate Petitioner’s Seventh Amendment rights. The Seventh

Amendment right a jury trial is not absolute and can be waived. See *Commodity Futures Trading Com v. Schor*, 478 U.S. 833, 848-49 (1986). It preserves the right to a jury trial in federal court only once it has been determined that the claims presented should proceed in that court. Entering into an arbitration agreement necessarily involves waiver of that right. The Seventh Amendment right to a jury trial is not violated by enforcing a valid arbitration agreement. See, e.g., *Sydnor v. Conseco Fin. Servicing Corp.*, 252 F.3d 302, 307 (4th Cir. 2001); *Am. Heritage Life Ins. Co. v. Orr*, 294 F.3d 702, 711 (5th Cir. 2002); *Harrington v. Atl. Sounding Co.*, 602 F.3d 113, 126 (2d Cir. 2010) (“It is well-settled that waiver of jury trial are fully enforceable under the FAA.”); *Cooper v. MRM Inv. Co.*, 367 F.3d 493, 506 (6th Cir. 2004); *Hawkins v. Aid Ass’n for Lutherans*, 338 F.3d 801, 808 (7th Cir. 2003); *Nw. Airlines, Inc. v. Air Line Pilots Asso., Int’l*, 373 F.2d 136, 142 (8th Cir. 1967). Thus, because there is a valid arbitration agreement, the Petitioner waived his Seventh Amendment right to a jury trial. This case does not, as the Petitioner suggests, present an opportunity to clarify the intersection of arbitration rules and the constitutional right to a jury trial. Instead, it presents a relatively straightforward application of well-settled principles.

The Petitioner also urges this Court to clarify the legal standards applied to determine the enforceability of arbitration agreements. Besides the fact that these issues were not raised to the District Court, these are not issues of federal law. The FAA provides that arbitration agreements are “valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract” 9 U.S.C. § 2. “Thus, “state law whether

of legislative or judicial origin, is applicable *if* that law arose to govern issues concerning the validity, revocability, and enforceability of contracts generally. *Perry v. Thomas*, 482 U.S. 483, 492 n.9 (1987). Because these are issues of substantive state contract law, they are not appropriate for review by this Court.

CONCLUSION

For these reasons, the Petition for Writ of Certiorari fails to present a compelling reason for review, and should be denied.

Respectfully submitted this the 21st day of April, 2025.

Luke A. Dalton
Counsel of Record
McAngus Goudelock & Courie, PLLC
4130 Parklake Avenue, Suite 550
Raleigh, North Carolina 27612
Phone: (919) 719-8204
luke.dalton@mgclaw.com
Attorney for Respondent Douglas Weir

And

Joseph W. Fulton
Martineau King PLLC
PO Box 241268
Charlotte, NC 28278
Attorneys for Respondents Douglas Markiewicz, Marybeth Markiweicz, and Douglas Weir