Date: May 30, 2007

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Pages: 6 (including cover page)

Re: **Fadness v. Fadness**

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VIRGINIA:

In the Circuit Court of the County of Fairfax

Lynette Thompson Fadness

In Chancery No. 188973

v.

Jeffrey Michael Fadness

ARBITRATION AWARD

This matter came on for hearing on a written Agreement to Arbitrate "the issue of tangible personal property as directed by Judge Stanley P. Klein." The limited issue and jurisdiction of the arbitrator were defined by Judge Klein's February 28, 2006 Final Decree of Divorce and expressed in detail by Judge Klein in hearings on various days, including December 21 and 22, 2005; January 6 and 27, 2006; and in an order entered January 6, 2006. The parties disagreed as to the scope of issues to be resolved. This decision addresses the limited issue cited above and specifically does not address the husband's request for fees or sanctions. Transcripts will set forth in detail the positions taken by the parties and the reasoning for the arbitrator's decision as to scope. But inherent in the arbitration were procedural issues that need explanation and finding of facts.

Judge Klein had ordered an appraisal to be done by Adam A. Weschler and Son. No appraisal was done. The arbitrator had to decide whether the hearing could comply with Judge Klein's directions in the absence of such appraisal. The absence of an appraisal was caused by the wife's non-cooperation, obstruction, movement of the furniture from one storage place to another, the use of names other than hers to prevent detection, and the isolation of the furniture simply to keep it away from the husband. The arbitrator does not intend to exceed his jurisdiction but credibility findings permeate the decisions made, including going forward with the hearing without an appraisal.

Despite court authorization of the husband to take over possession of certain storage units the nature of the stored objects made an inventory difficult at best. The husband attempted to locate, inventory, inspect, and appraise the property but was thwarted in his efforts by the wife's refusal to comply with orders and any good faith cooperation effort. The husband attempted to follow the orders of the Court to have this property located and appraised but the wife refused to timely cooperate, and continued a consistent pattern of concealing the property. Counsel for complainant, on or about

November 31, 2006 made an offer to have an agreed appraisal done free but that was too close to the scheduled start of the hearing to allow the hearing to proceed. The wife's counsel appeared to make a good faith effort on November 31 to protect the wife from her own seizure and concealment of property. The wife's refusal to timely cooperate in accurately identifying the location of the property, how to reasonably conduct an inventory, and how to jointly follow the order to get an appraisal all caused the absence of an appraisal.

The arbitrator decided to go forward with the hearing without an appraisal. The circumstances required closure between these parties on this limited part of a broader, obviously protracted litigation. Further delay was unlikely to have produced cooperation in achieving any appraisal.

The hearing started December 6, 2006. Opening statements made it clear that the parties were able to reasonably identify the existence, possession, and estimated value of the vast majority of the pieces of property in question. The evidence was voluminous over many days and demonstrated each party's ability to testify as to extensive details as to the acquisition of property. The hearings length was expanded by a consistent inability of most witnesses to give short, specific answers to questions calling for specific information, the intense detail given by the parties justified the decision to go forward. There was relatively no disagreement between the parties as to the nature and location of most pieces. They both testified that they were active shoppers involved over years in together acquiring expensive furniture at bargain prices. The wife differed somewhat, in testifying that she regarded herself as the interior decorator between them. The parties each submitted lists of the property in question and offered opinions as to value. Each party claimed knowledge as to a basis for an opinion as to value. The wife produced detailed receipts but in large part they were a decade old, and the linkage of specific receipts to specifically identified pieces was contested. The parties frequently did not make estimates as to depreciation or discounting values of the original purchase prices for age or use of the property.

The wife and her witnesses lacked credibility individually and collectively. Previous statements by witnesses were directly contradicted by themselves and by the wife's other witnesses on specific material points.

The wife had, upon receiving a note in the Clifton house in June 2005 indicating that her husband had removed some furniture to a new residence for himself and the two children, hired movers to take furniture from the Clifton house and the Bay house not to use it but because "possession" was 9/10 of the law. Around June 7-9, 2005, she caused the furniture to be put into Public Storage units near Herndon.

The wife had no immediate use of the property and seized it to keep for herself some marital property and to deny its use to the husband. That original motive continued and has been a reason for the multiple moves and involvement of other people in hiding the furniture from her husband as a litigation tactic. The wife's storage methods caused waste and dissipation in the condition and value of marital assets.

The wife claimed that her previous lawyer had advised the husband's lawyer as to the Public Storage location but the arbitrator finds that to be untrue. The wife's mother, Patty Thompson, testified that she did not know where the furniture was (in Public Storage) and did not want to know. That lacked credibility. The wife's pattern of behavior was to keep the furniture away from the husband.

A friend, Gary Billingsley, his son, and a college age friend of his son moved the furniture from Public Storage for various unpersuasive claimed reasons, ranging from a "break-in" to changed locks to a desire to have the furniture closer to Fairfax. Billingsley and the wife caused the furniture to be moved to Shurgard under the name Billingsley. Some months later, the wife paid Billingsley some rental cost and the Shurgard units were put under the name of the wife's mother.

The wife called James Scott as a witness. His testimony in deposition and in several sessions in this hearing contradicted the wife's claim that she sold as a lot the stored marital furniture in her possession for $20,000 around November 2005. Scott said that he "loaned" the wife $5,000 and took the furniture "as a pawn" or mortgage but had absolutely no interest in or ownership of the furniture. The wife's brother had worked for James Scott and suggested they meet, but denied participating in the arrangement of any "sale" of furniture to Scott. The wife testified that she sold the furniture to Scott for $20,000. The wife's mother claimed to have seen a written receipt for that $20,000 alleged sale. The arbitrator finds that no sale occurred, but that the wife is bound by her own testimony on that subject in this equitable distribution of personalty.

In late 2005, the wife caused James Scott to remove the marital furniture from Shurgard and moved it to Scott's farm in Fauquier County. The wife caused the seized property to be moved not for her use but to deny it to the husband. She had stored it under varying names in locations she didn't want the husband to know. She admitted participation in the moves from Public Storage to Shurgard and to Scott's farm but denied knowledge of Scott's later move of the furniture from his farm to Fredericksburg. She also claimed a lack of knowledge as to why Scott gave inaccurate information about the storage facility in Fredericksburg where some of the marital furniture she seized is presently located. James Scott gave differing addresses for the Fredericksburg location, even though his brother owns commercial realty at the same or neighboring address. She lacks credibility on those denials.

The wife always had knowledge of how to reach James Scott, while denying that information to the husband, and is found to have knowledge of Scott's move to, and location in, Fredericksburg of the property. The arbitrator does not address the accuracy of any representations made to Judge Klein except as inherent in the decisions in this arbitration, recognizing that Judge Klein has obvious familiarity with the history of this protracted litigation and has reserved to the Court certain decisions.

Each party now seeks a money judgment against the other rather than possession of the furniture seized by the wife. The wife is not entitled to a money judgment in equity, and is awarded whatever furniture she now possesses, and whatever furniture remains in the Fredericksburg location, Scott's farm, or anywhere else she now finds it. It would be inequitable to require the husband to locate, transport, renovate, or bear the cost of disposing of that furniture now. It would also be inequitable to require the husband to absorb the diminished value of the stored property since she caused it. She caused a degradation in the condition of marital assets and is not entitled to a monetary award.

After considering each item individually as to value, the arbitrator finds that the husband now holds marital property reasonably valued at $94,055 plus equipment described as Lucent equipment, and the wife now holds marital property reasonably valued at $128,335 including a $15,000 piano that she clearly did not "sell".

The arbitrator deducts $15,000 for the piano in wife's possession from "her" $128,335 marital furniture to yield a $113,335 marital furniture value for the goods concealed by the wife. Her alleged sale denied the husband his 52% of that $113,335 marital asset. The wife thus owes the husband 52% of $113,335 or $58,934.20 for part of this award and she acquires the right to the stored furniture and she also owes him 52% of the $15,000 piano or $7,800.

The wife is not entitled to her 48% of $113,335 because she is bound by her own multiple claims and testimony that she sold that asset and got $20,000, either in cash or promise to pay, in exchange for it. The husband was denied his marital half of that $113,335 asset. The wife thus owes him $56,667.50 for that "wasted" marital asset.

The $94,055 and $128,335, in a normal litigation evaluation, would see the husband get 52% of the total marital property ($222,390) or $115,642.80, and the wife get 48% of ($222,390) or $106,747.20. She would normally owe him $8,895.60. But this is far from a "normal" personalty dispute. Such a division would inequitably award the wife and financially penalize the husband.

Each party should keep what is in their present possession or control. The Lucent equipment should be sold with the net proceeds to be divided 52% to the husband and 48% to the wife.

To the extent that anyone else believes there was actually a "sale" of the furniture, that dispute is between the wife and her alleged purchaser. As between the wife and husband, she is bound by her own testimony that she sold that marital furniture for $20,000.

The husband seeks an award of interest from June 1, 2004, an assessment of storage fees from February 3, 2006, and fact findings regarding the reasonableness of attorney's time and fees. Those are not ruled upon as they exceed the scope of this arbitration and/or the arbitrator's jurisdiction. Those issues are left to the Court for resolution, along with claims for attorney's fees, as not appropriate the arbitrator to decide.

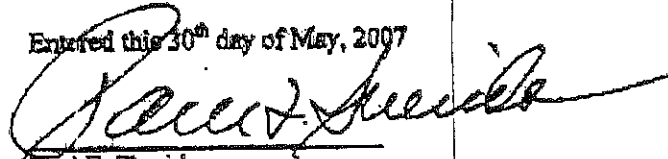
The husband keeps the property in the Clifton and Bay homes. The wife keeps the property in her possession or stored elsewhere.

The wife owes the husband $56,667.50 for his 52% of that $113,335, plus $7,800 for 52% of the piano she possesses, plus $8,895.60 for a total of $73,363.10.

The arbitrator does not include in the findings of value the Lucent Telephone equipment but orders that it be sold and the proceeds divided 52% to the husband and 48% to the wife.

Counsel is directed to prepare an award order consistent with the findings herein if they desire a different form.

Entered this 30th day of May, 2007



Paul F. Sheridan
Arbitrator

This award has been mailed and faxed to all listed counsel this 30th day of May, 2007

Alison D. Meyer
The McCammon Group