

WHY WAIT TO MEDIATE?

In current ADR news, mediation ends a five year-long battle between two Tampa, Florida, “Shock Jocks”. In 2008, Todd “MJ” Schnitt, a talk-radio show host, and his wife Michelle, filed suit against disc jockey rival Bubba “The Love Sponge” Clem, his Bubba Radio Network, Inc., and Cox Radio, Inc., the station who carried the show. Schnitt asserted the claim of defamation, stating that Clem called Schnitt’s wife a whore on-air, insinuated that Schnitt accepted favors and gifts for radio plugs, and that Schnitt engaged in possible radio ratings tampering. Five years later and days before trial, Cox Radio, Inc. came to a settlement with Schnitt. Details of that settlement were kept confidential, and Cox Radio, Inc. relayed that it was strictly a business decision that in no way demonstrated that they did not support Clem.

The case against Clem and Bubba Radio Network, Inc. went to trial. Clem’s defense was that all comments were simply opinions used for satire on a public figure and were protected by the First Amendment. The trial lasted approximately three weeks, and the jury deliberated for approximately three hours, rendering a verdict on January 13, 2013 that Clem did not defame Schnitt. Schnitt filed a motion to retry the case on February 12, 2013 claiming that Clem’s attorneys practiced misconduct when they allegedly set-up one of Schnitt’s attorneys mid-trial for a DUI arrest.

Schnitt’s legal situation compounded when he fired his representing attorneys after the original trial. They went to court against him seeking nearly \$1 million in outstanding legal fees on top of the \$1 million in court costs and legal fees he already paid from the 2008 filing of the case through the trial that ended on January 30, 2013. He is also responsible for paying his newly obtained representation. For his part, Clem had spent between \$800,000 and \$3 million in legal fees per varying news reports.

Schnitt and Clem agreed to mediate on March 14, 2013. The mediation lasted 12-13 hours and concluded around midnight. News reports indicated that Clem was asleep on the floor during the last hour, as he was due to be on the radio for 3a.m. on Friday. Clem’s attorney, Joseph Diaco, Jr., described that the mediator “did a heck of a job, employing persistence, a rational and common sense approach and relentless determination to keep us there.” Elaine Silvestrini, *Bubba the Love Sponge, Schnitt reach mediation settlement*, The Tampa Tribune, Apr. 14, 2013, <http://tbo.com/news/crime/bubba-the-love-sponge-schnitt-reach-mediation-settlement-b82464866z1>. The mediation was a success and accomplished what 5 years of litigation had not, ending the dispute with an agreement that both parties could live with.

In the settlement, Clem agreed to drop his request for reimbursement for his attorney costs thus far, and in return, Schnitt agreed to drop his motion for retrial or any appeal on the failed defamation claim. The agreement also established that should Clem ever mention Schnitt’s wife or family on the air again, he would pay \$5,000 per violation. However, it appears that verbal assaults on Schnitt himself are still allowable based on news reports. Clem felt that he won because he was protecting the verdict in support of the First Amendment and for other broadcasters’ benefit. He was also relieved to finally have closure on the matter and to be able to save the money it would have cost him to continue the litigation. Schnitt expressed that he felt he won because he was able to protect his family from the verbal tirades of Clem, which is what he sought all along.

After learning the details of the Shock Jock case, it can easily be determined that finality was not achieved through litigation. While the jury found in favor of the defense in the original trial, the plaintiff filed a motion for a new trial. This case could have continued for years more with potential appeals and other motions. Many positives could have been established if mediation would have occurred sooner: more than \$2 million in legal fees could have potentially been saved, years of emotional stress could have been avoided, and closure could have been obtained much earlier. The Schnitts' lawyer, Wil Florin, said it best when he stated that the mediation was "something that should have happened a long time ago. Their previous lawyers and Clem's lawyer should have sat down years ago and had a professional discussion about their differences. It's just sad that didn't happen, but we're very happy with the result." *Id.*

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