

MEMORANDUM

TO: Lawyering Skills I students
FROM: Professor David E. Sorkin
DATE: April 12, 2010
RE: Adams v. Walther University

Our client, Diana Adams, is the owner and president of Fleming Co., a Chicago-based business that markets security systems for commercial and industrial use. Adams is a graduate of Walther University in northern Indiana. Adams regularly donates money to Walther for scholarships and other programs, and for the past several years she has purchased season tickets to Walther's home football games. She usually attends one or two games each year with her family, and gives the remaining tickets to clients and suppliers of her company. In 2009, she paid \$2,000 for four season tickets and donated approximately \$5,000 to the university's athletic program. In recognition of her donations, Walther has upgraded her seat locations each year; her 2009 tickets were on the 30-yard line. The Walther Goldeneyes lost only two regular season games in 2009 and received a bid to play in the Broccoli Bowl against Jones College. As a season ticket holder, Adams was able to buy two Broccoli Bowl tickets through the university for \$150 each. She was injured in an automobile accident on Christmas Eve, however, and gave the tickets to her nephew. After the game, she learned that he had sold the tickets through StubHub for \$2,500.

In late January 2010, Adams submitted her application to renew her season tickets for the 2010 season. She subsequently received a letter from Walther's Athletic Department, dated February 10, 2010, stating that her season ticket privileges had been suspended indefinitely pursuant to the university's season ticket policy. A copy of the policy is provided with season ticket and bowl game ticket applications, and it is posted on the university's website. The policy includes the following provisions:

6. *Resale.* Any individual with season ticket privileges who is found to have sold tickets for an amount greater than the face value of the tickets, or to have sold tickets to a ticket broker or agency which in turn resells the tickets for an amount greater than face value, will be denied ticket privileges for a minimum period of five years. In addition, the individual will not receive the same seat location if the privilege is reinstated.

12. *Arbitration.* Any dispute or controversy of any nature whatsoever arising out of or in connection with season tickets or otherwise concerning the relationship between the University and the ticket holder, whether arising in contract, tort, or otherwise, shall be resolved exclusively by final and binding arbitration administered by Neutral Arbitration Service (NAS), pursuant to NAS's Rules of Procedure then in effect, and conducted before a sole arbitrator at a

location determined by NAS or mutually agreed upon by the parties. This arbitration agreement is made pursuant to a transaction involving interstate commerce, and shall be governed by and interpreted under the Federal Arbitration Act, 9 U.S.C. §§ 1-16. Any award of the arbitrator may be entered as a judgment in any court having jurisdiction.

Adams filed an arbitration claim against Walther University, challenging its suspension of her season ticket privileges, and requesting that the university be ordered to reinstate her ticket order. The parties agreed to conduct the arbitration in Chicago, and Neutral Arbitration Service appointed Roger Dalton, a Chicago attorney and an alumnus of Walther University, to serve as the arbitrator. Both parties were provided copies of a statement of Dalton's qualifications and given the opportunity to object to his appointment. Neither party objected, and on March 30, 2010, Dalton held a hearing at his law office. On April 2 Dalton issued his decision in the case, denying Adams's claim.

On April 8, Adams received a letter from the Office of Admissions at Walther University, requesting that she conduct interviews on the university's behalf with several high school seniors who had applied for admission to Walther and were being considered for scholarships. She has conducted such interviews for the university on several previous occasions. One of the prospective students on the list she received this year was Sean Dalton. Adams recognized the name and telephoned the admissions office, which confirmed that Sean Dalton is the son of Roger Dalton.

Adams now wants to ask a court to set aside the arbitration award. Please write a memorandum addressing the likelihood that she would prevail in such an action.