

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 13-60066-CIV-COHN-SELTZER

ABRAHAM INETIANBOR

Plaintiff,

vs.

CASHCALL, INC.,

Defendant.

DEFENDANT CASHCALL, INC.'S OPPOSITION TO "PLAINTIFF'S MOTION TO RECONSIDER AND REPORT REGARDING THE STATUS OF THE CASE" [DE 61]

Defendant CashCall, Inc. ("CashCall"), submits its opposition to *Plaintiff's Motion to Reconsider and Report Regarding the Status of the Case* ["Motion"; DE 61]. In brief, plaintiff Abraham Inetianbor ("Inetianbor") has provided no basis for reconsideration and must proceed with the arbitration as ordered by the Court, which is continuing forward despite Inetianbor's current refusal to participate in those proceedings. If Inetianbor disagrees with the eventual award, he may then challenge the award on the limited bases provided by federal law; however, he cannot raise his (spurious) challenges at before an award has even issued. Accordingly, the *Motion* should be denied.

In further opposition, CashCall states as follows:

I. INTRODUCTION

On Friday, May 17, 2013, the Court granted CashCall's *Renewed Motion to Compel Arbitration* [DE 53], finding that "CashCall has properly submitted this action to arbitration, and that the designated forum is available to conduct arbitration." *Order Compelling Arbitration* [DE 59] at 5. The following Monday (May 20), Inetianbor filed *Plaintiff's Notice of Compliance*

with *Order Compelling Arbitration (order) [Doc #59]* [Doc 60 (filed 5-20-13; docketed 5-21-13)], attached to which is the *Answer to CashCall, Inc.'s Complaint Submitted to Arbitration and Abraham Inetianbor's Counterclaim*. See DE 60 at 4-9. Thus, Inetianbor proceeded initially to assert his claims in arbitration, in express compliance with the Court's ruling. However, the following day, Inetianbor filed the *Motion*, once again claiming that he is not bound to arbitrate his claims and asserting that Tribal Elder Robert Chasing Hawk, Sr., is biased, which claim Inetianbor bases on Mr. Chasing Hawk's daughter's former employment and the fact that "Mr. Chasing Hawk is also a *friend* of her [sic] daughter Shannon on Facebook." *Id.* at 2 (italics in original).

Whether or not the arbitrator's daughter's supposed former employment with Western Sky is a proper basis for challenging Mr. Chasing Hawk's impartiality – and it is not – that issue is not properly before the Court at this time. Federal law is clear that Inetianbor must proceed with the arbitration before he may raise such a challenge. Moreover, this is likely to be a moot issue, because Inetianbor has apparently chosen to refuse to participate in the arbitration. Exhibit C to the *Motion* is an e-mail from Inetianbor to CashCall's counsel in which he states, "I have chosen not to participate in this arbitration that was initiated by Cash Call, Inc. for the following reasons" DE 61 at 13.¹ Indeed, as reflected in Inetianbor's *Notice to Cease and Desist* [DE 64], he even objects to CashCall's counsel's having provided a copy of his *Notice of Address Change* [DE 63] to the arbitrator because, "If I wanted Mr. Chasing Hawk to have my

¹ Irrespective of their lack of merit, the laundry list of reasons is not appropriately addressed at this time. CashCall cannot properly be sucked into litigating the host of issues Inetianbor is bound to arbitrate and, to the extent that he chooses to do so in the event of an adverse award, Inetianbor may only properly raise them in a challenge to such an award. See *infra*.

new address, I will notify him myself.” DE 63 at 1.² Further, Inetianbor has wholly failed to respond the arbitrator’s inquires regarding scheduling the preliminary telephonic hearing in the arbitration, which is set to take place on Friday, June 7, 2013, at noon EDT.

Accordingly, for the reasons set forth in more detail below, the *Motion* should be denied.

II. NO PROPER BASIS FOR RECONSIDERATION IS SHOWN BY INETIANBOR’S *MOTION*

The thesis of Inetianbor’s request for reconsideration is that “plaintiff may not achieve justice through this arbitration process being that the selected arbitrator has relationships with the defendant and as such may not be fair to plaintiff.” *Motion* at ¶ 1. That is not a proper basis for reconsideration generally, and what “may” happen in an arbitration is not a proper basis for avoiding arbitration in specific.

As this Court stated in *Jallali v. National Board of Osteopathic Medical Examiners, Inc.*, No. 12-60548, 2012 WL 4089894 (S.D. Fla. Sept. 17, 2012) (Cohn, J.), *aff’d*, No. 12-15259, 2013 WL 1979825 (11th Cir. May 15, 2013):

A motion for reconsideration under Fed.R.Civ.P. 59(e) is made for the purposes of correcting manifest errors of law or fact or presenting newly discovered evidence. *Burger King Corp. v. Ashland Equities*, 181 F.Supp.2d 1366, 1369 (S.D.Fla. 2002). Reconsideration of an order is “an extraordinary remedy to be employed sparingly.” *Gathagan v. Rag Shop / Hollywood, Inc.*, No. 04-805200-CIV, 2005 WL 6504749 at *1 (S.D.Fla. May 9, 2005) (quoting *Sussman v. Salem, Saxon, & Nielsen, P.A.*, 153 F.R.D. 689, 694 (M.D.Fla.1994)).

The three grounds that would justify reconsideration are “(1) an intervening change in controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or prevent manifest injustice.” *Burger King*, 181 F.Supp.2d, at

² It is not clear what Inetianbor wants CashCall’s counsel to do in response to this notice. Inetianbor’s filing states, “defendant is allowed to e-mail plaintiff, but not to use his personal e-mail address on filings.” *Id.* at 2. Counsel will of course try to ensure that no future filings reflect Inetianbor’s e-mail address – although there should be no more filings until the arbitration has concluded. However, the *Notice to Cease and Desist* concludes by stating that “[a]ll future leadings, memoranda, correspondence, orders, etc., shall be sent to the address listed below,” which is only a physical address. *See id.* To ensure that Inetianbor receives filings as quickly as practicable, counsel will e-mail filings to him while omitting his e-mail address from those filings. The appropriate procedure in the arbitration is an issue for the arbitrator.

1369. However, a motion for reconsideration cannot be used “to relitigate old matters, raise arguments or present evidence that could have been raised prior to the entry of judgment.” *Michael Linet, Inc. v. Village of Wellington, Fla.*, 408 F.3d 757, 763 (11th Cir.2005); *see also In re Mathis*, 312 B.R. 912, 914 (Bankr.S.D.Fla.2004) (Rule 59(e) motion not meant to permit the “arguing of issues and procedures that should have been raised prior to judgment.”).

Id., at *1. *See also U.S. Commodity Futures Trading Comm’n v. Angus Jackson, Inc.*, No. 12-60450, 2013 WL 501885, at *1 (S.D. Fla. Feb. 11, 2013) (Cohn, J.) (“As pertinent here, a motion for reconsideration may be granted ‘to correct clear error or prevent manifest injustice.’ *Williams v. Cruise Ships Catering & Serv. Int’l, N.V.*, 320 F.Supp.2d 1347, 1357–58 (S.D.Fla.2004). A court may not grant reconsideration, however, if ‘the motion does not raise new issues but only relitigates what has already been found lacking.’ *Reyher v. Equitable Life Assurance Soc’y*, 900 F.Supp. 428, 430 (M.D.Fla.1995).”). Under these exacting standards for reconsideration, Inetianbor’s *Motion* should be denied.

Inetianbor’s *Motion* raises no new law, raises no newly-available, valid, or relevant evidence, and shows no “clear error” or “manifest injustice.” No new law is cited and nothing has happened other than Inetianbor has been compelled to arbitration pursuant to the contract binding him and governing his claims. *See Order Compelling Arbitration* at 4-5. The “evidence” he attaches to his *Motion* – purportedly a printout from Facebook – is about the arbitrator’s daughter, not Tribal Elder Chasing Hawk. *See id.* at 9-11. Not only was this information apparently publicly available prior to the *Order Compelling Arbitration*, the fact that the arbitrator’s daughter worked at some prior time for an entity Inetianbor asserts is related to CashCall is no basis for allowing Inetianbor to escape his arbitration commitment. Arbitrator “evident partiality or corruption”– if established, which Inetianbor will not be able to do – is a basis for challenging an arbitration award, *see* 9 U.S.C. § 10(a)(2), but first Inetianbor has to have an award to challenge.

Even aside from the high standard for reconsideration, the Court may not accept Inetianbor's implicit invitation to speculate as to what might happen in arbitration as a basis to deny enforcement of the arbitration provision. *See, e.g., Summers v. Dillard's, Inc.*, 351 F.3d 1100, 1101 (11th Cir. 2003) (speculation about costs an improper basis to deny arbitration, noting that "if a party considers his liability for costs to be excessive or to deprive him of his statutory remedy, he may seek judicial review of the award"); *Musnick v. King Motor Co. of Ft. Lauderdale*, 325 F.3d 1255, 1261 (11th Cir. 2003) ("Whether [plaintiff] will, in fact, incur attorneys' fees in this matter depends entirely on whether he prevails in arbitration."); *Bess v. Check Express*, 294 F.3d 1298, 1304 (11th Cir. 2002) ("[A]ny discussion of [Plaintiff's] potential costs under the AAA rules necessarily is based on speculation and cannot provide an adequate basis for concluding that [his] costs likely would be prohibitively expensive."). Inetianbor is assuming that he will lose his claims – which goes more to their evident lack of merit than anything else. But, such speculation is not a permissible basis to deny arbitration.

More to the point, as a judge of this Court has held, the arbitrator's qualifications are not properly considered prior to the arbitration – and, again, especially not on reconsideration. "[U]nder the Federal Arbitration Act, interlocutory review of an arbitrator's qualifications or alleged bias does not seem to be available. Instead, such reviews are confined under the statute to judicial decisions to confirm, modify, or vacate an arbitration award *after* a final arbitration decision has been made. *See* 9 U.S.C. §§ 10(a)(1)–(3)[.]" *Brandon, Jones, Sandall, Zeide, Kohn, Chalal & Musso, P.A. v. MedPartners, Inc.*, 203 F.R.D. 677, 687 (S.D. Fla. 2001) (Middlebrooks, J.) (italics in original; other citations omitted), *aff'd*, 312 F.3d 1349 (11th Cir. 2002). Similarly, addressing an argument identical to Inetianbor's in *Marc Rich & Co. v. Transmarine Seaways Corp. of Monrovia*, 443 F. Supp. 336 (S.D. N. Y. 1978), that district court

noted that allowing pre-arbitration challenges to arbitrator partiality should not be permitted because “[a]ny other rule might spawn endless applications and indefinite delay.” *Id.* at 387-88.

Thus, Inetianbor’s unwarranted assertion that Tribal Elder Chasing Hawk is biased against him due to his daughter’s former employment is not properly considered at this time. First, the arbitrator must issue an award, and then Inetianbor may seek vacatur of that award if he deems it appropriate. *See* 9 U.S.C. § 10. Accordingly, reconsideration should be denied.

III. INETIANBOR FAILS TO PARTICIPATE IN THE ARBITRATION AT THE RISK OF A DEFAULT

As noted above, the arbitration is underway. After repeated attempts to obtain Inetianbor’s agreement to a date for the preliminary telephonic hearing, the hearing is set to take place on June 7, 2013, at noon Eastern Daylight Time. On June 6, 2013, CashCall timely served *Petitioner CashCall, Inc.’s Answer and Affirmative Defenses to Respondent Abraham Inetianbor’s Counterclaim*. Accordingly, the matter is at issue and can proceed to a final arbitration hearing.

As reflected in the attached e-mail exchange between the arbitrator, Inetianbor, and CashCall’s counsel attached as Exhibit A,³ the preliminary hearing was scheduled without Inetianbor’s participating in selecting a date – which is consistent with his stated refusal to participate in the arbitration. *See Motion* at Exhibit C. CashCall submits that Inetianbor cannot properly evade his commitment to arbitrate through refusal to participate. CashCall has properly initiated the arbitration and the arbitration will proceed to its conclusion. Inetianbor’s refusal to participate in the proceeding will likely have no result different than any litigant’s refusal to participate in a proceeding: defendants who refuse to participate after proper service – which

³ The e-mail exchange is attached without the referenced attachments. And, in accordance with Inetianbor’s request and as a matter of courtesy to the arbitrator, Inetianbor’s e-mail address has been redacted where shown in the exchange and the arbitrator’s contact information has also been redacted.

Inetianbor has acknowledged through the filing of his *Answer to CashCall, Inc.'s Complaint Submitted to Arbitration and Abraham Inetianbor's Counterclaim* – usually have defaults entered against them. CashCall anticipates that the same will occur in the arbitration proceeding of its claims against Inetianbor.

IV. CONCLUSION

WHEREFORE, for the reasons set forth above defendant CashCall, Inc., respectfully requests that the Court deny *Plaintiff's Motion to Reconsider and Report Regarding the Status of the Case*.

Date: June 6, 2013

Respectfully submitted,

AKERMAN SENTERFITT
1 S.E. Third Avenue – Suite 2500
Miami, FL 33131
Tel. 305-374-5600
Fax. 305-374-5095

By: s/ Christopher S. Carver
CHRISTOPHER S. CARVER, ESQ.
Florida Bar No. 993580
christopher.carver@akerman.com
ANDREW M. SHAPIRO, ESQ.
Florida Bar No. 0100015
andrew.shapiro@akerman.com

Counsel for Defendant CashCall, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that I electronically filed a true and correct copy of *Defendant CashCall, Inc.'s Opposition to "Plaintiff's Motion to Reconsider and Report Regarding the Status of the Case" [Doc 61]* with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on parties as listed (through counsel or those reflected as appearing without counsel) in the below Service List via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/ Christopher S. Carver

Attorney

SERVICE LIST

Inetianbor v. CashCall, Inc.
CASE NO. 13-CV-60666-CIV-COHN/SELTZER
U.S. District Court, Southern District of Florida

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Andrew M. Shapiro, Esq.
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christopher.s.carver@akerman.com
andrew.shapiro@akerman.com

Attorneys for Defendant CashCall, Inc.

Abraham Inetianbor
(service by e-mail at [e-mail address redacted upon Inetianbor's request] on June 6, 2013, and by U.S. Mail on June 7, 2013)
Pro se plaintiff
161 NE 38th Street, #52
Oakland Park, FL 33334

Pro Se

Exhibit A

RE: CashCall, Inc. v. Inetianbor arbitration: Letter to Tribal Elder Robert Chasing Hawk, Sr. [5-20-13]

Robert Chasing Hawk [REDACTED]

Sent: Monday, June 03, 2013 4:27 PM

To: Carver, Christopher (Sh-Mia); [REDACTED]

Christopher S. Carver:

I will proceed on with the hearing on June 7, 2013 at 10:00 am as schedule, unless I hear anything different from Mr. Inetianbor in the next couple of days and also, I will give you the logistics of the hearing by tomorrow morning.,

Respectfully,

Robert Chasing Hawk, Sr.
[REDACTED]

From: christopher.carver@akerman.com

To: robert [REDACTED]

CC: andrew.shapiro@akerman.com; cary.gonzalez@akerman.com; christopher.carver@akerman.com

Subject: RE: CashCall, Inc. v. Inetianbor arbitration: Letter to Tribal Elder Robert Chasing Hawk, Sr. [5-20-13]

Date: Mon, 3 Jun 2013 20:21:38 +0000

Mr. Chasing Hawk:

I thought I should wait a reasonable amount of time to give Mr. Inetianbor an opportunity to respond. I will be by my phone - 305-982-5572 - on Thursday, June 7, at 10:00am MST/Noon EDT prepared to proceed with the initial preliminary hearing.

Thank you.

Sincerely,

Christopher S. Carver
Akerman Senterfitt
One S.E. Third Avenue
Suite 2500

Miami, FL 33131
Dir. 305-982-5572
Tel. 305-374-5600
Fax 305-374-5095

From: Robert Chasing Hawk [REDACTED]
Sent: Monday, June 03, 2013 9:40 AM
To: Carver, Christopher (Sh-Mia); [REDACTED]
Subject: RE: CashCall, Inc. v. Inetianbor arbitration: Letter to Tribal Elder Robert Chasing Hawk, Sr. [5-20-13]

June 3, 2013

To: Cashcall, Inc.

From: Robert Chasing Hawk, Sr.

Subject: Waiting for Acknowledgement

I am still waiting for an acknowledgement from Abraham Inetianbor, the Respondent to confirm the suggested date and time, as of this morning I have not receive any email from him, so please be on the stand-by on the date and time. Thank you very much.

Cc: Abraham Inetianbor
4271 NW 5th Street
Unit 247
Plantation, Fl 33317

From: christopher.carver@akerman.com
To: [REDACTED]; [REDACTED]; [REDACTED];
[REDACTED]
CC: andrew.shapiro@akerman.com; cary.gonzalez@akerman.com; christopher.carver@akerman.com
Subject: RE: CashCall, Inc. v. Inetianbor arbitration: Letter to Tribal Elder Robert Chasing Hawk, Sr. [5-20-13]
Date: Fri, 31 May 2013 12:15:00 +0000

Thank you. I am available on June 7 at 10am MST (noon EDT). Please advise as to the call-in logistics.

Christopher S. Carver
Counsel for CashCall, Inc.

From: Robert Chasing Hawk [REDACTED]
Sent: Friday, May 31, 2013 12:33 AM
To: Carver, Christopher (Sh-Mia); [REDACTED]; [REDACTED]
Subject: RE: CashCall, Inc. v. Inetianbor arbitration: Letter to Tribal Elder Robert Chasing Hawk, Sr. [5-20-13]

May 30, 2013

Abraham Inetianbor
4271 NW 5th Street
#247
Plantation, FL 33317

Cashcall, Inc.
1600 Douglass
Anaheim, CA 92086

To Whom It May Concern:

I am scheduling an Arbitration between Abraham Inetianbor vs. Cashcall, Inc on June 7, 2013 at 10:00 am (mountain standard time) and this hearing will be an telephonic hearing to address preliminary matters. Please contact me as soon as practical to select a different date and time, so each party will have ample time to agree on a date.

Thank you very much,

From: christopher.carver@akerman.com
To: Robert [REDACTED]
CC: [REDACTED]; andrew.shapiro@akerman.com; cary.gonzalez@akerman.com; christopher.carver@akerman.com
Subject: RE: CashCall, Inc. v. Inetianbor arbitration: Letter to Tribal Elder Robert Chasing Hawk, Sr. [5-20-13]
Date: Thu, 30 May 2013 19:03:04 +0000

Mr. Chasing Hawk:

Further to my e-mail of May 21 (copied below), my schedule has tightened up slightly next week. I am now available the afternoons of June 4th and June 5th and all day on June 6th and June 7th. I do not know Mr. Inetianbor's schedule, but presume he will respond with available dates also.

Please advise what date/time would be convenient for setting up the preliminary telephonic hearing.

Thank you.

Sincerely,

Christopher S. Carver
Akerman Senterfitt
One S.E. Third Avenue
Suite 2500
Miami, FL 33131
Dir. 305-982-5572
Tel. 305-374-5600
Fax 305-374-5095

From: Carver, Christopher (Sh-Mia)
Sent: Tuesday, May 21, 2013 3:59 PM
To: Abraham Inetianbor; Robert [REDACTED]
Cc: Shapiro, Andrew (Assoc-Mia); Gonzalez, Cary (LAA-Mia); Carver, Christopher (Sh-Mia)
Subject: RE: CashCall, Inc. v. Inetianbor arbitration: Letter to Tribal Elder Robert Chasing Hawk, Sr. [5-20-13]

Mr. Chasing Hawk:

Attached is a letter to Your Honor from me which was sent to Mr. Inetianbor by e-mail yesterday, which explains the reference line in his e-mail to which I am now responding. The letter was sent to Your Honor by mail, in part because I did not have Your Honor's e-mail address. I am responding to Mr. Inetianbor's e-mail on behalf of CashCall, Inc.

As an initial matter, Mr. Inetianbor's claims are nothing more than an attempt to derail the arbitration to which he is contractually committed - and through which the judge in his action in the Southern District of Florida federal court has ordered him to proceed. A copy of the *Order Compelling Arbitration*, which was issued last Friday, is attached. Also attached is Mr. Inetianbor's filing in response to that Order, which I received via electronic court notice this morning. Mr. Inetianbor's *Notice of Compliance with Order Compelling Arbitration* (etc.) has as its Exhibit A Mr. Inetianbor's *Answer to Cash Call Inc.'s Complaint Submitted to Arbitration and Abraham Inetianbor's Counter Claim*, which was served - apparently - by certified mail to Your Honor and to my office. With Mr. Inetianbor's Answer and Counterclaim, the case has been joined; the pleadings will be closed with CashCall's answer to his Counterclaim.

Contrary to Mr. Inetianbor's contentions, this matter is properly in arbitration and Your Honor is the proper arbitrator for this dispute. His spurious claim that Your Honor's daughter's former employment (or current, it is not clear what Mr. Inetianbor claims) constitutes a basis for impugning Your Honor's impartiality must be rejected. If Mr. Inetianbor is, in the end, dissatisfied with whatever arbitration

award is issued, he has a vehicle to challenge the award through the Federal Arbitration Act, Title 9 U.S.C. s. 2, *et seq.* However, he must first proceed through the arbitration and receive the award before he is entitled to complain about the award - as he inevitably will.

As stated in the attached letter, CashCall's counsel was generally available between now and the end of May for the necessary preliminary telephone conference. Since Mr. Inetianbor asserts he is not available until after May 31st in his e-mail below, that forces us to look to early June. I am not available June 3 or the morning of June 4th; however, I am available the remainder of that week. I submit that there is no reason why the preliminary telephone conference cannot be scheduled to take place on or before June 7.

If Mr. Inetianbor chooses not to participate in the arbitration process, so be it. However, he is under a court order to do so and contractually obligated himself to do so. He cannot and should not be allowed to derail the process through spurious claims challenging Your Honor's independence.

Sincerely,

Christopher S. Carver
Akerman Senterfitt
One S.E. Third Avenue
Suite 2500
Miami, FL 33131
Dir. 305-982-5572
Tel. 305-374-5600
Fax 305-374-5095

From: Abraham Inetianbor [REDACTED]
Sent: Tuesday, May 21, 2013 3:00 PM
To: Carver, Christopher (Sh-Mia); Robert [REDACTED]
Cc: Shapiro, Andrew (Assoc-Mia); Gonzalez, Cary (LAA-Mia)
Subject: Re: CashCall, Inc. v. Inetianbor arbitration: Letter to Tribal Elder Robert Chasing Hawk, Sr. [5-20-13]

ATT: To Whom it may Concern

Abraham Inetianbor will be available for a telephone conference after May 31st, 2013. However, a telephone conference will not be necessary at this time until certain pending issues are clarified. See attachment for details and be advised that family work history and ties has been made available to plaintiff with a pending sworn affidavit to accompany. More information and documents will be made available to the court as plaintiff deems fit or as needed.

...Abe

[REDACTED] cell

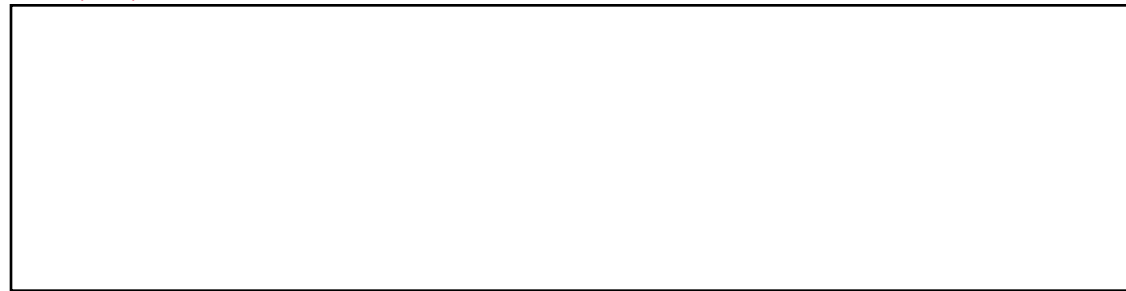
On Mon, May 20, 2013 at 4:17 PM, <christopher.carver@akerman.com> wrote:

Please see attached.

Sincerely,

Christopher S. Carver
Akerman Senterfitt
One S.E. Third Avenue
Suite 2500
Miami, FL 33131
Dir. 305-982-5572
Tel. 305-374-5600
Fax 305-374-5095

[V Card](#) | [Bio](#) | akerman.com



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Thank you.

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