

Guard-IT Wins Legal Challenge of Source Code Escrow Agreement

Award Affirms Agent's Role in Protecting Client's Intellectual Property

AUSTIN, TEXAS, US, April 17, 2024 /EINPresswire.com/ -- Guard-IT Corporation (www.guard-it.com), a leader in [source code escrow](#) and intellectual property escrow services, has won an international arbitration award supporting the protection of its client's software source code.



The action was filed in 2022 with the American Arbitration Association International Center for Dispute Resolution (AAA/ICDR, Case #01-22-003-8691) by a beneficiary outside the U.S. who threatened Guard-IT with monetary damages, demanding that Guard-IT hand over software source code and related intellectual property owned by the escrow depositor.

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The arbitrator, the second one assigned to the case, issued her final award on March 26, 2024. In accordance with AAA rules, parties to the arbitration and award details are not disclosed.

Since 1999, Guard-IT has served as a neutral, third-party escrow agent responsible for the protection and preservation of a wide range of tech-related intellectual property and other digital assets. The escrow agent also

serves as a monetary escrow agent and paymaster for commercial projects in the U.S. and abroad, with clients in 36 countries.

Guard-IT's founder and CEO Jim Ford was happy to win the arbitration for his company and other [software escrow](#) service providers.

“The decision is a big win for Guard-IT and the industry as a whole,” Ford said. “This specialized

and often misunderstood service we provide is now validated by an international arbitration decision. This should bring a lot of proper attention to the escrow industry and the critical need for software and intellectual property escrow services.”

For 25 years, Guard-IT has protected the technology assets of its clients without a legal challenge.

“This was a rare and unusual case,” Ford said. “We have managed plenty of escrow deposit releases that were clearly defined, amicable and easy to administer. When the arbitration was filed against us, excluding the depositor, our attorney and I knew the case would be complex.”

The arbitration lasted 18 months and included input and opinions from two AAA arbitrators.

In 2022, the beneficiary submitted to Guard-IT three separate release requests that were each answered by the depositor’s contrary instructions. Guard-IT routed the notices and objections and advised the parties of the dispute, maintaining its possession of the source code.

The beneficiary challenged Guard-IT by filing the AAA claim seeking monetary damages from Guard-IT and excluding the depositor as a party to the arbitration. The depositor was subsequently included as an intervenor by the arbitrator.

More than a year into the proceedings, the claimant’s counsel proposed a “walk away” settlement offer that Guard-IT refused. The claimant’s attorney subsequently resigned from the case.

According to Guard-IT’s escrow agreement and industry standards, a beneficiary may have access to deposit materials if the depositor files bankruptcy or experiences some other material failure. Additionally, it is customary that if a depositor objects to the release of its intellectual property, Guard-IT (escrow agent) has the right to retain the materials pending dispute resolution. These terms are agreed to by the parties to the escrow agreement.

“Our role is to serve the interests of both depositor and beneficiary. If a depositor files bankruptcy or suffers some critical failure, then the beneficiary may obtain copies of the deposit materials to support its ongoing operations,” Ford said. “In this case, the depositor was viable and naturally objected to the beneficiary’s demands. We stood our ground and retained the deposit materials.”

In her final award, the arbitrator denied all claims and allegations against Guard-IT in their entirety and granted Guard-IT’s counterclaim for indemnification and reimbursement of its attorney’s fees and arbitration costs.

Because of the lengthy duration and expense of the arbitration, Guard-IT is reconsidering its use of arbitration in its software escrow agreements.

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