

Ladenburg Thalmann & Co. Inc. v Matty

2012 NY Slip Op 31292(U)

May 7, 2012

Supreme Court, New York County

Docket Number: 114494/11

Judge: Barbara Jaffe

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: JAFFE BARBARA JAFFE
J.S.C.
Justice

PART 5

Ladenburg Thalmann &
Co. Inc.

INDEX NO. 114494/1/1

MOTION DATE _____

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

Richard MATTY, ET AL.

The following papers, numbered 1 to _____ were read on this motion to/for compel arbitration

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED	
1, 2, 3	
4, 5, 6, 7, 8	

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ~~ORDER~~ JOURNAL**

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: 5/7/12
MAY 07 2012

BARBARA JAFFE
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG. SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 5

-----X
LADENBURG THALMANN & CO. INC.,

Index No. 114494/11

Petitioner,

Motion Date: 2/14/12
Motion Seq. No.: 001

-against-

DECISION AND JUDGMENT

RICHARD MATTY AND NEW YORK STATE
DIVISION OF HUMAN RIGHTS,

UNFILED JUDGMENT

Respondents.

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).-----X

-----X
BARBARA JAFFE, JSC:

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By order to show cause dated January 4, 2012, petitioner moves pursuant to CPLR 401(d) and 7501 *et seq.* and the Federal Arbitration Act (FAA) for an order compelling arbitration of all disputes between it and respondent Matty related to Matty's employment and staying the action pending before respondent New York State Division of Human Rights (SDHR) filed by Matty against it. Matty and the SDHR oppose.

The salient facts are as follows: In February 2001, Matty executed an employment application with petitioner which required him to agree that:

any dispute or claim that may arise between [Matty] and [petitioner] . . . shall be determined by mandatory arbitration (and not in a court). This agreement to mandatory arbitration covers all employment disputes or claims including but not limited to termination of employment and all claims under Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967 and any other federal, state or local statute or regulation regarding employment

discrimination.

(Petition, dated Dec. 22, 2011 [Pet.], Exh. 2). Upon his employment with petitioner, Matty also received a copy of petitioner's employee handbook which contains the identical arbitration clause. (*Id.*, Exh. 3).

On or about September 19, 2011, Matty filed a complaint with the SDHR, alleging that petitioner had violated Article 15 of the Executive Law of the State of New York (Human Rights Law) by discriminating against him because of his disability. (*Id.*, Exh. 1).

At issue is whether Matty's agreement to engage in mandatory arbitration precludes him from pursuing his complaint with the SDHR or the SDHR from investigating and/or prosecuting the complaint.

In *E.E.O.C. v Waffle House, Inc.*, the Supreme Court held that the Equal Employment Opportunity Commission (EEOC) had the authority to pursue relief on behalf of an employee who had filed a claim against his or her employer, notwithstanding that the employee had agreed to arbitrate discrimination claims against the employer. (534 US 279 [2002]). The Court observed that the EEOC was statutorily authorized to bring enforcement actions on its own behalf, even if the employee had declined to pursue his or her claim. The Court also rejected the employer's claim that the FAA barred the EEOC from pursuing a claim against it as the EEOC was not a party to the employment contract at issue, nor did it agree to arbitrate the claim.

Prior to *Waffle House, Inc.*, in *Gilmer v Interstate/Johnson Lane Corp.*, the Supreme Court held that an employee who filed a discrimination claim against his or her employer was bound by a mandatory arbitration clause in an employment agreement, but also found that "an individual [discrimination] claimant subject to an arbitration agreement will still be free to file a

charge with the EEOC, even though the claimant is not able to institute a private judicial action.” (500 US 20 [1991]; *see also E.E.O.C. v Rappaport, Hertz, Cherson & Rosenthal, P.C.*, 273 F Supp 2d 260 [ED NY 2003] [E.E.O.C. cannot be compelled to arbitrate discrimination complaint against employer even though employee could be compelled to do so pursuant to arbitration clause in employment contract]).

In analogous circumstances, the New York Court of Appeals has held that the Attorney General of the State of New York may not be compelled to arbitrate claims brought by him or her on behalf of persons who had signed agreements containing mandatory arbitration clauses. The Court observed that the Attorney General had not agreed to arbitrate any claims and that he was statutorily authorized to bring actions on behalf of the public interest. (*People v Coventry First LLC*, 13 NY3d 108 [2009]; *see also People v H & R Block, Inc.*, 58 AD3d 415 [1st Dept 2009] [trial court properly declined to compel plaintiff to arbitrate claims]).

Here, absent any dispute that the SDHR, like the EEOC and the Attorney General, has the authority to investigate and prosecute discrimination complaints on its own behalf in order in order to vindicate the public interest by eliminating discrimination in employment (Executive Law §§ 290, 295), and as the SDHR was not a party to the employment agreement between petitioner and Matty, petitioner has failed to establish that the arbitration clause at issue precludes Matty or the SDHR from pursuing Matty’s complaint.

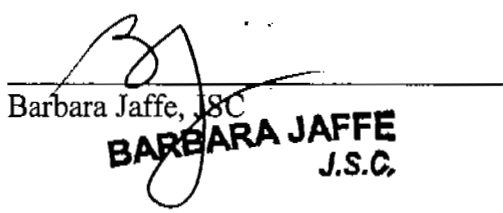
Petitioner has also failed to cite any authority for the proposition that Matty’s discrimination claim may not be heard simultaneously in an arbitration and an action filed by the SDHR. (*See eg Matter of New York State Dept. of Labor (Unemployment Ins. Appeal Bd.) v New York State Div. of Human Rights*, 71 AD3d 1234 [3d Dept 2010], *lv denied* 15 NY3d 714

[SDHR required to give collateral estoppel effect to findings made in earlier arbitration concerning discrimination claim]; *Matter of Metro-North Commuter R.R. Co. v New York State Exec. Dept. Div. of Human Rights*, 271 AD2d 256 [1st Dept 2000] [same]; *see also Anker Mgt. Corp. v State of N.Y., Div. of Human Rights*, 215 AD2d 706 [2d Dept 1995] [denying petitioner's motion to enjoin SDHR from investigating and adjudicating complaint filed by employee despite employee having participated in arbitration proceeding regarding claim as SDHR had independent authority to pursue claim]).

Accordingly, it is hereby

ADJUDGED and ORDERED, that the petition is denied and the proceeding is dismissed.

ENTER:


Barbara Jaffe, JSC
BARBARA JAFFE
J.S.C.

DATED: May 7, 2012
New York, New York
MAY 07 2012

UNFILED JUDGMENT

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