

Nissan v Tejas Secs. Group, Inc.

2012 NY Slip Op 33544(U)

November 13, 2012

Supreme Court, New York County

Docket Number: 150637/12

Judge: Anil C. Singh

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANIL C. SINGH
SUPREME COURT JUSTICE
Justice

PART 61

Index Number : 150637/2012
NISSAN, WENDY
vs.
TEJAS SECURITIES GROUP, INC.
SEQUENCE NUMBER : 001
DISMISS

INDEX NO.
MOTION DATE
MOTION SEQ. NO.

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

Notice of Motion/Order to Show Cause - Affidavits - Exhibits No(s).
Answering Affidavits - Exhibits No(s).
Replying Affidavits No(s).

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed memorandum decision and order

DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER

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

Dated: 11/13/12

HON. ANIL C. SINGH
SUPREME COURT JUSTICE

- 1. CHECK ONE: CASE DISPOSED
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

-----X

WENDY E. NISSAN,
Plaintiff,

DECISION AND
ORDER

-against-

TEJAS SECURITIES GROUP, INC.,

Index No.
150637/12

Defendant.

-----X

HON. ANIL C. SINGH, J.:

Motion sequence numbers 001 and 002 are consolidated for disposition. Defendant moves pursuant to CPLR 3211(a)(1), (5) and (7) and 9 U.S.C. section 1 et seq., to dismiss this action and compel arbitration, contending that the parties are bound by an arbitration clause in an employment agreement. Plaintiff opposes the motion and moves to stay arbitration pursuant to CPLR 7503.

The verified complaint alleges the following facts.

Plaintiff Wendy Nissan holds a degree in economics from the Wharton School at the University of Pennsylvania. She is also the mother of three children.

Defendant Tejas Securities Group, Inc., ("the company") is a financial services firm. The company is a full-service independent broker dealer. Its home office is in Austin, Texas. It has a local office in New York City.

In November 2008, plaintiff was hired by defendant to act as Managing Director of Sales for distressed and high-yield debt in the company's New York office. She was responsible for covering sales of fixed income securities to institutional clients, primarily hedge funds. She worked one or two days a week out of the company's Wall Street office. During the rest of the week, she worked from her home in Port Washington, New York.

At some point in 2008 or 2009, plaintiff became pregnant with her third child.

The parties signed a written employment agreement dated March 1, 2009.

On March 20, 2009, plaintiff gave birth to her third child by cesarean section.

Four weeks after delivery, because her cesarean incision became infected, she was placed on antibiotics for ten days. On May 4, 2009, several days after finishing the antibiotics, plaintiff experienced the symptoms of a stroke. She was admitted to the hospital, and was ultimately diagnosed as having suffered moderate traumatic brain injury. The traumatic brain injury caused various problems, including a tendency to stumble, visual blurring, a lack of balance, headaches and fatigue. Plaintiff contends that these medical problems constitute a "disability," for they substantially limit her ability to walk, stand or drive a car for

extended periods of time.

Despite her disability, plaintiff contends that she remains fully able to perform all of the cognitive tasks necessary to sell fixed income securities; that she remains “extremely capable” intellectually, emotionally, and socially; and that she has no difficulty operating a computer, analyzing market information and data, interacting with customers and colleagues, and making and closing sales.

According to plaintiff, the main issue posed by her medical disability is the danger involved in commuting from her home in Nassau County to defendant’s office in the city. Because she continues to suffer from incidents of fatigue, dizziness, vision blurring and poor balance, driving or using public transportation for long distances poses what plaintiff calls “unpredictable risks.” She contends, however, that if she worked from home, she could safely manage these occasional bouts of fatigue and vision and balance problems, and satisfactorily perform all of the job functions.

In February 2010, after a period of “official medical leave,” plaintiff requested to return to work full-time with reasonable accommodations for her medical disability. Specifically, she asked that she be permitted to continue to work from home, as she had done prior to her strokes and disability.

According to the complaint, management for the defendant refused to even

discuss the possibility of providing accommodations for her disability and stated that she was not entitled any reasonable accommodations because she had not filled out a form claiming insurance benefits for a "long term disability."

On March 7, 2010, defendant's Chief Compliance Officer told plaintiff that she was being terminated immediately. Soon thereafter, plaintiff received a "U-5" form indicating that her employment was being terminated because of "consolidation of personnel."

In March 2010, plaintiff commenced the instant action by filing the summons and verified complaint, alleging that defendant unlawfully terminated plaintiff's employment because of her gender and disability. In her complaint, plaintiff contends that it is "absolutely false" that she was terminated because of "consolidation of employment." Plaintiff asserts that the "real reason" defendant terminated her employment is that she is a woman with a medical disability caused by pregnancy-related strokes; that the company resented her pregnancy-related absences and her medical leave of absence; and that the company did not want to even discuss potential reasonable accommodations for that disability.

In addition to the facts alleged above, the complaint alleges that Ms. Nissan was "marginalized" by her male co-workers and supervisors, and excluded by those male employees from important and lucrative debt sales and trades.

According to the complaint, Ms. Nissan learned of and objected to unethical conduct by a senior-level employee of the company, but she was “ignored and further marginalized” (Verified Complaint, p. 13).

Plaintiff contends that her male colleagues wrongfully excluded her from participating in Lehman Brothers trades that would have earned her commissions in the range of approximately \$1 million to \$2 million dollars.

She asserts that the company discriminated against her on the basis of her gender by denying her reimbursement for approximately \$5,000 of travel expenses she incurred related to the company’s holiday party held in Texas in December 2008. According to plaintiff, each male employee that traveled from New York to Texas for that event was reimbursed for his travel expenses (Verified Complaint, p. 12, para. 48). However, despite repeated requests, the Company, “without any valid justification,” refused to reimburse Ms. Nissan for her expenses (Id.).

The first and second causes of action allege that defendant, in terminating plaintiff’s employment, discriminated against her on the basis of gender in violation of the New York State Human Rights Law (Executive Law section 296 et seq.) (the State HRL) and the New York City Human Rights Law (Administration Code of the City of New York section 8-101 et seq.) (The City HRL). The third and fourth causes of action allege discrimination on the basis of

disability under the State and City HRL. Plaintiff seeks compensatory damages in excess of \$5,000,000; punitive damages in excess of \$10,000,000; and statutory attorneys' fees.

Discussion

Defendant contends that pursuant to CPLR 7503(a), and section 4 of the Federal Arbitration Act ("FAA"), this action should be dismissed and plaintiff should be compelled to honor her agreement to submit her claims to arbitration. Based on holdings of the United States Supreme Court and the FAA, defendant asserts that parties who sign agreements to arbitrate are absolutely obligated to pursue their claims in arbitration and cannot avoid their agreements by seeking recourse to the courts.

In response, plaintiff contends that defendant narrowly drafted its arbitration clause to cover only those disputes related to the "employment agreement"; that plaintiff's gender and disability-based discrimination claims are unrelated to her employment agreement; and, therefore, that plaintiff's claims are not covered by defendant's employment agreement's arbitration clause.

The arbitration clause of the employment agreement states:

Any dispute arising out of or relating to this agreement or its breach between the Employee and the Company shall be resolved by arbitration pursuant to the rules of the FINRA and shall take place in

Austin, Texas and judgment upon the award entered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The party prevailing, in addition to other relief, shall be entitled to an award for reasonable attorney's fees and related costs. Nothing in this paragraph, however, shall limit or affect the Company's right to seek from a court injunctive or other equitable relief, including but not limited to relief for the unauthorized sale, use or disclosure of Confidential Material.

(Plaintiff's Motion Papers, exhibit G, p. 4, para. 15).

The facts alleged in this case are analogous to the facts alleged in Tong v. S.A.C. Capital Management, LLC, 52 A.D.3d 386 [1st Dept., 2008]).

In Tong, an employee sued his employer for discrimination, harassment, and retaliation, based, inter alia, on his gender, under the State and City HRL. The Supreme Court granted the employer's motion to compel arbitration, and the employee appealed.

The First Department affirmed, holding that the employee's claims fell within the scope of his employment agreement's arbitration provision. The Court wrote:

Since all plaintiff's claims arise out of events that occurred in the course of his employment by defendant SAC Capital Management, LLC and supervision by SAC manager defendant Ping Jiang, they all are subject to arbitration pursuant to the broad and unambiguous arbitration provision contained in his employment agreement, which covers "any dispute or controversy arising out of or relating to this agreement, the interpretation thereof, and/or the employment relationship." Even if the arbitration provision were, as plaintiff

contends, ambiguous in scope, since its construction is governed by the Federal Arbitration Act, any such ambiguities would be properly resolved in favor of arbitration.

Tong, 52 A.D.3d at 387 (internal citation omitted).

Because the arbitration clause in the instant action contains identical “arising out of” language, the Court finds that Ms. Nissan’s claims fall squarely within the scope of her employment agreement’s arbitration provision.

Accordingly, it is


ORDERED that defendant’s motion to compel arbitration and dismiss this action is granted; and it is further

ORDERED that plaintiff Wendy E. Nissan shall arbitrate her claims against defendant Tejas Securities Group, Inc., in accordance with the employment agreement; and it is further

ORDERED that plaintiff’s motion to stay arbitration is denied.

The foregoing constitutes the decision and order of the court.

Date: 11/13/12
New York, New York



Anil C. Singh