

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LYNNE BRUNDAGE and MICHAEL
BRUNDAGE,

Plaintiffs,

-against-

PENSION ASSOCIATES RETIREMENT
PLANNING, LLC and MORGAN STANLEY &
CO., LLC,

Defendants.

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DATE FILED: 2/3/2023

No. 18 Civ. 2473 (NSR)

ORDER

NELSON S. ROMÁN, United States District Judge:

Plaintiffs Lynne Brundage and Michael Brundage filed this action against Defendants Pension Associates Retirement Planning, LLC (“Pension Associates”) and Morgan Stanley & Co., LLC (“Morgan Stanley”) pursuant to the Employment Retirement Income Act (“ERISA”), 29 U.S.C. §§ 1024(b)(4), 1132(c), New York General Business Law § 349, and New York common law. (ECF No. 1.) Defendant Pension Associates filed a motion to dismiss (ECF Nos. 15 & 20), and Defendant Morgan Stanley filed a motion to compel arbitration and stay this matter or, in the alternative, to dismiss. (ECF No. 21.) In an Opinion & Order dated June 13, 2019, this Court granted Defendant Morgan Stanley’s motion to compel arbitration and stay the matter. (ECF No. 27 at 14.) This Court further instructed the parties to notify this Court when the arbitration concluded. (*Id.*) Having received no such notification, this Court ordered “Plaintiffs show cause in writing on or before February 7, 2023 why this action should not be dismissed without prejudice for want of prosecution pursuant to Fed. R. Civ. P. 41(b).” (ECF No. 29.) The Court warned that “[f]ailure to comply with this Court’s present order will result in dismissal of this case for want of prosecution.” (*Id.*)

In a letter dated February 2, 2023, Plaintiffs report to the Court that the arbitration process was “delayed by multiple adjournments resulting from the COVID-19 pandemic.” (ECF No. 30.) Arbitration concluded on December 20, 2022. Plaintiffs are now “prepared to resume litigating the instant matter.” (*Id.*) Plaintiffs argue the delay in resuming the present litigation “was not caused by failure of Plaintiffs to comply with any orders, or by any neglect on the Plaintiff[s]’ part.” (*Id.*) Plaintiffs conclude by requesting this Court (1) lift the stay; (2) dismiss Defendant Morgan Stanley from the litigation with prejudice; and (3) grant Plaintiffs leave to file an Amended Complaint pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure. Accordingly, it is hereby

ORDERED that the Clerk of Court vacate the stay in the instant proceeding. It is further

ORDERED that the Clerk of Court vacate the Order to Show Cause at ECF No. 29.

The parties are directed to submit a Stipulation of Dismissal as to Defendant Morgan Stanley. Plaintiff is granted leave to file an Amended Complaint and is directed to do so by February 24, 2023. Defendant is directed to answer or otherwise seek leave to respond to the Amended Complaint by March 17, 2023.

SO ORDERED.

Dated: February 3, 2023
White Plains, New York



NELSON S. ROMÁN
United States District Judge