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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 21

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GFI GROUP INC., GFI SECURITIES LLC., JOHN PUCKHABER and CHRISTOPHER SPENCER,

Petitioners,

For an Order Pursuant to Article 75 of the Civil Practice Law and Rules Staying Arbitrations

Index No. 109888/05

-against-

MURPHY & DURIEU,

Respondent.

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ROBERT LIPPMANN, J. :

Petitioners move for an order staying two arbitrations commenced by respondent, and directing respondent to pursue its claims against petitioners John Puckhaber and Christopher Spencer before a panel of National Association of Securities Dealers (NASD) Dispute Resolution, Inc., in an arbitration commenced by Puckhaber, Spencer and petitioner GFI Securities LLC (GFI Securities).

Petitioner GFI Group is a corporation formed under the laws of Delaware. Petitioner GFI Securities is a limited liability corporation formed under the laws of New York. Petitioners Puckhaber and Spencer are employees of GFI Securities. Respondent is a limited partnership existing under the laws of New York.

Puckhaber started working for respondent in 1998 and Spencer started working for respondent in 2000. They were hired to broker on respondent's existing Corporate Bonds Desk, which focused on brokering utility bonds. In 2002, Puckhaber and Spencer were required to sign employment contracts with six year terms in order to maintain their good standing and revenue

levels. Section 6 of the agreements contained non-competition provisions.

On May 12, 2005, Puckhaber and Spencer resigned from respondent and confirmed to respondent that they were leaving to pursue opportunities at GFI Securities. On June 8, 2005, respondent commenced an arbitration with NASD against GFI Group, entitled Murphy & Durieu v GFI Group Inc., (NASD Arbitration No, 05-3014). Respondent asserts four claims against GFI Group: conversion of confidential business information, unfair competition, misappropriation of trade secrets and tortious interference with the agreements. To date, GFI Group has not participated in the NASD arbitration.

On June 8, 2005, respondent commenced an arbitration at the New York Stock Exchange (NYSE) against Puckhaber and Spencer, entitled Murphy & Durieu v John Puckhaber & Christopher Spencer, (NYSE Docket No. 2005-016110). In the NYSE Arbitration, respondent asserts four claims against Puckhaber and Spencer: conversion of confidential business information, breach of contract with respect to the agreements, unfair competition and misappropriation of trade secrets. Puckhaber and Spencer have submitted an answer and defenses along with a complete reservation of their rights.

On July 15, 2005, GFI Securities, Puckhaber and Spencer commenced an arbitration against respondent before NASD, entitled GFI Securities LLC, John Puckhaber and Christopher Spencer v Murphy & Durieu, LP. The three claimants seek a declaratory judgment holding that the non-competition provisions in the agreements are inapplicable to the facts and/or are unenforceable under New York law; GFI Securities did not tortiously interfere with respondent's agreements with Puckhaber and Spencer; they did not misappropriate any trade secrets from respondent; and they did not engage in unfair competition or any other wrongdoing in connection

with the hiring and employment of Puckhaber and Spencer by GFI Securities.

Petitioners move to stay the arbitrations commenced by respondent. First, they argue that respondent's NASD arbitration should be stayed because GFI Group is not a member of NASD, does not have an agreement with respondent to arbitrate disputes between them and has not consented to arbitration with respondent. According to petitioners, GFI Group is an indirect parent of GFI Securities, which is a member of NASD. However, they argue that the fact of corporate affiliation between GFI Group and GFI Securities does not subject GFI Group to NASD arbitration.

Petitioners contend that respondent's NYSE arbitration should also be stayed because NASD is the more appropriate venue. The parties in this proceeding, except GFI Group, are members of NASD. The arbitration brought by GFI Securities, Puckhaber and Spencer involve all the relevant parties and allegedly would provide the opportunity for the efficient determination of their claims. Petitioners claim that this court has the power to order the consolidation of more than one arbitration and that this court should stay the NYSE arbitration and compel respondent to pursue its claims in NASD arbitration commenced by GFI, Puckhaber and Spencer..

Petitioners argue that the questions of law and fact in both respondent's NYSE arbitration and GFI's NASD arbitration are the same, and no prejudice would result to respondent from an order staying the NYSE arbitration. They assert that the dispute among the parties is subject to mandatory arbitration before the NASD, citing Rule 10201 of the NASD Code of Arbitration Procedure.

Petitioners finally argue that the continuation of the NYSE arbitration would be

prejudicial to them, as inconsistent decisions could result from the NYSE and NASD proceedings.

Respondent opposes the petition to stay arbitration. Based on the allegations in the petition, respondent has filed an amended statement of claim with NASD replacing GFI Group with GFI Securities. As a result of this action, respondent states that GFI Group's motion for a stay has been rendered moot.

Respondent argues that petitioners' attempt to move the arbitration from NYSE to a forum preferred by petitioners is nothing more than an attempt at forum shopping. Moreover, respondent contends that petitioners are not entitled to the relief they seek. Where, as here, an agreement is governed by the Federal Arbitration Act (FAA), consolidation allegedly can only be ordered if the arbitration agreement contains an express provision providing for it. Since the arbitration agreements between respondent and Puckhaber and Spencer do not contain such a provision, the petition allegedly fails as a matter of law and must be dismissed.

According to respondent, the pertinent arbitration provision is contained in the Form U-4 executed by Puckhaber and Spencer upon commencing employment with respondent. The arbitration provision requires them to arbitrate, among other things, any dispute between either of them and respondent pursuant to any organization with which they are registered. While they were employed by respondent, both Puckhaber and Spencer were registered with NYSE and NASD. According to respondent, NYSE is a proper forum for the arbitration. Significantly, the arbitration provision in the Form U-4 , allegedly governed by FAA, does not contain a consolidation provision.

In reply, petitioners argue that the arbitration provision in the agreements is governed by

New York law, not the FAA. According to petitioners, New York law clearly allows the consolidation of separate arbitrations. Petitioners also argue that the relief sought by them does not conflict with the terms or policies underlying the FAA.

First, this court acknowledges that respondent has replaced GFI Group with GFI Securities in its NASD arbitration, therefore rendering GFI Group's claim against respondent moot.

Next, there is an issue as to whether the FAA or New York law is applicable to these arbitrations. The FAA applies when a contract calling for arbitration evidences transactions involving interstate commerce. See Barbier v Shearson, Lehman Hutton, Inc., 948 F2d 117 (CA2 1991). In a proceeding concerning a U-4 form, evidencing a transaction involving commerce, the FAA governs and supplants inconsistent state law. Stinger v Jeffers & Co., 78 NY2d 76 (1991). Respondent refers to the Forms U-4 executed by Puckhaber and Spencer. This indicates that the agreements involve interstate commerce. A standard choice-of-law provision in an arbitration will not override the federal laws under the FAA governing arbitration disputes without the express intention of the parties to apply state arbitration law. Bisnoff v King, 154 F Supp 630 (SD NY 2001).

In the agreements that Puckhaber and Spencer executed, there was a choice-of-law provision. Section 7 (d) of the agreements provides the following: This agreement will be governed by and construed and enforced in accordance with the laws of the State of New York, without regard to its conflict of laws, rules and principles.

The provision does not spell out an explicit adherence to the state arbitration laws. Therefore, the FAA applies to this matter. Courts may not consolidate arbitrations in

contravention of the parties' agreement even if consolidation would ensure a more economical proceeding. In re Cullman Ventures, Inc., 252 AD2d 222 (1st Dept 1998). This means that the consolidation is not allowed unless the parties' arbitration agreement specifically provides for it.

Section 7 (e) of the employment agreements is the arbitration provision which provides:

> Arbitration: All disputes or differences between or among the Parties hereto arising under or which are related to this Agreement (other than proceedings related to Section 6) will be settled by arbitration in New York City, New York, conducted in accordance with the New York Stock Exchange, Inc.(NYSE) or, if the NYSE declines jurisdiction, the National Association of Securities Dealers, Inc.

The arbitration provision does not provide for the consolidation of arbitration proceedings. Therefore, this court is precluded from consolidating the arbitrations. Moreover, attempts at consolidation should be conducted by the arbitrators. For that reason, the court shall deny the motion to stay respondent's arbitration.

Accordingly, it is

ORDERED and ADJUDICATED that petitioners' motion to stay arbitration is denied.

DATED: 10-31-05

ENTER:

HON. ROBERT D. LIPPMANN J.S.C.

FILED
NOV 10 2005
NEW YORK
COUNTY CLERK'S OFFICE

Norman Cousman
Clerk