

Revis v Schwartz

2017 NY Slip Op 33259(U)

June 7, 2017

Supreme Court, Westchester County

Docket Number: 67097/2016

Judge: Sam D. Walker

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
PRESENT: HON. SAM D. WALKER, J.S.C.

-----X
DARRELL REVIS and SHAVAE, LLC,

Plaintiff,

-against-

Index No. 67097/2016
DECISION & ORDER
Motion Sequence 3

NEIL SCHWARTZ, SCHWARTZ & FEINSOD, LLC,
and JONATHAN FEINSOD, JOHN DOE,

Defendants.
-----X

The following papers were received and considered in connection with a motion pursuant to CPLR 7503 to compel arbitration and for a stay in the above-captioned matter:

<u>PAPERS</u>	<u>NUMBERED</u>
Notice of Moton/Affirmation/Exhibits A-C/Affidavit/Exhibits A-D	1-10
Memorandum of Law in Support	11
Affidavits in Opposition(5)/Exhibits A-G	12-22
Memorandum of Law in Opposition	23
Reply Affidavits(2)/Exhibits A, A-C, B	24-30
Memorandum of Law in Reply	31

Factual and Procedural Background

Plaintiff, Darrelle Revis ("Revis") is a player in the National Football League ("NFL") and a member of the National Football League Players Association ("NFLPA"), the union for professional football players in the NFL with a negotiated a Collective Bargaining Agreement through 2020. Revis is the owner of Shavae, LLC.

Schwartz & Feinsod, LLC¹ ("S&F") is an NFL sports agency owned by Defendants, Neil Schwartz ("Schwartz") and Jonathan Feinsod ("Feinsod"), certified NFLPA contract advisors. Schwartz is also an attorney. On January 18, 2007, Revis signed a Standard Representation Agreement ("SRA") with Schwartz. Revis asserts that he also entered into an oral agreement with Schwartz, whereby Schwartz agreed to serve as Revis' attorney from 2007 to 2016 and as Shavae LLC's attorney from its creation in 2016, through an unknown legal entity, John Doe. As per Revis, Schwartz would provide legal services related to marketing and endorsement agreements for a 10% contingent fee from amounts received for marketing and endorsement agreements handled by Schwartz on Revis' behalf.

Schwartz and Feinsod have negotiated contracts and endorsement deals on Revis' behalf since entering into the SRA. One such deal was the Healthy Beverage Agreement ("HBA"), which was negotiated in or about January 2015. However, Revis asserts that Schwartz secretly hired another law firm, Wilentz, Goldman & Spitzer P.A. ("Wilentz"), to assist Schwartz with the negotiation and drafting of the deal and directed Wilentz not to communicate directly with Revis regarding the deal. Revis asserts that the HBA provided for each party to pay his own attorney's fees, but contrary to such terms, Healthy Beverage paid Wilentz and deducted the amount from what was due to Revis, allegedly to conceal Wilentz's involvement in the HBA and allow Revis to pay Wilentz's bill without him being aware that he was paying the bill. Revis alleges that Schwartz had an oral agreement with Healthy Beverages's CEO, Linda Barron to conceal the payments to Wilentz.

¹Schwartz & Feinsod is a corporation and not a limited liability company as named in the complaint. Therefore, the correct title is Schwartz & Feinsod, Inc.

Revis also asserts that in January 2015, Schwartz brought the one page HBA to Revis and told him to sign the Agreement. Revis alleges that at the time, he was focused on the playoffs and the Super Bowl and signed the document without any explanation from Schwartz. Revis further asserts that Schwartz had Revis initial the attached Schedule A, which directed Healthy Beverage to pay 50% off all amounts due to S&F directly, without explaining the contents or giving Revis time to read it. Revis claims that he was unaware of that provision, was never told of the provision and only initialed the provision because Schwartz told him to initial the page.

The first three payments made pursuant to the HBA, were distributed as follows: 50% to Revis, 12.5% to Schwartz, 12.5% to Feinsod, 12.5% to Diana Askew (Revis' mother) and 12.5% to Hiller. Revis alleges that in early 2016, he requested a copy of the HBA from S&F, but he was not sent a copy of the agreement until he insisted and he was then sent an illegible copy. Revis claims S&F eventually sent him a copy of the HBA, which he read and discovered for the first time, the provision that S&F was to be paid 50% under the agreement. On May 12, 2016, Revis terminated his agent/client relationship with Schwartz by a letter. Healthy Beverage then made the fourth payment in July 2016. Revis received 50%, but NFLPA contacted Schwartz to inform him that Revis was questioning the distribution of the other 50% of the final payment. Schwartz avers that he deposited the other 50% into S&F's attorneys' escrow account and offered to transfer the funds to an escrow account maintained by the NFLPA. On August 12, 2016, S&F commenced arbitration against Revis, pursuant to the SRA, to resolve any issues with respect to amounts due to Revis.

Revis also asserts that during the nine years Schwartz represented him, Schwartz

billed Revis and Shavae for contingent legal fees to which he was not entitled. Revis alleges that Schwartz failed to communicate in writing about the fees he would charge or the expenses for which Revis and Shavae would be responsible.

On November 15, 2016, Revis filed a Summons and Complaint alleging breach of fiduciary duty, fraud, breach of contract, breach of implied duty of good faith and fair dealing, unjust enrichment, conversion and civil theft, and fraudulent inducement. Defendants now file the instant motion pursuant to CPLR 7503, seeking to compel arbitration and for a stay of the action.

Discussion

CPLR 7503 states in relevant part that:

A party aggrieved by the failure of another to arbitrate may apply for an order compelling arbitration. Where there is no substantial question whether a valid agreement was made or complied with, and the claim sought to be arbitrated is not barred by limitation..., the court shall direct the parties to arbitrate. CPLR 7503(a). 'In deciding an application to compel arbitration pursuant to CPLR 7503(a), the court is required to "first make a determination whether the parties have entered into a valid arbitration agreement (citation omitted) and, if so, whether the issue sought to be submitted to arbitration falls within the scope of that agreement"' *Koob v. IDS Financial Services, Inc.* 213 A.D.2d 26, 629 N.Y.S.2d 426 (1st Dep't 1995). "The agreement [to arbitrate] must be clear, explicit and unequivocal...and must not depend upon implication or subtlety" *Sutphin Retail One, LLC v. Sutphin Airtrain Realty, LLC*, 143 A.D.3d 972, 973, 40 N.Y.S.3d 457, 458 (2d Dep't 2016).

"A broad arbitration clause should be given the full effect of its wording in order to

implement the intention of the parties." *Weinrott v. Carp*, 32 N.Y.2d 190, 199, 344 N.Y.S.2d 848, 298 N.E.2d 42 (1973). A court's job is to perform the initial screening process designed to determine in general terms whether the parties have agreed that the subject matter under dispute should be submitted to arbitration. The burden is on the party seeking arbitration, to demonstrate a "clear and unequivocal" agreement to arbitrate, *Matter of Siegel v 141 Bowery Corp.*, 51 A.D.2d 209, 212. "Once it appears that there is, or is not a reasonable relationship between the subject matter of the dispute and the general subject matter of the underlying contract, the court's inquiry is ended," *Nationwide Gen. Ins. Co. v. Investors Ins. Co. of America*, 37 N.Y.2d 91, 332 N.E.2d 333 (1975). Here, Defendants have demonstrated a clear and unequivocal agreement to arbitrate and the Court finds a relationship between the subject matter of the dispute and the general subject matter of the underlying SRA.

It is clear to the Court that the parties entered into a valid arbitration agreement and that the issues stated in the Summons and Complaint are encompassed within the SRA's broad arbitration clause which states that "[a]ny and all disputes between Player and Contract Advisor involving the meaning, interpretation, application, or enforcement of this Agreement or the obligations of the parties under this Agreement shall be resolved exclusively through the arbitration procedures set forth in Section 5 of the NFLPA Regulations Governing Contract Advisors." [Paragraph 8 of the SRA]. The dispute in this action involves the parties' application or enforcement of the Agreement or the obligations of the parties under the Agreement.

The Court finds no merit in Revis' assertion, nor did Revis provide any evidence, that Schwartz acted as his attorney and that the claims in this action are wholly separate

from the rights and duties created under the SRA. Revis claims that the action arises from Schwartz's separate agreement to provide other legal services to Revis and Revis' LLC and are based upon Schwartz's misconduct related to his legal services regarding the drafting and execution of the endorsement agreement between Healthy Beverage, LLC and Revis and various other actions by Schwartz that violated his legal, ethical and fiduciary obligations to Revis and Shavae as a member of the New York Bar. However, Revis provides absolutely nothing to show how and when Schwartz acted as anything other than his agent and in fact Revis' own letter terminating the relationship between Schwartz and Revis states that the letter officially terminates the relationship of agent and client and makes no mention of an attorney/client relationship.

The mere fact that Schwartz is an attorney does not create an attorney/client relationship to get Revis out of the arbitration clause of the SRA. Further, Revis provided no documentation or other evidence to establish that the 10% agent fee was actually a legal fee for Schwartz's representation as an attorney.

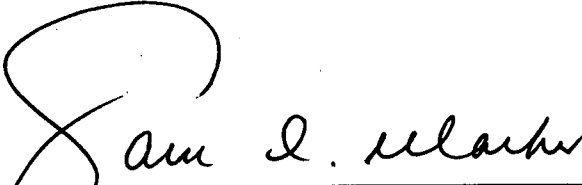
Therefore, it is

ORDERED that the parties shall submit to arbitration pursuant to the SRA; and it is further

ORDERED that the action is stayed pending such arbitration.

The foregoing constitutes the Opinion, Decision and Order of the Court.

Dated: White Plains, New York
June 7, 2017


HON. SAM D. WALKER, J.S.C.