

Matter of Berdon LLP v Stenger
2018 NY Slip Op 31947(U)
August 13, 2018
Supreme Court, New York County
Docket Number: 652153/2018
Judge: Carmen Victoria St. George
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: IAS PART 34**

-----X

In the Matter of the Application of

BERDON LLP,

Petitioner,

-against-

Index No. 652153/2018

Motion Sequence 001

Decision and Order

CAROLYN STENGER,

Respondent.

-----X

Carmen Victoria St. George, J.S.C.:

Currently, Berdon LLP petitions this Court for an order compelling mediation under its agreement with respondent Carolyn Stenger pursuant to CPLR § 7601. Alternatively, petitioner seeks an order compelling arbitration under the agreement between the parties pursuant to CPLR § 7502.

Petitioner Berdon LLP offers professional services as accountants and financial advisors. On November 30, 2012, respondent executed an engagement letter (“Agreement”) by which she contracted with petitioner for an array of professional accounting services pertaining to a matrimonial action. Respondent and respondent’s attorney at the time executed the agreement. The Agreement states that invoices will be presented monthly and are due upon receipt. Notably, the Agreement includes an exhibit that notified respondent that disputes arising from the Agreement shall first be submitted for good faith mediation. It further states that “if the matter is not resolved by mediation within 60 days of its submission to the mediator, then the parties shall submit the dispute for arbitration administered by the American Arbitration Association” (*see* petitioner’s exhibit A).

Petitioner alleges, and respondent does not oppose, that respondent has failed and refuses to pay the fees charged by petitioner for professional services that were performed pursuant to the Agreement. Petitioner states that it rendered professional services to respondent for a period of time ending in April 2016. Petitioner asserts that it issued invoices to respondent on a monthly basis and respondent has failed to pay the full amount due on the invoices totaling \$373,915.95. Petitioner maintains that it has repeatedly attempted to communicate with respondent to resolve the outstanding balance. Petitioner submits two letters it sent to respondent demanding immediate payment dated March 15, 2018 and April 17, 2018, respectively. When respondent failed to respond, petitioner commenced this proceeding.

Pursuant to CPLR § 7503(a), “[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 [of time], the court shall direct the parties to arbitrate (*see Liberty Mgt. & Constr. Ltd. v Fifth Ave. & Sixty-Sixth St. Corp.*, 208 AD2d 73, 80 [1st Dept 1995]) [“the judicial inquiry ends once it is determined that a valid agreement to arbitrate exists and that the matter in controversy falls within the scope of the agreement”]). Here, petitioner has demonstrated that (1) a valid agreement to arbitrate exists, and (2) the matter in controversy falls within the scope of the Agreement (*see Thies v Bryan Cave LLP*, 35 AD3d 252, 252-253 [1st Dept 2006] [engagement letters with arbitration clause are sufficient contracts to bind parties to those clauses]). The fourth page of the Agreement states that any disputes arising out of or relating to this engagement shall be resolved in accordance with the dispute resolution procedures set forth in Exhibit 1 of the Agreement. The Court notes that Exhibit 1 unequivocally establishes that the parties agreed that any dispute arising out of the Agreement shall be resolved by mediation, and failing that,

arbitration (*see* CPLR § 7501 [“A written agreement to submit any controversy thereafter arising or any existing controversy to arbitration is enforceable without regard to justiciable character of the controversy”]). Any liability of respondent to petitioner necessarily arises out of the relationship agreement by the Agreement. As such, pursuant to the Agreement’s mediation and arbitration clauses, the parties first and foremost, must submit to mediation. (*see Ogoe v New York Hosp.*, 99 AD2d 968, 969 [1st Dept 1984] [“[defendant] was entitled to such relieve under the arbitration clause in the contract, and we so direct. Any liability of [defendant] to the plaintiff would necessarily arise out of the relationship created by the contract”]; *see generally Praetorian Realty Corp. v Presidential Towers Residence, Inc.*, 49 AD2d 816, 817 [1st Dept 1975] [“Our Court of Appeals has held that it is an announced policy of this State to encourage arbitration and to prevent the parties to an arbitration agreement from using the courts as a vehicle to protract litigation. Broad arbitration clauses should therefore be given the full effect of their wording”]).

Accordingly, respondent has demonstrated its entitlement to compel mediation, and failing that, arbitration, in accordance with the rules of the American Arbitration Association in the New York City area.

Based on the foregoing, it is

ORDERED that the petition to compel mediation is granted; and it is further


ORDERED that petitioner Berdon LLP shall mediate its claims against respondent Carolyn Stenger and if necessary arbitrate in accordance with the alternate dispute resolution clause contained in the Agreement; and it is further

ORDERED that all proceedings in this action are hereby stated, except for an application to vacate or modify the stay; and it is further

ORDERED that either party may make an application by order to show cause to vacate or modify the stay upon determination of the mediation or arbitration.

This constitutes the decision and order of this court.

Dated: August 13, 2018

ENTER:


CARMEN VICTORIA ST. GEORGE, J.S.C.
HON. CARMEN VICTORIA ST. GEORGE
J.S.C.