

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4946-09T1

BRIAN CAMPBELL,

Plaintiff-Appellant,

v.

PAMRAPO SERVICE CORP.
and DANIEL MASSARELLI,
i/p/a DANIEL MAZZARELLA,

Defendants-Respondents.

Argued March 15, 2011 – Decided May 24, 2011

Before Judges Messano and Waugh.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Docket No. L-2237-10.

Dan A. Druz argued the cause for appellant.

Steven L. Menaker argued the cause for respondents (Chasan, Leyner & Lamparello, P.C., attorneys; Mr. Menaker, of counsel and on the brief; Kirstin Bohn, on the brief).

PER CURIAM

Plaintiff Brian Campbell appeals from the order of the Law Division vacating a previously-entered order to show cause and dismissing his verified complaint against defendants Pamrapo Service Corp. (PSC) and Daniel Massarelli. We affirm

substantially for the reasons expressed in the oral opinion of Judge Barry P. Sarkisian.

The record reveals that on April 22, 2010, plaintiff filed a verified complaint seeking to compel defendants to submit to arbitration. Plaintiff alleged certain facts of which there is little dispute.

PSC is a wholly-owned subsidiary of Pamrapo Bancorp (the Bank). Massarelli is a member of the Board of PSC.¹ Plaintiff was employed by PSC as a manager and was also licensed as a "registered representative" by the Financial Industry Regulatory Authority (FINRA), the successor to the National Association of Securities Dealers (NASD). The Bank would refer its customers to plaintiff, who maintained a desk in the Bank, for investment advice.

Plaintiff contended that he was required by the Bank to become associated with a "FINRA member broker-dealer," Prime Capital Services Inc. (Prime), thus allowing PSC and plaintiff to share commissions charged in relation to the purchase of securities and life insurance products by the Bank's customers. In order to become licensed and registered with FINRA through Prime, plaintiff completed and executed a Uniform Application

¹ Plaintiff alleged Massarelli was the Chief Executive Officer of PSC.

for Securities Industry Registration (U-4) which contained the following language:

I agree to arbitrate any dispute, claim or controversy that may arise between me and my firm, or a customer, or any other person, that is required to be arbitrated under the rules, constitutions, or by-laws of [FINRA] as may be amended from time to time.

Disputes arose with defendants regarding commissions plaintiff claims were due to him. On or about March 9, 2010, plaintiff filed a "Statement of Claim" with FINRA naming PSC, Prime and Massarelli as respondents. On May 6, 2010, FINRA notified defendants that they were "not required to arbitrate disputes in the FINRA arbitration forum." Apparently in anticipation of this development, plaintiff filed his verified complaint and order to show cause seeking to compel defendants to arbitrate the employment dispute. The judge entered the order to show cause, defendants filed an answer, both parties filed supplemental papers, and the matter was heard on the return date, June 11, 2010.

In his certification in opposition, Massarelli alleged that plaintiff was discharged when he failed to remit more than \$270,000 in commissions to PSC. Massarelli further certified that he and PSC were not registered with FINRA, nor did they consent to submit "any claims or disputes between us and [plaintiff] to arbitration." In furtherance of his position,

Massarelli attached copies of FINRA's arbitration rules and regulations.

Pursuant thereto, all disputes must be arbitrated if "[r]equired by a written agreement," or "[r]equested by the customer"; the "dispute is between a customer and a member or associated person of a member"; and, "[t]he dispute arises in connection with the business activities of the member or the associated person." FINRA's rules further provide that "a dispute must be arbitrated . . . if the dispute arises out of the business activities of a member or an associated person and is between or among: Members[,], Members and Associated Persons[,], or Associated Persons." These are defined terms, and it is undisputed that defendants are not "customers," "members," or "associated persons," and plaintiff is not a "customer."

In reply, plaintiff disputed Massarelli's claims regarding the commissions, and further certified that he was directed by PSC to obtain his license, and that PSC benefited as a result because it was able to share in the commissions earned by plaintiff. Citing the language of the U-4, plaintiff claimed that "all disputes arising from [his] business activities with [his] member 'firm, or a customer, or any other person,'" were subject to arbitration. Plaintiff argued that PSC was "any other person" and, therefore, required to arbitrate the dispute.

After considering the oral arguments of both sides, Judge Sarkisian noted that "[a]rbitration is a matter of contract," and "there [wa]s no written agreement in which . . . [PSC] agreed to submit . . . to arbitration." The judge also rejected plaintiff's argument that he was acting as PSC's agent when he executed the U-4, thus, binding PSC to submit all disputes to arbitration. Judge Sarkisian concluded that those cases cited by plaintiff were inapposite, and, even if plaintiff was PSC's agent, the U-4 and FINRA's arbitration requirements did not apply to the employment dispute. He noted, "[T]here[] was [no] employment agreement between plaintiff and the [B]ank which compelled these matters to be submitted to arbitration." Lastly, Judge Sarkisian rejected any claim that PSC was equitably estopped from refusing to submit to arbitration. He entered the order under review and this appeal followed.

Before us, plaintiff contends that a valid agreement to arbitrate existed between the parties and that PSC is required to arbitrate the dispute because "a nonsignatory may be bound by an agreement to arbitrate under traditional principles of agency and contract law."

As to plaintiff's first contention, it lacks sufficient merit to warrant discussion in this opinion. R. 2:11-3(e)(1)(E). It is undisputed that neither PSC nor the Bank ever

entered into an agreement with plaintiff to arbitrate disputes arising out of plaintiff's employment.

Plaintiff asserts that he acted as PSC's agent in the sales of securities and insurance investments to the Bank's customers. He further claims that in some circumstances, an agent can bind the principal to the terms of an arbitration agreement even if the principal never expressly agrees. While we accept that statement as one of general principle, it is inapposite to the facts presented in this case.

"[A] party can be forced to arbitrate only those issues it specifically has agreed to submit to arbitration." Angrisani v. Fin. Tech. Ventures, L.P., 402 N.J. Super. 138, 149 (App. Div. 2008)(quotation omitted). However, in EPIX Holdings Corp. v. Marsh & McLennan Cos., Inc., 410 N.J. Super. 453, 466 (App. Div. 2009), we "acknowledged those cases in which arbitration was compelled where a non-signatory to the contract is closely aligned to a contracting party, such as a parent or successor corporation," citing Angrisani, supra, 402 N.J. Super. at 154, "or enjoys a principal-agent relationship therewith," citing Alfano v. BDO Seidman, LLP, 393 N.J. Super. 560, 569 (App. Div. 2007). The facts in Alfano aptly demonstrate the rationale behind this exception.

In that case, Deutsche Bank (DB) sought to compel arbitration pursuant to a customer account agreement executed by plaintiff and Deutsche Bank Securities Incorporated (DBSI), a separately incorporated indirect subsidiary registered with the Securities and Exchange Commission and acting as the Bank's agent in securities sales and transfers. Id. at 565-66. The Law Division denied DB's motion, concluding that as a nonsignatory to the agreement, DB could not enforce its provisions and compel arbitration. Id. at 568.

We reversed, noting first that "[a]gency has been applied to bind nonsignatories to arbitration agreements." Id. at 569 (citations omitted). After analyzing the relationship between the parties, "[w]e conclude[d] an agency relationship between DB and DBSI [wa]s established, allowing DB to seek enforcement of [plaintiff]'s agreement to arbitrate claims within the provisions of the DBSI Customer Account Agreement." Id. at 569-70.

Here, assuming arguendo that plaintiff was PSC's agent, his claim is not one covered by the arbitration agreement. By executing the U-4, plaintiff agreed "to arbitrate any dispute, claim or controversy that may arise between [him] and [his] firm, or a customer, or any other person, that is required to be arbitrated under the rules, constitutions, or by-laws of [FINRA]

as may be amended from time to time." Even assuming the Bank was "any other person," it is clear that the Bank was not required to arbitrate what is essentially an employment dispute between plaintiff and his employer, because that dispute is not "required to be arbitrated under the rules, constitutions, or by-laws of [FINRA]."

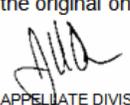
Plaintiff's reliance on our holding in Singer v. Commodities Corp., 292 N.J. Super. 391 (App. Div. 1996), is misplaced. There, although the subject of the dispute was an employment claim, the issue was whether the plaintiff could be compelled to abide by his express agreement and arbitrate his claim with a successor employer, the parent of his original employer, and an entity itself subject to the amended NASD rules and regulations then in existence. Id. at 395-400. We concluded that the plaintiff's dispute with his successor employer was covered by the original arbitration agreement contained in the U-4 he had executed. Id. at 411-15. The case provides no support for plaintiff's position on appeal.

Plaintiff also argues that even if FINRA did not consider the dispute to be covered by the arbitration agreement, quoting Alfano, supra, 393 N.J. Super. at 573, "'the unavailability of [FINRA] to arbitrate this matter will not defeat the applicability of arbitration where the arbitration contract is

otherwise enforceable and applicable to this dispute.'" However, for the reasons already cited, the arbitration agreement in this case was not applicable to this dispute. The argument lacks sufficient merit to warrant further discussion in this opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION