

Matter of Domansky v Little

2003 NY Slip Op 30022(U)

June 30, 2003

Supreme Court, New York County

Docket Number: 0101018/0182

Judge: Rosalyn H. Richter

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

HON. ROSALYN RICHTER

PRESENT: _____
Justice

PART 24

0101018/2003

DOMANSKY, MARTIN
vs
LITTLE, JEFFREY

SEQ 1

COMPEL OR STAY ARBITRATION

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

SCANNED
JUL 08 2003

**MOTION IS DECIDED IN ACCORDANCE
WITH THE ATTACHED MEMORANDUM DECISION.**

MOTION/CASE IS REFERRED TO JUSTICE

Dated: 6/30/03

Rosalyn Richter
HON. ROSALYN RICHTER J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

act on behalf of the Trust. Domansky seeks a stay of the arbitration pending the Surrogates Court's decision in that case. A court may stay an arbitration pending related court litigation to avoid a multiplicity of suits or to prevent litigation of issues that more appropriately should be litigated in the other action. *See GAF Corporation v. Werner*, 106 A.D.2d 41 (1st Dept.), *reversed on other grounds*, 66 N.Y.2d 97 (1985). Here, however, the issue before the Surrogate – whether Little has authority to act for the Trust – is separate and distinct from the dispute in the arbitration – whether Domansky violated his fiduciary duty to the partnership. Moreover, to grant a stay of arbitration merely because a party has filed a petition in Surrogates Court would unduly frustrate the purpose of arbitration clauses, which is to avoid litigation in favor of an alternative method of resolving disputes.

Domansky also argues that the Trust lacks standing to file an arbitration demand because it allegedly transferred its partnership interest to Domansky. However, as explained in this Court's decision in the Supreme Court action, that is the precise issue which is being sent to arbitration. Thus, the arbitration will cover both the Trust's claim that Domansky violated his fiduciary duty (the subject of the Trust's arbitration demand) and Domansky's claim that the Trust had transferred its partnership interest to Domansky (the subject of the now-stayed Supreme Court action). Finally, Domansky argues that the arbitration should be stayed due to the absence of an indispensable party. However, that party is not a signatory to the agreement containing the arbitration clause and thus cannot be compelled to arbitrate. Accordingly, it is

ORDERED and ADJUDGED that Domansky's petition to stay the arbitration is denied.

This constitutes the decision, order and judgment of the Court.


Justice Rosalyn Richter

June 30, 2003