[* 1]

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

PRESENT: ALICE SCHLESINGER PART 16

Justice

Adam Jacobs Associates Inc

- v -

Credit Suisse First Boston (USA)

&E

INDEX NO. 601-39226 03

MOTION DATE

MOTION SEQ. NO. 01

MOTION CAL. NO.

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

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that this motion

MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

Dated: JAN 13 2004

ALICE SCHLESINGER J.S.C.

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

JUSTICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 16

..... X

ADAM JACOBS ASSOCIATES INC., Index No. 601392/03

Plaintiff,

Mot. Seq. 001

- against -

CREDIT SUISSE FIRST BOSTON (USA), INC. and CREDIT SUISSE FIRST BOSTON,

Defendants.

----------X

SCHLESINGER, J:

Plaintiff Adam Jacobs Associates, Inc. (Adam Jacobs) places consultants and employees of different occupations with interested companies on both a temporary and a permanent basis. On or about July 8, 2002, Adam Jacobs entered into a written contract with defendant Credit Suisse First Boston (Credit Suisse) pursuant to which Adam Jacobs placed four computer programming consultants with Credit Suisse on a temporary basis. For reasons discussed more fully below, Adam Jacobs commenced the instant action in or about May 2003 seeking substantial money damages and punitive damages from Credit Suisse. Before the Court at this time is a motion by Credit Suisse for an order pursuant to CPLR § 7503(a) staying this action and compelling Adam Jacobs to submit the parties' dispute to arbitration and awarding Credit Suisse attorney's fees. The motion is granted as provided herein.

Background Facts

The parties agree that Adam Jacobs placed four particular temporary employees (the Temporary Employees) with Credit Suisse pursuant to the aforementioned July 2002 contract between the parties. The parties also agree that Credit Suisse paid to Adam

Jacobs the agreed upon compensation for the placement of the Temporary Employees through March 31, 2003. The instant controversy involves a March 31, 2003 letter agreement between the parties and the events which followed.

In sum and substance, the March 2003 letter agreement provided as follows. Adam Jacobs agreed that, effective immediately, Credit Suisse was free to utilize the services of the four designated Temporary Employees without obligation to Adam Jacobs. In consideration, Credit Suisse agreed to place Adam Jacobs on the Vendor " A list for permanent placement services for all Credit Suisse offices in North America for a minimum period of one year. The agreement further provided that the placement of Adam Jacobs on the Vendor " A list would be done by April 14, 2003. Apparently such placement on the Vendor " A list would have increased business opportunities, and therefore income, to Adam Jacobs.

When April 14, 2003 came and went without the agreed upon Vendor " A placement having been done, Adam Jacobs commenced this action seeking damages based on an alleged breach of contract and fraudulent misrepresentation by Credit Suisse. The damages, Adam Jacobs asserts, should be calculated by determining either the value of placement on the Vendor " A list based on existing data or the value to Adam Jacobs of the four Temporary Employees released from its service by the March 2003 letter agreement.

The Competing Claims

In moving to compel arbitration of the dispute and an award of attorney's fees, Credit Suisse relies on some very specific language in paragraph 20 of the July 2002 contract between the parties. That paragraph provides in relevant part that:

> The parties agree that any and all disputes, claims or controversies arising out of or relating to this agreement shall be submitted to J.A.M.S/ENDISPUTE, or its successor, for mediation, and if the matter is not resolved through mediation, then it shall be submitted to J.A.M.S/ENDISPUTE, or its successor, for final and binding arbitration... The provisions of this Paragraph may be enforced by any Court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees, and expenses, including attorneys fees, to be paid by the party against whom enforcement is ordered.

Credit Suisse asserts that this paragraph applies to the instant dispute which flows from the March 2003 letter agreement. It acknowledges that the March 2003 agreement is a writing separate from the July 2002 contract and that the letter agreement does not specifically refer to the July contract. However, relying on Nationwide General Ins. Co. *v.* Investors Ins. *Co. of* America, 37 NY2d 91, 96 (1975) and its progeny, Credit Suisse asserts that the arbitration clause covers the instant dispute because, at a minimum, there exists "a reasonable relationship between the subject matter of the dispute and the general subject matter of the underlying [July 2002] contract..."

Such a "reasonable relationship" is evident, Credit Suisse contends, because the March 2003 agreement undeniably relates to the July 2002 contract. The July 2002 contract expressly provided for Adam Jacobs' placement with Credit Suisse of the four Temporary Employees, specifying their names in workorders and including their signatures in letter agreements attached as exhibits to the contract, and the March 2003 agreement expressly provided for the termination of that placement, again by referring to the four Temporary Employees by name. Even if the July 2002 and March 2003 agreements are

viewed as separate contracts, "the court's inquiry is ended", and arbitration must be ordered Credit Suisse contends, upon a finding of a "reasonable relationship" between the subject matter of this dispute and the general subject matter of the July 2002 contract. 37 NY2d at 96.

Of course Adam Jacobs vigorously disagrees. The subject matter of the instant lawsuit is the failure of Credit Suisse to place Adam Jacobs on the Vendor "A" list for permanent placement services nationwide, it contends. In contrast, the general subject matter of the July 2002 contract is the placement of the particular Temporary Employees with a particular Credit Suisse office. Adam Jacobs continues that it entered into the March 2003 agreement primarily to obtain placement on the Vendor "A" list. The reference to the Temporary Employees in this lawsuit and the March 2003 agreement, or even in the potential calculation of damages, does not make the placement of the Employees the subject matter of the dispute, as that placement has not caused either party a problem. Rather, according to Adam Jacobs, the subject matter of the dispute arises from the failure of Credit Suisse to place Adam Jacobs on the Vendor "A" list. As that issue is in no way mentioned or even contemplated by the July 2002 contract which contains the arbitration clause, Adam Jacobs urges, no basis exists for a finding that the "reasonable relationship" test has been satisfied. Finally, Adam Jacobs argues that Credit Suisse has effectively conceded the separateness of the March 2003 agreement by having asserted that it contemplated an extensive contract regarding placement on the Vendor "A" list, one completely separate and apart from the July 2002 contract.

Public Policy and the Circumstances Favor Arbitration

While Adam Jacobs has made some compelling arguments, the issue must be

resolved in favor of Credit Suisse and consistent with "the long and strong public policy favoring arbitration." *Smith* Barney *v.* Sacharow, 91 NY2d 39, 49 (1997). Adam Jacobs correctly notes that "in the absence of an agreement to do so, parties cannot be forced to arbitrate." *Mionis v.* Bank *Julius* Baer *& Co., Ltd.*, 301 AD2d 104 (1st Dep't 2002). However, if an arbitration clause exists covering the dispute, "this State favors and encourages arbitration as a means of conserving the time and resources of the courts and the contracting parties." Nafionwide, 37 NY2d at 95. Relevant as well is the extremely broad language in the arbitration clause at issue, mandating the arbitration of "any and all disputes, claims or controversies arising out of or relating to this agreement."

While the Court recognizes that Adam Jacobs was motivated to commence this action because Credit Suisse did not place it on the Vendor "A" list, that part of the March 2003 agreement cannot be divorced from the rest of the agreement as Adam Jacobs urges. Whether one views the Vendor "A placement as the primary purpose of the March 2003 agreement, or merely as consideration for the release of the Temporary Employees also provided for therein, the two go hand in hand. Indeed, without a promise and consideration for that promise, no agreement would exist. The Court also finds significant that the only employees specifically referenced in the July 2002 contract are the same four Temporary Employees specifically mentioned in the March 2003 letter agreement.

The "reasonable relationship" text enunciated by the Court of Appeals in Nationwide has been construed to require arbitration in a broad variety of cases. As the Nationwide court admonished, a court must carefully avoid determining the merits of a dispute if a broad arbitration clause exists indicating that a dispute is subject to arbitration. Indeed, "[a]

claim need not [even] be tenable in order to be arbitrable." 37 NY2d at 96.

The First Department's broad reading of the "reasonable relationship" test is evident, for example, in Szabados *v. Pepsi-Cola Bottling* Co. *of New* York, 174 AD2d 342 (1st Dep't 1991). The parties in Szabados had a contract for the distribution by Szabados of Pepsi products. After the contract had been terminated, Szabados commenced an action for libel based on certain statements included in the termination letter. The court held that the libel dispute had to be arbitrated pursuant to the broad arbitration clause in the distributorship agreement, finding a "reasonable relationship" between the tort claims which were the subject of the dispute and the "general subject matter" of the underlying contract, the termination of which had given rise to the libel claim.

Similarly, arbitration was ordered in *Poly-Pak Industries v.* Collegiate Stores Corp., 269 AD2d 130 (1st Dep't 2000). an action by a supplier of custom-printed plastic bags against a buyer. The agreement contained a broad arbitration clause. A dispute arose involving work performed after the agreement had expired pursuant to separately negotiated terms. Since the dispute related to a type of work similar in some respects to the work in the written contract, the Court ordered arbitration, stating that: "The parties' dispute bears 'a reasonable relationship' to the contract containing the arbitration provision, and the addition of incidental matters will not defeat arbitrability." 269 AD2d at 131, citing Szabados, supra.

In *Alsy* Corp. *V. Gindel*, 197 AD2d 492 (1st Dep't 1993), the court went so far as to find, based on Nationwide, that the "reasonable relationship" test had been satisfied, despite the existence of multiple contracts: "Indeed, there is no question that there is 'a

reasonable relationship between the subject matter of the dispute and the general subject matter of the underlying contract[s]'." In reaching that conclusion, the court relied on the broad arbitration clause in the Termination Agreement and the "obvious interrelation" between that Agreement and the Employment Agreements and Certificate of Incorporation.

These cases compel a finding in the instant case that the parties' dispute must be arbitrated. It matters not if the March 2003 agreement is viewed as including a new promise, or even as constituting an agreement entirely separate from the July 2002 contract. A central part of the March 2003 agreement, which is the basis for the instant dispute, is the termination of the placement of the Temporary Employees which had been effectuated by the July 2002 contract. Even the promised placement of Adam Jacobs on the Vendor "A" list has a "reasonable relationship" to the "general subject matter" of the July 2002 contract, as both generally involve the use by Credit Suisse of the services offered by Adam Jacobs in placing employees. The distinction between temporary and permanent placements, and even the inclusion of "incidental" issues, cannot avoid a finding of a reasonable relationship. *Poly-Pak*, supra. Nor is the separateness of the two documents sufficiently significant. ***Alsy,*** supra. See *also*, Schlaifer *v. Sedlow*, 51 NY2d 181, 185 (1980) (considering the broad arbitration clause in the original agreement, "all questions with respect to the validity and effect of subsequent documents purporting to work a modification or termination of the substantive provisions of the original agreement are to be resolved by the arbitrator"); Fener Realty Co. *v. NICO Constr.*, 182 AD2d 436, 437 (1st Dep't 1992), citing Schaifer ("termination of the contract's substantive obligations and replacement of it with a new agreement are issues which similarly involve conduct of

the parties subsequent to the contracting which are to be decided by the arbitrator," even though the arbitration clause was included only in the original agreement).

The case of *ITT Avis, Inc. v. Tuttle*, 27 NY2d 571 (1970), cited by Adam Jacobs, is distinguishable based on the very narrow, very limited language in the arbitration clause. The clause in the employment contract, providing for the arbitration of "Any controversy concerning a question of fact arising under this agreement," did not extend to compel the arbitration of legal issues related to a separate stock option agreement. Similarly, an arbitration clause in a managing agent's agreement with a landowner regarding one building did not extend to compel arbitration of a dispute involving a separate building subject to a different contract which had no arbitration clause. *Wien v Malkin, LLP,* 302 AD2d 253 (First Dep't 2003).

In sum, based on the broad arbitration clause in the July 2002 contract, and the reasonable relationship between the subject matter of the instant dispute and the general subject matter of that contract, this Court finds that the instant dispute should be arbitrated.

As to the issue of attorney's fees, Credit Suisse correctly notes that paragraph 20 of the July 2002 contract quoted above entitles it to an award of attorney's fees in connection with this motion to enforce the arbitration clause. The language of the clause is mandatory. Adam Jacobs does not claim otherwise and, in fact, has not addressed the point at all. Accordingly, should the parties be unable to agree upon an amount, Credit Suisse should notify the Court and the issue will be referred to a Special Referee to hear and report on the amount of attorney's fees to be awarded. Such notice, if so advised, may be included as part of the motion to confirm the arbitration award or may be given in advance.

Accordingly it is hereby

ORDERED that defendant's motion is granted to the extent of staying this action pending the arbitration of the dispute raised in this action and awarding Credit Suisse attorney's fees as provided herein.

This constitutes the decision and order of the Court.

Dated: January 13, 2004

JAN 13 2004

J.S.C.
ALICE SCHLESINGER