

Goldman, Sachs & Co. v Griffin

2007 NY Slip Op 31098(U)

April 23, 2007

Supreme Court, New York County

Docket Number: 0101192/2007

Judge: Kibbie F. Payne

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

PRESENT: KIBBIE F. PAYNE
Justice

PART 4

GOLDMAN, SACHS & CO., and SOFIA FRANKEL,

Petitioners,

INDEX NO. 101192/07

- against -

MOTION DATE 3/7/07

KATHERINE GRIFFIN,

MOTION SEQ. NO. 001

Respondent.

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, petitioners' motion to permanently stay arbitration is adjourned as indicated in the memorandum attached.

RECEIVED
MAY 02 2007
IAS MOTION
SUPPORT OFFICE

FILED
MAY 08 2007
NEW YORK
CLERK'S OFFICE

Dated: April 23 2007

[Signature]
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

M. F.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Frankel managed Griffin's account at that firm.

Griffin filed a statement of claim, dated December 21, 2006, with the National Association of Securities Dealers (NASD) against Goldman Sachs, Sofia Frankel and Lehman Brothers. In the statement, Griffin sought damages against Goldman Sachs and/or Frankel for common law fraud, statutory fraud, breach of contract and breach of fiduciary duties. On January 25, 2007, petitioners commenced this proceeding to stay arbitration in part on the ground that the claims asserted against them are barred by the statute of limitation. A question exists regarding whether petitioners' application to stay arbitration is timely, which cannot be resolved on the sparse record before the court.

Petitioners fail to indicate whether Griffin served them with a notice or demand for arbitration pursuant to CPLR 7803 (c). They neither allege petitioner failed to comply with the explicit service requirements of CPLR 7803 (c) nor that they filed this petition within the 20-day time limit set forth in the statute. Petitioners contend that respondent filed its statement of claim on December 27, 2006, exactly 20 days before they filed this petition. However, the date in which Griffin's claim was filed is not dispositive for purposes of timeliness pursuant to CPLR 7803 (c).

Where an arbitration agreement exists, which is undisputed here, the party seeking to avoid arbitration must seek to stay

arbitration within 20 days of service of the notice or demand to arbitrate (see CPLR 7503 [c]).¹ "The 20-day time limit is construed as a period of limitation, and the courts have no discretion to waive or extend [it]" (Hartford Ins. Co. v Martin, 16 AD3d 149, 150 [1st Dept 2005], citing Actna Life & Cas. Co. v Stekardis, 34 NY2d 182, 185-186 [1974] [holding that "failure to move to stay arbitration within the (statutory) period specified in section 7503 constitutes a bar to judicial intrusion into arbitration proceedings"]). "Where the application to stay is untimely, courts have no authority to determine threshold issues of arbitrability or the scope of an arbitrator's jurisdiction" (Hartford, 16 AD3d at 150 [citation omitted]). Accordingly, it is

ORDERED that this petition is adjourned until May 16, 2007; it is further

ORDERED that petitioners are directed to provide the court with the information necessary to determine the timeliness of this proceeding pursuant to CPLR 7803 (c) prior to the end of such adjournment; and it is further

ORDERED that petitioners serve this order on respondent within 10 days of notice of entry.

¹ Section 7503 (c) provides in pertinent part: "An application to stay arbitration must be made by the party served within twenty days after service upon him of the notice or demand, or he shall be . . . precluded" (emphasis added).

This constitutes the order and judgment of the court.

DATE: *April 23, 2007*



KIBBIE F. PAYNE, J.S.C.

FILED
MAY 08 2007
NEW YORK
COUNTY CLERK'S OFFICE