

**Rankel v Sachs**

2007 NY Slip Op 33090(U)

September 26, 2007

Supreme Court, New York County

Docket Number: 0601241/2007

Judge: Herman Cahn

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

PRESENT: Cahn  
*Justice*

PART 49m

Stephen Bankel et al

INDEX NO. 601241/07

MOTION DATE 7/9/07

MOTION SEQ. NO. 001

MOTION CAL. NO. \_\_\_\_\_

- v -

Stanley Sachs et al

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

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

MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION IN MOTION SEQUENCE .....

FILED  
OCT - 1 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 9/26/07

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J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : IAS PART 49

-----X  
STEPHEN RANKEL, GREGORY LAVIN, ARTHUR  
M. KOPLOWITZ, MARVIN MILLER, RONALD J.  
TRAMAZZO, ALAN P. KURINOVICH, MARTIN  
LEVENTHAL, I. JAY SAFIER,

Petitioners,

-against-

Index No.  
601241/07

STANLEY SACHS, KENNETH TURNER,  
PAUL TRAGER, and WARREN SHIMOFF,

Respondents.

-----X  
**Herman Cahn, J.:**

Petitioners move for a permanent stay of the arbitration proceeding brought by respondents before the American Arbitration Association against them, to the extent that the respondents are seeking an award against each of the petitioners for an amount above and beyond their capital investment in Weinick, Sanders, Leventhal & Co., LLP (Weinick), an accounting firm.

The petitioners are former partners of Weinick, a partnership which was engaged in public accounting for over 50 years (Verified Pet, ¶ 1; Bab Aff, ¶ 2). Respondents are retired partners of Weinick. Under the terms of the July 1, 1997 Weinick Partnership Agreement, the retiring partners were entitled to retirement payments (Verified Pet, Exh A, ¶3), which Respondents received from 2000 through September 2006 (Bab Aff, ¶ 3).

In July 2005, Weinick ceased active operations, and began to wind down its affairs (Verified Pet, ¶ 2). The petitioners thereafter joined various other accounting firms (id.). The wind down is continuing, and is being managed by a wind down committee made up a certain

former Weinick partners (id., ¶ 4).

The respondents claim that Weinick and the petitioners stopped making retirement payments to them in September 2006 (Bab Aff, ¶ 4). They claim that there is a balance of \$1,128,000 of agreed retirement payments still due them (id.).

The Weinick Partnership Agreement contains an arbitration provisions, which states, in relevant part:

Resolution of Disputes: Any controversy arising out of or relating to this Agreement shall be settled and resolved by arbitration in the City, County and State of New York, pursuant to the rules then obtaining of the American Arbitration Association.

(Verified Pet, Exh A at 33).

On March 23, 2007, respondents served a Notice of Intent to Arbitrate, pursuant to CPLR 7503 (c), regarding the amount of retirement payments allegedly due them (Verified Pet, Exh B). This notice was served on Weinick, the petitioners, and various accounting firms (id., ¶ 7). The respondents seek an award against all of the parties named in the Notice of Intent, including Weinick and each of the petitioners, based on a claimed contractual right to the retirement payments under the Weinick Partnership Agreement.

Petitioners now seek a stay of the arbitration arguing that they signed the Weinick Partnership Agreement and agreed to arbitrate disputes, in their capacity as limited liability partners only. They contend that they did not sign the agreement in their personal capacity, and they did not agree to arbitrate disputes with other partners where the dispute extended beyond partnership property. Therefore, they seek a stay of the arbitration to the extent that the respondents are seeking recovery from them in an amount beyond their respective capital

investment in the partnership.

In response, respondents argue that petitioners are individually liable for the payments sought in the arbitration. They point to provisions in the Weinick Partnership Agreement which provide that assets, revenue and clientele of Weinick belonged to and would be retained by the partnership, and which prohibited partners from taking any such assets, revenue and clients with them. The respondents contend that the petitioners transferred the assets, goodwill and clients of the partnership to new assignee accounting firms with which petitioners are now associated, without consideration to Weinick, and thus leaving the partnership without assets to pay respondents the agreed upon retirement benefits. Respondents claim that the petitioners stripped Weinick of its assets and clients for their own benefit. Respondents argue that the petitioners are individually obligated to arbitrate, because they are parties to the Weinick Partnership Agreement, pointing to the signature page in which each of the petitioners signed that agreement with no language limiting the signatures. They assert that petitioners' contention that they are not bound to arbitrate any claims in excess of their partnership capital, simply raises substantive issues of whether the contract entitles respondents to recover more than the amount of the petitioners' capital investment in Weinick, an issue for the arbitrator.

**DISCUSSION**

The motion to stay arbitration is denied.

On a motion to stay arbitration, it is for the court to determine whether there is a valid agreement to arbitrate, whether it was complied with and whether the claim is barred by limitations in CPLR 7502 (b) (CPLR 7503 [b]; see Aetna Cas. & Sur. Co. v Cochrane, 64 NY2d 796 [1985]).

Here, the only issue is whether there is a valid agreement to arbitrate, and with these petitioners beyond their capital investment in Weinick. The individual petitioners signed the Weinick Partnership Agreement with the arbitration provision, which indicated their assent to the terms and conditions of that agreement. While a corporate officer who signs an arbitration agreement solely in his or her representative capacity cannot be compelled to arbitrate a claim against him in his individual capacity (see Metamorphosis Constr. Corp. v Glekel, 247 AD2d 231, 231 [1<sup>st</sup> Dept 1998]; Application of Jevremov, 129 AD2d 174, 176-78 [1<sup>st</sup> Dept 1987]), these petitioners did not clearly sign this partnership agreement solely in a representative capacity. There is no indication alongside their names that they were signing solely on behalf of the partnership. In fact, they admit that they signed the partnership agreement, but assert that they agreed to arbitrate disputes only in their capacity as limited liability partners (Verified Pet, ¶ 9). Accordingly, they have agreed to arbitrate their disputes regarding this partnership agreement. Whether the petitioners have bound themselves to be liable beyond their capital contribution to the partnership, is an issue of interpretation of the partnership agreement which is to be resolved by the arbitrators (see Town of Ramapo v Ramapo Police Benevolent Assn., 17 AD3d 476, 478 [2d Dept 2005]).

Petitioner's reliance on Beaunit Corp. v Solarset, Inc. (51 AD2d 926 [1<sup>st</sup> Dept 1976]) is unavailing. In that action, the court determined that the individual members of a partnership had not agreed and were not bound to arbitrate. This determination was based in part on the respondent's (a corporation pursuing arbitration against a partnership), concession that the individuals should be excluded from the arbitration. In the instant case, the dispute is between

the partners over assets of the partnership, the agreement does not indicate that the petitioners were signing only in a representative capacity, and it is the petitioners who have conceded that they have agreed to arbitrate. Therefore, the petitioners are individually bound to the arbitration provision in the Weinick Partnership Agreement, and the extent of their financial exposure under the partnership agreement is an issue for the arbitrator.

Accordingly, it is

ORDERED that the application to stay the arbitration entitled Sachs, et al. v Weinick Sanders Leventhal & Co., LLP, et al., commenced before the American Arbitration Association is denied, and the parties are directed to proceed to arbitration.

Dated: September 26, 2007

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J.S.C.

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Accordingly, it is

ORDERED that the application to stay the arbitration entitled Sachs, et al. v Weinick Sanders Leventhal & Co., LLP, et al, commenced before the American Arbitration Association is denied, and the parties are directed to proceed to arbitration.

Dated: September 26, 2007

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J.S.C.