

**Hahami v Gottlieb**

2007 NY Slip Op 33755(U)

November 19, 2007

Supreme Court, New York County

Docket Number: 0114881/2007

Judge: Joan Madden

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

PRESENT: HON. JOAN A. MADDEN  
Justice

PART 11

Yaron Hahami

INDEX NO.: 114881/07

MOTION DATE: 11/13/07

MOTION SEQ. NO. 001

MOTION CAL. NO.

Plaintiffs,

- v -

Gottlieb, et al.

Defendants.

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for stay arbitration

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~~ application is decided in accordance with the attached memorandum Decision, Order + Judgment.

**IMMEDIATE FILING**  
This judgment has not yet been filed by the County Clerk and notice of entry has not yet been posted hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 11B)

Dated: Nov. 19, 2007

[Signature]  
J.S.C.

Check one:  FINAL DISPOSITION

[ ] NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 11

-----X  
YARON HAHAMI and YONATAN HAHAMI,

Index No. 114881/07

Petitioners

-against-

ELIEZER GOTTLEIB, and THE NEW YORK DIAMOND  
DEALERS CLUB INC., a/k/a THE NEW YORK  
DIAMOND DEALERS CLUB,

**UNRECORDED COPY  
This judgment has not been entered by the County Clerk  
and notice of entry cannot be served based hereon. To  
obtain entry, counsel or other interested representative must  
appear in person at the Judgment Clerk's Desk (Room  
11B)**

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**JOAN A. MADDEN, J.:**

Pctitioners move to stay an arbitration against petitioner Yonatan Hahami (“Hahami”) on the grounds that he is not bound by a valid agreement to arbitration. Respondents oppose the petition, which is denied for the reasons below.

On October 9, 2007, respondent Eliezer Gottlieb (“Gottlieb), on behalf of Elgo Diamonds International, Inc. (“Elgo”), filed a demand for arbitration with the New York Diamond Dealers Club, Inc., a/k/a The New York Diamond Dealers Club (“the DDC”) against petitioners and their corporation, A & H Diamond Corporation. The claim arose out of the five transactions occurring in July and August 2007, in which petitioner alleged failed to pay for diamonds allegedly worth \$192,066.84. Gottlieb is a member of the DDC.

Petitioners argue that Hahami, who is the father of petitioner, Yaron Hahami, should not be required to arbitrate as he is not a current member of the DDC since he has not paid his membership dues since 2006. In support of this argument, petitioner notes that since October 2007, Hahami has not been listed as a member on DDC’s website, and that his card granting access to DDC clubs has been blocked since that time. Hahami also submits his affidavit in

which he states that he resigned his membership in 2006. Petitioners also assert that as Hahami was not involved in the transactions at issue, he should not be required to arbitrate the dispute.

In opposition, DDC submits the affidavit of Martin Hochbaum, the Managing Director of the DDC, who states that all of its members are required to arbitrate their claims with arising out of the diamond business with other members, as well as members of 26 other diamond clubs affiliated with the World Federation of Diamond Bourses. Mr. Hochbaum states that "there is no question that Yonathan Hahami is presently a member of the DDC." He also rejects Hahami's argument that the failure to pay dues results in the suspension, and states that Hahami, who has become a member of the DDC in May of 1979, never resigned his membership and the DDC has never sent him a notice of suspension or posted his name and picture on the DDC Bulletin Board. Mr. Hochbaum also points out that Hahami has frequently been delinquent in paying his dues but during his 28 years as a member of the DDC, his membership has never been suspended. In addition, he states that the World Federation of Diamond Bourses, which is the administrative arm of the 26 affiliate Bourses, has never been notified of any resignation or suspension by Hahami.

Mr. Hochbaum also points out that Hahami is included in the membership roster, continues to receive mailings from the DDC, and is included in the various publications listing DDC members. He further states that removal of Hahami from the website and blocking his access card based on his failure to pay dues does not mean that he has been suspended. The DDC also submits the affidavit from the individual in charge of managing the DDC websites who states that he has no information in his records indicating that Hahami was suspended from the DDC. In any event, the DDC asserts that even if Hahami's failure to pay dues resulted in his

suspension in October 2007, as the transactions at issue occurred before that date, Hahami is bound to arbitrate under Article III, Section 11a of the DDC Bylaws, which requires a member who has been suspended or resigns from the DDC to arbitrate claims arising out transactions.

Respondent Gottlieb also submits an affidavit in opposition to the petition in which he states that he has known Hahami for twenty years and that he based his decision to extend credit to petitioners' company "solely upon the fact that they are DDC members [as] I know that in the event a DDC member does not pay for the diamonds I tender him, I will be able to take him to arbitration at the DDC and obtain a judgment against him personally as well as against his company." He further states that he relies on the Bulletin Board located on the DDC trading floor to notify him if any members are suspended, that he visits the trading floor frequently, and his salesman check the Board several times a week. He further states that "Yonathan Hahami held himself out as a member of the DDC and I was never notified otherwise nor was his name posted on the Bulletin Board of the DDC."

On a petition to stay arbitration, the initial inquiry for the court is whether there was an agreement to arbitrate. CPLR 7503; Liberty Management & Construc. Ltd. v. Fifth Ave and Sixty-Sixth Street Corp., 208 AD2d 73 (1<sup>st</sup> Dept 1995). As arbitration is contractual by nature, a party cannot be required to arbitrate any dispute that it has not agreed to arbitrate. Waldron v Goddess, 61 NY2d 181, 183 (1984).

The arbitration clause in this case is contained in the membership agreement signed by Hahami, who agreed to abide by:

the Charter, By-Laws, Rules and Regulations of the Diamond Dealers Club, Inc. as they now exist, and as they, or any of them, maybe hereafter amended or otherwise changed...[and to] all rules

and Regulations of the World Federation of Diamond Bourses, which the Diamond Dealers Club, Inc, and its members are bound to adhere to...[and] to arbitrate any disputes with members pursuant to the Bylaws of the club, in the Arbitration Tribunals of the Club.

(emphasis supplied).

Petitioners' argument that the above-referenced arbitration agreement is no longer effective as Hahami is no longer a member of the DDC is unavailing. In support of this argument, petitioners rely on Hahami's failure to pay dues, his removal from the DDC website in October 2007, and blocking of his access to DDC clubs at that time. However, the DDC has provided evidence that Hahami remains a member the DDC and is listed as a member in publications made available to the public, including a 2007/2008 Diamond Buyer's Guide. Furthermore, while Hahami states in his affidavit that he resigned in 2006, he provides no evidence that he provided the DDC of notice of such resignation. Under these circumstances, even if Hahami may have believed he was no longer a member, he continued to be held out to the public as one and, in any event, as he continued to receive mailings from the DDC, including requests to pay dues, he should have been aware of his continuing status as a member.

Next, even assuming arguendo, that Hahami was suspended from the DDC in October 2007, when his name was removed from the DDC website and his access card to DDC clubs was blocked, the transactions which Roth seeks to arbitrate occurred in July and August 2007, and under of the DDC By-Laws, a transaction which arises prior to a member's suspension or resignation must be arbitrated.<sup>1</sup>

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<sup>1</sup>Article III, Section 3a of the DDC By-Laws provides that:

Whenever any member is suspended, expelled or resigns, such member shall be amenable to all obligations and duties of a member is good standing in connection with any transaction,

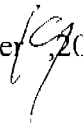
Finally, even assuming that Yaron Hahami was primarily responsible for handling the transaction at issue, as an alleged principal of A & H Diamond Corporation, which purchased the diamonds from H. Rhodes. Inc., Yonathan Hahami is potentially personally liable under DDC's By-Laws. See Article XII, Section 24 of the DDC By-Laws (providing that "[c]very member is personally responsible for all transactions with other members, whether he/she conducts business individually, as a member of a partnership or through a corporation").

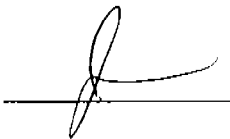
In view of the above,

It is

ORDERED AND ADJUDGED that the petition to stay arbitration is denied; and it is further

ORDERED AND ADJUDGED that the parties are directed to proceed forthwith to arbitration.

DATED: November  2007

  
\_\_\_\_\_  
J.S.C..

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occurrence, or matter which arose or was initiated, in part or while, prior to such member's suspension, expulsion or resignation including but not limited to arbitration.