

**Ahuja v Vlna U.S.A. Travel Ctr. Inc.**

2010 NY Slip Op 32542(U)

September 13, 2010

Supreme Court, New York County

Docket Number: 102540/10

Judge: Eileen A. Rakower

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

PRESENT: HON. EILEEN A. RAKOWER

PART 15

Justice

Index Number : 102540/2010

**AHUJA, BHIM**

vs.

**VINA USA TRAVEL CENTER INC**

SEQUENCE NUMBER : 001

COMPEL DISCLOSURE

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

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

this motion to/for \_\_\_\_\_

PAPERS NUMBERED

1

2

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

**FILED**

SEP 14 2010

NEW YORK

COUNTY CLERK'S OFFICE

**DECIDED IN ACCORDANCE WITH  
ACCOMPANYING DECISION / ORDER**

Dated: 9/13/10



**HON. EILEEN A. RAKOWER**  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 15

-----X

BHIM AHUJA,

Index No.  
102540/10

Petitioner,

**DECISION  
and ORDER**

- against -

VINA U.S.A. TRAVEL CENTER, INC., TRAN THINH,  
and VED GULATI,

Mot. Seq.  
001

Respondents.

-----X

HON. EILEEN A. RAKOWER:

Bhim Ahuja (“Petitioner”) states that he is a 45% shareholder of respondent Vina U.S.A. Travel Center, Inc. (“Vina” or “the corporation”). Petitioner brings the instant petition seeking an order: (1) restraining respondent Ved Gulati (“Gulati”), shareholder and President of Vina, from wasting, diluting or misappropriating corporate funds; (2) permitting Petitioner to inspect and take copies from the record of shareholders, the minute book, and all books of account of the corporation and to examine the last audit of the Corporation together with the income and franchise tax returns; (3) directing that respondents bear the expenses of said inspection and audit; and (4) awarding Petitioner costs and disbursement in connection with this proceeding.

Petitioner states that he has been a shareholder of Vina, a corporation organized for the purpose of owning and operating a travel agency, since March 21, 2001. Petitioner alleges the following facts as the basis for the petition herein:

- that the respondents have failed to notice and hold annual shareholder meetings for more than six years, in violation of Business Corporation Law (“BCL”) §602(b);
- that respondents have deliberately avoided supplying shareholders with balance sheets and profit and loss earnings statements for more than six years, in violation of BCL §624(e);

- that respondents have failed to prepare or cause to be prepared federal, state and local tax returns for the tax years 2007 and 2008, and have failed to provide Petitioner with a copy of the tax documentation required to fully and properly report Petitioner's income;
- that respondents Gulati and Tran Think ("Think"), another shareholder in the corporation, willfully and intentionally failed to appear for a special shareholder meeting, duly noticed by Petitioner, for the purpose of obtaining an accounting of corporate books and records.

Petitioner alleges that Gulati "has exclusively and completely controlled the books and records of respondent Corporation, and petitioner has been excluded... from any access to the Corporation's books, papers, records, and accounts." Petitioner further alleges that Think acted in concert with Gulati in excluding Petitioner from access to corporate records. Petitioner alleges that Gulati's exclusion of Petitioner from access to corporate records is "in furtherance of a scheme to divert and convert the assets of the Corporation to his own use," and that these acts "have been either tacitly or openly sanctioned by [Think]...."

Respondents cross-move for an order (1) staying the petition and compelling Petitioner to arbitrate his claims pursuant to CPLR §7503(a); and (2) granting discovery "in aid of arbitration" pursuant to CPLR §3102(c). Respondents point to Article VIII(g) of the parties' shareholder agreement, which provides that

Any dispute or controversy under this Agreement shall be determined by arbitration in New York City in accordance with the rules of the American Arbitration Association then in effect, and judgment upon the award made in such arbitration may be entered in any Court having jurisdiction.

As for discovery in aid of arbitration, respondents allege that, contrary to Petitioner's claims, it is Petitioner who has misappropriated funds from Vina, diverting them to his own company, Penta Worldwide Travel Inc. ("Penta").<sup>1</sup> Accordingly, respondents claim that discovery of Penta's records in aid of arbitration is appropriate, since Penta would not be a party to any such proceeding. Petitioner has failed to submit any papers in response to the cross-motion.

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<sup>1</sup>Respondents also state that Petitioner is a 25% shareholder, rather than 45%.

It is well settled that New York courts have “a long and strong public policy favoring arbitration,” and that “this State favors and encourages arbitration as a means of conserving the time and resources of the courts and the contracting parties. Therefore, New York courts interfere as little as possible with the freedom of consenting parties to submit disputes to arbitration” (*Stark v. Molod Spitz DeSantis & Stark, P.C.*, 2007 NY Slip Op 7740, \*6-7 [2007]). Moreover, the First Department has held that broad arbitration clauses in shareholder agreements which provide for arbitration of “all dispute... in connection with or arising out of” the shareholder agreement are to be given full effect” (*In re Herrero*, 168 A.D.2d 343 [1st Dept. 1990]).

Here, the court finds that the instant dispute is covered by the broad arbitration agreement entered into by the parties in the shareholder agreement, which provides for arbitration of “[a]ny dispute or controversy” arising thereunder (*see Better Living Now, Inc. v. Dwyer*, 2006 NY Slip Op 50441U [Sup. Ct. Suffolk Co. 2006]) (demand for accounting and access to corporate books, records and documents arbitrable pursuant to similar arbitration clause in shareholder agreement). However, the parties are reminded that, irrespective of the forum in which the right is asserted, Petitioner has both a statutory and a common law right to inspect corporate books and records as a shareholder of the corporation (*see Business Corporation Law §624, Tatko v. Tatko Bros. Slate Co.*, 173 A.D.2d 917 [3rd Dept. 1991]).

The court finds that respondents’ motion for discovery in aid of arbitration is premature at this time, as there is currently no arbitration pending between the parties. The granting of a motion to compel arbitration merely precludes a party from litigating a matter in court; it does not result in the commencement of an arbitration proceeding (*see Marillo v. Shearson Hayden Stone Inc.*, 159 A.D.2d 1012, 1013 [4th Dept. 1990]; Siegel, N.Y. Prac. §592).

Wherefore it is hereby

ORDERED that respondent’s motion to compel arbitration and to stay this action is granted; and it is further

ORDERED that Petitioner shall arbitrate his claims against respondents pursuant to the shareholder agreement; and it is further

ORDERED that all proceedings in this action are hereby stayed, except for an application to vacate or modify said stay; and it is further

ORDERED that either party may make an application by order to show cause to vacate or modify this stay upon the final determination of the arbitration.

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: September <sup>13</sup>~~8~~, 2010

  
EILEEN A. RAKOWER, J.S.C.

**FILED**  
SEP 14 2010  
NEW YORK  
COUNTY CLERK'S OFFICE