

Briggs v Cohen

2011 NY Slip Op 33771(U)

May 3, 2011

Sup Ct, NY County

Docket Number: 100938/2011

Judge: Bernard J. Fried

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: BERNARD J. FRIED

E-FILE

PART 60

HON. BERNARD J. FRIED

Justice

Shannon Briggs,

Plaintiff,

- v -

Gregory D. Cohen, et al.,

Defendants.

INDEX NO. 100938/2011

MOTION DATE _____

MOTION SEQ. NO. 001

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

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

This motion is decided in accordance with the attached memorandum decision.

SO ORDERED.

Dated: 5/3/2011


HON. BERNARD J. FRIED
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: COMMERCIAL DIV. PART 60
----- X
SHANNON BRIGGS,

Petitioner,

Index No. 100938/2011

-against-

GREGORY D. COHEN, SHELLY FINKEL, BARRY HONIG,
THE EMPIRE SPORTS & ENTERTAINMENT CO., and
THE EMPIRE SPORTS & ENTERTAINMENT HOLDINGS CO.,

Respondents.

----- X

APPEARANCES:

Attorneys for the Petitioner:

Attorneys for Respondents:

PROFETA & EISENSTEIN
14 Wall Street
New York, NY 10005

CROWELL MORING
3 Park Plaza
Irvine, CA 92614

By: Jethro M. Eisenstein, Esq.

By: Bruce J. Zabarauskas, Esq.

FRIED, J.:

I have reviewed all the papers submitted regarding Defendants’ motion, Motion Sequence 001, seeking to have me: (i) compel arbitration of Plaintiff’s “Boxing Claims” as to all Defendants, pursuant to CPLR § 7503(a), or, alternatively, dismiss these claims pursuant to CPLR § 3211(a)(7); (ii) dismiss Plaintiff’s “Non-Boxing Claims” as to all Defendants, pursuant to CPLR § 3211(a)(1),(5), and (7); and (iii) dismiss all claims as to Defendant Barry Honig, pursuant to CPLR § 3211(a)(8). For the reasons set forth below, Defendants’ motion is granted insofar as it seeks to have me compel arbitration of the “Boxing Claims”. The remainder of this action is stayed pending the outcome of arbitration.

As Defendants' briefs point out, public policy in New York favors the enforcement of arbitration clauses. *See, e.g., Cooper v. Bruckner*, 21 AD3d 758, 758, 801 NYS2d 19, 20 (1st Dep't 2005). When, as authorized by CPLR § 7503(a), a party seeks a court order compelling arbitration, the court's role is to determine whether there is a valid, enforceable arbitration agreement between the parties that encompasses the issue that is the subject of the motion to compel arbitration. *See Cooper v. Bruckner*, 21 AD3d 758, 759, 801 NYS2d 19, 20 (1st Dep't 2005); *Edgewater Growth Capital Partners, L.P. v. Greenstar No. Am. Holdings, Inc.*, 69 AD3d 439, 439, 891 NYS2d 278, 278 (1st Dep't 2010). Where, as here, I find that such an agreement exists, I must refer the matter to arbitration pursuant to that agreement.

Although Plaintiff's Complaint raises a variety of issues pertaining to the various agreements signed between the parties to this case, all but one of those agreements – and the issues pertaining to them – are irrelevant to deciding the only questions before me that must be addressed at this juncture: (1) whether the Promotional Agreement contains a valid arbitration clause and (2) whether, if valid, that arbitration clause can be enforced against the Plaintiff by the Defendants in this matter. Both questions are answered in the affirmative.¹

The Promotional Agreement provides, in relevant part, "Notwithstanding the foregoing, any and all disputes between the parties (other than emergency injunctive relief) shall be resolved only [by] arbitration at the Newark International Airport pursuant to the Commercial Rules of arbitration

1

For example, the issue of whether Plaintiff's signature was forged on the Bout Agreement need not be decided before determining the threshold question of whether to refer the Boxing Claims to arbitration because there is an arbitration clause contained in the Promotional Agreement that is broad enough to cover the Boxing Claims at issue here. Likewise, because of the scope of the arbitration clause contained in the Promotional Agreement, it is also unnecessary to consider whether Plaintiff is bound to the entirety of the Subscription Agreement in light of his allegation that he only saw the signature page of that Agreement.

of the American Arbitration Association before a single arbitrator.” Promotional Agreement at § 21.

Thus, there can be no question that the arbitration provision contained in the Promotional Agreement is broad enough to encompass the Boxing Claims raised by Plaintiff in this case.

Neither is there any real dispute that the arbitration clause contained in the Promotional Agreement is valid as between Plaintiff and Golden Empire, the predecessor entity to the corporate Defendant here, The Empire. The question at issue here is really whether The Empire may enforce the arbitration clause against the Plaintiff in light of Plaintiff’s allegation that the assignment of the Promotional Agreement from Golden Empire to The Empire was not valid.

The argument that the assignment is invalid is undermined, however, by Plaintiff’s words and conduct that indicate his belief that the assignment was indeed valid. For example, at Paragraph 15 of the Complaint, Plaintiff admits that Golden Empire assigned all of its agreements - with no exception made for the Promotional Agreement - to its successor entity, The Empire. Additionally, Plaintiff referred to The Empire as his promoter in television interviews and fought on behalf of The Empire in fights that The Empire organized and promoted. See Transcript of April 1, 2011 Oral Arg. (Tr.) at 7-8. As Defendants’ counsel argued at oral argument on this motion, Plaintiff’s words and actions demonstrated that he consented to the assignment of the Promotional Agreement to The Empire and, in fact, ratified that assignment. Tr. at 8. Thus, Plaintiff cannot now contest the validity of that assignment by alleging that there is not sufficient documentary evidence to demonstrate the consent of Plaintiff that is necessary for a proper assignment.

Accordingly, having established that the Promotional Agreement was validly assigned to The Empire, there is no question that The Empire is entitled to enforce that Agreement, and the

arbitration clause contained therein, against Plaintiff. And, as shown above, the arbitration clause itself is valid and is comprehensive enough to encompass the parties' dispute regarding the Boxing Claims. Thus, I am required to compel the parties to arbitrate those claims.

Defendants are correct in arguing that Plaintiff having named Defendants Cohen, Finkel, and Honig - the individuals who serve as officers of the corporate Defendant, The Empire - in this action does not vitiate Plaintiff's obligation to arbitrate pursuant to Plaintiff's agreement with The Empire. Neither does Plaintiff having named The Empire's parent company, Empire Holdings. As the caselaw cited in Defendants' opening brief establishes, "it is appropriate for the Court to stay the litigation against those defendants who are not parties to the arbitration until after the arbitration is decided." *See* Defendants' Opening Memorandum of Law at 17. Accordingly, Plaintiff is required to arbitrate the Boxing Claims against The Empire, while those same claims are stayed as against the other Defendants.

Additionally, as the arbitration of the Boxing Claims against The Empire is necessarily germane to the substance of the Non-Boxing Claims and the question of personal jurisdiction over Honig - and the parties do not dispute that these questions shall not be arbitrated - it seems necessary to stay the balance of the case while the Boxing Claims against The Empire are arbitrated to avoid the possibility of duplicative or inconsistent decisions. Consequently, I am exercising my discretion to stay what remains of this action pending the outcome of the arbitration of the Boxing Claims.

Accordingly, it is

ORDERED THAT Defendants' motion is **GRANTED IN PART** insofar as it seeks to have me compel arbitration of the "Boxing Claims" against defendant The Empire; and it is further

ORDERED THAT the Plaintiff shall arbitrate the Boxing Claims against The Empire in accordance with the terms of the arbitration clause contained in the Promotional Agreement; and it is further

ORDERED THAT the remainder of this action, including Plaintiff's Boxing Claims against the individual Defendants and Empire Holdings, is stayed pending the outcome of arbitration.

DATED: 5/3/2011



J.S.C.
HON. BERNARD J. FRIED