

Rice Sec. LLC v Bonwick Capital Partners, LLC
2015 NY Slip Op 32204(U)
November 17, 2015
Supreme Court, New York County
Docket Number: 653482/2015
Judge: Anil C. Singh
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 45

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RICE SECURITIES LLC d/b/a RICE FINANCIAL
PRODUCTS COMPANY,

DECISION AND
ORDER

Petitioner,

Index No.
653482/2015

-against-

BONWICK CAPITAL PARTNERS, LLC, et al.,

Respondents.

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HON. ANIL C. SINGH, J.:

In motion sequence 003, petitioner Rice Securities LLC moves pursuant to CPLR 2201 and 7503 to compel respondents' arbitration before FINRA Dispute Resolution, Inc. The only respondent to oppose the motion is Stacy Almeyda.

Rice Securities commenced the instant proceeding seeking to temporarily restrain and preliminarily enjoin respondents from engaging in certain conduct during the pendency of an arbitration commenced by petitioner before the Financial Industry Regulatory Authority ("FINRA") on October 20, 2015, captioned Rice Securities LLC d/b/a Rice Financial Products Company v. Bonwick Capital Partners, LLC, Devin Wicker, Ray Gatten, Phillip Toth, Rashaun Williams, Carol Mackoff, Kenneth Bruce, and Stacy Almeyda. By order dated

November 2, 2015, the Court issued a limited preliminary injunction in aid of arbitration.

In the FINRA arbitration, petitioner alleges that respondents engaged in a fraudulent scheme to deceive petitioner's customers and steal business from petitioner by: a) falsely representing that Bonwick Capital has acquired Rice Financial; b) taking credit for past securities transactions actually executed by Rice Financial; and c) misusing Rice Financial's proprietary information that was misappropriated by former employees of Rice Financial who are now employed by Bonwick Capital.

Rice Financial alleges that respondent Stacy Almeyda took substantial amounts of Rice Financial data without permission when she left Rice Financial in order to further Bonwick Capital's fraud. Counsel for petitioner asserts on information and belief that Almeyda is an "associated person" of respondent Bonwick Capital who can be compelled to arbitrate.

Discussion

Rule 13200(a) of the FINRA Code of Arbitration for Industry Disputes states:

Except as otherwise provided in the code, a dispute must be arbitrated under the code if the dispute arises out of the business activities of a member or an associated person and is between or among: members;

members and associated persons; or associated persons.

FINRA rules define the term "associated person" as follows:

The term "associated person" means: (1) a natural person registered under NASD Rules; or (2) a sole proprietor, or any partner, officer, director, branch manager of the applicant, or any person occupying a similar status or performing similar functions; (3) any company, government or political subdivision or agency or instrumentality of a government controlled by or controlling the applicant; (4) any employee of the applicant, except any person whose functions are solely clerical or ministerial; (5) any person directly or indirectly controlling the applicant whether or not such person is registered or exempt from registration under the FINRA By-Laws or NASD Rules; (6) any person engaged in investment banking or securities business controlled directly or indirectly by the applicant whether such person is registered or exempt from registration under the FINRA By-Laws or NASD Rules; or (7) any person who will be or is anticipated to be a person described in (1) through (6) above.

(FINRA Membership and Registration Rules, section 1022(b)).

Respondent Stacy Almeyda states in a sworn affidavit that she holds no professional licenses, nor is she registered with FINRA or any other regulatory agency. Ms. Almeyda asserts that all of her work is subject to the supervision of her superiors; she has no interaction with Bonwick's customers, regulators or competitors; she has no authority to sign documents on behalf of Bonwick; and she cannot make decisions on behalf of the firm or otherwise bind it in any way.

The Court finds that the sworn affidavit is sufficient to make a prima facie

showing the Stacy Almeyda is not a broker, sole proprietor, partner, officer, director, or branch manager of a FINRA member. Because she has no discretionary authority, her responsibilities are of an entirely clerical or ministerial nature. Accordingly, the affidavit sufficiently supports respondent's contention that Ms. Almeyda is not an "associated person" as defined by the rules and regulations of FINRA.

Petitioner has not filed reply papers or submitted an affidavit to rebut Ms. Almeyda's sworn affidavit. In the absence of a reply or opposing affidavit, the Court finds that petitioner has failed to rebut respondent's prima facie showing or otherwise raised an issue of fact regarding Ms. Almeyda's status.

Accordingly, it is

ORDERED that the motion to compel arbitration is granted as to all respondents except it is denied as to respondent Stacy Almeyda.

The foregoing constitutes the decision and order of the court.

Date: November 17, 2015

New York, New York


Anil C. Singh