

Kaminski v Investis Inc.
2018 NY Slip Op 32580(U)
October 12, 2018
Supreme Court, New York County
Docket Number: 160763/17
Judge: Barbara Jaffe
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. BARBARA JAFFE
Justice

PART 12

-----X

JENNIFER KAMINSKI,

Plaintiff,

INDEX NO. 160763/17

MOTION DATE _____

- v -

MOTION SEQ. NO. 1

INVESTIS INC.,

Defendant.

DECISION AND ORDER

-----X

Defendant's motion pursuant to CPLR 7503 for an order compelling the parties to participate in arbitration and to stay this action pending the outcome thereof is granted to the extent of ordering a hearing and directing a reference to hear and report on the threshold issues of (1) whether plaintiff can pay the arbitration fees and costs, (2) what is the expected cost differential between arbitration and litigation in court, and (3) whether the cost differential is so substantial as to deter the bringing of her claim in the arbitral forum. (*Brady v Williams Capital Grp., LP*, 14 NY3d 459, 467 [2010]). In order to determine these threshold issues, the referee is also directed to determine (4) whether the evidence of plaintiff's ability to pay should be restricted to her earnings since her termination, (5) whether the evidence of her spouse's finances should be limited to her earnings as a therapist, and (6) whether the evidence of plaintiff's savings and retirement accounts should be considered. Any and all matters concerning discovery in aid of the hearing is likewise referred to the referee.

Accordingly, it is hereby

ORDERED, the court having on its own motion determined to consider the appointment of a referee to hear and report, and it appearing to the court that an exceptional condition requiring said appointment in this case exists, it is now hereby

ORDERED, that a Judicial Hearing Officer (JHO) or Special Referee shall be designated to hear and report to his court on the following individual issues of fact, which are hereby submitted to the JHO/Special Referee for such purpose:

- (1) whether plaintiff can pay the arbitration fees and costs,
- (2) what is the expected cost differential between arbitration and litigation in court,
- (3) whether the cost differential is so substantial as to deter the bringing of her claim in the arbitral forum,
- (4) whether the evidence of plaintiff's ability to pay should be restricted to her earnings since her termination,
- (5) whether the evidence of her spouse's finances should be limited to her earnings as a therapist, and
- (6) whether the evidence of plaintiff's savings and retirement accounts should be considered; it is further

ORDERED, that the power of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR; it is further

ORDERED, that this matter is hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or spref@nycourts.gov) for placement at the earliest possible date upon the calendar of the Special Referees Part (SRP), which, in accordance with the Rules of the Part (which are posted on the website of this court at www.nycourts.gov/suptctmanh at the

“References” link), shall assign this matter at the initial appearance to an available JHO/Special Referee to hear and report as specified above; it is further

ORDERED, that counsel shall immediately consult one another and counsel for plaintiff shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail an Information Sheet (accessible at the “References” link on the court’s website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; it is further

ORDERED, that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed with the hearing, on the date fixed by the Special Referee Clerk for the initial appearance in the Special Referee Part, subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that part; it is further

ORDERED, that except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue specific above shall proceed from day to day until completion and counsel must arrange their schedules and those of their witnesses accordingly; it is further


ORDERED, that counsel shall file memoranda or other documents directed to the assigned JHO/Special Referee in accordance with the Uniform Rules of the Judicial Hearing Officers and the Special Referees (available at the “References” link on the court’s website) by filing same with the New York State Courts Electronic Filing System (see Rule 2 of the Uniform Rules); it is further

ORDERED, that any motion to confirm or disaffirm the Report of the JHO/Special Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts; it is further

ORDERED, that unless otherwise directed by this court in any Order that may be issued together with this Order of Reference to Hear and Report, the issues presented in any motion identified in the first paragraph hereof shall be held in abeyance pending submission of the Report of the JHO/Special Referee and the determination of this court thereon; and it is further

ORDERED, that the parties shall appear for a status conference on January 30, 2019 at 2:15 pm at 60 Centre Street, Room 341, New York, New York.

10/12/18
DATE


BARBARA JAFFE, J.S.C.
HON. BARBARA JAFFE

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
	<input type="checkbox"/>	DO NOT POST	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	