SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8

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YECHIEL ZAGELBAUM,

Plaintiff, Decision and order

- against - Index No. 518906/19

mot # 1 & 2

UNITEDHEALTHCARE OF NEW YORK, INC., &
UNITEDHEALTHCARE INSURANCE COMPANY,

Defendants, February 18, 2020

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PRESENT: HON. LEON RUCHELSMAN

The defendants have moved seeking to compel arbitration or in the alternative to dismiss the complaint pursuant to CPLR §3211. The plaintiff opposes the motion. Papers were submitted by both parties and arguments held. After reviewing all the arguments this court now makes the following determination.

The plaintiff is a doctor who contracted with the defendant health insurance company to provide medical services. On May 1, 2019 the defendant notified the plaintiff that the contract would not be renewed. The plaintiff instituted this lawsuit alleging breach of contract and other causes of action. The defendant has moved seeking to compel arbitration pursuant to an arbitration clause or in the alternative to dismiss the complaint for the failure to state any cause of action. The defendant opposes the motion arguing the complaint has merit and the arbitration clause is inapplicable.

Conclusions of Law

"It is firmly established that the public policy of New York State favors and encourages arbitration and alternative dispute resolutions" (Westinghouse Elec. Corp. v. New York City Tr. Auth., 82 NY2d 47, 603 NYS2d 404 [1993], citing, Nationwide Gen. Ins. Co. v. Investors Ins. Co. of Am., 37 NY2d 91 [1975]). It is well settled that a party cannot be subject to arbitration absent a clear and unequivocal agreement to arbitrate (see, Waldron v. Goddess, 61 NY2d 181, 473 NYS2d 136 [1984]). Thus, where an arbitration clause encompasses all disputes between the parties and is unambiguous such arbitration clause will be enforced (Stoll America Knitting Machinery Inc., v. Creative Knitwear Corp., 5 AD3d 586, 772 NYS2d 863 [2d Dept., 2004]). In contrast, a clause will be held ambiguous if key terms are not defined in the agreement (Spataro v. Hirschhorn, 40 AD3d 1070, 837 NYS2d 258 [2d Dept., 2007]).

In this case the arbitration clause states that "we will resolve all disputes between us by following the dispute procedures set out in our Provider Manual. If either of us wishes to pursue the dispute beyond those procedures, they will submit the dispute to binding arbitration in accordance with the Commercial Dispute Procedures of the American Arbitration Association" (see, Participation Agreement, page 5). The

plaintiff argues this clause is "clearly not applicable, because Dr. Zagelbaum is no longer a provider!" (see, Memorandum of Law in Opposition, page 5). Thus, according to the plaintiff "the arbitration agreement clearly only applies to providers who are unhappy with the resolution available under the Provider Manual, not to former providers who are suing the Defendants for various grievances" (id). That argument might be plausible if the plaintiff were suing over matters that were not covered by the contract at all. However, the plaintiff is suing for breach of contract, clearly demonstrating that the viability of the contract even applies to former providers. Thus, the plaintiff cannot assert claims under the contract but then simultaneously argue the arbitration provision of the contract is inapplicable since the plaintiff is not a current provider.

Furthermore, the arbitration provision itself states that it "shall survive and govern any termination of this agreement" (see, supra, Participation Agreement). In Matter of Primex International Corp., v. Wal-Mart Stores, 89 NY2d 594, 657 NYS2d 385 [1997] the court held that "a general release terminating the substantive rights of the parties to the contract will not nullify their obligation to submit to an arbitrator all of the disputes relating to that contract and its termination" (id). Again, in Avalon International Trading Corp., v. GST Receivables

Management Corp., 220 AD2d 248, 632 NYS2d 95 [1st Dept., 1995] the court explained that "Plaintiff's claim that the obligation to arbitrate did not survive defendant's termination of the contract is without merit. The issue of termination of a contract is itself arbitrable under a broad arbitration clause" (id).

Equally unavailing is the argument the language of the arbitration clause that states "if a court allows any litigation" is rendered meaningless since there are never instances where a court can allow litigation. As noted, there could be situations where a matter raised between the parties is outside of the contract and not subject to arbitration. In those instances, not applicable here, the agreement provides that both parties waive the right to a jury, a permissible waiver. The clause surely does not mean that instances such as this where the very claims are rooted in the contract can be decided by a court where arbitration has been agreed upon by the parties.

Therefore, the arbitration clause is binding and the parties must proceed to arbitration. Therefore, the defendant's motion seeking to compel arbitration is granted.

So ordered. ENTER:

DATED: February 18, 2020
Brooklyn N.Y.

Hon. Leon Ruchelsman
JSC

KINGS COUNTY CLERK
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