

Sittercity, Inc. v Carlson
2020 NY Slip Op 30967(U)
April 17, 2020
Supreme Court, New York County
Docket Number: 655164/2019
Judge: Barry R. Ostrager
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. BARRY R. OSTRAGER PART IAS MOTION 61EFM

Justice

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SITTERCITY, INC.,	Petitioner,	MOTION DATE	
	- v -	MOTION SEQ. NO.	001
BETHANY CARLSON,	Respondent.	DECISION + ORDER ON MOTION	
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HON. BARRY R. OSTRAGER

The Court has reviewed all the filings in this fully submitted petition by Sittercity, Inc. for an order pursuant to CPLR 7503(b) to stay the arbitration demanded by respondent Bethany Carlson and the cross-motion by Carlson to compel arbitration pursuant to CPLR 7503(c). On April 16, 2020, the Court heard oral argument on the motion via a teleconference. For the reasons stated below, the petition and cross-motion are both granted in part and denied in part.

The business of Sittercity is to connect parents to safe, reliable, and competent babysitters and nannies that Sittercity claims to have rigorously vetted. Parents register for Sittercity services online and then, after paying a fee and accepting a single-spaced, 26-page document entitled “Sittercity Terms of Use and End User License Agreement,” can access information about various individuals available for hire. Carlson hired a sitter through Sittercity to care for her infant child. Carlson alleges she subsequently learned the babysitter had an undisclosed prior criminal record when the sitter was arrested for endangering the welfare of a minor – Carlson’s child. According to Carlson, the sitter transported Carlson’s child, without Carlson’s consent, from New York City to New Jersey and allegedly left the infant unattended in a hotel room while the sitter engaged in a dispute with an acquaintance in the parking lot and lit a car on fire.

While there is a petition to stay arbitration in New York and a cross-motion to compel arbitration in New York with an arbitrator selected by the Court, there is presently no pending arbitration. Carlson's counsel did file a 43-page Statement of Claim with the American Arbitration Association ("AAA") and a form requesting an in-person arbitration in New York and also served Sittercity counsel with a "Notice of Intent to Arbitrate pursuant to New York CPLR 7503(c)" (NYSCEF Doc. Nos. 3, 10 and 11). However, after an exchange of letters, the Consumer Filing Team of AAA sent both counsel a letter dated July 22, 2019 advising that "we [AAA] must decline to administer this case and have closed our file" due to Sittercity's "failure to adhere" to certain AAA policies that were a pre-condition to the arbitration (NYSCEF Doc. No. 17).

The Court therefore looks to the arguably unconscionable online arbitration provision assented to by Carlson in Section 35 of Sittercity's Terms of Use and End User License Agreement (NYSCEF Doc. No. 3). That provision calls for arbitration (1) in Chicago, Illinois, (2) pursuant to the AAA Commercial Arbitration Rules, (3) before a single arbitrator chosen solely by Sittercity. Sittercity seeks to stay the arbitration demanded by Carlson on the ground it fails to comply with the arbitration agreement insofar as it demands arbitration (1) in New York, (2) pursuant to the AAA Consumer Arbitration Rules, (3) before an independent and neutral arbitrator. Carlson in her cross-motion to compel arbitration relies in large part on the July 1, 2019 letter from AAA administrators to Sittercity's counsel suggesting that the three criteria insisted upon by Sittercity are contrary to AAA policy and that the criteria urged by Carlson are consistent with AAA rules. However, as Sittercity declined to satisfy the conditions set by AAA, no formal decision has been rendered by an arbitrator on that point, nor has any finding been made as to whether the arbitration provision is enforceable.

The Court finds that the overarching intent of the arbitration agreement is for the parties to have the American Arbitration Association resolve their dispute arising from the alleged gross misconduct of a babysitter hired by Carlson via Sittercity's online service, which represented that it had carefully and thoroughly vetted the sitter. Under the circumstances, the Court construes to arbitration agreement to require that an arbitrator, and not this Court, determine the three threshold issues relating to the proper location for the arbitration, the applicable AAA rules, and the method for selecting an arbitrator. Indeed, the arbitration provision states in relevant part that: "If there is any inconsistency between the AAA Rules and this arbitration provision, the terms of the arbitration provision will control *unless the arbitrator determines that the application of the inconsistent terms would result in a fundamentally unfair arbitration.*" (Emphasis added).

The parties have clearly agreed to AAA arbitration. The Court expresses no view either as to whether Sittercity has included provisions in the arbitration agreement designed to frustrate AAA arbitration or to preclude the AAA from properly conducting the arbitration in accordance with AAA rules. The Court is only deciding that the portion of the arbitration agreement that makes provision for AAA arbitration should be enforced. All other issues are for resolution by the AAA arbitrators in accordance with AAA rules.

Accordingly, it is hereby

ORDERED that Sittercity's petition to stay arbitration and Carlson' cross-motion to compel arbitration are granted to the extent that the parties are directed to apply to the American Arbitration Association to resolve this dispute in accordance with the applicable AAA rules. The AAA arbitrators will determine whether the dispute can be arbitrated, what provisions of the arbitration agreement are enforceable, and where the seat of the arbitration should be. Any

aggrieved party would have recourse by following the procedures to available to challenge the determination of the arbitrator. The petition and cross-motion are denied in all other respects, including the request for attorney’s fees and the request that this Court appoint the arbitrator.

April 17, 2020

Barry R. Ostrager

BARRY R. OSTRAGER, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	GRANTED IN PART	<input checked="" type="checkbox"/>	OTHER
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
<input type="checkbox"/>		<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: