

Gertner v Manorhaven Partners, LLC

2020 NY Slip Op 33631(U)

October 29, 2020

Supreme Court, New York County

Docket Number: 657566/2019

Judge: Andrew Borrok

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION 53EFM

-----X	
ALBERT GERTNER	INDEX NO. 657566/2019
Plaintiff,	MOTION DATE 10/29/2020
- v -	MOTION SEQ. NO. 001 002
MANORHAVEN PARTNERS, LLC,	DECISION + ORDER ON MOTION
Defendant.	
-----X	

HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 19, 39, 40, 41 were read on this motion to/for COMPEL ARBITRATION.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 22, 23, 25, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 42, 43, 44, 45, 46 were read on this motion to/for DISMISSAL.

Upon the foregoing documents, and for the reasons set forth on the record (10/29/2020), Albert Gertner's petition (Mtn. Seq. No. 001) to compel Manorhaven Partners, LLC (**Manorhaven**) to submit to arbitration pursuant to CPLR § 7503(a) is granted to the extent set forth herein, and Manorhaven's motion (Mtn. Seq. No. 002) to dismiss the petition pursuant to CPLR § 3211(a)(7) is denied.

I. The Facts Relevant to the Motions

Reference is made to a certain Employment Agreement (the **Agreement**), dated August 5, 2015, by and between Manorhaven and Mr. Gertner, pursuant to which Manorhaven hired Mr. Gertner as the Managing Director of both Manorhaven and its affiliate, Manorhaven Capital, LLC (NYCEF Doc. No. 5, § 3[a]). Section 13(g) of the Agreement provides that any controversy or

claim arising out of or relating to the Agreement that cannot be resolved by good faith negotiations between the parties shall be settled by arbitration in New York, New York, in accordance with the Commercial Arbitration Rules of the American Arbitration Association (AAA) (*id.*, § 13[g][b]). The Agreement also provides that the “Agreement to arbitrate may be specifically enforced by a court of competent jurisdiction under the applicable law of the state of New York pertaining to arbitrations” (*id.*).

Mr. Gertner voluntarily resigned from his employment at Manorhaven on October 26, 2017 (Petition, ¶ 23). On June 4, 2018, Mr. Gertner filed a Demand for Arbitration and Statement of Claim with the AAA, alleging that Manorhaven improperly withheld in excess of \$1.15 million in compensation to which he was entitled under the terms of the Agreement (*id.*, ¶¶ 27, 30). On July 3, 2018, after Manorhaven failed to pay its portion of the filing fee despite multiple requests by the AAA, Manorhaven filed a petition in the New York State Supreme Court seeking a stay of arbitration before the AAA in favor of arbitration before FINRA (*id.*, ¶ 40). The court (Rakower, J.) denied the petition and ordered the parties to proceed to arbitration before the AAA (*id.*, ¶ 42).

The parties proceeded to select an arbitration panel, entered into a case management schedule, and conducted extensive document discovery (*id.*, ¶ 43). An arbitration hearing was originally scheduled for December 2019 (*id.*, ¶ 44). The arbitrator emailed the parties on October 15, 2019, requesting an update as to the status of the arbitration (NYSCEF Doc. No. 14). Manorhaven partners responded the same day, indicating that the deposition of Mr. Gertner was scheduled for that day and the deposition of Manorhaven’s principal was scheduled for that Friday (NYSCEF

Doc. No. 11). The deposition of Mr. Gertner proceeded as planned (petition, ¶ 52). The deposition of Manorhaven's principal, however, did not (*id.*). Instead, by letter dated October 17, 2019, i.e., the day before Manorhaven's principal was to be deposed, Manorhaven disputed the AAA's computation of its fees and costs which, by that time, exceeded \$124,000, and argued that 50% of the fees should be allocated to Mr. Gertner (NYSCEF Doc. No. 10).

By Order, dated October 28, 2019, the arbitration panel denied Manorhaven's request to allocate 50% of the fees to Mr. Gertner and determined that under the Commercial Arbitration Rules in effect at the time Mr. Gertner filed his Demand for Arbitration, Manorhaven is responsible for all of the arbitration fees in excess of Mr. Gertner's initial fee of \$300 (NYSCEF Doc. No. 12).

Despite the panel's ruling, however, Manorhaven has failed to pay the required fees (Petition, ¶ 55). By letter dated November 25, 2019, Manorhaven indicated that it "lacks the financial wherewithal to pay the costs of this arbitration, and does not have the ability to borrow funds," and stated that "[a]s a result, [Manorhaven] cannot pay the expenses of this arbitration" (NYSCEF Doc. No. 13). Accordingly, on December 3, 2019, the arbitration panel stayed the hearing indefinitely (NYSCEF Doc. No. 14).

Mr. Gertner filed a petition in this court on December 18, 2019 to compel Manorhaven to submit to arbitration and pay the required fees, and seeking imposition of sanctions against Manorhaven pursuant to NYCRR § 130.1-1 for its allegedly frivolous conduct.

II. Discussion

CPLR § 7503 provides that “[a] party aggrieved by the failure of another to arbitrate my apply for an order compelling arbitration.” On an application to compel arbitration pursuant to CPLR § 7503(a), the court must first determine (1) whether the parties entered a valid and binding arbitration agreement, and (2) whether the issues to be submitted to arbitration are within the scope of the agreement (*Edgewater Growth Capital Partners, L.P. v Greenstar N. Am. Holdings, Inc.*, 69 AD3d 439, 439 [1st Dept 2010]).

Here, it is undisputed that Section 13(g) of the Agreement requires the parties to submit any claims or controversies arising out of or relating to the Agreement to arbitration in New York in accordance with the Commercial Arbitration Rules of the AAA, which require the employer to pay all arbitrator compensation in excess of the employee’s \$300 filing fee. Mr. Gertner’s claims seeking compensation are undeniably within the scope of the Agreement’s broad arbitration clause. In addition, Justice Rakower has already ordered the parties to proceed to arbitration before the AAA, and the AAA has ruled that Manorhaven is required to pay the outstanding arbitration fees. Manorhaven cannot stymie the employment agreement and its arbitration provision by refusing to pay the fees required by the AAA to . Therefore, the petition is granted and Manorhaven is ordered to participate in the arbitration proceedings that it agreed to participate in pursuant to the employment agreement, including, without limitation paying all outstanding and future arbitration fees as ordered by the AAA, such that such arbitration can proceed.

However, the motion for sanctions pursuant to NYCRR § 130.1-1 is denied without prejudice. If Manorhaven fails to comply with this court’s order on or before November 5, 2020, leave is

granted to Mr. Gertner to bring a motion by order to show cause seeking judgment for defaulting on its obligation to participate in arbitration and appropriate sanctions.

Accordingly, it is

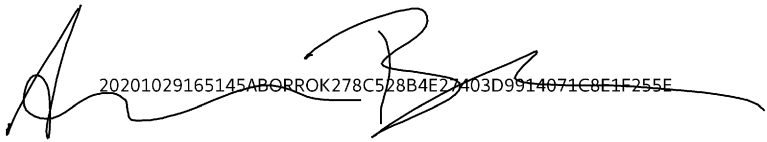
ADJUGDED that the petition (Mtn. Seq. No. 001) to compel arbitration including paying the required fees by the AAA is granted; and it is further

ORDERED AND ADJUGED the petition's request for sanctions pursuant to NYCRR § 130.1-1 is denied without prejudice; and it is further

ORDERED and ADJUGED that Manorhaven shall submit to and participate in the arbitration proceeding pending before the AAA in the matter captioned *Albert Gertner v Manorhaven Partners, LLC*, Case No. 01-18-0002-2187, and shall pay all outstanding and future arbitration fees billed by the AAA, and it is further

ORDERED that Manorhaven's motion (Mtn. Seq. No. 002) to dismiss the petition is denied.

20201029165145ABORROK278C528B4E27403D9914071C0E1F255E



ANDREW BORROK, J.S.C.

10/29/2020
DATE

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED SUBMIT ORDER OTHER

CHECK IF APPROPRIATE: SETTLE ORDER FIDUCIARY APPOINTMENT REFERENCE

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN