

**Living Real Estate Group, LLC v Douglas Elliman,
LLC**

2023 NY Slip Op 30778(U)

March 10, 2023

Supreme Court, New York County

Docket Number: Index No. 653595/2022

Judge: Laurence L. Love

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This opinion is uncorrected and not selected for official publication.

As further described in the Petition, summarizing Respondent's demand for arbitration, Respondent Douglas Elliman, LLC ("Elliman") is a real estate broker, claiming that in 2021, it represented two family trusts: the CKN 2020 FAMILY TRUST and the NAN 2020 FAMILY TRUST (the "Trusts") as prospective buyers of a property known as 237 West 26th Street, Unit 4, New York, NY 10010 (the "Apartment") and also represented the sellers of the Apartment. Elliman alleges that it offered \$2.1 million for the Apartment on behalf of the Trusts but that Sellers never signed a purchase agreement. Thereafter, Seller successfully sold the Apartment to different Buyers represented by Living Real Estate Group, LLC ("Living NY"), who earned a commission on the \$2.2 million selling price. Thereafter, Elliman demanded by letter that Living NY "remit" its \$55,000 commission to Elliman on the ground that Elliman was "the procuring cause of the sale of the apartment" and "produced a ready, willing and able buyer" and further claims that Living NY's individual clients are associated with the Trusts, which constitutes a breach of contract. Living NY denies same, resulting in the filing of the underlying arbitration and the instant Petition to stay arbitration pursuant to CPLR 7503(b).

In opposition, Respondent submits screenshots of the REBNY website which identifies Scott Durkin, Douglas Elliman's CEO, and Kenneth Haber, Douglas Elliman's General Counsel, as Broker A members of REBNY, screenshots of Living NY's website which identifies Jonathan Bakhsh ("Bakhsh") as Living NY's co-founder and CEO, and a screenshot of REBNY's website identifying Bakhsh as a Broker A member of REBNY and a screenshot of Living NY's website identifying same as a member of REBNY.

At the center of the instant dispute is the issue of whether the Arbitration Procedure of REBNY and the REBNY Constitution mandates the arbitration of this matter. Pursuant to the preamble of the Arbitration Procedure, "Arbitration of disputes is compulsory between members

of the classes specified in Article XIII if one party to a dispute demands it of the other. Arbitration is not required of other Board members, but they, as well as non-members of the Board, may by agreement submit their differences to the Board for determination by a panel consisting of one to three arbitrators.” Pursuant to Article XIII, Section 1(a) of the REBNY Constitution, “Arbitration of any dispute(s) between members, or the firms which such members are affiliated, in the classes listed below shall be compulsory: Broker A, Broker B, Borough Broker, Appraiser A, Non-Resident Appraiser, Non-Resident Broker, Management A, and/or Management B.”

The affidavit of Devin Someck, principal and co-founder of Living NY states in relevant part that Living NY is a member of REBNY but has never signed or agreed to the REBNY Constitution and was not aware of its provisions until the subject arbitration was demanded. Said affidavit further argues that Living NY has never agreed to or signed the “REBNY Universal Co-Brokerage Agreement” and that Living NY is not bound by the compulsory arbitration provisions of the REBNY Constitution as “though Living NY is a brokerage, it is not within the constitutional definitions of the classes Broker A, Broker B, Borough Broker, or Non-Resident Broker.” The Court notes that the final argument is without merit as it is undisputed that the CEOs of both firms are Broker A members of REBNY and the mandatory arbitration clause specifically includes “the firms which such members are affiliated.”

Petitioner further argues that the arbitration should be permanently stayed as Elliman’s demand for arbitration identifies no claim, and because Elliman has refused Living NY’s repeated requests to specify its claims or causes of action. Specifically, Petitioner alleges that Respondent has failed to allege a claim for breach of contract, fraud, or tortious interference with contract.

With respect to whether there is a valid arbitration agreement, as discussed in *Imagine Marketing Group, LLC v. 125North10, LLC*, 2011 WL 2941339 (Sup. Ct. N.Y. Cty. June 29, 2011, Ling-Cohan, J.),

Membership in a group whose organizing documents require arbitration of certain disagreements satisfies and constitutes an agreement under CPLR 7503(a). *Willard Alexander, Inc. v Glasser*, 31 NY2d 270, 273-274 (1972).

In *State of New York v Philip Morris Inc.*, 8 NY3d 574, 581 (2007), the Court of Appeals has rearticulated the rule that, for an arbitration provision to be enforceable, it must “expressly and unequivocally encompass...the subject matter of the particular dispute.” (internal quotation marks and citations omitted). The law is clear that, as the party seeking to enforce the instant clause, [Respondent] bears the burden of proving that the dispute herein is encompassed by said clause. *Eiseman Levine Lehrhaupt & Kakoyiannis, P. C v Torino Jewelers, Ltd.*, 44 AD3d 581, 583 (1st Dep't 2007). Here, a reading of the plain language of Article XIII, Section 1 of the REBNY Constitution makes clear that the issues in dispute in this action are unequivocally encompassed therein. As defendants have shown that principals of [Respondent] and [Petitioner] are Broker A members, as defined by the REBNY Constitution, [Respondent] can compel arbitration.

As Petitioner’s principal, Mr. Bakhash, is a Broker A member of REBNY, Living NY agreed to be bound by the REBNY Constitution and the Code, which include valid agreements to arbitrate.

As to Petitioner’s claim that there is no valid claim to arbitrate, it is well settled that disputes related relating to brokerage commissions between REBNY members unquestionably arise from their professional activities and are routinely subject to compulsory arbitration, *See*, *Imagine Marketing Group, LLC*, *supra*, and *In re New York LLC v. Greiner Maltz Co. of New York Inc.*, No. 701655/2013, 2014 WL 12976513 (N.Y. Sup. Ct. Mar. 11, 2014). In its demand for arbitration, Respondent sets forth in detail allegations that its agent, Jessica Escobar, represented buyers Nicolas Berzin and Alexandra Nikolaidis, who sought to purchase the Apartment through two trusts and negotiated a deal sheet on behalf of said trusts to purchase the Apartment for \$2.1

million, that the sellers refused to sell, citing a \$2.2 million offer and subsequently discovered that three weeks later Nicolas Berzin and Alexandra Nikolaidis purchased the Apartment in their individual capacities employing Petitioner’s firm as broker. Arising from same, Ms. Escobar asserts that she is the procuring cause of the sale and entitled to a commission. Petitioner’s cited case of *Realogy Holdings Corp. v. Urban Compass*, 195 AD3d 429 (1st Dept 2021) is entirely inapposite to the instant action as in that action the Appellate Division held that “The causes of action at issue primarily allege tortious interference with exclusive listings and are not asserted by the Corcoran Group and Sotheby's for purposes of a monetary recovery, but only in support of plaintiffs' claims sounding in, inter alia, misappropriation of trade secrets, confidential business information contracts, and competitors' listings, agents and employees, which are not required to be arbitrated pursuant to the REBNY arbitration provisions.” As the instant action seeks only a monetary recovery arising out of a fee dispute, it is squarely within the parties’ agreement to arbitrate.

ORDERED that the instant Petition is DENIED in its entirety; and it is further

ORDERED that Respondent shall arbitrate its claims against Petitioner in accordance with the Arbitration Procedure of REBNY and the REBNY Constitution.

3/10/2023

DATE



LAURENCE L. LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE