Weiss v Nitekman
2025 NY Slip Op 34278(U)
November 5, 2025
Supreme Court, Kings County
Docket Number: Index No. 523297/2025
Judge: Reginald A. Boddie
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At an IAS Commercial Part 12 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York on the 5th day of November 2025.

P R E S E N T:
Honorable Reginald A. Boddie
Justice, Supreme Court

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JACK WEISS, individually and derivatively on behalf of INTEGRA DEVELOPMENT GROUP INC.,

Plaintiff,

-against-

MEIR NITEKMAN, 935 MANAGEMENT LLC, MARTA PAWLOWSKA, MOSHE SCHEPANSKY, ANETA KWOLEK, FRADIE GELBER, AND DIEGO MORA,

Defendants,

-and-

INTEGRA DEVELOPMENT GROUP INC.,

Nominal Defendant.

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Index No. 523297/2025

Cal. No. 24-25 MS 1-2

Decision and Order

The following e-filed papers read herein:	NYSCEF Doc Nos.
MS 1	2-17, 25-38, 42
MS 2	39-41, 44-58, 62-70

Plaintiff's motion to stay arbitration and defendants' motion to compel arbitration and stay the instant action are decided as follows:

Background

This action arises from allegations by plaintiff Jack Weiss ("Weiss") against defendant Meir Nitekman ("Nitekman"), each 50% shareholders in, and the founders of, nominal defendant Integra Development Group Inc. ("Integra"), of secretly forming defendant 935 Management LLC ("935") to compete with, and siphon business from, Integra, using Integra's employees and funds falsifying records to conceal diversion and breaching of fiduciary duty. Plaintiff further alleges that the employee defendants worked for 935 on Integra's time and helped mask the scheme.

Plaintiff moves by order to show cause pursuant to CPLR 7503 to stay an arbitration before Rabbi Joseph Chaim Perlman (the "Arbitrator") of House of Aaron – Beit Din Rabbinical Court (Motion Sequence 1). Plaintiff argues that the pending arbitration is improper because (i) the only arbitration agreement executed was between plaintiff and Nitekman individually and covered only the limited dispute existing at that time, (ii) none of the other defendants, including the nominal defendant Integra, are parties to any arbitration agreement; and (iii) the Arbitrator lacks authority to decide issues of arbitrability, which rest exclusively with the Court. Weiss contends that the current claims alleging post-award misconduct including diversion of Integra's assets, usurpation of corporate opportunities, fraud, and breaches of fiduciary duty, fall entirely outside the scope of that narrow agreement, involve non-signatories, and cannot lawfully be compelled to arbitration.

In opposition, Nitekman and 935 argue that Weiss signed a broad Beit Din arbitration agreement (the "Arbitration Agreement"), covering all disputes about Integra, actively arbitrated for about a year, thereby waiving any right to a judicial stay, and that the Court already directed the parties in June 2025 to reconvene before the Arbitrator until a final award has been issued. The Decision and Order dated June 5, 2025, issued by this Court in the related proceeding, Index No. 513095/2025, which was Nitekman's Article 75 petition to confirm an arbitration award and

compel arbitration, held that "it is premature to seek either confirmation or disapproval of Rabbi Perlman's partial decision" and directed that "the parties are therefore directed to reconvene arbitration proceedings before Rabbi Perlman until a final award can be issued." Nitekman and 935 assert that the interim award that the Court declined to confirm resolved disputes "for the sake of peace," barred "new claims regarding past commingling and misappropriation of funds," and vested the Arbitrator with authority to interpret and modify his rulings; therefore, any arbitrability questions belong to the arbitrator. Nitekman and 935 contend that the "new" lawsuit claims here mirror issues already arbitrated or within the Arbitration Agreement's scope regardless of whether Weiss styles them as "derivative" or adds non-signatories; derivative claims are arbitrable, agents or closely related parties may invoke the clause, and Weiss is estopped from avoiding arbitration by artful pleading. Nitekman and 935 further argue that Weiss cannot meet injunction standards, as there is no likelihood of success, no irreparable harm, and equities favor enforcing the parties' Arbitration Agreement and the Court's prior order.

Under similar arguments, Nitekman and 935 also move pursuant to CPLR 7503(a) to compel arbitration and stay this entire action (Motion Sequence 2), arguing that all claims asserted by plaintiff are governed by the parties' Arbitration Agreement and must be decided by the Arbitrator, who retains jurisdiction and is already conducting the arbitration. Nitekman and 935 contend that Weiss's attempt to relitigate arbitrated matters in court constitutes forum shopping, and that derivative or non-signatory-related claims are likewise arbitrable because they arise from the same operative facts and corporate relationship.

In opposition to Nitekman and 935's motion, plaintiff argues that the Arbitration Agreement was a narrow, one-time submission between only Weiss and Nitekman, individually, to resolve the specific "dispute" that existed as of April 3, 2024, regarding past misappropriation

and commingling, not a blanket clause covering future conduct, Integra's derivative claims, or claims against non-signatories like 935 and former employees. Plaintiff contends that Integra itself never agreed to arbitrate, no operating agreement exists, the May 10, 2024 "interim" award was unsigned and merely memorialized a settlement "for the sake of peace" that bars only new claims regarding the past, not post-agreement or post-award misconduct, and Nitekman breached it by not paying the $375,000 and continuing to siphon opportunities and funds. Plaintiff asserts arbitrability is for this Court to decide under CPLR 7503, the Arbitrator has improperly tried to expand his own jurisdiction and threaten to nullify court claims, and the Court's June 6, 2025 Order only asked the Beit Din to issue a final award on the original matter, not to absorb new parties or later-arising issues.

In reply, Nitekman and 935 reassert that all of Weiss's claims belong in the ongoing Beit Din arbitration: the parties agreed to a broad submission, the Arbitrator retained jurisdiction, the Court already directed the parties to reconvene, and Weiss waived any challenge by actively participating. They argue Weiss's "new" claims are the same disputes regarding commingling, diversion, and misappropriation, and are arbitrable whether styled as direct or derivative. They assert that any non-signatory issue is now mooted because 935 and the former Integra employees have signed written "Consent to Arbitration and Jurisdiction of Beit Din" forms, submitting themselves to the Beit Din, as exhibits submitted in reply.

Discussion

"[O]n a motion to compel or stay arbitration, a court must determine, in the first instance . . . whether parties have agreed to submit their disputes to arbitration and, if so, whether the disputes generally come within the scope of their arbitration agreement" (*All Is. Estates Realty Corp. v Singh*, 219 AD3d 1390, 1391 [2d Dept 2023] [citation omitted]). "Arbitration is a matter of

contract, grounded in agreement of the parties" (*id.*). "When deciding whether the parties agreed to arbitrate a certain matter ... courts generally ... should apply ordinary state-law principles that govern the formation of contracts" (*Mozzachio v Schanzer*, 188 AD3d 873, 874 [2d Dept 2020] [citations omitted]). "Inasmuch as an arbitration clause is a contractual right, the general rule is that only a party to an arbitration agreement is bound by or may enforce the agreement" (*id.*, at 874-75 [internal quotation marks omitted]). Pursuant to CPLR 7503, "a party who has not participated in the arbitration and who has not made or been served with an application to compel arbitration, may apply to stay arbitration on the ground that a valid agreement was not made or has not been complied with." Further, "[b]ecause an LLC shall be a separate legal entity from its members, a nonsignatory LLC is a nonparty to an agreement among its members only" (*Wythe Berry LLC v Goldman*, 230 AD3d 1081, 1083 [1st Dept 2024] [citation and internal quotation marks omitted]).

In the present action, the record establishes that the Arbitration Agreement was a narrow, one-time agreement between Weiss and Nitekman, individually, to "appear and litigate before [the Arbitrator] the dispute that exists between [the signatories]." The only signatories to the Arbitration Agreement are Weiss and Nitekman. Integra was not a party to the agreement, and the document contains no reference to Integra, 935 Management LLC, any Integra employees, or any future or continuing controversies.

The May 10, 2024 interim decision memorialized a limited compromise of the dispute that existed on or before the date of the Arbitration Agreement, April 3, 2024, providing that Nitekman would pay Weiss $375,000 "for the sake of peace," and barring only "new claims regarding the past commingling and misappropriation of funds." Nothing in either the Arbitration Agreement or the May 10, 2024 interim award purports to immunize future conduct, to foreclose judicial relief

for subsequent wrongdoing, or to subject any future disputes arising after April 3, 2024 to arbitration.

Defendants' reliance on the "consent to arbitration and jurisdiction" forms executed in September 2025 by Integra's former employees and by Nitekman on behalf of 935 Management is misplaced. Those documents were executed after the commencement of this action and cannot retroactively enlarge the scope of the 2024 arbitration submission, nor can they bind Weiss or Integra to arbitrate derivative claims they never agreed to submit. Absent an express, mutual agreement to arbitrate the claims now asserted, which involve alleged post-April 3, 2024 misconduct, distinct corporate entities, and non-signatories, the Court finds that the present controversy falls outside of the scope of the Arbitration Agreement.

The Court's June 5, 2025 Decision and Order issued in the related proceeding does not alter the limited scope of the Arbitration Agreement. In that Article 75 petition, Nitekman sought to confirm what he characterized as a final arbitration award and to compel further arbitration. The Court held that "it is premature to seek either confirmation or disapproval of Rabbi Perlman's partial decision" and directed that "the parties are therefore to reconvene arbitration proceedings before Rabbi Perlman until a final award can be issued" (*see* NYSCEF Doc No. 24). That direction was procedural and limited in nature, intended only to allow the parties to complete the existing arbitration on the issues submitted in April 2024, not to expand the Arbitrator's jurisdiction or authorize the inclusion of new parties or new claims arising thereafter.

As to defendants' contention that Weiss is not entitled to seek relief under CPLR 7503(b), which expressly authorizes "a party who has not participated in the arbitration" or "who has not made or been served with an application to compel arbitration" to "apply to stay arbitration," that argument is unavailing. Defendants assert that Weiss waived his right to challenge the arbitrator's

jurisdiction or the arbitrability of the claims by voluntarily participating in the arbitration proceedings. However, a review of the docket demonstrates that plaintiff did not actively or voluntarily engage in arbitration on the issues now presented before this Court. To the contrary, plaintiff's position has been consistent throughout, as reflected in his June 11, July 22, and July 25, 2025 communications to the Arbitrator, which made clear that (i) the prior arbitration was concluded except for issuance of a final award, and (ii) the Arbitrator lacked jurisdiction to adjudicate any new claims or to include non-signatory parties such as Integra's former employees and 935 Management LLC (*see* NYSCEF Docs No. 53, 56, 57). Such conduct cannot reasonably be characterized as participation sufficient to constitute waiver under CPLR 7503(b).

Conclusion

Based on the foregoing, defendants' motion to compel arbitration and to stay this action is denied in its entirety. Plaintiff's motion to stay arbitration is granted to the extent that any arbitration purporting to address the claims or parties presented in the instant action is hereby stayed.

Any argument not explicitly addressed herein was considered and deemed to be without merit or unnecessary to address given the court's determination.

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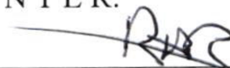

Honorable Reginald A. Boddie
Justice, Supreme Court

HON. REGINALD A. BODDIE
J.S.C.