At an IAS Term, Part Comm-2 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 5th day of January, 2026.

P R E S E N T:
HON. CENCERIA P. EDWARDS, CPA,
Justice.

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In the Matter of the Application of OLIVIA ANZIVINE and NOELLE ANZIVINE
To Stay Arbitration,

Petitioner(s),

-against-

PRSPER LLC,

Defendant(s).

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ORDER

Motion Calendar: 2/19/2025

Motion Cal. #(s): 6

Index #: 502567/2025

Mot. Seq. #(s): 1

The following e-filed papers read herein:	NYSCEF Doc. Nos.:
Notice of Motion/Cross-Motion/Petition/ Order to Show Cause, Affidavits/Affirmations, and Exhibits	1-7
Opposing Affidavits/Affirmations and Exhibits	13-18
Reply Affidavits/Affirmations and Exhibits	

Petitioners Olivia Anzivine and Noelle Anzivine ("Petitioners") commenced this special proceeding by Verified Petition on January 24, 2025, to stay arbitration pursuant to CPLR § 7503 alleging Prsper LLC ("Respondent") failed to abide by their contracted method to resolve disputes via mediation in accordance with their arbitration agreement.

Petitioners in its underlying dispute allege Respondent "improperly has interacted with fans of Olivia and Noelle on many occasions while pretending to be Olivia or Noelle without our clients' knowledge of the activities taking place. Particularly troubling are the many instances in which PRSPER has interfaced with Olivia and Noelle's followers by sharing pornographic pictures which PRSPER, while pretending to be Olivia or Noelle, claimed as actual pictures taken by Olivia and Noelle of their own bodies. These actions served to destroy the non-graphic brand that Olivia

and Noelle toiled over years to build, there by greatly harming the trust they had cultivated with their followers". (See Ex "C", Notice of Dispute and Demand letter, ¶3).

Petitioner in its Motion Sequence #1 requests an "Order to be made and entered pursuant to CPLR § 7503(b) and (c), (1) immediately staying all arbitration proceedings pending a determination on the instant petition and any hearings ordered thereto, (2) permanently staying arbitration on the papers (3) the Court order that the Agreement between the parties does not contain an enforceable mandatory arbitration clause upon the parties, and (4) for such other, further, and different relief as the Court deems just and proper under the circumstances. (*NYSCEF* Doc. #2)

Civil Practice Law and Rules (CPLR) 7503 provides, in pertinent part:

> (b) Application to stay arbitration. Subject to the provisions of subdivision (c), 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 or that the claim sought to be arbitrated is barred by limitation under subdivision (b) of section 7502.

"[A]s a general matter, on 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' " *Matter of Northeast & Cent. Contrs., Inc. v. Quanto Capital, LLC*, 203 A.D.3d 925, 927-928 [2ND Dept 2022] citing (*Revis v Schwartz*, 192 AD3d at 134, quoting *Sisters of St. John the Baptist, Providence Rest Convent v Geraghty Constructor*, 67 NY2d 997, 998, 494 NE2d 102, 502 NYS2d 997 [1986]). The threshold issue of whether there is a valid agreement to arbitrate is for the court and not the arbitrator to determine "*Matter of Primex Intl. Corp. v Wal-Mart Stores*, 89 NY2d 594, 598 [1997]; Ferrarella v Godt, 131 AD3d 563, 565, 15 NYS3d 180 [2015], *See, Matter of Northeast & Cent. Contrs., Inc. v. Quanto Capital*, LLC, 203 A.D.3d 925, 927-928 (2nd Dept 2022)].

The relevant portions of **Article 15** of the parties' Agreements reads, **Dispute Resolution**.

> (a) If a dispute arises between the Parties in connection with the Agreement, the Parties agree to hold an in-person meeting or a conference call, together with their respective representatives and/or legal counsel, to attempt to resolve the dispute in good faith prior to pursuing any formal legal action or remedies. The

disputing Party shall provide the other Party written notice of any dispute ("Notice of Dispute"). The Parties shall meet (or speak, if via a conference call) at a mutually acceptable time and place within ten (10) business days after receipt of the Notice of Dispute ("Good Faith Conferral"); provided however, if an in-person meeting is required for the Good Faith Conferral, then such meeting will take place in a mutually agreed to location in New York City.

(b) The Parties agree that any and all disputes, claims or controversies arising out of or relating to this Agreement that cannot be resolved by the good faith conferral provided in sub-paragraph (a) above, shall be mediated, in good faith, through a formal mediation conducted by a mutually-agreeable independent mediator (the "Mediation").

Either Party may commence the Mediation by providing JAMS (f/k/a Judicial Arbitration and Mediation Services, Inc.) and the other Party a written request for Mediation, setting forth the subject of the dispute and the relief requested. The Mediation will be conducted in New York City. The Parties will cooperate with JAMS and with one another in selecting a mediator from the JAMS panel of neutrals and in scheduling the Mediation. The Parties agree that they will participate in the Mediation in good faith. All offers, promises, conduct and statements, whether oral or written, made in the course of the Mediation are confidential, privileged and inadmissible for any purpose.

Either Party may initiate an arbitration with respect to the matters submitted to Mediation by filing a written demand for arbitration at any time following the declaration of an impasse. At no time prior to the completion of the Mediation shall any Party initiate an arbitration related to this Agreement.

DISCUSSION

Respondent filed their Demand for Arbitration with Judicial Arbitration and Mediation Services, Inc. ("JAMS"), served on both Petitioners and their counsel (*See NYSCEF* Doc. #14). The parties contractually agreed to participate in arbitration as set forth in the parties' Exclusive Management Agreements ("Agreements," NYSCEF doc. #3, Exhibit A). Petitioner's argument to stay arbitration is based upon Respondent's "failure" to meet its condition precedent to participate in "good faith" mediation prior to moving to arbitrate.

Contrary to Petitioner's claim, consent of all the parties is not required to commence an arbitration proceeding. Their fully executed agreement specifically states "Either Party may initiate an arbitration with respect to the matters submitted to Mediation by filing a written demand for arbitration at any time following the declaration of an impasse. At no time prior to the completion of the Mediation shall any Party initiate an arbitration related to this Agreement." It

further states that the parties must attempt to resolve their dispute and mediate same in good faith prior to moving for arbitration.

With respect to the condition precedent to mediate, Petitioners' statements regarding whether mediation occurred are illusive and conflicting. Petitioners' statements verify the parties met, discussed their dispute, but could not resolve their differences. Petitioner admitted the parties did mediate the dispute but were "too far apart to have meaningful settlement discussions…. See Petitioners verified petition (*NYSCEF* Doc. #1, ¶19, 20).

> Counsel instead, made his intentions clear that he would not participate in mediation in good faith, as according to him he would make no offer to Petitioners' demand unless Petitioners sua sponte lowered that demand by some unknown amount. The undersigned had asked Defense counsel to waive the mediation provision on more than one occasion, because the two parties were too far apart for any meaningful good faith, mediation to occur. Defense counsel ignored this request and then preceded to "mediate" in what Petitioners argue was in, less than good faith. (*NYSCEF* Doc. #1, ¶19).
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> Good faith mediation is a condition precedent to any attempt to arbitrate the disputes. Therefore, as in this case, when the parties are too far apart to have meaningful settlement discussions, rendering good faith mediation a fruitless endeavor, the only pathway the agreement allows for is not arbitration, but litigation in a court of law. (*NYSCEF* Doc. #1, ¶19).

Respondents insist that any allegations of a purported failure to mediate in "good faith" are false, procedurally improper and fail to state a basis for arbitration, arguing inter alia, that there was no bad faith evidenced when it declined to meet Petitioner's demand with a pre-mediation counteroffer (*NYSCEF* Doc. #1, ¶¶42-48).

Petitioner's arguments that since the parties are not within reach of each other's settlement offers lends their dispute toward court litigation is unsupported in its contractual agreements and in law. It is not this Court's obligation to determine whether the parties' mediation was held in good faith, but that mediation occurred. The agreement allows for either party to initiate arbitration and Respondent rightfully did so after fulfilling their requirement to mediate. Moreover, questions of compliance with step-by-step grievance procedure are questions of procedural arbitrability to be adjudicated by the arbitrator (*See Matter of Nat'l Amusements, Inc.*, 210 AD2d 336, 336 [2d Dept 1994]).

Lastly, Petitioners argue the causes of action asserted are intentional torts that could not have been anticipated…therefore, the "subject of the claims is not properly addressed through arbitration" [of the Agreements]. Petitioners' argument is unavailing and not supported by their submissions or by any case or statutory law (*see Brandle Meadows v Bette*, 84 AD3d 1579, 1581 [3d Dept 2011] [a "reasonable relationship" exists between the general subject matter of the underlying contract dispute … and [Petitioners] intentional [sic] tort claims in the instant action, such that Supreme Court did not err in finding that these tort claims are subject to arbitration]).

Here, Petitioners and Respondent entered into Agreements, which elected use of JAMS Rules by virtue of the value of the alleged claim being over $250,000. This subsequently triggered Rule 11 (b) of the JAMS Rules, thus leaving questions of arbitrability to the arbitrator.

Based on the foregoing, this Court has determined the parties fully executed and entered a contract and agreed to arbitrate their dispute under their binding arbitration agreement and their disputes come within the scope of their arbitration agreement. CPLR § 7503(a); *See, Matter of Northeast & Cent. Contrs., Inc. v. Quanto Capital*, LLC, 203 A.D.3d 925, 927-928 (2nd Dept 2022)]; *Degraw Constr. Group, Inc. v. McGowan Blds., Inc.*, 152 A.D.3d 567, 569 [(2d Dep't 2017)].

Accordingly, Petitioner's (mot. seq. #1), is **DENIED in its entirety**.

The foregoing constitutes the Decision and Order of this Court.

E N T E R:

Hon. Cenceria P. Edwards, J.S.C, CPA