

McKenna v SurvivorNet, Inc.
2026 NY Slip Op 31845(U)
April 27, 2026
Supreme Court, New York County
Docket Number: Index No. 158003/2025
Judge: Phaedra F. Perry-Bond
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PHAEDRA F. PERRY-BOND PART 35

Justice

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INDEX NO. 158003/2025

PAUL MCKENNA,

MOTION DATE 08/07/2025

Plaintiff,

MOTION SEQ. NO. 001

- v -

SURVIVORNET, INC. A/K/A SURVIVORNET.COM,
STEVEN ALPERIN

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 42, 43, 44, 48

were read on this motion to/for DISMISSAL

Upon the foregoing documents, Defendants' motion to dismiss Plaintiff's first, second, and third causes of action is denied. Plaintiff's cross motion to compel Defendants to submit to arbitration, to pay all past due fees charged by the American Arbitration Association ("AAA"), and for sanctions is granted in part and denied in part.

I. Background

Defendant SurvivorNet, Inc. ("SurvivorNet") is a company that provides resources, education, and support to cancer and rare disease patients and the patients' families and health care practitioners. Defendant Steven Alperin ("Alperin") is SurvivorNet's principal. Plaintiff was formerly employed by SurvivorNet as a Senior Vice President of Commercial Operations, and was responsible for generating new business opportunities, achieving sales targets, and overseeing SurvivorNet's sales infrastructure. Plaintiff reported directly to Alperin.

On January 20, 2025, Alperin allegedly terminated Plaintiff's employment without cause. Plaintiff alleges he was not paid bonuses owed to him, was not paid severance in accordance with

the parties' employment agreement and was not awarded vested stock options. Plaintiff alleges he tried to bring these claims in arbitration pursuant to the parties' employment agreement, but Defendant failed to pay required filing fees and the arbitration was administratively closed.

Now, Plaintiff sues Defendants for various causes of action, including a violation of New York Labor Law ("NYLL") based on Defendant's failure to pay bonus compensation, breach of contract based on Defendant's failure to pay Plaintiff's contractually required bonus, unjust enrichment, breach of contract for failure to pay severance benefits, breach of contract for failure to award stock option. In the alternative, Plaintiff seeks declaratory and injunctive relief, seeking a declaration that Plaintiff owns certain stocks in SurvivorNet and an injunction ordering Defendant to turn over those stocks. Plaintiff also seeks specific performance of the arbitration clause in the parties' employment agreement and separately alleges breach of contract based on Defendants' violation of the arbitration clause.

Defendants respond seeking dismissal of the NYLL, breach of contract with respect to Plaintiff's unpaid bonus, and unjust enrichment claims.¹ In opposition, Plaintiff cross moves to compel arbitration and seeking sanctions. Plaintiff argues the Court should not even delve into the merits of Defendants' motion because the claims are arbitrable and should be for an arbitrator to decide in accordance with the parties' employment agreement. In response to the cross motion, Defendants argue that Plaintiff cannot enforce the arbitration agreement because he has unclean hands and further argues that Plaintiff waived the right to arbitrate by asserting the merits of his claims in court. In reply, Plaintiff argues that Defendants do not contest the applicability of the arbitration clause, and that Plaintiff has not waived the right to arbitrate since he was forced to file this action as a result of Defendants' refusal to participate in arbitration.

¹ Defendants do not move to dismiss Plaintiff's several other causes of action, including Plaintiff's claims regarding arbitration.

II. Discussion

Defendants' motion to dismiss is denied, and Plaintiff's cross motion is granted to the extent Defendants are compelled to participate in arbitration, but the remainder of Plaintiff's cross motion, which asks for sanctions, is denied without prejudice. The Court first addresses Plaintiff's cross motion, as the determination that Plaintiff's claims must be arbitrated would moot Defendants' motion to dismiss.

As a preliminary matter, and contrary to Defendants' argument, the Court does not find Plaintiff waived the right to arbitrate. Plaintiff was required to commence this proceeding to seek relief after Defendants seemingly purposefully avoided arbitration. That Plaintiff tried to seek redress here after Defendants ignored arbitration does not amount to a finding of waiver against Plaintiff. In both Plaintiff's Complaint and his Amended Complaint, Plaintiff has consistently asked this Court to order Defendants to perform pursuant to the parties' arbitration agreement. In response to Defendants' motion to dismiss, Plaintiff promptly and thoroughly moved to compel arbitration. These circumstances do not show an unequivocal intention to waive arbitration rights (*see, e.g. Singer v Seavey*, 83 AD3d 481, 482 [1st Dept 2011]; *Lodal, Inc. v Home Ins. Co.*, 309 AD2d 634 [1st Dept 2003]). In fact, Plaintiff's actions show just the opposite – namely a continuous and strong intention to arbitrate (*Skyline Steel, LLC v PilePro LLC*, 139 AD3d 646, 647 [1st Dept 2016]).² Having determined that Plaintiff did not waive the right to arbitrate, the Court next turns to the parties' arbitration agreement and whether the parties should be compelled to arbitrate.

² In a parallel action between the parties, Plaintiff responded to SurvivorNet's claims asserted against him with a motion to compel arbitration, and Plaintiff refused to engage in any discovery. This further shows Plaintiff's repeated intent to arbitrate. The Court granted that motion.

The arbitration agreement, found in ¶ 16 of the parties' employment agreement, states:

“Other than a claimed violation by Employee of the provisions in Sections 7-10 above, which may be addressed by a request for equitable and injunctive relief in applicable courts having jurisdiction thereof (“Injunctive Relief Exception”), any dispute or controversy arising out of or relating to this Agreement, and/or related to Employee’s employment, that could otherwise be resolved by a court shall be resolved through arbitration in accordance with the Employment Arbitration Rules and Mediation Procedures of the American Arbitration Association, in which neither class nor collective proceedings will be permitted....Except for the Injunctive Relief Exception, Employee and the Company give up and waive any right to resolve a controversy through any other means, and the right to sue in court in connection with claims related to this agreement and/or Employee’s employment with the Company. This waiver of the right to sue in court includes, for example, claims based on federal statutes such as Title VII of the Civil Rights Act of 1964 and the Fair Labor Standards Act and claims based on statutes, common law causes of action and concerning compensation. If there is more than one dispute between Employee and the Company, all such disputes may be heard in a single proceeding.”

New York public policy favors enforcement of contracts for arbitration (*Cooper v Bruckner*, 21 A.D.3d 758 [1st Dept 2005]). Neither party disputes that the arbitration agreement is valid, nor is there any dispute that arbitration clause encompasses the claims brought in this dispute. Since the parties agreed that the AAA rules govern, “questions concerning the scope and validity of the arbitration agreement, including issues of arbitrability, are reserved for the arbitrators” (*Badme v Aecom*, 244 AD3d 403, 403 [1st Dept 2025]; *Anima Group, LLC v Emerald Expositions, LLC*, [1st Dept 2021]; *Flintlock Const. Services, LLC v Weiss*, 122 AD3d 51, 54 [1st Dept 2014]). Because the parties agreed that the existence, scope or validity of the arbitration agreement is an issue for the arbitrator to decide, the Court’s inquiry into any other collateral matters with respect to the agreement must end there (*see also Life Receivables Trust v Goshawk Syndicate 102 at Lloyd’s*, 66 AD3d 495, 496 [1st Dept 2009], *affd* 14 NY3d 850 [2010], *cert denied* 562 U.S. 962 [2010]). This includes whether Plaintiff allegedly breached the employment agreement and thus cannot seek the benefits of the arbitration clause.

Therefore, Plaintiff's cross motion to compel arbitration is granted. At this juncture, the Court denies Plaintiff's request for sanctions against Defendants. However, denial is without prejudice, and should Defendants continue to obstruct the arbitration, Plaintiff may renew its motion for sanctions. Because the parties are compelled to arbitrate, Defendants' motion to dismiss Plaintiff's first through third causes of action is denied, without prejudice, with leave to renew in the event the arbitration is dismissed without reaching the merits of Plaintiff's claims alleging violation of the NYLL, breach of contract with respect to bonus payment, and unjust enrichment. Moreover, as the parties are compelled to arbitrate, this matter shall be marked stayed pending outcome of the arbitration or some other resolution of the parties' claims.

Accordingly, it is hereby,

ORDERED that Defendants' motion to dismiss is denied, without prejudice; and it is further

ORDERED that Plaintiff's motion to compel arbitration is granted, and the parties are compelled to arbitrate the claims set forth in Plaintiff's Amended Complaint before the American Arbitration Association ("AAA"), pursuant to ¶ 16 of the parties' Employment Agreement; and it is further

ORDERED that Defendants shall, within twenty one (21) days of entry of this decision and order, pay all past due fees charged by AAA in connection with Plaintiff's prior attempt to arbitrate, and Defendants are compelled to timely pay all future fees charged by AAA which they are required to pay either pursuant to AAA's rules or pursuant to the parties' Employment Agreement; and it is further

ORDERED that Plaintiff's motion for sanctions is denied, without prejudice, with leave to renew in the event Defendants continue to ignore their obligation to arbitrate; and it is further

ORDERED that the Clerk of the Court shall mark this matter stayed, and either party may vacate or modify the stay via order to show cause or via so-ordered stipulation; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on Plaintiff via NYSCEF.

This constitutes the Decision and Order of the Court.

4/27/26
DATE


HON. PHAEDRA F. PERRY-BOND, J.S.C.

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