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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SCOTT J. PAGANO,

Plaintiff,

-against-

GFI SECURITIES, LLC,

Defendant.

MEMORANDUM ORDER GRANTING DEFENDANT'S MOTION TO COMPEL ARBITRATION

17 Civ. 4728 (AKH)

ALVIN K. HELLERSTEIN, U.S.D.J.:

Plaintiff Scott J. Pagano ("Pagano") brought this action against his former employer, defendant GFI Securities, LLC ("GFI"), following GFI's termination of Pagano's employment. Pagano seeks a "declaratory judgment that Defendant did not have legal authority to terminate the Employment Agreement." Compl. ¶ 22. Pagano also asserts a claim for breach of contract. GFI moves to compel arbitration of Pagano's claims and stay this action on the ground that Pagano's employment agreement provides that all employment-related disputes be resolved "exclusively through arbitration." For the reasons stated herein, GFI's motion is granted.

BACKGROUND

Pagano and GFI entered into an employment agreement on May 28, 2008 ("Employment Agreement."). Section 10 of the Employment Agreement provides as follows:

> This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of New York without regard to conflict of law provisions. Except as provided in Paragraph 5(F)2 above, ***the parties hereby agree that all claims, disputes or controversies ("Claims") arising under this Agreement or otherwise concerning in any way Employee's employment,*** including, without limitation, Claims for wages or salary, severance or compensation; Claims for breach of any contract or covenant

> (express or implied); tort Claims; Claims for any type of discrimination including, without limitation, race, color, sex, religion, national origin, age, marital status, sexual orientation or disability; Claims for benefits (except where any applicable employee benefit or pension plan specifies a different procedure for resolving such Claims); and Claims for violation of any federal, state or other governmental law, statute, regulation, rule or ordinance (but excluding Claims for worker's compensation or unemployment benefits), ***shall be resolved exclusively through arbitration. Such arbitration shall be conducted before, and in accordance with the applicable arbitration rules of, the Financial Industry Regulatory Authority (FINRA),*** or the National Futures Association ("NFA"), if the matter is eligible for such arbitration and the FINRA or NFA, as the case may be, agrees to arbitrate. This agreement to arbitrate before the FINRA or NFA includes, but is not limited to, Claims asserted under the Age Discrimination in Employment Act, as amended; Title VII of the Civil Rights Act of 1964, as amended, the Employee Retirement Income Security Act of 1974, as amended; the Family and Medical Leave Act; Section 1981 of the Civil Rights Act of 1866; the Americans with Disabilities Act; the New York State Human Rights Law; the New York City Human Rights Law; and any successor statute to any of the foregoing provisions of law.

Milligan Decl. Ex. A § 10 (emphases added).

On September 17, 2015, Pagano initiated a FINRA arbitration against GFI, alleging claims for breach of contract, breach of the covenant of good faith and fair dealing, and fraudulent inducement. Compl. ¶ 11. GFI asserted a counterclaim for breach of contract. On December 22, 2016, following a six-day hearing, a three-member FINRA arbitration panel issued an award which denied both parties' claims in their entirety. Milligan Decl. Ex G at 2 (the "Award"). In summarizing the parties requested relief, the Award noted that "at the hearing, [GFI] requested that [Pagano's] employment contract be terminated." In addition to denying the parties' formal claims, the panel also ruled that "any and all relief not specifically addressed herein, including attorneys' fees and punitive damages, is denied." *Id.*

On December 27, 2016, the next business day after the Award was issued, GFI terminated Pagano's employment. Compl. ¶ 17.

DISCUSSION

The arbitration clause contained in Pagano's employment agreement, which covers "all claims, disputes or controversies arising under this Agreement or otherwise concerning in any way [Pagano's] employment," plainly applies to this action. Pagano does not argue to the contrary. Instead of challenging the enforceability or scope of the arbitration clause, Pagano instead premises his opposition solely on the contention that the FINRA panel specifically ruled that "GFI did not have the legal right to terminate its employment agreement with Pagano." Consequently, Pagano contends that the doctrines of *res judicata* and collateral estoppel bar GFI from claiming that it had the legal right to terminate his employment, and that arbitration is improper because "the parties certainly did not agree to resubmit issues to arbitration that have already been arbitrated and decided."

This argument fails. Whether or not GFI was precluded from terminating Pagano's employment under the doctrines of *res judicata* and collateral estoppel is a merits argument that goes beyond the threshold question of arbitrability, the subject of GFI's motion. Pagano is of course entitled to present his *res judicata* argument, but not in this forum, given the broad scope of the arbitration clause to which he agreed. The Second Circuit addressed this precise issue in *Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. Belco Petroleum Corp.*, 88 F.3d 129 (2d Cir. 1996), and held that where the applicability of an arbitration clause is not in dispute, claim and issue preclusion arguments must be resolved by the arbitrator:

> Nothing in the arbitration clause gives any indication that anyone other than the arbitrator should decide the preclusive effect of a prior arbitration. … The preclusion issue is not … a disagreement over 'whether [the parties] agreed to arbitrate the merits' of their dispute. Belco's claim of preclusion is a legal defense to National Union's claim. As such, it is itself a component of the dispute on the merits. Belco's attempt to characterize the preclusion issue as not related to the merits is unavailing. It is as much related to the merits as such affirmative defenses as a time limit in the arbitration agreement or

> laches, which are assigned to an arbitrator under a broad arbitration clause similar to the one in the [agreement].

88 F.3d at 135–36 (internal citations omitted). Numerous other cases are in accord. *See U.S. Fire Ins. Co. v. Nat'l Gypsum Co.*, 101 F.3d 813, 817 (2d Cir. 1996) (compelling arbitration of issue preclusion argument); *Triumph Const. Corp. v. New York City Council of Carpenters Pension Fund*, 29 F. Supp. 3d 373, 392 (S.D.N.Y. 2014) (rejecting argument that "claim preclusion is somehow substantively different from other defenses to arbitrability that are reserved to arbitration."); *N. River Ins. Co. v. Allstate Ins. Co.*, 866 F. Supp. 123, 129 (S.D.N.Y. 1994) (finding "the logic of allowing arbitrators to decide procedural defenses to arbitration equally compelling in the context of res judicata and collateral estoppel.").

In light of this clear authority, I decline to address the parties' arguments as to whether either *res judicata* or collateral estoppel do in fact apply in these circumstances.

CONCLUSION

For these reasons, defendant's motion to compel arbitration is granted. The Clerk shall terminate the motion (Dkt. No. 7) and mark the case closed. Upon filing of a motion to confirm or vacate any subsequent arbitration award, the filing party may ask the Clerk to re-assign the case to me as related.

SO ORDERED.

Dated: August 14, 2017
New York, New York

ALVIN K. HELLERSTEIN
United States District Judge