IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

PATRICK F. DYE, JR. and SPORTSTRUST ADVISORS, LLC, Plaintiffs, v. JIMMY SEXTON, Defendant.	CIVIL ACTION NO. 1:16-CV-00035-LMM

ORDER

This case comes before the Court on Defendant's Motion to Dismiss and Require Arbitration [28]. After due consideration, the Court enters the following Order.

I. BACKGROUND[1]

Plaintiff Patrick F. Dye, Jr. and Defendant Jimmy Sexton are sports agents. Until 2010, Plaintiff Dye owned and operated a sports agency called ProFiles Sports, Inc., and Defendant owned and operated a sports agency called Athletic Resource Management. The two sports agents were longtime competitors, but agreed in 2010 to partner and merge their respective agencies into a new sports agency called SportsTrust Advisors, LLC ("SportsTrust"). They signed a Letter of Intent Agreement on November 11, 2010. The merger was formally announced to

[1] The facts relied upon in this Order are taken from the Complaint and are construed in the light most favorable to Plaintiffs as the non-moving party.

the public in a press release on November 18, 2010. Plaintiff Dye was the President of SportsTrust and Defendant was its Chief Executive Officer.

Plaintiffs allege that Plaintiff Dye and Defendant succesfully brought in a number of high-profile National Football League ("NFL") clients to SportsTrust, most notably Julio Jones of the Atlanta Falcons. However, beginning in the fall of 2011, Defendant allegedly began spending a great deal of time cultivating a relationship with Mr. Jones in the hopes of managing him in the future without Plaintiff Dye's involvement. Plaintiffs allege that Defendant deliberately concealed these efforts, which included sending a representative of Defendant to each Falcons game and throwing a surprise birthday party for Mr. Jones's mother in Alabama.

On November 13, 2011, Defendant Sexton informed Plaintiff Dye that he had engaged in discussions over the past several months to join one of SportsTrust's competitiors, Creative Artists Agency ("CAA"). On December 1, 2011, Defendant Sexton joined CAA. Plaintiffs allege Defendant did not disclose to CAA that he had a partnership agreement with Plaintiff Dye nor did he attempt to bring Plaintiff Dye with him to CAA. Shortly after Defendant's departure from SportsTrust, Plaintiffs allege that Defendant Sexton signed NFL players Trent Richardson, Mark Barron, Dontari Poe, and Brock Osweiler, all of whom were being recruited by SportsTrust before Defendant's departure. Additionally, Plaintiffs allege that Defendant Sexton signed new exclusive agency deals with

then-SportsTrust clients including Darren Sproles and Mr. Jones, both of whom later signed multimillion dollar contracts or contract extensions.

Plaintiffs bring a number of Georgia state law claims against Defendant. Specifically, they assert claims for breach of contract for failing to remit certain partnership profits and soliciting Plaintiff Dye's pre-partnership clients; unjust enrichment from using Plaintiffs' confidential information to solicit clients; fraud through purposefully concealing solicitation activities; breach of fiduciary duties; violations of the Georgia Trade Secrets Act, O.C.G.A. § 10-1-760; and tortious interference with existing and prospective business relations. Plaintiffs also seek punitive damages and attorneys' fees in this case.

On August 24, 2017, Defendant filed a Motion to Dismiss and Require Arbitration [28], arguing that, under the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1, the NFL's collective bargaining agreement requires all of Plaintiffs' claims be resolved in private arbitration. See Dkt. No. [28-3] (NFLPA Regulations Governing Contract Advisors) [hereinafter "NFL Regulations"]. In relevant part, the NFL Regulations provide:

> This arbitration procedure shall be the exclusive method for resolving any and all disputes that may arise from the following:
> . . .
> (4) Any other activities of a Contract Advisor within the scope of these Regulations;
> (5) A dispute between two or more Contract Advisors with respect to whether or not a Contract Advisor interfered with the contractual relationship of a Contract Advisor and player in violation of Section 3(B)(21). . . . and/or
> (6) A dispute between two or more Contract Advisors with respect to their individual entitlement to fees owed, whether paid or unpaid, by

> a player-client who was jointly represented by such Contract Advisors, or represented by a firm with which the Contract Advisors in question were associated.

Id. at 13. And in turn, the above-referenced Section 3(B)(21) of the NFL Regulations prohibits Contract Advisors from:

> Initiating any communication, directly or indirectly, with a player who has entered into a Standard Representation Agreement with another Contract Advisor and . . . if the communication concerns a matter relation to the:
> (i) Player's current Contract Advisor;
> (ii) Player's current Standard Representation Agreement;
> (iii) Player's contract status with any NFL Club(s); or
> (iv) Services to be provided by prospective Contract Advisor either through a Standard Representation Agreement or otherwise."

Id. at 10. The NFL Regulations go on to proscribe procedures for how a Contract Advisor may initiate a grievance against another Contract Advisor; respond to a filed grievance; select an arbitrator; and conduct an arbitration hearing. See id. at 13–15. The NFL Regulations specifically provide that the arbitration "shall be conducted in accordance with the Voluntary Labor Arbitration Rules of the American Aribtration Association." Id. at 14.

II. LEGAL STANDARD

"The [FAA] reflects the fundamental principle that arbitration is a matter of contract." Rent-A-Car, W., Inc. v. Jackson, 561 U.S. 63, 67 (2010). The "primary substantive provision," id. at 67 (quotation omitted), of the FAA provides:

> A written provision in . . . a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract . . . shall be valid, irrevocable, an

> enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

9 U.S.C. § 2.

"The FAA thereby places arbitration agreements on an equal footing with other contracts and requires courts to enforce them according to their terms." Rent-A-Car, 561 U.S. at 67 (citations omitted). Its "provisions manifest a liberal federal policy favoring arbitration agreements." Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 25 (1991) (quotation omitted). Therefore, "questions of arbitrability must be addressed with a healthy regard for the federal policy favoring arbitration." Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24 (1983). Even so, "arbitration is matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." AT&T Techs., Inc. v. Commc'ns Workers of Am., 475 U.S. 643, 648 (1986). Nonetheless, "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." Moses H., 460 U.S. at 24.

III. DISCUSSION

When a district court rules on a motion to compel arbitration under the FAA, it must engage in a two-step inquiry. Klay v. All Defendants, 389 F.3d 1191, 1200 (11th Cir. 2004). "The first step is to determine whether the parties agreed to arbitrate the dispute." Id. If so, "[t]he second step in ruling on a motion to compel arbitration involves decising whether legal constraints external to the parties' agreement foreclosed arbitration." Id. (quotation omitted). Because the parties only dispute whether an arbitration agreement exists and, if so, its scope,

the Court addresses only the first step. Although the presumption in favor of arbitrability applies to "doubts concerning the scope of an arbitration clause," it "does not apply to disputes concerning whether an agreement to arbitrate has been made." Dasher v. RBC Bank (USA), 745 F.3d 1111, 1116 (11th Cir. 2014) (quotation omitted).

The parties first dispute whether the NFL Regulations constitute an arbitration agreement. "[W]hen determining whether an arbitration agreement exists, courts generally should apply ordinary state-law principles that govern the formation of constracts." Id. (quotation omitted and alteration adopted). "These principles dictate that courts look for evidence that the parties objectively revealed an intent to submit the dispute to arbitration." Id. (quotation omitted and alteration adopted).

Plaintiffs contend that the only agreement between the parties is their partnership agreement, which does not contain any arbitration agreement.[2] Dkt. No. [33] at 10; see Dkt. No. [1-1] Ex. A (Letter of Intent). Plaintiffs do not dispute that, as registered NFL Contract Advisors, both Plaintiff Dye and Defendant "agreed to be bound by the [NFL] Regulations." Dkt. No. [33] at 11. Instead, they argue that the NFL Regulations are not an agreement between the parties and existed before the two agents went into business together. See id.

[2] Plaintiffs also argue that the NFL Regulations cover only the portion of SportsTrust's business related to the NFL, but that argument concerns the scope of the agreement, not whether the agreement itself existed.

These arguments miss the mark. As Plaintiffs acknowledge, both Plaintiff Dye and Defendant are registered Contract Advisors bound by the NFL Regulations they signed. Part of those regulations mandate certain disputes between Contract Advisors be resolved through arbitration including any "interfere[ence] with the contractual relationship of a Contract Advisor and player" and any dispute about "their individual entitlement to fees owed." Dkt. No. [28-3] at 13. The allegations in Plaintiffs' Complaint include, at the very least, claims by Plaintiffs that Defendant interfered with their client relationships as well as what fees Defendant may owe Plaintiffs. It does not matter that Plaintiff Dye and Defendant agreed to the NFL Regulations before their relationship began—by agreeing to the NFL Regulations, each agreed that any covered dispute between himself and another Contract Advisor would be subject to arbitration. Indeed, every other court to have examined the NFL Regulations in a dispute between two Contract Advisors has reached the same conclusion. See Smith v. IMG Worldwide, Inc., 360 F. Supp. 2d 681, 685 (E.D. Pa. 2005); Rosenhaus v. Star Sports, Inc., 929 So.2d 40, 41 (Fla. Dist. Ct. App. 2006) ("All parties are members of the NFLPA and are 'Contract Advisors,' as defined by that organization. . . . [A]s contract Advisors, they are bound by the Agent Regulations promulgated by the NFLPA which detail the obligations, rights, and liabilities of Contract Advisors . . . . [and] contain a provision requiring certain disputes between Contract Advisors to be resolved through arbitration.").

Plaintiffs also contend that because Plaintiff SportsTrust is not a Contract Advisor bound by the NFL Regulations, it cannot be subject to arbitration under these provisions. Dkt. No. [33] at 12–13. However, Plaintiffs have not provided, and neither has the Court found, any authority to support this contention. See id. As Defendant points out, Plaintiff Dye is currently the sole member of SportsTrust and its claims are not severable from Plaintiff Dye's claims. Although the scope to which SportsTrust must submit to arbitration is not clear from the NFL Regulations, the NFL Regulations do contemplate at least some involvement in arbitration by Contract Advisors' firms. See Dkt. No. [28-3] at 13 ("A dispute between two or more Contract Advisors with respect to their individual entitlesment to fees owed . . . by a player-client . . . *represented by a firm with which the Contract Advisors in question were associated.*" (emphasis added)). The Court therefore finds that an arbitration agreement exists between the parties.

Next, the parties dispute the scope of the NFL Regulations' arbitration clause. But because the arbitration provisions in the NFL Regulations incorporate the rules of the American Arbitration Association ("AAA"), the Eleventh Circuit has held that this issue should be resolved by the arbitrator, not the Court. In U.S. Nutraceuticals, LLC v. Cyanotech Corp., 769 F.3d 1308 (11th Cir. 2014), the Eleventh Circuit examined a contract that required arbitration of all disputes with "a carve-out for any dispute that related to the breach of confidentiality." Id. at 1309. The plaintiff in Nutraceuticals maintained that all of its claims related to

the breach of confidentiality and were therefore not subject to arbitration. Id. at 1310. The district court agreed, denying the motion to compel arbitration, but the Eleventh Circuit reversed on appeal. Id. It held that "the district court should have sent this dispute to arbitration for an arbitrator to decide the question of arbitrability." Id. The Eleventh Circuit explained that the contract at issue stated that the arbitration was to occur under the rules of the AAA. Id. at 1310. And "when parties incorporate the rules of the [AAA] into their contract, they 'clearly and unmistakeably agree that the arbitrator should decide whether the arbitration clause applies.'" Id. at 1311 (quoting Terminix Int'l Co., LP v. Palmer Ranch Ltd. P'ship, 432 F.3d 1327, 1332 (11th Cir. 2005)) (alterations adopted).

The NFL Regulations in this case state that the arbitration "shall be conducted in accordance with the Voluntary Labor Arbitration Rules of the [AAA]." Dkt. No. [28-3] at 13. Those rules, in turn, provide that "[t]he arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement." Am. Arbitration Ass'n, Labor Arbitration Rules, at 8 (Mar. 15, 2015), https://www.adr.org/sites/default/files/Labor%20Rules.pdf. Under binding Eleventh Circuit precedent, the Court must respect this rule and send this matter to arbitration. See Nutraceuticals, 769 F.3d at 1310–11; Terminix, 432 F.3d at 1332–33.

However, the Court denies Defendant's request to dismiss this action altogether. Under Section 3 of the FAA, the proper remedy is to instead "stay the

trial of the action until such arbitration has been had in accordance with the terms of the agreement." 9 U.S.C. § 3. This is particularly so in a case like this where the parties contest the scope of arbitration and it is possible that some or all of the claims may be found by the arbitrator to be outside the scope of the arbitration agreement.

IV. CONCLUSION

In accordance with the foregoing, Defendant's Motion to Dismiss and Require Arbitration [28] is **GRANTED in part and DENIED in part**. Specifically, the Court **GRANTS** Defendant's Motion to Compel Arbitration and **DENIES** Defendant's Motion to Dismiss. This case is **STAYED** pending arbitration. The Clerk is **DIRECTED** to **ADMINISTRATIVELY CLOSE** this action pending the parties' arbitration.[3]

The parties are **DIRECTED** to petition the Court to reopen this matter following arbitration, if required. In the event the action is resolved prior to completion of said arbitration proceedings, the parties shall notify this Court as soon as practicable and dismiss the above-captioned case.

IT IS SO ORDERED this 13th day of December, 2017.

Leigh Martin May
United States District Judge

[3] Administrative closure of a case does not prejudice the rights of the parties to litigation in any manner. The parties may move to reopen an administratively closed case at any time.