

CLOSING

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CHAMBERS OF
MADELINE COX ARLEO
UNITED STATES DISTRICT JUDGE

MARTIN LUTHER KING
COURTHOUSE
50 WALNUT ST. ROOM 2060
NEWARK, NJ 07101
973-297-4903

April 13, 2017

VIA ECF

LETTER ORDER

Re: Puppet Heap, LLC v. Estate of Suzanne R. Phillips, Civil Action No. 16-4528

Dear Counsel:

This matter comes before the court of Defendant Estate of Suzanne R. Phillips' (the "Estate") motion to dismiss and compel arbitration of Plaintiff Puppet Heap, LLC's ("Puppet Heap") Complaint. Dkt. No. 7. For the reasons stated below, Defendant's motion is **GRANTED**.

I. BACKGROUND

This dispute arises from Puppet Heap's refusal to remit payment for services provided by Suzanne Phillips.

Puppet Heap is a New Jersey company that makes puppets for the entertainment industry. Compl. ¶ 1, Dkt. No. 1-1. Suzanne R. Phillips ("Phillips") was a New York licensed attorney who died on July 27, 2015. Id. ¶ 2.

Puppet Heap and Phillips entered into a contractual relationship on June 1, 2007, when Paul Andrejco, the President of Puppet Heap, executed a retainer agreement (the "Agreement") with Phillips. Id. ¶ 4. The two-page Agreement confirmed Phillips' representation of Puppet Heap's "legal interests in connection with various design and/or puppet building projects." See Compl., Ex. A. ¶ 1, Dkt. No. 1-1. In exchange, the Agreement provided for consideration of a ten percent "Agent Fee" for all projects that Phillips originated, and a five percent "Non-Agent Fee" for Phillips' work on other projects she did not originate. Id. ¶ 2. The Agreement also contains the following provision:

Arbitration: Any dispute or controversy arising from this Agreement shall be subject to arbitration in New York city in accordance with the Rules of the American Arbitration Association (AAA) as decided by one (1) arbitrator with a background in the entertainment industry mutually approved by the parties and whose decision shall

be binding, final and non-appealable and may be entered in a court of competent jurisdiction. The parties shall share the arbitration costs equally but each shall be solely responsible for their individual attorney's fees and expenses.

Id. ¶ 5.

Since the execution of the Agreement, Puppet Heap has paid Phillips approximately two million dollars for legal services. Compl. ¶ 22. Puppet Heap alleges that at all times during their relationship, it believed that Phillips was licensed to practice law in New Jersey. Id. ¶¶ 15-17. Upon Phillips' death in 2015, Puppet Heap discovered that Phillips was not licensed to practice law in New Jersey. Id. In the Fall of 2015, the Estate contacted Puppet Heap regarding unpaid compensation pursuant to the Agreement, asserting that such payment is owed in perpetuity. Id. ¶¶ 23, 45. In July 2016, the Estate initiated an arbitration action against Puppet Heap, asserting contract claims for unpaid amounts for services rendered by Phillips before her death, and seeking the production of documents to determine any additional amounts due. Id. ¶¶ 24-25; see also, Certification of Adam Kominsky, Ex. A ("Arbitration Complaint"), Dkt. No. 7-2.

Instead of responding to the Arbitration Complaint, Puppet Heap filed a lawsuit in New Jersey Superior Court, Hudson County. Notice of Removal, Dkt. No. 1. In its Complaint, Puppet Heap alleges that Phillips breached her fiduciary duty by "engaging in the unauthorized practice of law within the State of New Jersey," and by imposing a "disproportionate" fee structure and arbitration clause in the Agreement. Compl. ¶ 60. Puppet Heap requests an injunction enjoining the Estate from the arbitration, an accounting from the Estate, and damages. Id. ¶¶ 43, 50, 56, 62. The Estate then removed the action to this Court on the basis of diversity jurisdiction. See Notice of Removal. Dkt. No. 1.

II. DISCUSSION

A. Legal Standard

A motion to dismiss and compel arbitration is evaluated on a Rule 12 motion to dismiss standard where "the affirmative defense of arbitrability of claims is apparent on the face of a complaint." Guidotti v. Legal Helpers Debt Resolution, LLC, 716 F.3d 764, 773-74 (3d Cir. 2013). Where, as here, all the relevant documents are before the Court, the motion to dismiss standard is appropriate.¹ See Alder Run Land, LP v. Ne. Nat. Energy LLC, 622 Fed. App'x. 164, 166 (3d Cir. 2015).

In considering a Rule 12(b)(6) motion to dismiss on the pleadings, the Court accepts as true all of the facts in the complaint and draws all reasonable inferences in favor of the plaintiff. Phillips v. Cnty. of Allegheny, 515 F.3d 224, 231 (3d Cir. 2008). A complaint will survive a motion to dismiss if it provides a sufficient factual basis such that it states a facially plausible claim for relief. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). The facts alleged must be "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do."

¹ Parties do not dispute the application of a Rule 12(b) standard. See Mot. to Dismiss at 5; Opp'n Br. at 8, Dkt. No. 22.

Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). The allegations in the complaint “must be enough to raise a right to relief above the speculative level.” Id. Accordingly, a complaint will survive a motion to dismiss if it provides a sufficient factual basis such that it states a facially plausible claim for relief. Iqbal, 556 U.S. at 678.

B. Analysis

The Estate argues that Puppet Heap’s claims stem from the retainer agreement, and are therefore subject to arbitration. The Court agrees.

Congress “expressed a strong federal policy in favor of resolving disputes through arbitration” by enacting the Federal Arbitration Act (“FAA”). Century Indem. Co. v. Certain Underwriters at Lloyd’s, London, 584 F.3d 513, 522 (3d Cir. 2009). Nonetheless, “[a]rbitration is strictly a matter of contract. If a party has not agreed to arbitrate, the courts have no authority to mandate that he do so.” Bel-Ray Co., Inc. v. Chemrite (Pty) Ltd., 181 F.3d 435, 444 (3d Cir. 1999). Thus, in deciding whether a party may be compelled to arbitrate under the FAA, the Court considers (1) whether there is a valid agreement to arbitrate between the parties and, if so, (2) whether the dispute falls within the scope of that valid agreement. Flintkote Co. v. Aviva PLC, 769 F.3d 215, 219-20 (3d Cir. 2014). The party opposing arbitration may then invalidate the clause based on generally applicable contract defenses. Harris v. Green Tree Fin. Corp., 183 F.3d 173, 179 (3d Cir. 1999).

Puppet Heap first contends that the Agreement is void as unconscionable under New Jersey law.² But this argument focuses on the contract as a whole, and not on the specific arbitration clause. Puppet Heap argues that the Agreement was fraudulent because Phillips misrepresented that she was licensed in New Jersey, and that the payment structure was “grossly disproportionate.” Opp’n Br. at 11. These arguments are unavailing. It is well established that claims that target the contract as whole—rather than the arbitration clause itself—are themselves arbitrable. Buckeye Check Cashing, Inc. v. Cardegna, 546 U.S. 440, 449 (2006) (“a challenge to the validity of the contract as a whole, and not specifically to the arbitration clause, must go to the arbitrator.”). Therefore, attacks on the entire contract cannot invalidate an arbitration clause. Preston v. Ferrer, 552 U.S. 346, 349 (2008) (holding that “questions concerning the validity of the entire contract are to be resolved by the arbitrator in the first instance, not by a federal or state court”).

Next, Puppet Heap contends that the arbitration clause itself is flawed because it “does not, in any way, advise Puppet Heap that it is giving up its right to litigate claims or its right to file appeals.” Opp’n Br. at 18. But in New Jersey, an arbitration provision will be upheld if “[t]he arbitration provisions are sufficiently clear, unambiguously worded, satisfactorily distinguished from the other Agreement terms, and drawn in suitably broad language to provide a consumer with reasonable notice of the requirement to arbitrate all possible claims arising under the contract.” Curtis v. Cellco P’ship, 413 N.J. Super. 26, 33 (App. Div. 2010). Importantly, the agreement must “clearly express the election of arbitration as the sole remedy.” Marchak v. Claridge Commons Inc., 134 N.J. 275, 282 (1993). The Agreement’s arbitration clause satisfies these requirements. The provision is presented as a standalone paragraph that is labeled “Arbitration” in the middle of the second page of a two-page agreement. It states that “[a]ny dispute or controversy arising from

² The parties agree that New Jersey law applies.

this Agreement shall be subject to arbitration.” The plain meaning of this provision conveys the message that all disputes will be resolved through arbitration. In other words, arbitration is the exclusive remedy.

Moreover, the parties here do not demonstrate unequal bargaining power. Puppet Heap is a sophisticated party that has earned at least twenty million in revenue during the time that it was represented by Phillips. It continued to pay Phillips under the Agreement for many years without objection. It was not until the Estate sought additional payment under the Agreement that Puppet Heap expressed any reservations about it. Additionally, the clause below the arbitration provision in the Agreement alerts Puppet Heap in bold, capitalized letters, that it has the right to retain counsel of its own choosing to negotiate and execute the Agreement. Accordingly, the arbitration is valid and enforceable.

III. CONCLUSION

For the reasons set forth above, the Estate of Suzanne R. Phillips’ motion to dismiss and compel arbitration is **GRANTED**, and the Complaint is **DISMISSED with prejudice**. This matter is closed.

SO ORDERED.

/s Madeline Cox Arleo
MADELINE COX ARLEO
UNITED STATES DISTRICT JUDGE