

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JOHN KIEHL and VITTORIA KIEHL,
Plaintiffs

vs.

AQUA VANTAGE POOLS & SPAS,
WILKES POOL OF MIFFLIN, POOL TECH OF
MIFFLIN, INC., JOHN BARRERA and POOL
TECH, INC., individually and t/a AQUA VANTAGE,
Defendants

: NO. 15 - 3047
:
: CIVIL ACTION - LAW
:
:
: Petition to Confirm
: Arbitration Award
:
: Petition to Vacate and/or
: Modify Arbitration Award

OPINION AND ORDER

Before the court are opposing petitions by which Plaintiffs seek to confirm an arbitration award in its entirety and Defendant John Barrera seeks to vacate or modify the award with respect to himself individually. Argument on the petitions was heard February 11, 2016, at which time the parties requested and were granted the opportunity to file additional briefs. Those briefs were submitted on February 19, 2016 and February 23, 2016 and the matter is now ripe for decision.

After a hearing which was duly noticed, on December 10, 2015 an arbitrator acting under the auspices of the American Arbitration Association entered an Award in favor of Plaintiffs and against all above-named defendants¹ in the amount of \$28,000.00 plus \$1,225.00 fees. It was noted that none of the defendants had appeared at the arbitration hearing. Plaintiffs then filed the instant petition to confirm this award and enter judgment, on December 16, 2015. On January 19, 2016, Defendant John Barrera filed an Answer to that petition and also filed the instant petition to vacate or modify the award. Mr. Barrera contends the arbitration panel did not have personal jurisdiction over him because he did

not sign the agreement to arbitrate. Plaintiffs dispute that position, and also assert that Mr. Barrera has waived his right to raise a jurisdictional objection.

Mr. Barrera is correct that arbitration cannot be compelled in the absence of an express agreement to arbitrate. *See* Bair v. Manor Care of Elizabethtown, 108 A.3d 94 (Pa. Super. 2015). In this case, however, there *was* an express agreement to arbitrate and thus the question becomes whether Mr. Barrera can be held to that agreement even though he did not personally sign it.² The court believes that he can be so held.

In Pritzker v. Merrill Lynch, Pierce, Fenner & Smith, 7 F.3d 1110, 1121-22 (3rd Cir. 1993), the Court rejected the argument that an individual (one Ms. Stewart, who was employed by Merrill Lynch as a financial consultant and who was alleged to have made unauthorized purchases of investments) was not subject to an arbitration agreement because she had not signed the agreement, reasoning as follows:

As to Stewart, the decision is quite straightforward. Under traditional agency theory, she is subject to contractual provisions to which MLPF&S is bound. *Barrowclough*, 752 F.2d at 938. Because a principal is bound under the terms of a valid arbitration clause, its agents, employees, and representatives are also covered under the terms of such agreements. *See, Arnold v. Arnold Corp.*, 920 F.2d 1269, 1281-82 (6th Cir. 1990); *Letizia v. Prudential Bache Securities*, 802 F.2d 1185, 1187-88 (9th Cir. 1986).

In *Arnold*, for example, a shareholder filed suit against a corporation and its officers alleging RICO violations and asserting claims under section 10(b) of the Exchange Act. In holding that the arbitration clause should be enforced, the court also extended its scope to non-signatory officers who were deemed agents of the corporation.

¹ Plaintiffs' claim was denied as against one Mary Price, who is not named herein.

² That Mr. Barrera did not personally sign the agreement to arbitrate is not in dispute.

Arnold, 920 F.2d at 1281-82. Similarly, in *Letizia*, the court held that statutory claims against non-signatory brokers were subject to arbitration agreements. *Letizia*, 802 F.2d at 1187-88.

The *Letizia* court noted that brokers and employees were integral to, if not directly responsible for, the alleged statutory violations of the principal corporation. Indeed, "all of the individual defendants' allegedly wrongful acts related to their handling of *Letizia's* securities account. . . . We conclude that the arbitration clause is applicable to [claims against the broker and his supervisor]." *Id.* at 1188. See also *Trott v. Paciolla*, 748 F. Supp. 305, 309 (E.D. Pa. 1990) ("Mr. Paciolla was an employee of Merrill Lynch. An entity such as Merrill Lynch can only act through its employees, and an arbitration agreement would be of little value if it did not extend to [them]."). In keeping with the federal policy favoring arbitration, we share the views of the Courts of Appeals for the Sixth and Ninth Circuits and will extend the scope of the arbitration clauses to agents of the party who signed the agreements.

This court believes that, as in *Pritzker*, agency principles require a finding that Mr. Barrera was subject to the arbitration: Mr. Barrera is the President of the corporate entity, and was alleged to have taken part in the conduct which was the subject matter of the claim.

With respect to the issue of waiver, although not necessary to the instant decision, the court believes Plaintiffs are correct. See *Kaplan v. First Options of Chicago, Inc.*, 19 F.3d 1503, 1510 ("A jurisdictional objection, *once stated*, remains preserved for judicial review absent a clear and unequivocal waiver.")(emphasis added). By failing to appear at the hearing or otherwise making known his objection to jurisdiction, Mr. Barrera has waived that issue.

ORDER

AND NOW, this day of February 2016, for the foregoing reasons, the Petition to Vacate and/or Modify Arbitration Award is DENIED. The Petition to Confirm Arbitration Award is GRANTED and the Award entered December 10, 2015, is hereby entered as a judgment in favor of Plaintiffs and against all defendants, jointly and severally in the amount of \$29,225.00 plus interest at the legal rate and costs of suit.

BY THE COURT,

Dudley N. Anderson, Judge

cc: William Carlucci, Esq.
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Gary Weber, Esq.
Hon. Dudley Anderson