

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

Laura Worrell Hutto, as Co-Trustee of the Henry Patterson Worrell Revocable Trust UTD 9/3/1981, First Amendment and Restatement dated 6/30/1995, Second Amendment dated 8/28/1998, Third Amendment and Restatement dated 12/8/2005, and as Co-Trustee of the Family Trust created thereunder,)

Petitioner,)

vs.)

Hallett Jones Worrell as Personal Representative of the Estate of Henry Patterson Worrell and Hallett Jones Worrell and Thomas Reed Worrell, Individually and as Co-Trustees of the Henry Patterson Worrell Revocable Trust UTD 9/3/1981, First Amendment and Restatement dated 6/30/1995, Second Amendment dated 8/28/1998, Third Amendment and Restatement dated 12/8/2005, and as Co-Trustee of the Family Trust created thereunder, and Douglas R. Wahl, CPWA, CIMA, CRPC, Wahl Group Financial Advisors, Merrill Lynch, Pierce, Fenner & Smith Inc., and Merrill Lynch Bank of America Corporation,)

Respondents.)

In Re: Estate of Henry Patterson Worrell and the Henry Patterson Worrell Revocable Trust UTD 9/3/1981, First Amendment and Restatement dated 6/30/1995, Second Amendment dated 8/28/1998, Third Amendment and Restatement dated 12/8/2005, and the Family Trust created thereunder,)

IN COURT OF COMMON PLEAS

CIVIL CASE NO.: 2016-CP-22-00909

**ORDER COMPELLING
ARBITRATION**

RECEIVED
JUN 25 2018
SC Court of Appeals

This matter came before the Court on Respondents Merrill Lynch, Pierce, Fenner & Smith Inc. (“MLPF&S”) and Douglas Wahl’s (“Wahl”) (collectively, MLPF&S and Wahl “the Institutional Respondents”) Motion to Compel Arbitration and Stay Discovery, and Respondents Hallett Jones Worrell (“Ms. Worrell”) and Thomas Reed Worrell’s (“Mr. Worrell”) (collectively, Ms. Worrell and Mr. Worrell “the Family Respondents”) Motion to Compel and Join in Arbitration both in their individual capacity as well as their capacity as co-trustees. At the hearing on this matter, counsel for Ms. Worrell in her capacity as Personal Representative of the Estate of Henry Patterson Worrell likewise consented to the motions to compel arbitration and stay discovery. In determining that the Institutional Respondents and the Family Respondents are entitled to the relief requested under the Federal Arbitration Act and Rule 12 of the SCRPC and that their Motions should therefore be granted, the Court finds as follows:

As to the Institutional Respondents:

1. That Petitioner alleges that the estate assets of Henry Patterson Worrell (“Decedent”) were to be held, administered, and distributed pursuant to the Estate of Henry Patterson Worrell as stated in the case caption and as described in the Petition and Amended Complaint (hereafter, the Revocable Trust UTD and the Family Trust are collectively referred to as the “Trust”).
2. That Petitioner’s claims involve and relate to the Trust that is the holder of accounts with MLPF&S that are governed by a MLPF&S Client Relationship Agreement (“CRA”) signed by Petitioner, Hallett Jones Worrell, and Thomas Reed Worrell, in their respective capacities as Co-Trustees.
3. That the CRA contains an arbitration clause stating that all controversies that may arise between the Co-Trustees (including Petitioner) and MLPF&S are subject to arbitration.

4. That the parties' activities under the CRA involve interstate commerce, making the arbitration clause subject to the Federal Arbitration Act.

5. That the CRA is a valid contract.

6. That the CRA contains a valid choice of law provision that provides that the CRA is to be governed in accordance with New York law.

7. That, like South Carolina, New York has a policy favoring arbitration.

8. That the dispute and the allegations in Petitioner's complaint fall within the scope of the arbitration clause in the CRA.

9. That the Federal Arbitration Act ("FAA") mandates arbitration of this dispute, because (a) the arbitration clause is valid; (b) the CRA involves interstate commerce; and (c) this dispute is within the scope of the arbitration clause.

10. That New York law mandates arbitration of this dispute, because (i) the CRA's arbitration clause is valid; (ii) the arbitration clause evinces an intent among the parties that all controversies growing out of the contract in any way shall be submitted to arbitration; and (iii) the dispute falls within the scope of the arbitration clause.

11. That if this Court were to apply South Carolina law, it would also find that South Carolina law mandates arbitration of this dispute, because (i) the CRA's arbitration clause is valid; (ii) the arbitration clause evinces an intent among the parties that all controversies growing out of the contract in any way shall be submitted to arbitration; and (iii) the dispute falls within the scope of the arbitration clause.

12. That Douglas Wahl, as an employee of MLPF&S, is entitled to the same protections that the arbitration clause provides MLPF&S.

13. That, therefore, Petitioner's claims against Douglas Wahl are also subject to arbitration in this case.

As to the Family Respondents:

14. Petitioner's claims against the Family Respondents should also be sent to arbitration for four reasons.

15. *First*, the CRA contains a broadly-written arbitration agreement, which requires all parties to arbitrate "all controversies that may arise." CRA at 2, Provision no. 7.

16. Importantly, Petitioner and Defendant Ms. Worrell signed the CRA as co-"Trustees." The only Defendant not named on the face of the CRA is the Defendant Mr. Worrell, also a Trustee, as pleaded. But this is of no consequence because Petitioner asserts eleven out of twelve counts against Mr. Worrell as a co-Trustee of the Trust, including a purported civil conspiracy involving all of the Respondents, as to maintenance, use, and distribution of Trust assets under the CRA. Thus, the CRA and related activities and allegations involve *all* of the named parties, and the allegations as to individual Respondents cannot be severed from one another.

17. *Second*, any doubts concerning the scope of arbitrable issues under South Carolina law should be resolved in favor of arbitration. *Landers v. Fed. Deposit Ins. Corp.*, 402 S.C. 100, 109, 739 S.E.2d 209, 213 (2013), citing *Am. Recovery Corp. v. Computerized Thermal Imaging, Inc.*, 96 F.3d 88, 94 (4th Cir. 1996) ; accord *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 597, 553 S.E.2d 110, 118 (2001).

18. "The heavy presumption of arbitrability requires that when the scope of the arbitration clause is open to question, a court must decide the question in favor of arbitration." *Am. Recovery*, 96 F.3d at 94 (citation and internal quotation omitted). "Such a presumption is

strengthened when an arbitration clause,” as here, “is broadly written.” *Landers*, 402 S.C. at 109, citing *AT & T Tech., Inc. v. Commc’ns Workers of Am.*, 475 U.S. 643, 650, 106 S.Ct. 1415, 89 L.Ed.2d 648 (1986).

19. **Third**, all allegations and counts in the Amended Complaint “touch on” the same case and controversy, as well as the same CRA, and therefore all claims in the Amended Complaint should be arbitrated in the same forum.

20. This conclusion is well supported by South Carolina law, cited above, New York law (which governs the CRA), and by the FAA. *See, e.g., Sutphin Airtrain Realty, LLC*, 40 N.Y.S.3d 457, 458 (N.Y. App. Div. 2016), citing N.Y.C.P.L.R. § 7503(a) (issues must be submitted to arbitration if within the scope of an arbitration clause when the agreement to arbitrate is “clear, explicit and unequivocal” and “there is no substantial question whether a valid agreement was made”); *Hall Street Assocs., LLC v. Mattell, Inc.*, 552 U.S. 576, 582 (2008) (“Congress enacted the FAA to replace judicial indisposition to arbitration with a ‘national policy favoring it.’ ”)

21. Here, as to the scope of the arbitration clause, there can be no doubt that the allegations in the Amended Complaint “touch” on all matters under the CRA since the CRA is the principal document as to managing the Trust. As pleaded, Petitioner complains of a conspiracy involving the Family Respondents and the Institutional Respondents regarding the maintenance, use, and distribution of the assets of the same Trust and the same Trustees, pursuant to the same CRA. Petitioner also seeks special damages regarding the purported “conspiracy to injure the Decedent’s Estate” using the CRA to “aid[] and abet[] a breach of fiduciary duty.” The CRA—and activity flowing from the CRA as to activities involving both the Family Respondents and the Institutional Respondents—lie at the center of this controversy.

22. *Fourth*, the interests of judicial economy compel arbitration of all claims in the Amended Complaint to avoid inconsistent outcomes in different fora, which may prejudice the Family Respondents and the Petitioner. The Family Respondents and Petitioner are co-Trustees (and beneficiaries, for that matter) of the *same* Trust. Further, two of the family members are signatories to the same CRA, which, as noted, contains a broadly-written arbitration agreement.

23. Petitioner's claims against Mrs. Worrell as Personal Representative of the Decedent's estate are likewise subject to arbitration. The allegations against Mrs. Worrell in her capacity as Personal Representative likewise "touch on" the same case or controversy and the same CRA as the other claims against her in her individual and trustee capacities. Petitioner's second cause of action, which is the only claim alleged against Mrs. Worrell solely in her capacity as Personal Representative, makes specific reference to the Institutional Respondents and alleges that her actions were done "with the assistance of her financial broker, Respondent Douglas R. Wahl." All other claims against Mrs. Worrell are made against her in her Personal Representative capacity are interrelated with her actions in her Trustee capacity.

24. Furthermore, failure to compel arbitration with respect to only these claims would be contrary to the interests of judicial economy and consistent outcomes.

25. At the hearing on this matter, Mrs. Worrell's counsel in her capacity as Personal Representative consented to arbitration.

26. Thus, this dispute should be decided in the same arbitral forum to avoid inconsistent outcomes and the real danger of prejudice to all of the parties.

27. Notwithstanding the well-settled law of South Carolina and New York, and federal law favoring arbitration, Petitioner argues that the joinder of the Family Respondents to arbitration should not be decided by this Court and instead should be submitted to the arbitration

panel pursuant to S.C. Code Ann. § 15-48-10, *et seq.* This Court is not convinced. The broadly-worded arbitration agreement in the CRA and well-settled state and federal law favor arbitration, and this Court finds no authority or justification for permitting Petitioner to re-argue its position to the arbitration panel.

28. **THEREFORE IT IS ORDERED** that:

- a. Respondents MLPF&S and Douglas Wahl's (the Institutional Respondents) Motion to Compel Arbitration and Stay Discovery is GRANTED;
- b. Respondents Hallett Jones Worrell and Thomas Reed Worrell's (the Family Respondents) Motion to Compel and to Join in Arbitration both individually and as co-trustees is GRANTED;
- c. All Petitioner's claims in this action are hereby DISMISSED in favor of arbitration;
- d. Should Petitioner elect to continue to pursue any claims against MLPF&S, Douglas Wahl, Hallett Jones Worrell, and Thomas Reed Worrell, those claims shall be submitted to arbitration; and
- e. All discovery in this matter is HEREBY STAYED pending the outcome of arbitration.

AND IT IS SO ORDERED.

February ____, 2018.

The Honorable William H. Seals, Jr.



Georgetown Common Pleas

Case Caption: Laura Worrell Hutto Tr , plaintiff, et al VS Henry Patterson Worrell Est
, defendant, et al
Case Number: 2016CP2200909
Type: Order/Compel

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157