

June 17, 2012

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VIA E-MAIL AND U.S. MAIL

Sandra L. Marshall
Manager of ADR Services
[REDACTED]

Fresno, CA 93704

Re: 72 147 00218 12 SIM (Sitrick and Company v. Jeffrey Epstein)

Dear Ms. Marshall:

This firm represents Mr. Jeffrey Epstein. We understand that on or about March 22, 2012 Sitrick and Company ("Sitrick") unilaterally commenced an arbitration against Mr. Epstein (the "Arbitration") before the American Arbitration Association (the "AAA"). As explained below, Sitrick does not have the right to submit this dispute to arbitration, and its demand for arbitration is based on claims relating to work that is far outside the scope of the only arbitration provision that ever existed between the parties. That provision had long been terminated as Sitrick had completed the last of its services that it previously rendered to Mr. Epstein almost six years ago in 2006. Consequently, Sitrick has no basis to force Mr. Epstein into binding arbitration over an entirely new matter as to which no arbitration agreement exists between the parties.

Mr. Epstein, therefore, objects to the Arbitration and requests that the Honorable James M. Slater (the "Arbitrator") (i) dismiss it, or, alternatively, (ii) stay the Arbitration unless and until a court of competent jurisdiction rules that it should proceed, without prejudice to Mr. Epstein's right to appeal any such ruling. Submission of this application shall not be construed as Mr. Epstein's participation in, or consent to, the Arbitration, and any and all rights to challenge the jurisdiction of the Arbitrator, or to challenge the Arbitration on any other grounds, are hereby expressly reserved.

I. INTRODUCTION

Sitrick claims in this Arbitration that Mr. Epstein owes Sitrick money for public relations work that Sitrick allegedly performed for Mr. Epstein in connection with negative press circulated about the latter in 2011. Sitrick bases its demand for arbitration on a long expired agreement that Sitrick entered into almost seven years ago with Black, Srebnick, Kornspan & Stumpf, a Miami, Florida law firm (the "Black Law Firm"), which appears to have signed the

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agreement on behalf of Mr. Epstein, in connection with the the Black Law Firm's representation of Mr. Epstein in a very specific criminal case (the "2005 Consulting Agreement"). That criminal case was resolved in 2008. Moreover, until Sitrick's alleged work in 2011, the last time that Sitrick had rendered any services in connection that case (or any other matter) for Mr. Epstein was sometime in the middle of 2006, nearly six years ago. No agreement with Mr. Epstein was made or even alleged with respect to the work that Sitrick claimed to perform nearly five years later in 2011.

Though it seeks to force Mr. Epstein to arbitrate based on this document, Sitrick recognized that its 2005 Consulting Agreement was not in effect in 2011 when it proposed to Mr. Epstein that the Black Law Firm sign a new consulting agreement with Sitrick for the new 2011 matter. However, Mr. Epstein advised Sitrick that any proposed consulting agreement should be addressed to Mr. Epstein's counsel in the new matter, Jay Lefkowitz, Esq., a partner with the New York office of Kirkland & Ellis (the "Kirkland Law Firm"). It is undisputed that Mr. Epstein expressly rejected Sitrick's proposed written consulting agreement for the new matter, which contained an arbitration clause that Sitrick proposed to govern the parties with respect to that new work.

Despite the plain lack of any agreement to arbitrate a dispute regarding this new work in 2011, Sitrick submitted a demand for arbitration pursuant to the arbitration clause contained in the 2005 Consulting Agreement seeking to extend its applicability far beyond that which was clearly contemplated by the 2005 Consulting Agreement. By its express terms, the 2005 Consulting Agreement only covered work in connection with the legal services on the criminal case then being performed by the Black Law Firm for Mr. Epstein at that time. Sitrick's efforts to extend the scope of the 2005 Consulting Agreement to cover claimed fees in connection with publicity issues arising in 2011, nearly three years after the resolution of that criminal case and nearly five years after Sitrick had last rendered the services for Mr. Epstein that were covered by the 2005 Consulting Agreement, have no legal justification whatsoever.

In addition, an arbitrator does not have jurisdiction to determine whether claims are arbitrable unless the parties have demonstrated a "clear and unmistakable intent" to delegate that power to the arbitrator. Here, there is no agreement from which to even infer such a "clear and unmistakable intent." Moreover, even assuming that the 2005 Consulting Agreement were applicable to this matter, which it clearly is not, there is simply no language in the 2005 Consulting Agreement indicating the parties consented to contravening the general rule of submitting the issue of arbitrability to a court. Therefore, the arbitration should be either dismissed or, alternatively, stayed unless and until a court of competent jurisdiction rules that Sitrick's claims are arbitrable.

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II. SALIENT FACTS

A. The 2005 Consulting Agreement And Arbitration Clause.

In 2005, Mr. Black contacted Sitrick about the latter becoming a consultant to provide advice and public relations services to Mr. Epstein in connection with certain legal issues the Black Law Firm was then handling for Mr. Epstein in Florida concerning a criminal case (the “Criminal Case”). On November 7, 2005, the Black Law Firm, on behalf of Mr. Epstein, entered into the 2005 Consulting Agreement with Sitrick. The 2005 Consulting Agreement provides in relevant part (emphasis added):

- “This letter, when accepted by you below on behalf of Jeffrey Epstein (the ‘Client’) and accepted by [the Black Law Firm] (‘Attorney’), will constitute the agreement with respect to the engagement of Sitrick And Company Inc., a California corporation (‘Sitrick’) as corporate communications advisor, specialist and non-designated expert consultant, with respect to any legal issues Attorney **is handling** for Client”
- “[Mr. Epstein] and [the Black Law Firm], effective as of October 21, 2005, have retained Sitrick to provide advice and public relations services in connection with legal issues **it is handling**.”
- “Any controversy, claim or dispute relating to this letter agreement shall be resolved by binding arbitration in accordance with the rules of the American Arbitration Association pursuant to an arbitration conducted in Los Angeles County, California.”

B. The “Legal Issues” Referenced In The 2005 Consulting Agreement Concluded In 2008.

The “legal issues” contemplated by the 2005 Consulting Agreement (i.e., the legal issues the Black Law Firm “is handling” for Mr. Epstein in Florida on the Criminal Case) were resolved with the resolution of the Criminal Case in 2008. Neither Mr. Epstein nor the Black Law Firm required or requested Sitrick to perform any further work in connection with those legal issues. In fact, prior to its alleged work in 2011, the last time that Sitrick performed any work for Mr. Epstein in connection with the Criminal Case (or any other matter) was in 2006, two years prior to the resolution of the Criminal Case. Once the Criminal Case was resolved in 2008, the “legal issues” that the Black Law Firm “is handling” were concluded and the 2005 Consulting Agreement, which specifically applied only to those “legal issues”, necessarily terminated.

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C. Three Years After The 2005 Consulting Agreement Terminated, The 2011 Publicity Issues Arose, Sitrick Proposed A New Engagement And A New Consulting Agreement Containing An Arbitration Clause, And Mr. Epstein Summarily Rejected The Same.

In early March of 2011, almost three years after the resolution of the Criminal Case and the termination of the 2005 Consulting Agreement, and nearly five years after Sitrick had last performed any services for Mr. Epstein, certain negative publicity arose regarding Mr. Epstein's friendship with Prince Andrew, the Duke of York, and negative comments about Mr. Epstein by another member of the Royal Family. Clearly recognizing that the 2005 Consulting Agreement had long since terminated and was no longer in effect, Sitrick's principal, Michael Sitrick, proposed to send a new consulting agreement for a new engagement concerning these 2011 publicity issues to the Black Law Firm in Miami, Florida. Mr. Epstein informed Sitrick that the new consulting agreement for the new matter should be sent to Mr. Epstein's counsel handling this matter, Mr. Lefkowitz of the Kirkland Law Firm. Sitrick did so, and it is undisputed that Mr. Epstein, through his general counsel, unequivocally rejected that new consulting agreement, which included an arbitration clause that Sitrick proposed to apply to the new matter.

Recognizing that this was a new matter with Mr. Lefkowitz (and not Mr. Black) as lead counsel, Sitrick sent to Mr. Lefkowitz (and not Mr. Black) copies of invoices for work it claimed to have performed for this new matter. Moreover, clearly indicating Sitrick's lack of any significant contact with Mr. Epstein or his organization since last performing services for Mr. Epstein five years earlier in 2006, Sitrick addressed its invoices to Mr. Epstein via email utilizing an obsolete email address of Mr. Epstein that had long been out of use.

On July 12, 2011, Mr. Sitrick's counsel, J. Michael Hennigan, Esq., sent a letter to both Mr. Black and Mr. Lefkowitz demanding that Mr. Epstein pay Sitrick \$103,518 for work allegedly performed by Sitrick in connection with the 2011 publicity issues. In his letter, Mr. Sitrick's counsel admits that: (1) Mr. Sitrick asked if he should have the Black Law Firm sign the new consulting agreement, (2) Mr. Epstein informed Mr. Sitrick that the consulting agreement should be addressed to Mr. Lefkowitz at the Kirkland Law Firm in connection with this matter, (3) Mr. Sitrick sent Mr. Lefkowitz a new proposed consulting agreement, and (4) on behalf of Mr. Epstein, Mr. Epstein's general counsel, Darren Indyke, not once, but two times, unequivocally rejected the proposed consulting agreement and, thus, the arbitration provision contained therein.

On or about March 22, 2012, Sitrick submitted to the AAA a demand for arbitration against Mr. Epstein. Sitrick alleged in the demand that Mr. Epstein failed to pay Sitrick for public relations services concerning the Royal Family issues. Sitrick alleges, without any legal basis

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whatsoever, that these claims fall within the scope of the arbitration provision contained in the 2005 Consulting Agreement that had clearly terminated in 2008.

III. APPLICABLE LAW DICTATES THE DISMISSAL/STAY OF THE ARBITRATION.

Even though the law favors agreements for arbitration of disputes between parties, “there is no policy compelling persons to accept arbitration of controversies which they have not agreed to arbitrate” *Victoria v. Superior Court*, 40 Cal. 3d. 734, 744 (1985) (citations and internal quotations omitted). Thus, while California has a strong policy favoring arbitration, “our courts also recognize that the right to pursue claims in a judicial forum is a substantial right and not one lightly deemed to be waived.” *Marsch v. Williams*, 23 Cal. App. 4th 250, 254 (1994) (citations omitted). The general policy favoring arbitration cannot replace an agreement to submit a particular dispute to arbitration. *Id.* (citations omitted).

In *Marsch*, plaintiff and defendant were parties to several real estate ventures governed by partnership agreements, which did not contain arbitration provisions, and a later real estate venture governed by an agreement that required arbitration of any controversy related to or growing out of that agreement. *Id.* at 253. The court denied a motion by defendant to compel arbitration of a dispute related to the earlier agreements. *Id.* at 254. The Court of Appeal affirmed, holding that where “the parties have separate contractual relationships . . . and most importantly separate commercial risks, an arbitration clause which governs one contractual relationship cannot be imposed in the other relationship without undermining the parties’ reasonable expectations.” *Id.* at 256. The court further reasoned that the arbitration provision in the later agreement was inapplicable to the dispute because the agreements were “not closely related in purpose, did not incorporate one another’s terms [and] were not executed at the same time.” *Id.*

Marsch is directly on point. The 2005 Consulting Agreement governs the relationship between Mr. Epstein and Sitrick only with respect to the “legal issues” on the Criminal Case in Florida that Mr. Black was handling in 2005-2008. By the time of Sitrick’s alleged work in 2011 with respect to Mr. Epstein’s publicity issues with the Royal Family, the Criminal Case and the Black Law Firm’s related “legal issues” -- to which the 2005 Consulting Agreement exclusively applied -- had long since been resolved and the 2005 Consulting Agreement had terminated. Sitrick acknowledged this obvious point when it asked Mr. Epstein if it should send its new consulting agreement for the new matter to the Black Law Firm for signature. Furthermore, by Sitrick’s own admission, Mr. Epstein directed Sitrick to send the new consulting agreement for this new matter to the Kirkland Law Firm. Inasmuch as the 2005 Consulting Agreement only governed Sitrick’s work in connection with legal issues then being handled by the Black Law Firm, it certainly does not apply to legal issues on which the Kirkland Law Firm was lead

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counsel. Thus, like the arbitration provision in *Marsch*, which was part of an unrelated agreement, the arbitration provision in the 2005 Consulting Agreement is inapplicable to Sitrick's claims because they are clearly outside the express scope of that agreement.

In addition, Mr. Epstein expressly refused to enter into Sitrick's proposed written agreement in connection with the 2011 publicity issues. Indeed, Mr. Epstein's general counsel expressly *rejected* Sitrick's proposed agreement, which contained an arbitration provision. Thus, as in *Marsch*, requiring arbitration of Sitrick's claims would "undermin[e]" Mr. Epstein's "reasonable expectations."

IV. THE ARBITRATOR LACKS JURISDICTION TO DETERMINE WHETHER THE CLAIMS SUBMITTED BY SITRICK ARE SUBJECT TO ARBITRATION.

The question of whether parties agreed to arbitrate a particular dispute is decided by the court, not the arbitrator. *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 838, 944 (1995); *Parker v. Twentieth Century-Fox Film Corp.*, 118 Cal. App. 3d 895, 901 (1981); *United Public Employees v. City and County of San Francisco*, 53 Cal. App. 4th 1021, 1026 (1997). An arbitrator may only determine arbitrability where it is shown by "clear and unmistakable evidence" that the parties intended to delegate that issue to the arbitrator. *FirstOptions, supra*, 514 U.S. at 944 (citations and internal quotations omitted); *Ajamian v. Cantorco2E, [REDACTED]*, 203 Cal. App. 4th 771, 781-782 (2012). With no written agreement relating to the new 2011 publicity issues, there is simply no evidence whatsoever that the parties intended to delegate the issue of arbitrability to the Arbitrator. Even assuming *arguendo*, however, that the 2005 Consulting Agreement applies in this case, which it unquestionably does not, no clear and unmistakable evidence of the parties' intent can be inferred from that agreement.

Several courts, including a majority of Federal Circuits, have held that "clear and unmistakable" intent to permit the arbitrator to determine arbitrability is not established simply by showing that the parties agreed to submit to arbitration rules that permit arbitrators to determine their own jurisdiction. *See Ajamian, supra*, 203 Cal. App. 4th at 789 (reference to AAA Rules insufficient to establish that employee agreed to permit arbitrator to determine jurisdiction); *Gilbert Street Developers, LLC v. La Quinta Homes*, 174 Cal. App. 4th 1185, 1195 (2009) (majority of Federal Circuits hold that mere incorporation of NASD Rules is insufficient to show a clear and unmistakable agreement to have arbitrators decide their own jurisdiction).

Here, the parties did not specifically delegate to the Arbitrator the power to determine whether the claims submitted are subject to the arbitration provision of the 2005 Consulting Agreement. Further, although the 2005 Consulting Agreement does refer to AAA Rules, which, in turn, allow (but do not require) an arbitrator to determine his or her own jurisdiction, Mr. Epstein does not, and has never agreed to, submit that issue to the Arbitrator in contravention of

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the general rule. Thus, there is no evidence of a “clear and unmistakable” intent by Mr. Epstein to submit the issue of arbitrability to the Arbitrator.

V. CONCLUSION

For all of the above reasons, the Arbitration should be dismissed, or, alternatively, stayed pending a ruling by a court of competent jurisdiction on whether the claims are subject to arbitration.

Sincerely,

TROUTMAN SANDERS LLP

/s/ Stephen G. Rinehart

Stephen G. Rinehart

cc: Jonathan B. Cole, Esq.