

dispute resolution process. Plaintiff Nelson now brings this action to compel Defendants to participate in the alternative dispute resolution process to which they contractually agreed.

Parties

4. Plaintiff Michael R. Nelson is a citizen of the state of Florida who resides at 4785 Kittiwake Court, Naples, Florida 34119.

5. Defendant David L. Brown is a citizen of the state of North Carolina with a place of business at 800 Green Valley Road, Suite 302, Greensboro, North Carolina 27408-7030.

6. Defendant John M. Clark is a citizen of the State of New Jersey with a place of business at Three Valley Square, Suite 220, Blue Bell, Pennsylvania 19422.

7. Defendant Michael A. Hamilton is a citizen of the Commonwealth of Pennsylvania with a place of business at 1700 Market Street, Suite 1418, Philadelphia, Pennsylvania 19103-3907.

8. Defendant Daniel J. de Luca is a citizen of the Commonwealth of Pennsylvania with a place of business at Three Valley Square, Suite 220, Blue Bell, Pennsylvania 19422.

9. Defendant Kenneth T. Levine is a citizen of the Commonwealth of Pennsylvania with a place of business at Three Valley Square, Suite 220, Blue Bell, Pennsylvania 19422.

10. Defendant William O. Krekstein is a citizen of the Commonwealth of Pennsylvania with a place of business at 400 Maryland Drive, Fort Washington, Pennsylvania 19034.

11. Defendant John F. Mullen is a citizen of the Commonwealth of Pennsylvania with a place of business at 1275 Drummers Lane, Wayne, Pennsylvania 19087.

12. Defendant Claudia D. McCarron is a citizen of the Commonwealth of Pennsylvania with a place of business at 1275 Drummers Lane, Wayne, Pennsylvania 19087.

Jurisdiction and Venue

13. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. §1332, because there is complete diversity between Plaintiff, on the one hand, and Defendants, on the other hand, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

14. Pursuant to section 9.8 of the Operating Agreement and section 7.9 of the Buy-Sell Agreement, the parties expressly consented to personal jurisdiction in Pennsylvania and venue in this District.

15. Pursuant to 28 U.S.C. §1391, venue is also proper in the District because a substantial part of the events or omissions giving rise to the claims occurred in this District.

Facts

16. Plaintiff Michael R. Nelson and all of the Defendants were members of the Firm. The Firm is a Pennsylvania limited liability company that was previously engaged in the practice of law, and which had a principal office at 518 Township Line Road, Suite 300, Blue Bell, Pennsylvania 19422.

17. The rights and obligations of the parties as members of the Firm are governed by the Operating Agreement and the Buy-Sell Agreement, both dated August 29, 2013. A copy of the Operating Agreement is attached hereto as Exhibit A, and a copy of the Buy-Sell Agreement is attached hereto as Exhibit B.

18. Nelson's underlying claims, and the underlying controversies and disputes, arise out of:

- (a) the repayment of a \$4 million line of credit with First Niagara Bank.

Plaintiff Nelson has had to contribute more than his proportionate share to repay that line of

credit, and he has also had to pay income taxes on certain sources of income used for the repayment. This implicates the Defendants' duty, pursuant to Section III of the Operating Agreement and paragraph 3.1.1 of the Buy-Sell Agreement, to contribute capital. Plaintiff Nelson further seeks indemnification from the Defendants for the amounts he has paid beyond his proportionate share of liability.

(b) Defendants taking advance draws that exceeded their entitlement to distributions for 2014, in violation of Section IV of the Operating Agreement. Despite demand, Defendants have refused to repay the excess advance draws that they received and, instead, Defendants have tried to characterize those advance draws as guaranteed payments. This has diluted Nelson's interest. In addition to constituting breaches of the Operating Agreement, this conduct by Defendants also constitutes breaches of the fiduciary duties that the Defendants owe to Plaintiff Nelson. This conduct, and the fact that all of the Defendants left the firm without giving proper notice, also implicates the winding-up process set forth at Section VII of the Operating Agreement, by placing undue burdens on Nelson.

(c) While all Defendants took advance draws to which they were not entitled, Defendants Clark, de Luca, and Levine took advance draws in 2014 simultaneously with planning and preparing the launch of their (respective) new, competing law firms, at a time when they were supposed to be devoting all of their professional time and efforts to the law firm they shared with Plaintiff Nelson. This conduct violates paragraph 5.3 of the Operating Agreement, and also constitutes additional breaches of fiduciary duty by these Defendants.

19. In addition, Section 9.3 of the Operating Agreement and Section 7.3 of the Buy-Sell Agreement, expressly authorize the issuance of equitable relief such as that which Plaintiff seeks in this case, "compelling the performance of any obligation that, if not performed, would

constitute a breach.” This includes the duty to submit the underlying claims and disputes to alternative dispute resolution.

20. In Section 9.13 of the Operating Agreement, which Plaintiff Nelson and all of the Defendants entered into on or about August 29, 2013, the parties agreed as follows:

“9.13 Dispute Resolution. Subject to a party’s right to seek injunctive relief and/or specific performance pursuant to Section 9.3 hereof, any and all claims, controversies and disputes (each, a “*DISPUTE*”) arising under or relating to this AGREEMENT shall be settled through mediation conducted in accordance with the then-existing rules of the Pennsylvania Bar Association Lawyer Dispute Resolution Program (the “PBA Program”). Any *DISPUTE* not resolved through such mediation shall be submitted to binding arbitration conducted in accordance with the then-existing rules of the PBA Program. If the PBA Program ceases to exist, all *DISPUTES* shall be settled in accordance with the then-existing Commercial Arbitration Rules of the American Arbitration Association. Any award rendered shall be final, binding and non-appealable, and judgment thereon may be entered in any court having jurisdiction thereof.” See Operating Agreement, pp. 29-30, Section 9.13.

21. In Section 7.13 of the Buy-Sell Agreement, Plaintiff Nelson, all of the Defendants and the Firm agreed to precisely the same method of dispute resolution under the PBA Program:

“7.13 Dispute Resolution. Subject to a PARTY’S right to seek injunctive relief and/or specific performance pursuant to Section 7.3 hereof, any and all claims, controversies and disputes (each, a “*DISPUTE*”) arising under or relating to this BUY-SELL AGREEMENT shall be settled through mediation conducted in accordance with the then-existing rules of the Pennsylvania Bar Association Lawyer Dispute Resolution Program (the “PBA PROGRAM”). Any *DISPUTE* not resolved through such mediation shall be submitted to binding arbitration conducted in accordance with the then-existing rules of the PBA PROGRAM. If the PBA PROGRAM ceases to exist, all *DISPUTES* shall be settled in accordance with the then-existing Commercial Arbitration Rules of the American Arbitration Association. Any award rendered shall be final, binding and non-appealable, and judgment thereon may be entered in any court having jurisdiction thereof.” See Buy-Sell Agreement at p. 8, Section 7.13.

22. The PBA Program remains in full force and effect.

23. The PBA Program, which the parties chose as the method of resolving all disputes arising under or relating to the Operating Agreement and the Buy-Sell Agreement, provides a confidential, inexpensive forum for lawyers to resolve disputes with their current or former members or partners through mediation and, if necessary, arbitration, without subjecting the members or partners to the burden, expense and publicity associated with litigation before a court. A copy of the PBA Rules is attached hereto as Exhibit C.

24. On January 23, 2017, Plaintiff Nelson invoked the mediation and arbitration process under the rules of the PBA Program by sending an appropriate notice to the Pennsylvania Bar Association, and all Defendants, of the existence of claims and disputes among the members of the Firm that require resolution. A copy of the notice is attached hereto as Exhibit D.

25. On February 6, 2017, in an effort to commence the dispute resolution process under the agreements, the Pennsylvania Bar Association sent a letter to all of the Defendants notifying them of the request for dispute resolution under the PBA Program and requesting that they sign the standard agreement and pay the required fee (\$150 for Pennsylvania Bar Association members and \$250 for non-members of the Pennsylvania Bar Association). A copy of the February 6, 2017 letter is attached to this pleading as Exhibit E.

26. None of the Defendants has signed the mediation agreement or paid the required fee.

27. All of the Defendants have failed and refused to participate in the mediation and arbitration process under the PBA Program.

28. In the absence of an order by this Court directing the Defendants to proceed with mediation and, if necessary, arbitration, in the PBA Program as required by Sections 9.13 of the

Operating Agreement and 7.13 of the Buy-Sell Agreement, the Pennsylvania Bar Association cannot commence the dispute resolution process to which the parties contractually agreed.

COUNT I – PETITION TO COMPEL ARBITRATION UNDER 9 U.S.C. § 4

29. Plaintiff Nelson incorporates by reference the previous allegations.

30. Under 9 U.S.C. § 4, when a party such as Plaintiff Nelson is “aggrieved by the alleged failure, neglect or refusal of another to arbitrate under a written agreement for arbitration....”, the proper remedy is for the Court to enter “an order directing that such arbitration proceed in the manner provided for in such agreement.” 9 U.S.C. § 4.

31. Despite receiving notice of the existence of claims and disputes and a demand by Plaintiff Nelson for mediation and arbitration under the PBA Program as required by Sections 9.13 of the Operating Agreement and 7.13 of the Buy-Sell Agreement, all of the Defendants have failed, neglected and refused to proceed with mediation and, if necessary, arbitration under the PBA Program.

32. The federal Arbitration Act, 9 U.S.C. § 4, governs proceedings to compel alternative dispute resolution in accordance with the Operating Agreement and the Buy-Sell Agreement because both agreements are transactions “involving commerce” under 9 U.S.C. § 2. The agreements involve “commerce among the several States” because the parties to the agreements are citizens of different states and engaged in commerce under the terms of those agreements. *See* 9 U.S.C. § 1.

33. Because Defendants have failed and refused to participate in the contractually-specified mediation and arbitration, Plaintiff Nelson is entitled to an order under 9 U.S.C. § 4 directing the Defendants to proceed with mediation and, if necessary, arbitration, under the PBA Program.

WHEREFORE, Plaintiff Nelson requests that the Court enter an Order under 9 U.S.C. § 4 directing all Defendants to proceed to mediation and, if necessary, arbitration, under the PBA Lawyers' Dispute Resolution Program Rules as specified in Section 9.13 of the Operating Agreement and Section 7.13 of the Buy-Sell Agreement with respect to all claims, controversies and disputes arising under or relating either to the Operating Agreement or to the Buy-Sell Agreement, together with Plaintiff's costs, and such other and further relief as the Court deems just and proper.

COUNT II – PETITION TO COMPEL ARBITRATION UNDER 42 Pa. C.S.A. § 7304

34. Plaintiff Nelson incorporates by reference the previous allegations.

35. In the alternative, if the Operating Agreement and the Buy-Sell Agreement are deemed not to be agreements involving interstate commerce under 9 U.S.C. § 1, § 2 and § 4, Plaintiff Nelson is entitled to the entry of an Order under 42 Pa. C.S.A. § 7304 compelling the Defendants to proceed under the PBA Program with mediation and, if necessary, arbitration, on all claims, controversies and disputes arising under or relating either to the Operating Agreement or to the Buy-Sell Agreement.

36. Under 42 Pa. C.S.A. § 7304, which applies to agreements to arbitrate that do not involve interstate commerce, Plaintiff Nelson is entitled to the entry of an Order compelling the Defendants to proceed with mediation and, if necessary, arbitration, because the Defendants have failed to comply with the contractually-specified dispute resolution process.

37. Despite the existence of the dispute resolution provisions in the agreements, and the Defendants' receipt of notice of the existence of claims and disputes and a demand for mediation and, if necessary, arbitration under the PBA Program, the Defendants have improperly refused to participate in the contractually-specified dispute resolution process.

38. Because Defendants have refused to proceed with the mediation and, if necessary, arbitration of claims as mandated by Section 9.13 of the Operating Agreement and Section 7.13 of the Buy-Sell Agreement, Plaintiff Nelson is entitled to the entry of an Order under 42 Pa. C.S.A. § 7304, directing the Defendants to proceed with mediation and, if necessary, arbitration under the PBA Program.

WHEREFORE, Plaintiff Nelson requests that the Court enter an Order directing all Defendants to proceed to mediation and, if necessary, arbitration, under the PBA Lawyers' Dispute Resolution Program Rules as specified in Section 9.13 of the Operating Agreement and Section 7.13 of the Buy-Sell Agreement with respect to all claims, controversies and disputes arising under or relating either to the Operating Agreement or to the Buy-Sell Agreement, together with Plaintiff's costs, and such other and further relief as the court deems just and proper.

Dated: November 10, 2017

Respectfully submitted,

/s/ Michael LiPuma

Michael LiPuma, Esq.

ML-445

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Attorney for Plaintiff, Michael R. Nelson

CERTIFICATE OF SERVICE

I certify that on November 10, 2017, I caused a copy of the foregoing document, together with all supporting papers, to be served by ECF upon all parties and counsel.

/s Michael LiPuma
Michael LiPuma, Esq.