IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

BARRY COHEN, and BCO PLANNING,	:	
	:	April, 2002
	:	
Plaintiff,	:	No. 1990
v.	:	
	:	Commerce Program
FIRST FINANCIAL PLANNERS, INC.,	:	
STEVE KOENIG, and KRIS VANDELICHT	:	Control No. 110348
	:	
Defendants.	:	

ORDER and MEMORANDUM

AND NOW, this 13th day of JANUARY, 2003, upon consideration of the Preliminary Objections filed by Defendants, First Financial Planners, Inc., Steve Koenig, and Kris Vandelicht (the "Defendants"), to the Plaintiffs' Barry Cohen and BCO Planning (the "Plaintiffs"), Complaint, the parties responses thereto, and in accordance with the Memorandum Opinion being filed contemporaneously with this Order, it is hereby ORDERED and DECREED that:

1) Defendants' Preliminary Objection in the nature of a motion to compel arbitration is **SUSTAINED**;

2) Defendants' remaining Preliminary Objections are **OVERRULED** as moot; and

3) Plaintiffs' Complaint is **DISMISSED**.

BY THE COURT:

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GENE D. COHEN, J.

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MEMORANDUM OPINION

GENE D. COHEN, J.

Before the Court are the preliminary objections of Defendants, First Financial Planners, Inc., Steve Koenig, and Kris Vandelicht (the "Defendants") to Plaintiffs', Barry Cohen and BCO Planning (the "Plaintiffs") Complaint. Defendants object in the nature of a motion to compel arbitration, a demurrer, legal insufficiency, insufficient pleading, and failure to conform to a rule of law.

The instant Complaint was brought by Barry Cohen, a licensed securities broker, and BCO Planning a corporation engaged in the business of financial planning. The Plaintiffs seek redress for Defendants' alleged misrepresentations to Plaintiffs concerning inter alia the Defendants' Errors and Omissions insurance coverage (the "E & O Policy"). The Plaintiffs allege that Defendants misrepresented that they had professional liability tail coverage dating back to May 1993. Compl. ¶26. Plaintiffs further allege that Barry Cohen had a reasonable expectation that the liability coverage he purchased through Defendants would cover claims arising out of actions

from May, 1993. Compl. ¶24. Essentially, Plaintiffs are seeking damages incurred as a result of the allegedly defective liability coverage, as well as, past commissions owed to Plaintiffs.

Defendants primary objection to Plaintiffs' allegations is that the parties expressly agreed to arbitrate any dispute arising out of the Registered Agent's Agreement by and between Barry Cohen and First Financial Planners, Inc.. Secondarily, Defendants raise numerous preliminary objections in the nature of a demurrer, legal insufficiency, insufficient pleading, and failure to conform to a rule of law.

DISCUSSION

I. The Arbitration Provision Governs the Instant Matter.

Defendants' preliminary objection asserting the existence of an agreement to arbitrate is **Sustained.** As a starting point, it should be noted that Pennsylvania law advocates strict construction of arbitration agreements and dictates that any doubts or ambiguity as to arbitratbility be resolved in favor of arbitration. Smith v. Cumberland Group, Ltd., 455 Pa. Super. 276, 283, 687 A.2d 1167, 1171 (1997). It is settled that our crowded dockets demand and our statutes favor settlements of disputes by arbitration. Flightways Corp. v. Keystone Helicopter Corp., 459 Pa. 660, 662-63 (1975); Langston v. National Media Co., 420 Pa. Super. 611, 615-16, 617 A.2d 354, 356 (1992). Under 42 Pa. C.S.A. §7303:

> A written agreement to subject any existing controversy to arbitration or a provision in a written agreement to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity relating to validity, enforceability or revocation of any contract.

42 Pa. C.S.A. §7303. Furthermore, this Court may order the parties to proceed with arbitration where the court finds the existence of a valid, prior agreement to arbitrate. 42 Pa. C.S.A. §7304.

Viewing the facts of the instant case there is little doubt that the parties are required, in accordance with 42 Pa. C.S.A. §§7303-04, to submit the instant dispute to arbitration.

On November 10, 1999, Defendant, First Financial Planners, Inc. and Plaintiff, Barry Cohen entered into a "Registered Agents Agreement" which governed the terms of the parties business relationship (the "Agreement"). Compl. Ex. A. (See Prelim. Obj. Ex. B for the full text of the Agreement). Paragraph 2 of the Agreement provides in pertinent part that:

> The Parties further agree that any dispute or claim arising out of the terms of this Agreement must be submitted to binding arbitration and settled in accordance with the Code of Arbitration Procedure of the National Association of Securities Dealers, Inc.

Compl. Ex. B at ¶2; Prelim Obj. Ex. B. at ¶2 (the "Arbitration Provision"). The above quoted language clearly provides that the parties agreed to arbitrate all matters arising out of the subject matter of the Agreement. Unfortunately, the inquiry does not end here because the Plaintiffs suggest to this Court that the Arbitration Provision does not cover a letter addendum to the Agreement, dated November 10, 1999. Pls. Ans. to Prel. Obj. at ¶10.

The Plaintiffs should be well aware, as a fundamental tenet of contract law, an "addendum" is part of the original agreement, and the parties to an addendum are bound by the terms of the agreement. Williston on Contracts §30:25 at 234-35 (4th ed. 1999). Moreover, by definition an "addendum" is additional material used to supplement an original document. Therefore, this Court finds, as matter of law, as well as common sense, that the subject matter of the Agreement and the Addendum are covered by the Arbitration Provision.

As a final matter, this Court also finds that the subject of the instant Complaint falls within the parameters of the Arbitration Agreement. Plaintiffs' Complaint specifically seeks relief from Defendants' alleged fraudulent misrepresentations concerning E & O Policy coverage, as well as a the Defendants' alleged unwarranted reduction of Plaintiff's commissions to cover the E & O Policy premiums. Compl. 14-48. Given that the Agreement provides that the "Agent must purchase Errors & Omissions ("E & O") coverage through the Company," and that "the Company will escrow monthly from the Agents's commission account at a rate of 1/12 of the then current E & O premium" it is disingenuous for the Plaintiffs to dispute the arbitrability of the instant matter when the subject matter of the Complaint is specifically discussed in the Agreement.[1] See Compl. Ex. B at ¶18; Prelim Obj. Ex. B. at ¶18. Accordingly, this Court sustains the Defendants' preliminary objection asserting the existence of a valid agreement to arbitrate and Plaintiffs' Complaint is dismissed.

II. The Parties Remaining Motions are Denied as Moot.

Because this Court is sustaining Defendants' preliminary objection asserting the existence of a valid agreement to arbitrate, and the parties are ordered to submit the instant matter to arbitration, the remaining preliminary objections are **overruled** as moot.

CONCLUSION

For the above-stated reasons, this Court finds that the parties agreed to arbitrate the subject matter of the instant dispute. Accordingly, this Court sustains the Defendants'

[1] Additionally, the Addendum details the process by which the parties will pay for the E & O Policy coverage, including a discussion concerning commission rates. See Def.'s Reply in Support of Prelim. Obj., Ex. B.

preliminary objection asserting a prior agreement to arbitrate, and Plaintiffs' Complaint is dismissed. The Court will issue a contemporaneous Order consistent with this Opinion.

BY THE COURT:

GENE D. COHEN, J.

DATED: January 13, 2003