COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss. **SUPERIOR COURT**
Civil No. 25-869-BLS1

BRUCE DUBEAU
Plaintiff

vs.

BDO USA, LLP, & others[1]
Defendants

MEMORANDUM AND ORDER ON DEFENDANTS' MOTION TO COMPEL ARBITRATION

Bruce Dubeau brings this action against BDO USA, LLP[2] ("BDO") and one of its former Certified Public Accountants, Justin Amico ("Amico") (together, the "BDO Defendants"), and against Lipresti Law, P.C. and attorney Nicholas Lipresti (together, the "Lipresti Defendants"), for alleged malpractice mainly in connection with the sale of his business. The BDO Defendants move to compel arbitration of the claims against them. For the following reasons, I must enforce plaintiff's agreement to resolve his disputes with the BDO Defendants through arbitration. I also stay this case pending arbitration.

FACTUAL BACKGROUND

A. The Present Dispute[3]

Plaintiff is a successful electrician and was the sole owner of Energy Electric Company, Inc. ("EEC"). BDO advised EEC "for years on its tax obligations and liabilities." Complaint ¶10.

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[1] Justin Amico, Lipresti Law, P.C., and Nicholas Lipresti.

[2] BDO indicates it converted from an LLP to a professional corporation in 2023.

[3] I distill the facts in this section from the allegations in plaintiff's complaint and from the engagement agreements implicitly referenced therein, which are attached to the BDO Defendants' memorandum of law without challenge as to their authenticity.

Plaintiff, as President of EEC, and BDO entered into a letter engagement agreement dated October 7, 2020 ("the Review Agreement"). The prime "objective" of the engagement was for BDO to prepare and review EEC's financial statements in accordance with accounting principles generally accepted in the United States. The engagement letter also makes clear that, subject to its terms, BDO personnel "are always available to meet with you and other executives at various times throughout the year to discuss current business, operational and accounting matters affecting your Company," "to assist you in any of these areas," and "to attend your directors' and stockholders' meetings." Review Agreement at 5. Along these lines, in addition to drafting financial statements, BDO agreed to "provide advice and recommendations to assist management of [EEC] in performing its functions and making decisions." Id.

The Review Agreement contains a lengthy dispute resolution provision. In relevant part, it states:

> Any dispute or claim between you[4] and BDO arising out of or relating to the Agreement or a breach of the Agreement, including, without limitation, claims for . . . professional negligence . . . or claims based in whole or in part on any other . . . statutory . . . theory . . . shall be submitted to binding arbitration by the American Arbitration Association ("AAA"), in accordance with its Commercial Arbitration Rules. . . . The arbitration panel shall have the power to rule upon its own jurisdiction and authority**,** including any objection to the initial or continuing existence, validity, effectiveness, or scope of this arbitration agreement. . . . The parties . . . acknowledge that by agreeing to this arbitration provision, they are giving up the right to litigate claims against each other, and important rights that would be available in litigation, including the right to trial by judge or jury, to extensive discovery and to appeal an adverse decision. The parties acknowledge that they have read and understand this arbitration provision, and that they voluntarily agree to binding arbitration. (Emphasis added).

[4] The Review Agreement refers to EEC as "the 'Company' or 'you.'"

In addition to its work for EEC and its advice to EEC's management, plaintiff and his wife also hired BDO to prepare their personal tax returns, including under a letter engagement agreement dated January 15, 2021 (the "Tax Agreement"). Plaintiff and his wife accepted and agreed-to the Tax Agreement. Section 1 of the Terms & Conditions of the Tax Agreement ("T&C") states that the Tax Agreement "will apply to all services BDO performs at Client's request and pursuant to the Client's directions [ ] even if such services are not expressly covered by a" statement of work. The Tax Agreement includes a comprehensive arbitration agreement that is effectively identical to the dispute resolution provision in the Review Agreement.

In or before 2020, after 34 years in business, plaintiff decided to sell EEC and retire. In November 2020, plaintiff asked the BDO Defendants and the Lipresti Defendants to advise him about the sale. Plaintiff negotiated a Stock Purchase Agreement ("SPA") to sell EEC to three non-parties ("the Buyers"). Along with cash paid at closing, the SPA provided for a post-closing working capital adjustment, under which plaintiff could receive additional monies based on EEC's working capital. The SPA defined "working capital" as accounts receivable plus inventory, minus adjusted current liabilities. Plaintiff claims the BDO Defendants advised him that "retainage receivables" were part of accounts receivable and included in working capital. He alleges that, contrary to this advice, BDO used an accounting method for EEC in 2019 that identified retainage receivables as a separate asset, rather than as accounts receivable. Lipresti asked Amico to review the SPA, including the language about "working capital." Amico concluded that the definition of "working capital" was broad enough to "catch everything," and reaffirmed this position shortly before the deal closed.

After the closing, the Buyers' calculations of the working capital adjustment differed from plaintiff's. The dispute was submitted to arbitration. On May 27, 2022, an arbitrator

adopted the Buyers' calculation. Plaintiff now alleges that due to his reliance on the defendants, he lost $747,603 in the sale and incurred over $100,000 in professional fees for the arbitration.

BDO prepared plaintiff's personal tax returns for 2021; however, before filing, it requested a release of all claims. Plaintiff declined to sign the release, and BDO subsequently terminated its tax services shortly before plaintiff's tax return was due for 2022.

B. Procedural History

On March 31, 2025, just under three years after the arbitration award, plaintiff filed this case. He asserts claims for accounting malpractice against both of the BDO Defendants for giving deficient advice regarding the definition of "working capital" in the SPA (Count I), for legal malpractice against both of the Lipresti Defendants (Count II), and for violation of G.L. c. 93A, § 9 against BDO for withdrawing from providing personal tax advice to plaintiff in 2022 (Count III).

The Lipresti Defendants and the BDO Defendants filed cross-claims for contribution against each other. See Docket #s 9, 16. The BDO Defendants have moved to stay the cross-claims pending the arbitrator's determination, see Docket #24, which the Lipresti Defendants oppose. See Docket #25.

DISCUSSION

I. Standard of Review

"[A]rbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." McCarthy v. Azure, 22 F.3d 351, 354 (1st Cir. 1994), quoting AT&T Technologies, Inc. v. Communications Workers of Am., 475 U.S. 643, 648 (1986). See also Hogan v. SPAR Group, Inc., 914 F.3d 34, 38 (1st Cir. 2019), quoting Ouadani v. TF Final Mile LLC, 876 F.3d 31, 36 (1st Cir. 2017) ("arbitration is a matter of consent, not coercion."); Landry v. Transworld Systems Inc., 485 Mass. 334, 338 (2020),

quoting Howard v. Ferrellgas Partners, L.P., 748 F.3d 975, 977 (10th Cir. 2014) ("[B]efore the [Federal Arbitration] Act's heavy hand in favor of arbitration swings into play, the parties themselves must agree to have their disputes arbitrated."); Constantino v. Frechette, 73 Mass. App. Ct. 352, 354 (2008) ("Absent advance consent to such an agreement, a party cannot be compelled to arbitrate a dispute."). In Massachusetts, arbitration agreements are "valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract." G.L. c. 251, § 1. Indeed, "the Massachusetts Arbitration Act . . . and relevant case law all demonstrate the strong public policy in favor of arbitration in commercial disputes." GGNSC Administrative Services, LLC v. Schrader, 484 Mass. 181, 191 (2020).

The SJC has described four principles governing arbitration agreements: (i) a party may be "required to arbitrate" only those disputes it has agreed to submit to arbitration; (ii) unless the parties provide otherwise, courts decide whether a dispute is arbitrable; (iii) courts do "not consider the merits of the underlying claims" in making that determination; and (iv) "broadly worded arbitration clause[s]" create a presumption that disputes are arbitrable unless expressly excluded. Commonwealth v. Philip Morris, Inc., 448 Mass. 836, 843 (2007).

Plaintiff tries to distinguish advice the BDO Defendants gave him personally from advice they provided to him in his capacity as CEO of EEC. He alleges that Amico, a principal at BDO, acted outside the scope of the Review Agreement and provided advice about the SPA to him individually. Given the language of the various engagement agreements, I find the argument unconvincing.

Guided by the four principles of arbitration, I must first determine whether the parties intended for their present dispute to be resolved through arbitration. The Review Agreement provides, "[a]ny dispute or claim . . . arising out of or relating to the Agreement . . . including, without limitation, claims for . . . professional negligence . . . shall be submitted to binding

arbitration." The issue of "accounting malpractice" relates to the scope of work provided for in the Review Agreement, which also covered advice provided to EEC's executives and to help EEC's management make decisions. Thus, the arbitration clause appears to cover the present dispute.

Second, unless the parties provide otherwise, courts decide whether a dispute is arbitrable. Here, the Review Agreement provides that "[t]he arbitration panel shall have the power to rule upon its own jurisdiction and authority, including any objection to the initial or continuing existence, validity, effectiveness, or scope of this arbitration agreement." The parties agreed to have the arbitration panel decide whether the present dispute is arbitrable.

Third, I do not consider the merits of the underlying claims in making my determination.[5]

Fourth, broadly worded arbitration clauses generally give rise to a presumption that disputes fall within arbitration unless they are specifically carved out. See Quirk v. Data Terminal Sys., Inc., 379 Mass. 762, 767 n.2 (1980) (parties "free to limit the arbitration provision as they see fit"). In the present case, the Review Agreement's arbitration clause is broad enough to encompass plaintiff's claims. In short, the parties acknowledged that by signing the Review Agreement, they were "giving up the right to litigate claims" and "voluntarily agree[d] to binding arbitration."

Plaintiff's Chapter 93A claim based on BDO's decision in 2022 that it would not file plaintiff's 2021 tax returns without plaintiff signing a release, plainly triggers the Tax Agreement's arbitration clause. See T&C § 11 ("Any dispute . . . relating to the Agreement . . . based . . . on any . . . statutory . . . theory . . . shall be submitted to binding arbitration"). Plaintiff

[5] Given my ruling on the arbitration question, I need not address the BDO Defendants' arguments for dismissal under Mass. R. Civ. P. 12(b)(6).

does not challenge the validity or enforceability of the Tax Agreement or its dispute resolution provision. Without more, there is no merit to plaintiff's argument that enforcing the arbitration provisions would be "unconscionable and contrary to Massachusetts public policy."

As to plaintiff's claims against the Lipresti Defendants, no one contends they are subject to arbitration. Plaintiff contends that splitting the proceeding would increase the risk of inconsistent results and "improperly fragment the case." Massachusetts law is clear, "[a]ny action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration . . . has been made . . . if the issue is severable, the stay may be with respect to such issue only." G.L. c. 251, § 2. This language authorizes courts to bifurcate litigation. See Town of Danvers v. Wexler Const. Co., 12 Mass. App. Ct. 160, 165 n.6 (1981) ("Legislature intended that arbitration take place even where it would necessitate separating certain issues or parties from a multi-claim, multi-party action.").

On balance, it makes sense for the arbitration to run its course in the first instance. The arbitration may make further litigation of the claims against the Lipresti Defendants unnecessary, or may considerably narrow the issues that have to be addressed by the court. Moreover, arbitration is generally designed to proceed on an expedited schedule. Accordingly, it makes sense to stay further proceedings in this case pending the results of the arbitration of plaintiff's claims against the BDO Defendants.

ORDER

So much of The BDO Defendants' Motion to Compel Arbitration, or in the Alternative, to Dismiss the Complaint (Docket #29) as seeks to compel arbitration is **ALLOWED**. The case shall be **STAYED** while the arbitration proceeds. The parties shall jointly provide the court with

a report on that status of the arbitration at six-month intervals, the first of which shall be filed by October 30, 2026.

Dated: April 29, 2026

Peter B. Krupp
Justice of the Superior Court