

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

Plaintiff,

-against-

Defendant.

AFFIRMATION IN SUPPORT
OF MOTION TO STAY
ARBITRATION

_____, an attorney duly licensed to practice before the Courts of the State of New York, and associated with the law firm of _____, the attorneys of record for plaintiff _____ (the "Corporation"), affirms under penalty of perjury and says, pursuant to CPLR 2106:

1. I am familiar with the facts and circumstances stated herein. I submit this Affirmation in support of the Corporation's motion to stay the arbitration instituted by the defendant _____ by Demand for Arbitration _____ dated _____ (Exhibit A).

THE PARTIES

2. The Corporation is a domestic corporation with its principal place of business located at _____. It employs professional architects and draftsmen and is engaged in the business of design of private and public structures.

3. Defendant is the President, a director, and a 50 percent shareholder of the Corporation and is a resident of New York.

THE DISPUTE

4. A dispute has arisen between the Corporation and defendant, stemming from his abandonment of his managerial duties and breach of his fiduciary obligations of care and loyalty to the Corporation, as set forth in detail in the Complaint herein. (A copy of the Complaint is annexed as Exhibit B.)

THE PENDING PROCEEDINGS

5. When the Corporation discovered that defendant was secretly competing with it by covertly performing architectural and design services for present and potential clients of the Corporation, failing to maintain proper records, and pocketing funds that rightfully belonged to the Corporation, it initiated this lawsuit.

6. Concurrently, the Corporation moved for a preliminary injunction to restrain defendant from further damaging it pending the outcome of the litigation.

THE INSTANT DEMAND FOR ARBITRATION

7. In response to the Corporation's Complaint and motions, defendant has served a Demand for Arbitration based upon an arbitration clause contained in a separate shareholders' agreement (the "Agreement") between defendant and the Corporation's other controlling shareholders.

8. On or about [date], the individual shareholders had entered into an Agreement to form the Corporation (Exhibit C). The Agreement contained a provision for arbitration of disputes between *the parties to the Agreement* (p. ____, par. ____)—that is, between defendant and the shareholders. The Corporation was not a party to the Agreement.

9. Indeed, the Agreement specifically provided that the Corporation could later become a party to the Agreement by resolution of the Board of Directors. However, the Board never resolved to make the Corporation a party to the Agreement, and the Corporation never ratified the Agreement.

THE ARBITRATION SHOULD BE STAYED

10. The gravamen of the pending litigation is that defendant breached his fiduciary duties to the Corporation. Since the Corporation is not a party to the Agreement containing the arbitration clause, the Corporation is entitled to an order pursuant to CPLR 7503(b) staying the arbitration instituted by defendant at least until the resolution of the pending motions, which will determine the issues raised herein.

11. Twenty days have not elapsed since the date of service of the Demand for Arbitration.

12. No previous request for this or any similar relief has been made to this or any other court.

WHEREFORE, Plaintiff respectfully requests this, the entry of an order, pursuant to CPLR 7503(b), staying all proceedings under the Demand for Arbitration, and directing defendant to answer the Complaint previously served upon him and for such other and further relief as the Court may deem just and proper.

Dated: _____, New York
_____, 20__

s/ _____
[Signing Attorney's Name]