

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

WILLIAM B. CHANDLER III
CHANCELLOR

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Submitted: May 17, 2010
Decided: May 21, 2010

Brian M. Rostocki
Reed Smith LLP
1201 Market Street, Suite 1500
Wilmington, DE 19801

Cathy L. Reese
Charles B. Vincent
Joseph B. Warden
Fish & Richardson P.C.
222 Delaware Avenue, 17th Floor
P.O. Box 1114
Wilmington, DE 19899

Re: *Aris Multi-Strategy Fund, LP v. Southridge Partners, LP*
Civil Action No. 5422-CC

Dear Counsel:

Before the Court is defendant's motion to dismiss plaintiff's complaint in favor of arbitration. I conclude that arbitration of this controversy is contractually mandated. I also conclude that the Delaware Revised Uniform Limited Partnership Act¹ permits parties to contractually agree to submit books and records actions under 6 *Del. C.* § 17-305 to arbitration. Accordingly, defendant's motion is GRANTED.

The limited partnership agreement (the "LP Agreement") at issue contains an arbitration provision which provides in relevant part:

¹ 6 *Del. C.* §§ 17-101, et al. (2010).

[A]ny claim or controversy arising among or between the parties hereto pertaining to the Partnership or this Agreement shall be settled by arbitration . . . under the then-prevailing rules of the American Arbitration Association. In any such arbitration, each of the parties hereto agrees to the request that (i) the authority of the arbitrators shall be limited to construing and enforcing the terms and conditions of the Agreement as expressly set forth herein, (ii) the arbitrators shall state the reasons for their award in a written opinion, (iii) the arbitrators shall not make any award which shall alter, change, cancel or rescind any provision of this Agreement and shall not have authority to award punitive damages and (iv) their award shall be consistent with the provisions of this Agreement; provided, however, that any such request may be denied in whole or in part by such arbitrators.²

The language of this provision is broad and evinces the parties' intent to submit "any" dispute "pertaining to the Partnership" to arbitration. As a limited partner of defendant, plaintiff filed this action under section 17-305 seeking access to defendant's books and records. Plaintiff contends this action is necessary because defendant has been unresponsive to its earlier requests for information. As one can plainly see, this is a dispute "pertaining to the Partnership" and is therefore subject to arbitration per the terms of the LP Agreement. Moreover, contrary to plaintiff's assertions, the arbitration provision does not limit the arbitrator to resolving only those disputes that involve the LP Agreement. The arbitration provision states that the parties may "request" that the arbitrator limit his or her authority to resolving disputes involving the LP Agreement, but that "such request may be denied" by the arbitrator. Accordingly, it is up to the arbitrator in the first instance to determine whether he or she will resolve this books and records dispute.

Plaintiff also contends that inspection rights under Section 17-305 cannot be determined by an arbitrator because the statute grants exclusive jurisdiction to the Court of Chancery.³ This is incorrect. 6 *Del. C.* § 17-109(d) allows a limited partner to altogether waive its right to bring actions "relating to the organization or

² LP Agreement § 10.11 (emphasis added).

³ See 6 *Del. C.* § 17-305(e) ("The Court of Chancery is hereby vested with exclusive jurisdiction to determine whether or not the person seeking such information is entitled to the information sought.").

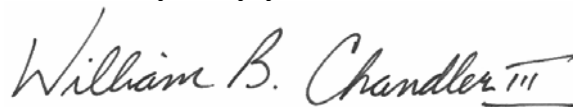
internal affairs of a limited partnership” in the Delaware courts, so long as it does so by agreeing to arbitrate such actions. That is exactly what has occurred in this case.

In closing I observe that permitting limited partners to contractually agree to arbitrate their statutory rights—rather than assert those rights in court—is consistent with the manner in which Delaware has treated this issue in other contexts. In the corporate context, for example, parties can agree to submit advancement actions under 8 *Del. C.* § 145 to arbitration, notwithstanding the Court of Chancery’s exclusive jurisdiction over section 145 actions.⁴ And in the limited liability company context, parties can agree to submit derivative actions against company management under 6 *Del. C.* § 18-110(a) and related statutes to arbitration, notwithstanding the Court of Chancery’s jurisdiction over such matters.⁵

For the foregoing reasons defendant’s motion is GRANTED. In light of this ruling, the trial scheduled for July 15, 2010 is canceled and has been removed from the Court’s calendar. This case is dismissed without prejudice.

IT IS SO ORDERED.

Very truly yours,

A handwritten signature in cursive script that reads "William B. Chandler III". The signature is written in black ink and includes a horizontal line under the name.

William B. Chandler III

WBCIII:arh

⁴ *Yuen v. Gemstar-TV Guide Int’l, Inc.*, 2004 WL 1517133, at *1-2 (Del. Ch. June 30, 2004).

⁵ *Elf Atochem North America, Inc. v. Jaffari*, 727 A.2d 286, 295 (Del. 1999).