STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT

SHERIZEN BENEFITS GROUP, LLC,
Plaintiff,

v. **Case No. 15-145215-CK**
Hon. James M. Alexander

JEANNE E. KELFORD,
Defendant.
_____/

OPINION AND ORDER RE: MOTION TO DISMISS

This matter is before the Court on Defendant's motion to dismiss. Defendant previously worked as an independent contractor for Plaintiff managing its day-to-day operations and marketing insurance policies. The parties' relationship was governed by two written contracts executed on January 1, 2014 – an Independent Contractor Agreement and a Confidentiality Agreement.

On January 5, 2015, Defendant notified Plaintiff that she was terminating the Independent Contractor Agreement. Plaintiff's Complaint alleges that Defendant's voluntary termination of the Agreement triggered a two-year "protection of contractual relationships" provision of the Confidentiality Agreement. This Confidentiality Agreement contained non-solicitation and protection-of-confidential-information provisions.

Plaintiff generally claims that, after the death of its founder, Howard Sherizen, Defendant "engaged in a plot to steal the clients and business of [Plaintiff] for her own personal gain." On January 27, 2015, Plaintiff filed the current action on claims that Defendant breached various

portions of both agreements, breached her fiduciary duties, intentionally interfered with contractual relationships, and embezzled and converted Plaintiff's property.

Defendant now moves to dismiss Plaintiff's claims based on an arbitration provision found in the Independent Contractor Agreement. To this end, Defendant seeks summary disposition under MCR 2.116(C)(7), which tests whether a claim is barred, among other grounds, by an agreement to arbitrate. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999).

In Michigan, "a 'question of arbitrability' is an issue for judicial determination unless the parties unequivocally indicate otherwise." *Gregory J Schwartz & Co v Fagan*, 255 Mich App 229, 232 (2003), citing *Howsam v Dean Witter Reynolds, Inc*, 537 US 79; 123 S Ct 588; 154 L Ed 2d 491 (2002). Further, MCL 691.1686(1) provides that "[a]n agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except on a ground that exists at law or in equity for the revocation of a contract."

Further, "[t]he court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate." MCL 691.1686(2). Michigan courts have consistently reasoned that "our Legislature and our courts have strongly endorsed arbitration as an inexpensive and expeditious alternative to litigation." *Rembert v Ryan's Family Steak Houses, Inc*, 235 Mich App 118,133; 596 NW2d 208 (1999). As a result, "any doubts about the arbitrability of an issue should be resolved in favor of arbitration." *DeCaminada v Coopers & Lybrand*, 232 Mich App 492, 499; 591 NW2d 364 (1998).

Defendants' motion is based on a provision found in paragraph 4.4 of the Independent Contractor Agreement. The provision provides (in relevant part):

> Any controversy, claim, or dispute arising out of or relating to the terms of this Agreement shall be settled by arbitration, before three (3) arbitrators. . . . The

> Parties to such controversy, claim or dispute hereby agree to take any action reasonably necessary or appropriate to expedite the arbitration process and, notwithstanding any term of this Agreement to the contrary, the arbitration shall be completed within ninety (90) days after arbitration is commenced.

In response, Plaintiff's sole argument is that the arbitration provision is only relevant to claims arising under the Independent Contractor Agreement. This is so because only it contained an arbitration provision, and it did not incorporate the Confidentiality Agreement by reference. The Court agrees.

While both agreements were executed on the same day, **and** the Independent Contractor Agreement acknowledges the Confidentiality Agreement, neither agreement incorporates the terms of the other. In other words, the Independent Contractor Agreement is independent of the Confidentiality Agreement with respect to the arbitration provision.

Because Plaintiff's Complaint alleges claims that fall squarely within the provisions of the Independent Contractor Agreement's arbitration provision, said claims are subject to arbitration as agreed by the parties. As a result, Plaintiff's claims that arise out of the Independent Contractor Agreement must be arbitrated. These claims are: (Count I) An Accounting; (Count II) Breach of Contract; (Count IV) Intentional Interference with Contractual Relationships; (Count V) Breach of Fiduciary Duty; (Count VI) Conversion; (Count VII) Embezzlement; and (Count VIII) Unjust Enrichment. In each of these counts, Plaintiff specifically identifies the Independent Contractor Agreement or Defendant's status as an Independent Contractor as a basis for the claim.

Plaintiff's Count III, however, alleges claims solely arising out of the Confidentiality Agreement, and is, therefore, not subject to arbitration – unless the parties agree otherwise.

Under the Uniform Arbitration Act, "If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim

subject to the arbitration is severable, the court may limit the stay to that claim." MCL 691.1687(7).

Because the bulk of the parties' dispute is subject to arbitration, the Court finds it appropriate to stay the remainder of the case pending arbitration on the above issues. Once the arbitration with respect to these claims is concluded, Plaintiff's claim under the Confidentiality Agreement (Count III) may proceed.

The parties must notify the Court within 28 days of the final arbitration report.

IT IS SO ORDERED.

_June 3, 2015___ ____ __/s/ James M. Alexander_____
Date Hon. James M. Alexander, Circuit Court Judge