

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

.....X  
DANIEL DEMBICKI and JOSEPH DUNHILL

Index No.: 159402/2023

Plaintiffs,

-against-

SYNERGY HEALTH NETWORK, INC. and  
BRIAN WEINSTEIN,

Defendants.

.....X

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS FOR LACK OF  
PERSONAL JURISDICTION**

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## **PRELIMINARY STATEMENT**

This is an easy case to dismiss for lack of personal jurisdiction. Plaintiffs are both Florida residents. The corporate defendant, Synergy Health Network, Inc. is incorporated in Delaware and is alleged to have offices in Florida and Illinois. There are no allegations that Plaintiffs rendered any services in New York or that Defendants undertook any actions in New York. The only basis asserted for personal jurisdiction is that the parties chose New York as the forum for arbitration. But the choice of an arbitral forum does **not** establish personal jurisdiction in new civil litigation. *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. East*, No. 121067/93, 1993 WL 764642, at \*2 (N.Y. Sup. Ct. Nov. 4, 1993).

## **FACTUAL BACKGROUND**

Plaintiffs commenced this action by filing a Summons and Complaint (henceforth, the “Complaint”) on September 25, 2023. According to the Complaint, the parties had previously been engaged in arbitration proceedings, which were dismissed by the arbitrator with leave for Plaintiffs to pursue their claims “in another forum.” Complaint ¶¶ 9-10. According to Plaintiffs, Weinstein had commingled personal and corporate funds. Complaint ¶ 31-33. This in Plaintiffs’ telling, which conveniently leaves out the real reasons for Plaintiffs’ termination, caused Weinstein and Synergy to retaliate against Plaintiffs. Complaint ¶¶ 57, 66. To shore up their case, Plaintiffs also included new factual allegations.<sup>1</sup> None of the allegations in the Complaint indicate that either Defendant engaged in any conduct in New York.

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<sup>1</sup> Because arbitration proceedings are confidential, Defendants cannot reveal the content of any new or old allegations. Plaintiffs are well aware of which paragraphs contain new factual matter and Defendants reserve the right to file the arbitration claim under seal if necessary.

## **LEGAL ARGUMENT**

Under general principles of personal jurisdiction, in New York as elsewhere, personal jurisdiction can be either “general” or “specific.” *See* CPLR §§ 301–302. General jurisdiction arises when a defendant is either domiciled in New York or when, in an exceptional case, its contacts with a forum are so extensive that jurisdiction may be exercised over the defendant consistently with Constitutional due process principles. *See IMAX Corp. v. The Essel Grp.*, 62 N.Y.S.3d 107, 109 (1st Dep’t 2017) (courts may not exercise general jurisdiction unless defendant is domiciled in the State or has contacts with State that are so extensive as to support general jurisdiction notwithstanding domicile elsewhere). Plaintiffs cannot argue that either Defendant is domiciled in New York and the Complaint plainly does not present evidence of contacts so extensive as to permit an exercise of general jurisdiction over defendants who not only are domiciled outside of New York, but also conducted all their business affairs outside of New York.

With respect to specific jurisdiction, “the plaintiff’s cause of action must arise out of defendant’s contacts with the state which, although not substantial, satisfy the state’s long arm statute.” *Nautilus Ins. Co. v. Adventure Outdoors, Inc.*, 247 F.R.D. 356, 359 (E.D.N.Y. 2007) (citing N.Y. C.P.L.R. § 302). New York’s long arm statute allows courts to exercise personal jurisdiction over an out-of-state defendant who:

1. transacts any business within the state or contracts anywhere to supply goods or services in the state; or
2. commits a tortious act within the state, except as to a cause of action for defamation of character arising from the act; or
3. commits a tortious act without the state causing injury to person or property within the state, except as to a cause of action for defamation of character arising from the act, if he
  - (i) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or

(ii) (expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce; or

4. owns, uses or possesses any real property situated within the state.

CPLR § 302(a)(1-4). *See also MDG Real Est. Glob. Ltd. v. Berkshire Place Assocs., LP*, 513 F. Supp. 3d 301, 306 (E.D.N.Y. 2021).

There are no allegations anywhere in the Complaint that Defendants' conduct satisfies any of the provisions under CPLR §302(a). The only basis asserted in the Complaint for the exercise of personal jurisdiction over Defendants is that the parties selected New York as the forum for arbitration of their disputes. However, New York law is clear that the choice of New York as an arbitral forum does not operate to confer personal jurisdiction in a new civil action.

*Merrill Lynch* 1993 WL 764642, at \*2. As the Court stated in that case:

In sum, it is well-settled that an arbitration clause containing a forum selection will be upheld by courts, but it is equally well-settled that such a clause will be enforced only insofar as it applies to arbitration proceedings and will not be construed to mean consent to jurisdiction in the courts of New York State.

*Id.*

In *Aero-Bocker Knitting Mills, Inc. v. Allied Fabrics Corp.*, 387 N.Y.S.2d 635, 637 (1st Dep't 1976), the Court went even further, stating that even where the parties had expressly consented to the jurisdiction of New York courts, "the only fair reading of the clause is that the jurisdictional designation applies only to arbitration proceedings."

Moreover, the Complaint contains new factual allegations, undermining any possible claim that Defendants had somehow consented to personal jurisdiction before a New York court. *See supra* at 2. The arbitrator herself was careful not to make any pronouncements on the question of jurisdiction in any subsequent action, stating only that Claimants were free to pursue the claims "in another forum."

This other forum cannot be New York, where there is no statutory basis for long-arm personal jurisdiction over Defendants, the consent to arbitrate does not confer personal

jurisdiction in a subsequent civil action, and the Complaint, in any event, contains new factual material.

### **CONCLUSION**

For the reasons set forth above, the Court should dismiss the Complaint for lack of personal jurisdiction under CPLR §3211(a)(8).

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