To be Argued by:
MARIO AIETA
(Time Requested: 15 Minutes)

New York Supreme Court
Appellate Division – Second Department

Docket No.: 2017-07940

DARRELLE REVIS and SHAVAE, LLC,

Plaintiffs-Appellants,

– against –

NEIL SCHWARTZ, SCHWARTZ & FEINSOD, LLC,
JONATHAN FEINSOD and JOHN DOE,

Defendants-Respondents.

BRIEF FOR DEFENDANTS-RESPONDENTS

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PRELIMINARY STATEMENT

This is a dispute about fees payable by a professional football player to his sports agents. Plaintiff-Appellant Darelle Revis was a professional football player. He averred in his Verified Complaint that "[o]n or about January 18, 2007, Mr. Revis and [Defendant-Respondent] Schwartz signed a Standard Representation Agreement . . . providing that Attorney Schwartz would represent Mr. Revis as his attorney and contract advisor." The Standard Representation Agreement ("SRA") provided that Revis would pay Scwhartz a fee of 2% of Revis's compensation from NFL Player Contracts and a fee of 10% of Revis's compensation from "Marketing and Endorsements." The Standard Representation Agreement also contained an arbitration clause requiring Revis and Schwartz to arbitrate "any and all disputes" "involving the meaning, interpretation, application, or enforcement of this Agreement or the obligations of the parties under this Agreement."

Revis, as an NFL Player subject to a collective bargaining agreement, and Defendants-Appellants, as Contract Advisors subject to NFL Players Association ("NFLPA") Regulations, are also bound by that part of the Regulations that mandates arbitration of any disputes concerning a fee agreement. The Regulations are incorporated by reference in the SRA.

In May 2016, Revis fired Schwartz and Feinsod as his agents. In August 2016, the Healthy Beverage Company paid to Revis and to Defendants-Respondents a "termination fee" as required by a contract between Revis and the Healthy Beverage Company arranged by Schwartz as Revis's agent. Later that month, Schwartz and Feinsod placed into escrow that part of the termination fee that had been paid to them and commenced an arbitration against Revis seeking a ruling from the arbitrator as to the proper distribution of the termination fee. Revis commenced this action in November 2016, claiming that Schwartz and Feinsod had charged him fees in excess of the amounts stipulated in the Standard Representation Agreement. Defendants-Respondents moved to compel arbitration of Revis's claims and the court below granted that motion.

Revis now appeals, arguing that in spite of its plain language, the arbitration clause in the Standard Representation Agreement does not apply to "any and all disputes" concerning Schwartz's "represent[ation of] Mr. Revis as his attorney and contract advisor." Revis concedes that any dispute regarding the fee owed by Revis to Schwartz for Schwartz's services as contract adviser must be arbitrated, but argues that Revis's claims relate to Schwartz in his capacity as Revis's lawyer and that those claims are not subject to the arbitration provision in the SRA. The plain language of the

Standard Representation Agreement – "any and all disputes . . . involving the meaning, interpretation, application, or enforcement of this Agreement or the obligations of the parties under this Agreement" – and Revis's own sworn allegation that he engaged Schwartz as his attorney by signing the SRA belie Revis's argument. Furthermore, the court below rejected Revis's assertion that Schwartz acted as Revis's attorney, finding that Revis "provides absolutely nothing to show how and when Schwartz acted as anything other than his agent" and holding that there was "no merit in Revis' assertion . . . that . . . the claims in this action are wholly separate from the rights and duties created under the SRA." Because the Supreme Court properly granted Defendants-Respondents' motion to compel arbitration of Revis's claims, the order appealed from should be affirmed.

QUESTION PRESENTED

Are Plaintiff-Appellant's claims, each of which asserts that Defendants-Respondents charged more for their services than was agreed to in a written contract containing an arbitration clause, subject to arbitration where Plaintiff-Appellant has agreed to arbitrate any and all disputes involving the meaning, interpretation, application, or enforcement of the contract or the obligations of the parties under that contract?

The Supreme Court answered this question in the affirmative.

COUNTER-STATEMENT OF THE FACTS

Plaintiff Darrelle Revis is a player in the National Football League (A-8 [Complaint ¶ 8]).[1] As such, he is a member of the National Football League Players Association (the "NFLPA"), the union for professional football players (A-44; https://www.nflpa.com/about ["The National Football League Players Association is the union for professional football players in the National Football League . . . . In 1993, the NFLPA again was officially recognized as the union representing the players, and negotiated a landmark Collective Bargaining Agreement with the NFL. The current CBA will govern the sport through 2020"]). Plaintiff Shavae LLC is wholly-owned by Revis (A-8 [Complaint 9]). Defendants Neil Schwartz and Jonathan Feinsod are certified NFLPA Contract Advisors (A-91). Schwartz & Feinsod, Inc., is a corporation organized under the laws of the State of New York, wholly-owned by Schwartz and Feinsod (A-91).

On January 18, 2007, Revis signed a Standard Representation Agreement ("SRA") with Schwartz in which the parties agreed that Schwartz would act as Revis's Contract Adviser (A-91, 96). Since 2007, as Revis's agents, Schwartz and Feinsod have successfully negotiated contracts

[1] Citations to "A-X" throughout this Brief are citations to the full record produced on appeal.

for Revis with the New York Jets, the Tampa Bay Buccaneers, and the New England Patriots (A-92). Revis has been paid over $117 million on those contracts (A-92).

Schwartz has never acted as Revis's lawyer (A-92). He never charged Revis for legal services; he never represented to Revis or to anyone else that he was acting as Revis's lawyer; and he never agreed to be Revis's lawyer (A-92).[2] The Supreme Court found "no merit in Revis' assertion, nor did Revis provide any evidence, that Schwartz acted as his attorney. . . ." (A-8).

In 2014 Revis was introduced to the Healthy Beverage Company by his uncle, Shaun Gilbert, and Zachary Hiller, Revis's current football agent (A-205).[3] Revis entered into a contract with the Healthy Beverage Company which had been negotiated by Schwartz and Gilbert (A-238, 241, 242). The contract between Revis and the Healthy Beverage Company was not a simple marketing and endorsement agreement. In addition to allowing the Healthy Beverage Company to use Revis's name in marketing efforts, it

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[2] The Complaint fails to identify any matter in which Schwartz acted as Revis's lawyer and fails to identify any legal advice supposedly given to Revis by Schwartz.

[3] See http://www.nydailynews.com/sports/football/giants/giants-darrelle-revis-left-thin-cb-crew-article-1.3447037. Plaintiffs-Appellants refer to Hiller as Schwartz's "employee." Hiller was never an employee of Schwartz or of Schwartz and Feinsod; he admits that over the two summers he interned part time for Schwartz and during the three years after he became a certified agent and attempted to recruit players with Schwartz's help he was never paid a penny in salary or wages by Schwartz and Feinsod and his "expenses" were never reimbursed by them (A-203).

required Revis to actively contribute marketing support (A-155), it provided for a marketing fee based on sales growth (A-155), it gave Revis the right to buy the Healthy Beverage Company under certain conditions (A-158), and it required the Healthy Beverage Company to pay a "termination fee" to Revis should it be acquired by anyone else (A-159). Revis and his personal representative, his uncle Sean Gilbert, were aware throughout the negotiations of the terms under negotiation and of the fact that the Wilentz law firm was representing Revis and his co-venturers in the Healthy Beverage deal (A-92, 238-239).

In the Complaint Revis falsely alleged that Schwartz "brought" the Healthy Beverage Agreement to him for signature in Boston (A-21) and was present when it was signed (A-22); in fact, Schwartz was not in Boston when Revis signed the agreement, he was in Arizona (A-248). Revis falsely alleged that he was not given a copy of the executed Healthy Beverage Agreement until May of 2016 (A-24); in fact, the executed agreement was emailed to Revis on January 8, 2015 (A-248). Revis also falsely alleged that he did not have time to read the Healthy Beverage Agreement or that its terms were not explained to him (A-21); in fact, Schwartz explained the Agreement to Revis at face to face meetings a week before he was asked to sign it and he had as long as he wanted to review it (A-247-48). And Revis

falsely alleged that he did not know that a New Jersey law firm that he had previously retained in unrelated matters, Wilentz, Goldman & Sptizer, also represented him (and his co-venturers) in the Healthy Beverage transaction (A-23); in fact, Revis's uncle and personal representative was copied on the Wilentz firm's emails regarding the negotiations and Revis himself was copied on the request to pay the firm's invoice (A-238-39; A-248-49; A-263-64).

Four payments were made by The Healthy Beverage Company pursuant to its contract. The first three payments were distributed 50% to Revis, 12.5% to Schwartz, 12.5% to Feinsod, 12.5% to Diana Askew (Revis's mother) as directed by Sean Gilbert (Askew's brother), and 12.5% to Zach Hiller (who is also an NFLPA Contract Adviser) (A-92). Revis specifically approved of the split of the fees in this manner (A-92 [Schwartz Aff. ¶ 9]).

On May 12, 2016, Revis terminated his relationship with Schwartz and Feinsod in a letter that makes no mention of his supposed attorney/client relationship with Schwartz (A-93, 107).[4] Two months later, Revis's uncle

[4] In their Brief, Plaintiffs-Appellants assert that the letter terminating Schwartz and Feinsod as Revis's agents was sent "[a]fter terminating Mr. Schwartz as his lawyer...." Plaintiffs-Appellants Brief at 4. This preposterous assertion is made without any citation to or support in the record and it is false. The letter in which Revis refers to Schwartz as

and representative asked Schwartz and Feinsod to waive the fees owed to them under the SRA for the remaining life of the contract that Schwartz and Feinsod negotiated on Revis's behalf with the New York Jets (A-93). When Schwartz refused to give up those fees, Revis's representative told him that Revis would destroy Schwartz's reputation (A-93).[5]

The fourth and final payment from The Healthy Beverage Company was a "termination" payment and was made in July 2016 (A-93). Revis received his 50% directly from The Healthy Beverage Company (A-93). Schwartz was contacted by the NFLPA before the other 50% was received by Schwartz & Feinsod and was told that Revis was questioning the distribution of that part of the final payment (A-93). Schwartz and Feinsod deposited the other 50% into their attorneys' escrow account and offered to transfer the funds to an escrow account maintained by the NFLPA (A-93).

On August 12, 2016, Schwartz and Feinsod commenced an arbitration against Revis pursuant to the Regulations to resolve any issues with respect to amounts due to Revis under the Healthy Beverage Agreement (A-93). Revis responded to the grievance on September 6, 2016, and filed a counter-

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his "agent," not as his lawyer, is the only communication in which Revis terminated any relationship with Schwartz (A-93).

[5] Revis has never paid the fees he owes to Schwartz and Feinsod for the 2016-17 football season. Schwartz and Feinsod seek to recover those fees in arbitration.

grievance asserting false allegations much like the false allegations in the Complaint (A-94).

The NFLPA regulates the relationship between contract advisors and NFL players through the NFLPA Regulations Governing Contract Advisors (the "NFLPA Regulations").[6] The SRA executed between Revis and Schwartz is a standard form agreement issued by the NFLPA for representation between certified Contract Advisors and NFL players (A-54).[7] Schwartz and Feinsod did not draft or modify the arbitration provisions of the SRA (A-96).

Paragraph 8 of the SRA states "Any and all disputes between the Player and Contract Advisor involving the meaning, interpretation, application, or enforcement of this Agreement or the obligations of the parties under this Agreement shall be resolved exclusively through the arbitration procedures set forth in Section 5 of the NFLPA Regulations Governing Contract Advisors" (A-96). Paragraph 10 of the SRA provides: "This Agreement, along with the NFLPA Regulations, sets forth the entire agreement between the parties hereto and cannot be amended, modified or

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[6] The Collective Bargaining Agreement between the NFL and the Players states: "The NFL and the Clubs recognize that, pursuant to federal labor law, the NFLPA will regulate the conduct of agents who represent players in individual contract negotiations with Clubs" (A-44).

[7] The Standard Representation Agreement is available online (A-114).

changed orally. Any written amendments or changes shall be effective only to the extent that they are consistent with the Standard Representation Agreement as approved by the NFLPA" (A-96).

Section 5 of the NFLPA Regulations Governing Contract Advisors (the "Regulations") clearly provides that all disputes between players and contract advisors (not just disputes arising under the SRA) are subject to arbitration: "This arbitration procedure shall be the exclusive method for resolving any and all disputes that may arise from the following: . . . . (2) Any dispute between an NFL Player and a Contract Advisor with respect to the conduct of individual negotiations by a Contract Advisor; (3) The meaning, interpretation or enforcement of a fee agreement and; (4) Any other activities of a Contract Advisor within the scope of these Regulations" (A-56). The "other activities within the scope of the Regulations" are defined in Section 1(B) the Regulations and include "...any other activity or conduct which directly bears upon the Contract Advisor's integrity, competence or ability to properly represent individual NFL Players and the NFLPA in individual contract negotiations, including the handling of player funds..." (A-46).

While the Complaint is generously larded with false allegations about an attorney/client relationship between Revis and Schwartz (without ever

mentioning a specific detail about the matters in which Schwartz supposedly represented Revis as a lawyer or the legal advice Schwartz supposedly gave) and vague hints at financial improprieties (again without ever identifying a specific payment or transaction that was not properly accounted for), the eight causes of action set forth therein fall squarely within the arbitration provisions of the SRA and the Regulations. The first cause seeks the production of documents. The next six causes of action expressly relate to either the Healthy Beverage Agreement or to the "2% contingent legal fee" and "10% contingent fee on marketing and endorsements" contained in the SRA and in various ways (without any detail) assert that Revis was injured by a supposed "misappropriation" of funds. The eighth cause of action asserts that Revis was "fraudulently induced" to enter into the SRA. (Revis signed the SRA with Schwartz ten years ago and Revis has made over $117 million as a result.) Each of Revis's causes of action is encompassed within the broad language of the SRA and the NFLPA Regulations mandating arbitration.

ARGUMENT

I. THE TRIAL COURT CORRECTLY HELD THAT PLAINTIFF-APPELLANT'S CLAIMS MUST BE ARBITRATED

The Federal Arbitration Act, 9 U.S.C. Section 2 (1970) (the "FAA"), controls arbitration provisions in State court actions involving interstate commerce (*Cusimano v. Schnurr*, 26 N.Y.3d 391 [2015]). New York courts recognize the strong federal policy favoring arbitration as implemented through the FAA and in accordance with this policy, "doubts as to the arbitrability of a claim are to be resolved in favor of arbitrability" (*Highland HC, LLC v. Scott*, 113 A.D. 3d 590, 593 [2d Dep't 2014]). An arbitration agreement governed by the FAA is presumed to be valid and enforceable (*Shearson/Am. Express v. McMahon*, 482 U.S. 220, 226 [1987]). The party resisting arbitration bears the burden of demonstrating that the arbitration agreement is invalid or does not encompass the claims at issue (*Green Tree Fin. Corp. v. Randolph*, 531 U.S. 79, 92 [2000]; *Fletcher v. Kidder, Peabody & Co., Inc.*, 81 N.Y.2d 623 [1993] [plaintiff has the burden of proving that his claims under state law are not subject to arbitration clause governed by the FAA]).

A. The Parties Agreed to Arbitrate Under Both the SRA and the NFLPA Regulations.

Both the SRA and the Regulations contain broad arbitration clauses. And both the SRA and the Regulations are form agreements that were not drafted by either Revis or Schwartz and Feinsod. Furthermore, Revis and Schwartz and Feinsod were required to accept those arbitration obligations as a condition to their participation in National Football League activities. Therefore, the arbitration clauses at issue are unassailable and must be enforced.[8] "Where there is no substantial question whether a valid agreement [to arbitrate] was made . . . the court shall direct the parties to arbitrate" (CPLR 7503(a)).

B. Plaintiff's Claims Fall Squarely within the Scope of the Arbitration Provision in the SRA.

The SRA mandates the arbitration of "[a]ny and all disputes between the Player and Contract Advisor involving the meaning, interpretation, application, or enforcement of this Agreement or the obligations of the parties under this Agreement." Revis seeks the return of the agent fees he

[8] Although the Complaint appears to include a claim for fraudulent inducement, that claim does not impair the arbitration clause (*see Matter of Monarch Consulting, Inc. v. Nat'l Union Fire Ins. Co.*, 26 N.Y.3d 659, 675 [2016]["Attacks on the validity of the contract, as distinct from attacks on the validity of the arbitration clause, itself, are to be resolved by the arbitrator in the first instance, not by a federal or state court"] [internal quotation marks omitted]).

has paid under the SRA (A-35, 37 [Complaint ¶¶ 91, 109]) and a declaration that he owes nothing further under the SRA (A-38 [Complaint ¶110(C)]). Clearly, Revis's claims regarding contract adviser fees paid or still due pursuant to the SRA present a dispute "involving the meaning, interpretation, application, or enforcement of [the SRA] or the obligations of the parties under [the SRA]" that Revis is obligated to arbitrate. Plaintiffs-Appellants' only response to this compelling argument for arbitration is to label it "ipse dixit" and to cite a single forty-year old case that was not decided under the Federal Arbitration Act.[9] In *Shuffman v. Rudd Plastic Fabrics Corp.*, 64 A.D.2d 699 (2nd Dept. 1978), in stark contrast to the approach mandated by the FAA, the court noted that "[i]f equivocal, the scope of a commercial arbitration clause must be read conservatively," and held that a controversy as to whether or not an "entire commission agreement" had been terminated by the filing of a bankruptcy petition did not have to be arbitrated under an arbitration agreement applicable only to "disputes as to the amount of commissions due and payable" (64 A.D.2d at 699). Here, the FAA requires "doubts as to the arbitrability of a claim . . . to be resolved in favor of arbitrability" (*Highland*, 113 A.D. 3d at 593) and the arbitration clause at issue applies to "any and all disputes." Therefore,

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[9] Plaintiffs-Appellants' Brief at 26 n. 5.

claims expressly seeking the return of the fees that are the main objective of the SRA are subject to arbitration under the SRA's arbitration provision.

Revis seeks to avoid his obligation to arbitrate by ignoring the allegations in his own Verified Complaint and by imposing an irrationally restricted reading of the SRA's arbitration clause. Taking the words of the SRA out of context, Revis asserts that the SRA applies only to "Mr. Schwartz's work negotiating with NFL teams as Mr. Revis's contract adviser."[10] But the Verified Complaint expressly alleges that the attorney-client relationship between Revis and Schwartz was created by the SRA: "On or about January 18, 2007, Mr. Revis and Attorney Schwartz signed a Standard Representation Agreement . . . providing that Attorney Schwartz would represent Mr. Revis as his attorney and contract advisor" (A-17-18 [Complaint ¶ 21]). The Verified Complaint also expressly alleges that the fiduciary duty owed to Revis by Schwartz and allegedly breached by Schwartz arises under Section 3 of the SRA: "Under Section 3 of the Standard Representation Agreement, Attorney Schwartz acknowledged that he was acting as a fiduciary on behalf of Mr. Revis. . . ." (A-18 [Complaint ¶ 22]). And, most importantly, the SRA, and only the SRA, sets forth the 2% and 10% fee provisions that Revis claims Schwartz and Feinsod breached.

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[10] Plaintiffs-Appellants' Brief at 19-20.

An order to arbitrate "should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute" (*AT&T Techs., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 650 [1986]). Here, where the Complaint alleges that the attorney-client relationship was created when the parties signed the SRA, that a fiduciary duty was created when the parties signed the SRA, and that specific fee percentages were agreed to when the parties signed the SRA, any reasonable interpretation of the clause in the SRA requiring arbitration of "any and all disputes. . .involving the meaning, interpretation, application or enforcement of this Agreement or the obligations of the parties under this Agreement" must include claims based on the alleged failure to provide legal services, the alleged breach of fiduciary duty, and the alleged charging of excessive fees.

Morton v Steinberg (2007 WL 3076934 [Cal. Ct. App. Oct. 22, 2007]), an unreported California state court decision which, under California Rules of Court Rule 8.1115, "must not be cited or relied on by a court or a party in any other action," is cited and heavily relied on by Plaintiff. In *Morton* the claims held to be outside of the arbitration obligation in the SRA arose from the player's agreement to accept a five percent interest in a restaurant venture in China in repayment of a $300,000 loan he made to his

agent and an additional agreement to loan $200,000 to the agent to finance a music concert series, also in China. And in contrast to Revis, who expressly alleges that the SRA gave rise to his attorney/client relationship with Schwartz and seeks to enforce the SRA's 10% endorsement fee over the fee Revis agreed to in the Healthy Beverage Agreement, the player in *Morton* "does not assert a claim for breach of the representation agreement, or ask the court to interpret, apply, or enforce the representation agreement."

Far more instructive than *Morton*, is *Rosenhaus v. Star Sports, Inc.* (929 So.2d 40 [Dist. Ct App Fla 2006]), distinguished by the *Morton* court. In *Rosenhaus* the court held that claims for "intentional interference with an advantageous business relationship and tortious interference with a contractual right" had to be arbitrated under the NFLPA Regulations, even though the parties to the litigation had not contracted with each other.

C. Plaintiff-Appellants' Claims Fall Squarely Within the Scope of the Arbitration Provision in the NFLPA Regulations.

Plaintiffs-Appellants do not dispute the fact that Revis, Schwartz and Feinsod are subject to two arbitration agreements: that found in the SRA and that found in the NFLPA Regulations. Section 5(A) of the NFLPA Regulations provides that all disputes between players and contract advisors (not just disputes arising under the SRA) are subject to arbitration: "This

arbitration procedure shall be the exclusive method for resolving any and all disputes that may arise from the following: . . . . (2) Any dispute between an NFL Player and a Contract Advisor with respect to the conduct of individual negotiations by a Contract Advisor; (3) The meaning, interpretation or enforcement of a fee agreement and; (4) Any other activities of a Contract Advisor within the scope of these Regulations" (A-56).

Plaintiffs-Appellants ignore Section 5(A)(3) of the Regulations, dismissing it in a footnote by suggesting that it "has no bearing on this dispute [because] Mr. Revis and Shavae do not assert a claim to enforce a fee agreement."[11] But, to the contrary, Plaintiffs-Appellants do seek to enforce a fee agreement. The Complaint repeatedly refers to the Defendants-Respondents' alleged breaches of the "10% contingent fee agreement" as a basis for the breach of fiduciary duty and unjust enrichment claims and even includes a specific cause of action for breach of an agreement for "a 10% contingent fee on marketing and endorsement deals" and "a 2% contingent fee on compensation from employment by National Football league teams" (A-32-33 [Complaint ¶¶ 78-83]). Obviously, these claims seeking to enforce a fee agreement must be arbitrated under the very broad arbitration clause contained in the Regulations.

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[11] Plaintiffs-Appellants' Brief at 42, n. 12.

Furthermore, Plaintiffs-Appellants' various arguments for a narrow reading of the arbitration clause in the SRA simply do not apply to the arbitration clause in the Regulations. In contrast to the SRA, which Plaintiffs-Appellants argue applies only to the negotiation of contracts between players and teams, the Regulations are defined in Section 1(B) to include "...any other activity or conduct which directly bears upon the Contract Advisor's integrity, competence or ability to properly represent individual NFL Players and the NFLPA in individual contract negotiations, including the handling of player funds..." (A-46). Section 5(A)(3) of the Regulations provides for arbitration as "the exclusive method for resolving any and all disputes that may arise from. . . .[t]he meaning, interpretation or enforcement of a fee agreement." Section 5(A)(3) is nowhere limited to negotiations between players and teams. Revis's argument that he entered into a "distinct and independent" agreement for a 10% fee on marketing and endorsements supports the conclusion that his claim that Schwartz and Feinsod violated that agreement is subject to arbitration under 5(A)(3) of the Regulations.

Plaintiffs-Appellants' lengthy exegesis on the Collective Bargaining Agreement between the NFLPA and the NFL is a vain attempt to avoid the plain language of the SRA and the Regulations. The SRA expressly

includes the Regulations as part of the agreement between the Player and the Contract Adviser (A-96 [SRA ¶ 10]). And the Regulations expressly require the arbitration of any and all disputes that may arise from the meaning, interpretation or enforcement of a fee agreement.

The arbitration clause in the Regulations is a classic broad arbitration clause. Where the clause is broad, there is a heightened presumption of arbitrability such that "[i]n the absence of any express provision excluding a particular grievance from arbitration ... only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail" (*AT&T Techs.*, 475 U.S. at 650 [internal quotation marks omitted]; *see Mehler v. Terminix Int'l Co.*, 205 F.3d 44, 49 [2d Cir. 2000][clause requiring arbitration of "any controversy or claim between [the parties] arising out of or relating to" the contract "is a classically broad one"]; *Oldroyd v. Elmira Sav. Bank*, 134 F3d 72, 76 [2d Cir. 1998][clause requiring arbitration of "[a]ny dispute, controversy or claim arising under or in connection with" an agreement was "prototypical[ly] broad" and "justifies a presumption of arbitrability"]).

Revis argues that his claims of "legal wrongdoing" relating to the Healthy Beverage Agreement are not arbitrable because they do not constitute a dispute involving the meaning, interpretation, application or

enforcement of the SRA.[12] Whatever label he may attach to his causes of action, Revis's factual allegations assert that the 10% Marketing and Endorsement fee contained in the SRA should apply to the Healthy Beverage Agreement (A-29 [Complaint ¶ 61, accusing Defendants-Appellants of "secretly and unilaterally changing their contingent legal fee to 50% instead of 10%"]).[13] But, as is clear from the language of the Regulations, Section 5(A)(3) is not limited to the SRA and compels the arbitration of any and all disputes between players and agents regarding a fee agreement, no matter how they are labeled (*see Genesco, Inc. v. T. Kakiuchi & Co., Ltd.*, 815 F.2d 840 [2d Cir. 1987][in determining whether a particular claim falls within the scope of the parties' arbitration agreement under the FAA, "we focus on the factual allegations in the complaint rather than the legal causes of action asserted"]). Revis did not come forward with "forceful evidence," or any evidence at all, to exclude the claims asserted in the Complaint from the requirement to arbitrate as set forth in the SRA and the Regulations.

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[12] Plaintiffs-Appellants' Brief at 22.

[13] Revis makes this claim even though he read the Healthy Beverage Agreement and signed it and it clearly states that 50% of the fees thereunder will be paid to S&F (and, as Revis knew, would then be distributed in equal parts to his uncle, his friend, and his two long-time agents). The general rule in New York is that a signatory is bound by the contract he signs even if he does not read it (*Daniel Gale Assocs., Inc. v. Hillcrest Estates, Ltd.*, 283 A.D.2d 386, 387-88 [2d Dep't 2001]). Failure to read a contract "carefully," as Revis contends, excuses nothing.

D. Revis's Use of a Personal Services LLC Does Not Defeat His Obligation to Arbitrate.

Revis notes that Shavae, Feinsod and Schwartz & Feinsod Inc. are not parties to the SRA. Feinsod is a certified NFLPA Contract Advisor subject to the arbitration provisions of the NFLPA Regulations. Shavae is Revis's wholly owned personal services company. Revis cannot avoid arbitration under the FAA by pointing to Shavae, his agent and alter ego (*Thomson-CSF, S.A. v. Am. Arbitration Ass'n*, 64 F.3d 773, 776 [2d Cir. 1995]["This Court has made clear that a nonsignatory party may be bound to an arbitration agreement if so dictated by the ordinary principles of contract and agency"]). Schwartz & Feinsod, Inc. consents to arbitration.

II. THE TRIAL COURT CORRECTLY FOUND THAT PLAINTIFF-APPELLANT FAILED TO SHOW THE EXISTENCE OF AN ATTORNEY-CLIENT RELATIONSHIP THAT WAS NOT SUBJECT TO ARBITRATION.

Revis argues on appeal that the trial court erred by issuing an order that "erroneously and dangerously. . .risks stripping NFL players of the right to a judicial forum by shielding attorneys and non-attorney contract advisors for misconduct entirely unrelated to their services as NFLPA contract

advisors."[14] The trial court's order does no such thing because, as the trial court expressly found, Revis did not carry his burden of proving that acts he complains of were "entirely unrelated to their services as NFLPA contract advisors." "Revis provides absolutely nothing to show how and when Schwartz acted as anything other than his agent...." (A-9 [Decision and Order Appealed From at 6]).

Furthermore, Revis's allegation that he entered into an attorney-client relationship with Schwartz does not shield his claims from arbitration pursuant to the SRA and the Regulations. First, Revis expressly alleges that the attorney-client relationship is governed by the SRA (A-17-18 [Complaint ¶ 21]). The arbitration provision in the SRA applies to "any and all disputes. . .involving . . . the obligations of the parties hereunder." Therefore, any dispute that Revis has against Schwartz "as his attorney" must be arbitrated. Second, Revis's attempt to condition the performance of his obligation to pay the agent fees required by the SRA on Schwartz's provision of legal services violates both Paragraph 10 of the SRA (prohibiting oral modifications of the SRA) and paragraph 3(B) of the SRA (prohibiting the signing of the SRA being conditioned upon the acceptance of any other agreement). Therefore, Revis's claim that Schwartz's conduct as Revis's

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[14] Plaintiffs-Appellants' Brief at 20.

attorney relieves Revis of his obligation to pay fees involves the "meaning, interpretation, application or enforcement" of the SRA and must be arbitrated. And third, a malpractice claim, if Revis had one, is arbitrable under New York law (*Thies v. Bryan Cave LLP*, 35 A.D.3d 252 [2006]).

III. QUESTIONS AS TO ARBITRABILITY MUST BE SUBMITTED TO THE ARBITRATOR.

Typically, the question of arbitrability – "whether a collective bargaining agreement creates a duty for the parties to arbitrate the particular grievance" – is to be determined by the court; however, the question of arbitrability is be determined by the arbitrator where the parties "clearly and unmistakably [so] provide" (*AT&T Techns., Inc. v. CWA*, 475 U.S. 643, 649 [1986]). "[T]he issue of arbitrability may only be referred to the arbitrator if there is clear and unmistakable evidence from the arbitration agreement, as construed by the relevant state law, that the parties intended that the question of arbitrability shall be decided by the arbitrator" (*Contec Corp. v. Remote Solution, Co., Ltd.*, 398 F.3d 205, 208 [2d Cir. 2005], *quoting Bell v. Cendant Corp.*, 293 F.3d 563, 566 [2d Cir. 2002]). When the parties "explicitly incorporate rules that empower an arbitrator to decide issues of arbitrability, the incorporation serves as clear and unmistakable evidence of

the parties' intent to delegate such issues to an arbitrator" (*Contec Corp.*, 398 F.3d at 208).

Here, the Regulations provide that the arbitration hearing "shall be conducted in accordance with the Voluntary Labor Arbitration Rules of the American Arbitration Association" (A-104). The Labor Arbitration Rules of the American Arbitration Association provide that "[t]he arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement" (A-70). Therefore, as an alternative basis for affirming the order of the trial court, this matter should be referred to the arbitrator for a determination of arbitrability (*see Oracle Am., Inc. v. Myriad Grp. A.G.*, 724 F.3d 1069, 1074-75 [9th Cir. 2013] [agreeing with "[v]irtually every circuit ... that incorporation of the [AAA] arbitration rules constitutes clear and unmistakable evidence that the parties agreed to arbitrate arbitrability"]; *Schneider v. Kingdom of Thailand*, 688 F.3d 68, 72 [2d Cir. 2012] [citing *Contec* for the proposition that incorporation of arbitration rules is "clear and unmistakable evidence of the parties' intent to delegate such issues to an arbitrator" and holding "[t]hat is precisely what occurred here. . . . .Thailand agreed in the Terms of Reference to use the UNCITRAL Arbitration Rules as the rules of procedure. Article 21 of those rules provides: The arbitral

tribunal shall have the power to rule on objections that it has no jurisdiction, including any objections with respect to the existence or validity of the arbitration clause or of the separate arbitration agreement"]).

CONCLUSION

For the foregoing reasons, the order of the Supreme Court granting Defendants-Respondents' motion to compel arbitration in accordance with the express terms of the SRA and the FLPA Regulations should be affirmed.

Dated: New York, New York
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CERTIFICATE OF COMPLIANCE

Pursuant to 22 NYCRR 670.10.3(f)

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