

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1095

CA 14-02006

PRESENT: SMITH, J.P., CENTRA, VALENTINO, WHALEN, AND DEJOSEPH, JJ.

ANTONIA BARONE, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

JAMES D. HASKINS, COMMONWEALTH EQUITY SERVICES, INC., DOING BUSINESS AS COMMONWEALTH FINANCIAL NETWORK, DEFENDANTS-APPELLANTS, LINCOLN NATIONAL CORPORATION, ET AL., DEFENDANTS.

PADUANO & WEINTRAUB LLP, NEW YORK CITY (KATHERINE B. HARRISON OF COUNSEL), FOR DEFENDANTS-APPELLANTS.

JOHN J. FLAHERTY, WILLIAMSVILLE, FOR PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (Henry J. Nowak, Jr., J.), entered October 17, 2014. The order denied the motion of defendants James D. Haskins and Commonwealth Equity Services, Inc., doing business as Commonwealth Financial Network, to compel arbitration.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs and the matter is remitted to Supreme Court, Erie County, for further proceedings in accordance with the following memorandum: Plaintiff commenced this action alleging fraud, negligence, breach of contract, breach of fiduciary duty, and violations of the General Business Law. James D. Haskins and Commonwealth Equity Services, Inc., doing business as Commonwealth Financial Network (defendants), brought a motion seeking, inter alia, to compel arbitration pursuant to CPLR 7503 (a). We conclude that Supreme Court properly determined that *Matter of Brady v Williams Capital Group, L.P.* (14 NY3d 459) applies in the financial/investment industry context (see generally *Green Tree Fin. Corp.-Alabama v Randolph*, 531 US 79, 88-91). We further conclude, however, that the court erred in denying the motion to compel arbitration on the ground that arbitration in this case would be financially prohibitive to plaintiff without first directing plaintiff to apply for a waiver of the arbitration fee charged by the Financial Industry Regulatory Authority. We therefore reverse the order and remit the matter to Supreme Court for that purpose before deciding the motion pursuant to the factors set forth in *Brady* (*id.* at 467).

Entered: October 9, 2015

Frances E. Cafarell
Clerk of the Court