[Cite as *Anderson v. Lofton*, 2015-Ohio-1603.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

WARREN COUNTY

SHAWN D. ANDERSON,	:	
Plaintiff-Appellee,	:	CASE NO. CA2014-08-108
	:	<u>O P I N I O N</u>
- vs -		4/27/2015
	:	
TIMOTHY P. LOFTON,	:	
Defendant-Appellant.	:	

CIVIL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 14CV85388

Frost Brown Todd LLC, Benjamin J. Helwig, Austin W. Musser, 9277 Centre Pointe Drive, Suite 300, West Chester, Ohio 45069, for plaintiff-appellee

John D. Smith Co., LPA, John D. Smith, Andrew P. Meier, 140 North Main Street, Suite B, Springboro, Ohio 45066, for defendant-appellant

RINGLAND, J.

{¶ 1} Defendant-appellant, Timothy P. Lofton, appeals from the judgment of the Warren County Common Pleas Court denying his motion to dismiss or, in the alternative, to stay pending arbitration the lawsuit brought against him by plaintiff-appellee, Shawn D. Anderson. For the reasons that follow, we reverse the judgment of the trial court and remand this matter for further proceedings.

{¶ 2} Lofton and Anderson are financial advisors. In 1993, the two met at church and became friends, and their families developed a cordial, social relationship. In 1995, Anderson, with Lofton's encouragement, joined Lofton at Edward D. Jones & Co. as a financial advisor. In 2003, Anderson decided to shift his client portfolio from Edward D. Jones & Co. to UBS Financial Services. Lofton subsequently moved to UBS. In 2005, Anderson wanted to retire from the business for health reasons. Consequently, in April of that year, he and Lofton entered into a "partnership agreement," under which Anderson agreed to transition his client portfolio ("the Anderson Portfolio") to Lofton over a ten-year period, commencing on November 1, 2005 and ending on October 30, 2015. Lofton was to begin immediately to manage the Anderson Portfolio, and Anderson was to help with anything necessary to aid the transition and maintain the Anderson Portfolio. The parties memorialized some, but not all, of the terms of their partnership agreement in a single-page instrument entitled, the "Lofton/Anderson Partnership Agreement."

{¶ 3} The first section of the written partnership agreement set forth the "Compensation split" between the parties for each of the ten years of the agreement. Under the first year of the agreement, Anderson was to receive 70 percent of the compensation earned by Lofton's managing the Anderson Portfolio with Anderson's assistance, while Lofton was to receive 30 percent. Over the next three years of the agreement, Anderson's share of the compensation was to gradually decrease while Lofton's share was to gradually increase by the same amount, so that by the fourth year of the agreement, Lofton's share of the compensation was to be 70 percent while Anderson's share was to be 30 percent. For the final six years of the agreement, Lofton's share of the compensation was to be 90 percent while Anderson's share was to be ten percent. The second section of the agreement listed the "Partnership Agreement Details," as follows:

> 1) If at any time Tim [Lofton] leaves UBS[,] the above agreement is

> transferable and stays in effect at the new company.
>
> 2) The above [compensation] split refers to bonus [sic], assets, and all compensation.
>
> 3) Staff expense will be split 50/50 for year 1 & year 2 and then the staff expense will be split according to the revenue split agreement [for] year[s] 3-10.
>
> > a. Staff split is only on [the] *Lofton/Anderson Book*.
> >
> > b. Reimbursement of both Bus. Bldr [sic] and Club Level Exp. A/C will be processed on a quarterly basis by Lofton Staff.

{¶ 4} In January 2008, the parties made minor amendments to the written terms of their partnership agreement by changing the ending date of the final eight years of their agreement from October 30 to October 31 and by including a provision stating that payments to Anderson would go to his wife and family if he died before October 31, 2015.

{¶ 5} In May 2009, Lofton moved to Morgan Stanley Smith Barney, LLC (Morgan Stanley), taking with him his client portfolio and the Anderson Portfolio. Shortly after Lofton's move, the parties again amended the written terms of their partnership agreement by extending the period of time for the compensation split from October 31, 2015 to January 31, 2016 and by making revisions to the payment schedule to account for the extension.[1] The parties also amended the "Details" section of their written partnership agreement to provide that "[i]f at any time Tim [Lofton] leaves [Morgan Stanley] the above agreement [i.e., the revised compensation-split/payment schedule] is transferable and stays in effect at the new company."

{¶ 6} On March 1, 2011, Lofton and Anderson, along with a third financial advisor,

1. Under the revised payment schedule, Lofton, for the period from August 15, 2009 to January 31, 2010, is to receive 70 percent of the compensation for managing the Anderson Portfolio while Anderson is to receive 30 percent, and for the final six years of the agreement (February 1, 2010 to January 31, 2016), Lofton is to receive 90 percent of the compensation while Anderson is to receive ten percent.

Kyle Poland,[2] signed a "Joint Production Agreement" (JPA), which is a form contract from Morgan Stanley. The preamble of the JPA states as follows:

> Whereas this Agreement is being entered into on 03/01, 2011 (commencement date) solely for the convenience of Timothy Lofton ("Joint Producer 'A'") Kyle Poland ("Joint Producer 'B'") and Shawn Anderson ("Joint Producer 'C'") [footnotes omitted] (herein collectively the "Joint Producers") to better service clients and to share in commission/revenues generated by such clients' accounts and nothing in the Agreement is intended to affect, change, modify or otherwise alter in anyway Morgan Stanley Smith Barney LLC's ("MSSB's") ownership of client accounts and documents, and confidential and company records and information.

{¶ 7} Section 3 of the JPA provides as follows:

> 3) **Sharing of Commission, Business Revenues and Business Expenses:** As between the Joint Producers, (a) all gross commissions and other business revenues generated under the Joint Production Number ["set up for the Joint Production Arrangement" that includes the JPA] will be split between the Joint Producers as follows: Joint Producer A [Lofton] 70%, Joint Producer B [Poland] 20%, and Joint Producer C [Anderson] 10%; and (b) all business expenses directly related to the generation of commissions and business revenues under the Joint Production Number will be split between the Joint Producers as follows: Joint Producer A 70%, Joint Producer B 20%, and Joint Producer C 10%.

{¶ 8} Section 6 of the JPA contains a dispute-resolution provision that states in pertinent part:

> c) **Dispute Resolution:**
>
> I understand and agree that in the event of any dispute between me and any Joint Producer(s) arising out of the Joint Production Arrangement, including but not limited to disputes regarding the allocation of commissions and revenues, * * * the then current Branch Manager, District Manager and/or Division Director shall consider the matter and in their sole discretion make binding determinations.

{¶ 9} Section 7(c) of the JPA contains an arbitration clause that states in pertinent part:

2. Poland is not a party to the partnership agreement, Anderson's lawsuit against Lofton, or this appeal.

> Any controversy or claim arising out of or relating to this Agreement, or its breach, the resolution of which is not otherwise provided for in this Agreement or in the Joint Production Acknowledgments executed by each Joint Producer, will be settled by arbitration in accordance with the rules of the Financial Industry Regulatory Authority ("FINRA") in accordance with the FINRA Code of Arbitration Procedure for Industry Disputes.

{¶ 10} Anderson also signed a "Joint Production Arrangement Acknowledgment (JPAA)" that contains dispute-resolution and arbitration provisions similar to the ones contained in the JPA. Presumably, Lofton also signed a JPAA as the JPA provides that "[e]ach Joint Producer <u>must sign his/her own</u> Joint Production Acknowledgement." Under Section 2 of the JPAA, Anderson (and, presumably, Lofton) acknowledged the following:

> I further understand and agree, that I shall make no side deals with any Financial Advisor whether in or out of the Joint Production Arrangement. I recognize that such deals **WILL NOT BE HONORED BY [MORGAN STANLEY]** and that any such action on my part would be viewed as a serious violation of [MORGAN STANLEY] policy and may subject me to disciplinary action.

(Bold sic.)

{¶ 11} In 2014, Anderson filed a complaint raising claims of breach of contract, unjust enrichment, fraudulent inducement, estoppel, and fraud. Anderson alleged that, among other things, Lofton failed to pay him all the amounts he was due under the terms of the partnership agreement, including his share of the bonuses that Lofton has received during the period of the agreement, which, according to Anderson, total approximately one million dollars. Lofton moved to dismiss for lack of subject matter jurisdiction under Civ.R. 12(B)(1), arguing that the trial court had been divested of jurisdiction to rule on the claims raised by Anderson in his complaint, since the parties' JPA "provides for arbitration as the sole method of resolving any controversies between the parties." Lofton moved, in the alternative, to stay Anderson's lawsuit pending arbitration.

{¶ 12} The trial court overruled Lofton's motion to dismiss or, in the alternative, to stay the case pending arbitration in a single-paragraph entry that states as follows:

> Pending before the court is * * * Lofton's * * * motion to dismiss or, in the alternative, to stay proceedings. Mr. Lofton argues that dismissal is appropriate pursuant to Ohio Rule of Civil Procedure 12(B)(1) for lack of subject matter jurisdiction, because there is an arbitration provision in the parties' agreement. However, our review of the pleadings and the attached agreements reveals that the arbitration provision is contained within an agreement between the parties and [Morgan Stanley], an unnamed party. Therefore, the arbitration provision is not binding on this matter and the court does have subject matter jurisdiction in this case. As a result, Mr. Lofton's motion is denied.

{¶ 13} Lofton now appeals from this entry and assigns the following as error:

{¶ 14} THE TRIAL COURT ERRED IN DENYING LOFTON'S REQUEST TO DISMISS OR STAY THE CASE PENDING ARBITRATION.

{¶ 15} Lofton asserts that the trial court erred in denying his motion "to dismiss or stay" Anderson's lawsuit pending arbitration.[3] He presents two arguments in support of this assertion.

{¶ 16} In his first argument, Lofton contends that the trial court's only basis for denying his motion was that Morgan Stanley was not made a party to the lawsuit. Lofton asserts that the trial court "abused its discretion" in denying his motion on this basis, because Morgan Stanley was not named as a party in this case since its role in this matter is immaterial to the dispute between the parties. However, we disagree with the premise of this argument, i.e.,

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3. While Lofton's assignment of error alleges that the trial court erred in denying his motion "to dismiss or stay" the proceedings, he does not argue on appeal, as he did in the trial court, that the trial court was obligated to dismiss Anderson's lawsuit under Civ.R. 12(B)(1), since the trial court was divested of subject matter jurisdiction to rule on the case by virtue of the arbitration provision in the JPA. Had Lofton raised such an argument, it would have failed, regardless. First, while an order granting or denying a motion to stay a lawsuit pending arbitration, generally, is final and appealable, R.C. 2711.02(C), an order denying a motion to dismiss a complaint for lack of subject matter jurisdiction, generally, is not. See, e.g., *Cantie v. Hillside Plaza*, 8th Dist. Cuyahoga No. 99850, 2014-Ohio-822, ¶ 24. Second, appellate courts in this state have found that even if the parties' dispute may be subject to arbitration, this does not divest the trial court of subject matter jurisdiction over the controversy, and the trial court may decide whether to stay the proceedings on proper motion filed under R.C. 2711.02(B). *See, e.g.*, *Pappas v. Richmond Towers, LLC*, 8th Dist. Cuyahoga No. 94558, 2011-Ohio-5249, ¶ 8-17.

that the trial court's only basis for denying his motion to stay the proceedings pending arbitration was that Morgan Stanley was not made a party to the lawsuit.

{¶ 17} While the trial court mentioned in its entry denying Lofton's motion that Morgan Stanley was an "unnamed party" to the lawsuit, the trial court did not expressly state that it was denying Lofton's motion for this reason, nor can it be reasonably inferred from its decision that the trial court denied Lofton's motion on this basis. Instead, the trial court determined that the arbitration provision in the parties' JPA is not "binding" in this case because it is contained in the parties' JPA and not their partnership agreement. In essence, the trial court determined that Anderson's claims in his lawsuit against Lofton are governed by the terms of the parties' partnership agreement and not their JPA.

{¶ 18} Lofton begins his second argument by alleging that the trial court "abuse[d] [its] discretion" by failing to address "whether the parties' dispute is subject to arbitration." However, by *expressly* determining that the arbitration provision in the parties' JPA is not "binding" in this case because it is contained in the parties' JPA and not their partnership agreement and by *implicitly* determining that Anderson's claims in his lawsuit against Lofton are governed by the terms of the parties' partnership agreement and not their JPA, the trial court *did* address the question of whether the parties' dispute is subject to arbitration and determined that it was not. The questions that remain are whether the trial court erred in finding that the arbitration provision in the JPA is inapplicable to the parties' dispute, and thus, whether the trial court erred in denying Lofton's motion to stay the proceedings pending arbitration.

{¶ 19} In the remaining portion of his second argument, Lofton contends that the trial court erred in finding that the arbitration provision in the JPA was inapplicable to this case.[4]

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4. At trial, Lofton mentioned both the dispute-resolution clause and the arbitration clause in Sections 6 and 7(c) of the JPA, respectively, in support of his motion to dismiss or, in the alternative, stay proceedings. The trial

He contends that "[t]he parties' dispute falls squarely within the arbitration provision, and certainly relates to the [JPA], because the parties are arguing about the allocation of commissions and revenues." He contends that the partnership agreement, the JPA and JPAA "are not separate, independent contracts, but together represent the entire agreement between [him] and Anderson on how money should be shared between them." Therefore, Lofton contends, the trial court erred in denying his motion to stay the proceedings pending arbitration.

{¶ 20} Anderson responds by noting that during the time he and Lofton worked together as financial advisors, the parties signed several JPAs with different brokerages, including Morgan Stanley and UBS, and that all of these JPAs have had arbitration provisions. Anderson states that he has made no claim against Lofton under any of the JPAs and that the claims he is raising now against Lofton are grounded solely in the partnership agreement. Therefore, Anderson contends, any arbitration provision contained in any of the JPAs is "irrelevant to this case."

{¶ 21} Anderson contends that the written terms of the partnership agreement govern three categories of payments: (1) "bonuses," (2) "assets," and (3) "all compensation," while the JPA covers only one of these three categories, i.e., "assets." Anderson represents that the term "assets" is a reference to the commissions that Lofton earned from managing the assets of the Anderson Portfolio and that the term, "all compensation" is a reference to "additional incentives." Anderson states that he is not disputing that Morgan Stanley and UBS correctly paid him the percentages of commissions and "revenues" stated in the JPAs over the period of the partnership agreement, and therefore, his lawsuit is not about the

court in its decision referred only to the arbitration provision in the JPA. On appeal, Lofton mentions only the arbitration clause in the JPA and no longer mentions the dispute resolution clause in the JPA. Therefore, our opinion pertains only to the arbitration clause in Section 7(c) of the JPA.

allocation of "commissions and revenues," as Lofton contends. Instead, Anderson contends, his lawsuit is about Lofton's failure to pay him for his share of the "bonuses" and "all compensation" or "additional incentives" that Lofton received during the ten-year period of the parties' agreement.

{¶ 22} Anderson also submits that under the terms of the partnership agreement, Lofton is obligated to pay him one-half of the "staff expense" on the "*Lofton/Anderson Book*" for years one and two of the partnership agreement and then a percentage of the staff expense that matches the "revenue split" for years three through ten of the agreement. Anderson asserts that the "[b]onuses, all additional compensation amounts, and expense reimbursements were never contemplated by the JPAs, and the parties clearly never intended for Morgan Stanley and UBS to manage those payments." He further asserts that "[t]hese payments were to be paid directly to [him] by [Lofton] himself and that both parties "understood [this] to be the case."

{¶ 23} Lofton replies to Anderson's arguments by noting that section 3 of the JPA states that Anderson will receive ten percent of "all gross commissions and other business revenues" generated under the provisions of the JPA. Lofton accuses Anderson of "split[ting] hairs" by arguing that "bonuses" and "all compensation" are not specifically identified in the JPA, "because the [JPA] allocates all funds in any form to Lofton and Anderson in the percentages they agreed upon." Lofton states that he "finds it hard to imagine that 'other business revenues' does not include other forms of compensation, such as bonuses." Lofton also notes that Anderson alleged in his complaint that Lofton "manipulated" the Anderson Portfolio, which "led to direct reductions in the amounts" Anderson received. Lofton points out that the trial court was obligated to determine whether *any* dispute between the parties was subject to arbitration, and therefore, Lofton argues, the trial court should have submitted this claim to arbitration. Lofton also claims that he cannot pay Anderson "outside of" the JPA and that, without the JPA, the percentage allocation of money in the partnership agreement has no meaning. Lofton also points out that Rule 3270 of FINRA prohibits arrangements like the parties' partnership agreement, which involve direct payments from one broker to another outside of brokerage firm channels.

{¶ 24} We begin our analysis by discussing the applicable standard of review. Appellate courts in this state have found that "[n]ormally, the determination of whether a dispute is subject to a contractual arbitration clause rests within the sound discretion of the trial court." *See, e.g.*, *Forturne v. Castle Nursing Homes, Inc.*, 164 Ohio App.3d 689, 2005-Ohio-6195 (5th Dist.); *Rippe & Kingston Co. PSC v. Kruse*, 1st. Dist. Hamilton No. C-130587, 2014-Ohio-2428, ¶ 14. However, where an appeal of a trial court's decision to grant or deny a motion to stay a trial pending arbitration involves strictly legal issues, the proper standard of review is de novo rather than abuse of discretion. *McKenzie v. Cintas Corp.*, 12th Dist. Warren No. CA2012-11-110, 2013-Ohio-1310, ¶11, fn. 3; *Dunkelman v. The Cincinnati Bengals*, 158 Ohio App.3d 604, 2004-Ohio-6425, ¶18-20 (1st Dist.). As stated in *Dunkelman*, "[t]he question of whether a controversy is arbitrable under a contract is a question of law for the trial court to decide. [Footnote omitted.] On that issue, appellate courts will generally accept the trial court's findings of fact but review the questions of law de novo." [Footnote omitted.] *Id*. at ¶ 20, citing *Vanyo v. Clear Channel Worldwide*, 156 Ohio App.3d 706, 2004-Ohio-1793, ¶ 8, fn. 2 (8th Dist.). Here, the trial court did not make any findings of fact. Therefore, we will engage in a de novo review of the trial court's determination that the arbitration provision in the JPA is not "binding on this matter." *McKenzie* and *Dunkelman*.

{¶ 25} "A party seeking to enforce an arbitration provision may choose to move for a stay under R.C. 2711.02, or to petition for an order for the parties to proceed to arbitration under R.C. 2711.03, or to seek orders under both statutes." *Maestle v. Best Buy Co.*, 100 Ohio St.3d 330, 2003-Ohio-6465, ¶ 18. Here, Lofton chose to enforce the arbitration provision in the parties' JPA by moving for a stay of Anderson's lawsuit pending arbitration.

{¶ 26} Motions for a stay of the proceedings pending arbitration are governed by R.C. 2711.02(B), which states as follows:

> If any action is brought upon any issue referable to arbitration under an agreement in writing for arbitration, the court in which the action is pending, upon being satisfied that the issue involved in the action is referable to arbitration under an agreement in writing for arbitration, shall on application of one of the parties stay the trial of the action until the arbitration of the issue has been had in accordance with the agreement, provided the applicant for the stay is not in default in proceeding with arbitration.

{¶ 27} "R.C. 2711.02(B) authorizes a trial court to grant a stay of court proceedings until an arbitration 'has been had' when a party, upon application, demonstrates to the court's satisfaction that an issue in dispute in the action is 'referable to arbitration under an agreement in writing for arbitration.'" *Maestle* at ¶ 2.

{¶ 28} The Ohio Supreme Court has listed four principles that guide determinations on the question of "arbitrability," i.e., whether an agreement creates a duty for the parties to arbitrate the particular dispute or controversy in question: (1) arbitration is a matter of contract and a party cannot be required to submit any dispute to arbitration that he has not agreed to submit to arbitration; (2) the question of arbitrability is an issue for judicial determination unless the parties clearly and unmistakably agree otherwise; (3) in deciding whether the parties have agreed to submit a particular dispute to arbitration, a court is not to rule on the merits, or lack thereof, of the underlying claim; (4) where the contract contains an arbitration clause, there is a "presumption of arbitrability" in that a party's request to enforce an arbitration clause 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 matter in dispute, with any doubts resolved in favor of finding coverage. *Council of Smaller Enterprises v. Gates, McDonald & Co.*, 80 Ohio St.3d 661, 665-666 (1998).

{¶ 29} "To determine whether the claims asserted in [a] complaint fall within the scope of an arbitration clause, [a] court must 'classify the particular clause as either broad of narrow.'" *Acad. of Med. of Cincinnati v. Aetna Health Inc.*, 108 Ohio St.3d 185, 2006-Ohio-657, ¶ 18, quoting *ADR/JB, Corp. v. MCY III, Inc.*, 299 F.Supp.2d 110, 114 (E.D.N.Y.2004), quoting *Louis Dreyfus Negoce S.A. v. Blystad Shipping & Trading Inc.*, 252 F.3d 218, 224 (2d Cir.2001). "An arbitration clause that contains the phrase 'any claim or controversy arising out of or relating to the agreement' is considered 'the paradigm of a broad clause.'" *ADR/JB, Corp.*, quoting *Collins & Aikman Prods. Co. v. Bldg. Sys. Inc.*, 58 F.3d 16, 20 (2d Cir.1995).

{¶ 30} "Arbitration is not limited to claims alleging a breach of contract." *Acad. of Med. of Cincinnati* at ¶ 19. However, "the existence of a contract between the parties does not mean that every dispute between the parties is arbitrable." *Id*. at ¶ 29, citing *Fazio v. Lehman Bros., Inc.*, 340 F.3d 386 (6th Cir.2003). The "overarching issue" is whether the parties agreed to arbitrate the dispute. *Acad. of Med. of Cincinnati* at ¶ 19, citing *Mitsubishi Motors Corp. v. Solar Chrysler-Plymouth, Inc.*, 473 U.S. 614, 626, 105 S.Ct. 3346 (1985). Additionally, the United States Supreme Court has warned against "forcing unwilling parties to arbitrate a matter they reasonably would have thought a judge, not an arbitrator, would decide." *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 945, 115 S.Ct. 1920 (1995).

{¶ 31} Here, the arbitration clause in the JPA provides that "[a]ny controversy or claim arising out of or relating to this Agreement, or its breach, the resolution of which is not otherwise provided for in this Agreement or in the Joint Production Acknowledgments executed by each Joint Producer, will be settled by arbitration in accordance with * * * FINRA[.]" Thus, the arbitration clause at issue in this case is considered "the paradigm of a broad clause." *Collins & Aikman Prods. Co.*, 58 F.3d at 20.

{¶ 32} The trial court provided very little reasoning in support of its decision finding that the arbitration provision is not "binding" in this matter. It appears likely, though, that in determining that the arbitration provision in the JPA was not "binding" in Anderson's lawsuit against Lofton, the trial court found that the partnership agreement and the JPA are separate, independent contracts and that the partnership agreement is the "primary contract" between the parties. However, we agree with Lofton that the partnership agreement and the JPA are not separate, independent contracts. Instead, those two agreements, together, represent the entire agreement between Lofton and Anderson on how commissions and other business revenues and business expenses should be shared or divided between them.

{¶ 33} The record shows that the parties have used their JPAs with UBS and Morgan Stanley to effectuate most, if not all, of the payments that Lofton owes to Anderson under the terms of their partnership agreement. The parties' so-called "partnership agreement" is more of an outline of an agreement or an addendum to an agreement rather than a separate, enforceable agreement. The partnership agreement is missing many of the key terms on which Anderson contends the parties agreed. One glaring example of this is Anderson's contention that Lofton agreed to pay Anderson *directly* for his share of the "bonuses" and "all compensation" or additional incentives that Lofton received during the ten-year period of the agreement and to reimburse him *directly* for certain business expenses that, presumably, are not covered under section 3(b) of the JPA.

{¶ 34} According to Anderson himself, all of the parties' JPAs during the ten-year period of their agreement contained arbitration provisions. The parties made their JPA an integral part of their partnership agreement at the time they arrived at that agreement in 2005, when they used their JPA as at least one of the methods by which Lofton was to pay Anderson in return for his agreement to transition his portfolio to Lofton over a ten-year period.[5]

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5. Anderson also alleges in his brief that the parties *orally* agreed on another "method" by which Lofton would pay Anderson, namely, that Lofton would pay Anderson *directly* for Anderson's share of the bonuses and

{¶ 35} Given the foregoing, we conclude that the trial court erred in reading the partnership agreement and the JPA as separate contracts. Instead, those agreements should be read together, as representing the entire agreement between Lofton and Anderson on how commissions and other business revenues and business expenses should be shared or divided between them. On remand, the trial court is instructed to interpret the partnership agreement and JPA as being parts of one agreement. Then, the trial court is to determine whether all or some part of the claims or causes of action raised by Anderson in his complaint against Lofton are subject to the arbitration provision in the JPA, and if so, to stay the proceedings pending such arbitration.

{¶ 36} Accordingly, Lofton's assignment of error is sustained to the extent indicated.

{¶ 37} The judgment of the trial court is reversed, and this cause is remanded for further proceedings consistent with this opinion.

PIPER, P.J., and M. POWELL, J., concur.

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additional compensation that Lofton received, as well as for a portion of the staffing costs associated with the management of the Anderson Portfolio.