UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

PARK SHORE RESORT CONDOMINIUM ASSOCATION, INC.,

Petitioner,

v. Case No.: 2:19-cv-125-FtM-38MRM

GENERAL SECURITY INDEMNITY COMPANY OF ARIZONA, CERTAIN UNDERWRITERS AT LLOYD'S, LONDON SUBSCRIBING TO POLICY AMR-36545-03, INDIAN HARBOR INSURANCE COMPANY, QBE SPECIALITY INSURANCE COMPANY, STEADFAST INSURANCE COMPANY, UNITED SPECIALTY INSURANCE COMPANY, LEXINGTON INSURANCE COMPANY, PRINCETON EXCESS AND SURPLUS LINES INSURANCE COMPANY, HDI GLOBAL SPECIALTY SE and OLD REPUBLIC UNION INSURANCE COMPANY,

Defendants.
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OPINION AND ORDER[1]

Before the Court are parties' Joint Stipulation (Doc. 19) and Plaintiff's Motion to Compel Arbitration (Doc. 26).

This is an insurance dispute. The parties agree that this case is subject to a valid arbitration agreement and should be sent to arbitration. (Docs. 19 at 2; 26 at 2). Plaintiff

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and Defendants selected their own arbitrators in accordance with the insurance policy. (Docs. 19 at 2-3; 26 at 2-4). Now, the parties dispute whether the selected arbitrators are qualified to serve under the relevant contractual provision. (Docs. 19 at 3-4; 26 at 2-4). So "[t]he only issue before this Court is the qualification of the proposed [a]rbitrators." (Docs. 19 at 2; 26 at 2). The parties "seek a ruling from this Court on the qualifications of the proposed [a]rbitrators and request that the Court retain jurisdiction to consider other matters related to the qualifications of the proposed [a]rbitration panel." (Doc. 19 at 4). The Court declines to do either.

Without citation to any relevant legal authority or argument, the parties ask this Court to step into the ring of a pre-arbitration fight on qualifications of arbitrators. Even if the Court wanted to entertain this empty-handed request, it cannot do so. "[I]t is well established that a district court cannot entertain an attack upon the qualifications or partiality of arbitrators until after the conclusion of the arbitration and the rendition of an award." *Michaels v. Mariforum Shipping, S.A.*, 624 F.2d 411, 414 n.4 (2d Cir. 1980) (collecting cases); *see, e.g.*, *Gulf Guar. Life Ins. v. Conn. Gen. Life Ins.*, 304 F.3d 476, 492 (5th Cir. 2002) ("[T]he dispute regarding [an arbitrator's] qualification to serve, although framed as a request to the court to enforce the arbitration agreement by its terms, is not the type of challenge that the district court was authorized to adjudicate . . . prior to issuance of an arbitral award."); *Savers Prop. And Cas. Ins. v. Nat'l Union Fire*

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Ins. Co. of Pittsburg, Pa., 748 F.3d 708, 718 (6th Cir. 2014); *Aviall, Inc. v. Ryder Sys., Inc.*, 110 F.3d 892, 895-96 (2d Cir. 1997); *Smith v. Am. Arbitration Ass'n*, 233 F.3d 502, 506-07 (7th Cir. 2000); *Queen's Med. Ctr. V. Travelers Cas. And Surety Co. of Am.*, No. 17-00361 JMS-RLP, 2018 WL 1719703, at *6 (D. Haw. Apr. 9, 2018) (collecting cases); *John Hancock Life Ins. v. Emp'rs Reassurance Co.*, No. 15-cv-13623, 2016 WL 3460316, at *2-5 (D. Mass. June 21, 2016). While the Eleventh Circuit has not expressly addressed this issue, it has made clear that court intervention in arbitrations is extremely limited prior to the issuance of an arbitral award. *See, e.g.*, *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1109 (11th Cir. 2004) ("Generally speaking, courts are empowered to resolve disputes that solely involve whether a particular claim should be resolved in court or arbitration."); *Musnick v. King Motor Co. of Fort Lauderdale*, 325 F.3d 1255, 1261 (11th Cir. 2003). Moreover, "disputes about the meaning and application of particular procedural preconditions for the use of arbitration . . . are generally for the arbitrators themselves to resolve," rather than the district court. *Bamberger Rosenheim, Ltd., v. OA Dev., Inc.*, 862 F.3d 1284, 1288 (11th Cir. 2017) (citations and internal quotation marks omitted). And interpretation of the arbitration clause to determine qualifications of proposed arbitrators is analogous to other procedural matters that courts do not entertain before arbitration. *See id.* (holding that "the interpretation of forum selection clauses in arbitration agreements raise presumptively arbitrable procedural questions"). Thus—absent a clear basis to do so—the Court will not determine the qualifications of the arbitrators or retain jurisdiction over those matters at this point. *See Brandon, Jones, Sandall, Zeide, Kohn, Chalal & Musso, P.A. v. MedPartners, Inc.*, 203 F.R.D. 677, 687

(S.D. Fla. 2001) (noting that review of "an arbitrator's qualification or alleged bias" is improper until "*after* a final arbitration decision has been made" (emphasis in original)).

Although the Court cannot resolve the disputed arbitrator qualifications, the parties agree the case should be sent to arbitration (Docs. 19 at 2, 4; 26 at 2) and Plaintiff moves to compel arbitration. (Doc. 26 at 4). So the Court will stay this case and compel arbitration.

Accordingly, it is now **ORDERED:**

1. The Motion to Compel Arbitration (Doc. 26) is **GRANTED in part**. The Motion is only granted to the extent the Court stays this case and compels arbitration.
2. All proceedings here are **STAYED** until the parties advise the Court that arbitration has been completed and that the stay is due to be lifted or the case is due to be dismissed. The parties must notify the Court of such matters within **seven (7) days** of the arbitration proceedings concluding.
3. The parties are **DIRECTED** to file a joint written status report regarding the status of arbitration on or before August 6, 2019, and every ninety (90) days afterwards until the arbitration proceedings conclude.
4. The Clerk is **DIRECTED** to add a stay flag on the docket.

DONE and **ORDERED** in Fort Myers, Florida this 8th day of May, 2019.

SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record