

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

WN PARTNER, LLC,

*Petitioner,*

-against-

BALTIMORE ORIOLES LIMITED  
PARTNERSHIP,

*Respondent.*

Index No.: \_\_\_\_\_

**PETITION TO STAY ARBITRATION**

Petitioner WN Partner, LLC (the “Washington Nationals”, or the “Nationals”), by and through their undersigned attorneys, Quinn Emanuel Urquhart & Sullivan, LLP, allege as follows in support of their Petition pursuant to the Federal Arbitration Act (“FAA”), 9 U.S.C. § 4, for an order enjoining Respondent Baltimore Orioles Limited Partnership (the “Orioles” or “BOLP”) from pursuing the arbitration it commenced in New York against the Nationals before the American Arbitration Association (the “AAA”), Case No. 01-19-0000-9222 (the “Arbitration”).

**NATURE OF THE PROCEEDING**

1. This is an action to enjoin the Orioles from pursuing the arbitration before the AAA, including on issues of arbitrability, where the parties’ underlying contract specifies that arbitration is supposed to be before the Major League Baseball (“MLB”) Commissioner except in certain limited circumstances where arbitration is to be before the AAA; and where the Nationals months ago submitted the parties’ dispute to the Commissioner for arbitration, and the Orioles not only did not contest the Commissioner’s jurisdiction, but in fact asked the Commissioner to determine arbitrability of the dispute at that time. The Orioles, having consented to the Commissioner’s

determination of arbitrability in the previously pending arbitration, cannot now legitimately initiate AAA proceedings to determine the proper venue for arbitration.

2. The parties' dispute arises under a Partnership Agreement dated September 2005.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

3. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4. As managing partner, the Orioles are responsible for directing MASN's cash flow distributions, and did so from 2009-2017 without fail. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. In

submitting the dispute at that time, the Nationals noted that after months of correspondence, the Orioles had failed to take reasonable steps to permit a mediation of the dispute, and therefore had effectively waived the mediation phase of the dispute resolution process.

5. In response, the Orioles *did not contest* the MLB Commissioner's jurisdiction to arbitrate the dispute or determine arbitrability. Rather, the Orioles *invoked* the Commissioner's jurisdiction and asked him to determine arbitrability: that is, the Orioles asked the Commissioner to rule that the parties should first mediate the dispute before arbitrating. At the Orioles' urging,

the Commissioner did determine arbitrability, and in early November 2018 directed that the parties should first mediate, and that the Nationals' arbitration demand would be held "in abeyance" in the meantime. The Orioles then agreed to mediate, and did not contest the propriety of the Commissioner holding the Nationals' arbitration demand "in abeyance" while the mediation was underway.

6. The mediation process, before a JAMS mediator, concluded on March 22, 2019, without the parties reaching a resolution of the dispute. The Nationals, early that afternoon, reported to the Commissioner that mediation had concluded and requested that the arbitration – the subject of the Nationals' pending arbitration demand before the Commissioner – be promptly scheduled.

7. Thereafter, on the night of March 22, 2019, the Orioles initiated the AAA arbitration, claiming for the first time that MLB had a financial interest in the Nationals and that this would require arbitration of the dispute before the AAA. The Orioles asserted that the "financial interest" related to a \$25 million advance MLB made to the Nationals *in 2013* in connection with a wholly separate matter, which the Nationals voluntarily agreed in February 2018 to pay back with interest. Thus, the Orioles' assertion of an MLB financial interest was predicated solely on information that had been available to the Orioles for more than a year, and certainly in October 2018 when the Orioles asked the Commissioner to determine the arbitrability of the Nationals' arbitration demand.

8. The Orioles, in making their arbitration demand to the AAA, did not disclose either (i) the prior pending arbitration before the MLB Commissioner, or (ii) that the Orioles had themselves previously asked the Commissioner to determine arbitrability of this very dispute.

9. The AAA immediately scheduled an initial administrative conference, before the Nationals had responded to the Orioles' demand.

10. On March 27, 2019, the Nationals objected in writing to any AAA arbitration of this dispute. The Nationals informed the AAA that the dispute was already pending before the Commissioner, that the Orioles had previously asked the Commissioner to determine that the dispute should be mediated, and that AAA did not have jurisdiction to hear the dispute. The Nationals also showed that MLB's \$25 million advance to the Nationals did not constitute a "financial interest" of MLB in the Nationals under the Partnership Agreement.

11. On April 1, 2019, the Orioles responded to the Nationals' jurisdictional objection, and on April 2, 2019 the Nationals submitted a detailed reply, including case citations and factual references. Then, just an hour later, the AAA case administrator notified the parties without further detail that the "AAA had determined" that the Nationals' objection as to the proper venue for the mediation raised an arbitrability issue that would be referred to an AAA tribunal. The AAA scheduled the administrative conference for April, 9, 2019.

12. On April 4, 2019, MLB's Deputy Commissioner wrote to the parties "[o]n behalf of the Commissioner," stating that "threshold questions exist as to whether the Commissioner has jurisdiction over this dispute and who should decide this jurisdictional question. The Commissioner invites the parties to submit their arguments as to these questions, as well as proposals as to how the two for a should deal with the fact that competing arbitration proceedings have now been demanded, to my attention by no later than April 18, 2019. Each party may also respond to the other's submission by no later than May 2, 2019."

13. That same day, the Nationals notified the AAA of the Deputy Commissioner's communication to the parties, and the Nationals again objected to any further AAA proceedings,

including to determine the proper venue for this dispute. The Nationals follow-up with a letter on April 5, 2019, providing case authorities and factual citations in support of the Nationals' position. At approximately 5 pm on Sunday, April 7, 2019, the Orioles responded to the Nationals' objections. And then just a few hours later, the AAA case administrator assigned to this matter wrote to the parties that "the AAA will proceed with the administration of this matter and the arbitrability issue will be determined by the Tribunal."

14. The Nationals therefore bring this Petition to prevent the irreparable harm that would be caused if the Nationals are forced to arbitrate in a forum to which they did not agree. This dispute is properly before the MLB Commissioner pursuant to the Nationals' prior pending arbitration demand. Moreover, the Orioles expressly invoked the Commissioner's jurisdiction to determine arbitrability of this dispute, and never suggested that the AAA was the proper venue to determine arbitrability. The Orioles cannot properly do so now, given a prior course of conduct effectively consenting to the MLB Commissioner's jurisdiction to determine arbitrability.

### **PARTIES**

15. Petitioner WN Partner, LLC is a Delaware limited liability company with its principal place of business at 1500 South Capitol Street, SE, District of Columbia.

16. Upon information and belief, Respondent the Baltimore Orioles Limited Partnership is a Maryland limited partnership with its principal place of business at 333 West Camden Street, Baltimore, Maryland.

### **JURISDICTION AND VENUE**

17. This Court has jurisdiction to hear this Petition pursuant to C.P.L.R. Article 75.

18. The Orioles consented to the jurisdiction of this Court by consenting to arbitration before the Commissioner of Major League Baseball in New York, New York, and by initiating

arbitration before the AAA in New York, New York. *See, e.g., Zurich Ins. Co. v. R. Elec.*, A.D.3d 338, 339 (1st Dep’t 2004); *Merrill Lynch Pierce, Fenner & Smith Inc. v. Lecopulos*, 553 F.2d 842, 844 (2d Cir. 1977); *accord Doctor’s Assocs. v. Stuart*, 85 F.3d 975, 983 (2d Cir. 1996) (“A party who agrees to arbitrate in a particular jurisdiction consents not only to personal jurisdiction but also to venue of the courts within that jurisdiction.”).

19. Venue is proper in this County pursuant to CPLR § 7502(a). This Petition seeks to stay BOLP from proceeding with an arbitration initiated in New York.

### FACTUAL BACKGROUND

#### A. The Partnership Agreement Underlying the Dispute

20. The dispute between the Nationals and the Orioles stems from and is governed by a Partnership Agreement entered on September 6, 2005. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

25. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**B. MLB's \$25 Million Advance to the Nationals Did Not Create a "Financial Interest in the Nationals"**

26. In 2013, MLB made a \$25 million advance to the Nationals (in a year when MLB had more than \$8 billion in revenue) in connection with a separate dispute among the parties under a separate March 2005 agreement, not at issue here, regarding the amount of fees that MASN is required to pay the Nationals for the right to televise Nationals baseball games. *See TCR Sports Broad. Holding, LLP v. WN Partner, LLC*, 2015 WL 6746689, at \*2 (N.Y. Sup. Ct. 2015). Pursuant to the arbitration clause in that separate agreement, the rights fee dispute was arbitrated in 2012 before MLB's Revenue Sharing Definitions Committee (the "RSDC"). *Id.*

27. While the RSDC reached a decision during the summer of 2012, the decision was not formally issued until 2014. *Id.* at \*3-4. In the interim, MLB encouraged the parties to settle the dispute, and certain MLB-sponsored discussions took place. *Id.* In that context, MLB by mid-2012 had informed the parties that the award was substantially higher than the amounts that MASN, wholly controlled by the Orioles, had unilaterally been paying the Nationals. But MASN, at the Orioles' direction, continued to pay only the lower amount of rights fees for which they had advocated before the RSDC.

28. To encourage the negotiations, MLB in August 2013 made an advance to the Nationals totaling approximately \$25 million, intended to make up for the shortfall in 2012 and



2013 between the amount of rights fees MASN was paying the Nationals and the amount the RSDC had determined to award.

29. The terms of the advance did not call for the Nationals to return the advance, but instead provided “if the RSDC issues a decision that covers 2012 and/or 2013, any payments from MASN otherwise due to the Nationals will be made first to the Commissioner’s Office to cover” the advance, and “[a]ny excess amounts would go to the Nationals.” In other words, MLB was to receive the first \$25 million of any payment by MASN pursuant to the RSDC award if and when released. In January 2014, MLB confirmed that it would “not look to the Nationals for repayment of the advances made to it pursuant to the letter agreement dated August 26, 2013, as we consider this to be an obligation of MASN.”

30. Ultimately, the negotiations among the parties were not successful, and the RSDC issued its award in 2014.

### **The Orioles’ Previous Attempts to Re-Write the Parties’ Agreement and Compel Arbitration Before the AAA Are Rejected by the New York Courts**

31. The New York Supreme Court ultimately vacated the RSDC’s award, but solely on grounds related to the Nationals having been represented in the arbitration by the law firm Proskauer Rose LLP (a firm that also concurrently represented MLB, and interests related to the RSDC members, in other unrelated matters). *See TCR Sports*, 2015 WL 6746689, at \*9-13. Notably, the court expressly rejected arguments by the Orioles and MASN that the award should be vacated based on MLB’s \$25 million advance to the Nationals in 2013. *Id.* at \*8-9. The court also rejected the Orioles’ argument that a new arbitration should be held in the AAA (rather than in the RSDC). *Id.* at \*13, n.21 ((rejecting as “unavailing” MASN’s request to “*re-writ[e] the parties’ Agreement*” in order to compel arbitration outside of the RSDC).

32. The Appellate Division affirmed those conclusions, 153 A.D.3d 140, and the Orioles failed in their bids for further appellate review, *see In re TCR Sports Broad. Holding, LLP v. WN Partner, LLC*, 30 N.Y.3d 1005 (2017); *In re TCR Sports Broad. Holding, LLP v. WN Partner, LLC*, 2018 WL 457101 (N.Y. App. Div. Jan. 18, 2018). The Appellate Division expressly held that the Nationals' motion to compel arbitration before the RSDC should have been granted. 153 A.D.3d at 143.

**The Nationals Voluntarily Agreement to Repay the \$25 Million Advance Prior to a New RSDC Hearing on the Separate Rights Fee Dispute**

33. In February 2018, after the Appellate Division conclusively remanded the parties to the RSDC for a new arbitration on the rights fee dispute, the Nationals voluntarily promised to repay the \$25 million advance from MLB in full, with interest, prior to the new RSDC hearing. The letter setting forth the Nationals' agreement stated that the Nationals would repay the advance if the new RSDC arbitration were to go forward as scheduled. Further, the letter did not supersede or in any way amend the prior agreements that made clear the Nationals had no obligation to repay the advance. Indeed, the letter and the repayment were wholly voluntary; they were intended only to head off the Orioles' and MASN's anticipated (but meritless) argument that the second RSDC proceeding would be biased because MLB purportedly had an interest in how much the RSDC would award. The First Department had recognized that a mechanism (such as a bond) to "guarantee repayment of the advance to MLB regardless of the outcome of the arbitration" would suffice to avoid any colorable claim of bias in the RSDC arbitration, *see* 153 A.D. 3d at 158 (Andrias, J., concurring).

34. At no point during the New York State action did either the Orioles or the New York courts suggest that MLB's advance gave MLB an ownership or financial interest *in the Nationals*. Instead, at most, the Orioles and MASN suggested that the advance (repayable only

from the proceeds of the RSDC award) might have given MLB an interest *in the outcome of the RSDC arbitration*. See *TCR Sports*, 2015 WL 6746689, at \*8-9; 153 A.D.3d at 157-58 (Andrias, J., concurring). Nor could MASN have made any legitimate argument that the advance created an interest in the Nationals themselves: the Nationals had no obligation to repay the advance, and MLB had no right to reach into the Nationals' pocket to recover the money. Any recovery could come *only via the arbitration award*. In fact, when the New York State action was before the First Department, MASN complained that the Nationals would never have to re-pay the advance from MLB.

**The Nationals, Pursuant to the Partnership Agreement, Make a Demand on the Commissioner of Baseball to Arbitrate the Cash Flow Distribution Dispute**

35. In June 2018, the Nationals recognized that the Orioles and MASN had failed to make cash flow distributions. Such distributions had been made annually, from 2009-2017 without fail, by June at the very latest. Therefore, the Nationals inquired about the cash flow distribution in June 2018.

36. After months of correspondence, once it became clear that the parties had reached an impasse, the Nationals on September 20, 2018, informed the Orioles that the Nationals were invoking the dispute resolution procedures of the Partnership Agreement. The Nationals requested that the Orioles and MASN either waive mediation of the dispute in order to proceed to arbitration before the MLB Commissioner, or else proceed to mediation.

37. The Orioles, in their response dated September 26, 2018, did not object to the Nationals' assertion that arbitral jurisdiction lies with the MLB Commissioner; they also did not address the Nationals' request to mediate.

38. The Nationals replied on September 28, 2018, stating that if the Orioles and MASN would not agree to waive mediation or proceed promptly to mediation, "the Nationals intend to

ask the Commissioner to determine that MASN and BOLP have effectively waived the mediation phase of the dispute resolution process, so that the matter can be determined by the Commissioner without further delay.”

39. The Orioles responded later that day, and again did not object that the MLB Commissioner lacked jurisdiction to hear the dispute or to determine arbitrability.

40. When the Nationals again indicated their intention to invoke the MLB Commissioner’s jurisdiction on October 3, 2018; the Orioles again responded without objecting that the MLB Commissioner lacked jurisdiction to hear the dispute or determine arbitrability.

41. Accordingly, on October 5, 2018, the Nationals submitted the 2018 distributions dispute to the MLB Commissioner for arbitration, asking the Commissioner to determine that the Orioles’ had waived the mediation phase of the Partnership Agreement’s dispute resolution procedures, that the Orioles improperly failed to make cash flow distributions in 2018, and that the Orioles were required to make such distributions.

42. The Orioles responded on October 16, 2018. Through their response, the Orioles invoked the jurisdiction of the Commissioner and asked him to determine that the parties were required by the Partnership Agreement to mediate the dispute first, asserting that the Nationals violated the Partnership Agreement by failing to do so. The Orioles also argued that the Nationals’ demand lacked merit. Thus, far from suggesting that the MLB Commissioner lacked jurisdiction to serve as arbitrator, the Orioles instead invoked the Commissioner’s jurisdiction to determine arbitrability of this dispute.

43. On October 25, 2018, the Nationals wrote again to the MLB Commissioner, specifically stating that “[g]iven that the MLB Commissioner is contractually designated to

arbitrate this dispute, the Nationals request that the Commissioner schedule the arbitration promptly.”

44. The Orioles did not respond, nor did they otherwise object to the MLB Commissioner determining arbitrability or being the proper arbitrator when, in the Orioles’ view, the dispute would be ripe for arbitration.

**The Commissioner Decides Arbitrability of the Dispute And Directs the Parties to Mediate, Holding the Nationals’ Arbitration Demand in Abeyance.**

45. On November 8, 2018, the the Deputy Commissioner of Baseball, Daniel Halem, informed the Nationals and the Orioles that the Commissioner had determined arbitrability – specifically, the Commissioner had “determined that the most productive course of action to achieve what he believes is everyone’s goal—an efficient resolution of the issue—

\_\_\_\_\_”

46. The Commissioner instructed that “the Nationals arbitration demand will be held in abeyance until the parties report back on the results of the mediation.”

47. The Commissioner thus made a threshold determination of arbitrability – deciding that the Nationals and the Orioles had to mediate the dispute before arbitrating the dispute before him.

48. The Orioles accepted the Commissioner’s determination on arbitrability (which they had requested), and did not object to the Commissioner’s holding the Nationals’ arbitration demand “in abeyance.”

49. The parties proceeded to mediate their dispute before a JAMS mediator, but did not reach a resolution. On March 22, 2019, the Nationals informed the Commissioner that the

mediation had failed to reach resolution and requested that the arbitration demanded by the Nationals in October 2018, which had been held in abeyance, be promptly scheduled.

**While the Arbitration Before the Commissioner was Pending, the Orioles Initiated a New Arbitration Before the AAA**

50. The night of March 22, 2019, after the Nationals had already asked the Commissioner to schedule the pending arbitration, the Orioles initiated an arbitration against the Nationals before the AAA. [REDACTED]

[REDACTED] The Orioles asserted – for the first time – that MLB purportedly had a “*financial interest*” based on the \$25 million advance MLB made to the Nationals in 2013 in connection with a different dispute. The Orioles failed to disclose in their AAA arbitration demand that the Nationals had previously submitted the dispute to the Commissioner for arbitration, that the Orioles had not objected to the Commissioner determining arbitrability and indeed has asked him to do so, and that the Commissioner had decided arbitrability and determined to hold the Nationals’ demand in abeyance until the parties first attempted mediation.

51. Following receipt of the Orioles’ arbitration demand, the AAA promptly scheduled an administrative teleconference for April 3, 2019.

**The Nationals Object to Arbitration Before the AAA**

52. On March 27, 2019, the Nationals objected formally in writing to the AAA’s jurisdiction to hear the dispute. As explained in the Nationals’ correspondence to the AAA, the Commissioner has exclusive jurisdiction over the dispute; the Orioles had invoked and consented to that jurisdiction in asking the Commissioner to determine arbitrability of the Nationals’ arbitration demand in October 2018; and the Commissioner, at the Orioles’ request, had determined to direct the parties but mediate first, but had held the Nationals’ arbitration demand

in abeyance. The Nationals also explained that MLB does not have a financial interest in the Nationals as defined in the Partnership Agreement: the \$25 million advance made by MLB to the Nationals in 2013, which the Nationals were not required to pay back, did not give MLB a financial interest in the Nationals. MLB's ownership and financial interest in the Nationals ended in 2006 when it sold the Nationals to their current owners. MLB has had no ownership or financial interest in the Nationals since that time.

53. In their demand to the AAA, the Orioles asserted that the Nationals' February 2018 promise to pay MLB back gave MLB a financial interest that required arbitration before the AAA. But the Nationals explained in their letter that this promise did not serve to convert the \$25 million advance into some MLB financial interest *in the Nationals*. The promise neither purported to create any enforceable right in favor of MLB nor did it purport to supersede the original terms of the advance, which never required repayment by the Nationals. The Nationals repaid the \$25 million advance, with interest, by November 5, 2018, ten days before the start of the RSDC proceeding on November 15, 2018.

54. The Orioles did not respond to the Nationals March 27, 2019 letter; instead, counsel for the Orioles on March 29, 2019 emailed the AAA that he was unavailable for an administrative conference that the AAA had scheduled for April 3, 2019. That same day, counsel for the Nationals wrote to the AAA that:

the AAA does not have authority or jurisdiction to arbitrate this dispute, which was previously submitted to the Commissioner of Major League Baseball for arbitration pursuant to the parties' Partnership Agreement. The Washington Nationals respectfully submit that it would be inappropriate for the AAA to convene any conferences, administrative or otherwise, in this matter, and object to the scheduling or holding of any such conferences.

55. On April 1, 2019, the Orioles submitted a response to the Nationals' March 27 letter.

56. In the early morning on April 2, 2019, the Nationals submitted a detailed reply to the AAA, including additional case authorities, asserting again that the AAA had no jurisdiction to hear any aspect of the dispute.

57. About one hour after the Nationals submitted their reply, the AAA informed the parties, without supporting analysis, that "[t]he AAA deems this to be an arbitrability issue to be determined by the Tribunal." The AAA advised that the administrative conference would proceed the next day, April 3, 2019, at 10:00 AM. The Orioles counsel then requested that based on his availability, the conference be adjourned to the following week.

58. On April 4, 2019, MLB's Deputy Commissioner, writing to the parties "[o]n behalf of the Commissioner," stated: "threshold questions exist as to whether the Commissioner has jurisdiction over this dispute and who should decide this jurisdictional question. The Commissioner invites the parties to submit their arguments as to these questions, as well as proposals as to how the two for a should deal with the fact that competing arbitration proceedings have now been demanded, to my attention by no later than April 18, 2019. Each party may also respond to the other's submission by no later than May 2, 2019."

59. The Nationals on April 4, 2019, promptly advised the AAA of the Deputy Commissioner's message, and renewed the request that the AAA cancel the planned administrative conference and permit the Commissioner to determine arbitrability of the dispute – specifically, the proper venue for the dispute.



60. On April 5, 2019, the Nationals transmitted a letter to the AAA reiterated their objection to the jurisdiction of the AAA, including to decide issues of arbitrability, and set forth a detailed analysis of the relevant case law and facts.

61. On April 7, 2019, the Orioles responded, arguing that the AAA should proceed to determine arbitrability of the dispute, including the proper venue for the arbitration. Within just a few hours, the AAA informed the parties that, as urged by the Orioles, “[t]he AAA will proceed with the administration of this matter and the arbitrability issue will be determined by the Tribunal. We will, therefore, conduct an Administrative Conference call on April 9th at 11 a.m. ET.”

62. The purpose of this Petition is to prevent the irreparable harm that will result if the Nationals are forced to arbitrate in a venue to which the Nationals did not agree – including for purposes of determining arbitrability.

## CAUSES OF ACTION

### FIRST CAUSE OF ACTION

#### (Injunctive Relief Pursuant to 9 U.S.C. § 4)

63. Petitioner repeats and re-alleges paragraphs 1 through 63 hereof, as if fully set forth herein.

64. Petitioner seeks (1) a temporary restraining order pursuant to the Federal Arbitration Act, restraining Respondent BOLP from proceeding with its claims against Petitioner in the arbitration initiated before the American Arbitration Association, Case No. 01-19-0000-9222, pending resolution of this application; and (2) a preliminary and permanent enjoining BOLP from proceeding with its claims against Petitioner in the arbitration currently pending before the AAA, Case No. 01-19-0000-9222.

65. Pursuant to 9 U.S.C. § 4, this Court has the authority to enjoin Respondent BOLP from proceeding with its claims against petitioner in the arbitration.

66. This Court should exercise its authority to relieve Petitioner from being forced to proceed with an arbitration to which it did not consent that would irreparably deprive Petitioner of its bargained-for rights under the Partnership Agreement.

### **PRAYER FOR RELIEF**

Petitioners respectfully request an Order from this Court:

- A. Enjoining BOLP from proceeding with the AAA Arbitration;
- B. Awarding Petitioners their attorneys' fees and costs; and
- C. Granting such other and further relief as this Court deems just and proper.

DATED: New York, New York  
April 8, 2019

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SULLIVAN, LLP**

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