

To commence the statutory time period for appeals as of right (CPLR § 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

PRESENT: HON. LINDA S. JAMIESON

PAMELA GOLDSTEIN, ELLYN & TONY BERK,
as Administrators of the Estate of
Winifred Berk, and PAUL BENJAMIN,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

-against-

HOULIHAN/LAWRENCE INC.

Defendant.

Index No. 60767/2018

DECISION AND ORDER

The following papers numbered 1 to 3 were read on the unopposed motion (seq. no. 9) by class action plaintiffs pursuant to CPLR § 4403 and Section 202.44 of the Uniform Rules for Trial Courts for an Order confirming the Fifteenth Report and Recommendation entered by the Discovery Referee William P. Harrington, Esq. (the "Discovery Referee") on May 20, 2022:

<u>Papers</u>	<u>Numbered</u>
Notice of Motion, Declaration and Exhibits	1
Memorandum of Law	2
Referee Report	3

The following papers numbered 1 to 3 were read on the unopposed motion (seq. no. 10) by class action plaintiffs pursuant to CPLR § 4403 and Section 202.44 of the Uniform Rules

for Trial Courts for an Order confirming the Sixteenth Report and Recommendation entered by the Discovery Referee on June 10, 2022:

<u>Papers</u>	<u>Numbered</u>
Notice of Motion, Declaration and Exhibits	1
Memorandum of Law	2
Referee Report	3

The following papers numbered 1 to 3 were read on the unopposed motion (seq. no. 11) by defendant Houlihan/Lawrence Inc. pursuant to 9 U.S.C. §§ 1-14 and CPLR § 7503 for an Order compelling arbitration of claims against any purported class members who executed an arbitration agreement or arbitration clause with defendant, and dismissing them from this action:

<u>Papers</u>	<u>Numbered</u>
Notice of Motion, Affirmation and Exhibits	1
Memorandum of Law	2
Letter from Jeremy Vest, Esq. dated July 11, 2022	3

This Decision and Order addresses and grants three unopposed motions that are pending in this class action lawsuit, which arises out of allegations that defendant acted as an undisclosed, non-consensual dual agent in representing both buyers and sellers in approximately 10,000 residential real estate sales transactions throughout the Hudson Valley.

First, the Court grants the unopposed motion of class action plaintiffs (seq. no. 9) pursuant to CPLR § 4403 and Section 202.44 of the Uniform Rules for Trial Courts for an Order confirming the Fifteenth Report and Recommendation entered by the Discovery Referee on May 20, 2022.

Second, the Court grants the unopposed motion of class action plaintiffs (seq. no. 10) pursuant to CPLR § 4403 and Section 202.44 of the Uniform Rules for Trial Courts for an Order confirming the Sixteenth Report and Recommendation entered by the Discovery Referee on June 10, 2022.

Third and finally, with respect to defendant's motion (seq. no. 11) pursuant to 9 U.S.C. §§ 1-14 and CPLR § 7503 for an Order compelling arbitration of claims against any purported class members who executed an arbitration agreement or arbitration clause with defendant and dismissing them from this action, the Court notes that this motion was originally made returnable on August 5, 2022, with class action plaintiff's opposition due on July 21, 2022 pursuant to the Discovery Referee's Fourteenth Report and Recommendation.

However, on July 11, 2022, the Court received a letter from class action plaintiffs' counsel in which counsel, *inter alia*, stated that "Class Plaintiffs do not oppose [defendant's] motion to compel arbitration (Dkt. 1387) insofar as it seeks only to

exclude homebuyers and sellers who signed an arbitration agreement with [defendant] from the Class. Class Plaintiffs suggest the Court hold a conference this week to determine whether that stipulation is sufficient to resolve [defendant's] motion." As of the date of this Decision and Order, counsel for defendant has not responded to the letter, thus tacitly reflecting that counsel concurs that the parties' agreement has resolved defendant's motion.

Therefore, the Court grants defendant's unopposed motion (seq. no. 11) pursuant to 9 U.S.C. §§ 1-14 and CPLR § 7503 for an Order compelling arbitration of claims against any purported class members who executed an arbitration agreement or arbitration clause with defendant, and dismissing them from this action. In light of counsel's apparent agreement, a conference to address this issue is unwarranted.

Accordingly, as set forth above, the Court grants motion sequence numbers 9, 10 and 11 herein.

The foregoing constitutes the decision and order of the Court.

Dated: White Plains, New York
July 18, 2022



HON. LINDA S. JAMIESON
Justice of the Supreme Court

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