| New York Mar. & Gen. Ins. Co. v Jorgensen & Co. |
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| 2017 NY Slip Op 05186 |
| Decided on June 27, 2017 |
| Appellate Division, First Department |
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| This opinion is uncorrected and subject to revision before publication in the Official Reports. |

Decided on June 27, 2017
Friedman, J.P., Webber, Gesmer, Kern, JJ.

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**[*1] New York Marine and General Insurance Company, Plaintiff-Appellant,**

**v**

**Jorgensen & Company, et al., Defendants-Respondents, Risk Avoidance Managers, Inc., Defendant.**

Carroll McNulty & Kull LLC, New York (Christopher R. Carroll of counsel), for appellant.

Clausen Miller P.C., New York (Kimbley A. Kearney of counsel), for Jorgensen & Company, respondent.

Lewis Brisbois Bisgaard & Smith LLP, New York (Mark K. Anesh of counsel), for Greenwich Insurance Company, respondent.

Order, Supreme Court, New York County (Saliann Scarpulla, J.), entered April 4, 2016 which, to the extent appealed from as limited by the briefs, granted defendant Jorgensen & Company's motion to dismiss the claims for an injunction and the subrogation claims and to compel arbitration of the remaining claims against it, unanimously affirmed, without costs.

The court correctly determined that the claims asserted against defendant Jorgensen, which plaintiff describes as essentially alleging "fraud and intentionally dishonest conduct," are subject to arbitration pursuant to the broad arbitration clause in the parties' Program Management Agreement (*see e.g. Szabados v Pepsi-Cola Bottling Co. of N.Y.* , 174 AD2d 342 [1st Dept 1991]). The complaint does not allege fraud in the inducement of the arbitration clause or fraud permeating the entire agreement (*see Matter of Silverman [Benmor Coats]* , 61 NY2d 299, 307-308 [1984]).

The court also correctly dismissed the disgorgement claim as subsumed within claims to be resolved by the arbitrator, and the claims for injunctive relief and subrogation are without merit.

THIS CONSTITUTES THE DECISION AND ORDER

OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: JUNE 27, 2017

CLERK

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