

NOTICE
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2017 IL App (5th) 160141-U

NO. 5-16-0141

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

MAZHAR H. LAKHO,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	St. Clair County.
)	
v.)	No. 14-CH-279
)	
ABID NISAR, ARIF PYARALI, and MAHENDRA)	
GUNAPOOTI, Individually; PYRAMID)	
INVESTMENT MANAGEMENT I, LLC; PYRAMID)	
INVESTMENT MANAGEMENT II, LLC;)	
ABID NISAR, ARIF PYARALI, MAHENDRA)	
GUNAPOOTI, RASHID DALAL, and SHABBIR)	
SHAIKH, as Managing Members of Pyramid)	
Investment Management I, LLC, and Pyramid)	
Investment Management II, LLC,)	Honorable
)	Stephen P. McGlynn,
Defendants-Appellees.)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Justices Chapman and Barberis* concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred in compelling arbitration of counts I, III, and V of the

*Justice Stewart was originally assigned to participate in this case. Justice Barberis was substituted on the panel subsequent to Justice Stewart's retirement and has read the briefs and listened to the recording of oral argument.

verified amended complaint where the defendants failed to establish that the parties had a valid agreement to arbitrate under the Operating Agreement for Pyramid I. The trial court did not err in compelling arbitration of counts II, IV, and VI of the verified amended complaint where the defendants established that there was a valid agreement to arbitrate under the Operating Agreement for Pyramid II, and that plaintiff's claims arose from and related to the Operating Agreement for Pyramid II.

¶ 2 The plaintiff, Mazhar H. Lakho, filed this interlocutory appeal from an order of the circuit court of St. Clair County, granting the defendants' motion to enforce arbitration. For reasons that follow, we reverse the order of the circuit court and remand the case for further proceedings.

¶ 3 **BACKGROUND**

¶ 4 In January 2010, defendant Abid Nisar contacted the plaintiff, Mazhar Lakho, about investing in two real estate ventures, Pyramid Investment Management I, LLC (Pyramid I), and Pyramid Investment Management II, LLC (Pyramid II). Pyramid I was organized under the laws of Florida on June 4, 2009. Pyramid II was organized under the laws of Florida on February 18, 2010. Each corporation has its principal place of business in Florida. Each is engaged in the business of acquiring and managing real properties located in Florida. The plaintiff initially invested \$100,000 in Pyramid I. Less than two months later, he invested \$55,000 in Pyramid II. The relationship between the parties became contentious after the defendants refused the plaintiff's demand for the return of his investments, with the promised interest.

¶ 5 In April 2014, the plaintiff filed an action in the circuit court of St. Clair County, alleging that the defendants engaged in common law fraud and violated the Illinois Securities Law of 1953 (815 ILCS 5/1 *et seq.* (West 2014)), when they solicited him to

invest in Pyramid I and Pyramid II. The verified first amended complaint contains six counts. The main allegations are set forth below.

¶ 6 Count I alleges common law fraud against Pyramid I. In count I, the plaintiff alleges that defendant Abid Nisar contacted him in January 2010, and invited him to invest in Pyramid I. At that time, Nisar informed the plaintiff that the operating agreement for Pyramid I was still being drafted, but that the plaintiff could get in on the "ground floor" of the venture, and make a lot of money when the real estate market revived. Nisar told the plaintiff that he and defendants, Arif Pyarali and Mahendra Gunapooti, were managing members and among the investors in Pyramid I. When the plaintiff voiced concerns about tying up his funds in a long-term land investment, Nisar represented that the plaintiff could quit at any time, and receive his initial investment, plus annual interest of 8% on the investment. The plaintiff alleges that Nisar's representations were made prior to February 16, 2010, in the presence of Pyarali and Gunapooti; that Nisar, Pyarali and Gunapooti knew these representations were false at the time Nisar made them; and that neither Pyarali, nor Gunapooti corrected Nisar.

¶ 7 The plaintiff further alleges that he acted in reliance on the false representations, and invested \$100,000 in Pyramid I, on or about February 16, 2010. Then, when the plaintiff sought to withdraw the money he invested in Pyramid I, and receive the promised 8% interest on his investment, the managing members of Pyramid I refused the plaintiff's request. The plaintiff asserts he would not have invested his money had he known that he would not be able to withdraw it at any time and receive the 8% return on

his investment. He seeks damages from Pyramid I in the sum of \$100,000, and 8% interest from the date of investment to judgment.

¶ 8 Count II is brought against Pyramid II, under a theory of common law fraud. In count II, the plaintiff alleges that on or about February 26, 2010, Nisar contacted the plaintiff about investing in another real estate venture, Pyramid II. Sometime prior to April 8, 2010, the plaintiff expressed concerns about tying up additional money in a long-term real estate deal, and Nisar again assured the plaintiff he could quit at any time, and receive his investment, with 8% interest. The plaintiff alleges that Nisar's representations were made in the presence of Pyarali and Gunapooti, that Nisar, Pyarali and Gunapooti knew the representations were false at the time Nisar made them, and that neither Pyarali, nor Gunapooti corrected Nisar.

¶ 9 The plaintiff further alleges that he acted in reliance on the false representations, and invested \$55,000 in Pyramid II on or about April 8, 2010. Then, when the plaintiff sought to withdraw the money he invested in Pyramid II, and obtain the 8% interest on his investment, the managing members of Pyramid II refused the plaintiff's request. The plaintiff asserts that he would not have invested his money had he known that he would not be able to withdraw it at any time and receive the 8% return on his investment. He seeks damages from Pyramid II in the sum of \$55,000, and 8% interest from the date of investment to judgment.

¶ 10 Count III is directed against the individual defendants Nisar, Pyarali, and Gunapooti, and alleges common law fraud based on their false representations related to

the plaintiff's decision to invest in Pyramid I. Count III sets forth the same basic factual allegations and seeks the same damages as pled in count I.

¶ 11 Count IV is brought against the individual defendants Nisar, Pyarali, and Gunapooti for their false representations related to the plaintiff's decision to invest in Pyramid II. Count IV sets forth the same factual allegations and seeks the same damages as pled in count II.

¶ 12 Count V and count VI of the first amended complaint seek damages and an injunction to enforce the Illinois Securities Law of 1953 (815 ILCS 5/1 *et seq.* (West 2014)). In count V, the plaintiff alleges that at the time Nisar was soliciting the plaintiff to invest in Pyramid I, Nisar, Pyarali and Gunapooti were controlling members of the company and actively participated in the sale of securities under section 2.4 of the Illinois Securities Law (815 ILCS 5/2.4 (West 2014)). The plaintiff further alleges that Nisar, Pyarali and Gunapooti violated the Illinois Securities Law in that they: (a) failed to appropriately register their interests in securities which they were marketing in Illinois in violation of section 12(D) (815 ILCS 5/12(D) (West 2014)); (b) engaged in said transactions with the intent to work a fraud or deceit upon the purchaser in violation of section 12(F) (815 ILCS 5/12(F) (West 2014)); and (c) obtained \$100,000 from the plaintiff by means of an untrue statement of material fact or omission to state a material fact in violation of section 12(G) (815 ILCS 5/12(G) (West 2014)). The plaintiff asserts that he demanded the return of his investment in Pyramid I, plus interest on March 13, 2014, pursuant to section 13 (815 ILCS 5/13 (West 2014)), and that the managing members failed to respond to his demand. The plaintiff prayed for a permanent

injunction barring Pyramid I and its managing members from violating the Illinois Securities Law of 1953; the payment of the full amount of the plaintiff's investment in Pyramid I, plus interest of 10% per annum; costs and attorneys fees, and further relief as the court deems proper. In count VI, the plaintiff alleges the same basic facts with respect to the plaintiff's investment in Pyramid II, and seeks the same relief.

¶ 13 The defendants filed a number of motions attacking the verified first amended complaint, including a motion to enforce the arbitration provisions at issue in this appeal. In the motion to enforce arbitration, the defendants asserted that there are arbitration provisions in the respective Operating Agreements for Pyramid I and Pyramid II. The defendants further asserted that the plaintiff was provided with copies of the Operating Agreements for Pyramid I and Pyramid II prior to making his decisions to invest in those corporations; that the plaintiff invested in Pyramid I on February 16, 2010; that the plaintiff signed the Operating Agreement for Pyramid II, and invested in Pyramid II on November 8, 2010. The defendants claimed that the plaintiff received copies of the Operating Agreements for Pyramid I and Pyramid II prior to making his decisions to invest, and thereby had actual or constructive notice of the arbitration provisions at the time he made his investments in Pyramid I and Pyramid II. The defendants argued that there was a valid agreement to arbitrate, and that under the Illinois Uniform Arbitration Act, a written agreement to submit an existing controversy to arbitration is valid, enforceable, and irrevocable.

¶ 14 The defendants also asserted that the allegations in the plaintiff's verified amended complaint fall squarely within the scope of the arbitration provisions because the

allegations relate to the plaintiff's investments in Pyramid I and Pyramid II, and thus relate to and arise from the Pyramid Operating Agreements. Finally, the defendants claimed that the plaintiff failed to show the arbitration provisions were unconscionable or invalid. The defendants argued that the plaintiff acted in bad faith when he summarily refused to comply with the arbitration provisions in the Pyramid Operating Agreements, and they asked the court to compel arbitration.

¶ 15 The defendants attached several documents in support of their motion to enforce arbitration, including copies of the Operating Agreements for Pyramid I and Pyramid II, and declarations by defendant Gunapooti, and by defendant Nisar. In the opening paragraph of Nisar's declaration, Nisar identified himself as a managing member of Pyramid I and Pyramid II. He then stated: "I have personal knowledge of the facts set forth in this Declaration, based upon my experience with the LLC's, my review of relevant documents or my discussions with other managing members with particular knowledge." Nisar noted that the Operating Agreements for Pyramid I and Pyramid II both contain provisions for binding arbitration of any disputes arising out of or relating to the respective Operating Agreements. Nisar further averred:

"11. That the Operating Agreement was provided to the plaintiff, Mazhar Lakho, by PIM I and PIM II prior to him making the decision to become a member of the PIM LLC's (prior to or on or about February 26, 2010) and he reviewed the Operating Agreements which included a forum selection clause *** as well as a mandatory arbitration clause.

12. That when plaintiff, Lakho, decided to invest in the PIM LLC's he met at the law office of attorney Andrew Weinhaus (the attorney for the PIM LLC's) which is located at 8000 Maryland in Clayton, Missouri in 2010 and he obtained and reviewed the PIM LLCs' Operating Agreement with attorney Weinhaus and he

provided a check for the purchase of his membership interest in the PIM LLC's while in the State of Missouri."

¶ 16 In the opening paragraph of Gunapooti's declaration, Gunapooti also stated, "I have personal knowledge of the facts set forth in this Declaration, based upon my experience with PIM II, my review of relevant documents or my discussions with other members with particular knowledge." In subsequent paragraphs, Gunapooti averred as follows:

"5. That when plaintiff, Mazhar Lakho, decided to invest in PIM II, he met at the law office of attorney Andrew Weinhaus (the attorney for PIM II) which is located at 8000 Maryland Ave, Clayton, Missouri, in 2010 and he obtained and reviewed the Operating Agreement of PIM II with attorney Andrew Weinhaus and he provided a check for the purchase of his membership interest in PIM II while in the State of Missouri.

6. That I was present at the meeting of November 8, 2010 at the law offices of Andrew Weinhaus and did witness the plaintiff, Mazhar Lakho, and his wife, Asma Lakho, sign the Operating Agreement of PIM II, which did include the binding forum selection clause and mandatory arbitration clause."

¶ 17 The defendants attached a document called "Operating Agreement of Pyramid Investment Management, LLC" in support of their motion to enforce arbitration. The Operating Agreement consists of 22 pages of text, including provisions identifying the members, the rights and duties of members, and allocations of voting rights, profits, and losses. The plaintiff is not identified as a member in the text of the agreement. This Operating Agreement contains an arbitration provision:

"Any controversy or claim arising out of or relating to this Operating Agreement, or to the interpretation, breach or enforcement thereof, shall be settled by binding arbitration conducted in accordance with the then current arbitration rules of the American Arbitration Association ('the AAA') strictly in accordance with the provisions of this Operating Agreement and the substantive laws of the State of

Florida. The arbitration shall be conducted at the AAA's office located closest to the principal place of business of the Company."

¶ 18 A document identifier is located near the bottom of each page of text, and appears as follows:

"Operating Agreement
Pyramid Investment Management, LLC
Page 1"

¶ 19 The final page of this Operating Agreement is a certificate page. The certification appears at the top of this page:

"The undersigned hereby agree, acknowledge, and certify that the foregoing *Amended and Restated Operating Agreement*, consisting of Twenty-Three (23) pages, including this page but excluding the attached Exhibit, constitutes the Amended and Restated Operating Agreement of Pyramid Investment Management, LLC adopted by the Members of the Company as of 7/8, 2009." (Emphasis added.)

There are signature lines directly under the certification statement. Signatures appear on the signature lines for Abid Nisar, Mahendra Gunapooti, Mubeen Mahmood, and Arif Pyarali. There is no signature line for the plaintiff on this certificate page.

¶ 20 There is also a document identifier located near the bottom of the certificate page, and it appears as follows:

"Amended and Restated Operating Agreement
Pyramid Investment Management, LLC
Page 23."

¶ 21 The record reveals that the certificate page pertains to an Amended and Restated Operating Agreement, rather than the document to which it is attached. The Amended and Restated Operating Agreement is not in the record before us. In addition, there is no certificate page for the Operating Agreement for Pyramid I in this record.

¶ 22 Another document, "Amendment to Operating Agreement of Pyramid Investment Management, LLC," (Amendment) was also attached in support of the defendants' motion. The Amendment is a four-page document. It initially states: "Effective as of March 18, 2013, the following amendments are being made to the Operating Agreement of Pyramid Investment Management, LLC, a copy of which is attached as Exhibit 'A' (hereinafter 'Operating Agreement')." However, Exhibit A is not attached to the Amendment. There is no arbitration provision set out on any of the four pages in the Amendment. The Amendment states that it is amending specific paragraphs in the 2009 Operating Agreement, including the identities of the members and the allocation of voting rights, profits and losses. According to the Amendment, the plaintiff is a member, having a 7% voting interest, and a 7% allocation of profits and losses.

¶ 23 The last page of the Amendment is the certificate page. The certification appears at the top of the page, and states: "The undersigned hereby agree, acknowledge and certify that the foregoing Amendment to Operating Agreement of Pyramid Investment Management, LLC, *** constitutes the Amendment to the Operating Agreement of Pyramid Investment Management, LLC, adopted by the members of the Company." The Amendment identifies Nisar, Gunapooti, Mahmood, Pyarali, Shabbir Shaikh, Asif Habib, and the plaintiff as members of Pyramid I. Beneath the certification are signature lines for the aforementioned members. Signatures appear on the signature lines for Nisar, Gunapooti, Pyarali, Shaikh, and Habib. The signature lines for the plaintiff and Mubeen Mahmood are blank.

¶ 24 The defendants also attached the Operating Agreement of Pyramid II in support of the motion to enforce arbitration. The Operating Agreement for Pyramid II does not state its effective date. It contains the same arbitration provisions as set forth in the Operating Agreement above. According to a section in the Operating Agreement for Pyramid II, Nisar, Gunapooti, Mahmood, Pyarali, the plaintiff and his wife, Habib, Azra Ahmad, Shaikh, Victoria J. Dorr Trust, and Frozen Fortress, LLC, are identified as members of this venture.

¶ 25 The Operating Agreement for Pyramid II includes a certificate page. There are actually three copies of the certificate page. Each page contains a different array of signatures. It appears that some members signed all copies of the certificate page. For example, Gunapooti's signature appears on all three copies of the certificate page. On one copy, Gunapooti's signature appears on the signature line, and just beneath it is a hand-printed date, "4/25/10." On a second copy of the certificate, a hand-printed date, "11/18/10," appears just beneath Gunapooti's signature. On a third copy, there is an illegible signature on Gunapooti's signature line, and that signature is undated. The signatures of Nisar and Pyarali appear on all three of the certificate copies, but there are slight variations in their signatures. This suggests that these certificates may have been circulated for signatures, and that the members did not sign the Operating Agreement for Pyramid II at the same time and place. A signature appears on the plaintiff's signature line on only one copy of the certificate document, the copy containing Gunapooti's signature, with the hand-printed date of 11/8/10. This document contains a document

identifier at the bottom of each page, including the certificate pages, and the document identifier is consistent throughout the document.

¶ 26 The plaintiff filed a response to the defendants' motion to enforce arbitration. Therein, the plaintiff claimed that the defendants' motion to enforce arbitration should be denied because the allegations in the verified amended complaint do not fall within the scope of the arbitration provisions in the Pyramid Operating Agreements. The plaintiff argued that the verified complaint alleges that the defendants knowingly engaged in a scheme to defraud him by providing false and misleading information about investing in Pyramid I and Pyramid II, and that the defendants' fraudulent misrepresentations did not arise from or relate to Operating Agreements for Pyramid I and Pyramid II. The plaintiff also argued that the defendants' motion to enforce arbitration should be denied because he never signed the Operating Agreement for Pyramid I, and he never agreed to arbitrate matters related to his decision to invest in Pyramid I.

¶ 27 After considering the briefings and oral arguments of the parties, the trial court entered an order stating, "Motion to compel arbitration is granted. Motion to transfer is denied as moot." The trial court made no findings of fact, and gave no explanation in support of its ruling. The plaintiff filed a timely interlocutory appeal pursuant to Illinois Supreme Court Rule 307(a)(1) (eff. July 6, 2000).

¶ 28 DISCUSSION

¶ 29 An order granting or denying a motion to compel arbitration is an interlocutory order subject to appellate review under Supreme Court Rule 307(a)(1) (eff. July 6, 2000). *Salsitz v. Kreiss*, 198 Ill. 2d 1, 11, 761 N.E.2d 724, 730 (2001). When an interlocutory

appeal is taken pursuant to Supreme Rule 307(a)(1), the only question is whether there is a sufficient showing to sustain the trial court's order granting or denying the relief sought. *Woods v. Patterson Law Firm, P.C.*, 381 Ill. App. 3d 989, 993, 886 N.E.2d 1080, 1084 (2008). In this case, the trial court did not hold an evidentiary hearing on the defendants' motion to enforce arbitration, and the court did not include any factual findings or analysis in its order compelling arbitration. Accordingly, our review is *de novo*. *LAS, Inc. v Mini-Tankers, USA, Inc.*, 342 Ill. App. 3d 997, 1001, 796 N.E.2d 633, 636 (2003).

¶ 30 Generally, Illinois considers arbitration to be a favored method of settling disputes. *Salsitz*, 198 Ill. 2d at 13, 761 N.E.2d at 731. The Uniform Arbitration Act (Act) (710 ILCS 5/1 (West 2014)) provides that a written agreement to arbitrate or a provision in a written contract to arbitrate is valid, enforceable, and irrevocable save upon grounds as exist for revocation of any contract. Section 2(a) of the Act provides that upon application of a party showing an agreement to arbitrate and the opposing party's refusal to arbitrate, a court is empowered to compel arbitration. 710 ILCS 5/2(a) (West 2014). Section 2(a) further provides that if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issues raised and shall order arbitration if it finds for the moving party, but otherwise it shall deny the application. 710 ILCS 5/2(a) (West 2014).

¶ 31 The pro-arbitration policy is not intended to render arbitration agreements more enforceable than other contracts, and it does not operate in disregard of the intent of the contracting parties. *Carter v. SSC Odin Operating Co.*, 2012 IL 113204, ¶ 55, 976 N.E.2d 344. An arbitration agreement is a matter of contract, and like any other contract,

the principles of state contract law apply. *Carter*, 2012 IL 113204, ¶ 55; 976 N.E.2d 344; *Salsitz*, 198 Ill. 2d at 13, 761 N.E.2d at 731. Under basic principles of contract law, only parties to the arbitration contract may compel arbitration or be compelled to arbitrate. *Carter*, 2012 IL 113204, ¶ 55, 976 N.E. 2d 344. In the absence of a contract to arbitrate, arbitration cannot be coerced. *Vassilkovska v. Woodfield Nissan, Inc.*, 358 Ill. App. 3d 20, 25, 830 N.E.2d 619, 623 (2005). Additionally, parties are bound to submit to arbitration only those issues that they have agreed to resolve through the arbitration mechanism, and an arbitration agreement will not be extended by construction or implication. *Carter*, 2012 IL 113204, ¶ 55, 976 N.E.2d 344.

¶ 32 When presented with a motion to compel arbitration, the trial court's inquiry is limited to certain gateway matters, such as whether the parties have a valid agreement to arbitrate at all, and if so, whether the issues in dispute come within the scope of the arbitration agreement. *Jensen v. Quik International*, 213 Ill. 2d 119, 123, 820 N.E.2d 462, 465 (2004). The party seeking to compel arbitration has the initial burden to establish that the parties have a valid agreement to arbitrate and that the claims raised are within the scope of the agreement to arbitrate. *Hubbert v. Dell Corp.*, 359 Ill. App. 3d 976, 983, 835 N.E.2d 113, 121 (2005).

¶ 33 In this case, the plaintiff's claims of fraud and securities violations involve two separate investments in two distinct companies, Pyramid I, and Pyramid II. The defendants argued that plaintiff's claims regarding his investment in Pyramid I are subject to the arbitration provision in the Operating Agreement for Pyramid I, and that the plaintiff's claims regarding his investment in Pyramid II are subject to the arbitration

provision in the Operating Agreement for Pyramid II. The trial court compelled arbitration of all claims. Therefore, we must consider whether there is a sufficient showing to sustain the trial court's order compelling arbitration as to each investment.

¶ 34

Pyramid I

¶ 35 Initially, we consider whether the defendants met their burden to establish the existence of a valid agreement to arbitrate the claims related to the plaintiff's decision to invest in Pyramid I. In this case, the defendants sought to compel arbitration based on the arbitration provision in the Operating Agreement for Pyramid I. The defendants concede that they cannot show that the plaintiff ever signed the Operating Agreement for Pyramid I. They contend, however, that the plaintiff is bound by the arbitration provision in the Operating Agreement for Pyramid I, because he received a copy of that agreement prior to investing in Pyramid I. The defendants rely on a document called "Operating Agreement of Pyramid Investment Management, LLC" and the declarations of Nisar and Gunapooti which they submitted in support of their argument. There are, however, a number of problems with these documents. First, we note that the "Operating Agreement of Pyramid Investment Management, LLC" has not been adequately authenticated. Next, there is no indication that the Operating Agreement for Pyramid I was signed by any member of Pyramid I. The certificate page, which purports to contain the signatures of members to the agreement, refers to and ostensibly certifies a different agreement, namely "the foregoing Amended and Restated Operating Agreement." The certificate page does not correspond with the Operating Agreement to which it is appended, and the "Amended and Restated Operating Agreement" is not part of the record before us. In

addition, the plaintiff is not identified as a member of Pyramid I in the text of the Operating Agreement for Pyramid I. According to the record, the first time the plaintiff is identified as a member of Pyramid I is in the Amendment to the Operating Agreement of Pyramid Investment Management, LLC. This Amendment became effective March 18, 2013, more than three years after the plaintiff made his substantial investment in Pyramid I. In addition, there is no arbitration provision mentioned in the four-page Amendment. Further, the plaintiff was not a signator to the Amendment to the Operating Agreement for Pyramid I, and there is no indication that the plaintiff was a signator to any written contract containing an agreement to arbitrate matters related to his decision to invest in Pyramid I.

¶ 36 After reviewing the record, we find no factual support for the defendants' contentions that the plaintiff reviewed the arbitration clause contained within the Operating Agreement for Pyramid I prior to making his decision to invest in Pyramid I, and therefore had actual or constructive knowledge of the arbitration provision in that agreement. Again, we note that the defendants failed to produce an authenticated and executed copy of the Operating Agreement for Pyramid I, or any applicable amended agreement. The declaration of Gunapooti relates to the plaintiff's investment in Pyramid II, not Pyramid I. Nisar states that he has "personal knowledge" of the facts averred in his declaration based on his "experience" with the Pyramid companies, and his review of "relevant documents," or his "discussions with other managing members with particular knowledge." But, Nisar does not identify the documents that he reviewed or the facts that he derived from those documents. Likewise, he does not identify the other managing

members with whom he spoke, or the substance of those conversations. In short, Nisar's declaration consists of a number of vague and conclusory statements, rather than specific facts, and there are no attributable sources for the information averred.

¶ 37 In this case, the defendants failed to establish the existence of a valid agreement to arbitrate any claims or disputes arising out of or related to the plaintiff's decision to invest in Pyramid I. Because the defendants failed to show that there was a valid agreement to arbitrate, the trial court erred in granting the defendants' motion to compel arbitration of any claims or disputes pertaining to the plaintiff's investment in Pyramid I. The order compelling arbitration, as it relates to counts I, III, and V of the plaintiff's verified first amended complaint, is hereby reversed.

¶ 38 Pyramid II

¶ 39 Next, we consider whether there is a sufficient showing to sustain the trial court's order compelling arbitration of the claims related to the plaintiff's investment in Pyramid II. It is undisputed that the plaintiff invested \$55,000 in Pyramid II on April 8, 2010, and that the plaintiff signed the Operating Agreement for Pyramid II on or about November 8, 2010. The Operating Agreement for Pyramid II contains the same broad arbitration clause covering any dispute that arises from or relates to the agreement. In the verified first amended complaint, the plaintiff alleges that he was fraudulently induced to invest in Pyramid II, based on misrepresentations regarding the return on his investment. According to the record, approximately six months later, the plaintiff signed the Operating Agreement for Pyramid II, which contained different terms regarding withdrawal events and returns on his investment. The plaintiff has not alleged that his

decision to sign the Operating Agreement for Pyramid II was obtained through fraud or coercion. More importantly, the plaintiff has not claimed that the arbitration provision is invalid. Instead, he argues that his fraud claim does not fall within the scope of the arbitration clause. "The question whether the parties have submitted a particular dispute to arbitration, *i.e.*, the "*question of arbitrability*," is "an issue for judicial determination [u]nless the parties clearly and unmistakably provide otherwise." ' " (Emphasis in original.) [Citations.]" *Hollingshead v. A.G. Edwards & Sons, Inc.*, 396 Ill. App. 3d 1095, 1099, 920 N.E.2d 1254, 1258 (2009). A challenge to the validity of the agreement as a whole, rather than the arbitration provision within the agreement, is a matter to be considered by the arbitrator in the first instance. *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 445-46 (2006); *Bess v. DirecTV, Inc.*, 381 Ill. App. 3d 229, 236, 885 N.E.2d 488, 494 (2008). Inasmuch as the trial court provided no findings of fact, or conclusions of law, we find, based upon the record before us, that the parties entered into a valid arbitration agreement and that the plaintiff's claims fall within the scope of that arbitration clause. Therefore, the plaintiff's allegations regarding fraudulent inducement to invest in Pyramid II are matters to be considered by the arbitrator, and the order compelling arbitration, as it relates to counts II, IV, and VI of the plaintiff's verified first amended complaint, is affirmed.

¶ 40

CONCLUSION

¶ 41 In this case, the defendants failed to satisfy their burden to establish that the parties had a valid agreement to arbitrate under the Operating Agreement for Pyramid I, and the trial court erred in compelling arbitration as to counts I, III, and V of the

plaintiff's verified first amended complaint. In contrast, the defendants met their burden to show that there was a valid agreement to arbitrate under the Operating Agreement for Pyramid II, and that plaintiff's claims arose from and related to the Operating Agreement for Pyramid II. Therefore, the trial court's order compelling arbitration of counts II, IV, and VI, is affirmed. Accordingly, the judgment of the circuit court is affirmed in part and reversed in part, and the cause is remanded for further proceedings.

¶ 42 Affirmed in part and reversed in part; cause remanded.