2001 WL 204214
United States District Court, S.D. New York.

Ajay CHANCHANI and
Bharati Chanchani, Plaintiffs,
v.
SALOMON/SMITH BARNEY, INC., Defendant.

No. 99 CIV 9219 RCC.
|
March 1, 2001.

OPINION AND ORDER

CASEY, D.J.

***1** Plaintiffs Ajay and Bharati Chanchani (collectively, the "Chanchanis") filed the above-captioned action against their former employer, defendant Salomon Smith Barney, Inc. ("Smith Barney" or the "Company"), alleging common law wrongful termination and employment discrimination in violation of Title VII of the civil rights laws, 42 U.S.C. § 2000 *et seq.* Smith Barney now moves to compel arbitration pursuant to the dispute-resolution clause contained in the Company's Employee Handbook, and requests that this Court stay further proceedings pending resolution of that arbitration. For the reasons set forth below, Smith Barney's motion is granted.

I. BACKGROUND

Defendant Smith Barney, a registered broker-dealer of securities, is headquartered in New York, New York, with branches nationwide. During the period relevant to the instant motion, the Chanchanis were employed in Smith Barney's Lawrenceville, New Jersey office. Mr. Chanchani held the position of Financial Consultant, or broker. Mrs. Chanchani initially worked as a Sales Assistant, providing clerical support to her husband, before she too obtained the title of Financial Consultant.

In 1993, Smith Barney distributed to its personnel an Employee Handbook containing the Company's dispute-resolution policy, which made arbitration the exclusive forum for claims against the Company. Smith Barney issued updated versions of the Handbook in 1994, 1995 and 1996. Mr. and Mrs. Chanchani acknowledged receipt of the 1996 version by signing individual Employee Handbook Receipt Forms in March 1997. *See* Declaration of Scott E. Kresch dated November 1, 1999 ("Kresch Decl."), Exs. 3–4.[1] In executing the Receipt Forms, the Chanchanis affirmed that they reviewed the Handbook and agreed to "comply with all the Policies and Procedures of the Company." *Id.*

The 1996 Handbook sets forth the arbitration policy, in pertinent part, as follows:

> The Policy makes arbitration the required, and exclusive, forum for the resolution of all disputes based on legally protected rights (i.e. statutory, contractual or common law rights) that may arise between an employee or former employee and the [Company] or its affiliates, officers, directors, employees and agents (and which are not resolved by the internal dispute resolution procedure), including claims, demands or actions under Title VII of the Civil Rights Act of 1964 ... and any other federal, state or local statute, regulation or common law doctrine, regarding employment discrimination, conditions of employment, or termination of employment.

Kresch Decl., Ex. 1 at p. 5. The policy further provides that arbitration shall be conducted pursuant to the rules of the New York Stock Exchange ("NYSE") except as modified by the policy. *Id.* If the NYSE declines to provide a forum for the dispute, the arbitration is to be governed by the rules of the American Arbitration Association ("AAA"). *Id.*

In March 1998, Smith Barney again distributed Receipt Forms to the Lawrenceville employees pertaining to a newly-issued Interim Employee Handbook. The Interim

Handbook, by its terms, "supersedes any conflicting human resources/employment-related policies" of Smith Barney. Reply Declaration of Scott E. Kresch dated April 19, 2000 ("Kresch Reply Decl."), Ex. 1. The Chanchanis never signed the 1998 Receipt Forms. In any event, in April 1998, the branch manager, Rochelle Horst, informed the Lawrenceville employees that the Receipt Form procedure was under review, and stated that she would advise them upon clarification of the policy. *See* Chanchani Aff., Ex. D. Ms. Horst returned those 1998 Receipt Forms which already had been signed to the appropriate individuals.

***2** On October 1, 1998, Smith Barney terminated Mr. Chanchani. Mrs. Chachani left the Company thereafter. In 1999, the Chanchanis filed discrimination claims against Smith Barney with the EEOC. After the EEOC issued a "right to sue" letter, the Chanchanis filed the instant complaint in this Court asserting race discrimination, national original discrimination, retaliation and wrongful termination. Specifically, the complaint alleges that (1) Smith Barney improperly failed to promote Mr. Chanchani; (2) Lawrenceville management allocated new syndicate issues among employees in a discriminatory fashion; (3) Mrs. Chanchani was subject to separate incidents of harassment by Ms. Horst; and (4) the Chanchanis were retaliated against for reporting their complaints to management. Smith Barney now moves to compel arbitration and to stay the proceedings in this Court on the ground that the arbitration policy contained in the Employee Handbook governs this dispute.

II. DISCUSSION

The federal policy favoring arbitration is well-established. *See Gilmer v. Interstate/Johnson Lane Corporation,* 500 U.S. 20, 24 (1991); *Desiderio v. National Association of Securities Dealers, Inc.,* 191 F.3d 198, 203–04 (2d Cir.1999); *Arakawa v. Japan Network Group,* 56 F.Supp.2d 349, 352 (S.D.N.Y.1999); *Maye v. Smith Barney Inc.,* 897 F.Supp. 100, 105 (S.D.N.Y.1995). Under the Federal Arbitration Act ("FAA"), a written agreement to arbitrate "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. When faced with a motion to compel arbitration under the FAA, the court must assess the following factors: (1) whether the parties agreed to arbitrate; (2) whether the parties' claims fall within the scope of the agreement; and (3) if federal statutory claims are at issue, whether Congress intended those claims to be non-arbitrable. *Genesco, Inc. v. T. Kakiuchi & Co.,* 815 F.2d 840, 844 (2d Cir.1987); *see also Arakawa,* 56 F.Supp.2d at 352. [2]

A. AGREEMENT TO ARBITRATE

With respect to the first factor, courts employ "ordinary principles of contract and agency" in order to determine whether the parties have agreed to arbitrate. *Thomson–CSF S.A. v. American Arbitration Ass'n,* 64 F.3d 773, 776–77 (2d Cir.1995). A party generally will be held to a signed contract unless he can demonstrate special circumstances, such as duress or coercion, that contradict his intent to be bound. *See Arakawa,* 56 F.Supp.2d at 352 (applying New York law). Smith Barney argues that the Chanchanis expressly accepted binding arbitration when they executed their Employee Handbook Receipt Forms in 1997. The language of the Receipt Form reads, in pertinent part:

> I have reviewed the Smith Barney Employee Handbook ... I will comply with all the Policies and Procedures of the Company. I will take responsibility for having any questions about any policies answered.

***3** Kresch Decl., Exs. 3–4.

Courts in this district routinely uphold arbitration agreements contained in employee handbooks where, as here, the employee has signed an acknowledgment form. *See Arakawa,* 56 F.Supp.2d at 352 (holding that parties' arbitration agreement was manifested in employee handbook and acknowledgment form signed by plaintiff, and constituted a valid, enforceable contract to arbitrate); *Degaetano v. Smith Barney,* No. 95 Civ. 1613, 1996 WL 44226, at *7–8 (S.D.N.Y. Feb. 5, 1996) (holding that signed arbitration agreement in employment handbook was an enforceable contract in accordance with New York law); *Maye,* 897 F.Supp. at 105–07 (enforcing signed arbitration policy contained in employee handbook according to state law principles of contract formation).

Notwithstanding this case law, the Chanchanis argue that the 1996 Employee Handbook policy does not constitute a binding agreement because Smith Barney "disavowed" it by issuing the Interim Handbook without requiring Receipt Forms. However, by its own terms, the 1998 Interim Handbook supersedes only previous "conflicting" employment policies. Kresch Reply Decl., Ex. 1. The arbitration provision contained in the 1998 Interim Handbook is identical in all respects to that contained in the earlier edition. *Id.* ¶ 3. There is therefore no support for plaintiffs' contention that the policy in the 1996 manual was superseded by the Interim Handbook.

Moreover, the Chanchanis would still be subject to the later arbitration provision even though they did not execute Receipt Forms. The FAA does not require that the parties sign written acknowledgments of an arbitration agreement; it mandates only that the agreement itself be in writing. *See* 9 U.S.C. § 3; *see also Gonzalez v. Toscorp Inc.,* No. 97 Civ. 8158, 1999 WL 595632, at *2 (S.D.N.Y. Aug. 5, 1999) (citing cases). It is well-settled that a non-signatory party may be subject to an arbitration agreement if his subsequent conduct indicates that he has assumed the obligation to arbitrate. *See Thomson,* 64 F.3d at 777. Because the Chanchanis continued to work at Smith Barney even after the promulgation of the Interim Handbook, and never informed Smith Barney that they rejected its terms, they will be deemed to have accepted its provisions.

In a similar case from this district, the Court held that the plaintiff was subject to the company's arbitration policy, distributed to employees along with a copy of the company's handbook, despite the fact that the plaintiff did not sign the required receipt form. *See Gonzales,* 1999 WL 595632 at *1–3. The Court found that the plaintiff assumed the obligation to arbitrate when he continued his employment with the company past the effective date of the policy. *Id.* at *2; *see also Genesco v. T Kakiuchi & Co.,* 815 F.2d 840, 846 (2d Cir.1987) (finding that plaintiff agreed to arbitrate with defendant under both signed and unsigned agreements); *Bishop v. Smith Barney,* No. 97 Civ. 4807, 1998 WL 50210, at *5 (S.D.N.Y. Feb. 6, 1998) (holding that unsigned arbitration agreement was binding under the FAA and indicating that plaintiff's conduct demonstrated an obligation to arbitrate). Therefore, the Chanchanis can be held to arbitration under either the 1996 or the 1998 policy.

B. SCOPE OF THE AGREEMENT

***4** Courts must resolve any doubts as to the scope of arbitrable issues in favor of arbitration. *See Genesco,* 815 F.2d at 847 (citing *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.,* 460 U.S. 1, 24–25 (1983)). The Smith Barney arbitration policy, by its terms, applies to "legally protected rights (i.e. statutory, contractual or common law rights) ... including claims, demands or actions under Title VII of the Civil Rights Act of 1964 ... and any other federal, state or local statute, regulation or common law doctrine, regarding employment discrimination, conditions of employment, or termination of employment." Kresch Decl., Ex. 1 at p. 5. This comprehensive language therefore encompasses both plaintiffs' common law wrongful termination claim and plaintiffs' Title VII claims.

The Chanchanis argue, however, that the Smith Barney policy cannot encompass their employment discrimination claims because NYSE Rules 347 and 600, as amended effective January 1, 1999, mandate that such claims are not eligible for arbitration in the absence of a *post-dispute* arbitration agreement:

Rule 347. Controversies As to Employment or Termination of Employment

> (a) Except as provided in paragraph (b), any controversy between a registered representative and any member or member organization arising out of the employment or termination of employment of such registered representative by and with such member or member organization shall be settled by arbitration, at the instance of any such party, in accordance with the arbitration procedure prescribed elsewhere in these rules.
>
> (b) A claim alleging employment discrimination, including any sexual harassment claim, in violation of a statute shall be eligible for arbitration only where the parties have agreed to arbitrate the claim after it has arisen.

Rule 600. Arbitration

> ...
>
> (f) Any claim alleging employment discrimination, including any sexual harassment claim, in violation of

> a statute shall be eligible for submission to arbitration under these Rules only where the parties have agreed to arbitrate the claim after it has arisen.

Reply Declaration of Michael Delikat dated April 20, 2000 ("Delikat Reply Decl."), Ex. 1.[3] The Chanchanis argue that these Rules are applicable here because the Chanchanis' Uniform Application for Securities Industry Registration or Transfer, commonly known as a Form U–4, as well as the Smith Barney policy itself, provide that arbitration shall be conducted in accordance with the NYSE rules.

The Chanchanis contend that the NYSE rules must govern this dispute because the Smith Barney arbitration policy is superseded by the Chanchanis' Form U–4s. As brokers, the Chanchanis executed Form U–4s in order to become "registered representatives" with the NYSE and other self-regulatory securities organizations. The U–4 signed by Mr. Chanchani provides that:

> I agree that any controversy between me and any member or member organization or affiliate or subsidiary thereof arising out of my employment or the termination of my employment shall be settled by arbitration at the instance of any such party in accordance with the arbitration procedure prescribed in the Constitution and Rules then obtaining of the New York Stock Exchange, Inc.

***5** Affidavit of **Alice K. Jump** dated April 13, 2000 ("Jump Aff."), Ex. 1. The U–4 signed by Mrs. Chanchani is similar:

> I agree to arbitrate any dispute, claim or controversy that may arise between me and my firm, or a customer, or any other person, that is required to be arbitrated under the rules, constitutions, or by-laws of the organizations indicated in item 10 as may be amended from time to time and that any arbitration award rendered against me may be entered as a judgment in any court of competent jurisdiction.

Id., Ex. 2. The Chanchanis urge that these arbitration agreements, which reference the NYSE rules, must take precedence over the Smith Barney policy, particularly as Smith Barney itself is a member of the NYSE.

The Court, however, does not agree that the Form U–4s trump the Smith Barney policy. First of all, it is generally recognized that later agreements supersede earlier agreements, not vice versa. *See, e.g., Kreiss v. McCown De Leeus & Co.,* 37 F.Supp.2d 294, 301 (S.D.N.Y.1999) ("under New York law, a subsequent contract regarding the same subject matter supersedes the prior contract") (citations omitted). Mr. and Mrs. Chanchani signed their U–4s in 1971 and 1996, respectively; therefore the 1997 Receipt Forms would govern. In any event, the Court can give effect to both agreements because there is no conflict between the two—the terms of the U–4s and the NYSE rules in no way prohibit member organizations from entering into separate, private arbitration agreements with their employees. Indeed, the NYSE Rules merely prevent the NYSE from acting as an arbitral *forum* with respect to pre-dispute arbitration agreements. In its release approving the amendments to the Rules, the Securities and Exchange Commission ("SEC") recognized that, according to the NYSE's own interpretation, the proposal "neither invalidates pre-disputes arbitration agreements nor forces parties to litigate statutory employment discrimination claims—it merely removes the Exchange as an arbitration forum for such claims." SEC Release No. 34–40858, 1998 WL 907943, at *5 (Dec. 29, 1998). The SEC also recognized that such disputes could still be brought in "another forum provided for in the Form U–4 *or* arbitration agreement." *Id.* at *4 (emphasis added).

The Smith Barney arbitration policy provides such an alternative forum, stating that "[i]f the NYSE declines to provide a forum for dispute, the arbitration shall be conducted under the auspices of the American Arbitration Association (AAA), pursuant to the AAA rules as modified by the Travelers Group Arbitration Policy." Kresch Decl., Ex. 1 at p. 5. Consequently, plaintiffs' second argument—that the Smith Barney policy itself prohibits pre-dispute agreements because it references the

NYSE rules—also must fail. Read in full, the policy clearly requires that the parties submit their dispute to the AAA where, as here, the NYSE does not provide a forum for the dispute. Therefore, both plaintiffs' Title VII employment claims and their common law wrongful termination claim are subject to arbitration under the AAA rules.

C. ARBITRABILITY OF FEDERAL STATUTORY CLAIMS

***6** It is well-established in this Circuit that employment discrimination claims under Title VII of the Civil Rights Act are arbitrable. In *Desiderio v. National Ass'n of Securities Dealers, Inc.,* 191 F.3d 198, 204–05 (2d Cir.1999), the Second Circuit definitively held that compulsory arbitration was not incompatible with the purposes of Title VII. The Second Circuit's decision was in accordance with the long-standing case law in this Circuit. *See, e .g., Maye,* 897 F.Supp. at 109–110.

III. CONCLUSION

For the foregoing reasons, defendant Smith Barney's motion to compel arbitration is granted. The Court will not conduct any further proceedings pending resolution of the parties' arbitration. The Court therefore directs the Clerk of the Court to close this case subject to reinstatement in the event that post-arbitral proceedings become necessary.

SO ORDERED:

All Citations

Not Reported in F.Supp.2d, 2001 WL 204214, 85 Fair Empl.Prac.Cas. (BNA) 840, 80 Empl. Prac. Dec. P 40,538, 17 IER Cases 860

Footnotes

1 Mr. Chanchani appears also to have signed a copy of the Receipt Form in February 1997. *See* Affidavit of Ajay Chanchani dated April 13, 2000 (“Chanchani Aff.”), Ex. A.

2 The Court generally must also decide whether to stay the balance of the case pending arbitration in the event that certain claims are non-arbitrable. *Genesco,* 815 F.2d at 844. Because the Court finds that all claims asserted herein are subject to arbitration, this fourth factor is irrelevant. *See Arakawa,* 56 F.Supp.2d at 353 n. 2.

3 Presumably the Chanchanis concede that their common law wrongful termination claim is not excluded from arbitration by the NYSE rules, which by their terms apply only to claims of “employment discrimination ... in violation of a statute ....” *Id.* Plaintiffs' papers do not address this distinction.