IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

| | | |
|---|---|---|
| RAYMOND M. TERRY and KITTY MOORE CASE, | ) | |
| Plaintiffs, | ) | |
| VS. | ) | No. 02-1035 |
| LABOR READY, INC., | ) | |
| Defendant. | ) | |

ORDER GRANTING DEFENDANT'S MOTION TO COMPEL ARBITRATION OF PLAINTIFF TERRY'S CLAIM

Plaintiffs Raymond M. Terry and Kitty Moore Case have filed suit against their former employer, Labor Ready, Inc., for allegedly discriminating against them on the basis of their race and gender in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., as amended ("Title VII"), and the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq. ("THRA"). Defendant has filed a motion to compel arbitration of Plaintiff Terry's claim. Plaintiffs have responded to the motion.[1] For the reasons set forth below, Defendant's motion is GRANTED.

Plaintiff Terry was hired by Defendant in May 1999, as a customer service

[1] Plaintiffs have styled their response "motion in opposition to arbitration and motion to dismiss motion to compel." To the extent that this document can be considered a motion, it is DENIED.

representative.[2] On May 17, 1999, Plaintiff signed a written agreement in which he agreed to submit to arbitration all claims "arising out of or relating to this Contract or the breach of this Contract or Employee's employment" including "any claim alleging discrimination or harassment in any form." Defendant's Exhibit 1. Plaintiff Terry also signed a second agreement on April 27, 2000, in which he agreed to submit to arbitration "claims based on any alleged violation of Title VII . . . and any other federal or state statutes, and including any claims of discrimination, harassment, retaliation, wrongful termination, compensation due or violation of civil rights." Defendant's Exhibit 2. Plaintiff alleges that his employment was terminated in March 2001 and was the result of "sexual harassment, racial discrimination and harassment as well as retaliation harassment and intimidation." Complaint at ¶ 4.

Plaintiff does not dispute the fact that he signed the agreements. Instead, Plaintiff argues that the agreements are unenforceable because (1) they establish procedural hurdles with a penalty of dismissal should the employee fail at any step; (2) they shorten the statute of limitations; (3) the discovery provisions are inadequate and ill-defined; and (4) there is no provision for meaningful judicial review.

Under the Federal Arbitration Act ("FAA"), a district court must stay proceedings if satisfied that the parties have agreed in writing to arbitrate the issue(s) presented in the lawsuit. 9 U.S.C. § 3. The district court has no discretion to refuse to compel arbitration if the court finds that the parties have so agreed. Dean Witter Reynolds, Inc. v. Byrd, 470 U.S.

[2] The facts are stated for the purpose of deciding this motion only.

213, 218 (1985). Any limitation of an arbitration provision must be read narrowly in order to effectuate the strong national policy of favoring enforcement of agreements to arbitrate, and any doubts must be resolved in favor of arbitration. Moses H. Cone Memorial Hospital v. Mercury Construction Corp., 460 U.S. 1, 24-25 (1983); Cincinnati Gas & Electric Co. v. Benjamin F. Shaw Co., 706 F.2d 155 (6th Cir. 1983). Arbitration should be ordered unless it can be said that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574, 582-83 (1960); McMahan Sec. Co. v. Forum Capital Markets, 35 F.3d 82, 88 (2nd Cir. 1994).

When a contract contains a broad arbitration clause covering all controversies arising under the agreement, arbitration must be ordered unless the party seeking to avoid it can show that the particular dispute was expressly excluded. Cincinnati Gas, 706 F.2d at 160. In Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614 (1985), the Supreme Court made clear the applicability of the FAA to statutorily-created causes of action. See also Circuit City Stores, Inc. v. Adams, 532 U.S. 105 (2001) (compelling arbitration of state court employment discrimination action); Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20 (1991) (compelling arbitration of Age Discrimination in Employment Act claim). The party resisting arbitration bears the burden of proving that the claims at issue are unsuitable for arbitration. Id.

Plaintiff first argues that the agreements to arbitrate are unenforceable because they

establish procedural hurdles with a penalty of dismissal should the employee fail at any step. Plaintiff has cited no law in support of his argument. To the contrary, as discussed in Morrison v. Circuit City, 70 F. Supp.2d 815 (S.D. Ohio 1999),

> Furthermore, the Sixth Circuit recognizes that both statutory and common law claims may be subject to an arbitration agreement enforceable under the FAA. See Cosgrove [v. Shearman Lehman Brothers], 1997 WL 4783, 1997 U.S.App. LEXIS 392 [6th Cir. 1997], at *5-*6 (citing Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 26, 111 S. Ct. 1647, 114 L.Ed.2d 26 (1991) (holding that claims arising under the Age Discrimination in Employment Act ("ADEA") may be subject to an enforceable arbitration agreement); Willis v. Dean Witter Reynolds, Inc., 948 F.2d 305, 310 (6th Cir.1991) (extending the holding of Gilmer to claims arising under Title VII)). The Supreme Court reiterated in Gilmer that, "'[h]aving made the bargain to arbitrate, the party should be held to it unless Congress itself has evinced an intention to preclude a waiver of judicial remedies for the statutory rights at issue.'" Id., 500 U.S. at 26 (quoting Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 628 (1985)).
>
> ...
>
> Because we find no evidence that Congress intended to preclude the arbitration of her statutory claims and because Plaintiff fails to persuade us that Ohio would preclude the arbitration of her state-law claims, the Court concludes that Plaintiff should be held to her bargain unless (1) the traditional grounds for revocation of a contract exist in this case or (2) the Agreement fails to protect the substantive rights guaranteed by law. See 9 U.S.C. § 2; Gilmer, 500 U.S. at 28, 33, 111 S. Ct. 1647 (quoting Mitsubishi Motors Corp., 473 U.S. at 637, 627).

70 F. Supp.2d at 820-21.

Here, Plaintiff has failed to show that any "traditional grounds for revocation of a contract exist" or that the agreements fail "to protect the substantive rights guaranteed by law." To the extent that Plaintiff argues that he was coerced into signing the arbitration agreement upon penalty of termination from his job, Plaintiff's Response at p. 1, Plaintiff's

argument is without merit. In Morrison, the court rejected the argument that an agreement to arbitrate was a contract of adhesion merely because the employee had to sign it before she could be considered for employment. 70 F. Supp.2d at 821. The court relied, in part, on Beauchamp v. Great West Life Assurance Co., 918 F. Supp. 1091 (E.D. Mich.1996), and EEOC v. Frank's Nursery & Crafts, 966 F. Supp. 500 (E.D. Mich.1997) (*rev'd on other grounds,* 177 F.3d 448 (6th Cir.1999)), "in support of the proposition that adhesion contracts do not exist where applicants have a choice of where to apply for a job." 70 F. Supp.2d at 822.

> In Beauchamp, the court indicated its reluctance in finding a contract of adhesion in a context where a plaintiff could choose to work for other employers without signing arbitration agreements. Likewise, the court in Frank's Nursery & Crafts stated that "[i]f [the applicant] disagreed with anything contained in the application she was free to simply look elsewhere for employment.... (When a party ... voluntarily *agrees* to something in an attempt to obtain employment, they are not being 'forced" to do anything"). (emphasis in original).

Id. (citations omitted).

Plaintiff has not presented any other "traditional grounds for revocation" of her arbitration agreements.

The Supreme Court has found that "'so long as the prospective litigant effectively may vindicate [his or her] statutory cause of action in the arbitral forum, the statute will continue to serve both its remedial and deterrent function.'" Gilmer, 500 U.S. at 28 (quoting Mitsubishi Motors Corp., 473 U.S. at 637). Thus, Plaintiff's first argument fails.

Plaintiff next complains that the agreement shortens the statute of limitations.

Plaintiff has not specified to what extent the agreement shortens the statute of limitations. Furthermore, parties to an arbitration agreement may shorten a statute of limitations. Morrison, 70 F. Supp.2d at 826. Therefore, this argument is without merit.

Thirdly, Plaintiff contends that the discovery provisions for arbitration are inadequate and ill-defined. The Supreme Court has "rejected generalized attacks on arbitration that rest on 'suspicion of arbitration as a method of weakening the protections afforded in the substantive law to would-be complainants.'" Green Tree Financial Corp.-Alabama v. Randolph, 531 U.S. at 90 (citations omitted). Moreover, the Court has specifically approved of reasonable limitations on discovery in the arbitration of statutory discrimination claims. Gilmer, 500 U.S. at 31.

> Gilmer also complains that the discovery allowed in arbitration is more limited than in the federal courts, which he contends will make it difficult to prove discrimination. It is unlikely, however, that age discrimination claims require more extensive discovery than other claims that we have found to be arbitrable, such as RICO and antitrust claims. Moreover, there has been no showing in this case that the NYSE discovery provisions, which allow for document production, information requests, depositions, and subpoenas, will prove insufficient to allow ADEA claimants such as Gilmer a fair opportunity to present their claims. **Although those procedures might not be as extensive as in the federal courts, by agreeing to arbitrate, a party "trades the procedures and opportunity for review of the courtroom for the simplicity, informality, and expedition of arbitration."**

Id. at 30-31 (emphasis added) (citations omitted).

Relying on Gilmer, the Sixth Circuit Court of Appeals explained that:

> The question is not whether plaintiff might have been able to secure the discovery it wanted under Fed. R. Civ. P. 56(f) in a civil action. The Supreme Court has explained that "by agreeing to arbitrate, a party 'trades the

> procedures and opportunity for review of the courtroom for the simplicity, informality, and expedition of arbitration.'" Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 31 (1991) (citation omitted). Arbitration may proceed summarily and with restricted inquiry into factual issues. See Robbins v. Day, 954 F.2d 679, 685 (11th Cir.1992).
>
> .....
>
> "Arbitrators are not bound by formal rules of procedure and evidence, and the standard for judicial review of arbitration procedures is merely whether a party to arbitration has been denied a fundamentally fair hearing." See National Post Office v. U.S. Postal Serv., 751 F.2d 834, 841 (6th Cir.1985). Fundamental fairness requires only notice, an opportunity to present relevant and material evidence and arguments to the arbitrators, and an absence of bias on the part of the arbitrators. See Bowles Financial Group, Inc. v. Stifel, Nicolaus & Co., 22 F.3d 1010, 1013 (10th Cir.1994) (citing cases).

Louisiana D. Brown 1992 Irrevocable Trust v. Peabody Coal Co., 2000 WL 178554 at **5-6 (6th Cir.). See also Willis v. Dean Witter Reynolds, Inc., 948 F.2d 305 (6th Cir. 1991) (relying on Gilmer in rejecting the contention of the plaintiff and the EEOC "that arbitration is inappropriate for Title VII claims because arbitration provides insufficient procedural safeguards and different mechanisms for discovery than are available in a judicial forum.")

As explained in Gilmer, Plaintiff has "trade[d] the procedures and opportunity for review of the courtroom for the simplicity, informality, and expedition of arbitration." Because there has been no showing that the discovery mechanism of the arbitration agreement at issue "provides insufficient procedural safeguards," this argument is without merit.

Finally, Plaintiff argues that the agreement cannot be enforced because there is no provision for meaningful judicial review. Plaintiff is in error. The FAA provides for limited

judicial review of an arbitration award. An award may be vacated under the following conditions.

> In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration--
> (1) Where the award was procured by corruption, fraud, or undue means.
> (2) Where there was evident partiality or corruption in the arbitrators, or either of them.
> (3) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.
> (4) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made . . . .

9 U.S.C. § 10(a) . That is, an arbitration award may be vacated if it was made in manifest disregard of the law. Merrill Lynch v. Jaros, 70 F.3d 418, 421 (6th Cir. 1995).

The court in Koveleskie v. SBC Capital Markets, Inc., 167 F.3d 361, 366 (7th Cir. 1999), rejected the argument that judicial review did not "provide meaningful oversight of the securities industry arbitration process because arbitration awards, unlike judicial decisions, are not reviewable for statutory error and cannot be reversed on the ground that the arbitrators did not correctly apply Title VII principles."

> However, Gilmer held that "although judicial scrutiny of arbitration awards necessarily is limited, such review is sufficient to insure that arbitrators comply with the requirements of the statute at issue." 500 U.S. at 32. In addressing an identical challenge to the adequacy of judicial review of arbitration decisions, the D.C. Circuit found that "judicial review of arbitration awards is necessarily focused, but that does not mean that meaningful review is unavailable." Cole v. Burns International Security Services, 105 F.3d [1465, 1486 (D.C. Cir. 1997)]. The court noted both the text of the FAA, which provides a non-exclusive list of grounds on which an arbitration award may be

> vacated, and language from the Supreme Court indicating that arbitration awards may be vacated if they are in "manifest disregard of the law." Id. at 1486 (citing First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938 (1995)). Based on the reasoning of this authority, we are convinced that judicial review of arbitration awards is sufficient to protect statutory rights.

167 F.3d at 366 .

Because Plaintiff Terry, as the party resisting arbitration, has not carried his burden of proving that the claims at issue are unsuitable for arbitration, see Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20 (1991), Defendant's motion to compel arbitration is GRANTED. This action as to Plaintiff Terry is hereby STAYED until the arbitration is completed. The parties will advise the court within thirty (30) days of the completion of the arbitration.

Plaintiffs' "motion in opposition to arbitration and motion to dismiss motion to compel arbitration" is DENIED.

IT IS SO ORDERED.

_____
JAMES D. TODD
UNITED STATES DISTRICT JUDGE

_____
DATE