IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JOE VERA, on behalf of himself and all others similarly situated,	)	
Plaintiff,	)	
v.	)	Civil Action No. 00-89-GMS
FIRST USA BANK N.A.,	)	
Defendant.	)	

M E M O R D AN D U M A N D O R D E R

On February 16, 2000, Joe Vera ("Vera") filed a class action lawsuit under the Truth In Lending Act ("TILA"), 15 U.S.C. § 1601 *et seq.* (1994) against First USA Bank, N.A. ("First USA"). On April 5, 2000, the court stayed this matter pending an appeal of the court's decision in *Johnson v. Telecash, Inc.*, 82 F. Supp. 2d 264, (D. Del. 1999).[1] On April 29, 2000, the Third Circuit reversed the court's decision. *See Johnson v. West Suburban Bank*, 225 F.3d 366 (3d Cir. 2000), *cert. denied*, 69 USLW 3383 (Feb. 20, 2001).

On March 6, 2001, Vera requested that the court set aside the stay, set a case schedule, and direct the parties to meet pursuant to Fed. R. Civ. P. 26(f). Specifically, Vera claims that the Third Circuit's decision in *Johnson* v. *West Suburban Bank* and the United States Supreme Court's decision in *Green Tree Financial Corp. v. Alabama*, 121 S. Ct. 513 (2000), "explicitly left open the basis to

[1]In *Johnson v. Telecash*, the court denied the defendant's motion to dismiss because of an inherent conflict between the underlying purposes of the TILA and the limited relief available through arbitration. This matter was also stayed pending appeal of another Delaware District Court decision, *Sagal v. First USA Bank, N.A.*, 69 F. Supp. 2d 627 (D. Del. 1999). *Sagal* held that the applicable arbitration clause was valid and enforceable, despite an alleged inherent conflict with the TILA. The Third Circuit affirmed *Sagal* on January 18, 2001. No. 99-8753, 2001 U.S. App. LEXIS 2015 (3d Cir. Del. Jan. 18, 2001).

challenge arbitration which the plaintiff in this case asserts." First USA opposes Vera's requests and urges the court to grant its motion to dismiss and to compel arbitration, which was filed on March 20, 2000. First USA also contends that neither *Johnson v. West Suburban Bank* nor *Green Tree* left Vera with an avenue to challenge the arbitration clause.

After reviewing the parties' submissions and the relevant precedent, the court finds First USA's arguments to be persuasive and will grant its motion to dismiss and compel arbitration. In challenging the arbitration clause, Vera contends that the arbitral forum in this case, the National Arbitration Forum ("NAF"), is biased and aligned with lenders. Despite Vera's contentions, this is not an acceptable challenge to arbitration under either *Johnson v. West Suburban Bank* or *Green Tree*. In *Johnson v. West Suburban Bank*, the court does contemplate a valid challenge to arbitration if the "arbitral rules in question precluded the substantive relief made available by statute, or the forum otherwise presented barriers to a plaintiff's assertion of his or her rights." 255 F.3d, at 374 n.2. However, it is clear from the language of *Johnson v. West Suburban Bank* itself that this is not the case with the NAF. *See id* (stating that because the NAF is authorized to "grant any remedy or relief allowed by applicable substantive law," there would not be a problem with securing the full range of remedies available under the TILA).

Green Tree held that a party challenging arbitration on the grounds that prohibitive costs of arbitration prevent the vindication of federal statutory rights bears the burden of showing the likelihood of incurring prohibitive costs, and that the mere contention that the cost of arbitration would be excessive, without any record support, is insufficient to invalidate an arbitration agreement. 121 S. Ct. at 23. The Court also expressly mentions that the NAF is a model for fair cost and fee allocation. *Id.* at 524 n.2 (Ginsburg, J., dissenting).

Finally, the court agrees with First USA's assertion that challenges to the impartiality of an arbitrator cannot be entertained by a district court "until after the conclusion of arbitration and the rendition of an award." *See Insurance Co. of N. Am. v. Pennant Ins. Co.*, No. 97-MC-154, 1998 WL 103305, at *2 (E.D. Pa. Feb. 18, 1998) (noting that "such a determination could have the disadvantage of enmeshing district courts in endless peripheral litigation and ultimately vitiate the very purpose for which arbitration was created") (citations omitted).[2]

Therefore, in light of the Third Circuit's decision in *Johnson v. West Suburban Bank* and the Supreme Court's decision in *Green Tree Financial Corp. v. Alabama*, the court will grant First USA's motion to dismiss and to compel arbitration.

For these reasons, IT IS HEREBY ORDERED that:

1. First USA's Motion to Dismiss and Compel Arbitration (D.I. 5) is GRANTED.

2. Pursuant to the Federal Arbitration Act, 9 U.S.C. § 4, all claims are DISMISSED without prejudice. The parties are to arbitrate these claims pursuant to the terms of the arbitration agreement.

Date: April 19, 2001

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE

[2]The Federal Arbitration Act provides that a court can vacate an award if there is evidence of impartiality, however, it does not provide for pre-award removal of an arbitrator. 9 U.S.C. § 10(a)(2) (1994).