IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

WILLIAM E. THORNBURG,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 03-824 JJF
	:	
PAK 2000, INC.,	:	
	:	
Defendant.	:	

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Attorneys for Defendant PAK 2000, Inc.

OPINION

February 2, 2004

Wilmington, Delaware

Farnan, District Judge.

Presently before the Court is PAK 2000 Inc.'s ("PAK") Motion to Dismiss And Motion To Compel Arbitration. (D.I. 7.) For the following reasons, the Court will grant PAK's Motion.

BACKGROUND

This lawsuit arises from PAK's termination of Plaintiff's employment as one of its security bag account representatives in 2003. When PAK hired Plaintiff the parties entered into an employment contract (the "Employment Agreement") which defined the rights and obligations of each party. Included in the Employment Agreement is an arbitration provision, compelling the parties to submit claims arising from and related to the Employment Agreement to arbitration. Following his termination, Plaintiff filed the instant lawsuit alleging breach of contract, breach of covenant, and violation of the Age Discrimination and Employment Act ("ADEA"). (D.I. 1.) By its Motion (D.I. 7), PAK requests the Court to dismiss Plaintiff's Complaint and compel arbitration.

I. Parties' Contentions

A. PAK

PAK contends that the Court does not have subject matter jurisdiction over the instant lawsuit because Plaintiff's employment contract requires the parties to arbitrate all controversies "arising out of or relating to" the Employment

Agreement. PAK contends that Plaintiff's contractual obligation to arbitrate disputes prevails over Plaintiff's right to pursue his ADEA claim in federal court.

B. Plaintiff

Plaintiff contends that the arbitration provision of his Employment Agreement is invalid for several reasons. Plaintiff contends that an individual may not waive his or her right to a jury trial unless it is done "knowingly and voluntarily." Plaintiff also contends that an individual's right to a jury trial, protected by state and federal law, prevails over the federal policy favoring arbitration. Plaintiff further contends that his ADEA claim does not arise out of the Employment Agreement.

DISCUSSION

The Federal Arbitration Act (the "FAA") manifests the "'liberal federal policy favoring arbitration agreements.'" Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 25, 111 S. Ct. 1647, 1652 (1991). In relevant part, Section 2 of the FAA provides, "[a] written provision in . . . a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract . . . 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 a party enters into a contract requiring

arbitration, a party "[h]aving made the bargain to arbitrate, . . . 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." Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 627-28, 105 S. Ct. 3346, 3354-55 (1985). "Nothing short of a showing of fraud, duress, mistake" or some other compelling ground to invalidate a contract will permit a court to preclude the enforceability of an agreement to arbitrate. Seus v. John Nuveen & Co., Inc., 146 F.3d 175, 184 (3d Cir. 1998).

I. The Knowing And Voluntary Waiver Of A Right To A Jury Trial Issue

The Court is not persuaded by Plaintiff's contention that the arbitration provision at issue is unenforceable because Plaintiff did not knowingly and voluntarily waive his right to a trial by jury. As evidenced by Section 2 of the FAA, a contract to arbitrate has a presumption of validity. 9 U.S.C. § 2. Therefore, absent factors that would "exist at law or in equity for the revocation of any contract," id., a court must enforce the parties' contractual agreement to arbitrate. In the instant case, Plaintiff has not asserted any facts demonstrating that his execution of the Employment Agreement was the result of fraud, duress, or mistake. Sues, 146 F.3d at 184. Further, the Third Circuit has previously rejected a "knowing and voluntary" waiver argument similar to Plaintiff's. In Sues, the Third Circuit held

that applying a "knowing and voluntary" standard to employment contracts with arbitration provisions would be "inconsistent with the FAA and [Supreme Court precedent]." 146 F.3d at 184.[1] Moreover, to the extent Plaintiff contends that his employment contract is unenforceable because it is a contract of adhesion, the Court need only note that "[u]nequal bargaining power is not alone enough to make an agreement to arbitrate a contract of adhesion." Id. For these reasons, the Court must recognize and defer to the arbitration provision in the Employment Agreement.

II. The Effect Of Federal And State Constitutions Issue

Plaintiff's contention that the state and federal constitutions preclude a waiver of his right to a jury trial is not supported by applicable precedent. In Mitsubishi, the Supreme Court made clear that "[b]y agreeing to arbitrate . . . a party . . . submits to . . . resolution in an arbitral, rather than a judicial, forum." 473 U.S. at 628. Plaintiff cites no case, nor has the Court found any, stating that an individual's right to a jury trial precludes enforcement of arbitration

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[1] The Third Circuit in Sues also rejected an argument identical to Plaintiff's that the Older Workers Benefit Protection Act (the "OWBPA") requires a knowing and voluntary waiver of a party's right to trial by jury. The Third Circuit reasoned that the legislative history of the OWBPA does not indicate that Congress intended the heightened standard to apply to agreements to arbitrate. Instead, the Third Circuit concluded that the OWBPA's knowing and voluntary standard only applied to a party's agreement to waive his or her substantive rights under the ADEA. Sues, 146 F.3d at 181.

agreements. To the contrary, controlling precedent advises that "'questions of arbitrability must be addressed with a healthy regard for the federal policy favoring arbitration.'" Id. at 626 (quoting Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24-25 (1983)). Therefore, the Court concludes that the right to a jury trial protected by the U.S. and Delaware Constitutions does not preclude the enforcement of the arbitration agreement in this case.

III. The ADEA Claim Issues

The determination of whether Plaintiff's ADEA claim arises from or is related to his employment agreement is a matter of contract law. First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 944, 115 S. Ct. 1920, 1924 (1995). Therefore, a court must look to relevant state contract law principles. Id. However, the question of whether a particular claim is subject to arbitration "should be resolved in favor of arbitration." Mitsubishi, 473 U.S. at 626 (interior quotation omitted). This principle derives from the "congressional policy manifested in the Federal Arbitration Act . . . requir[ing] courts [to] liberally . . . construe the scope of arbitration agreements covered by that Act." Mitsubishi, 473 U.S. at 627.

In the instant case, the arbitration agreement is governed by New Hampshire law. (D.I. 9, Ex. B at 6.) Under New Hampshire law, a contract to arbitrate has a presumption of arbitrability.

John A. Cookson Co. v. N.H. Ball Bearings, Inc., 787 A.2d 858, 355-56 (N.H. 2001). Therefore, absent "'positive assurance that the [contract] is not susceptible of an interpretation that covers the dispute,'" id. (quoting Appeal of Town of Bedford, 706 A.2d 680 (N.H. 1998)), a court should conclude that a particular dispute is arbitrable. Applying these standards to the Employment Agreement, the Court concludes that Plaintiff's ADEA claim is subject to arbitration.

The Employment Agreement provides that "[a]ny controversy or claim arising out of or relating to this Agreement or the breach thereof shall be finally settled by arbitration in Mirror Lake, New Hampshire, in accordance with the then prevailing rules of the American Arbitration Association." (D.I. 9, Ex. B at 6.) In the Court's view, this broad arbitration clause evidences the parties' intent to arbitrate Plaintiff's ADEA claim. In his Complaint, Plaintiff alleges that PAK illegally discriminated against him and wrongfully caused him "injuries including, but not limited to, loss of pay, qualified commissions, loss of expense reimbursements, loss of severance, and loss of qualified bonuses (as further described in the . . . employment contract)." (D.I. 1.) The Court concludes that the injuries alleged by Plaintiff clearly are "related to" his Employment Agreement with PAK, and therefore, concludes that Plaintiff's ADEA claim is subject to arbitration.

Plaintiff's obligation to arbitrate the instant claims is not weakened because he alleges a potential statutory violation under the ADEA. See Sues, 146 F.3d at 180. Statutory claims are subject to arbitration agreements because a party "does not forgo the substantive rights afforded by [a] statute" by agreeing to arbitrate. Id. Plaintiff may pursue his ADEA cause of action in arbitration, and therefore, the "'statute will continue to serve both its remedial and deterrent function.'" Id. (quoting Mitsubishi, 473 U.S. at 28).

IV. Conclusion

The Court concludes that Plaintiff's ADEA claim is related to the Employment Agreement, and therefore, the Court will dismiss Plaintiff's Complaint because all of Plaintiff's claims are subject to arbitration.

An Order consistent with this Opinion will be entered.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

WILLIAM E. THORNBURG, Plaintiff, v. PAK 2000, INC., Defendant.	: : : : : : : : :	Civil Action No. 03-824 JJF

ORDER

At Wilmington this 2nd day of February 2004, for the reasons set forth in the Opinion issued this date;

IT IS HEREBY ORDERED that PAK 2000, Inc.'s Motion To Dismiss And Motion To Compel Arbitration (D.I. 7) is **GRANTED**.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE