

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LISA K. PRATTA, :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 04-089 JJF
 :
 AMERICAN GENERAL FINANCIAL SERVICES, :
 INC., :
 :
 Defendant. :

Thomas S. Neuberger, Esquire of THOMAS S. NEUBERGER, P.A. and John M. LaRosa, Esquire of LAW OFFICE OF JOHN M. LAROSA, Wilmington, Delaware.

Attorneys for Plaintiff.

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Of Counsel: Barbara Rittinger Rigo, Esquire and Ann Marie Painter, Esquire of LITTLER MENDELSON, P.C., Dallas, Texas.

Attorneys for Defendant.

O P I N I O N

November 5, 2004
Wilmington, Delaware

FARNAN, District Judge

Presently before the Court is Defendant's Motion To Compel Arbitration And Motion To Dismiss (D.I. 4). For the reasons discussed, the Court will deny the motion (D.I. 4).

Background

Plaintiff Lisa K. Pratta was hired on September 26, 1980, by Manufacturers Hanover, which American General Financial, Inc. ("AGF") subsequently acquired. Defendant American General Financial Services, Inc. ("AGFS") is a subsidiary of AGF and is incorporated in the state of Delaware. Ms. Pratta was employed by AGFS as a Branch Manager and acted in that capacity until August 13, 2002, when her employment was terminated.

AGF instituted a mandatory EDR Program on June 1, 1999. In the written materials that AGFS allegedly distributed to its employees, AGFS states that the EDR Program is the sole means of resolving most employment-related disputes between the employee and the company or between the employee and another employee. The EDR Program encompasses disputes with regard to legally protected rights such as freedom from discrimination, retaliation, and harassment. Documents describing the EDR Program state that AGF may amend or terminate the Program at any time, but that such amendment or termination would not be effective: 1) until ten days after reasonable notice of termination is given to employees; and 2) as to any dispute as to which AGF had actual notice on the date of the amendment.

On February 9, 2004, Mr. Pratta filed this federal employment lawsuit alleging two counts of age discrimination under the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621 et seq. In her Complaint (D.I. 1), Ms. Pratta seeks injunctive relief, and compensatory and statutory liquidated damages. The Complaint includes a demand for a jury trial.

Parties' Contentions

By its motion, AGFS contends that the Court should compel arbitration and dismiss Ms. Pratta's Complaint because both of Ms. Pratta's claims fall within the ambit of AGF's Employee Dispute Resolution Program ("EDR Program"). AGFS contends that its EDR Program became effective as a condition of employment on June 1, 1999. AGFS argues that it sent EDR Program materials to Ms. Pratta in March 1999, when the program was first implemented, and again in June 2001, when the program was amended. AGFS contends that it made the EDR Programs' Plan and Rules available on its corporate intranet beginning in June 2001. AGFS further contends that it hung a poster providing details about the EDR Program in the branch office that Ms. Pratta managed.

In response, Ms. Pratta argues that no legally enforceable contractual obligation to arbitrate exists between her and AGFS. Specifically, Ms. Pratta contends that she did not accept any offer by AGFS to arbitrate employment disputes because she had no knowledge of the EDR Program and, thus, could not accept its terms. Ms. Pratta further contends that any agreement to arbitrate is

illusory because AGF can unilaterally amend or revoke the arbitration agreement. Ms. Pratta further contends that the Court should not enforce the arbitration agreement in the EDR Program because it is unconscionable.

Discussion

I. Legal Standard For Compelling Arbitration

The Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1 et seq., manifests the "liberal federal policy favoring arbitration agreements." Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 25 (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.

Section 3 of the FAA allows district courts to stay a proceeding "upon being satisfied that the issue involved in such ... proceeding is referable to arbitration under ... an agreement." 9 U.S.C.A. § 3.

The Court must answer two threshold questions before compelling or enjoining arbitration: 1) Did the parties seeking or resisting arbitration enter into a valid arbitration agreement? 2) Does the dispute between those parties fall within the language of the arbitration agreement? John Hancock Mut. Life Ins. Co. v. Olick, 151 F.3d 132, 137 (3d Cir. 1998).

II. Whether The Parties Entered Into A Valid Agreement To Arbitrate

In determining whether the parties entered into a valid agreement to arbitrate, "[w]e are to look to the relevant state law of contracts...." Id. (citing Blair v. Scott Specialty Gases, 283 F.3d 595, 603 (3d Cir. 2002)). Pursuant to Delaware law, a contract "comes into existence if a reasonable person would conclude, based on the objective manifestations of assent and the surrounding circumstances, that the parties intended to be bound to their agreement on all essential terms." Intellisource Group, Inc. v. Williams, 1999 WL 615114, *1 (D. Del., 1999) (citing Telephone & Data Sys., Inc. v. Eastex Cellular L.P., Civ. A. No. 12888, 1993 WL 344770, at *10 (Del. Ch. Aug. 27, 1993)).

The Court finds that AGFS unilaterally imposed the EDR Program containing an arbitration agreement upon its employees. In the Court's view, however, it does not necessarily follow that Ms. Pratta and AGFS entered into a valid contract. A review of the materials submitted by the parties reveals that the EDR Program documents state that adherence to the terms of the EDR Program was a condition of continued employment after June 1, 1999. (D.I 5, Ex. B at 3; D.I. 5, Ex. C at 2; D.I. 5, Ex. D at 6.) However, Ms. Pratta disputes that she ever received a copy of any of these documents. The Court finds that AGFS has not sufficiently demonstrated that Ms. Pratta was actually in receipt of any of the EDR Program documents, or that the purpose of Ms. Pratta's

continuing to work manifested an intent to be bound by the terms of the EDR Program.

In these circumstances, the Court cannot infer Ms. Pratta's assent to be bound by the arbitration agreement from her continued work at AGFS. Rather, the Court finds that, by continuing to work after the EDR Program was initiated, Ms. Pratta was merely performing her duties under the previous terms of her employment. Thus, the Court concludes that Ms. Pratta's continued work after June 1, 1999, did not constitute acceptance of AGS's offer to arbitrate. Therefore, in the circumstances of this case, there is no "contract evidencing a transaction involving commerce" within the meaning of section two of the FAA.

Because the Court concludes that no arbitration agreement existed between the parties, it will not explore arguments raised by Ms. Pratta with regard to the illusoriness or unconscionability of the arbitration agreement, or determine whether Ms. Pratta's claims falls within the language of the arbitration agreement.

Conclusion

Despite the strong policies in favor of enforcing arbitration agreements, the Court concludes that there is no valid arbitration agreement between Ms. Pratta and AGFS. Accordingly, the Court will deny the Motion To Compel Arbitration And Motion To Dismiss (D.I. 4) filed by Defendant AGFS.

An appropriate Order will be entered.

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ORDER

At Wilmington, this 5th day of November 2004, for the reasons
discussed in the Opinion issued this date;

IT IS HEREBY ORDERED that Defendant's Motion To Compel
Arbitration And Motion To Dismiss (D.I. 4) is **DENIED.**

Joseph J. Farnan, Jr.
UNITED STATES DISTRICT JUDGE