

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DIANNE REIBSTEIN, ROBERT REIBSTEIN	:	CIVIL ACTION
and DAVID PHILLIPS,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	NO. 00-1781
	:	
CEDU/ROCKY MOUNTAIN ACADEMY,	:	
	:	
Defendant.	:	

MEMORANDUM

ROBERT F. KELLY, J.

DECEMBER 20, 2000

Before this Court are three Motions filed by the Defendant, CEDU/Rocky Mountain Academy ("CEDU"). The Motions are: (1) Motion to Dismiss; (2) Motion to Compel Arbitration; and (3) Motion to Transfer to the United States District Court for the District of Idaho. For the following reasons, the Motion to Compel Arbitration is granted.

I. BACKGROUND.

The Plaintiffs, Dianne and Robert Reibstein, enrolled their son,¹ David Phillips, in Rocky Mountain Academy. Rocky Mountain Academy, which is operated by the Defendant CEDU ("CEDU"), is a private school located in Bonners Ferry, Idaho,

¹ Robert Reibstein is David Phillip's step-father. (Compl., ¶ 33.) It is alleged that Robert Reibstein was treated as David Phillips' parent since he paid for a majority of David's enrollment expenses and he was required by CEDU to attend its seminars as a requirement for David's enrollment. (Pls.' Mem. Law Opp'n Mot. to Dismiss at 5-6.)

that helps teenagers who have emotional, behavioral and academic difficulties.

From November, 1996 until January 3, 1997, David Phillips was enrolled in the "Ascent" Program, which is CEDU's drug and alcohol abuse crisis intervention program in Northern Idaho. (Compl., ¶ 7.) On January 3, 1997, at the end of the "Ascent" Program, Dianne Reibstein visited Rocky Mountain Academy with the intent of enrolling David Phillips, who was fifteen years old at the time, "in a high school that would address his learning disabilities and negative behavior patterns."² (Id.) That same day, Dianne Reibstein executed the "Participant Admission Contract,"³ ("Contract") which enrolled David Phillips

² Prior to choosing Rocky Mountain Academy, Plaintiffs aver that Dianne Reibstein had visited at least five other therapeutic high schools. (Compl., ¶ 8.) Also, Plaintiffs allege that before Dianne Reibstein was to retrieve her son, CEDU sent an informational catalog and application by mail. (Id.)

³ The Plaintiffs state that Dianne Reibstein executed a one-page agreement in their pleadings. (Compl., ¶ 10.) Also, the Plaintiffs base some of their arguments on the insufficiency of the one-page agreement. (Pls.' Mem. Law Opp'n Mot. Dismiss at 3-4.) However, the Plaintiffs currently admit that Dianne Reibstein signed a "Participant Admission Contract" that was prepared by CEDU. (Pls.' Mot. Supplement R., Ex. A.) It was only upon an inquiry from this Court that the Plaintiffs found and forwarded to this Court the first page of the "Participant Admission Contract" and an "Enrollment Status" report prepared by CEDU. The complete "Participant Admission Contract" and "Enrollment Status" report were subsequently submitted in the Plaintiffs' Motion to Supplement the Record as Exhibits B, C, and D. For purposes of this Motion, both pages 1 and 2 of the "Participant Admission Contract" are considered the complete contract. (Id.)

as a student in CEDU's Rocky Mountain Academy from January 6, 1997 through April 7, 1998. (Id.)

The Plaintiffs allege that David Phillips was "under the continual dominion and control of Defendant from January 6, 1997 through April 7, 1998 when CEDU allowed and directed Plaintiff, David Phillips, to take home visitation in Pennsylvania with Plaintiffs, Dianne and Robert Reibstein." (Id. at ¶ 13.) On April 11, 1998, David Phillips ran away from Dianne and Robert Reibstein's Pennsylvania home. (Id.) On April 12, 1998, Dianne Reibstein "informed Defendant (CEDU) that David had run away and kept in constant contact with Defendant (CEDU) as of April 12, 1998." (Id. at ¶ 14.) Thereafter, CEDU sent their representative, Patricia Doyle, to the Reibstein's house. (Id.) Patricia Doyle "specifically assured" Dianne and Robert Reibstein that CEDU "would do whatever it took to see David get back to their program and to complete their program (which was a 30-month program)" ⁴ (Id.)

On May 2, 1998, Dianne and Robert Reibstein learned that David Phillips was "in the custody of the New Jersey State Police having been charged as a juvenile with violations of the Criminal Code of the State of New Jersey." (Id. at ¶ 15.) The

⁴ The Plaintiffs allege that the CEDU representative specifically stated that "David would be taken back into the program even having run away no matter what setbacks might have occurred during the period of time that David had run away." (Compl., ¶ 14.)

next day, Dianne Reibstein telephoned Patricia Doyle at CEDU and explained the circumstances of David Phillips' arrest. (Id. at ¶ 16.) The Plaintiffs aver that Patricia Doyle was supportive and stated that "CEDU was willing to work with Plaintiffs, Dianne and Robert Reibstein to re-enroll Plaintiff, David Reibstein, as soon as possible." (Id.) On or about May 9, 1998, the Reibsteins were informed that "David Phillips should not have been released for home visitation at all or without significant information known only to Defendant being provided to Plaintiffs Dianne and Robert Reibstein before releasing him." (Id. at ¶ 17.)

Subsequently, in phone conversations with Patricia Doyle, the Reibsteins expressed their unhappiness with CEDU's "neglect" in failing to provide them with all of the information known by CEDU before sending David Phillips home for visitation. (Id. at ¶ 19.) On or about June 15, 1998, without an explanation, Dianne and Robert Reibstein received a one-page faxed letter informing them that David Phillips was ineligible to be re-admitted to Rocky Mountain Academy.⁵ (Id. at ¶ 20.) On or about April 5, 2000, Dianne and Robert Reibstein, along with David Phillips, brought this action against CEDU. The action involves three counts: breach of contract (Count I), misrepresentation (Count II) and negligence (Count III). The

⁵ At the time that this letter was sent, David Phillips had not been adjudicated of any criminal violation. (Compl., ¶ 20.)

Defendant responded by filing the current Motions: (1) Motion to Dismiss Plaintiffs' Complaint; (2) Motion to Compel Arbitration; and (3) Motion to Transfer.

II. STANDARD.

A motion to compel arbitration is viewed as a summary judgment motion if the parties contest the making of the agreement. Lepera v. ITT Corp., No. 97-1461, 1997 WL 535165, at *3 (E.D. Pa. Aug. 12, 1997)(citing Par-Knit Mills, Inc. v. Stockbridge Fabrics Co., Ltd., 636 F.2d 51, 54 (3d Cir. 1980)). In most cases, a party has a right to a jury trial on this issue. Id. However, if there is no genuine issue of fact concerning the formation of the agreement, the court should decide whether the parties did or did not enter into the agreement. Id. Further, the court should apply the summary judgment standard, giving the opposing party "the benefit of all reasonable doubts and inferences that may arise." Lepera, 1997 WL 535165, at *5 (citations omitted).

Moreover, "if a party to a binding arbitration agreement is sued in federal court on a claim that the plaintiff has agreed to arbitrate, it is entitled under the Federal Arbitration Act (FAA) to a stay of the court proceeding pending arbitration . . . and to an order compelling arbitration If all claims involved in the action are arbitrable, a court may dismiss the action instead of staying it." Seus v. John Nuveen &

Co., Inc., 146 F.3d 175, 179 (3d Cir. 1998).

III. DISCUSSION.

This case deals with a "Participant Admission Contract" which contains an arbitration clause.⁶ CEDU contends that the Contract is valid and therefore the arbitration clause is binding. CEDU further argues that the arbitration clause cannot be avoided because of any alleged misrepresentations and, therefore, this Court can compel arbitration in accordance with the Contract. The Plaintiffs agree with CEDU that the Contract containing the arbitration clause is a valid contract. However, the Plaintiffs argue that the arbitration clause is only binding upon Dianne Reibstein, the sole signatory to the Contract. Relying upon the assertion that the Contract was signed solely by Dianne Reibstein, the Plaintiffs additionally argue that the arbitration clause is invalid because it lacks mutuality. They

⁶ Since this case began, the Court has received three different versions of the one relevant "Participant Admission Contract." Initially, the Plaintiffs offered the Court only the second page of the Contract signed solely by Dianne Reibstein and the Plaintiffs argued that the Contract was insufficient in its terms and, therefore, was invalid. (See Compl.) Upon the Court's inquiry, the Plaintiffs found the first page of the Contract and conceded that it made the Contract sufficiently definite and valid, but maintained that the Contract was not binding and lacked mutuality since Dianne Reibstein is the sole signatory to the Contract. (Pls.' Mot. Supplement R., Ex. A.) Recently, CEDU offered the Court a third version of the Contract where both CEDU and Dianne Reibstein signed the Contract. (Def.'s Resp. Pls.' Mot. Supplement R., Ex. A.) To be thorough, the Court will address the Contract as signed by both Dianne Reibstein and CEDU, and the Contract as signed only by Dianne Reibstein.

assert that the arbitration clause should not be enforced because CEDU failed to sign the Contract and thereby did not explicitly assent to arbitration. CEDU's production of the Contract signed by both Dianne Reibstein and CEDU renders this argument moot. If the Contract was signed by both parties, the Plaintiffs cannot argue that it lacks mutuality because it is a valid contract signed by and binding upon both parties. Because this argument is mooted by the Contract signed by both Dianne Reibstein and CEDU, the Court's analysis will hereafter focus on the Contract signed solely by Dianne Reibstein.

"The FAA establishes a strong federal policy in favor of compelling arbitration over litigation." Sandvik AB v. Advent Int'l Corp., 220 F.3d 99, 104 (3d Cir. 2000). In fact, "[t]he FAA was enacted to reverse longstanding judicial hostility to arbitration agreements by placing them on the same footing as other contracts." Wetzel v. Baldwin Hardware Corp., No. CIV.A. 98-3257, 1999 WL 54563, at *2 (E.D. Pa. Jan. 29, 1999)(citing Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 24 (1991); Pritzker v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 7 F.3d 1110, 1113 (3d Cir. 1993)). In accordance with its general policy favoring the enforcement of arbitration agreements, the FAA mandates that district courts shall consider written arbitration agreements as "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the

revocation of any contract.” Id. at *2 (quoting 9 U.S.C. § 2).

In Perry v. Thomas, the United States Supreme Court explained that general questions of enforceability of arbitration agreements are governed by state law. 482 U.S. 483, 492 (1987). This case is governed by Pennsylvania law because, in a diversity action, the substantive law of the state where the court is sitting is the applicable law. Van Buskirk Ex Rel. Van Buskirk v. West Bend Co., 100 F. Supp.2d 281, 283 (E.D. Pa. 1999) (citing Wallace v. Tesco Eng’g, Inc., No. 94-2189, 1996 WL 92081, at *1 (E.D. Pa. Mar. 1, 1996)(citation omitted). In Wetzel v. Baldwin Hardware Corp., Judge Van Antwerpen of this Court stated that “[a]rbitration is a matter of contract between the parties and the determination of whether the agreement is enforceable is made under Pennsylvania law.” Wetzel, 1999 WL 54563, at *3 (citing Goodwin v. Elkins & Co., 730 F.2d 99, 108 (3d Cir. 1984)).

In Wetzel, the plaintiff attempted to bring a claim in federal court against his employer under the Age Discrimination in Employment Act. Id. The defendant’s motion to dismiss and compel arbitration was granted based on an arbitration policy and accompanying explanatory memorandum that the plaintiff had received as a condition of his employment. Id. Although the plaintiff did not sign a form that acknowledged receipt of the policy, the unilaterally imposed policy was found to be enforceable because the policy was clear and explicit in its

terms and the plaintiff continued to be employed by the defendant after the policy was implemented. Id. The Court found the unilaterally imposed arbitration policy bound the employer and employees and covered all claims either concerning the employment or termination of current and former employees or claims the employer may have concerning the employee's employment or termination. Id.

The Court's analysis in Wetzel focused on arbitration and contract law. Id. at *3. Since that case involved an employer's unilaterally imposed arbitration policy, the Court had to determine whether the policy amounted to a valid contract under Pennsylvania law. Id. As such, the Court examined the policy to decipher whether there had been an offer, acceptance and consideration. Id. The Court noted that "[i]t is well established, under Pennsylvania law, that an offer must be definite and 'define its terms, specify the thing offered and be an intention of the present or the future to be bound.'" Id. at *3 (quoting Morosetti v. Louisiana Land & Explorer Co., 564 A.2d 151, 152 (Pa. 1989)).

As in Wetzel, the current case involves the issue of enforceability of a contract and therefore must be analyzed under Pennsylvania contract law. Id. Under Pennsylvania law, this Court finds that the written "Participant Admission Contract" is a valid contract. Firstly, the written "Participant Admission

Contract" meets the criteria of a valid contract under Pennsylvania law because it is a definitive offer by CEDU to perform the enunciated duties. (Pls.' Mot. Supplement R., Exs. C & D.) A review of the Contract reveals that the terms of the agreement are well-defined because it both specifies the services offered by CEDU and asserts a clear intention by CEDU to be bound to such terms. Id.

Secondly, acceptance of the offer is found in Dianne Reibstein's signature of the Contract, which the Plaintiffs concede bound Dianne and Robert Reibstein and David Phillips "to its terms and to the entire agreement between the parties." (Pls.' Mot. Supplement R., Ex. A.) In addition, the Plaintiffs further admit their acceptance of the agreement through "attendance by Robert and Dianne at required seminars, payment by Robert . . . and full-time, live-in attendance by David." (Pls.' Mem. Law Opp'n Mot. Dismiss at 6.) Lastly, consideration is evidenced by the parties' performance of duties over a 15 month period. (See Compl.)

The Plaintiffs argue that, although the underlying Contract is valid and binding upon them, the arbitration clause is not. (Pls.' Mot. Supplement R., Ex. A.) They contend that since CEDU failed to sign the Contract, CEDU did not assent to arbitration and therefore is not bound to the arbitration clause. (Pls.' Mem. Law Opp'n Mot. Dismiss at 7-9.) Thus, the Plaintiffs

argue that the arbitration clause is invalid because both parties did not agree to arbitrate. Id. The Plaintiffs fail to acknowledge that the arbitration clause clearly states that the parties to the Contract are required to arbitrate any controversy arising out of the Contract. (Pls.' Mot. Supplement R., Exs. C & D.) Thus, by its very terms, the arbitration clause offered by CEDU binds both CEDU and the Plaintiffs to arbitration. Id. Therefore, mutuality exists between CEDU and the Plaintiffs as to the arbitration clause and because the arbitration clause is sufficiently definite in its terms and duties and is mutually binding, it is enforceable under Pennsylvania contract law.

The next issue regarding the arbitration clause which this Court must address is whether the clause can be enforced against non-signatories, specifically Robert Reibstein and David Phillips. "[A]rbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." Sandvik AB, 220 F.3d at 104 (quoting AT&T Techs., Inc. v. Communications Workers of Am., 475 U.S. 643, 648 (1986))(citations omitted)). When considering a case involving the enforcement of an arbitration agreement against non-signatories, the main question is whether the non-signatory is bound to the agreement under traditional common law principles of contract and agency law. Bel-Ray Company, Inc. v. Chemrite (PTY) Ltd., 181 F.3d 435, 444 (3d Cir. 1999)(citing

Kaplan v. First Options of Chicago, Inc., 19 F.3d 1503 (3d Cir. 1994); Pritzker, 7 F.3d 1110, 1121 (3d Cir. 1993)).

The Plaintiffs argue that Robert Reibstein and David Phillips cannot be compelled to arbitrate because they did not sign the Contract and therefore did not agree to be bound to the arbitration clause. (Pls.' Mem. Law Opp'n Mot. Dismiss at 7-9.) In support of their position, the Plaintiffs argue that the decision of the United States Court of Appeals for the Third Circuit ("Third Circuit") in Dayhoff Inc. v. H.J. Heinz Co. precludes compelling arbitration against non-signatories to an arbitration clause. 86 F.3d 1287 (3d Cir. 1996). In Dayhoff, the plaintiff and another company were assignees to a License Agreement in which Dayhoff Inc. was granted the exclusive license to make and distribute candy in the United States. Id. The Agreement included an arbitration clause requiring all controversies arising from the Agreement to be arbitrated by an international arbitral tribunal. Id. After the defendants terminated the Agreement, plaintiff attempted to bring suit in the district court. Id. The district court dismissed all of the claims relating to the Agreement because of the arbitration clause. Id. Relying upon the United States Supreme Court's decision in First Options of Chicago, the Third Circuit held that the arbitration clause could "be enforced only by the signatories to th[e] Agreement." Id. at 1296; First Options of Chicago,

Inc. v. Kaplan, 514 U.S. 938 (1995).

The Plaintiffs would have us believe that all non-signatories to an arbitration agreement cannot be compelled to arbitrate. (Pls.' Mem. Law Opp'n Mot. Dismiss at 7-9.) However, this argument fails to acknowledge that the Dayhoff Court addressed and reaffirmed that non-parties to an arbitration agreement can enforce such an agreement only where there is an obvious and close nexus between the non-parties and the contract or the contracting parties. Dayhoff Inc., 86 F.3d at 1296-97 (citing Barrowclough v. Kidder, Peabody & Co., Inc., 752 F.2d 923, 938 (3d Cir. 1985), overruled on other grounds by Pritzker v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 7 F.3d 1110 (3d Cir. 1993)(non-signatory defendants able to enforce arbitration clause against signatory plaintiff because non-signatories directly related to another signatory party and did not object to arbitration); Pritzker, 7 F.3d 1110 (3d Cir. 1993)(arbitration clause enforceable by non-signatory sister corporation because non-signatory took part in alleged breaches of fiduciary duties).

The Third Circuit differentiated Dayhoff from Barrowclough based on the facts of those cases. Id. at 1296; 752 F.2d 923. In Dayhoff, the Third Circuit primarily distinguished its decision based on the parent-subsidiary corporate structure of the parties. 86 F.3d at 1296-1297. The court stated that the facts in Barrowclough were vastly different because the

decision in Barrowclough was based on non-signatories who were contingent beneficiaries to plaintiff's deferred compensation plan. Id. As such, the court noted that the non-signatory contingent beneficiaries' claims in Barrowclough were directly related to the principal's claim. Id. However, in Dayhoff, the court noted that the non-signatories shared a corporate relationship with the signatory and the court refused to disregard the parent-subsidary corporate structure. Id. at 1296.

Moreover, the Third Circuit differentiated its Dayhoff decision from Pritzker based on agency theory. Id. at 1297, 7 F.3d 1110. The court stated that "agency theory is not applicable to the facts before us" because of the corporate relationship in the case. Dayhoff, 86 F.3d at 1297. In Dayhoff, the relationship between the signatories and non-signatories was based on a parent-subsidary corporate structure, not a principal-agent relationship. Id. The court stressed the parent-subsidary corporate structure and refused to apply agency logic to the relationship. Id.

As demonstrated above, Dayhoff dealt with a parent-subsidary corporate relationship. Wherein the court based and distinguished its decision on the corporate structure of the parties. Id. According to the facts, the present case does not involve a parent-subsidary corporate relationship, but involves

close relationships based on contract and agency principles. (See Compl.) Thus, Dayhoff does not control an analysis of this case. 86 F.3d 1287. However, Barrowclough and Pritzker, the cases cited in Dayhoff, more closely resemble this case and therefore they are controlling due to their treatment of close relationships and agency. Id.; 752 F.2d 923; 7 F.3d 1110.

The Plaintiffs argue that David Phillips is not bound by the arbitration clause because he did not sign the Contract. (Pls.' Mem. Law Opp'n Mot. Dismiss at 8.) At the time of the Contract, David Phillips was a minor and his mother signed the Contract in order to admit David to Rocky Mountain Academy. (Compl., ¶ 7.) Thus, the Contract was entered to directly benefit David Phillips.

Third party beneficiaries to a contract may be compelled to arbitrate. Barrowclough, 752 F.2d 923. "Under Pennsylvania law, a party is an intended third-party beneficiary if 'both parties to the contract express an intention to benefit the third party in the contract itself,' Stone v. Pennsylvania Merchant Group, LTD., 949 F.Supp. 316, 321 (E.D. Pa. Dec. 16, 1996)(quoting Scarpitti v. Weborg, 530 Pa. 366 (1992)), or if 'recognition of a right to performance in the beneficiary is appropriate to effectuate the intentions of the parties and . . . the circumstances indicate that the promisee intends to give the beneficiary the benefit of the promised performance.'" Id.

(quoting the Restatement (Second) of Contracts section 302(1)(b) (1979), which has been adopted "as the law of Pennsylvania").

In Barrowclough, the Third Circuit dealt with the issue of whether third party beneficiaries of a deferred payment program under the Employee Retirement Income Security Act, who were non-signatories to an arbitration agreement, could be compelled to arbitrate a settlement. 752 F.2d 923. Barrowclough was an account representative and investment advisor who was employed by Kidder, Peabody & Co., Inc. ("Kidder, Peabody"). For tax purposes, Kidder, Peabody allowed some of its executives, including Barrowclough, to defer their salary up to twenty-five percent. Id. The deferred salary was kept in an account maintained by Kidder, Peabody and was payable to the participant or beneficiary upon the employee's retirement, termination, disability, or death. Id.

Kidder, Peabody refused to pay Barrowclough the deferred amount he had accrued upon his termination. Id. As a result of this refusal, Barrowclough and his contingent beneficiaries sued his former employer for a refund of his deferred salary. Id. The Third Circuit held that Barrowclough and his beneficiaries were required to arbitrate based on arbitration agreements that Barrowclough signed with the New York

Stock Exchange and American Stock Exchange.⁷ Id.

The Third Circuit compelled the non-signatory beneficiaries to arbitrate because “the non-parties to th[e] arbitration agreement have related and congruent interests with the principals to the litigation” Id. at 938. Relying upon the obvious and close nexus that Barrowclough’s beneficiaries had to the contract, the Third Circuit further held the non-signatory beneficiaries bound to arbitration because “[t]heir inchoate and derivative claims should not entitle them to maintain separate litigation in a forum that has been waived by the principal beneficiary.” Id. at 938.

Similar to the beneficiaries in Barrowclough, David Phillips is a third party beneficiary of the “Participant Admission Contract,” which he did not sign. Id. David Phillips has an obvious and close connection to the Contract signed by his mother for his benefit. Id. The “Participant Admission Contract” specifically includes David Phillips as the participant and requires him, along with the other parties, to perform certain duties in an attempt to help himself. (Pls.’ Mot. Supplement R., Exs. C & D.) As such, David Phillips is closely connected with the Contract and the contracting parties. Id.

Applying third-party beneficiary logic, David Phillips’

⁷ The Exchanges require such arbitration agreements to be signed by all brokers for member firms.

interests are congruent to the interests of his mother. Dianne Reibstein entered into the Contract with CEDU for the purpose of helping her troubled son. (See Compl.) CEDU was aware of the desires and needs of David Phillips and Dianne Reibstein and offered its help for a monetary sum. Id. Thus, due to the obvious and close nexus between David Phillips, the Contract and the contracting parties, I find that the facts of this case support binding David Phillips to the arbitration agreement. Thus, David Phillips was not only the intended beneficiary of the "Participant Agreement Contract," but he was a part of the Contract from its very inception. As the Contract clearly states, David Phillips is the participant for whom the "Participant Admission Agreement" benefited. (Pls.' Mot. Supplement R., Exs. C & D.) Therefore, both the Contract and the arbitration clause intended to include David Phillips based on his third-party beneficiary status. Id.

In addition to third-party beneficiary status, agency logic has been exercised to bind non-signatories to arbitration agreements. Pritzker v. Merrill Lynch, 7 F.3d 1110. In Pritzker, the Third Circuit relied upon agency theory to find that "because a principal is bound under the terms of a valid arbitration clause, its agents, employees, and representatives are also covered under the terms of such agreements." Id. at 1121. Relying in part upon Barrowclough, the Third Circuit

looked to the relationships of the parties and whether the interests of such parties were directly related to one another. Id.; Barrowclough, 752 F.2d 923.

In Pritzker, the trustees of a pension plan sued the brokerage firm that traded on behalf of the plan, a sister corporation of the brokerage firm, and the broker that serviced the pension plan's account. Id. The defendants sought to enforce the arbitration clauses contained in the Cash Management Agreements. Id. Such agreements were entered into and signed by the trustees and the brokerage firm, however, neither the sister corporation nor the individual broker signed the agreement. Id. The trustees filed suit because a dispute arose about investment decisions. Id. The defendants sought arbitration in accordance with their agreements. Id. The trustees opposed arbitration and argued that they were not compelled to arbitrate with either the sister corporation or the broker because they had not entered into the agreements with either party. Id. The Third Circuit rejected that argument. Id.

The Third Circuit's opinion relied upon traditional agency theory and examined the relationships that the brokerage firm had with its sister corporation and with the individual broker. Id. at 1121. In so doing, the court found that both of the relationships were sufficiently close to require arbitration. Id. The individual broker was found to be included in the

arbitration clause because of the direct and derivative nature of the relationship between a corporation and its employee. Id. Likewise, the sister corporation was found to be included in the arbitration clause because of the close relationship shared between it and the brokerage firm. Id. at 1122. The court's analysis focused on the duties performed by the sister corporation and found that the interests of the sister corporation were either directly related to or predicated upon the actions of the principal. Id.

In examining agency, "it is the essence of the actual relationship which governs whether or not an agency is created." Montgomery County v. Microvote Corp., 2000 WL 341566, at *4 (E.D. Pa. March 31, 2000) (quoting L & M Beverage Co. v. Anheuser Busch, Inc., No. CIV.A. 85-6937, 1988 WL 85670, at *14 (E.D. Pa. Aug. 16, 1988)). In Pennsylvania, there are four types of agency: (1) express authority; (2) implied authority; (3) apparent authority; and (4) agency by estoppel. Id. at *3. For purposes of this analysis, I will focus only on apparent agency and agency by estoppel.

Under Pennsylvania law, apparent agency is the "power to bind a principal which the principal has not actually granted, but which leads persons with whom his agent deals to believe that he has granted." Id. at *6 (quoting L & M Beverage, 1988 WL 85670, at *14 (citations omitted)). "Apparent agency turns on

the conduct of the principal 'which reasonably interpreted, causes the third party to believe that the principal consents to have the act done on his behalf by the person purporting to act for him.'" Id. at *6 (quoting Adriatic Ship Supply Co. v. M/V Shaula, 632 F.Supp. 1573, 1575 (E.D. Pa. 1986)). Thus, apparent agency is contingent upon the representation of the principal, and the justifiable reliance by a third person that the agent had the consent of the principal to act on his behalf. Id.

Agency by estoppel "comprises two required elements: (1) negligence on the part of the principal in failing to correct the belief of the third party concerning the agent; and (2) justifiable reliance by the third party." Id. at *7 (citing L & M Beverage, 1988 WL 85670, at *15 (citations omitted)). Thus, agency by estoppel "depend[s] upon a manifestation by the alleged principal to a third person and a reasonable belief by the third person that the alleged agent is authorized to bind the principal." Id. at *7 (quoting Universal Mktg. & Consulting, Inc. v. Hartford Life & Accident Ins. Co., 413 F.Supp. 1250, 1261 (E.D. Pa. 1976)).

In a supplemental letter to the Court, written immediately following a hearing where the Court raised the issue of compelling arbitration based on agency theory, the Plaintiffs aver that Dianne Reibstein did not act as an agent for Robert Reibstein when she signed the Contract. (Pls.' Mot. Supplement

R., Ex. F.) Interestingly, this new position by the Plaintiffs is in direct contradiction to the Complaint and correspondence from Plaintiffs' attorney to this Court dated October 26, 2000. In the Complaint, the Plaintiffs aver that "Plaintiff, Dianne Reibstein . . . at all times relevant hereto acted individually and as agent for Plaintiff, Robert M. Reibstein." (Compl., ¶ 3.) Likewise, in a letter sent to the Court, the Plaintiffs averred that "Dianne signed the document and, in so doing, Dianne bound her, Robert, and David to its terms and to the entire agreement between the parties." (Pls.' Mot. Supplement R., Ex. A.)

After reviewing the Complaint and supplemental documents, it appears that the Plaintiffs admit that Dianne Reibstein acted as Robert Reibstein's agent when the Plaintiffs argue that Mr. Reibstein has standing in this action; however, the Plaintiffs appear to directly contradict that position when such a finding requires Robert Reibstein to submit to arbitration. Thus, the Plaintiffs inconsistent position not only appears to be at war with itself, but leads this Court to believe that the Plaintiffs' argument that Dianne Reibstein never acted as Robert Reibstein's agent is disingenuous.

Under Pennsylvania agency law, this Court finds that Dianne Reibstein acted as Robert Reibstein's agent under both apparent agency theory and implied agency theory. As to apparent agency, Robert Reibstein's conduct is reasonably interpreted by a

third party as having given consent to Dianne Reibstein to bind him to the "Participant Admission Contract." The Plaintiffs' pleadings and supplemental documentation, Robert Reibstein's payment of a substantial part of the money owed to CEDU through his wife, Robert Reibstein's travels to Idaho on a quarterly basis in conjunction with the Contract, and Mr. Reibstein's actions in adherence to the terms of the Contract, evidence the conclusion that Dianne Reibstein acted as Robert Reibstein's apparent agent. (See Compl.; Pls.' Mem. Law Opp'n Mot. Dismiss.)

The facts of this case further lead this Court to find that Dianne Reibstein acted as Robert Reibstein's agent under an agency by estoppel theory. Robert Reibstein manifested to CEDU that Dianne Reibstein was authorized to bind him to the Contract. At no time does it appear as if Robert Reibstein ever attempted to correct the belief that Dianne Reibstein was acting as his agent without authority. Thus, CEDU had a reasonable belief that Dianne Reibstein acted as Robert Reibstein's agent due to Robert Reibstein's actions in compliance with the Contract, such as his payment of the CEDU tuition bill and his travels to Idaho for the required seminars. As such, when Dianne Reibstein signed the "Participant Admission Contract," she acted individually and as an agent for Robert Reibstein.

Since this Court finds that Dianne Reibstein acted as Robert Reibstein's agent, the question now before this Court is

whether Robert Reibstein can be compelled to arbitrate based on agency principles. Similar to the issue in Pritzker, this question deals with whether a non-signatory to an arbitration clause can be compelled to arbitrate under agency theory. Pritzker, 7 F.3d 1110. As noted in Pritzker, "arbitration agreements may be upheld against non-parties where the interests of such parties are directly related to, if not congruent with, those of a signatory." Id. at *1122 (citing Isidor Paiewonsky Assocs., Inc. v. Sharp Properties, Inc., 998 F.2d 145, 155 (3d Cir. 1993)).

In this case, Robert Reibstein's interests are directly related, if not congruent with, the interests of Dianne Reibstein. As David Phillips' step-father, Robert Reibstein's concern for his step-son David's well-being caused him to adhere to virtually all of the terms of the Contract that his wife signed as his agent. Robert Reibstein paid a substantial amount of money to enroll David in CEDU's program and, in conjunction with Dianne Reibstein, sought CEDU's assistance in helping David Phillips. Based on these facts, I find that Robert Reibstein's interests are directly related, if not congruent to those of his agent, Dianne Reibstein. As such, this Court compels Robert Reibstein to arbitrate based on agency principles.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DIANNE REIBSTEIN, ROBERT REIBSTEIN	:	CIVIL ACTION
and DAVID PHILLIPS,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	NO. 00-1781
	:	
CEDU/ROCKY MOUNTAIN ACADEMY,	:	
	:	
Defendant.	:	

ORDER

AND NOW, this 20th day of December, 2000, upon consideration of the Defendant's Motion to Dismiss, Motion to Compel Arbitration, and Motion to Transfer Venue, and the Plaintiffs' Responses thereto, it is hereby ORDERED that:

1. Defendant's Motion to Compel Arbitration (Dkt. No. 6) is GRANTED;
2. Defendant's Motion to Dismiss (Dkt. No. 5) and Motion to Transfer Venue (Dkt. No. 7) are DENIED; and
3. all other outstanding Motions are DENIED as moot.

BY THE COURT:

Robert F. Kelly, J.