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

AAMES FUNDING CORPORATION	:	CIVIL ACTION
	:	
	:	
v.	:	
	:	
	:	
ROSIE SHARPE	:	NO. 04-4337

MEMORANDUM

Padova, J. **October 28, 2004**

Petitioner Aames Funding Corporation commenced this federal action against Respondent Rosie Sharpe by filing a Petition to Compel Arbitration pursuant to the Federal Arbitration Act ("FAA"). In its Amended Petition to Compel Arbitration, Petitioner also requests that this Court stay an action brought by Respondent in state court against Petitioner and several other defendants who are not parties to the instant action. On October 25, 2004, the Court held a hearing on the Amended Petition to Compel Arbitration, and the matter has been fully briefed by the parties. For the reasons that follow, the Court grants the Amended Petition to Compel Arbitration and denies the request for a stay of the state court proceedings.

I. BACKGROUND

On July 16, 2004, Respondent Rosie Sharpe filed an action in the Philadelphia County Court of Common Pleas against Petitioner, a consumer lending company; Homecomings Financial Inc. ("Homecomings"), a consumer lending company; First Choice Builders, Inc. ("First Choice"), a residential home improvement company;

Brookside Mortgage, Inc. ("Brookside"), a mortgage company; and Michael Borso ("Borso"), a mortgage broker employed by Brookside. Rosie Sharpe v. Aames Funding Corp., et al., Philadelphia County Court of Common Pleas, Civ. A. No. 002279 (July Term, 2004). The Common Pleas Court Complaint alleges the following facts. On or about January 10, 2000, First Choice solicited Plaintiff to enter into a home improvement contract for her home in Philadelphia. Id. ¶ 7. Plaintiff and her daughter thereafter executed a "proposal" for home improvement work in the amount of $5,640. Id. Upon executing the contract, First Choice informed Plaintiff that someone from his office would be contacting her to arrange financing for the home improvement work. Id. ¶ 8. Two days later, Borso visited Plaintiff at her home to request all documentary information on her outstanding debts. Id. ¶ 9. Although Plaintiff never wanted a loan for anything but home improvements, Borso insisted that she would have to pay off any other outstanding debts in order to obtain the home improvement loan. Id. Borso did not provide Plaintiff with a broker contract, did not identify himself as a broker, and did not explain that, as a mortgage broker, he would be paid by Plaintiff for arranging a loan. Id. ¶ 10.

On or about March 3, 2000, a settlement agent for Petitioner closed a loan at Plaintiff's home for a principal amount of $25,000 and at an interest rate of 11%. Id. ¶ 11. The settlement statement for the loan reflects the pay-off of Respondent's

consumer loan, utility, and tax debts, as well as a $2,500 broker fee for Brookside. Id. The settlement statement did not account for the $5,500 balance of the principal of the loan. Id. Weeks later, First Choice's agent visited Plaintiff's home to inquire about the loan proceeds for the home improvement work. Id. ¶ 12. Plaintiff and her daughter advised First Choice that they never received the funds, whereupon First Choice called Borso on his cell phone to inquire about the unaccounted for loan proceeds. Id. First Choice's agent was overheard by Plaintiff and her daughter as saying to Borso, "What happened to the money?" and "Why did you do that?" Id. ¶ 13. First Choice's agent advised Plaintiff that he would look into the situation. Id.

On or about March 17, 2000, Plaintiff received three checks, $2,855 in cash payable to Plaintiff, $891 payable to PECO Energy, and $117 payable to CitiBank. Id. ¶ 14. The PECO Energy and CitiBank debts had not been listed on the settlement statement. Id. Plaintiff returned the checks to the sender because they did not represent the cash amount she was supposed to receive from the home improvement loan. Id. First Choice, Borso, and/or Brookside never responded to inquiries from Plaintiff nor visited her at her home ever again. Id. ¶ 15. The $1,700 remainder of the principal remains unaccounted for and Plaintiff never received any home improvements. Id. At all times herein, First Choice, Borso, and Brookside acted as agents for Petitioner. Id. ¶ 17.

In Count I of her Common Pleas Court Complaint, Respondent alleges violations of Pennsylvania's Unfair Trade Practices and Consumer Protection Law ("UTPCPL") against Petitioner, Homecomings, and First Choice, and seeks "a return of funds for wrongful and/or excessive improvement work charges, [a declaration] that Defendants' security interest [is] null and void, refund of all settlement charges in the loan, refund of the amount of all non-home improvement financed debts, treble the amount of the aforesaid charges, plus reasonable attorney's fees and costs and other appropriate relief." Id. ¶ 28. In Count II of the Common Pleas Court Complaint, Plaintiff alleges a claim for conversion against Borso, Brookside, and First Choice, and seeks actual and punitive damages, return of the converted loan funds, and attorney's fees and costs. Id. ¶ 33.

On September 13, 2004, Petitioner commenced the instant action against Respondent by filing a Petition to Compel Arbitration under § 4 of the FAA. Petitioner thereafter filed an Amended Petition to Compel Arbitration on September 23, 2004.[1] Petitioner maintains

[1] Petitioner did not seek leave of court to file the Amended Petition. Under the FAA, a petition to compel arbitration is treated procedurally as a motion. 9 U.S.C. § 6. Thus, the amendment provisions in Federal Rule Civil Procedure 15(a) do not apply in the instant case. See Albany Ins. Co. v. Almacenadora Somex, S.A., 5 F.3d 907, (5th Cir. 1993) (noting that motions are not "pleadings" for purposes of Rule 15(a)). Nevertheless, "the proposition that 'a [m]otion is subject to 'timely' amendment' is widely shared." Martinez v. Quality Value Convenience, Inc., 63 F. Supp. 2d 651, 655 (E.D. Pa. 1999) (quoting 5 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1194 (2d ed.

that Respondent is required to arbitrate her dispute against Petitioner pursuant to an arbitration agreement entered into by the parties. Under the arbitration agreement, Petitioner and Respondent are required to arbitrate "any and all" claims, with the exception of:

> (i) foreclosure proceedings, whether by judicial action, power of sale, or any other proceeding in which a lien holder may acquire or convey title to or possession of any property which is security for this Transaction (including an assignment of rents or appointment of a receiver) or (ii) an application by or on behalf of the Borrower for relief under the federal bankruptcy laws or any other similar laws of general application for the relief of debtors, or (iii) any Claim where Lender seeks damages or other relief because of Borrower's default under the terms of a Transaction.

(Am. Pet., Ex. B.)

II. LEGAL STANDARD

Petitions to compel arbitration are evaluated under the summary judgment standard set forth in Federal Rule of Civil Procedure 56(c). Paxson, LLP v. Asensio, Civ. A. No. 02-8986, 2003 WL 2107694, at *1 n.1 (E.D. Pa. May 5, 2003). Summary judgment is

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1990)). The decision to permit the amendment of a motion is within the Court's discretion. In re Repetitive Stress Injury Litig., 165 F.R.D. 367, 371 (E.D.N.Y. 1996). Because Petitioner filed the Amended Petition within ten days of filing the original Petition, and because Respondent has not raised any objection to Petitioner's filing of the Amended Petition, the Court treats the Amended Petition as having been properly filed. See id. ("As a general proposition, [the Court's] discretion should be exercised in favor of granting such permission [to amend], lest the mechanics of motion practice be elevated over substance.").

appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). An issue is "genuine" if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A factual dispute is "material" if it might affect the outcome of the case under governing law. Id.

III. DISCUSSION

A. Subject Matter Jurisdiction

At the threshold, Respondent argues that this Court lacks subject matter jurisdiction over this action. The FAA does not provide an independent basis for subject matter jurisdiction. Moses H. Cone Memorial Hosp. v. Mercury Construction Corp., 460 U.S. 1, 26 n.32 (1983). Instead, "Section 4 [of the FAA] provides for an order compelling arbitration only when the federal district court would have jurisdiction over a suit on the underlying dispute." Id. The party asserting jurisdiction bears the burden of showing that at all stages of the litigation the case is properly before the federal court. Samuel-Bassett v. Kia Motors America, Inc., 357 F.3d 392, 396 (3d Cir. 2004).

As the underlying dispute solely raises state law claims, the only possible basis for subject matter jurisdiction in this action

is diversity of citizenship. Diversity jurisdiction is properly invoked where there is complete diversity of citizenship between plaintiffs and defendants and the amount in controversy exceeds $75,000. 28 U.S.C. § 1332. Petitioner asserts that diversity jurisdiction is present in this action because it is a California citizen and Respondent is a Pennsylvania citizen, and the matter in controversy "is believed to exceed the sum of $75,000." (Am. Pet. ¶¶ 1-3.) Respondent maintains that the Court does not have diversity jurisdiction over this action because the other defendants in the state court action are also Pennsylvania citizens. Respondent further argues that the amount in controversy does not exceed $75,000 because she has only conceded in her Complaint that her damages exceed $50,000, the minimum amount required to avoid referral to Pennsylvania's mandatory arbitration program.

In determining whether the complete diversity requirement is satisfied, "a district court should not consider the citizenship of strangers to the arbitration contract, since they are not 'parties' [to] the suit arising out of the controversy within the meaning of the FAA." Doctor's Associates, Inc. v. Distajo, 66 F.3d 438, 446 (2d Cir. 1995); cf. Moses H. Cone, 460 U.S. at 20 (noting that the FAA requires piecemeal resolution of related disputes in different fora when necessary to give effect to an arbitration agreement and noting that "under the [FAA], an arbitration agreement must be

enforced notwithstanding the presence of other persons who are parties to the underlying dispute but not to the arbitration agreement."). It is undisputed that complete diversity exists between Petitioner and Respondent, and they are the only parties that entered into the arbitration agreement at issue. The complete diversity requirement is, therefore, satisfied in this case.

The amount in controversy in a petition to compel arbitration is determined by the underlying cause of action that would be arbitrated. Jumara v. State Farm Ins. Co., 55 F.3d 873, 877 (3d Cir. 1995). The allegations on the face of the petition to compel arbitration control unless it appears "to a legal certainty the claim is really for less than the jurisdictional amount." Id. (quoting Horton v. Liberty Mut. Ins. Co., 367 U.S. 348, 353 (1961)); see also Columbia Gas Transmission Corp. v. Tarbuck, 62 F.3d 538, 541 (3d Cir. 1995) (noting "dismissal is appropriate only if the district court is certain that the jurisdictional amount cannot be met"). In her Complaint, Respondent asserts that Petitioner violated the UTPCPL. The UTPCPL provides for recovery of actual damages, which are defined as "any ascertainable loss of money or property," trebling of the actual damages, reasonable attorney's fees, and "such additional relief as [the court] deems necessary or proper." 73 Pa. C.S.A. § 201.9.2(a). The relief sought by Respondent from Petitioner includes a "return of funds for wrongful and/or excessive improvement work charges, [a

declaration] that [Petitioner's] security interest [is] null and void, refund of all settlement charges in the loan, refund of the amount of all non-home improvement financed debts, treble the amount of the aforesaid charges, plus reasonable attorney's fees and costs and other appropriate relief."[2] Compl. ¶ 28, Rosie Sharpe v. Aames Funding Corp., et al., Philadelphia County Court of Common Pleas, Civ. A. No. 002279 (July Term, 2004). At the hearing on the instant Petition, Respondent's counsel stated that his client suffered approximately $15,000 in actual damages, which is subject to trebling under the UTPCPL. A declaration that Petitioner's security interest under the loan agreement is null and void adds another $25,000 towards the amount in controversy requirement.[3] See Alsbrooks v. Fairbanks Capital Corp., Civ. A.

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[2] Although Respondent's counsel admitted at the hearing that the amount in controversy likely exceeds $75,000, parties may not confer subject matter jurisdiction by consent. Samuel-Bassett, 357 F.3d at 396. The Court has, therefore, independently appraised the value of Respondent's claim against Petitioner. See Angus v. Shiley Inc., 989 F.2d 142, 146 (3d Cir. 1993) (holding that court should make an independent appraisal of the claim's value where "the complaint does not limit its request to a precise monetary amount").

[3] Such declaratory relief essentially amounts to rescission of the loan agreement between Petitioner and Respondent. See Coram Healthcare Corp. v. Aetna U.S. Healthcare, Inc., 94 F. Supp. 2d 589, 595-96 (E.D. Pa. 1999) (noting that "rescission is really an equitable remedy rather than a cause of action or claim for relief," which entails "the unmaking of the contract, and not merely a termination of the rights and obligations of the parties towards each other, but [also] an abrogation of all rights and responsibilities of the parties towards each other from the inception of the contract") (citation omitted). Pennsylvania courts have concluded that rescission and damages are not mutually

No. 03-2386, 2003 WL 21321735, at *4 (E.D. Pa. June 10, 2003) (noting that the amount in controversy for equitable relief is measured by "the value of the object of the litigation" from the plaintiff's viewpoint) (quoting Hunt v. Washington State Apple Adver. Comm'n, 432 U.S. 333, 347 (1977)); Rosen v. Chrysler Corp., 205 F.3d 918, 921 (6th Cir. 2000) (noting that the amount in controversy where a plaintiff seeks to rescind a contract is the contract's entire value). As the amount in controversy is approximately $70,000 before consideration of an award of attorney's fees and any additional relief available under the UTPCPL, it does not appear to a "legal certainty" that Respondent's claim against Petitioner is worth $75,000 or less. Accordingly, the Court has diversity jurisdiction over this action.

B. Arbitrability

Petitioner contends that Respondent is required to arbitrate the underlying dispute pursuant the agreement to arbitrate entered into by the parties in this action. Section 2 of the FAA provides as follows:

> [A] written provision in any . . . contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract . . . or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract . . . shall be valid, irrevocable,

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exclusive remedies under the UTPCPL. Baker v. Cambridge Chase, Inc., 725 A.2d 757, 767 (Pa. Super. Ct. 1999); Metz v. Quaker Highlands, Inc., 714 A.2d 447, 450 (Pa. Super. Ct. 1998).

> and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

9 U.S.C. § 2.[4] Before a reluctant party can be compelled to arbitrate, however, the court must "engage in a limited review to ensure that the dispute is arbitrable - i.e., that a valid agreement to arbitrate exists between the parties and that the specific dispute falls within the substantive scope of that agreement." PaineWebber, Inc. v. Hartmann, 921 F.2d 507, 511 (3d Cir. 1990). Federal law presumptively favors the enforcement of arbitration agreements. Harris v. Green Tree Fin. Corp., 183 F.3d 173, 178 (3d Cir. 1999); see also Moses H. Cone, 460 U.S. at 24 ("The [FAA] establishes that, as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability.").

Respondent contends that the arbitration agreement entered into by the parties in this case is void as unconscionable.[5]

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[4] The parties do not dispute that the loan agreement involved in this dispute involves "commerce," as defined in 9 U.S.C. § 1.

[5] Respondent separately argues that this Court should abstain from deciding whether the dispute is arbitrable because the issue is already pending before the state court in the underlying action. "The doctrine of abstention, under which a District Court may decline to exercise or postpone the exercise of its jurisdiction, is an extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy properly before it. Abdication of the obligation to decide cases can be justified under this

Questions concerning the interpretation and construction of arbitration agreements are determined by reference to federal substantive law. Harris, 183 F.3d at 179. In interpreting such agreements, federal courts may apply state law pursuant to § 2 of the FAA. Id. Thus, generally applicable contract defenses may be applied to invalidate arbitration agreements without contravening the FAA. Id. A party challenging a contract provision as unconscionable generally bears the burden of proving that the provision is both procedurally and substantively unconscionable. Alexander v. Anthony Int'l, L.P., 341 F.3d 256, 265 (3d Cir. 2003). Procedural unconscionability pertains to the process by which an agreement is reached and the form of an agreement, including the use therein of fine print and convoluted or unclear language. Harris, 183 F.3d at 181. Substantive unconscionability refers to terms that unreasonably favor one party to which the disfavored

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doctrine only in . . . exceptional circumstances . . . ." Moses H. Cone, 460 U.S. at 14 (quoting Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 813 (1976)); see also Colorado River, 424 U.S. at 820 (noting that factors a district court should consider in deciding whether to abstain include the inconvenience of the federal forum, the order in which jurisdiction was obtained by the courts, and the desirability of avoiding piecemeal litigation). Exceptional circumstances warranting abstention are not present in this case because the federal forum is not any less convenient for the parties, relatively little progress has been made in the state court action, and the FAA "*requires* piecemeal resolution [of disputes] when necessary to give effect to an arbitration agreement." Moses H. Cone, 460 U.S. at 20 (emphasis in original). The fact that federal law governs the issue of arbitrability also weighs against abstention in this case. See id. at 23.

party does not truly assent. Alexander, 341 F.3d at 265.

Respondent argues that the arbitration agreement is procedurally unconscionable as a contract of adhesion. An adhesion contract is defined as a "standard form contract prepared by one party, to be signed by the party in a weaker position, [usually] a consumer, who has little choice about the terms." Heugel v. Mifflin Constr. Co., Inc., 796 A.2d 350, 357 (Pa. Super. Ct. 2002) (citation omitted). Procedural unconscionability is generally established if the agreement at issue constitutes a contract of adhesion. Alexander, 341 F.3d at 265. Petitioner does not dispute that the arbitration agreement at issue constitutes a contract of adhesion. Accordingly, Respondent has demonstrated that the agreement to arbitrate is procedurally unconscionable. Of course, "[a]n adhesion contract is not necessarily unenforceable," Alexander, 341 F.3d at 265, as Respondent must also demonstrate that the arbitration agreement is substantively unconscionable.

Respondent argues that the arbitration agreement is substantively unconscionable because it requires her to arbitrate the vast majority of her claims while allowing Petitioner bring a foreclosure action in the courts. Respondent cites Lytle v. CitiFinancial Services, Inc., 810 A.2d 643 (Pa. Super. Ct. 2002), in support of her substantive unconscionability argument. Lytle involved a lender-borrower agreement which provided for arbitration of all claims by the parties, with the exception "[a]ny action to

effect a foreclosure to transfer title to the property being foreclosed . . . or [a]ny matter where all parties seek monetary damages in the aggregate of $15,000 or less in total damages (compensatory or punitive), costs and fees." Id. at 650. The Lytle court noted that, in practice, the borrowers were required arbitrate all disputes involving more than the modest sum of $15,000, while the lender remained free to enforce most of its substantive rights (i.e., repayment of the debt and commencement of foreclosure proceedings) in court. Id. at 660. The court concluded that "under Pennsylvania law, the reservation by [a lender] of access to the courts for itself to the exclusion of the consumer creates a presumption of unconscionability, which in the absence of 'business realities' that *compel* inclusion of such a provision in an arbitration provision, renders the arbitration provision unconscionable and unenforceable under Pennsylvania law." Id. at 665 (emphasis in original).

The Court concludes that the Respondent's reliance on the Pennsylvania Superior Court's decision in Lytle is unpersuasive. The Court is bound by the decision of the United States Court of Appeals for the Third Circuit in Harris, wherein the court rejected the borrowers' contention that an arbitration clause in a loan agreement was substantively unconscionable because it provided the lender with the option of litigating certain disputes, while providing no such choice to the borrowers. 183 F.3d at 183. The

court concluded that "the mere fact that [the lender] retains the option to litigate some issues in court, while the [borrowers] must arbitrate all claims does not make the arbitration agreement unenforceable. We have held repeatedly that inequality in bargaining power, alone, is not a valid basis upon which to invalidate an arbitration agreement." Id.; see id. ("It is of no legal consequence that the arbitration clause gives [the lender] the option to litigate arbitrable issues in court, while requiring the [borrowers] to invoke arbitration" because "mutuality is not a requirement of a valid arbitration clause"); see also In re Brown, 311 B.R. 702, 709-10 (Bankr. E.D. Pa. 2004) (finding Lytle unconvincing based on Harris); Choice v. Option One Mortgage Corp., Civ. A. No. 02-6626, 2003 WL 22097455, at *7-*8 (E.D. Pa. May 13, 2003) (same). The Court concludes, therefore, that the arbitration agreement entered into by Petitioner and Respondent is valid and enforceable. The Court further finds that the underlying dispute between Petitioner and Respondent falls within the broad scope of the arbitration agreement. Accordingly, Petitioner's Amended Petition to Compel Arbitration is granted.

C. Stay of State Court Action

Petitioner also requests that this Court stay the action presently pending in the Philadelphia County Court of Common Pleas. Under the Anti-Injunction Act (the "Act"), a federal court may enjoin an ongoing state court proceeding only "as expressly

authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. § 2283. The Act "is an absolute prohibition against enjoining state court proceedings, unless the injunction falls within one of [the] three specifically defined exceptions." Atlantic Coast Line R. Co. v. Brotherhood of Locomotive Engineers, 398 U.S. 281, 286 (1970). These "exceptions are narrow and are not to be enlarged by loose statutory construction." In re Prudential Ins. Co. of Am. Sales Practice Litig., 261 F.3d 355, 364 (3d Cir. 2001) (quoting Chick Kam Choo v. Exxon Corp., 486 U.S. 140, 146 (1988)); see also U.S. Steel Corp. Plan for Employee Ins. Benefits v. Musisko, 885 F.2d 1170, 1175 (3d Cir. 1989) (noting that non-intervention is the general rule under the Act because "inappropriate intervention breeds friction, but federal restraint facilitates the smooth and orderly operation of the dual judicial structure").

A number of courts have enjoined state court proceedings in conjunction with an order compelling arbitration based on the "in aid of its jurisdiction" and "protect and effectuate its judgments" exceptions to the Act. See, e.g., TranSouth Fin. Corp. v. Bell, 149 F.3d 1292, 1297 (11th Cir. 1998) (concluding that stay of state court proceedings "might be appropriate" if the court compelled arbitration because "continued state proceedings could jeopardize the federal court's ability to pass on the validity of the

arbitration proceeding it has ordered"); In the Matter of Arbitration Between Nuclear Elec. Ins. Ltd. & Central Power & Light Co., 926 F. Supp. 428, 436 (S.D.N.Y. 1996) (noting that "[t]he courts in this district have consistently held that a stay, when issued subsequent to or in conjunction with an order compelling arbitration concerning the same subject matter as the state court proceeding, falls within one or both of the latter two exceptions" to the Anti-Injunction Act); but see AK Steel Corp. v. Chamberlain, 974 F. Supp. 1120, 1125 (S.D. Ohio 1997) (declining to enjoin state court proceedings in connection with order compelling arbitration and noting that "[t]he majority of cases grant the injunction without discussing the requirements of the Anti-Injunction Act or how their injunction fits within those exceptions"). Assuming, *arguendo*, that an exception to the Act is applicable in this case, the Court nevertheless declines to enjoin the action presently pending in the Philadelphia County Court of Common Pleas. See Chick Kam Choo, 486 U.S. at 151 ("[T]he fact that an injunction *may* issue under the Anti-Injunction Act does not mean that it *must* issue.") (emphasis in original); In re Diet Drugs Prod. Liab. Litig., 369 F.3d 293, 306 (3d Cir. 2004) (noting that "principles of comity, federalism, and equity *always* restrain federal courts' ability to enjoin state court proceedings") (emphasis added). Given that the state court action includes a number of defendants who are parties to neither the arbitration agreement nor this

action, principles of comity, federalism, and equity counsel against enjoining the state court action. See Cash Converters USA, Inc. v. Burns, Civ. A. No. 99 C 146, 1999 WL 98345, at *13 (N.D. Ill. Feb. 19, 1999) (declining to issue stay where state court proceedings included several additional parties). Petitioner is, of course, free to seek a stay from the state court. Id. Accordingly, Petitioner's request for a stay of the action presently pending in the Philadelphia County Court of Common Pleas is denied.

IV. CONCLUSION

For the foregoing reasons, the Court grants Petitioner's Amended Petition to Compel Arbitration and denies Petitioner's request for a stay of the action presently pending in the Philadelphia County Court of Common Pleas.

An appropriate Order follows.

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

AAMES FUNDING CORPORATION	:	CIVIL ACTION
	:	
v.	:	
	:	
ROSIE SHARPE	:	NO. 04-4337

O R D E R

AND NOW, this 28th day of October, 2004, upon consideration of Petitioner's Amended Petition to Compel Arbitration (Doc. No. 3), Respondent's reply thereto, all related submissions, and the hearing held on October 25, 2004, **IT IS HEREBY ORDERED** as follows:

1. Petitioner's Amended Petition to Compel Arbitration is **GRANTED**.
2. Petitioner's request for a stay of the underlying action pending in the Philadelphia County Court of Common Pleas is **DENIED.**
3. This action is **DISMISSED**, and the Clerk shall **CLOSE** this action statistically.

BY THE COURT:

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John R. Padova, J.