

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

RAYMOND G. PERELMAN,

Plaintiff,

v.

FRIEDMAN, BILLINGS, RAMSEY  
& CO., INC.,

Defendant.

Case No. 2:04-cv-00958-LP

December 2, 2004

**MEMORANDUM/ORDER**

Currently before the Court is defendant Friedman, Billings, Ramsey & Co.'s Motion to Compel Arbitration and Stay Proceedings. For the reasons given below, defendant's motion will be granted

**I. Background**

In this securities case, defendant Friedman, Billings, Ramsey & Co. ("FBR") has moved to compel arbitration in its dispute with plaintiff Raymond G. Perelman. This dispute arose out of a failed stock transaction. Plaintiff Perelman was contacted by FBR regarding the purchase of shares of Bancorp.com stock. When plaintiff decided to purchase the stock, FBR informed him that he was required to open a brokerage account with Bear Sterns, which would act as a clearing

agent for the transaction. Plaintiff opened a Bear Sterns account, and the customer agreement that he completed to do so contained an arbitration provision. Plaintiff signed all paperwork and forwarded it to defendant FBR, authorizing FBR to proceed with the transaction. However, the transaction was never completed because FBR failed to secure the requested number of shares of stock for Perelman. As a result, Perelman filed the instant action. Perelman disputes FBR's claim that FBR was his brokerage agent in this deal. Perelman also claims that the arbitration agreement is inapplicable to this case because Bear Sterns was not a party to this case, and because Bear Sterns did not actually act as a clearing agent.

## **II. Discussion**

The Federal Arbitration Act states that “[a] written provision in any... contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction... shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or equity for the revocation of any contract.” Federal Arbitration Act, 9 U.S.C. § 3 (2003). In the present case, plaintiff Perelman signed an agreement with Clearing Agent Bear Sterns, which was provided to plaintiff by Brokerage Firm FBR. The agreement stated in relevant part “[y]ou agree that your Brokerage Firm and its employees are third-party beneficiaries of this Agreement, and that the terms and conditions thereof, including the arbitration provision, shall be applicable to all matters between or among any of you, your Brokerage Firm and its employees and the Clearing Agent Group and its employees.”

Plaintiff claims that this provision is not applicable to the current dispute because FBR was not his brokerage agent. However, based on all of the facts, it appears that FBR was

Perelman's brokerage firm, since opening an account with Bear Sterns also created a relationship with FBR. Although the customer agreement that plaintiff completed and signed had "Bear Sterns" printed on it, plaintiff completed this agreement and returned it to FBR, not Bear Sterns. Additionally, the form completed by plaintiff listed two FBR employees as the account executives on his account. One of these two employees was the FBR employee who initially contacted Perelman regarding the purchase of stock. Furthermore, defendant FBR assigned plaintiff an account number, and noted that it would have been impossible for FBR to have undertaken the stock transaction in question without plaintiff having an FBR account.

Defendant FBR is therefore a third party beneficiary to the customer agreement between Bear Sterns and plaintiff. This arbitration agreement is enforceable whether or not Bear Sterns is a party to the action. *Stone v. Doerge*, 245 F. Supp. 2d 878, 884 (N.D. Ill. 2003) (finding that an arbitration provision in agreement between Bear Sterns and plaintiff was applicable to all disputes arising from accounts on which Bear Sterns acted as a clearing agent, regardless of whether Bear Sterns was a party to the action). Furthermore, the agreement is applicable to this dispute because Bear Sterns was the clearing agent on the account in question. Plaintiff claims that the agreement is not applicable because Bear Sterns never acted on the account during this transaction. Plaintiff cites *Stone v. Doerge*, where the court found that an arbitration agreement between Bear Sterns and the plaintiff was not applicable to accounts on which Bear Sterns was not the clearing agent. *Stone*, 245 F. Supp. 2d at 884. This case is distinguishable, however, because, in *Stone*, the plaintiff had two separate accounts with the defendant broker. *Id.* at 880. Bear Sterns was the clearing agent on only one of the accounts, and it was the other account that was in dispute. *Id.* at 880. In the instant case, the customer agreement with Bear Sterns applied

to the account in dispute. The only reason Bear Sterns did not act on this account was because the transaction fell apart prematurely. The failure of the transaction, which led to the instant dispute, does not change the fact that Bear Sterns was the clearing agent on the account, and that, therefore, the arbitration provision of the customer agreement applies.

Accordingly, because FBR was a third party beneficiary to the customer agreement between Perelman and Bear Sterns, the arbitration provision of that agreement applies to this dispute.

For the foregoing reasons, FBR's Motion to compel arbitration and stay the proceedings pending resolution of the claims by arbitration is **GRANTED**.

BY THE COURT:

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Pollak, J.