

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

DEBORAH KAY,)	
KAREN HAYES,)	Civil Action
ELIZABETH PEMBLETON and)	No. 03-CV-06647
LIANNE COSTELLI,)	
)	
Plaintiffs)	
)	
vs.)	
)	
CLEAR CHANNEL COMMUNICATIONS,)	
INC. ,)	
LOWRY MAYS,)	
MARK MAYS,)	
RANDALL MAYS,)	
JOHN HOGAN,)	
CHRISTIAN TAYLOR,)	
JAMES SHEA,)	
JAY STERIN,)	
RICHARD LEWIS and)	
PATRICK GREMLING,)	
)	
Defendants)	

* * *

APPEARANCES:

GEOFFREY A. BAKER, ESQUIRE
DON A. BAILEY, ESQUIRE
ANDREW J. OSTROWSKI, ESQUIRE
On behalf of Plaintiffs

CHARLES L. BECKER, ESQUIRE
WAYNE C. STANSFIELD, ESQUIRE
On behalf of Defendants
Clear Channel Communications, Inc., Lowry Mays,
Mark Mays, Randall Mays, John Hogan, James Shea,
Jay Sterin, Richard Lewis and Patrick Gremling

CHARLES V. CURLEY, ESQUIRE
On behalf of Defendant
Christian Taylor

* * *

O P I N I O N

JAMES KNOLL GARDNER,
United States District Judge

This matter is before the court on the Motion of Defendants Clear Channel Communications, Inc., Lowry Mays, Mark Mays, Randall Mays, John Hogan, James Shea, Jay Sterin, Richard Lewis and Patrick Gremling to Dismiss Plaintiff's Complaint and to Compel Arbitration and Defendant Christian Taylor's Motion to Dismiss¹, which motions were both filed March 1, 2004. The Response in Opposition to Defendants' Motion to Dismiss was filed on behalf of plaintiffs April 8, 2004. For the reasons expressed below, we grant in part and deny in part defendants' motions to dismiss.

Specifically, we grant defendants' motion to dismiss Count 1 and 2 of plaintiffs' Complaint. However, we grant plaintiffs leave to file an Amended Complaint regarding those Counts. Moreover, we deny defendants' motion to compel arbitration. Furthermore, because we grant plaintiff leave to file an Amended Complaint, we dismiss Counts 3 through 6 of plaintiffs' Complaint but will permit plaintiff to restate these pendent state law claims in their Amended Complaint.

¹ In his motion to dismiss, defendant Christian Taylor joins the arguments asserted by the other defendants' motion to dismiss. Accordingly, we address the two separate motions to dismiss collectively and treat the two motions as one for purposes of this discussion.

JURISDICTION

Jurisdiction is based upon federal question jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1441(b). The court has supplemental jurisdiction over plaintiffs' pendent state law claims. See 28 U.S.C. § 1367. Venue is proper pursuant to 28 U.S.C. § 1391(b) because the events giving rise to plaintiffs' claims allegedly occurred in this judicial district, namely, Lehigh and Berks County, Pennsylvania.

SUMMARY OF DECISION

Although a conspiracy cannot arise between a corporation and its employees, officers and directors acting in their official capacity, there can be a conspiracy if the employees are acting in a personal capacity. Plaintiffs have pled an actionable conspiracy under 42 U.S.C. § 1985(3) because plaintiffs' alleged conspiracy includes individuals who are no longer employed by defendant Clear Channel Communications, but are now third parties to the conspiracy, outside the bar on intra-corporate conspiracies.

However, plaintiffs' Complaint lacks sufficient specificity regarding whether the alleged co-conspirators who are defendant Clear Channel's employees are acting in a personal or official capacity. But we permit plaintiffs to file an Amended Complaint to specify those things.

Concerning the conspiracy claim, plaintiffs have not

specifically indicated what constitutional provisions, federal statutes or specific right, privilege or immunity has been harmed. In this regard, plaintiffs' Complaint alleges conclusions of law rather than factual averments. Therefore, we dismiss Count 1 of plaintiffs' Complaint.

Because there may be federal rights, privileges and immunities which plaintiffs could assert, we will permit them to file an Amended Complaint specifically setting forth each federal right, privilege and immunity which they contend has been violated by defendants' conspiracy.

The arbitration agreements entered into between plaintiffs Deborah Kay and Elizabeth Pembleton when they were employees of defendant Clear Channel Communications do not apply to their post-termination claims. Because the arbitration clause relates only to employment-related claims and because the claims asserted by plaintiffs Kay and Pembleton all arose after their separation from employment with Clear Channel, we deny defendants' motion to compel Miss Kay and Mrs. Pembleton to arbitrate their claims.

STANDARD OF REVIEW

A Rule 12(b)(6) motion to dismiss examines the sufficiency of the Complaint. Conley v. Gibson, 355 U.S. 41, 45, 78 S.Ct. 99, 102, 2 L.Ed.2d 80, 84 (1957). In determining the sufficiency of the Complaint the court must accept all

plaintiffs' well-pled factual allegations as true and draw all reasonable inferences therefrom in favor of plaintiffs. Graves v. Lowery, 117 F.3d 723, 726 (3d Cir. 1997).

[T]he Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which [they base their] claim. To the contrary, all the Rules require is "a short and plain statement of the claim" that will give the defendant fair notice of what the plaintiff[s'] claim is and the grounds upon which it rests.

Conley, 355 U.S. at 47, 78 S.Ct. at 103, 2 L.Ed.2d at 85.

(Internal footnote omitted.)

Thus, a court should not grant a motion to dismiss unless it appears beyond a doubt that the plaintiffs can prove no set of facts in support of their claim which would entitle them to relief. Graves, 117 F.3d at 726 (citing Conley, 355 U.S. at 45-46, 78 S.Ct. at 102, 2 L.Ed.2d at 84.)

PLAINTIFFS' COMPLAINT

On December 10, 2003 plaintiffs Deborah Kay, Karen Hayes, Elizabeth Pembleton and Lianne Costelli filed a six-count Complaint. Plaintiffs collectively allege two federal, and four state-law, causes of action against all defendants.

Specifically, Counts 1 and 2 assert federal claims for conspiracy to deprive certain rights pursuant to 42 U.S.C. § 1985(3) (Count 1) and a cause of action for failure to prevent the alleged conspiracy pursuant to 42 U.S.C. § 1986 (Count 2).

Counts 3 through 6 allege state law claims for intentional infliction of emotional distress (Count 3), negligent supervision and retention (Count 4), intentional interference with actual and prospective economic relationships (Count 5) and defamation (Count 6).

FACTS

In their Complaint, plaintiffs' specifically allege the following facts which under the forgoing standard of review we must accept as true for the purposes of the within motions to dismiss. The pertinent facts are as follows:

On June 9, 2003 plaintiffs collectively filed a sexual harassment Complaint with the Pennsylvania Human Relations Commission ("PHRC") against defendants Clear Channel, Christian Taylor, Richard Lewis, Jay Sterin and Patrick Gremling. In that PHRC Complaint, plaintiffs alleged that defendants violated their civil and other rights under Title VII of the Civil Rights Act of 1964, ("Title VII")² and under the Pennsylvania Human Relations Act ("PHRA").³ In the within Complaint, plaintiffs aver that since the filing of their PHRC Complaint, defendants have collectively conspired to retaliate against plaintiffs for filing the PHRC Complaint.

² 42 U.S.C. §§2000(e) to 2000(e)-17).

³ Act of October 27, 1955, P.L. 744, No. 222, §§ 1-13, as amended, 43 P.S. §§ 951-963.

Plaintiffs contend that defendants ongoing conspiracy includes efforts by all defendants to deter and impede plaintiffs from redressing their legitimate Complaints against the PHRC defendants in both the PHRC matter and in this district court action.

In addition, plaintiffs allege that defendants have collectively conspired to interfere with plaintiffs new employment, their contractual relations and prospective economic relationships. This alleged interference includes communicating with plaintiffs' clients, customers and others. Plaintiffs aver that in these conversations, defendants disparaged plaintiffs, made false statements regarding them and otherwise negatively affected plaintiff's relationships with clients, customers and others. For example, defendants allegedly informed the owner of a prospective client of plaintiffs that plaintiff Elizabeth Pembleton was a "bitch" and would not take care of the clients' business appropriately.

Plaintiffs assert that defendants Lowry Mays, Mark Mays, Randall Mays, John Hogan, Richard Lewis and Patrick Gremling are all still employed with defendant Clear Channel. However, plaintiffs allege that defendants Christian Taylor, James Shea and Jay Sterin were all fired by Clear Channel in August 2003. Plaintiffs contend that defendants have wrongly informed plaintiffs' clients and prospective clients that

plaintiffs caused Clear Channel to fire those three defendants.

Plaintiffs further contend that while defendants Taylor, Sterin and Shea are no longer employed by defendant Clear Channel, all three maintain contact with all the other defendants and that all defendants are conspiring with one another to harm plaintiffs in retaliation for filing the PHRC Complaint. Plaintiffs assert that defendants sought to impede plaintiffs' ability to redress their grievances against defendants before appropriate judicial and administrative bodies.

Finally, plaintiff Costelli avers that she has relocated to the State of California because of the actions of defendants and is considering not returning to the Commonwealth of Pennsylvania.

DEFENDANTS' CONTENTIONS

On March 1, 2004 defendants Clear Channel Communications, Inc., ("Clear Channel") Lowry Mays, Mark Mays, Randall Mays, John Hogan, James Shea, Jay Sterin, Richard Lewis and Patrick Gremling filed their within motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure seeking dismissal of all of plaintiffs' claims. In addition, on March 1, 2004 defendant Christian Taylor filed a separate motion to dismiss in which he joined the motion and memorandum of law of the other defendants.

Specifically, defendants collectively seek dismissal of

plaintiffs Hayes and Costelli's claims asserted in Counts 1 and 2 with prejudice and dismissal of the state law claims of Mrs. Hayes and Mrs. Costelli in Counts 3 through 6 without prejudice. In addition, defendants seek the dismissal of all claims asserted by plaintiffs Kay and Pembleton and seek an Order compelling these plaintiffs to arbitrate their claims pursuant to an agreement with defendant Clear Channel Communications, Inc.

More specifically, regarding Count 1 of plaintiffs' Complaint, defendants assert that plaintiffs fail to state a cause of action in which relief can be granted. Defendants assert numerous bases for their motion to dismiss as follows.

Initially, defendants assert that plaintiffs fail to plead the elements of a Section 1985(3) claim by (1) failing to allege an actionable conspiracy and (2) failing to assert a deprivation of a federally protected right. Moreover, defendants contend that plaintiffs' claims under 42 U.S.C. § 1985(3) are really a claim for retaliation pursuant to 42 U.S.C. § 2000e-3 alleging that defendants retaliated against plaintiffs based upon plaintiffs filing claims of sexual harassment with the PHRC pursuant to Title VII and that the within Section 1985 action is barred because Section 1985(3) does not provide a remedy for Title VII violations.

In addition, defendants contend that because Title VII is the avenue of redress for plaintiff's claims of retaliation,

that even if the court were to consider this a Title VII retaliation claim, plaintiffs have not exhausted their administrative remedies under Title VII.

Next, defendants contend that Count 2 of plaintiffs' Complaint must be dismissed because it asserts a claim under 42 U.S.C. § 1986, and Section 1986 provides a cause of action only against a person who fails to take action to prevent a Section 1985 violation despite knowing that a violation of Section 1985 is about to be committed and despite possessing the power to prevent its occurrence. In this case, defendants assert that because plaintiffs have not pled a Section 1985 claim, their Section 1986 claim must fail as a matter of law.

In that same vein, defendants assert that because both plaintiffs' federal claims must fail, this court should not exercise pendent jurisdiction over plaintiffs' state law claims asserted in Counts 3 through 6 of the Complaint.

Finally, defendants assert that plaintiffs Kay and Pembleton signed binding arbitration agreements with defendant Clear Channel, and all of their claims should be dismissed with prejudice, and that these two plaintiffs should be compelled to arbitrate all of their claims.

PLAINTIFFS' CONTENTIONS

Plaintiffs assert that they have properly pled all of their causes of action. Specifically, plaintiffs assert that

they have alleged an actionable conspiracy and violation of numerous federal rights, privileges and immunities. In their brief in opposition to the within motions, plaintiffs assert violations of the First Amendment and Equal Protection Clause of the United States Constitution.

Plaintiffs assert that because the current ongoing conspiracy involves Clear Channel, some of its current and former employees, the conspiracy is not an intra-corporate conspiracy. In the alternative, plaintiffs advocate for a new exception to the intra-corporate conspiracy doctrine averring that Section 1985 liability should not be avoided simply because all of the members of a conspiracy are also part of a particular organization. Plaintiffs allege that to do so would abrogate and deny them the protections of the rights, privileges and immunities that Congress intended all persons to be able to enjoy through the enactment of Section 1985.

Finally, plaintiffs Kay and Pembleton contend that the arbitration agreement entered into with defendant Clear Channel is not enforceable because it constitutes an illegal contract of adhesion.

For the reasons set forth below, we agree with plaintiffs in part, and with defendants in part. We will permit plaintiffs an opportunity to file an Amended Complaint to attempt to correct the deficiencies in the current Complaint.

DISCUSSION

To begin our discussion of plaintiffs' claims, we must first look at the applicable language of Section 1985. In particular, Section 1985(3) of Title 42, provides in pertinent part:

If two or more persons in any State or Territory conspire...for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protections of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws;...in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U.S.C. § 1985(3).

We note that in our recent decision in Abdulhay v. Bethlehem Medical Arts, L.P., No. Civ.A. 03-04347, 2004 U.S. Dist. LEXIS 5494 (E.D. Pa. March 29, 2004), the undersigned examined extensively the scope of Section 1985(3). We incorporate here our analysis and reasoning in that matter.

It is well-established that Section 1985(3) does not by itself create any substantive rights. Rather, "it serves only as

a vehicle for vindicating federal rights and privileges which have been defined elsewhere." Abdulhay, 2004 U.S. Dist LEXIS at *22, (quoting, Brown v. Philip Morris, Inc, 250 F.3d 789, 805 (3d Cir. 2001)).

Furthermore, in Abdulhay, we concluded based upon the decision of the United States Court of Appeals for the Third Circuit in Novotny v. Great American Federal Savings & Loan Association, 584 F.2d 1235 (3d Cir. 1978), vacated on other grounds by Great American Savings & Loan Association v. Novotny, 442 U.S. 366, 99 S.Ct. 2345, 60 L.Ed.2d 957 (1979), that

"Whatever else 'equal privileges and immunities' or 'equal protection' may mean...we conclude that a deprivation of equal privileges and immunities under § 1985(3) includes the deprivation of a right secured by a federal statute..." Novotny, 584 F.2d at 1247; see e.g. Shaare Tefila Congregation v. Cobb, 481 U.S. 615, 107 S.Ct. 2019, 95 L.Ed.2d 594 (1987).

But in securing the fundamental of equal protection under the law, we must take care to avoid expanding the statute beyond the parameters which Congress created. The act requires that there be a conspiracy to deprive a person or a class of equal protection under the law or of equal privileges and immunities under the law. "The conspiracy, in other words, must aim at a deprivation of the equal enjoyment of rights secured by the law to all." Griffin, 403 U.S. at 102, 91 S.Ct. at 1798, 29 L.Ed.2d at 348 (footnotes omitted).

Abdulhay, 2004 U.S. Dist LEXIS at *29.

In Griffin v. Breckenridge, 403 U.S. 88, 91 S.Ct. 1790, 29 L.Ed.2d 338, (1971) the Supreme Court of the

United States synthesized the language of Section 1985(3) into a four-element test. In order to state a Section 1985(3) claim, plaintiffs must allege: (1) a conspiracy; (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of equal protection of the laws, or of equal privileges and immunities under the laws; (3) an act in furtherance of the conspiracy; and (4) whereby a person is either injured in his person or property or deprived of any right or privilege of a citizen of the United States. 403 U.S. at 102-103, 91 S.Ct. at 1798-1799, 29 L.Ed.2d at 348.

In this case, defendants assert that plaintiffs fail to allege an actionable conspiracy and fail to assert that they have been deprived of a federal right, privilege or immunity. For the following reasons we disagree with defendants regarding the first issue, agree with defendants on the second issue and will permit plaintiffs an opportunity to amend their Complaint.

Conspiracy

Defendants assert that plaintiffs fail to allege an actionable conspiracy because a conspiracy cannot arise between a corporation and its employees, officers, or directors when those individuals are acting in their official capacity. While we agree with defendants' general statement of the law, See Robinson v. Canterbury Village, Inc., 848 F.2d 424, 431, (3d Cir. 1988), we conclude that plaintiffs have pled an actionable conspiracy.

Plaintiff's Complaint alleges that defendants Sterin, Shea and Taylor are no longer employed by defendant Clear Channel. Plaintiffs do not plead in what capacity the other individual defendants are acting, either in their official capacity or an individual capacity. A Section 1985(3) conspiracy between a corporation and one of its officers may be maintained if the officer is acting in a personal, as opposed to official, capacity, or if independent third parties are alleged to have joined the conspiracy. 848 F.2d at 431.

Accordingly, because we conclude that plaintiffs' alleged conspiracy includes individuals who are no longer employed by defendant Clear Channel, they are now third parties to the alleged conspiracy, outside the bar on intra-corporate conspiracies. However, we conclude that plaintiffs' Complaint does not contain sufficient specificity to put defendants on notice regarding whether they are alleged to be acting in a personal or official capacity. Thus, because we conclude that plaintiffs have alleged an actionable conspiracy, we will permit plaintiffs the opportunity to amend their Complaint to flesh out this issue more fully in order to satisfy the federal notice-pleading standard.

Deprivation of a Federal Right

Next, defendants assert that plaintiffs have not alleged deprivation of a federal right, privilege or immunity in

their Complaint. We agree.

On the contrary, plaintiffs contend that in their Complaint they assert deprivation of their First Amendment right to seek redress with the government, deprivation of Mrs. Costelli's right to travel, state and federal claims of defamation and tortious interference with actual and prospective contractual relations, together with interference with plaintiffs' economic relationships. For the following reasons, we agree with defendants but will permit plaintiffs the opportunity to amend their Complaint.

Plaintiffs' Complaint contains the following averments of violation of rights, privileges or immunities.

Paragraph 15

This is an action to enforce and defend Plaintiffs' civil and other rights under the laws of the United States and Pennsylvania.

* * *

Paragraph 18

Defendants' conspiracy includes an ongoing scheme to deter/impede Plaintiffs from redressing their legitimate complaints against Defendants before the PHRC and/or this Court.

* * *

Paragraph 19

On information and belief, Defendants communicated among themselves and with others to discriminate against Plaintiffs, to violate Plaintiffs' rights and privileges and to otherwise implement the objectives of the conspiracy.

* * *

Paragraph 32

Mrs. Costelli has relocated to California and is seriously contemplating permanently moving out of Pennsylvania. At least indirectly, Defendants have caused this relocation and contemplated move through the complained of action and inaction.

* * *

Paragraph 36

To accomplish the objectives of their conspiracy, Defendants sought to undermine Plaintiff's relationships with their clients, customers and others. To further accomplish the objectives of their conspiracy, Defendants sought to impede Plaintiffs' ability to redress their grievances against Defendants before appropriate administrative and judicial bodies.

* * *

Paragraph 38

Defendants' actions in furtherance of their conspiracy and/or their failure or refusal to prevent wrongs conspired to be done have caused Plaintiffs direct and indirect injury to their persons and property, and have deprived them of having and exercising their rights and privileges as citizens of the United States. Defendants are liable for all such damages and injuries in accordance with 42 U.S.C. § 1985(3) in an amount to be determined at trial.

As noted above, Section 1985(3) does not create substantive rights, but rather serves as a vehicle for vindicating federal rights, privileges and immunities defined elsewhere. Abdulhay, 2004 U.S. Dist LEXIS at *22. Accordingly,

we do not agree with plaintiffs that deprivation of a state-created right, privilege or immunity satisfies the requirements of Section 1985(3).

Moreover, we conclude that plaintiffs' Complaint is inadequate to satisfy the federal-notice-pleading requirement to place defendants on notice of the claims against them in this regard. Plaintiffs are required to aver facts sufficient to put defendants on notice of the claims against them. Fed.R.Civ.P. 8(a); See Swierkiewicz v. Sorema N.A., 534 U.S. 506, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002).

Except for the specific allegation in Paragraph 36 of the Complaint asserting that defendants are "impeding plaintiffs' ability to redress their grievances against defendants before appropriate administrative and judicial bodies", we conclude that plaintiffs have not specifically indicated what Constitutional provisions, federal statutes or a specific right, privilege or immunity that has been harmed.

With regard to plaintiffs' allegation of defendants impeding their ability to seek redress, plaintiffs statement is more akin to a conclusion of law than a factual averment. Taking plaintiffs' facts as true and all the reasonable inferences deducible therefrom, we conclude that plaintiffs have not pled any abrogation of their right to seek redress in any court or administrative agency. On the contrary, plaintiffs' factual

averments reveal that they have filed Complaints in both this court and before the PHRC and that both cases are proceeding.

Furthermore, in their brief in opposition to the within motions, plaintiffs state they are "quite pleased with the hard work of the PHRC to date."⁴ Moreover, with regard to the claim of interference to the right to travel, Paragraph 32 of plaintiffs' Complaint with regard to Mrs. Costelli, does not imply that her right to travel has been impeded in any way. On the contrary, it appears that she was able to travel to California.

Accordingly, we conclude that plaintiffs' Complaint does not give defendants notice of the particular federal rights, privileges and immunities involved in the alleged conspiracy sufficiently to enable defendants to respond. Thus, plaintiffs have failed to state a cause of action upon which relief can be granted as it relates to Count 1. Hence, we grant defendants' motion to dismiss Count 1 of plaintiffs' Complaint.

However, because there may be federal rights, privileges and immunities which plaintiffs could assert, we will permit them to file an Amended Complaint. We direct plaintiffs specifically to set forth each federal right, privilege and immunity which they contend has been violated by defendants' alleged conspiracy.

⁴ Response in Opposition to Defendants' Motion to Dismiss, Page 2.

Arbitration

Defendants contend that all of the claims raised in plaintiffs' Complaint by Miss Kay and Mrs. Pembleton should be dismissed because these two plaintiffs entered into agreements to arbitrate all claims against defendants.

Plaintiffs contend that the arbitration agreements with defendant Clear Channel are not enforceable and constitute an illegal contract of adhesion. For different reasons, we disagree with both plaintiffs and defendants and conclude that the arbitration agreements do not relate to the issues in this case.

Upon review of the arbitration provision, we determine that it does not apply to post-termination claims. Specifically, the Arbitration Agreement provides: "Employees are still protected by all applicable employment laws, and are merely agreeing to have certain employment-related claims decided by a private arbitrator rather than by a judge or jury."⁵ (Emphasis added.)

Because the arbitration agreement relates only to employment-related claims and because the claims asserted by plaintiffs all arose after their separation from employment with Clear Channel, we deny defendants' motion to compel Miss Kay and

⁵ Memorandum of Law in Support of Motion of Defendants Clear Channel Communications, Inc., Lowry Mays, Mark Mays, Randall Mays, John Hogan, James Shea, Jay Sterin, Richard Lewis and Patrick Gremling to Dismiss Plaintiffs' Complaint and Compel Arbitration, Exhibit 3, Page 1.

Mrs. Pembleton to arbitrate their claims.

Finally, because we conclude that plaintiffs fail to assert a federally-protected right, privilege or immunity, we decline to address at this time defendants' contention that these claims are really just a Title VII retaliation claim clothed as a Section 1985(3) matter.

CONCLUSION

For all the foregoing reasons, we grant defendants' motion to dismiss plaintiffs' Section 1985(3) claim, deny defendants' motion to compel arbitration and permit plaintiffs to file an Amended Complaint in this matter by April 22, 2005.

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

DEBORAH KAY;)	
KAREN HAYES;)	Civil Action
ELIZABETH PEMBLETON; and)	No. 03-CV-06647
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CLEAR CHANNEL COMMUNICATIONS,)	
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LOWRY MAYS;)	
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CHRISTIAN TAYLOR;)	
JAMES SHEA;)	
JAY STERIN;)	
RICHARD LEWIS; and)	
PATRICK GREMLING,)	
)	
Defendants)	

O R D E R

NOW, this 31st day of March, 2005, upon consideration of the Motion of Defendants Clear Channel Communications, Inc., Lowry Mays, Mark Mays, Randall Mays, John Hogan, James Shea, Jay Sterin, Richard Lewis and Patrick Gremling to Dismiss Plaintiff's Complaint and to Compel Arbitration, which motion was filed

March 1, 2004; upon consideration of Defendant Christian Taylor's Motion to Dismiss filed March 1, 2004; upon consideration of the Response in Opposition to Defendants' Motion to Dismiss filed April 8, 2004; upon consideration of the briefs of the parties; upon consideration of plaintiffs' Complaint and for the reasons expressed in the accompanying Opinion,

IT IS ORDERED that the Motion of Defendants Clear Channel Communications, Inc., Lowry Mays, Mark Mays, Randall Mays, John Hogan, James Shea, Jay Sterin, Richard Lewis and Patrick Gremling to Dismiss Plaintiff's Complaint and to Compel Arbitration is granted in part and denied in part.

IT IS FURTHER ORDERED that Defendant Christian Taylor's Motion to Dismiss is granted in part and denied in part.

IT IS FURTHER ORDERED that defendants' motions to dismiss Count 1 of plaintiff's Complaint is granted with leave for plaintiffs to file an Amended Complaint.

IT IS FURTHER ORDERED that defendants' motion to dismiss Counts 2 through 6 of plaintiff's Complaint is granted with leave for plaintiffs to file an Amended Complaint.⁶

IT IS FURTHER ORDERED that defendants' motion to compel arbitration is denied.

IT IS FURTHER ORDERED that plaintiffs shall have until April 22, 2005 to file an Amended Complaint.

⁶ It is the sense of this Order that because the viability of Counts 2 through 6 are contingent on the viability of Count 1 we dismiss Counts 2 through 6 with leave to replead them in an Amended Complaint.

BY THE COURT:

/s/ James Knoll Gardner

James Knoll Gardner

United States District Judge