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

MICHAEL TAGUE,	:	
Plaintiff	:	**CIVIL ACTION**
	:	**NO. 04-5958**
v.	:	
	:	
JANE HURD and	:	
STEPHEN BIALE,	:	
Defendants	:	

MEMORANDUM OPINION AND ORDER

RUFE, J. **June 30, 2005**

Plaintiff Michael Tague brought this diversity action for damages arising out of the sale of his one-third interest in Medical Education Solutions, LLC ("MES") to Defendants Jane Hurd and Stephen Biale, the other two partners in MES. The Complaint alleges that Defendants pressured Plaintiff to sell his share in MES and misrepresented MES' value by, among other things, failing to disclose their negotiations to sell MES to Grey Healthcare Group. Defendants' fraudulent misrepresentations allegedly induced Plaintiff to enter into the sale. Shortly after Plaintiff sold his interest in MES to Defendants, Grey Healthcare Group acquired MES for a cash payment that greatly exceeded the value Defendants placed on MES during their negotiations with Plaintiff.

Presently pending before the Court are Defendants' Motion to Dismiss or in the Alternative to Stay the Proceedings Pending Arbitration Pursuant to the Federal Arbitration Act ("FAA")[1] and Defendants' Motion to Strike. Defendants argue that this dispute is subject to arbitration pursuant to the Redemption Agreement between Tague and MES members (the "Agreement"), signed by the parties in connection with the sale of Tague's interest in MES. The

[1] 9 U.S.C. §§ 1-16.

Agreement contains a Dispute Resolution clause, providing for binding arbitration of "any dispute relating to this Agreement" in New York, New York.

Federal law applies to Defendants' Motions.[2] "[W]hether the parties have submitted a particular dispute to arbitration, i.e., the *question of arbitrability,* is an issue for judicial determination unless the parties clearly and unmistakably provide otherwise. This approach is guided by a 'presumption of arbitrability,' and a motion to compel arbitration should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. The district court is to determine what is most consistent with the parties' intentions."[3]

Defendants argue that the broad language of the Agreement's arbitration clause covers Plaintiff's claims against them because the claims are directly tied to the negotiation and sale of his interest in MES, i.e. the matters covered by the Agreement. Defendants believe they have standing to enforce the arbitration provision compelling Plaintiff to arbitrate, even though MES, and not Defendants, is the signatory to the Agreement. Relying on the Third Circuit decision in Pritzker, Defendants argue that they may compel arbitration of the Agreement because they are agents of MES.

In Pritzker, the Third Circuit enunciated a broad "agency" rule, stating that where "a principal is bound under the terms of a valid arbitration clause, its agents, employees, and representatives are also covered under [its] terms. . . . Where the parties to [a valid arbitration] clause

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[2] Pritzker v. Merrill, Lynch, Pierce, Fenner & Smith, Inc., 7 F.3d 1110, 1114 (3d Cir. 1993) (applying federal law to a motion to compel arbitration under the FAA).

[3] Glah v. Mass. Mut. Life Ins. Co., No. Civ. A. 03-2407, 2003 WL 22872037, at *2 (E.D. Pa. Dec. 3, 2000) (internal citations omitted).

unmistakably intend to arbitrate all controversies which might arise between them, their agreement should be applied to claims against agents or entities related to signatories."[4] "In keeping with the federal policy favoring arbitration," the plaintiffs were required to arbitrate their claims against all of the defendants pursuant to their agreement with the defendant principal, extending enforcement of the arbitration clause to a non-signatory employee (deemed an agent of the principal corporation), and to the principal's subsidiary.[5]

Plaintiff argues that presumption of arbitrability does not extend to claims by or against non-signatories. Citing to the Third Circuit's decision in Kaplan v. First Options of Chicago, 19 F.3d 1503 (3d Cir. 1994), Plaintiff states that a corporate officer who signs an agreement for the purchase or the sale of assets, in his capacity as an agent for a disclosed principal, cannot compel a signatory to submit to arbitration pursuant to the agreement. Plaintiff attempts to distinguish Defendants' "agency" theory, articulated in Pritzker, on several grounds, and argues that Kaplan controls this case. Plaintiff further states that Defendants did not reserve a right to compel arbitration of claims against them individually in the Agreement.

Plaintiff's reliance on Kaplan is misplaced. In Kaplan, the Third Circuit found that a corporate officer's signature in his official capacity on an agreement containing an arbitration clause did not require him to arbitrate his individual responsibility for the company's obligations.[6] "As a matter of contract, no party can be forced to arbitrate unless that party has entered into an agreement to do so," but "doubts about the intended scope of an agreement to arbitrate are resolved

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[4] Pritzker, 7 F.3d at 1121-1122.

[5] Id.

[6] Kaplan, 19 F.3d at 1512.

in favor of arbitration."[7] The deal in question involved four documents, only one of which had an arbitration clause. The officer signed another document in his individual capacity, assuming certain limited and precisely defined obligations. That document did not contain an arbitration clause. The four documents, read together as one contract, negated any consent by the officer to arbitrate his individual responsibility for all obligations assumed by the company. The Third Circuit distinguished Pritzker on several grounds. In Kaplan, the officer's obligation to arbitrate depended on contract, not on agency or participation with the company in a wrongful act, and there was no "community of interest" between the officer and the company.[8]

The facts in this action are quite different. Here, the non-signatories are the ones seeking to compel the signatory to arbitrate his claims against them, making this case akin to Pritzker and not Kaplan. The issue before the Court is whether Plaintiff, in signing the Agreement, agreed to arbitrate his claims against Defendants, i.e. the scope of the Agreement's arbitration clause.[9]

The parties do not dispute the existence of a valid arbitration clause in the Agreement. All of Plaintiff's claims arise from Defendants' conduct during the negotiations and the sale of Plaintiff's interest in MES, formalized by the Agreement. Defendants acted as agents of MES during the negotiations and the sale.[10] As in Pritzker, the result here depends on the scope of the arbitration

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[7] Id.

[8] Id. at 1515.

[9] See Bel-Ray Co. v. Chemrite (Pty) Ltd., 181 F.3d 435, 444-45 (3d Cir. 1999) (distinguishing Pritzker and Kaplan). Plaintiff cites to decisions by other circuits which criticize Pritzker's broad approach or distinguish it on the facts. See Westmoreland v. Sadoux, 299 F.3d 462, 466 (5th Cir. 2002) (finding Pritzker to conflict with decisions of the First and Ninth Circuits); McCarthy v. Azure, 22 F.3d 351, 356-59 (1st Cir. 1994) (declining to apply holdings of cases allowing non-signatories to compel arbitration). These non-controlling cases are distinguishable from this case factually and legally. In any event, Pritzker remains the controlling law of this Circuit.

[10] See Pritzker, 7 F.3d at 1122 ("an entity such as [defendant] Merrill Lynch can only act through its employees, and an arbitration agreement would be of little value if it didn't extend to them") (citations omitted).

clause in the Agreement. The parties agreed to arbitrate "***any dispute relating to*** this Agreement" (emphasis added). Such language has been construed by the courts very broadly, to include claims against agents of the signatory party.[11] Plaintiff's claims relate to the negotiation and sale of his interest in MES, memorialized in the Agreement. Defendants are the only remaining MES partners and there is a clear community of interest between them and the company. Accordingly, all of Plaintiff's claims against Defendants are within the scope of the arbitration clause in the Agreement. Plaintiff, by signing the Agreement, made a contractual commitment to arbitrate, which Defendants are entitled to enforce. For these reasons, the Court grants Defendants' motion to stay the proceedings before it pending the results of arbitration.

An appropriate Order follows.

[11] Id. (such an arbitration clause covered "all controversies which may arise between" the parties); Letizia v. Pridential Bache Secs., 802 F.2d 1185 (9th Cir. 1986) (extending arbitration agreement to non-signatory brokers where the signatories agreed to arbitrate disputes "arising out of or relating to" the plaintiff's account with the signatory principal); see also Bel-Ray, 181 F.3d at 444.

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STEPHEN BIALE,	:	
Defendants	:	

O R D E R

AND NOW, this 30th day of June, 2005, upon consideration of Defendants' Motion to Dismiss or in the Alternative to Stay the Proceedings and Motion to Strike [Doc. #6], Plaintiff's Response Opposition thereto [Doc. #12], Defendants' Reply [Doc. #16], Plaintiff's Sur-Reply, and the record, it is hereby **ORDERED** that Defendants' Motion is **GRANTED IN PART** and **DENIED IN PART** It is specifically **ORDERED** as follows:

1. Defendants' Motion to Stay is **GRANTED**;

2. Defendants' Motion to Dismiss and to Strike are **DENIED WITHOUT PREJUDICE**;

3. Plaintiff's Motion for Leave to File a Sur-Reply [Doc. #17] is **GRANTED**;[12]

4. The Clerk of the Court is directed to place this matter on the civil **SUSPENSE** docket;

5. Defendants' counsel shall notify the Court of the status of the arbitration proceedings by August 30, 2005, or as soon as the arbitration proceedings terminate, whichever

[12] The Court considered Plaintiff's arguments in the Sur-Reply in its analysis above.

occurs first.

It is so **ORDERED**.

BY THE COURT:

/s/ Cynthia M. Rufe

CYNTHIA M. RUFE, J.