

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

MARC KAHN and	:	
ADRIENNE KAHN	:	
	:	
Plaintiffs,	:	CIVIL ACTION
	:	
v.	:	
	:	
OPTION ONE MORTGAGE	:	No. 05-5268
CORPORATION	:	
	:	
Defendant.	:	

**Baylson, J.**

**January 18, 2006**

**MEMORANDUM**

**I. Introduction**

Plaintiffs are residential mortgage borrowers Marc Kahn and Adrienne Kahn (“Plaintiffs”). On October 6, 2005, Plaintiffs filed a Complaint (Doc. No. 1) by which they sued their lender, Option One Mortgage Corporation (“Defendant”) in contract, tort, and equity. The Complaint alleges that Defendant improperly charged Plaintiffs certain fees when they paid off their mortgage loan.<sup>1</sup>

Presently before the Court is Defendant’s Motion to Dismiss and Compel Arbitration, filed on December 6, 2005 (Doc. No. 6). Defendant contends that the allegations and claims in

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<sup>1</sup> Plaintiffs’ Complaint asserts that jurisdiction lies in this Court pursuant to the new 28 U.S.C. § 1332(d) (resulting from the Class Action Fairness Act of 2005, P.L. 109-002, § (4)(a)(1)). In support of this conclusion, Plaintiffs’ aver that the amount in controversy for the entire putative class exceeds \$5,000,000. Plaintiff provides no support for this averment; however, Defendants do not bring any jurisdictional challenge. For the purposes of deciding this motion, the Court will assume that Plaintiffs’ averment of the amount in controversy is sufficient.

Plaintiffs' action are expressly covered by the parties' Arbitration Agreement, and Defendant seeks enforcement of that agreement via dismissal of Plaintiffs' Complaint in favor of arbitration. Plaintiffs maintain that the Arbitration Agreement "excepts" from arbitration the claims contained in the Complaint.

For the reasons set forth below, the motion will be granted; the Court will dismiss the Complaint and order the parties to submit this dispute to arbitration.

## **II. Legal Standard**

Motions to compel arbitration are evaluated, in the first instance, under the well-settled summary judgment standard set forth in Fed. R. Civ. P. 56(c). E-Time Sys., Inc. v. Voicestream Wireless Corp., 2002 WL 1917687, at \*4 (E.D. Pa. 2002) (citing Par-Knit Mills, Inc. v. Stockbridge Fabrics Co., 636 F.2d 51, 54 n.9 (3d Cir. 1980); Trott v. Paciolla, 748 F. Supp. 305, 308 (E.D. Pa. 1990)). Therefore, movant must prove through "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, ... that there is no genuine issue as to any material fact and that [they are] entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The court must consider all of the non-moving party's evidence and construe all reasonable inferences in the light most favorable to the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986); Versarge v. Township of Clinton N.J., 984 F.2d 1359, 1361 (3d Cir. 1993).

## **III. Facts**

Plaintiff's Complaint sets forth the following facts. Plaintiffs were the owners of a residence situated at 201 Victoria Drive, Montgomeryville, Pennsylvania. On or about August 31, 2001, Plaintiffs borrowed \$140,600.00 from Defendant to finance the purchase of a

residential condominium property located in Montgomery Township, Pennsylvania (the “Loan”). The Loan was evidenced and secured by an Adjustable Rate Note and Mortgage, executed by Plaintiffs.

At the closing of the Loan, Plaintiffs executed and delivered to Defendant an Agreement for the Arbitration of Disputes (the “Arbitration Agreement”). The Arbitration Agreement is a separate, signed, two-page document, with its title, “Agreement for the Arbitration of Disputes,” set forth in bold, capital letters at the top of the first page. Immediately beneath the title is the following notification, also written in bold capital letters: “This contract contains a binding arbitration provision which may be enforced by the parties.” The text of the Arbitration Agreement also contains an advisory, in bold type and italicizes, stating, “If you have any questions, you should consult your own lawyer before you sign this Agreement.” At the bottom of the Agreement, just above the signature line, is the statement, again in bold, capital letters: “By signing below you acknowledge that you have read and understood this agreement and that you agree to all of its terms. You also acknowledge that you have received a copy of this agreement. This contract contains a binding arbitration provision which may be enforced by the parties.” See Arbitration Agreement at 1-2.

The Arbitration Agreement provides that any dispute, regardless of when it arose, may, at the option of Plaintiffs or Defendant, be submitted to arbitration. It defines “dispute” and clearly states that both parties waive their rights to have disputes resolved in court by a judge or jury:

[A]ny claim or controversy of any nature whatsoever arising out of or in any way related to the Loan; the arranging of the Loan; any application, inquiry or attempt to obtain the loan; any Loan documents; the servicing of the Loan; or any other aspect of the Loan transaction. It includes, but is not limited to federal or state contract, tort, statutory, regulatory, common law and equitable claims. Because you and we have

agreed to arbitration, both of us are waiving our rights to have disputes resolved in court by a judge or jury.

See Arbitration Agreement at 1-2.

The Arbitration Agreement provides the following explanation of arbitration:

Arbitration: Arbitration is a means of having an independent third party resolve a dispute. Either you or we can request that a dispute be submitted to arbitration. Either you or we can do this before a lawsuit (which is usually initiated by the filing of a “complaint”) has been served or within 60 days after a complaint, an answer, a counterclaim or an amendment to a complaint has been served.

Each arbitration, including the selection of the arbitrator, will be administered by the American Arbitration Association (the “AAA”) pursuant to its Commercial Arbitration Rules. Each arbitration will be governed by the Federal Arbitration Act (the “FAA”) (Title 9 of the United States Code) . . . If either party, you or we, fails to submit to arbitration following a proper demand to do so, that party shall bear all costs and expenses, including reasonable attorney’s fees, incurred by the other party compelling arbitration. In all other situations, each party, you and we, shall each bear its own costs and expenses, including Arbitrator’s and attorney’s fees, that the party incurs with respect to the arbitration.

See Arbitration Agreement at 1-2.

Under the heading “Exceptions,” the Arbitration Agreement states:

Exceptions: The following are not disputes subject to this Agreement: (1) any judicial or non-judicial foreclosure proceeding against any real or personal property that serves as collateral for the loan, . . . and (3) provisional or ancillary remedies with respect to the loan or any collateral for the loan such as injunctive relief . . . This means that nothing in the Agreement shall limit your right or our right to take any of these actions.

See Arbitration Agreement at 1-2.

Plaintiffs subsequently fell into “financial difficulties” and filed for relief under 11 U.S.C. Chapter 13 on or about November 12, 2002. On or about October 14, 2004, pursuant to the

Bankruptcy Court’s grant of relief from the automatic stay, Defendant filed a Complaint in Mortgage Foreclosure against Plaintiffs in the Court of Common Pleas of Bucks County, Pennsylvania. However, prior to the entry of any judgment in the foreclosure action, Plaintiffs sold the property and repaid the Loan in full.

Plaintiffs paid the following charges upon settlement of the loan for Defendant to mark the mortgage “satisfied,” enabling Plaintiffs to convey good and marketable title:

FC Fees and Costs 05/20/2005:	\$4,941.00
Sheriff’s Commission 05/20/05:	\$3,467.86
Borr Interview:	\$48.00
Bpo 05/20/05:	\$200.00

Plaintiffs brought suit upon the belief that these charges were improper (i.e., that they were (1) not earned by Defendant; (2) not incurred by or on behalf of Defendant; (3) not charges to which Defendant had any entitlement; and (4) representative of charges that were improperly fee-shifted to Plaintiffs’ responsibility).<sup>2</sup> Plaintiffs’ Complaint alleges contract, tort and equitable causes of action: Count I - breach of contract; Count II - state law-based claims of unfair and deceptive trade practices; Count III - intentional misrepresentation; Count IV - breach of good faith and fair dealing; and Count V - unjust enrichment. Furthermore, Plaintiffs’ Complaint purports to seek “injunctive relief to prevent recurrence of the challenged conduct, and to assure uniform standards of future servicing of loans.” See Complaint at ¶ 11.<sup>3</sup>

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<sup>2</sup> Plaintiffs argue the substantive propriety of the fees in their briefing. However, the underlying question of whether Plaintiffs were wrongly charged the fees is irrelevant to the disposition of Defendant’s motion. The Court is faced with the sole issue of the proper mechanism for resolving the dispute.

<sup>3</sup> The Complaint asserts that “the claims by Plaintiffs, for themselves and for and on behalf of the members of the Class, are justified as a Class action for the reason that the causes of action for the Plaintiffs are the same causes of action for all of the members of the Class derived

On November 30, 2005, less than 60 days after service of Plaintiffs' Complaint, Defendant served written notice upon Plaintiffs of its request that this dispute be submitted to arbitration.<sup>4</sup> Plaintiffs refused to concede to Defendant's demand for arbitration. Defendants subsequently brought the motion sub judice to dismiss Plaintiffs' Complaint and compel arbitration. As part of the motion, Defendant seeks, under the Arbitration Agreement, an award of the costs and expenses, including reasonable attorney's fees, it has incurred in compelling arbitration.

#### **IV. Discussion**

The question before the Court is straightforward. Defendant asserts that the instant dispute is "expressly covered" by the Arbitration Agreement, and that Defendant may therefore compel arbitration pursuant to the terms of that contract. Plaintiffs assert that the claims contained in the Complaint are excepted from the Arbitration Agreement because (1) they are related to the foreclosure proceedings, and (2) they seek, among other remedies, injunctive relief. See Plaintiffs' Response Brief at 5-6.

As a threshold matter, both parties agree that they are bound to the terms of the written and signed Arbitration Agreement. The Arbitration Agreement at issue expressly provides that it will be governed by the Federal Arbitration Act, 9 U.S.C. 1 et seq. (the "FAA"). Moreover, the loan transaction at issue involves interstate commerce.<sup>5</sup> Where the transaction at issue involves

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from the following issues. . . (h) Whether Plaintiffs and the members of the Class are entitled to . . . injunctive relief . . ." See Complaint at ¶ 33.

<sup>4</sup> Although not contractually compelled to do so, Defendant offered to pay all fees and charges assessed by the AAA, consistent with the applicable fee schedules and rules.

<sup>5</sup> Plaintiffs are Pennsylvania residents and Defendant is a California corporation.

interstate commerce and a written agreement to arbitrate exists, the FAA applies to the dispute. 9 U.S.C. § 2; Goodwin v. Elkins & Co., 730 F.2d 99, 108 (3d Cir. 1984). It is appropriate to follow federal caselaw on issues concerning the scope, interpretations and application of the FAA. Perry v. Thomas, 482 U.S. 483, 492 (1987); see also Pritzker v. Merrill, Lynch, Pierce, Fenner & Smith, Inc., 7 F.3d 1110, 1114 (3d Cir. 1993) (noting that “federal law applies when construing an arbitration clause when, as here, the motions pertaining to arbitration are brought pursuant to the [FAA]”). The Court therefore analyzes the Arbitration Agreement under the legal rules associated with the FAA.

“Contracts to arbitrate are not to be avoided by allowing one party to ignore the contract and resort to the courts. Such a course could lead to prolonged litigation, one of the very risks the parties, by contracting for arbitration, sought to eliminate.” Southland Corp. v. Keating, 465 U.S. 1, 7 (1984). Under the FAA, parties to a lawsuit must submit claims to arbitration if the parties entered into an arbitration agreement and the subject dispute falls within the scope of the agreement. Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 626-28 (1985). Because Congress “declared a national policy favoring arbitration” and “has mandated the enforcement of arbitration agreements,” the FAA requires that courts compel arbitration when the relevant agreement covers the dispute. 9 U.S.C. § 4; Southland Corp., 465 U.S. at 10; see also Bel-Ray Comp., Inc. v. Chemrite, LTD, 181 F.3d 435, 440 (3d Cir. 1999).

Defendant correctly recites that courts are bound to resolve any doubts as to the scope of arbitrable issues in favor of arbitration, Brayman Constr. Corp. v. Home Ins. Co., 319 F.3d 622, 625 (3d Cir. 2003), especially where the arbitration clause at issue is broad. AT&T Technologies v. Comm. Workers of Amer., 475 U.S. 643, 650 (1986). Where, as here, there is a written

agreement to arbitrate, the Third Circuit has held that courts are required to “operate under a ‘presumption of arbitrability’ in the sense that” a motion to compel arbitration should not be denied absent “positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.” Brayman Constr. Corp., 319 F.3d at 625-66; In re Prudential Ins. Co. of America Sales Practice Litig., 133 F.3d 225, 231 (3d Cir. 1998); Beck v. Reliance Steel Prods. Co., 860 F.2d 576 (3d Cir. 1988).

Mindful of the broad language used in the Arbitration Agreement and the presumption of arbitrability dictated by the Third Circuit, the Court finds that Plaintiffs’ challenge of the fees paid in connection with paying off their loan is a “dispute” that certainly falls under the broad scope of the Arbitration Agreement. The Arbitration Agreement applies to “any claim or controversy of any nature whatsoever arising out of or in any way related to the Loan . . . or any other aspect of the Loan transaction.” Plaintiffs’ suit concerning fees to be paid as part of repaying the loan transaction falls squarely within this broad statement of scope – i.e., the case sub judice is plainly a controversy of “any nature” that is “in any way related” to “the Loan” or to “any aspect of the Loan transaction.” Moreover, the Arbitration Agreement specifically includes “federal or state contract, tort, statutory, . . . and equitable claims” such as those at issue here. To deny the motion to compel, this Court would have to find that the Arbitration Agreement is not susceptible of an interpretation that covers the asserted dispute. To the contrary, by its plain language the agreement is clearly susceptible to an interpretation that covers the asserted dispute.

Having reached this conclusion, the Court now examines whether any exculpatory language contained in the Arbitration Agreement removes the instant dispute from the purview of the Arbitration Agreement.

## 1. Exception for Foreclosure Proceedings

The Arbitration Agreement specifically excludes “any judicial or non-judicial foreclosure proceeding against any real or personal property that serves as collateral for the loan.” See Arbitration Agreement at 1-2.

At various points in their briefing (and in a very cursory fashion), Plaintiffs contend that this language excepts their claims concerning the fees from arbitration because the claims “relate back to and derive from,” “evolve[ ] from and relate[ ] to,” “issue directly from,” or “involv[e]” foreclosure. See Plaintiffs’ Response Brief, inter alia.

However, the exception in the Arbitration Agreement makes no reference whatsoever to any type action that may happen to “derive from,” “evolve from,” “issue directly from,” or “involve” foreclosure proceedings. Likewise, the Arbitration Agreement provides no support for the concept of “relat[ion] back” to a foreclosure proceeding (and Plaintiffs offer no legal authority for such a notion). Rather, the exception clearly and unambiguously excepts only actual foreclosure proceedings.<sup>6</sup>

The Court finds that Plaintiffs’ lawsuit is simply not a foreclosure action of any kind. Plaintiffs’ claims were not brought in a foreclosure proceeding, nor do they turn on the existence of an earlier foreclosure proceeding. Whatever their motivation may have been, Plaintiffs paid

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<sup>6</sup> Defendant correctly highlights the logical basis for this explicit and deliberately limited exception, i.e., an action in mortgage foreclosure is strictly an in rem proceeding against the property itself, and the purpose of a judgment in mortgage foreclosure is solely to effect a judicial sale of the mortgaged property. Fleet Real Estate Funding Corp. v. Smith, 366 Pa. Super. 116, 127 (1987) (citing Meco Realty Co. v. Burns, 414 Pa. 495 (1964)). The mortgaged property is, of course, not a party to the Arbitration Agreement, and the remedy of the judicial sale of the property could not be effectively enforced by an arbitrator without resort to judicial forum. Obviously, no such circumstances apply to in personam actions for damages, which were logically made subject to arbitration by the parties.

certain fees in connection with paying off their loan, and they now seek to recover those fees.

The Court agrees with Defendant's conclusion that Plaintiffs suit is nothing more than "an action to recover money damages for fees they paid but now claim they should not have been charged when they paid off their residential mortgage loan in full on or about May 15, 2005."

Defendant's Reply Brief at 3 (citing Complaint at §§ 42-46).

As such, the Court finds that Plaintiff's Complaint is not exempted from arbitration by the plain language of the "foreclosure proceedings" exception in the Arbitration Agreement.

## **2. Injunctive Relief Exception and Class Action Issue**

The Arbitration Agreement specifically excludes "provisional or ancillary remedies . . . such as injunctive relief." See Arbitration Agreement at 1-2.

Plaintiffs contend that because they make several references to injunctive relief in the Complaint – including in their "Prayer for Relief," which includes a request for an order "preliminarily and thereafter permanently enjoining Defendant from engaging in the acts described herein" – their entire Complaint is excluded from the scope of the Arbitration Agreement. See Plaintiffs' Response Brief, inter alia. In response, Defendant maintains that Plaintiffs do not have standing to assert any claim for injunctive relief.

The Supreme Court has stated that "[i]n essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues." Warth v. Seldin, 422 U.S. 490, 498 (1975). Under well-established precedent, Plaintiff bears the burden of establishing the three requirements of standing, which are as follows: (1) a plaintiff must have suffered an injury in fact; (2) there must be a causal connection between the plaintiff's injury and the challenged conduct; and (3) it must be likely rather than speculative that the injury

will be redressed by a favorable decision. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560–61 (1992). In evaluating standing, a court generally examines the complaint in an effort to determine “whether the particular plaintiff is entitled to an adjudication of the particular claims asserted.” Allen v. Wright, 468 U.S. 737, 752 (1984) (noting that relevant inquiries include “Is the injury too abstract, or otherwise not appropriate, to be considered judicially cognizable? Is the line of causation between the illegal conduct and injury too attenuated? Is the prospect of obtaining relief from the injury as a result of a favorable ruling too speculative?”). In short, the purpose of the standing doctrine is to ensure the existence of a “case” or “controversy” between litigants and to thereby prevent federal courts from giving advisory “opinions on moot questions or abstract propositions” and from “declaring principles or rules of law which cannot affect the matter in issue in the case before it.” Preiser v. Newkirk, 422 U.S. 395 (1975); Mills v. Green, 159 U.S. 651, 653 (1895).

Here, Plaintiffs challenge the imposition of certain fees which they paid in connection with settling the Loan. Plaintiffs have already paid all of the fees they dispute in this action and no longer hold any contract with Defendant. Plaintiffs therefore do not face the possibility of being forced to pay similar fees to Defendant in the future. As such, the Plaintiffs could not possibly benefit from an injunctive remedy such as the one requested here – i.e., an injunctive prohibiting Defendants’ future imposition or collection of such fees. Because Plaintiffs have no individual stake in their claim for injunctive relief, a decision by the Court on that claim would be a mere advisory opinion of the type expressly prohibited by a over a century of jurisprudence. The Court therefore finds that Plaintiffs lack standing as individuals to assert their claim for injunctive relief.

In the alternative, Plaintiffs argue that they are properly asserting claims for injunctive relief on behalf of a putative class of unnamed members that Plaintiffs hope to someday represent.<sup>7</sup> This argument is, however, unavailing.

As a threshold matter, it appears that Plaintiffs have expressly waived their right to bring a class action against Defendant. The Arbitration Agreement, signed by both parties, states that the required arbitration “may not address any dispute on a ‘class action’ basis. This means that the arbitration may not address disputes involving other persons which may be similar to the disputes between you and us.” See Arbitration Agreement at 1-2. The Third Circuit has held that arbitration clauses should be enforced even where they may render class relief unavailable. See John v. West Suburban Bank, 225 F.3d 366, 377-78 (3d Cir. 2000); see also Dean Witter Reynolds Inc. v. Byrd, 470 U.S. 213, 221 (1985) (stating the need to enforce arbitration agreements even if the result is ‘piecemeal’ litigation).

However, even if this Court were to somehow construe the Arbitration Agreement so as to not preclude a class action, Plaintiffs’ claims for injunctive relief still may not proceed because class allegations do not obviate traditional standing requirements. Despite the fact that a matter is pled as a putative class action, the named Plaintiffs must establish their own standing to assert each claim against the Defendant, just as in any matter that does not contain class allegations. See Lewis v. Casey, 518 U.S. 343, 357 (1996); see also Haas v. Pittsburgh Nat’l Bank, 526 F.2d 1083, 1096 n.18 (3d Cir. 1975) (“[A] class action may not be maintained unless the plaintiff representative is a member of the class he purports to represent.”). Stated differently, in order to

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<sup>7</sup> Although Plaintiffs have made no attempt to seek class certification, it appears from the Complaint that Plaintiffs attempt to state a putative class action.

represent a class, Plaintiffs must first be eligible to sue in their own right; “what [they] many not achieve [themselves], [they] may not achieve as [ ] representative[s] of a class.” Kauffman v. Dreyfus Fund, Inc., 434 F.2d 727, 734 (3d Cir. 1970). Therefore, named Plaintiffs cannot meet standing requirements by relying solely upon the claims and potential standing of putative class members. See Allee v. Medrano, 416 U.S. 802, 828-29 (1974) (“Standing cannot be acquired through the back door of a class action.”); O’Shea v. Littleton, 414 U.S. 488, 494 (1974) (“[I]f none of the named plaintiffs purporting to represent a class establishes the requisite of a case or controversy with the defendants, none may seek relief on behalf of himself or any other member of the class.”); see also, e.g., Weit v. Continental Ill. Nat’l Bank & Trust Co., 641 F.2d 457, 469 (7<sup>th</sup> Cir. 1981) (holding that if “plaintiffs lack the requisite stake in a controversy . . . they may not bootstrap that element into their claim by means of [a] class action.”).

As discussed above, Plaintiffs here lack individual standing to pursue claims for injunctive relief against Defendant. Plaintiffs attempt to do exactly what the aforementioned caselaw prohibits – “bootstrapping” injunctive claims for themselves by framing their Complaint as a putative class action. This Court can not, however, overlook the Plaintiffs’ own lack of standing to assert injunctive claims. The law does not permit Plaintiffs to circumvent fundamental standing requirements by alleging a putative class action. Plaintiffs can not predicate standing on potential injury they do not share.<sup>8</sup>

Because Plaintiffs cannot pursue their claims for injunctive relief – either individually or

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<sup>8</sup> Defendant additionally contends that Plaintiffs’ claims are not excluded from the Arbitration Agreement because they are not “provisional or ancillary remedies” as required by the injunctive relief exception in the agreement. Although Defendant’s argument has significant merit, the Court does not reach it because the Court determines that its ruling on standing is, by itself, dispositive of the question of the injunctive relief exception.

in a putative class action – they obviously cannot assert the benefit of the injunctive relief exception in the Arbitration Agreement.

### **3. Costs and Expenses**

As part of the instant motion, Defendant seeks, under the Arbitration Agreement, an award of the costs and expenses, including reasonable attorney’s fees, it has incurred in compelling arbitration.

The Arbitration Agreement clearly provides that “[i]f either party, you or we, fails to submit to arbitration following a proper demand to do so, that party shall bear all costs and expenses, including reasonable attorney’s fees, incurred by the other party compelling arbitration.” See Arbitration Agreement at 1-2.

Here, Defendant requested that Plaintiffs submit this dispute to arbitration pursuant to the terms of the Arbitration Agreement. That was request was proper and was made within the time frame set forth in the terms of the Arbitration Agreement. Indeed, Defendant even offered to pay a portion of the costs associated with the arbitration. Plaintiffs refused Defendant’s request. Defendant subsequently brought this motion to compel arbitration, and Plaintiffs opposed the motion.

The Court has resolved the motion in favor of Defendant. In accordance with the binding Arbitration Agreement, the Court will therefore award Defendant the costs and expenses, including reasonable attorney’s fees, that Defendant has incurred in compelling arbitration.

### **V. Conclusion**

For the foregoing reasons, the Court concludes that Plaintiffs’ claims constitute a dispute that is subject to arbitration under the parties’ valid, unambiguous and enforceable Arbitration

Agreement. Neither of the exceptions identified by Plaintiffs applies to the Complaint or to these parties, and neither alters the applicability and enforceability of the Arbitration Agreement. The Court will therefore dismiss Plaintiffs' Complaint and order Plaintiffs to pursue their claims against Defendant in an arbitration proceeding pursuant to the terms of the Arbitration Agreement. Pursuant to the terms of the Arbitration Agreement, the Court will award Defendant the costs and expenses (including reasonable attorney's fees) of compelling arbitration.

An appropriate Order follows.

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

MARC KAHN and	:	
ADRIENNE KAHN	:	
	:	
Plaintiffs,	:	CIVIL ACTION
	:	
v.	:	
	:	
OPTION ONE MORTGAGE	:	No. 05-5268
CORPORATION	:	
	:	
Defendant.	:	

**ORDER**

AND NOW, this 18<sup>th</sup> day of January, 2006, upon consideration of the pleadings and briefs, and based on the foregoing Memorandum, it is hereby ORDERED that:

1. Defendant's Motion to Dismiss and Compel Arbitration (Doc. No. 6) is GRANTED.
2. Defendant shall submit a proposed cost and expense award to Plaintiffs' counsel within fourteen (14) days; counsel shall discuss any objections, and Plaintiffs and Defendant shall file their respective papers on this issue within thirty (30) days.
3. Plaintiffs shall pursue their claims, if any, against Defendant in an arbitration proceeding in accordance with the terms of the Arbitration Agreement.

BY THE COURT:

/s/ MICHAEL M. BAYLSON  
\_\_\_\_\_  
Michael M. Baylson, U.S.D.J.