

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

GIUSEPPE SENA, : CIVIL ACTION  
: :  
: :  
v. : :  
: :  
: :  
GRUNTAL & CO. LLC, :  
et al. : NO. 99-3042

M E M O R A N D U M

**Padova, J.**

Plaintiff, Giuseppe Sena ("Sena"), filed a Complaint with this Court alleging that Defendants Gruntal & Co., LLC ("Gruntal") and Stephen Burton Clyde ("Clyde") defrauded him out of substantial sums of money through a deliberate and unauthorized course of marginal and speculative investments in violation of the Investment Company Act of 1940, 15 U.S.C. § 80a-43, the Securities Exchange Act of 1934, 15 U.S.C. § 78aa, and Pennsylvania common law fraud.

In response, Defendants filed a Joint Motion to Dismiss in Favor of Arbitration. Defendants allege that Sena signed a valid arbitration agreement that requires him to submit all of his claims to binding arbitration, precluding suit in a judicial forum. This Court agrees with Defendants' contentions and therefore grants Defendants' Motion.

**II. Factual Background**

Sena claims that during March of 1997, he opened an investment account with Gruntal through Clyde, a Gruntal broker/advisor based in Cherry Hill, New Jersey. (Compl. ¶ 8.) To open his account, Sena signed a series of blank forms including a Client Agreement, Options Account Information Form, and a New Account Form. (Compl. ¶ 8.) The second page of the Client Agreement contains a preprinted provision which states in pertinent part:

14. Arbitration (THIS PARAGRAPH 14 IS AN AGREEMENT TO ARBITRATE CERTAIN DISPUTES).

\* Arbitration is final and binding on the parties.

\* The parties are waiving their rights to seek remedies in court, including the right to jury trial.

\* Pre-arbitration discovery is generally more limited and different from court proceedings.

\* The arbitrator's award is not required to include factual findings or legal reasoning and any party's right to appeal or to seek modification of rulings by the arbitrators is strictly limited.

\*The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.

Any dispute I now or hereafter may have with Gruntal or any of its current or former officers, directors, agents, and/or employees, arising out of or relating to any of my accounts with Gruntal or to transactions heretofore or hereafter made therein or to any agreement between myself and Gruntal shall be settled by arbitration. Any such arbitration shall be held before facilities of the New York Stock Exchange, Inc., the National Association of Securities Dealers, Inc. or any other self-regulatory organization having jurisdiction, as I may elect, and shall be conducted pursuant to applicable Federal laws, the laws of the State of New York, without regard to conflict of laws, and the rules of the selected arbitral facility. ... This agreement to arbitrate does not apply to disputes arising under certain laws to the extent it has been

determined as a matter of law by controlling authority that I cannot be compelled to arbitrate such claims. (Compl. Exh. A.)

In April of 1997, Sena deposited over \$50,000 in his investment account. (Compl. ¶ 12.) However, by September 1998 when Sena closed his account, his portfolio was worth only \$4,000 and he had paid Defendants \$8,000 in commissions. (Compl. ¶ 12.) Sena alleges that his portfolio's losses were due to Defendants' unauthorized trading in marginal and speculative investments. (Compl. ¶ 11.)

### **III. Discussion**

Defendants argue that in signing the Client Agreement, Sena agreed to submit all of his claims arising between the parties to binding arbitration and that this agreement is enforceable under federal law. (Defs.' Mot. at 2.)

Sena contends that the arbitration clause is unenforceable because it is too broad to divest him of his right to a federal forum. (Pl. Reply at 4.) Sena further alleges that the clause covers only contractual disputes, not violations of federal securities laws. (Id.) Thus, the claims he is asserting in his Complaint are not included within the scope of the arbitration clause.

#### **A. Legal Standard**

The Federal Arbitration Act ("FAA") "creates a body of

federal substantive law establishing and regulating the duty to honor an agreement to arbitrate..." John Hancock Mutual Life Ins. Co. v. Olick, 151 F.3d 132, 136 (3rd Cir. 1998)(quoting Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp, 460 U.S. 1, 25 n. 32, 103 S. Ct. 927, 942 n.32, 74 L.Ed.2d 765 (1983)). The FAA applies to written arbitration provisions contained in any contract evidencing a transaction involving interstate or foreign commerce. 9 U.S.C. §§ 1, 2 (1994).<sup>1</sup>

Under the FAA, if a party files suit upon any issue referable to arbitration under a written agreement, the court must stay the trial until after arbitration is complete if another party so requests. 9 U.S.C. § 3 (1994) The only time a court can refuse to stay the proceedings is if the court finds either that the issue is not subject to arbitration, 9 U.S.C. § 3 (1994), or the party has not agreed to arbitrate its claims, John Hancock, 151 F.3d at 137. Therefore, prior to ordering arbitration, the district court must determine (1) whether the parties entered into a valid arbitration agreement, and (2) whether the specific dispute falls within the scope of that agreement. John Hancock, 151 F.3d at 137. In conducting this review, the court should apply "ordinary contractual principles,

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<sup>1</sup> The Client Agreement between Sena and Defendants concerns an investment account between parties of diverse citizenship involving stock trading, an activity involving interstate commerce. Thus, the FAA covers this arbitration agreement.

with a healthy regard for the strong federal policy in favor of arbitration." Moses H. Cone, 460 U.S. at 24, 103 S. Ct. at 927. Once the court answers these two questions in the affirmative, the court must stay or dismiss the proceeding in favor of arbitration. John Hancock, 151 F.3d at 137; Seus v. John Nuveen Co., Inc., 146 F.3d 175, 179 (3rd Cir. 1998), cert. denied, 119 S. Ct. 1028, 143 L.Ed.2d 38 (1999).

#### **B. Validity of the Arbitration Agreement**

Sena alleges that the arbitration provision is too broad to constitute a valid waiver of his right to a judicial forum and thus is not enforceable. There is no authority to support Sena's position.

Arbitration agreements are enforceable "save upon such grounds as exist at law or equity for the revocation of any contract," 9 U.S.C. § 2 (1994), or unless Congress itself has evinced an intention to preclude a waiver of judicial remedies for the statutory rights at issue, Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 628, 105 S. Ct. 3346, 3354-55, 87 L.Ed.2d 444 (1985).

As for the latter exception, the United States Supreme Court has specifically upheld the arbitrability of claims arising under the Securities Exchange Act of 1934, Shearson/American Express Inc. v. McMahon, 482 U.S. 220, 238, 107 S. Ct. 2332, 2343, 96 L.Ed.2d 185 (1987), and the Securities Act of 1933, Rodriguez De

Quijas v. Shearson/American Express, Inc., 490 U.S. 477, 483, 109 S. Ct. 1917, 1921, 104 L.Ed.2d 526 (1989). Although the Court has not explicitly decided the arbitrability of claims arising under the Investment Company Act of 1940, given the Court's recent trend in favor of arbitration, such claims are likely arbitrable. See Rodriguez, 490 U.S. at 485, 109 S. Ct. at 1922 (overruling Wilko v. Swan, 346 U.S. 427, 74 S. Ct. 182, 98 L.Ed 168 (1953) which held that claims arising under federal securities laws were not arbitrable); McMahon, 482 U.S. at 238, 107 S. Ct. at 2343; Mitsubishi Motors, 473 U.S. at 690, 105 S. Ct. at 3360.

Contrary to Sena's assertion, federal courts do enforce broadly-worded arbitration clauses. Many of the cases in which the Supreme Court supported arbitration involved broad arbitration clauses. See e.g. Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 23, 111 S. Ct. 1647, 1650, 114 L.Ed.2d 26 (1991)(involving a clause requiring arbitration of "any dispute, claim or controversy arising between him and [the other party]"); Rodriguez, 490 U.S. at 478, 109 S.Ct. at 1918 (involving an arbitration clause in a contract between investors and broker requiring arbitration of "any controversies relating to the accounts"); Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395, 398, 87 S. Ct. 1801, 1803, 18 L.Ed.2d 1270 (1967)(involving a provision requiring arbitration of "any

controversy or claim arising out of or relating to this Agreement"). Courts have enforced agreements that are worded similarly to Sena's expansively to apply to all disputes between signatories. See Pritzker v. Merrill Lynch, Pierce, Fenner & Smith, 7 F.3d 1110, 1114 (3rd Cir. 1993).

For these reasons, this Court finds that Sena's claims are arbitrable and the clause is valid despite its broad scope.

### **C. Scope of the Arbitration Provision**

Sena argues that the arbitration clause contained in the Client Agreement addresses contractual disputes only and does not cover statutory violations of securities laws. This Court disagrees.

The FAA requires that any doubts concerning the scope of arbitral issues be resolved in favor of arbitration, Moses H. Cone, 460 U.S. at 24-25, 103 S. Ct. at 941-42. In determining whether a dispute falls within the scope of the agreement, the court must apply a presumption of arbitrability such that arbitration should not be denied unless the court can state "with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute."<sup>2</sup>

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<sup>2</sup>Sena contends that his claim is not subject to a presumption of arbitrability and that any requirement to arbitrate must explicitly state in clear and unmistakable

Painewebber Inc. v. Hartmann, 921 F.2d 507, 511 (3rd Cir. 1990)(quoting United Steelworkers of Am. v. Warrior & Gulf Navigation Co., 363 U.S. 574, 582-83, 80 S. Ct. 1347, 1353, 4 L.Ed.2d 1409 (1960)).

In Pritzker, the contested arbitration clause purported to govern "all controversies which may arise between [the parties]." Pritzker, 7 F.3d at 1114. The Court of Appeals for the Third Circuit interpreted this to apply to all of the disputes that arose between the signatories. Id. Similarly in Rodriguez, the United States Supreme Court implicitly interpreted an arbitration clause contained in a contract between an investor and broker that covered any controversy "relating to [the] accounts," to encompass alleged violations of securities laws and fraud.

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language the parties' intention to waive a statutorily protected right. (Pl. Reply at 3.) He asserts that "a plaintiff's right to a federal forum is of sufficient importance to be protected against a broad arbitration clause contained in a securities agreement." (Id.) In support of this proposition, Sena cites Wright v. Universal Maritime Serv. Corp., 525 U.S. 70, 119 S. Ct. 391, 142 L.Ed.2d 361 (1998).

Wright is not applicable precedent because, unlike the instant case, it involved an arbitration clause contained in a collective bargaining agreement. In Wright, the Court affirmed its previous holdings that established a presumption of arbitrability under the FAA, Wright, 119 S. Ct. at n.1, but stated that the presumption does not apply to arbitration agreements that are negotiated by unions in collective bargaining agreements, Id. at 396. The Wright Court expressly limited its holding to require a clear and unmistakable waiver of employee's statutory rights to a federal forum solely to the context of collective bargaining agreements. Id. Thus, Wright left undisturbed the Court's previous express holdings that despite the important public policies embodied in federal securities laws, claims arising under those statutes are nonetheless appropriate for arbitration. See Gilmer, 500 U.S. 28, 111 S. Ct. at 1653.

Rodriguez, 490 U.S. at 478, 109 S. Ct. at 1918-19.

The language of the instant provision covers "any dispute ... arising out of or relating to any of [Sena's] accounts with Gruntal or transactions heretofore or hereafter made therein." (Compl. Exh. A.) Sena's claims revolve around Defendants' unauthorized handling of his investment account funds and alleged misrepresentations regarding his account. Due to the breadth of the arbitration clause, this Court cannot say with positive assurance that the clause does not cover Sena's asserted claims. Therefore, this Court finds that all of Sena's claims fall within the scope of the arbitration clause.

#### **IV. Conclusion**

Having found that Sena entered into a valid arbitration agreement with Defendants that mandates arbitration of all of the claims he has presented in his Complaint, this Court will dismiss Sena's Complaint without prejudice.<sup>3</sup>

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<sup>3</sup>Although the FAA directs courts to merely stay proceedings involving arbitrable issues, the United States Court of Appeals for the Third Circuit has held that where all of the issues raised in a suit are subject to binding arbitration, the court may dismiss the action. Seus v. John Nuveen Co., Inc., 146 F.3d 175, 179 (3rd Cir. 1998).

