

IN THE CHANCERY COURT OF COUNTY, MISSISSIPPI

VS.

CASE NO.

, , , AND

**'s MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS AND COMPEL
ARBITRATION OF CLAIMS OF CROSS-PLAINTIFFS**

INTRODUCTION

Cross-Claim Plaintiffs, and (the " ") filed the present lawsuit asserting that they were damaged as the result of the alleged actions of (" "), whom the assert was acting as the agent of (" "). The claim that they entrusted funds to for investment and profits, which converted to his/her own use. Specifically, the assert that forged their name on a change of address form with , and caused all correspondence, checks, ledgers, and other written documents to be mailed to rather than to the . The further assert that forged their endorsement on checks made payable to them, and deposited the funds in a bank account in the name of .

During the course of their dealings with , the opened a customer account with and executed a Client Option Agreement and Approval (the "Agreement"). A true and accurate copy of the Agreement is attached hereto as Exhibit A and incorporated herein by reference. The Agreement executed by the contains a binding arbitration clause that requires the to arbitrate the issues raised in this lawsuit. Thus, the allegations against set forth in the 's Cross-Claim should be dismissed. Alternatively all proceedings should be stayed until arbitration has been completed.

FACTS

was formerly an independent contractor licensed to effect securities transactions through . During the course of their dealings with the opened a customer account with and executed the Agreement, which sets forth their option objectives and application for option strategy approvals. The Agreement contains a binding arbitration clause that requires the to arbitrate their claims against . Paragraph fifteen (15) of the Agreement specifically provides that all controversies concerning any transaction or relating directly or indirectly to the construction, performance or breach of the Agreement or any obligation shall be determined by arbitration. See, Exhibit A, paragraph 15; and Affidavit of , paragraph 5. The claims with respect to investments made with relate to their account with and to the Agreement executed by the . Accordingly, their claims against should be compelled to arbitration in accordance with the express language of the Agreement.

ARGUMENT

The [redacted]'s claims against [redacted] are subject to the Federal Arbitration Act, 9 U.S.C. § 1 - 14 because the transactions, alleged in their cross-claim against [redacted] involve commerce within the meaning of the Act. See *Allied-Bruce Terminix Companies V. Dobson*, 115 5 .Ct 834, 130 L.Ed.2d 753 (U.S. 1995) ("involving" interstate commerce is broad and is the functional equivalent of "affecting" interstate commerce); *Mayaja, Inc. V. Bodkin*, 803 F.2d 157 (5th Cir. 1986) (customer agreements creating financial management and commodity accounts with broker involved "commerce" within the meaning of the Federal Arbitration Act); *Arce V. Cotton Club of Greenville, Inc.*, 883 F.Supp. 117, 119 (N.D. Miss. 1995) ("Section 2's requirements are met where contractual activity facilitates or affects commerce, even tangentially").

The standards applied when determining the question of arbitrability require a two-step analysis: (1) Whether a valid agreement to arbitrate exists; and (2) if so, whether the dispute comes within the scope of the agreement. *Id.* In the instant case, there is clearly a valid, binding agreement to arbitrate the claims asserted against [redacted] in the [redacted]'s cross-claim. The Agreement states in relevant part:

I AGREE AND BY CARRYING AN ACCOUNT FOR ME YOU AGREE THAT ALL CONTROVERSIES THAT MAY ARISE AT ANY TIME BETWEEN ME AND YOU CONCERNING ANY TRANSACTION OR OTHERWISE RELATING, DIRECTLY OR INDIRECTLY TO THE CONSTRUCTION, PERFORMANCE, OR ASSERTED BREACH OF THIS OR ANY OTHER AGREEMENT OR OBLIGATION BETWEEN ME AND YOU WHETHER ENTERED INTO PRIOR, ON, OR SUBSEQUENT TO THE DATE HEREOF SHALL BE DETERMINED BY ARBITRATION.

Exhibit A, Paragraph 15.

The Supreme Court has determined that there is a strong presumption in favor of arbitration. *Mitsubishi Motors Corp. V. Solar Chrysler-Plymouth, Inc.* 473 U.S. 614, 105 S.Ct. 3346, 87 L.Ed.2d 444 (1985). The Arbitration Act establishes that, as a matter of federal law, any doubts concerning the scope of the arbitration provision must be resolved in favor of ordering arbitration. *City of Meridian, Miss. V. Algernon Blair, Inc.*, 721 F.2d 525, 527-528 (5th Cir. 1983). Moreover, "unless it can be said with positive assurance that an arbitration clause is not susceptible of an interpretation which would cover the dispute at issue, then a stay pending arbitration should be granted." *Explo, Inc. V. Southern Natural Gas Co.*, 788 F.2d 1096, 1098 (5th Cir. 1986).

The [redacted] allege that they were damaged as a result of their entrustment of funds to [redacted] for investment purportedly during the time he was an agent, servant or employee of [redacted]. Based on the allegations in the [redacted]'s cross-claim against [redacted], the controversy relates to the [redacted]'s account with [redacted] and the Agreement executed by the [redacted] in connection with their investments with [redacted]. Thus, the [redacted]'s claims against [redacted] are subject to the arbitration clause contained in the Agreement, and should be compelled to arbitration in accordance with the Agreement.

WHEREFORE, Cross-Defendant, [redacted] respectfully moves the court to enter an Order dismissing the Cross-Claim against [redacted] and compelling arbitration of the [redacted]'s claims against [redacted]. Alternatively, [redacted] prays for an Order staying all further proceedings until arbitration has been

completed. further requests costs and expenses incurred herein, including reasonable attorneys' fees, and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

Attorney for

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