

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

MULTI-FINANCIAL SECURITIES CORP.,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	NO. 02-3828
	:	
ARLENE BROWN,	:	
Defendant.	:	

ORDER

AND NOW, this day of December, 2002, it is hereby ORDERED that Defendant's Motion to Compel Arbitration or in the Alternative for Summary Judgment is GRANTED for the reasons set forth below.

Presently before the Court is Defendant Arlene Brown's Motion to Compel Arbitration or in the Alternative for Summary Judgment, as well as the Response filed by Defendant Multi-Financial Securities Corp. ("Multi-Financial"). Multi-Financial, a Colorado Corporation, is a broker-dealer and is a member of the National Association of Securities Dealers ("NASD"). On or about March 12, 2002, Defendant, a resident of the Commonwealth of Pennsylvania, filed a Statement of Claim with the NASD seeking to arbitrate certain legal claims against Multi-Financial and two of its former registered representatives, George Brown and Kevin Brown ("the Browns"). Defendant alleges that the Browns advised her to establish an offshore trust with Intrados, S.A., a financial institution based in Costa Rica. Defendant's Statement of Claim alleges that the Browns engaged in the fraudulent sale of unregistered securities in violation of

the Securities Act of 1933, the Securities Exchange Act of 1934, Securities Exchange Commission Rule 10b-5, and the Pennsylvania Securities Act, and that the Browns committed certain common law torts, including fraud and breach of fiduciary duty. The Statement of Claim also asserts an independent cause of action against Multi-Financial for the negligent failure to supervise the Browns, and seeks to hold Multi-Financial liable for the Browns' actions under the doctrine of *respondeat superior* and as a "control person" pursuant to the Securities Act of 1933 and the Securities Exchange Act of 1934. The Browns filed answers to Defendant's Statement of Claim and agreed to arbitrate, but Multi-Financial did not. Instead, Multi-Financial instituted the present action against Defendant seeking to enjoin arbitration of Defendant's claims.

Rule 10301(a) of the NASD Code of Arbitration Procedure provides:

Any dispute, claim, or controversy eligible for submission under the Rule 10100 Series between a customer and a member and/or associated person arising in connection with the business of such member or in connection with the activities of such associated persons shall be arbitrated under this Code as provided by any duly executed and enforceable written agreement or upon the demand of the customer.

Defendant contends that she is entitled to a summary judgment ruling that Rule 10301(a) is applicable to her dispute with Multi-Financial and that Multi-Financial must therefore submit to arbitration of her claims.

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). It is undisputed that the Browns were "associated person[s]" of Multi-Financial during the relevant time period. However, Multi-Financial argues that Defendant is not entitled

to summary judgment because there are genuine issues of material fact as to: (1) whether Defendant was a “customer” during the relevant time period; and (2) whether the “dispute, claim, or controversy” at issue arose “in connection with the . . . activities of” the Browns. I disagree.

As to whether Defendant was a “customer,” the evidence clearly establishes that at the time of Defendant’s dealings with the Browns there was a business relationship between the Browns and Multi-Financial. The Browns expressly held themselves out as offering securities through Multi-Financial on their business cards, stationary, promotional materials, and internet site. When George Brown sent one of Defendant’s checks to the trustee to be deposited in the offshore trust in question, he designated the sender as “George P. Brown” and his company as “Multi-Financial Sec. Corp.” Even Multi-Financial acknowledges that during the time in question, the Browns were registered representatives of Multi-Financial. This relationship between the Browns and Multi-Financial is alone sufficient to compel the legal conclusion that Defendant, who undisputably had a relationship with the Browns, was a “customer” of Multi-Financial for purposes of Rule 10301(a). See Vestax Securities Corp. v. McWood, 280 F.3d 1078 (6th Cir. 2002); John Hancock Life Insurance Co. v. Wilson, 254 F.3d 48 (2d Cir.2001); see also BMA Fin. Servs., Inc. v. Guin, 164 F.Supp.2d 813 (W.D. La. 2001). I recognize that some federal district courts in other jurisdictions have looked to whether the purported “customer” was actually aware of the association between the member and the associated persons during the time in question. See, e.g., Hornor, Townsend & Kent, Inc. v. Hamilton, 218 F.Supp.2d 1369 (N.D. Ga. 2002); Washington Square Securities, Inc. v. Sowers, 218 F.Supp.2d 1108 (D. Minn. 2002); WMA Securities, Inc. v. Ruppert, 80 F.Supp.2d 786 (S.D. Ohio 1999). However, even under this more stringent standard, Defendant was still a “customer” based upon

the undisputed evidence. For example, the record includes a letter written by Kevin Brown to Defendant, regarding the trust account in question, written on his company's stationary stating "Securities offered through Multi-Financial Corp. – Member SiPC and NASD."

As to whether the "dispute, claim, or controversy" at issue arose "in connection with the . . . activities of" the Browns, the evidence clearly establishes that the offshore trust account in question was established and maintained by the Browns on behalf of Defendant. The record includes the following documents: (1) a Trust Agreement signed by Defendant as Settlor and George Brown as a witness; (2) two "Letter of Wishes" documents, signed by Defendant and George Brown as witness, requesting that the funds deposited in the offshore trust in question be invested in a "Stable Yield Investment Certificate issued by Honor, FA, a Cayman Island Corp."; (3) a receipt from George Brown sent to Defendant showing that Defendant sent her checks to George Brown for him to deposit for her; (4) a Federal Express receipt showing that George Brown sent Defendant's checks to the trustee of the trust to be deposited on Defendant's behalf; (5) a letter from Defendant to the trustee of the offshore trust account which states "cc:George Brown" (which letter Defendant alleges was actually drafted by George Brown); (6) a note from George Brown to Defendant dated December 20, 1996, acknowledging his receipt of the certificate of her investment, which certificate he sent to Defendant along with the note; and (7) an account statement from the Browns for Defendant's trust account. Taken together, the evidence compels the conclusion as a matter of law that the Browns, on behalf of Defendant, established the offshore trust account in question and maintained the account once it was established. Thus, Defendant's claims clearly arose in connection with the activities of the Browns.

In summary, this Court concludes as a matter of law that the dispute in question is between “a customer and a[n] . . . associated person arising . . . in connection with the activities of such associated persons,” and that the dispute must therefore be arbitrated pursuant to Rule 10301(a) of the NASD Code of Arbitration Procedure. Thus, Defendant’s Motion for Summary Judgment is GRANTED, Defendant’s Motion to Compel Arbitration is GRANTED, and Multi-Financial is ORDERED to submit to arbitration of Defendant’s claims. Judgment is hereby entered in favor of Defendant and against Plaintiff Multi-Financial. The Clerk of Court is directed to close this matter for statistical purposes.

BY THE COURT:

Legrome D. Davis