IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

TRACI RIBEIRO,

Plaintiff,

v.

SEDGWICK LLP,

Defendant.
/

No. C 16-04507 WHA

ORDER GRANTING MOTION TO COMPEL ARBITRATION AND STAYING ACTION

INTRODUCTION

In this putative class action alleging employment discrimination and retaliation at a law firm, defendant moves to compel arbitration. For the reasons stated below, defendant's motion is **GRANTED**.

STATEMENT

In January 2011, plaintiff Traci Ribeiro began work as a "contract partner" at the Chicago office of Sedgwick LLP, a large international law firm based in San Francisco. Pursuant to Ribeiro's contract partner agreement with Sedgwick, she could use the title of partner, but was not a signatory of the firm's partnership agreement and had none of the privileges of partnership (Celebrezze Decl. ¶ 2 ; Ribeiro Decl. ¶¶ 9–11).

Ribeiro's employment as a contract partner was scheduled to terminate in December 2011, but in November 2011, the partnership elected to promote Ribeiro to the position of "non-equity partner" effective January 2012. Pursuant to the partnership agreement, non-equity partners *were* signatories to the partnership agreement and enjoyed the right to vote on certain

matters regarding the firm, but they did not make capital contributions to the firm or share in the firm's profits. Non-equity partners could not be expelled from the partnership absent a two-thirds vote of all equity partners (Celebrezze Decl. ¶¶ 3, 12).

Ribeiro signed the partnership agreement in February 2012. The partnership agreement included an alternative dispute resolution provision that applied to "any disagreements in connection with any matters set forth in" the partnership agreement and constituted the "exclusive procedure for resolution of all" such disputes. The dispute resolution provision required the partnership and the partners involved in any dispute to submit a written demand for arbitration to the office of Judicial Arbitration and Mediation Services, Inc., in the appropriate venue (or to the American Arbitration Association in districts without a JAMS office). It provided, *inter alia*, that "the arbitrator shall schedule and hold a preliminary conference to review the status of the Dispute, to schedule motions, discovery and other matters, to schedule one or more dates for the hearing, and deal with any other administrative details the arbitrator deems necessary." It also provided that any arbitration would be governed by the "Comprehensive Arbitration Rules and Procedures then in effect for commercial disputes" before the arbitration tribunal selected, and the rules referenced were deemed incorporated by reference (*id.*, Exh. A ¶ 10.18(b)).

Rule 11(b) of the JAMS "Comprehensive Arbitration Rules and Procedures" provided, "Jurisdictional and arbitrability disputes, including disputes over the formation, existence, validity, interpretation or scope of the agreement under which Arbitration is sought, and who are proper Parties to the Arbitration, shall be submitted to and ruled on by the Arbitrator."

In November 2012, Sedgwick informed Ribeiro that the equity partners had amended and restated the partnership agreement. The only substantive change to the dispute resolution procedure in the agreement was to add that the arbitrator would "determine whether or not the Dispute should be subject to the ADR Process" at the preliminary conference (*id.*, Exh. D ¶ 10.17(b)). Ribeiro signed the amended and restated agreement in December 2012.

In January 2016, Ribeiro sent a letter to the Chair of Sedgwick claiming that decisions by the partnership had resulted in discrimination. In February, Ribeiro filed an administrative

charge with the Equal Employment Opportunity Commission. In April, Sedgwick filed a demand for Arbitration with JAMS, seeking declaratory judgment that it neither discriminated nor retaliated against Ribeiro in setting her compensation or determining whether to elect her as an equity partner. The parties stayed the arbitration pending settlement negotiations and attempts to modify the arbitration procedures, though negotiations were unsuccessful. In July 2016, an arbitrator was selected pursuant to the bilateral process specified in the partnership agreement.

Ribeiro commenced this action in San Francisco Superior Court in July 2016. Sedgwick removed the action to federal court on the basis of federal question jurisdiction in August. Sedgwick now moves to compel arbitration. This order follows full briefing and oral argument.

ANALYSIS

Sedgwick argues that the Court must defer questions of the arbitrability of this dispute to the determination of the arbitrator. Alternatively, it argues that this Court should enforce the arbitration provision.

Both sides agree that the Federal Arbitration Act applies to this motion. Section 2 of the FAA provides, "an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract."

The determination of whether an arbitration clause is valid, applicable, and enforceable under state contract law is reserved to the district court, unless "the parties clearly and unmistakably provide[d] otherwise," such as by delegating the issue of arbitrability to arbitration. *AT&T Technologies, Inc. v. Communications Workers of America*, 475 U.S. 643, 649 (1986). The enforceability of a clear and unmistakable delegation of arbitrability must be evaluated in isolation without considering whether the arbitration clause as a whole is enforceable. *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 71–74 (2010). The incorporation-by-reference of arbitration rules and procedures that provide that the arbitrator, not the court, shall determine the issue of arbitrability "constitutes clear and unmistakable

evidence that contracting parties agreed to arbitrate arbitrability," at least where the contracting parties are sophisticated. *Brennan v. Opus Bank*, 796 F.3d 1125, 1130 (9th Cir. 2015).

Here, there is no dispute that the initial partnership agreement signed by Ribeiro clearly and unmistakably delegated the issue of arbitrability to arbitration by incorporating the JAMS Comprehensive Arbitration Rules and Procedures. Nor is there any dispute that Ribeiro, a non-equity partner in a law firm, had the requisite sophistication to understand that the incorporation of the JAMS rules constituted the delegation of arbitrability.

For the first time at oral argument Ribeiro contended that the November 2012 amendment to the partnership agreement, which added a provision requiring the arbitrator to "determine whether or not the Dispute should be subject to the ADR Process" at the preliminary conference *subtracted* the delegation of arbitrability provided by the JAMS rules. (Counsel conceded that the JAMS rules did delegate arbitrability.) That is, Ribeiro contends that the arbitrator's determination of whether the dispute "should be subject to the ADR Process" related to the *scope* of the arbitration agreement, not its *enforceability*. This order need not whether Ribeiro is correct that the express delegation of authority to the arbitrator concerned only scope (or, conversely, whether it constituted clear and unmistakable delegation of questions of enforceability to the arbitrator even without the incorporation of the JAMS rules), because

even under Ribeiro's interpretation, the added language did not *exclude* consideration of enforceability from the arbitrator's preliminary conference, it merely identified one set of issues that must be decided at the initial conference.

Ribeiro completely ignores the foregoing controlling authority and argues that we must *first* determine whether the agreement to arbitrate this dispute is enforceable, *before* determining whether the agreement to arbitrate arbitrability is enforceable. Ribeiro's argument is directly contrary to *Rent-A-Center*, 561 U.S. at 70, in which the Supreme Court held that "a party's challenge to another provision of the [arbitration agreement], or to the [arbitration agreement] as a whole, does not prevent a court from enforcing a specific agreement to arbitrate," namely, the specific agreement to arbitrate the issue of arbitrability. Because the

delegation clause was severable from the arbitration agreement as a whole and no challenge had been made to the delegation clause in isolation, the Supreme Court held the arbitrator, not the district court, must decide the issue of arbitrability. *Ibid.*

Ribeiro argues that a delegation clause may be invalidated based on a "generally applicable contract defense, such as fraud, duress, or unconscionability." *Mohamed v. Uber Techs., Inc.*, __ F.3d __, No. 15-16178, 2016 WL 4651409, at *5 (9th Cir. Sept. 7, 2016). True, but Ribeiro raises no such defense as to the delegation clause alone. Rather, she argues that the arbitration provision as a whole is unconscionable. The parties dispute which standard applies to Ribeiro's unconscionability argument, but even under *Armendariz v. Found. Health Psychcare Services, Inc.*, 24 Cal. 4th 83, 114 (2000), which Ribeiro contends applies, Ribeiro's argument fails. To succeed under *Armendariz*, Ribeiro must show both procedural and substantive unconscionability. Ribeiro fails to raise *any* substantive unconscionability with regard to the delegation clause (though she contends the circumstances of the presentation of the partnership agreement were procedurally unconscionable). That failure is fatal at this stage. Ribeiro's arguments that the arbitration provision as a whole was unconscionable must be directed at the arbitrator.

CONCLUSION

For the reasons stated above, Sedgwick's motion to compel arbitration is **GRANTED**. This action will be stayed pending completion of the arbitration. The parties shall submit a joint status report by the earlier of the following: (1) **MARCH 9, 2017**, or (2) **SEVEN CALENDAR DAYS** following a determination by the arbitrator of the arbitrability of this dispute.

If the arbitration fails to move forward promptly despite plaintiff's best efforts, the Court will consider lifting the stay.

This order cites provisions from the partnership agreement and details the terms of plaintiff's employment, which both parties have sought to keep confidential. Accordingly, this order will be provisionally filed under seal. If the parties wish for any portion of the order to be redacted on the public docket, they should make a motion supported by a sworn declaration setting forth good cause for sealing those portions by **NOVEMBER 10**. If no motion is received by that date, the order will be filed on the public docket.

IT IS SO ORDERED.

Dated: November 2, 2016.

WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE