FILED
2016 Jun-01 PM 12:57
U.S. DISTRICT COURT
N.D. OF ALABAMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

THE VARIABLE ANNUITY LIFE INSURANCE COMPANY, et al.,	)	
Plaintiffs,	)	7:15-cv-02350-LSC
vs.	)	
BRETT LAFERRERA, et al.,	)	
Defendants.	)	

MEMORANDUM OF OPINION AND ORDER

Plaintiffs The Variable Annuity Life Insurance Company ("VALIC") and VALIC Financial Advisors, Inc. ("VFA") (collectively "Plaintiffs") filed this action against Brett LaFerrera, Jessica LaFerrera (collectively the "LaFerreras"), and Crimson Capital Group ("CCG") alleging violation of the Alabama Trade Secret Act, violation of the Computer Fraud and Abuse Act, and breach of contract. Before the Court is Defendants' motion to compel arbitration and stay these proceedings. (Doc. 39.) For the reasons stated below, Defendants' motion to compel arbitration and stay these proceedings is due denied in part and is otherwise moot.

I. BACKGROUND

The facts relevant to the instant motion are relatively straightforward: Plaintiffs allege that the LaFerreras, former VALIC employees, have been using confidential VALIC trade secrets and client information to contact and "poach" VALIC clients and provide competing services through their company, CCG. The LaFerreras each entered into identical Registered Representative Agreements ("RRA") with VALIC during their employment. The RRAs included an agreement to submit certain disputes to the National Association of Securities Dealers ("NASD"), an arbitration panel that is now known as the Financial Industry Regulatory Authority ("FINRA"). More specifically, the arbitration provisions state as follows:

> [§ 11(a)] Disputes between Registered Representative and Broker-Dealer.
> Disputes arising from or under the terms of this Agreement between Registered Representative and Broker-Dealer shall be resolved in accordance with the NASD's Code of Arbitration Procedures. Should the NASD decline jurisdiction over any dispute between Registered Representative and Broker-Dealer, or should any dispute not be eligible for submission to the NASD under its Code of Arbitration Procedures, such dispute shall be resolved under subparagraph 11.b, below.
>
> [§ 11(b)] Other disputes.
> (1) All other disputes arising from or under the terms of this Agreement, including, without limitation, all disputes with any Affiliated Company and/or Protected Company that is not a member of the NASD shall be resolved in a court of competent jurisdiction.

(Doc. 39-2 at Pages 2, 15.) The RRAs label the LaFerreras as the Registered Representatives and VFA as the Broker-Dealer.

After receiving information leading them to believe that the LaFerreras had improperly taken confidential information and had breached the RRAs, Plaintiffs filed a complaint and a motion for a temporary restraining order to prevent Defendants from using the confidential information. In lieu of a temporary restraining order, the parties submitted and the Court entered an agreed-upon preliminary injunction, which the parties later agreed to expand. Simultaneously, Plaintiffs submitted their claims against the LaFerreras to FINRA. All parties agree that those claims are subject to arbitration. The FINRA arbitration hearing began on May 10, 2016 and is ongoing.

II. STANDARD OF REVIEW

"[T]he basic purpose of the Federal Arbitration Act is to overcome courts' refusals to enforce agreements to arbitrate." *Allied-Bruce Terminix Comp., Inc. v. Dobson*, 513 U.S. 265, 270 (1995). The FAA places arbitration agreements "upon the same footing as other contracts." *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 511 (1974). The FAA applies to all "contract[s] evidencing a transaction involving commerce." 9 U.S.C. § 2. Thus, "claims [that arise] under federal statutes may be the subject of arbitration agreements and are enforceable under the FAA."

Weeks v. Harden Mfg. Corp., 291 F.3d 1307, 1312 (11th Cir. 2002). These agreements are "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of the contract." 9 U.S.C. § 2. Mindful of this "federal policy favoring arbitration," courts apply state law to determine enforceability. *Caley v. Gulfstream Aerospace Corp.*, 428 F.3d 1359, 1368 (11th Cir. 2005).

III. Discussion

The parties do not dispute that the claims submitted against the LaFerreras, signatories to the arbitration agreement, are subject to arbitration. Further, the FINRA arbitration hearing began on May 10, 2016. Thus, Defendants' motion to compel arbitration as to the claims asserted against the LaFerreras is moot. The agreed-upon preliminary injunction and the agreed-upon expanded preliminary injunction remain binding as to the parties, as Defendants concede in their brief in support of their motion to compel. (Doc. 39 at Page 18 (noting that the preliminary injunction extends until the arbitrator has "decide[d] whether to award relief)).

Regarding CCG, Plaintiffs contend that their claims against CCG are not subject to arbitration because CCG was not a party to the arbitration agreement. Ordinarily, "[i]n the absence of an agreement to arbitrate, a court cannot compel the parties to settle their disputes in an arbitral forum." *Klay v. All Defendants*, 389

F.3d 1191, 1200 (11th Cir. 2004). However, a nonsignatory to an arbitration agreement may force a signatory to arbitrate "'if the relevant state contract law allows him to enforce the agreement' to arbitrate." *Lawson v. Life of the South Ins. Co.*, 648 F.3d 1166, 1170 (11th Cir. 2011) (quoting *Arthur Anderson LLP v. Carlisle*, 556 U.S. 624, 632 (2009)). The parties agree that Alabama law is the relevant state contract law as to this issue.

In Alabama, "[o]ne of the key exceptions to this [nonsignatory] rule is the theory of equitable estoppel, under which a nonsignatory can enforce an arbitration provision when the claims against the nonsignatory are 'intimately founded in and intertwined with' the underlying contract obligations." *Jenkins v. Atelier Homes, Inc.*, 62 So. 3d 504, 510 (Ala. 2010) (quoting *Smith v. Mark Dodge, Inc.*, 934 So. 2d 375, 380–81 (Ala. 2006)). However, "[w]here 'the language of the arbitration provisions limited arbitration to the signing parties,' th[e Alabama Supreme Court] has not allowed the claims against the nonsignatories to be arbitrated." *Smith v. Mark Dodge, Inc.*, 934 So. 2d 375, 380–81 (Ala. 2006) (quoting *Ex parte Stamey*, 776 So. 2d 85, 89 (Ala. 2000)). In other words, a nonsignatory cannot invoke equitable estoppel if "the description of the parties subject to the arbitration agreement [is] so restrictive as to preclude arbitration by the party seeking it." *Ex parte Stamey*, 776 So. 2d 85, 89 (Ala. 2000).

The language in section 11(a) of the RRAs is party-specific to Registered Representative (the LaFerreras) and Broker-Dealer (VALIC Financial Advisors, Inc.). The language in section 11(b) of the RRAs then explicitly states that all other disputes are to be resolved through litigation. This language is sufficiently restrictive to preclude CCG, a nonsignatory, from enforcing the agreement through the doctrine of equitable estoppel. *See, e.g.*, *Smith v. Mark Dodge*, 934 So. 2d 375, 381 (Ala. 2006) ("[I]f the language of the arbitration provision is party specific and the description of the parties does not include the nonsignatory, this Court's inquiry is at an end, and we will not permit arbitration of claims against the nonsignatory."); *Ex parte Stamey*, 776 So. 2d 85, 91 (Ala. 2000) (holding that an arbitration clause that stated "ALL DISPUTES, CLAIMS OR CONTROVERSIES ARISING FROM OR RELATING TO THIS CONTRACT OR THE PARTIES THERETO SHALL BE RESOLVED BY BINDING ARBITRATION" was not specifically limited to the signing parties and thus was subject to analysis under the theory of equitable estoppel). Because CCG's theory of equitable estoppel fails here, and because CCG offers no alternative theory supporting arbitration of Plaintiffs' claims against it, Defendants' motion to compel arbitration as to the claims asserted against CCG is denied.

Faced with both arbitrable and nonarbitrable claims in this action, the Court must determine whether to stay the litigation of the nonarbitrable claims. "When confronted with litigants advancing both arbitrable and nonarbitrable claims, . . . courts have discretion to stay nonarbitrable claims." *Klay v. All Defendants*, 389 F.3d 1191, 1204 (11th Cir. 2004). The Eleventh Circuit has further noted that "[c]rucial to this determination is whether arbitrable claims predominate or whether the outcome of nonarbitrable claims will depend upon the arbitrator's decision." *Id.* However, "courts generally refuse to stay proceedings of nonarbitrable claims when it is feasible to proceed with the litigation." *Id.* (citing Justice White's concurrence in *Dean Witter Reynolds, Inc. v. Byrd*, 740 U.S. 213, 225 (1985), who stated that "it seems to me that the heavy presumption should be that arbitration and the lawsuit will each proceed in its normal course").

While Defendants maintain that "[t]he claims and issues decided for or against the Laferreras will unquestionably have preclusive effect against CCG," (Doc. 39 at Page 26), they offer no reason why a non-party to the arbitration would be precluded from litigating its own claim in this Court. The Court doubts that any determination by FINRA would have preclusive effect as to Plaintiffs' claims against CCG. Further, while proceeding with litigation may create some duplicative discovery, Defendants fail to show how CCG's alleged wrongdoing

would necessarily arise in the FINRA proceedings. Defendants contend that refusing to stay the claims against CCG will impose upon them a needless cost. The Court disagrees. This is not an instance where almost all claims asserted against one defendant are arbitrable and one or two essentially similar claims against that same defendant are not. This is an instance where all claims asserted against two defendants are arbitrable and all claims asserted against an entirely different defendant are not. No defendant in this action will have to defend some claims in this Court and arbitrate others. With CCG's role in Plaintiffs' allegations unlikely to be resolved in the FINRA proceedings, the Court declines to stay the proceedings against it.

The Court notes Plaintiffs have requested that the Court sanction Defendants for filing the instant motion in what Plaintiffs allege was bad faith. To the extent Plaintiffs still believe sanctions are warranted, they may file a motion requesting them. The Court will take up any such motion, as well as the currently-pending motion for sanctions for spoliation of evidence, at the trial or other dispositive consideration of this case if Plaintiffs reassert such at that time.

IV. CONCLUSION

For the reasons stated above, Defendants' motion to compel arbitration and stay these proceedings (Doc. 39) is DENIED in part and MOOT in part. More

specifically, the motion is denied as to Defendants' request that this Court compel Plaintiffs to arbitrate their claims against CCG or stay litigation of those claims, and the motion is moot as to Defendants' request that this Court compel Plaintiffs to arbitrate their claims against the LaFerreras.

DONE AND **ORDERED** ON JUNE 1, 2016.

L. SCOTT COOGLER
UNITED STATES DISTRICT JUDGE
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