

STATE OF MICHIGAN
COURT OF APPEALS

HARRY DEMPSEY,

Plaintiff-Appellant,

v

METROPOLITAN LIFE INSURANCE
COMPANY, BRUCE TALBOT
and JEFFREY STEELE,

Defendants-Appellees.

UNPUBLISHED

May 4, 1999

No. 208050

Saginaw Circuit Court

LC No. 97-017285 NZ

Before: Cavanagh, P.J., and MacKenzie and McDonald, JJ.

PER CURIAM.

Plaintiff, who alleged, among other things, that he was wrongfully discharged from his employment with defendant Metropolitan Life Insurance Company (MetLife) because of his age, appeals as of right from an order granting defendants' motion to dismiss based on a mandatory arbitration clause in a form that he signed. We affirm.

Because an arbitration clause prompted the dismissal, we construe it as a summary disposition under MCR 2.116(C)(7). This Court reviews a summary disposition under MCR 2.116(C)(7) de novo. *Iovino v Michigan*, 228 Mich App 125, 131; 577 NW2d 193 (1998). We consider all documentary evidence submitted by the parties and accept the plaintiff's well-pleaded allegations, except those contradicted by documentary evidence, as true. *Id.*, *Patterson v Kleiman*, 447 Mich 429, 433-435; 526 NW2d 879 (1994).

Plaintiff first argues that the form containing the arbitration clause – a Uniform Application for Securities Industry Registration or Transfer (Form U-4) – applied not to his employment with MetLife but solely to his employment with Metropolitan Life Securities (MetLife Securities), even though MetLife appears under the “firm name” section of the document. To support his argument, plaintiff states (1) that the company name had not yet been written in when he signed the form; (2) that the two companies were separate entities; and (3) that because he signed the form only to obtain a license to sell products for MetLife Securities, he could not reasonably know that the form applied to his employment with MetLife as well as to his employment with MetLife Securities. He admits, however, that the form

contained an arbitration clause applicable to MetLife Securities and that MetLife owned MetLife Securities.

In addressing plaintiff's argument, we find persuasive the United States Court of Appeals' reasoning in *Schulte v Prudential Ins Co of America*, 133 F 3d 225 (CA 3, 1998). In that case, the plaintiffs, former employees of Prudential, argued that the arbitration clause in a Form U-4 did not apply to their suit against Prudential because the sole firm listed on the form was Pruco Securities, a Prudential subsidiary. *Id.* at 228. The court ruled that the plaintiffs' claims were subject to mandatory arbitration (1) because the language of the Form U-4 mandated arbitration of disputes with Pruco as well as "any other person" if the claim was governed by the National Association of Securities Dealers (NASD) Code of Arbitration Procedure; (2) because the NASD code mandated arbitration of disputes "between or among members and/or associated persons"; and (3) because Prudential was a NASD member and plaintiffs were "associated persons" under the code. *Id.* at 229-230. In the instant case, the relevant provisions of the Form U-4 and of the NASD Code were identical to those mentioned in *Schulte*. Therefore, because MetLife was a NASD member and because plaintiff was an "associated person," disputes arising between them were subject to mandatory arbitration. We note that the NASD code's "insurance business" exception to arbitrability did not apply in this case because plaintiff's suit involved an employment decision and was not directed toward MetLife's insurance practices. *Vitone v Metropolitan Life Ins Co*, 943 F Supp 192, 198 (D RI 1996).

Plaintiff's argument that the arbitration clause should not have been enforced in this case because he had no actual knowledge that it applied to disputes with MetLife must fail under *DeCaminada v Coopers & Lybrand, LLP*, 232 Mich App 492, 499-500, 500 n 5; ___ NW2d ___ (1998), in which this Court indicated that an otherwise valid arbitration clause is enforceable, regardless of whether a plaintiff had actual knowledge of its applicability, unless the plaintiff can show traditional grounds for revocation such as fraud, deception, or misconduct. Here, plaintiff showed none of these grounds, and the arbitration agreement was therefore enforceable, especially since any doubts about the arbitrability of an issue should be resolved in favor of arbitration. *Id.* at 496.

Plaintiff next argues that even if he and MetLife *did* agree to arbitrate future disputes, such an agreement should have been held invalid with respect to his civil rights claims because enforcing it would violate the sound public policy of this state. Michigan public policy, however, was irrelevant in determining the enforceability of the instant arbitration clause, since the contract at issue here, as explained *infra*, was governed by the Federal Arbitration Act (FAA), 9 USC § 1 *et seq.* As stated in *DeCaminada, supra* at 501:

[A]pplication of the FAA implicates the Supremacy Clause, which precludes us from applying our state constitution or laws to defeat federal legislation. US Const, art VI, cl 2. Thus . . . where the FAA applies, it preempts any state law or policy that specifically invalidates arbitration agreements. *Doctor's Associates, Inc v Casarotto*, 517 US 681, 686-688; 116 S Ct 1652; 134 L Ed 2d 902 (1996). [Emphasis added; footnote omitted.]

The first inquiry, then, is whether the instant contract was governed by the FAA. The FAA provides that an arbitration clause in “a contract evidencing a transaction involving [interstate] commerce . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” 9 USC § 2. The phrase “involving commerce” is to be construed broadly, *Fairchild & Co, Inc v Richmond, F & P R Co*, 516 F Supp 1305, 1310 (D DC, 1981), and this Court has held that disputes between a member of a national stock exchange and its employees are encompassed by the act. See *Burns v Olde Discount Corp*, 212 Mich App 576, 580; 538 NW2d 686 (1995). In *Williams v Cigna Financial Advisors, Inc*, 56 F 3d 656, 659-660 (CA 5, 1995), the United States Court of Appeals specifically held that a Form U-4 falls within the provisions of the act. See also *Prudential Insurance Co of America v Shammass*, 865 F Supp 429 (WD Mich, 1993) (applying FAA to arbitration clause in a Form U-4). Therefore, the contract in the instant case was governed by the FAA.

The next inquiry is whether the FAA governs mandatory arbitration clauses in civil rights cases. A review of both federal and state cases indicates that it does. In *Gilmer v Interstate/Johnson Lane Corp*, 500 US 20, 35; 111 S Ct 1647; 114 L Ed 2d 26 (1991), the Supreme Court indicated that the FAA applied to federal age discrimination claims, in *Metz v Merrill Lynch*, 39 F 3d 1482, 1487 (CA 10, 1994), the court held that it applied to Title VII claims, and in *Shammass, supra* at 433, the court held that it applied to Michigan state civil rights claims. Additionally, in *DeCaminada, supra* at 494, 501-502, this Court held that arbitration clauses governed by the FAA could not be deemed invalid merely because a state civil rights claim was involved. Because the Form U-4 signed by plaintiff was subject to the provisions of the FAA, which allows for mandatory arbitration in civil rights cases, he was required to arbitrate his claims against defendants. The trial court therefore properly dismissed his circuit court action.

We note that even if the instant contract had *not* been governed by the FAA, plaintiff’s public policy argument would nonetheless fail, since a special panel of this Court recently held that mandatory arbitration of statutory civil rights claims does not violate Michigan public policy as long as the arbitral process is fair and as long as the employee does not waive any rights or remedies under the statute. See *Rembert v Ryan’s Family Steak Houses, Inc*, ___ Mich App ___; ___ NW2d ___ (Docket No. 196542, issued 4/9/99, slip op, pp 1, 20).

Affirmed.

/s/ Barbara B. MacKenzie

/s/ Gary R. McDonald