UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MORGAN P. WILLIAMSON,	:	
	:	
Plaintiff,	:	
	:	
V.	:	CASE NO.3:03CV1242 (RNC)
	:	
PUBLIC STORAGE, INC.,	:	
	:	
Defendant.	:	

RULING AND ORDER

Plaintiff Morgan Williamson, a former property manager for defendant Public Storage, Inc., brings this action pursuant to Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e et seq., alleging sex discrimination and retaliation. She also alleges state law claims for discrimination, retaliation and negligent infliction of emotional distress. Defendant has moved to compel arbitration and to dismiss or stay the action. [Doc. # 11] Plaintiff opposes arbitration on the ground that any agreement she might have entered into with defendant to arbitrate discrimination claims is invalid. She also contends that defendant has waived its right to arbitrate. These arguments are unavailing. Plaintiff agreed in writing, as a condition of her employment with Public Storage, to arbitrate discrimination claims; the written agreement is valid; and there has been no waiver. Accordingly, the motion to

compel arbitration must be granted.

Background

The following facts are undisputed. On May 2, 2001, the day plaintiff's employment with Public Storage began, she was given a copy of an employee handbook. The handbook contained the following section entitled "Arbitration Agreement," which specifically mentioned discrimination claims:

> Employee and Company agree that any claim by Employee of unlawful harassment or discrimination allegedly occurring in the course of Employee's employment with the Company which cannot be resolved by Company's internal process and/or with the administrative assistance of appropriate state or federal agencies will be submitted to final and binding arbitration and not to any other forum.

At the same time, plaintiff was given an acknowledgment form to sign to indicate that she had received and read the handbook. Defendant required her to sign the form as a condition of her employment.

Ten days later, plaintiff was presented with an employment agreement, which set forth some of the terms and conditions of her at-will employment. Plaintiff's supervisor instructed her to sign the agreement and initial three of its provisions. One of those provisions, entitled "Arbitration," mirrored the arbitration provision in the handbook.

During a company meeting on April 5, 2002, plaintiff's

supervisor gave the employees present, including plaintiff, a document entitled "Acknowledgment of Receipt of Public Storage Policies," which they were required to sign. One of the policies listed on the document was a revised arbitration agreement. The revised agreement did not alter the employees' obligation to arbitrate discrimination claims.[1] The parties agree that the revised agreement is the operative one for purposes of this motion.

Discussion

An agreement to arbitrate is enforceable if it is valid and encompasses the claim in question. See Mehler v. Terminix Int'l Co. L.P., 205 F.3d 44, 47 (2d Cir. 2000), cert. denied, 533 U.S. 911 (2001). The issue of validity is governed by state law on the formation of contracts. See First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 944 (1995). Connecticut law applies here.

Plaintiff argues that she should not be required to arbitrate her Title VII claim because she had no power to bargain with Public

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[1] The revised agreement provided in relevant part:

> Employee, on the one hand, and PUBLIC STORAGE, INC., L.P., PUBLIC STORAGE PICKUP & DELIVERY, INC. and PSCC, INC. (hereinafter collectively referred to as "Company"), on the other hand, agree to submit to final and binding arbitration, and not to any other forum, any claim by Employee or Company under state, federal or local law which arises out of or relates to Employee's employment with Company, including without limitation claims for sexual harassment, discrimination, wrongful termination . . . .

Storage. Connecticut case law is mixed on whether a requirement to arbitrate may be enforced against an employee if it was unilaterally imposed by the employer after the employee started work. See Depucchio v. Cigna Corp., 2003 WL 1787949, *3-5 (Conn. Super. Mar. 20, 2003) (discussing cases). But Connecticut courts have consistently enforced provisions of employment agreements unilaterally imposed at the time of hire, as in the present case. See Powers v. United Healthcare, No. HHDCV0599925, 2001 WL 291148, *2 (Conn. Super. Mar. 2, 2001) (rejecting plaintiff's claim of lack of mutuality and assent to arbitration agreement when acknowledgment form clearly requiring arbitration was signed by employee shortly after hire); see also Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 33 (1991) ("Mere inequality in bargaining power . . . is not a sufficient reason to hold that arbitration agreements are never enforceable in the employment context.").

Plaintiff argues that any agreement to arbitrate her Title VII claim is unenforceable due to unconscionability. See Herbert S. Newman & Partners v. CFC Constr. Ltd. P'ship, 236 Conn. 750, 759 (1996). Unconscionability has both procedural and substantive components, requiring a demonstration of "an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party." Emlee Equip. Leasing Corp. v. Waterbury Transmission, Inc., 31 Conn. App. 455,

463-64 (1993). Plaintiff cannot make this showing.

1. Substantive Unconscionability

Both the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1 et seq., and the Connecticut arbitration statute, Conn. Gen. Stat. § 54-408 et seq., reflect a policy favoring enforcement of written arbitration agreements. See Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24 (1983); White v. Kampner, 229 Conn. 465, 472-73 (1994). Title VII claims are arbitrable under the FAA, provided the litigant can effectively vindicate her claim. See Green Tree Fin. Corp.-Alabama v. Randolph, 531 U.S. 79, 90 (2000); Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 28 (1991); Desiderio v. Nat'l Assn. of Secs. Dealers, Inc., 191 F.3d 198, 204-05 (2d Cir. 1999).

Plaintiff contends that three defects in the arbitration agreement render it unenforceable: (1) employees are required to bear the costs of arbitration; (2) attorney's fees are not assessed in accordance with Title VII; and (3) the agreement subverts the FAA by requiring that state arbitration law apply. Defendant’s written and oral responses to plaintiff’s argument, and the agreement itself, establish that no such defect exists.

a) Arbitration Costs

An arbitration agreement may be unenforceable if it appears

likely that the party seeking to vindicate legal rights will have to pay prohibitive costs. See Musnick v. King Motor Co., 325 F.3d 1255, 1258-59 (11th Cir. 2003), and cases cited therein; see also Green Tree Fin. Corp., 531 U.S. at 90. The arbitration agreement in this case does not expressly address liability for costs, and the language that implicitly bears on the issue is ambiguous.[2] There is no need to analyze this ambiguity because defendant has conceded all liability for arbitration costs under the agreement. Therefore, the agreement does not prevent plaintiff from effectively vindicating her rights. See Green Tree Fin. Corp., 531 U.S. at 90 n.6 (agreement with no provision on liability for arbitration costs not unenforceable when employer frequently waived fees); Walker v. MDM Servs. Corp., 997 F. Supp. 822, 826 (W.D. Ky. 1998) (no unconscionability when plaintiff had not yet been required to pay arbitration costs and might never be required to do so).

b) Attorney's Fees

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[2] The revised agreement provides in relevant part: "In order to initiate a claim for arbitration, the party seeking arbitration must deliver to the local AAA office, and send to the other party a written request for arbitration within the time period required by the statute of limitations applicable to the party's claim . . . ." Plaintiff construes this provision as requiring that, at a minimum, she pay filing costs because the employee inevitably initiates the demand for arbitration. That interpretation is called into question by another part of the agreement, which provides: "In no case, however, shall the Employee bear any cost or expense as a result of arbitration that the Employee would not be required to pay if the claim had been brought in court."

Plaintiff claims that the arbitration agreement does not conform with Title VII because it does not require the arbitrator to award attorney's fees to prevailing employees and would permit an award of fees to the employer even if the employee's claim had arguable merit. See 42 U.S.C. § 2000e-5(k). Plaintiff's argument is at odds with the plain language of the agreement. The agreement provides:

> Each party shall pay his/her own attorneys' fees . . . except that where the arbitrator orders that the prevailing party recover attorneys' fees from the other party under applicable law. In no case, however, shall the employee bear any cost or expense as a result of arbitration that the Employee would not be required to pay if the claim had been brought in court.

Because Title VII is the "applicable law," the arbitrator must comply with its provisions regarding fee awards.[3] Any failure to do so would be subject to judicial review. See Hoeft v. MVL Group, Inc., 343 F.3d 57, 64 (2d Cir. 2003) (judicial review of arbitration award available when there has been a "manifest disregard of the law"); DeGaetano v. Smith Barney, Inc., 983 F. Supp. 459, 462-63 (S.D.N.Y. 1997) (arbitrator's failure to award fees to prevailing plaintiff constituted manifest disregard for the law).

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[3] To the extent the agreement is arguably ambiguous, it must be construed in a manner that requires the arbitrator to award fees in accordance with Title VII. See Gambardella v. Pentec, Inc., 2003 WL 22119182, *15 (D. Conn. Aug 25, 2003) (construing arbitration agreement to award fees to prevailing party).

c) Application of State Arbitration Law

Plaintiff claims that the arbitration agreement "subverts" the FAA by mandating application of state arbitration law. No such problem exists. Under the agreement, arbitration is governed by the National Rules for the Resolution of Employment Disputes of the American Arbitration Association ("AAA Rules"), and state law does not apply if it is inconsistent with AAA Rules. See Volt Info. Sciences, Inc. v. Bd. of Trustees of Leland Stanford Junior Univ., 489 U.S. 468, 476-77 (1989) (application of state law rules to arbitration does not offend FAA unless they discourage resort to arbitration and state rules are not preempted unless they actually conflict with federal law). Plaintiff points to no conflict between the AAA Rules and the FAA.

2. Procedural Unconscionability

The Connecticut Supreme Court has indicated that, although an agreement may be unenforceable due to substantive unconscionability alone, the same may not be true of procedural unconscionability. See Smith v. Mitsubishi Motors Credit of America, Inc., 247 Conn. 342, 353 n.10 (1998). Even assuming, however, that an agreement may be unenforceable due solely to procedural unconscionability, plaintiff has not demonstrated that her arbitration agreement with Public Storage is unenforceable on this basis.

Plaintiff alleges that, although her signature may appear on the pertinent documents, she was given no opportunity to read them.[4] "The general rule is that where a person of mature years, and who can read and write, signs or accepts a formal written contract affecting his pecuniary interests, it is his duty to read it, and notice of its contents will be imputed to him if he negligently fails to do so." Phoenix Leasing, Inc. v. Kosinski, 47 Conn. App. 650, 654 (1998); see also Forshaw v. S.C.I. Conn. Funeral Servs., Inc., 2002 WL 2005869, *3 (Conn. Super. July 29, 2002) (plaintiff's failure to read contract before signing not ground for voiding contract in absence of evidence of fraud or artifice). Nothing exceptional has been shown to justify applying a more lenient rule in this case.

3. Waiver

Plaintiff claims that defendant waived its right to arbitrate by failing to either timely initiate arbitration proceedings on its own or notify her of her obligation to do so. Plaintiff claims prejudice in that, by the time defendant invoked the arbitration agreement, she had drafted discovery to comply with the court's scheduling order.

"[T]here is a strong presumption in favor of arbitration

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[4] Plaintiff concedes that she received a copy of the employee handbook, and signed a form acknowledging its receipt, the day she started work. It is undisputed that she signed an at-will employment agreement containing the same arbitration clause.

[and] waiver of the right to arbitration is not to be lightly inferred. . . . Generally, waiver is more likely to be found the longer the litigation goes on, the more a party avails itself of the opportunity to litigate, and the more that party's litigation results in prejudice to the opposing party." Thyssen, Inc. v. Calypso Shipping Corp., S.A., 310 F.3d 102, 105 (2d Cir. 2002), cert. denied sub nom. Thyssen Inc. v. M/V MARKOS N, 538 U.S. 922 (2003).

Plaintiff has not made the showing required to overcome the presumption in favor of arbitration. Defendant notified plaintiff a month after she commenced this action that it intended to invoke its right to arbitrate. Given that notice, it would be unreasonable to infer that defendant intended to waive arbitration. Plaintiff's preparation of initial discovery requests was not so burdensome or costly that requiring her to arbitrate would be unduly prejudicial.

Conclusion

Accordingly, the motion to compel arbitration is hereby granted. The Clerk may close the file.

So Ordered.

Dated at Hartford, Connecticut this 1st day of March 2004.

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Robert N. Chatigny
United States District Judge