UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MORANDE AUTOMOTIVE GROUP, INC., Plaintiff, v. METROPOLITAN GROUP, METLIFE, INC., METROPOLITAN LIFE INSURANCE COMPANY, GENERAL AMERICAN LIFE INSURANCE COMPANY, GENAMERICA FINANCIAL CORP., MARSHALL & STEVENS COMPANY A/K/A MARSHALL & STEVENS INCORPORATED A/K/A MARSHALL & STEVENS ESOP CAPITAL STRATEGIES, INC., Defendants.	CIVIL ACTION NO. 3:04cv918 (SRU)

RULING ON MOTION TO DISMISS

Morande Automotive Group ("Morande") has sued various entities in connection with its attempt to create an Employee Stock Ownership Plan. One defendant, Marshall & Stevens ESOP Capital Strategies, Inc.[1] ("Marshall & Stevens"), has moved, among other things, to dismiss or to stay the case pursuant to 9 U.S.C. § 3 based on a contractual arbitration provision.

I. Background

On February 11, 2005, the parties came before the court for oral arguments on various pending motions, including Marshall & Stevens' motion to dismiss or to stay the litigation pending arbitration. Because the parties indicated a willingness to pursue settlement negotiations, I did not rule on that motion. At that time, Marshall & Stevens had already filed a

[1] The original complaint named this defendant as Marshall & Stevens Company a/k/a Marshall & Stevens, Incorporated a/k/a Marshall & Stevens ESOP Capital Strategies, Inc.

motion to enforce a settlement agreement, and it appeared that settlement between Marshall & Stevens and Morande was likely.

On April 5, 2005, I conducted a telephone conference, and the parties indicated that settlement was not progressing. Subsequent to the conference call, Morande filed an opposition to Marshall & Stevens' motion to enforce settlement once counsel for Morande realized that he had not yet filed this objection.

Morande has not, however, opposed in any way Marshall & Stevens' motion to dismiss or to stay the case pending arbitration. Although Morande filed a memorandum in opposition to the defendant's motion and presented arguments in support of the Court's exercise of personal jurisdiction over the defendant, the memo is completely silent on the issue of arbitration. It appears that Morande does not dispute the validity of the arbitration provision or the arbitrability of its claims.

II. Discussion

The Federal Arbitration Act provides:

> If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

9 U.S.C. § 3.

When considering a motion based on 9 U.S.C. § 3, I must determine whether the parties have agreed to arbitrate and, if so, the scope of their agreement. *See Mehler v. Terminix Int'l*

Co., 205 F.3d 44, 47 (2d Cir. 2000). If the parties have agreed in writing to arbitrate the issues underlying a district court proceeding, the "FAA leaves no place for the exercise of discretion by a district court, but instead mandates that district courts *shall* direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed." *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985).

Here, the parties' contract included an arbitration clause that provides:

> [Morande] and [Marshall & Stevens] agree to settle any controversy or claim arising out of this agreement, by arbitration in accordance with the rules of the American Arbitration Association.

Ex. A to Aff. in Supp. of Motion to Dismiss or to Stay Litigation, ¶ 12 (doc. # 22).

Morande has not disputed the validity of the arbitration clause. When the existence of an arbitration agreement is not in dispute, doubts regarding whether a claim falls within the scope of the agreement should be resolved in favor of arbitrability. *Hartford Accident & Indem. Co. v. Swiss Reinsurance America Corp.*, 246 F.3d 219, 226 (2d Cir. 2001).

The common law claims Morande has asserted – breach of contract and fraud or misrepresentation – fall within the scope of the agreement. *See ACE Capital Re Overseas Ltd. v. Central United Life Ins. Co.*, 307 F.3d 24, 30-35 (2d Cir. 2002) (deeming claims of fraudulent inducement and contract termination arbitrable when complaining party did not allege arbitration clause itself was voidable and clause broadly required arbitration of disputes "with reference to the interpretation of this Agreement" between the parties). In addition, the statutory claims based on the Connecticut Unfair Trade Practices Act and Connecticut Unfair Insurance Practices Act are also arbitrable. *See Fink v. Golenbock*, 238 Conn. 183, 196 (1996) (holding that because language of arbitration clause was "all-embracing, all-encompassing and broad," CUTPA claim

arising out of contract was arbitrable).

I also note that Morande – the party arguably resisting arbitration – bears the burden of demonstrating that a disputed issue is collateral to the arbitration agreement. *See ACE Capital*, 307 F.3d at 35. Morande has not disputed the arbitrability of any of its claims.

Although 9 U.S.C. § 3 requires district courts to stay actions pending arbitration, courts have held that dismissal is proper when all claims are arbitrable. *E.g.*, *Alford v. Dean Witter Reynolds, Inc.*, 975 F.2d 1161, 1164 (5th Cir. 1992) ("weight of authority clearly supports dismissal of the case when all of the issues raised in the district court must be submitted to arbitration"); *Sparling v. Hoffman Const. Co., Inc.*, 864 F.2d 635, 638 (9th Cir. 1988); *Lewis Tree Serv. v. Lucent Tech.*, 239 F. Supp. 2d 332, 340 (S.D.N.Y. 2002). In this case, all of the claims brought against Marshall & Stevens are arbitrable. Therefore, I dismiss Morande's claims against Marshall & Stevens in favor of arbitration.

The motions to dismiss (docs. # 21, # 32) are GRANTED to the extent based on the parties' agreement to arbitrate, and Marshall & Stevens is terminated as a defendant in this action. Its motion to enforce settlement agreement (doc. # 34) is DENIED without prejudice to renewal in arbitration.

It is so ordered.

Dated at Bridgeport, Connecticut, this 16th day of May 2005.

/s/ Stefan R. Underhill
Stefan R. Underhill
United States District Judge