IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

RODNEY LOUIS HARPER,

Plaintiff,

v. No. 04-2292 B

THE FRESH MARKET, INC.,

Defendant.

ORDER DENYING DEFENDANT'S MOTION TO DISMISS,
GRANTING DEFENDANT'S MOTION TO STAY FURTHER PROCEEDINGS
AND COMPEL ARBITRATION, AND DENYING AS MOOT
DEFENDANT'S MOTION TO STRIKE

This lawsuit was brought by the pro se Plaintiff, Rodney Louis Harper, on April 23, 2004 alleging employment discrimination on the bases of race and gender by his employer, The Fresh Market, Inc., in violation of Title VII to the Civil Rights Act of 1964. According to the pleadings, the Plaintiff began his employment with the Defendant on January 11, 2002 as a bakery clerk. In connection therewith, Harper signed a document entitled Agreement to Resolve Claims (the "Agreement"), which provided as follows:

> To the extent permitted by law, the Company and the undersigned employee agree to the following dispute resolution procedure with respect to any dispute arising out of or relating to a term or condition of employment or the breach thereof:
>
> > If a dispute arises out of or relates to a term or condition of employment, or the breach thereof, the parties shall first use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.
> >
> > If the parties do not reach such solution within a period of 60 days, and if the

> dispute cannot be settled through negotiation, the parties agree to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Employment Mediation Rules before resorting to arbitration.
>
> If the dispute is still unresolved, the parties agree to submit to arbitration, administered by the American Arbitration Association under its National Rules for the Resolution of Employment Disputes using one arbitrator selected from the roster of arbitrators of the American Arbitration Association, and that a judgment of any court having jurisdiction may be entered on the award.

(Def.'s Mot. to Dismiss or, in the Alternative, to Stay Further Proceedings and Compel Arbitration, Ex. A.)

Based on the language of the Agreement requiring the parties to arbitrate disputes, the Defendant moved, on July 6, 2004, for dismissal or, in the alternative, for a stay of these proceedings in order to permit the parties to participate in arbitration. As the Plaintiff failed to respond to the Defendant's motion within the time provided for by the Local Rules of this district (see LR7.2(a)(2) (responses to Rule 12(b) motions must be filed within 30 days of service of the motion)), the Court, on August 17, 2004, entered an order directing Harper to show cause why his complaint should not be dismissed pursuant to Rule 41 of the Federal Rules of Civil Procedure. In his responsive pleading, Harper simply reiterated his discrimination claims, making no mention of the Agreement whatever. Furthermore, the Plaintiff has neither denied in any of his other pleadings filed in this case that he signed the Agreement nor has he argued that he failed to understand its provisions. In fact, the Plaintiff has ignored the existence of the Agreement altogether throughout the pendency of this lawsuit.

The Federal Arbitration Act (the "FAA") requires the district courts to stay proceedings upon their satisfaction that the issue involved in the suit is subject to arbitration under an arbitration

agreement. 9 U.S.C. § 3; Maples v. Sterling, Inc., No. 01-1359, 2002 WL 1291239, at *1 (W.D. Tenn. Apr. 22, 2002). In addition, § 4 of the statute provides for orders compelling arbitration where one party has failed, neglected or refused to arbitrate under an arbitration agreement. 9 U.S.C. § 4. The Supreme Court has recognized that "[t]hese provisions manifest a 'liberal federal policy favoring arbitration agreements.'" Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 25, 111 S.Ct. 1647, 1651, 114 L.Ed.2d 26 (1991) (citing Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24, 103 S.Ct. 927, 941, 74 L.Ed.2d. 765 (1983)). Thus, the court is to keep "in mind that 'questions of arbitrability must be addressed with a healthy regard for the federal policy favoring arbitration.'" See id. at 26, 111 S.Ct. at 1652. The burden rests on the party resisting arbitration to show that his claims are not suitable for arbitration. Id., 111 S.Ct. at 1652; Maples, 2002 WL 1291239, at *2 (citing Gilmer).

It is well settled that "statutory claims may be the subject of an arbitration agreement, enforceable pursuant to the FAA." Gilmer, 500 U.S. at 26, 111 S.Ct. at 1652. "By agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than a judicial, forum." Morrison v. Circuit City Stores, Inc., 317 F.3d 646, 653 (6th Cir. 2003) (quoting Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 628, 105 S.Ct. 3346, 87 L.Ed.2d 444 (1985)). The Supreme Court has held that, generally, agreements to arbitrate employment disputes are enforceable under the FAA. See Circuit City Stores, Inc. v. Adams, 532 U.S. 105, 113-19, 121 S.Ct. 1302, 1308-11, 149 L.Ed.2d 234 (2001). The Sixth Circuit has also upheld such agreements. See Morrison, 317 F.3d at 665; Haskins v. Prudential Ins. Co. of Am., 230 F.3d 231, 239 (6th Cir. 2000), cert. denied, 531 U.S. 1113, 121 S.Ct. 859, 148 L.Ed.2d 773 (2001); Willis v. Dean Witter Reynolds, Inc., 948 F.2d 305,

309 (6th Cir. 1991).

In determining whether to grant a motion to compel arbitration, the district court must consider whether the arbitration agreement is valid and enforceable. Morrison, 317 F.3d at 665-66. Section 2 of the FAA provides that an agreement to settle by arbitration "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. As the Plaintiff has not so much as suggested the Agreement was invalid, unenforceable, or otherwise defective, and as no such defect becomes readily apparent from a reading of the document, the Court has no evidence upon which to base a ruling that the Agreement was anything other than valid and enforceable.

Based on the Plaintiff's failure to satisfy his burden of demonstrating, as he must, that this matter is unsuitable for arbitration, see Gilmer, 500 U.S. at 26, 111 S.Ct. at 1652, the Defendant's motion to stay this matter and compel arbitration is GRANTED. In so ruling, the Court assumes the parties have completed the first two steps in the dispute resolution process as set forth in the Agreement, that is, consultation and negotiation in good faith and mediation. If these prerequisites to arbitration have not occurred, the parties are ORDERED to commence the process within fifteen (15) days of the entry of this order. The parties are further directed to advise the Court within thirty (30) days following resolution of the dispute if it occurs during the negotiation or mediation phases or, if not, within thirty (30) days after final disposition of arbitration proceedings. The Defendant's alternative request for dismissal is DENIED. Finally, as a consequence of the Court's ruling, the Defendant's motion to strike, based on alleged procedural deficiencies in the Plaintiff's responsive pleading, is DENIED as moot.

IT IS SO ORDERED this 23rd day of September, 2004.

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J. DANIEL BREEN
UNITED STATES DISTRICT JUDGE