

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

CHARLIE L. JOHNSON

Plaintiff,

v.

**EAST BAY KIA, INC., SMART
AUTOMOTIVE GROUP, LLC, and
FIFTH THIRD BANK,**

Defendants.

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) **CIVIL ACTION NO. 08-00656-CG-B**
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ORDER

This matter is before the court on the motion of defendant, East Bay Kia, Inc., for reconsideration of this court’s order of February 4, 2009. (Doc. 15). Defendant asserts that the court erred in ordering East Bay Kia to initiate the arbitration proceedings for plaintiff’s claims. Defendant points out that the arbitration agreement at issue states that the parties “must follow the rules of the Administrator to initiate arbitration.” There are two potential administrators under the arbitration agreement, the American Arbitration Association and the National Arbitration Forum. Under either, the party asserting a claim is required to initiate the arbitration proceedings. Since the terms of the contract govern, the court should have ordered plaintiff to initiate the arbitration proceedings. Chris Myers Pontiac-GMC, Inc. v. Perot, 991 So. 2d 1281, 1283-1284 (Ala. 2008) (“ordinary contract rules govern the interpretation of arbitration provisions” and “a trial court, in granting a motion to compel arbitration, cannot alter or ignore the terms of the arbitration agreement that provides the basis for compelling arbitration”)

CONCLUSION

For the reasons stated above, the motion of defendant, East Bay Kia, Inc., for reconsideration (Doc. 15) is **GRANTED**, and this court's order of February 4, 2009, (Doc. 14) is hereby **AMENDED** to state that plaintiff, Charlie L. Johnson, is **ORDERED** to initiate the arbitration proceedings, and is further **ORDERED** to provide the court with a status report of arbitration proceedings at 90-day intervals, beginning May 5, 2009. At the termination or other completion of the arbitration proceedings, the plaintiff is **ORDERED** to advise the court of that fact within ten days.

DONE and ORDERED this 2nd day of April, 2009.

/s/ Callie V. S. Granade

CHIEF UNITED STATES DISTRICT JUDGE