

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

JERRY DON O'NEAL

PLAINTIFF

vs.

Civil No. 4:10-cv-04061

REGIONS BANK

DEFENDANT

REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

Before this Court are Defendant's Motion to Compel Arbitration (ECF No. 6) and Defendant's Motion to Dismiss (ECF No. 3). Plaintiff responded to these Motions on June 28, 2010. ECF No. 8. Pursuant to the provisions of 28 U.S.C. § 636(b)(1) and (3) (2005), the Honorable Harry F. Barnes referred these Motions to this Court for the purpose of making a report and recommendation. ECF No. 9. In accordance with that referral, this Court enters the following report and recommendation.

On September 29, 2010, this Court held a hearing on both of these motions. At that time, it became apparent that Plaintiff had sued the incorrect party. Instead of suing Regions Financial Corporation, Plaintiff should have sued Regions Bank. On October 28, 2010, Plaintiff filed an Amended Complaint naming Regions Bank as the proper party. ECF No. 15. Regions Financial Corporation is no longer a party to this action.

Regions Financial Corporation filed this Motion to Compel Arbitration (ECF No. 6), but is no longer a party to this action. Thus, this Motion (ECF No. 6) is denied as **MOOT**. Further, Regions Financial Corporation filed this Motion to Dismiss (ECF No. 3) but is no longer a party to this action. Thus, this Motion (ECF No. 3) is also denied as **MOOT**.

After Plaintiff's Amended Complaint was filed, the proper Defendant, Regions Bank, filed a Motion to Compel Arbitration (ECF No. 15) and Motion to Dismiss Amended Complaint (ECF No. 17). Both of these motions were filed on October 28, 2010. Both of these Motions have been referred to this Court. The time for Plaintiff to respond to these Motions has not yet expired, and this Court will address them at a later date.

The parties have fourteen (14) days from receipt of this Report and Recommendation in which to file written objections pursuant to 28 U.S.C. § 636(b)(1). The failure to file timely objections may result in waiver of the right to appeal questions of fact. The parties are reminded that objections must be both timely and specific to trigger *de novo* review by the district court. See *Thompson v. Nix*, 897 F.2d 356, 357 (8th Cir. 1990).

ENTERED this 10th day of November, 2010.

/s/ Barry A. Bryant
HON. BARRY A. BRYANT
U.S. MAGISTRATE JUDGE