

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

CHARLES GRANT ET AL.

CIVIL ACTION

VERSUS

NO. 10-805 c/w 10-872 & 10-1919

KEVIN HOUSER, ET AL.

SECTION "C"(3)

ORDER AND REASONS

Before the Court is Defendants' Motion to Compel Arbitration and Stay Proceedings of claims in Plaintiff Berger's Second Amended Complaint. (Rec. Doc. 88). The Court notices that Defendants have already brought a Motion to Compel Arbitration and Stay Proceedings, which was denied by this Court on January 10, 2011. (Rec. Doc. 89). In that Motion, Defendants argued that Securities America, Inc. ("Securities America") was entitled to enforce an arbitration agreement in the New Account Form that was signed by Plaintiff Berger and Brecek & Young Advisors, Inc. ("BYA"). (Rec. Doc. 58-1). The Court found that Defendants did not supply sufficient evidence to support their claim that when Securities America acquired all of BYA's shares, it became the assignee of all of BYA's assets, accounts, and contractual rights and obligations. (Rec. Doc. 89 at 4). The Court also rejected Defendants' argument for applying the principle of equitable estoppel, because Plaintiff's underlying claims for fraud and unfair trade practices were separable from the contract containing the arbitration clause. *Id.* at 4-5.

Defendants' present Motion incorporates by reference its prior Motion to Compel Arbitration and Stay Proceedings, but still does not include any evidence that Securities America was BYA's assignee. (Rec. Doc. 88-1). Defendants assert that Plaintiff's additional claims of negligent supervision and "selling away" fall within the scope of the arbitration provision, but also fail to

provide evidence for that claim. *Id.* at 2. The Court has disposed of this matter once before and hereby incorporates by reference the reasoning from its January 10, 2011 Order. (Rec. Doc. 89).

Accordingly,

IT IS ORDERED that Defendants' Motion to Compel Arbitration and Stay Proceedings is DENIED. (Rec. Doc. 88).

New Orleans, Louisiana, this 9th day of March, 2011.


HELEN G. BERRIGAN
UNITED STATES DISTRICT JUDGE