



“Service Agreement” which contains a mandatory arbitration clause. Defendants assert that Ms. Horton agreed to the terms of the Service Agreement. Ms. Horton contends she did not and that even if she did agree, it was limited to disputes about inter-bank transfers of funds.

Defendants have attached the Declaration of Phyllis Mauck, a FedChoice employee, who described the process of registering for the online electronic transfer service. Ms. Mauck stated that the Service Agreement was provided to Ms. Horton online. Immediately following the Service Agreement was the statement, “I acknowledge that I have the disclosure (sic) and agree to all terms and conditions.” Still online, there is a provision, “I accept.” Unless a member had accepted the “disclosure,” i.e. the Service Agreement, he or she could not use FedChoice’s inter-bank service. As proof that she had accepted the Service Agreement, Ms. Mauck states Ms. Horton later used that service. Defendants have also attached a copy of the “Service Agreement” as it appeared in a pop-up window and as it would have been seen by anyone considering the service. The twelve page Service Agreement contains the arbitration clause on page ten.

Without question, the Service Agreement is a contract of adhesion. FedChoice has set the terms and conditions. Ms. Horton could either accept those terms or be denied FedChoice’s inter-bank transfer service. She had no bargaining power. The contract was all or nothing.

While contracts of adhesion may be enforced, they invite an inquiry into whether

they are procedurally and substantively unconscionable. Here the invitation to examine both is loud and clear: twelve pages of legalese presented online with the arbitration clause buried on page 10, and arbitration procedures that might be found to require too much with too little chance for success.

I conclude that the validity of the Service Agreement is a disputed issue. It follows that the parties are entitled to discovery on the question of arbitrability. *Guidotti v. Legal Helpers Debt Resolution, LLC*, 716 F.3d 764 (3d Cir. 2013).

An appropriate order follows.