

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF PUERTO RICO

3 VENANCIO MARTÍ SANTA CRUZ,
4 et al.,

5
6 Plaintiffs,

7 v.

8 BANCO SANTANDER PUERTO RICO,
9 et al.,

10
11 Defendants.

Civil No. 08-1225 (JAF)

12 **ORDER**

13 Plaintiffs, Venancio Martí Santa Cruz ("Martí"), his wife Julita
14 Soler Vilá, their conjugal partnership, and their daughters María
15 Rosa Martí Soler ("María Rosa") and Sofía Martí Soler ("Sofía"),
16 brought this action on February 21, 2008, against Defendants, Banco
17 Santander Puerto Rico ("BSPR"), Santander Securities, Inc., Fernando
18 Gallardo Álvarez ("Gallardo"), his unknown supervisors, and unknown
19 insurance companies, for violations of the Securities Exchange Act of
20 1934, 15 U.S.C. § 78j(b), Rule 10b-5 of the Securities and Exchange
21 Commission, 17 C.F.R. 240.10b-5, the Racketeer Influenced and Corrupt
22 Organization Act, 18 U.S.C. § 1964, and Puerto Rico law. Docket
23 No. 1. On July 2, 2008, Defendants moved to compel arbitration of
24 certain of Plaintiffs' claims and stay the remaining claims pending
25 the arbitration. Docket No. 10. Plaintiffs opposed on October 30,
26 2008, Docket No. 22, and Defendants replied on November 19, 2008,
27 Docket No. 27.

1 Plaintiffs allege that Gallardo, a financial advisor at
2 Santander Securities and BSPR and Sofía's ex-husband, embezzled money
3 from Martí and María Rosa that he fraudulently induced them to invest
4 with him. Docket No. 1. Plaintiffs also allege that Gallardo
5 embezzled money from Sofía by inducing her to refinance the mortgage
6 of their apartment with BSPR while they were married. Id.

7 Defendants assert that Martí's and María Rosa's claims must be
8 arbitrated pursuant to the arbitration clauses in the contracts they
9 signed creating the accounts with Santander Securities. Docket
10 No. 10. The contracts state that "the parties are waiving their right
11 to seek remedies in court, including a jury trial," and that "any
12 controversy between [the parties] arising out of [their] business or
13 this agreement shall be submitted to arbitration." Docket Nos. 10-2,
14 10-3.

15 Plaintiffs concede that María Rosa's claims are subject to
16 arbitration pursuant to the contract she signed. Docket No. 22.
17 Plaintiffs allege, however, that Gallardo forged Martí's signature on
18 the contract; therefore, Martí never agreed to submit his claims to
19 arbitration. Docket Nos. 1, 22. Plaintiffs do not oppose a stay of
20 the non-arbitrable claims. Docket No. 22.

21 "Any analysis of a party's challenge to the enforcement of an
22 arbitration agreement must begin by recognizing the [Federal
23 Arbitration Act's ("FAA")] strong policy in favor of rigorously
24 enforcing arbitration agreements." KKW Enters. V. Gloria Jean's

1 Gourmet Coffees Franchising Corp., 184 F.3d 42, 49 (1st Cir. 1999).
2 Through the FAA, congress has declared "a liberal federal policy
3 favoring arbitration agreements." Moses H. Cone Mem'l Hosp. v.
4 Mercury Constr. Corp., 460 U.S. 1, 24 (1983). Nevertheless,
5 "arbitration is a matter of contract and a party cannot be required
6 to submit to arbitration any dispute which he has not agreed so to
7 submit." Large v. Conesco Fin. Servicing Corp., 292 F.3d 49, 52 (1st
8 Cir. 2002) (quoting McCarthy v. Azure, 22 F.3d 351, 354 (1st Cir.
9 1994)) (internal quotation marks omitted).

10 Martí's contention that he never signed the contract, if true,
11 would preclude compelled arbitration of his claims and entitle him to
12 a trial. See id. Plaintiffs, however, fail to submit any evidence
13 to support their allegation. In the absence of any such evidence, for
14 example a sworn affidavit from Martí attesting to the forgery, we
15 cannot find that a genuine issue exists as to the existence of the
16 arbitration agreement. See, e.g., Doctor's Assocs. v. Jabush, 89 F.3d
17 109, 114 (2d Cir. 1996) (requiring an "unequivocal denial" that there
18 was an agreement to arbitrate and "some evidence . . . to
19 substantiate the denial"); Chastain v. Robinson-Humphrey Co., 957
20 F.2d 851, 854-55 (11th Cir. 1992) (same). We find, therefore, that
21 arbitration of Martí's claims is required by the contract and the
22 FAA. See 9 U.S.C. § 4.

23 Where some claims are referred for arbitration, we have
24 discretion to stay litigation of the remaining non-arbitrable claims

1 pending the outcome of the arbitration proceeding. McCarthy, 22 F.3d
2 at 361 n.15. In the interest of maximizing judicial economy and
3 avoiding piecemeal litigation, and in the absence of any opposition
4 from Plaintiffs, we find that a stay of Plaintiffs' non-arbitrable
5 claims is appropriate.

6 Accordingly, we **GRANT** Defendants' motion to compel arbitration,
7 Docket No. 10. We hereby **ORDER** arbitration as to the claims of
8 Plaintiffs Martí and María Rosa Martí Soler, and **STAY** the claims of
9 Sofía Martí Soler pending the arbitration.

10 **IT IS SO ORDERED.**

11 San Juan, Puerto Rico, this 10th day of December, 2008.

12 S/José Antonio Fusté
13 JOSE ANTONIO FUSTE
14 U.S. District Judge