

| |
|--|
| Weerahandi v Pfizer, Inc. |
| 2018 NY Slip Op 33214(U) |
| December 13, 2018 |
| Supreme Court, New York County |
| Docket Number: 159527/2016 |
| Judge: Arlene P. Bluth |
| Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service. |
| This opinion is uncorrected and not selected for official publication. |

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 32

Justice

-----X----- INDEX NO. 159527/2016

SAMARADASA WEERAHANDI, MOTION DATE 10/30/2018

Plaintiff,

MOTION SEQ. NO. 002

- v -

PFIZER, INC., SANDEEP MENON, ANNA DIDIO, DAVID
KREUTER,

DECISION AND ORDER

Defendants.

-----X-----

The following e-filed documents, listed by NYSCEF document number (Motion 002) 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33

were read on this motion to DISMISS AND COMPEL ARBITRATION

The branch of defendants' motion seeking dismissal is granted. The branch of defendants' motion for an order compelling plaintiff to arbitrate his claims pursuant to the Federal Arbitration Act, 9 USC. §1 *et seq.*, and CPLR §7503(a) is granted; if plaintiff chooses to pursue his claims, then he must arbitrate them. The branch of the motion for attorney's fees is denied.

Background

Defendants are Pfizer, Inc. ("Pfizer"), a pharmaceutical corporation, and three of Pfizer's employees. Plaintiff is a former employee of Pfizer; since 2008, he served as a director in the Business Analytics Management Science Group. Plaintiff alleges that defendants engaged in employment discrimination against him on the basis of his Sri Lankan ethnicity over a period of seven years.

In 2010, plaintiff complained to Pfizer's Corporate Compliance Department about what he perceived as a lack of representation of people of Asian ethnicity in Pfizer's upper-management. When plaintiff reported his complaint up the chain, he claims defendants retaliated against him by overloading him with other employees' work in hopes of getting him to quit his job. As a result, plaintiff says he began to suffer from serious depression.

Following plaintiff's 2010 complaint about the lack of diversity at Pfizer, plaintiff alleges that every employee in his analytics group was promoted except him. In March 2013, plaintiff filed a lawsuit against Pfizer alleging employment discrimination, but shortly thereafter withdrew it. On November 18, 2013 plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission (EEOC) which he also withdrew. After applying for and being rejected from several positions at Pfizer, each of which plaintiff believes he was qualified for, plaintiff decided to file another complaint with the EEOC. On June 10, 2015 plaintiff filed a complaint with the EEOC.

While plaintiff's EEOC claim was pending, Pfizer established a new arbitration policy for its employees. On May 5, 2016 the policy announcement and arbitration agreement was emailed to all employees, including plaintiff. In the arbitration agreement, the parties waive the right to have a judge or jury decide any covered claims; it is undisputed that discrimination claims are covered. The agreement also provided that employees who remain working at Pfizer 60 days after receipt of the agreement are automatically subject to the agreement. Therefore, the agreement applied to plaintiff, at the latest, as of July 5, 2016 (sixty days after May 5).

On July 20, 2016, after the arbitration agreement took effect, the EEOC dismissed plaintiff's claim and informed him that its "processing of this charge has been concluded" (*see* Plaintiff's Exhibit 2.2).

On September 26, 2016, Pfizer told plaintiff his employment would be terminated effective December 31, 2016. On November 11, 2016 plaintiff brought this suit against defendants alleging violations of New York City Human Rights Law on the basis of discriminatory employment practices. Because the arbitration agreement was in effect on November 11, 2016, defendants assert that this suit should be dismissed, as Pfizer employees waive their rights to bring lawsuits against the company and instead agree to arbitrate all claims.

Discussion

CLPR 7503(a) states, “where there is no substantial question whether a valid agreement was made or complied with, and the claim sought to be arbitrated is not barred by limitation under subdivision (b) of section 7502, the court shall direct the parties to arbitrate.” Courts must first “[d]etermine whether parties have agreed to submit their disputes to arbitration and, if so, whether the disputes generally come within the scope of their arbitration agreement. The court’s inquiry ends, however, where the requisite relationship is established between the subject matter of the dispute and the subject matter of the underlying agreement to arbitrate” (see *Sisters of St. John the Baptist, Providence Rest Convent v Phillips R. Geraghty Constructor, Inc.*, 67 NY2d 997, 998 [1986]). The burden to show there is a valid agreement to arbitrate is on the party requesting arbitration (see *Gerling Global Reins. Corp. v Home Ins. Co.*, 302 AD2d 118, 123 [1st Dept 2002]).

Provision 7(h) of Pfizer’s arbitration agreement states,

You understand that your acknowledgment of this Agreement is not required for the Agreement to be enforced. If you begin or continue working for the Company sixty (60) days after receipt of this Agreement, even without acknowledging this Agreement, this Agreement will be effective, and you will be deemed to have consented to, ratified and accepted this Agreement through your acceptance of and/or continued employment with the Company.

Here, the parties agreed to submit their disputes to arbitration and the discrimination claim is within the scope of the agreement. First, plaintiff agreed to arbitration because he continued to work at Pfizer 60 days following receipt of the arbitration agreement. Defendants informed its employees of the new arbitration policy by sending an email explaining the policy (*see* Defendants' Exhibit B) and by disseminating the policy to employees (*see* Defendants' Exhibit C). Furthermore, defendants distributed an arbitration agreement FAQs handout to employees (*see* Defendants' Exhibit D). Plaintiff was aware of the arbitration agreement and its terms, yet continued to work at Pfizer past 60 days of receiving the agreement, automatically making him subject to the agreement.

Plaintiff acknowledges that he did sign the arbitration agreement but alleges that he did so only after being informed that the agreement would not apply to his pending EEOC litigation against defendants. Plaintiff alleges that had he known that the arbitration agreement would apply to his EEOC Complaint, he would have chosen to retire instead of signing and being subject to the arbitration agreement. However, plaintiff misses the point: the arbitration agreement did not apply to the pending EEOC complaint; he was not required to withdraw it or ignore its conclusions. However, that EEOC claim was dismissed and thus was no longer pending.

This lawsuit was filed by plaintiff on November 11, 2016, well after the arbitration agreement came into force. The arbitration agreement prohibited plaintiff from going to court and required him to assert his claims in arbitration. Because plaintiff waived his right to go to court by being a party to the arbitration agreement, this court is compelled to dismiss this current case. If plaintiff chooses to pursue a claim against defendant, he must do so through arbitration.

Summary

Because the EEOC claim was no longer pending and the arbitration agreement was in effect when plaintiff commenced this action, this action is dismissed. Plaintiff is not compelled to arbitrate, but if he chooses to pursue employment related claims against defendant, he must do so through arbitration in accordance with the arbitration agreement. The request for attorney's fees is denied.

Accordingly, it is hereby

ORDERED that defendant's motion to dismiss this action is granted. The case is dismissed and the clerk is directed to enter judgment for defendant upon presentation of proper papers therefor.

12.13.18
DATE


ARLENE P. BLUTH, J.S.C.

| | | | | |
|-----------------------|---|--|--|---------------------------------------|
| CHECK ONE: | <input checked="" type="checkbox"/> CASE DISPOSED | <input type="checkbox"/> DENIED | <input type="checkbox"/> NON-FINANCIAL DISMISSAL | <input type="checkbox"/> OTHER |
| APPLICATION: | <input checked="" type="checkbox"/> GRANTED | <input type="checkbox"/> SETTLE ORDER | <input type="checkbox"/> GRANTED IN PART | <input type="checkbox"/> SUBMIT ORDER |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN | <input type="checkbox"/> FIDUCIARY APPOINTMENT | <input type="checkbox"/> REFERENCE | |

~~NON-FINANCIAL DISMISSAL~~
ARLENE P. BLUTH