UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

THOMAS J. RENWICK, Plaintiff, V. ACCEL INTERNATIONAL CORPORATION, ET AL., Defendants.	:	CASE NO. 3:03cv02003 (RNC)

RULING AND ORDER

Plaintiff, a former Senior Vice President at defendant Accel International Corporation ("Accel"), brings this action pursuant to section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), against Accel, an affiliated entity and four individuals, claiming that misrepresentations and omissions of material facts by the individuals caused him to join Accel. He also asserts state law claims for breach of his written employment contract, and breach of the implied covenant of good faith and fair dealing. Defendants have moved to stay or dismiss the case based on an arbitration clause in the employment agreement. In response, plaintiff contends that defendants are not entitled to arbitration because they have bypassed a contractual prerequisite to arbitration (submission of the dispute to the Board of Directors) and waived arbitration by engaging in litigation. Neither argument provides a basis for refusing to enforce the arbitration clause. Accordingly, the motion to dismiss is granted.

Procedural Background

On May 12, 2003, defendants brought an action against plaintiff in Connecticut Superior Court seeking indemnification in connection with an action that had been brought against them in federal court in Mississippi. The Connecticut case was removed to this court but remanded for lack of subject matter jurisdiction. See Ruling and Order, Accell Int'l Corp. v. Renwick, No. 3:03CV983 (RNC) (Doc. # 32), approving and adopting Recommended Ruling on Pls.' Motion to Remand (Doc. # 25). On November 20, 2003, plaintiff filed the present action. In response to the complaint, defendants filed an initial motion to dismiss or stay. When the motion was denied, they requested arbitration pursuant to the employment agreement, then filed the present motion. Since then, plaintiff has been deposed in the state court action, and an arbitration proceeding has commenced. Plaintiff has asserted counterclaims in the arbitration proceeding that mirror his state law claims in this action, plus a counterclaim for securities fraud.[1]

Discussion

Defendants seek to enforce the following arbitration provision contained in paragraph 20 of the employment agreement:

[1] The fraud counterclaim is predicated on section 11 of the Securities Exchange Act rather than section 10(b). See Response to Demand for Arbitration, Ex. A to Defs.' Supp. Notice to Court Re Status of Arbitration (Doc. # 25), at 10. However, there appears to be no impediment to plaintiff's assertion of a counterclaim based on section 10(b). See Herman & MacLean v. Huddleston, 459 U.S. 375, 381, 387 (1983) (sections 11 and 10(b) provide distinct causes of action that may be pursued simultaneously).

> Any dispute that may arise between the parties hereunder, other than a dispute in which the primary relief sought is an equitable remedy such as an injunction, shall be submitted to binding arbitration in Hartford, Connecticut in accordance with the National Rules for the Resolution of Employment Disputes then in effect of the American Arbitration Association; provided that any such dispute shall first be submitted to the Corporation's Board of Directors in an effort to resolve such dispute without resort to arbitration.

Ex. 2 to Revised Compl., ¶ 20, at 11.

Under the Federal Arbitration Act, arbitration provisions contained in a contract affecting interstate commerce "shall be valid, irrevocable, and enforceable, save upon such grounds as exist under law or equity for the revocation of any contract." 9 U.S.C. § 2. "There is a strong federal policy favoring arbitration as an alternative means of dispute resolution." ACE Capital Re Overseas Ltd. v. Cent. United Life Ins. Co., 307 F.3d 24, 29 (2d Cir. 2002) (citation omitted). Therefore, "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability." Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24-25 (1983).

As mentioned earlier, plaintiff contends that the arbitration clause should not be enforced because defendants have failed to present the dispute to the Board of Directors and engaged in litigation. Both arguments are properly made to the arbitrator, rather than the court. New Avex, Inc. v. Socata Aircraft, Inc., No. 02 Civ. 6519 DLC, 2002 WL 1998193, at *6 (S.D.N.Y. Aug. 29, 2002) (argument that dispute could not be referred to arbitration based on failure to adhere to contractual prerequisite "asks this Court to resolve an issue of procedural arbitrability, which . . . is properly reserved for arbitration."); U.S. Titan, Inc. v. Guangzhou Men Hua Shipping Co., 182 F.R.D. 97, 102 (S.D.N.Y. 1998) (same) (citing cases), aff'd, 241 F.3d 135 (2d Cir. 2001); Mulvaney Mech., Inc. v. Sheet Metal Workers Int'l Ass'n, Local 38, 351 F.3d 43, 45 (2d Cir. 2003) (disputes about defenses to arbitrability such as waiver are "presumptively reserved for the arbitrator's resolution"). Accordingly, neither argument provides a basis for denying defendants' motion.

Conclusion

Defendants' motion to dismiss is therefore granted. The Clerk may close the file.

So ordered.

Dated at Hartford, Connecticut this 29th day of December 2004.

Robert N. Chatigny
United States District Judge