UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LARYSSA JOCK, et al.,

Plaintiffs,

-v-

STERLING JEWELERS, INC.,

Defendant.

08 Civ. 2875 (JSR)

MEMORANDUM ORDER

JED S. RAKOFF, U.S.D.J.

On November 9, 2010, the above-captioned plaintiffs moved for an order enjoining the defendant, Sterling Jewelers Inc. ("Sterling"), and the American Arbitration Association ("AAA"), from proceeding with individual arbitrations in this action during the pendency of the Second Circuit's expedited consideration of the plaintiffs' appeal of the Court's Order dated August 6, 2010 that denied class arbitration. Upon review of the parties' briefs and oral argument, the Court grants the injunction, but only until January 11, 2011.

By way of background, plaintiffs -- who are current and former female employees of Sterling, a nationwide specialty jeweler -- brought this action alleging that Sterling discriminated against them in pay and promotion on the basis of their gender, in violation of Title VII, 42 U.S.C. § 2000e et seq., and the Equal Pay Act, 29 U.S.C. § 206(d). Plaintiffs are subject to agreements requiring them to use RESOLVE, Sterling's three-step alternative dispute resolution program, for all employment-related disputes. Under RESOLVE, when an employee believes she has been subjected to an unlawful employment action, her first step is to contact the RESOLVE program administrator and file a complaint. If the employee is unsatisfied with the company's response, her second step is to file an appeal, which the program administrator may assign either to an outside administrator or to a peer review panel. Finally, if the employee is still not satisfied, she may proceed to the third step, binding arbitration. The RESOLVE arbitrations are to be conducted by the AAA in accordance with AAA rules, as amended or modified by certain RESOLVE-specific provisions. The agreement and applicable AAA rules are silent as to whether class arbitration is permitted.

Initially, in a Memorandum Order dated July 15, 2008, the Court, pursuant to its authority under § 4 of the Federal Arbitration Act ("FAA"), 9 U.S.C. § 4, granted plaintiffs' motion to compel arbitration of their claims. Thereafter, on June 1, 2009, the arbitrator issued a threshold ruling that plaintiffs would be permitted to proceed with class arbitration. This was in keeping with Second Circuit law as it then stood. See Stolt-Nielsen SA v. AnimalFeeds Intern. Corp., 548 F.3d 85 (2d Cir. 2008). Subsequently, however, the Supreme Court reversed the Second Circuit and held that there can be no class arbitration where the parties have not expressly contracted for such. Stolt-Nielsen, S.A. v. AnimalFeeds International Corp., 130 S. Ct. 1758 (2010). Accordingly, on August 6, 2010, the Court vacated the arbitrator's June 1, 2009 ruling and held there could be no class arbitration in this case. Plaintiffs promptly appealed the Court's August 6 Order to the Second Circuit.

Meanwhile, defendant sought to have arbitration proceed on an individualized basis, thus threatening to moot plaintiffs' appeal, in whole or in part. That this was defendant's motivation was also evidenced, inter alia, by defendant's opposing plaintiffs' request for an expedited appeal. Accordingly, by Order dated September 17, 2010, the Court granted plaintiffs' motion for a stay of the August 6 Order, nunc pro tunc, pending the appeal. In doing so, the Court anticipated that the arbitrator would simply place the arbitration on hold pending the resolution of the appeal. Accordingly, the Court did not take the further step of staying the class arbitration, as it "[saw] no reason not to permit the arbitrator to determine in the first instance whether to stay ... the proceeding" on his own volition. Id. at 9. This proved unnecessary, however, as the parties themselves, in light of the Court's September 17 Order, stipulated on October 6, 2010 to a stay of the class arbitration during the pendency of plaintiffs' appeal. See Pl. Mem. Ex. H.

On August 13, 2010, however, Sterling, in another blatant exercise of gamesmanship, attempted a new end-run around plaintiffs' appeal by initiating individual arbitrations for the 46 individual claimants who had previously sought to pursue arbitration as a class, a process that would lead to the appointment of individual arbitrators who would not be identified with the previously-appointed arbitrator who was overseeing the putative class arbitration that was now stayed. Although initially a "case manager" at the AAA, by letter dated August 26, 2010, instituted an automatic 60-day stay of those individual arbitrations, see Pl. Mem. Ex. A, thereafter, by letter dated November 1, 2010, the case manager at the AAA declined to extend the 60-day stay and ordered the administration of the individual arbitrations to proceed "absent party agreement or a court order." Id. at Ex. E. After Sterling declined plaintiffs' request to stay those arbitrations, plaintiffs, on November 9, 2010, filed the instant motion seeking to enjoin the individual arbitrations pending appeal of the August 6 Order. By further letter dated December 1, 2010, the case manager at the AAA confirmed that administration of the individual arbitrations would proceed -- starting with selection of the 46 individual arbitrators -- but expressly noted that "[t]he AAA will abide by any order issued by the courts." See Pl. Suppl. Ex. 1.

Meanwhile, on October 7, 2010, Circuit Judge Lynch, over Sterling's objections, approved plaintiffs' request for an expedited appeal of the Court's August 6 Order. See Pl. Mem. Ex. G. Briefing has occurred, and oral argument on that appeal is currently scheduled for January 11, 2011. See Transcript, 12/7/2010, at 6.

Against this background, the Court addresses the question of the plaintiff's requested relief, viz., to stay the individual arbitration proceedings. As the Court noted in its September 17 Order, at *9, whether a court has the power to stay arbitration proceedings under the FAA (either directly or by enjoining one or more parties thereto) appears to be a question that has not been finally decided in this Circuit. See Westmoreland Capital Corp. v. Findlay, 100 F.3d 263, 266 n.3 (2d Cir. 1996). However, the Second Circuit has in several instances -- both prior and subsequent to Westmoreland -- affirmed district court decisions enjoining arbitration proceedings, albeit not under the authority of the FAA. See, e.g., AXA Versicherung AG ex rel. Albingia Versicherungs AG v. New Hampshire Ins. Co., 348 Fed.Appx. 628, 631 (2d Cir. 2009); Motorola Credit Corp. v. Uzan, 322 F.3d 130, 137 (2d Cir. 2003); Collins & Aikman Products Co. v. Building Systems, Inc., 58 F.3d 16 (2d Cir. 1995). And, while one district court in this District has held that the FAA precludes a court from staying an arbitration proceeding, see Ghassabian v. Hematian, 2008 WL 3982885, at *2 (S.D.N.Y. Aug.27, 2008), several other district courts have held that the FAA permits such an injunction, see, e.g., L.F. Rothschild & Co., Inc. v. Katz, 702 F. Supp. 464, 467 (S.D.N.Y. 1988), or have "assume[d] without deciding that the Court does have the power to stay arbitration," see, e.g., Oppenheimer & Co. Inc. v. Deutsche Bank AG, 2009 WL 4884158, at *6 (S.D.N.Y. Dec. 16, 2009). Furthermore, courts of appeal in other circuits have held that district courts have the power under the FAA to enjoin arbitration in appropriate circumstances. See Tai Ping Ins. Co. v. M/V Warschau, 731 F.2d 1141, 1144 (5th Cir. 1984); Societe Generale de Surveillance, SA v. Raytheon European Mgmt. and Sys. Co., 643 F.2d 863, 867-68 (1st Cir. 1981) (then Circuit Judge Breyer). The thrust of most of these cases is that the Court's power to compel arbitration under the FAA necessarily implies the power to enjoin arbitration.

A typical case is Rothschild, supra. There, the parties' agreement permitted arbitration in either New York or Chicago, and the parties had separately initiated "rival arbitrations arising out of the same controversy" in those cities. Id. at 467. As such, "to permit both proceedings to continue would require the parties to pursue the same claims or defenses in two separate forums, resulting in the duplication of the arbitrators' efforts and risking inconsistent outcomes." Id. at 466-67. The Court therefore ordered the parties to proceed with the earlier-filed New York arbitration under § 4 of the FAA and, pursuant to that order, stayed the later-filed Chicago arbitration. Id.

In the instant action, the individual arbitrations with which Sterling seeks to proceed are clearly "rivals" (i.e., dealing with the same controversy) of the earlier-filed class arbitration that, in June of 2008, the Court had previously compelled. Though the first arbitration has now been stayed pursuant to an agreement of the parties, the broader situation remains unchanged. Sterling initiated a series of individual arbitrations that substantially overlap with an earlier-filed arbitration compelled by Order of this Court. The Court concludes that, as a necessary incident to its power to compel arbitration proceedings under § 4 of the FAA, it may preserve the integrity of those proceedings by enjoining later-filed arbitrations that arise out of the same controversy. Any other conclusion would impede rational application of § 4 of the FAA, as well as fundamentally limit the power of a court to enforce its own judgments. Cf. Landis v. N. Am. Co., 299 U.S. 248, 254 (1936)(noting that "the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket.").

Having established its authority to stay the individual arbitration proceedings initiated by Sterling, the Court moves to consider whether a stay -- i.e., a temporary injunction -- is warranted in the particular circumstances in which the instant motion is brought. Plaintiffs contend that, if forced to proceed with individual arbitrations that overlap with the presently-stayed class arbitration, they and the as-yet unidentified members of the putative class, would face the same harms this Court recognized as constituting "irreparable injury" in its September 17 Order. In that Order, the Court expressed concern regarding, inter alia, the burden and expense associated with pursuing potentially unnecessary duplicative arbitrations. See September 17 Order at 4 (noting the "Hobson's choice" facing "the named plaintiffs and members of the putative class ... between pursuing their claims in individual arbitrations while the plaintiffs' appeal is pending or else risk losing the possibility of bringing an individual claim if the Court's decision is affirmed.").

Plaintiffs further claim that a stay is required now, as opposed to after the individual arbitrators are selected and each arbitrator has had the opportunity to decide whether to stay the arbitration in the first instance, because "if required to go forward ... at least some of the 46 claimants with meritorious claims may not have the resources to pursue individual arbitrations due to costs and expenses of arbitration." Pl. Mem at 8-9. Moreover, plaintiffs point to the "hundreds or perhaps thousands" of putative class members who, in the absence of a stay, would be required to file and litigate separate individual arbitrations, or else risk prejudicing their right to join any later class arbitration. See Pl. Mem. at 9 n. 9 (noting that, if the Court's August 6 Order is overturned by the Second Circuit, hundreds of individual claimants will seek to join in the class arbitration who might not otherwise have the resources to initiate individual arbitrations).

The Court is persuaded that the same factors that led the Court in its September 17 Order to find that plaintiffs had satisfied all the requirements for a temporary injunction are present here as well, and, incorporating those findings and conclusions by reference, the Court therefore concludes that a stay of the individual arbitrations is required in this case. However, among the factors that motivates the Court to issue this injunction is its recognition that, otherwise, plaintiffs' appeal might be rendered moot as to the 46 named plaintiffs. Accordingly, the Court, while granting the stay, limits the period of its duration from now until January 11, 2011, when, at the oral argument of the appeal before the Court of Appeals, the plaintiffs can put this concern directly before the Court of Appeals, which putatively has its own power to stay the arbitrations if it so chooses.

For the foregoing reasons, the Court hereby enjoins Sterling from proceeding with the individual arbitrations until after oral argument is presented to the Court of Appeals on January 11, 2011. Despite the AAA's assurances that it will abide by the terms of any court order, see supra, nonetheless, given Sterling's claim that an order enjoining Sterling would not necessarily be binding on the AAA, see Def. Mem. at 3 n. 11, the Court, out of an abundance of caution, also temporarily restrains the AAA from proceeding with the administration of the individual arbitrations, but gives the AAA, if it disagrees with that injunction, the opportunity to contest it by submitting opposition papers to the Court by no later than December 23, 2010, to which the plaintiffs may respond by papers submitted no later than January 7, 2011. The parties are directed to immediately furnish the FAA with a copy of this Memorandum Order and to keep the Court apprised of any material developments in this matter in any of the pertinent fora.

The Clerk of this Court is directed to close document number 99 on the docket of this case.

SO ORDERED.

Dated: New York, NY
December 10, 2010

JED S. RAKOFF, U.S.D.J.