

Nedelchev v Student Loan Corp.

2010 NY Slip Op 30501(U)

March 12, 2010

Supreme Court, New York County

Docket Number: 111352/09

Judge: Jane S. Solomon

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

PRESENT: Solomon

PART 55

Index Number : 111352/2009
NEDELICHEV, NICKOLAY
 VS.
STUDENT LOAN CORP
 SEQUENCE NUMBER : 001
 COMPEL OR STAY ARBITRATION

INDEX NO. _____
 MOTION DATE 11/9/09
 MOTION SEQ. NO. _____
 MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

1-5
6-7

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed memorandum decision and order.

FILED
 MAR 12 2010
 NEW YORK
 COUNTY CLERK'S OFFICE

Dated: 3/12/10

JANE S. SOLOMON J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART 55

-----x

NICKOLAY NEDELICHEV,

DECISION AND ORDER

Plaintiff,

Index No.: 111352/09

-against-

THE STUDENT LOAN CORPORATION, OONA
ROBINSON, and DANIEL DANISH,

Defendants.

FILED
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NEW YORK
COUNTY CLERK'S OFFICE

JANE S. SOLOMON, J.:

Defendants The Student Loan Corporation ("SLC"), Oona Robinson and Daniel Danish move to compel plaintiff Nickolay Nedelchev to submit this dispute to arbitration, and move to stay these proceedings. The motion is granted as follows.

SLC, a subsidiary of Citigroup, Inc., is an originator, holder and servicer of student loans. Nedelchev was formerly employed by SLC as a Senior Quantitative Analyst. Oona Robinson is the Director of Financial Planning and Analysis at SLC, and Daniel Danish was Nedelchev's supervisor. SLC has an arbitration policy which provides that arbitration is the "required and exclusive forum for the resolution of all employment disputes based on legally protected rights . . . that may arise between an employee or former employee and the Company or its current and former parents, subsidiaries, and affiliates and its and their current or former officers, directors, employees, and agents . .

." (U.S. Consumer Group 2006 Employee Handbook, Aff. of Irene Hendricks, Ex. D). Nedelchev signed or acknowledged SLC's arbitration agreement seven times between July 25, 2007, the date he applied for a position at SLC, and July 20, 2009, the day his employment was terminated.

Nedelchev alleges two causes of action: wrongful termination in violation of New York Labor Law § 740 as against all defendants, and common law conversion as against SLC and Robinson. New York Labor Law § 740(2) prohibits an employer from retaliating against an employee who refuses to violate a law, rule or regulation (the "whistleblower" statute).

Nedelchev allegedly discovered errors in SLC's financial reports. He claims that Robinson and Danish ordered him to go along with the fraudulent financial statements and that he was fired when he refused to do so. Nedelchev also alleges that he stored three financial models (apparently computer software) on an SLC computer in his office, and that after his employment was terminated, SLC and Robinson refused to allow him to retrieve the models.

The Federal Arbitration Act (FAA, 9 USC § 1, et seq.) applies to any written agreement to arbitrate a contract evidencing a transaction involving commerce (9 USC § 4). Under the FAA, agreements to arbitrate employment contracts generally

are enforceable (*Circuit City Stores, Inc. v Adams*, 532 US 105 [2001] and *Flanagan v Prudential-Bache Sec., Inc.*, 67 NY2d 500 [1986] [arbitration agreements involving employees in the financial industry are subject to the FAA]). The United States Supreme Court and New York Court of Appeals have noted the strong policy considerations in favor of arbitration (*Dean Witter Reynolds, Inc. v. Byrd*, 470 US 213 [1985]; *Singer v. Jefferies & Co. Inc.*, 78 NY2d 76 [1991]).

The arbitration agreements Nedelchev signed are enforceable. Even though Citigroup's name appears on all the agreements, instead of SLC, Citigroup is defined within those documents to include all of its subsidiaries. Therefore, the arbitration agreement applies to Nedelchev's employment with SLC, a Citigroup subsidiary. Nedelchev's allegations stem from the termination of his employment with SLC and, therefore, his claims are within the scope of the arbitration agreement (*Singer*, 78 NY2d at 83-84).

Nedelchev contends that compelling him to arbitrate his claims is against public policy because it would undermine the whistleblower statute. New York courts have already determined that a plaintiff's whistleblower claim can fall within the scope of an arbitration clause, and have compelled arbitration of such

claims (e.g., see *Strattner v. Cabrini Medical Center*, 257 AD2d 549 [1st Dep't 1999]).

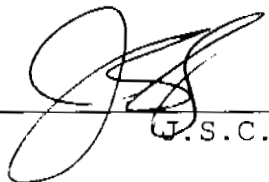
Nedelchev further asserts that his claims against Robinson and Danish are not subject to the arbitration agreements. However, these defendants were acting within the scope of their duties as SLC employees, so they may invoke the benefit of SLC's arbitration agreement even though they are not signatories to Nedelchev's agreements (see, *Hirschfeld Productions, Inc. v Mirvish*, 88 NY2d 1054 [1996]). Nedelchev's argument that Robinson and Danish performed ultra vires acts, and so are personally liable, is not supported by his factual allegations. Nedelchev states that Robinson and Danish improperly prepared financial reports, and wrongfully terminated his employment. These actions arise from their duties as SLC employees, and therefore are subject to the arbitration agreement (*Singer, supra*).

The conversion claim also falls within the scope of the arbitration agreement, as it relates to the events surrounding his termination, and property admittedly relating to SLC's business. Accordingly, it hereby is

ORDERED that defendants' motion to compel arbitration is granted, and this action is stayed pursuant to CPLR 7503(a) pending completion of the arbitration.¹

Dated: March 12, 2010

ENTER:



J.S.C.

JANE S. SOLOMON

FILED
MAR 12 2010
NEW YORK
COUNTY CLERK'S OFFICE

¹ It is marked "disposed" solely as an administrative convenience, and may be restored by motion at the completion of the arbitration, if appropriate.