SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DAKOTA D. RAMSEUR **PART** 34M

Justice

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ELIZABETH CRUZ

Plaintiff,

- v -

NUSRET NEW YORK LLC,

Defendant.

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INDEX NO. 157935/2021

MOTION DATE 05/30/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33

were read on this motion to/for COMPEL ARBITRATION.

In August 2021, plaintiff Elizabeth Cruz commenced this action against her employer Nurset New York LLC, asserting causes of action for gender and nationality-based discrimination, hostile work environment, and retaliation in violation of the New York State and New York City Human Rights Laws. In this motion sequence, defendant moves for an order pursuant to CPLR 7503 compelling arbitration and staying the proceeding. Plaintiff opposes. For the following reasons, the motion is granted.

On motions to compel arbitration, courts must determine whether parties made a valid agreement to arbitrate, whether the agreement has been complied with, whether the dispute at issue falls within the scope of the agreement, and whether the claim is time barred. (*Smith Barney, Harris Upham & Co., Inc. v Luckie*, 85 NY2d 193, 202 [1995]; *see also* CPLR 7503 (a) [providing that the court "shall direct the parties to arbitrate" where there is no substantial question as to whether a valid agreement was made or complied with and the arbitration is not barred under CPLR 7502 (b)].) Here, the only issue is whether parties entered an agreement to arbitrate.

In support of its motion, defendant did not submit a signed arbitration agreement with plaintiff. Instead, it submitted: (1) the offer letter that plaintiff signed when she was first hired, which specifically states, "you will be required to sign an Arbitration Agreement. We have enclosed a copy of the Arbitration Agreement for your review. You acknowledge that this Offer and Arbitration Agreement contain the entire agreement of the parties." (NYSCEF doc. no. 21); (2) a signed Acknowledgement of Receipt of [the Employee] Handbook (NYSCEF doc. no. 22); (3) an *un*signed copy of selected portions of the employee handbook, which includes the purported arbitration agreement (NYSCEF doc. no. 23); (4) a signed arbitration agreement from the same time period as plaintiff's employment but from a different employee (NYSCEF doc. no. 24); and (5) an affidavit from Harun Ilbuga, who described having personal knowledge of

defendant's procedure of requiring all new employees to sign arbitration agreements. (NYSCEF doc. no. 19).

In opposition, plaintiff identifies various deficiencies in defendant's proof and contends that defendant has not sufficiently demonstrated the existence of an arbitration agreement. She observes that the offer letter specifically stated that it "is not a contract" (though she omits the second half of the sentence that it was not a contract "guaranteeing employment for any specific duration"); that the Acknowledgement of Receipt of Handbook that she signed made no mention of an arbitration agreement; that the Acknowledgement submitted does not include the employee handbook so there is nothing to connect the Acknowledgement to the alleged handbook; and that Ilbuga did not have personal knowledge of whether plaintiff signed her arbitration agreement. (NYSCEF doc. no. 29 at ¶ ¶ 3-8, affidavit in opposition.) Significantly, plaintiff does not deny that she signed an arbitration agreement.

DISCUSSION

That defendant did not provide a signed arbitration agreement is not dispositive on a motion to compel. The Court of Appeals has made clear that, although CPLR 7501 confers jurisdiction on courts to enforce written arbitration agreements, there is no requirement that the writing be signed so long as there is other proof that the parties agreed to arbitrate. (*God's Battalion of Prayer Pentecostal Church, Inc. v Miele Assoc., LLP*, 6 NY3d 371, 374 [2006].) In the absence of a written agreement, the proper inquiry is whether outside evidence establishes the parties' "clear, explicit, and unequivocal" agreement to arbitrate. (*Id.*, citing *Waldron v Goddess*, 61 NY2d 181, 183 [1984]; *Weissman v Revel Transit, Inc.*, 190 NYS3d 46, 47 [1st Dept 2023].) Under this standard, when defendant's evidence is viewed in its entirety, it becomes clear that defendant has established a mutual agreement to arbitrate that is clear, explicit, and unequivocal.

Several factors are critical to the Court's determination. As manager of defendant's New York location during plaintiff's employment, Ilbuga explained that all new hires would run through an "onboarding process," whereby an employee in defendant's Human Resources department would review the offer letter, employment handbook, arbitration agreement, etc., with the new hire. (NYSCEF doc. no. 19 at ¶ 4.) He testified that, once this was done, defendant's standard operating procedure was that the new employee would be required to sign each document, whether electronically or in the presence of a member of the human resource team. (*Id.* at 6-7.) According to him, defendant would not have permitted new hires to begin working until they had signed the arbitration agreement. (*Id.* at ¶ 10.) And Ilbuga's testimony that the arbitration agreement was central to plaintiff's employment is supported by the offering letter, which explicitly states, "You acknowledge that this Offer and the Arbitration Agreement contain the entire agreement of the parties." (NYSCEF doc. no. 21 at 2.)

Just as significantly, the inclusion of an arbitration agreement in the overarching employment contract illustrates why *Meeg v Heights Casino* (2020 U.S. Dist LEXIS 56387 [EDNY 2020])—which plaintiff cites to in opposition—is inapplicable. Plaintiff appears to argue that in circumstances like here, where there is no signed agreement, an "employee-plaintiff [is] not bound by [an] arbitration policy within [an] employee handbook" because the handbook was

not submitted in its original form. (NYSCEF doc. no. 29 at ¶ 13-14, affidavit in opp.) But in *Meeg*, the court found only that, where an employee handbook specifically disclaims any rights and/or obligations created by the handbook itself, the arbitration agreement contained therein is unenforceable. (*Meeg*, at *9.) As the Southern District of New York explained in *Seltzer v Clark Assocs., LLC* (2020 U.S. Dist. LEXIS 161542 [SDNY 2020]), where a handbook contains disclaiming language to the effect of "this Handbook is informational only" or "the policies and provisions . . . do not create express or contractual rights or obligations" (as in *Meeg*, at *8-9), courts do not permit employers to use the handbook to avoid conferring employees with contractual rights while relying on the very same document to "impose asymmetric contractual duties" on the employee. (*Seltzer*, at *8-9.) On the other hand, where an arbitration agreement is integral to the employer-employee relationship, indeed where it is a component of the employment contract, such arbitration agreements are enforceable regardless of any disclaimers. (*Id.*, citing *Patterson v Raymours Furniture Co., Inc*, 96 F Supp3d 71, 76 [SDNY 2015] [agreement enforceable where arbitration described an essential element of continued employment]; *Curry v Volt Info. Scis., Inc.*, 2008 U.S. Dist. LEXIS 20910 at *1 [SDNY 2020] [enforceable agreement where employee handbook provides, "Arbitration is an essential element of your employment relationship"]; *Brown v St. Paul Travelers Companies, Inc.* (331 F. Appx'x 68, 69 [2d Cir. 2020] [motion to compel granted where company's arbitration policy "was an 'express condition' of continuing employment."])

The last factor the Court must considered is that nowhere in plaintiff's moving papers does she deny having signed an arbitration agreement. To deny defendant's motion to compel, then, would be to interfere with the parties' contract simply on grounds that defendant can no longer locate the signed agreement.

Accordingly, for the foregoing reasons, it is hereby

ORDERED that defendant Nusret New York, LLC's motion to compel arbitration and to stay this action pursuant to CPLR 7503 is granted; and it is further

ORDERED that plaintiff Elizabeth Cruz shall arbitrate her claims against defendant in accordance with the unsigned arbitration agreement submitted to the Court as NYCEF doc. no. 23; and it is further

ORDERED that all proceedings in this action are hereby stayed, except for an application to vacate or modify said stay; and it is further

ORDERED that counsel for defendant shall serve a copy of this order along with a notice of entry within twenty (20) days of this order.

This constitutes the decision and order of the Court.

8/29/2023
DATE

DAKOTA D. RAMSEUR, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
	X	GRANTED		DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE