IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

STACY A. BOHLEN, **Plaintiff,** **v.** **NATIONAL INDIAN HEALTH BOARD et al.,** **Defendants.**	**2024 CAB 005743** **Judge Yvonne Williams**

ORDER GRANTING MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS

Before the Court is Defendants National Indian Health Board and William Smith's Motion to Compel Arbitration and Stay These Proceedings ("Motion"), filed October 24, 2024. Plaintiff Stacy Bohlen filed an Opposition ("Opposition") on November 7, 2024, and Defendants filed a Reply ("Reply") on November 14, 2024.

I. BACKGROUND

This action arises from an allegation of gender discrimination in the workplace. *See* Cmplt. at 1. According to Defendants' Motion, "… at all times referenced in the Complaint, Plaintiff's employment with NIHB has been governed by successive employment agreements, each of which contained a clear and unambiguous arbitration provision mandating the arbitration of any dispute." Memorandum in Support of Mot. at 1. Defendants argue that (1) "Plaintiff signed a valid and enforceable contract that contains an agreement to arbitrate;" (2) "Plaintiff's claim falls within the scope of the arbitration agreement;" and (3) "Plaintiff's lawsuit should be stayed pending completion of arbitration." Memorandum in Support of Mot. at 4, 5, 7.

Plaintiff argues in her Opposition that the Court should deny Defendants' Motion because "(1) Defendants first materially breached the arbitration agreement by failing to follow required procedural prerequisites, including the duty to confer and provide proper notice; (2) Defendants

first materially breached the underlying agreement and is, thus, precluded from enforcing the arbitration provision; and (3) courts have routinely refused to enforce arbitration agreements where Plaintiffs bears arbitration costs, that will be expensive in this case." Opp. at 1. In Defendants' Reply, they state that they did not materially breach the contract at issue and that "the condition that each party bear their own costs of arbitration does not render the Agreement unenforceable." Reply at 1, 3.

II. LEGAL STANDARD

Under the Federal Arbitration Act, a written agreement in "a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof … shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. The FAA "leaves no place for the exercise of discretion by a district court, but instead mandates that district courts shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed." *Dean Witter Reynolds Inc. v. Bryd*, 470 U.S. 213, 218 (1985).

Pursuant to D.C. Code § 16-4407(e), "[i]f a party makes a motion to the court to order arbitration, the court, on just terms, shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section." D.C. Code § 16-4407(e).

III. DISCUSSION

The Court finds that the Employment Agreement is enforceable, and that it is appropriate to compel arbitration in the instant Matter.

A. Plaintiff signed an enforceable contract that contains an agreement to arbitrate.

Plaintiff signed Employment Agreements with Defendant on April 9, 2013, July 23, 2018, and November 6, 2023. *See* Memo. in Support of Mot. at 5 (citing Exhibits A, B, and C). She argues that the Agreement is not enforceable because Defendants materially breached the contract by "(1) failing to engage in 'good faith negotiations' prior to investigating Ms. Bohlen and terminating her as required under paragraph 8 of the Employment Agreement; (2) failing to provide the requisite 30 day written notice prior to terminating Ms. Bohlen as required by paragraph 7 of the Employment Agreement; and (3) failing to keep Ms. Bohlen's personnel matters confidential." Opp. at 4. The Court disagrees with Plaintiff, and instead finds that (1) Defendants did not breach the Agreement; (2) the Agreement is enforceable; and (3) the Parties must participate in arbitration pursuant to their Agreement.

1. Defendants did not breach the Agreement when they did not engage in negotiations prior to terminating Plaintiff's employment.

The Employment Agreement states that "[t]he Parties agree to resolve any disputes arising under this Agreement first through good faith negotiations and, if such negotiations are unsuccessful, exclusively through arbitration under the procedures established by the American Arbitration Association and before an arbitrator mutually agreed upon by the parties. Each party shall bear its own costs of arbitration." Ex. C at 5, ¶ 8. The Court agrees with Defendants that neither this paragraph nor any other in the Employment Agreement required Defendants to engage in negotiations prior to terminating Plaintiff's employment. Reply at 2. "There was no dispute. The decision to terminate Plaintiff resulted from a comprehensive investigation about Plaintiff's stewardship of the organization." *Id.* Therefore, Defendants did not, as alleged by Plaintiff, breach the Agreement by failing to engage in negotiations prior to Plaintiff's termination.

2. Defendants did not breach the Agreement when they did not provide 30-day written notice prior to terminating Plaintiff's employment.

The Employment Agreement states in pertinent part that "[e]ither party may terminate this agreement without cause upon thirty days written notice to the other party." Because Plaintiff was terminated for cause, the 30-day notice requirement for termination without cause is inapplicable. *See* Reply at 2. Thus Defendants did not, as alleged by Plaintiff, breach the agreement by failing to give 30-day notice about her for-cause termination.

3. Defendants did not breach the Agreement when they did not keep Plaintiff's personnel matters confidential.

While Plaintiff argues Defendants breached the Employment Agreement when they publicly announced her termination, she does not point to a specific section of the Agreement instructing the parties to keep personnel matters confidential. *See* Opp. at 5. There is no provision of the Employment Agreement that makes a public announcement of an employee's termination a breach of the Agreement. Defendants did not breach the Employment Agreement when they announced Plaintiff's termination, and the agreement's arbitration provision remains enforceable.

B. The Agreement's condition that each party bear their own costs of arbitration does not render the Agreement unenforceable.

Plaintiff argues that the Agreement's cost-sharing provision "renders the entire arbitration agreement unconscionable and unenforceable" and that "[t]he requirement that Ms. Bohlen must now pay arbitration costs is not only a bar to her ability to pursue her claims, but retaliatory." Opp. at 7-8. Plaintiff cites *Green Tree Financial Corporation-Alabama v. Randolph* for the proposition that "excessive arbitration costs may render an arbitration agreement unenforceable where they prevent a plaintiff form effectively vindicating statutory rights." *Id.* at 7 (citing *Green v. Tree Fin. Corp.-Ala. v. Randolph,* 531 U.S. 79, 90 (2000). Notably, in *Green Tree Financial Corporation-Alabama v. Randolph* the Supreme Court held that the risk that a party would be "saddled with

prohibitive costs is too speculative to justify the invalidation of an arbitration agreement.*" Green Tree Fin.* at 91. The Court does not find the cost-sharing provision to be retaliatory, particularly because it was included in the Agreement long before Plaintiff's position was terminated.

C. Plaintiff's claim falls within the scope of the arbitration agreement, and proceedings in this suit should be stayed pending completion of arbitration.

The Court agrees with Defendants that "Plaintiff's claims, disputes, and controversies arise from the terms of her employment, which is governed by the Employment Agreement, and, therefore, Plaintiff's claims fall squarely within the scope of the Arbitration provisions in each of the Agreements." Memo in Support of Mot. at 7; *see* D.C. Code § 16–4406(b) ("The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate."). Therefore, pursuant to D.C. Code § 16-4407(e), the Court grants Defendants' Motion.

Accordingly, it is this 11th day of December, 2024, hereby,

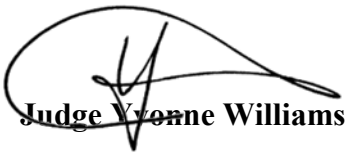
ORDERED that Defendants National Indian Health Board and William Smith's Motion to Compel Arbitration and Stay These Proceedings is **GRANTED**; and it is further

ORDERED that this case shall be **STAYED** pending the arbitration outcome; and it is further

ORDERED that the Remote Initial Scheduling Conference scheduled for December 13, 2024 is **VACATED**; and it is further

ORDERED that the Parties shall appear before the Court for a Remote Status Hearing on March 14, 2025 at 9:30 a.m. in virtual Courtroom 212 to provide representations on the status of the arbitration.

IT IS SO ORDERED.



Judge Yvonne Williams

Date: December 11, 2024

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