

## STATEMENT OF REASONS

### Overview

This case comes before the court on defendant, Best Buy Co. Inc.'s ("Defendant") Motion to Compel Arbitration and Dismiss Kevin Dugan's ("Plaintiff") Complaint. Specifically, Defendant contends that Plaintiff is bound by its Arbitration Policy, and his Complaint must therefore be dismissed. Plaintiff opposes the Motion. Specifically, Plaintiff argues that he did not waive his statutory rights or affirmatively agree to be bound by the Policy, and the Motion must therefore be denied.

For the reasons set forth below, the Motion to Compel Arbitration and Dismiss Plaintiff's Complaint is **GRANTED**.

### Facts

This matter arises from a purported age discrimination allegation by Plaintiff against Defendant. Plaintiff was hired by Defendant as an Assistant Manager in June 2000. (Def. Br., p. 2) Plaintiff was subsequently promoted to a General Manager position in 2003. (*Id.*) On April 5, 2016, Plaintiff was terminated from his employment at Best Buy. (*Id.*) Defendant claims that Plaintiff's termination was a result of his inappropriate interaction with a customer; Plaintiff contends that it was motivated by age discrimination and/or retaliation for prior complaints. (*Id.*)

On March 15, 2016, prior to Plaintiff's termination, Defendant implemented an Arbitration Policy (the "Policy"), which provided that all claims between Defendant and its employees will be decided by an arbitrator and not a court of law. (*Id.*) The Policy specifically stated that employees are obliged to "bring in arbitration, rather than court, any past, present or future claims, disputes or lawsuits of any kind . . . that they may have against [Defendant.]" (Def. Ex. 1, p.1) The Policy covers claims related to employment applications, recruitment, background checks, hire or non-hire, employment terms and conditions, wages and compensation, promotion or non-promotion, leaves of absences, benefits, and employment termination. (*Id.* at p. 2) Additionally, pursuant to the Policy, the definition of "Covered Claims" also provides that violations of any statute for discrimination under "any federal, state or local statute, regulation, wage order or ordinance" are encompassed in the scope of the Policy. (*Id.* at p. 3) The Age Discrimination in Employment Act is specifically delineated as an example of a law which is covered under the Policy. (*Id.*) The Policy further states that "it is a binding contract between Best Buy and Best Buy's employment applicants and employees," "is a mandatory condition of initial and continuing employment at Best Buy, and applies even after employment ends[.]" (*Id.* at p. 1)

Defendant utilizes certain programs to train its employees on its policies and procedures, one of which is E-Learnings. (Def. Br., p. 4) After Plaintiff was notified of the Policy, he participated in the E-Learning module on February 6, 2016. (*Id.* at p. 5) Employees are obliged to log onto the online "Learning Network" to see the requisite E-Learnings that need to be completed. (*Id.* at p. 4) Plaintiff was affirmatively notified of the Arbitration Policy through the Learning Network, learned more about the Policy through the E-Learning module, and passed the comprehension assessment at the end of the module. (*Id.* at p. 5) The E-Learning application explains the key components of the Policy, and provides that that all claims against Best Buy must

be arbitrated and may not be brought in a court of law. (*Id.*) The E-Learning module concludes with an acknowledgement, that states, in pertinent part, as follows:

[B]y remaining employed, you are considered to have agreed to the policy. The purpose of the eLearning is to ensure you read and understand the policy. Employees who do not take this eLearning are still subject to the policy. I have read and understand the Best Buy Arbitration Policy that takes effect on March 15, 2016.

(*Id.*)

### Discussion

Defendant contends that Plaintiff is bound to arbitrate his claims pursuant to the Policy, and the Complaint must therefore be dismissed. Plaintiff argues that he did not waive his statutory rights or affirmatively agree to be bound by the Policy, and is not obliged to arbitrate his allegations.

An agreement to arbitrate "is, at its heart, a creature of contract." Kimm v. Blisset, LLC, 388 N.J. Super. 14, 25 (App. Div. 2006) certif. denied, 189 N.J. 428 (2007). An arbitration agreement is governed by State contract law principles, and "a state is permitted to regulate agreements . . . that relate to arbitration by applying its contract-law principles that are relevant in a given case." Leodori v. Cigna Corp., 175 N.J. 293, 302, cert. denied, 540 U.S. 938 (2003). To enforce a waiver-of-rights provision in an arbitration agreement, there must be "some concrete manifestation of the employee's intent as reflected in the text of the agreement itself." Garfinkel v. Morristown Obstetrics & Gynecology Assocs., P.A., 168 N.J. 124, 131 (2001). Courts have held that "continued employment . . . constitute[s] sufficient consideration to support certain employment-related agreements." Quigley v. KPMG Peat Marwick, LLP, 330 N.J. Super. 252, 265 (App. Div.), certif. denied, 165 N.J. 527 (2000). In general, a valid arbitration clause may be established through an employee's signature, or some other "explicit, affirmative agreement that unmistakably reflects the employee's assent." Leodori, supra, 175 N.J. at 303 (2003).

Applying the foregoing principles to the instant case, two issues must be examined: "Does the relevant waiver-of-rights provision reflect an unambiguous intention to arbitrate an [age discrimination] claim? If yes, does the record before us indicate that plaintiff clearly had agreed to that provision?" *Id.* at 302. It is unequivocal that the Policy specifically states that employees are obliged to "bring in arbitration, rather than court, any past, present or future claims, disputes or lawsuits of any kind . . . that they may have against [Defendant.]" (Def. Ex. 1, p.1) Moreover, the Policy further indicates that violations of any statute for discrimination under "any federal, state or local statute, regulation, wage order or ordinance," including the Age Discrimination in Employment Act, are encompassed in the scope of the Policy. (*Id.* at p. 3) As a result, Plaintiff's age discrimination and retaliation claims are encompassed within the scope of the Policy.

Next, to be enforceable, an arbitration agreement "must reflect that an employee has agreed clearly and unambiguously to arbitrate the disputed claim." Leodori, supra, 175 N.J. at 302. Although an "explicit, affirmative agreement that unmistakably reflects the employee's assent" is required, an actual, handwritten signature is not necessary. *Id.* at 303-06. An arbitration agreement

may be enforced against an employee who signs it "or otherwise explicitly indicate[s] his or her agreement to it." Id. at 306. While "a party's signature to an agreement is the customary and perhaps surest indication of assent[,]" nevertheless, courts will enforce a waiver-of-rights if they "find some other unmistakable indication that the employee affirmatively had agreed to arbitrate his claims." Id. at 306-07. Our Appellate Division has found that a party may manifest assent to a contract by clicking a link on a website. Caspi v. Microsoft Network, L.L.C., 323 N.J. Super. 118, 122 (App. Div.), certif. denied, 162 N.J. 199 (1999). Additionally, our Appellate Division has further held that "[f]ailing to read a contract does not excuse performance unless fraud or misconduct by the other party prevented one from reading." Gras v. Assoc. First Capital Corp., 346 N.J. Super. 42, 56-57 (App. Div. 2001)

Here, the court finds that based on the record as a whole, Plaintiff unambiguously manifested the assent to arbitrate the instant age discrimination and retaliation claims, and the Motion to Compel Arbitration is therefore granted. As explained above, Defendant utilizes certain programs to train its employees on its policies and procedures, one of which is E-Learnings. (Def. Br., p. 4) Employees are obliged to log onto the online "Learning Network" to see the requisite E-Learnings that need to be completed. (Id. at p. 4) Plaintiff was affirmatively notified of the Arbitration Policy through the Learning Network, learned more about the Policy through the E-Learning module, and passed the comprehension assessment at the end of the module. (Id. at p. 5) The E-Learning program explicated the core principles of the Policy, and Plaintiff affirmatively acknowledged that he understood the Policy, including the fact that his continued employment would be an acceptance of it. Quigley, supra, 330 N.J. Super. at 265 (holding that continued employment . . . constitute[s] sufficient consideration to support certain employment-related agreements.") Additionally, after engaging in the E-Learning module, Plaintiff clicked a button acknowledging that he read and understood the Policy. (Pl. Reply, p. 3-4) As explained above, our Appellate Division has found that a party may manifest assent to a contract by clicking a link on a website. Caspi, supra, 323 N.J. Super. at 122.

Though Plaintiff argues that he should not be bound to the Policy because he was not required to read it, Plaintiff had ample opportunity to read the Policy, as the E-Learning Module provided employees the option to "Click the PDF icon to the right to read and review the Best Buy Arbitration Policy & FAQ." (Def. Reply, Ex. A) As described above, "[f]ailing to read a contract does not excuse performance unless fraud or misconduct by the other party prevented one from reading." Gras, supra, 346 N.J. Super. at 56-57. There is no evidence before the court which demonstrates that Defendant engaged in any fraud or misconduct to prevent Plaintiff from reading the Policy. Last, and importantly, the court cannot ignore the fact that Plaintiff was the general manager at his store, and was affirmatively responsible for ensuring that his staff understood the terms of the Policy, and participate in the E-Learning module. (Pl. Br., p. 5) Although Plaintiff's position is not, in and of itself, indicative of whether he manifested assent to arbitrate his claims, the court finds it as an important factor in the record as a whole.

Consequently, based on the foregoing, the court concludes that the Policy reflected an unambiguous intention to arbitrate Plaintiff's claims and, based on the record as a whole, Plaintiff

manifested the assent to arbitrate his claims pursuant to the Policy. Accordingly, Defendant's Motion to Compel Arbitration and Dismiss Plaintiff's Complaint is **GRANTED**.