IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANNA TRACTENBERG,	:	
Plaintiff	:	Civil Case
	:	
v.	:	
	:	
CITIGROUP INC. and CITICORP	:	No. 2:10-cv-03092-LS
Defendants	:	

ORDER

AND NOW, this 1st day of September, 2011, upon consideration of defendants' motion to compel arbitration and to stay the action (Doc # 4), and all responses and replies thereto, it is hereby ORDERED that the motion is GRANTED.[1] All claims between plaintiff and defendants in the instant action are to be arbitrated on an individual basis.

BY THE COURT:

/s/ LAWRENCE F. STENGEL
LAWRENCE F. STENGEL , J.

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[1] In AT&T Mobility LLC v. Concepcion, 131 S.Ct. 1740, 1746, 1753 (U.S. Apr. 27, 2011), the United States Supreme Court held the Federal Arbitration Act preempted a California rule "classifying most collective-arbitration waivers in consumer contracts as unconscionable." The Court noted that California's rule was "limited to adhesion contracts, but the times in which consumer contracts were anything other than adhesive are long past." Id. at 1750 (internal citations omitted). The Rule also required that the "damages be predictably small, and that the consumer allege a scheme to cheat consumers." Id. (quoting Discover Bank v. Superior Court, 113 P.3d 1100, 1110 (Cal. 2005)). The requirement that the damages be small, however, was "toothless and malleable," and the requirement to allege a scheme "has no limiting effect, as all that is required is an allegation." Id.

Ms. Tractenberg argues the arbitration clause is unenforceable because there is no valid contract. In her response to the motion to compel arbitration, Ms. Tractenberg did not argue the arbitration clause was invalid because there was no contract. Rather, Ms. Tractenberg argued the arbitration provision was unconscionable.

Ms. Tractenberg references the differences in the arbitration agreements in Concepcion and in her credit card contract. In Concepcion, the Supreme Court did not rely on the other terms of the arbitration provision for its determination the FAA preempted California's rule regarding class arbitration.

Ms. Tractenberg argues Pennsylvania law differs from the California law addressed in Concepcion. Pennsylvania's law is similar to California law. Compare Harris v. Green Tree Fin. Corp., 183 F.3d 173, 181 (3d Cir. 1999) (stating "[i]n evaluating claims of unconscionability, courts generally recognize two categories, procedural . . . unconscionability and substantive unconscionability.") and Hopkins v. NewDay Fin., LLC, 2008 WL 2654635, at *3 (E.D. Pa. June 30, 2008) (noting "Pennsylvania cases have held that limiting the use of the class-action vehicle, if it raises costs to the point of effectively preventing individual redress, is substantively unconscionable"), with Concepcion, 131 S. Ct. at 1746 (noting under California law, "[a] finding of unconscionability requires "a 'procedural' and a 'substantive' element" and stating the California Discover Bank rule provided an arbitration provision was unconscionable if it was in an adhesion contract which contained a class arbitration waiver, the disputes involved predictably small amounts of damages, and the plaintiff alleged the defendant "carried out a scheme to deliberately cheat large numbers of consumers out of individually small sums of money"). Moreover, the Supreme Court in Concepcion rejected the argument that individual arbitration is not effective where the claim amount is small. Concepcion, 131 S. Ct. at 1750.