

No. 1-12-1332

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(3)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JOAN C. PAWLOWSKI GRIFFIN,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	
)	11 CH 013113
MORGAN STANLEY SMITH BARNEY LLC, a)	
Delaware Limited Liability Company and H. GEORGE)	
ANDERSON, an individual,)	Honorable
)	Daniel J. Pierce,
Defendants-Appellants.)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Salone and Justice Murphy concurred in the judgment.

ORDER

¶ 1 *Held:* Illinois law requires parties to arbitrate any claim that falls within the purview of a broad arbitration clause incorporated by reference into a contract signed by the party who seeks to avoid arbitration, even if that party never saw the incorporated arbitration clause.

¶ 2 Joan Pawlowski Griffin sued Morgan Stanley Smith Barney LLC (MSSB) and its agent, George Anderson, alleging that Anderson negligently, and in breach of his fiduciary duties, failed to name Griffin as beneficiary on certain accounts that John Leonelli, a client of MSSB and

Anderson, owned at the time of his death. MSSB and Anderson moved to compel arbitration of the claims. The trial court denied the motion. MSSB and Anderson now appeal.

¶ 3 We find that when Leonelli set up his accounts with MSSB, he agreed to arbitrate disputes concerning the handling of his accounts at MSSB and duties arising from the business of MSSB. Griffin made the arbitration clause from Leonelli's agreement applicable to her potential claims against MSSB when she signed an agreement that permitted her to act as Leonelli's agent with respect to the MSSB accounts. The broad arbitration clause Griffin signed covers the claims she raised in her complaint. Accordingly, we reverse the trial court's order and remand for arbitration of Griffin's claims.

¶ 4 BACKGROUND

¶ 5 In 2005, Leonelli submitted an application to set up accounts with MSSB, and in the application, he agreed that:

"all claims or controversies *** between [Leonelli] and [MSSB] and/or any of its present or former *** employees concerning or arising from (i) any account maintained by [Leonelli] with [MSSB] individually or jointly with others in any capacity; (ii) any transaction involving [MSSB] *** whether or not such transaction occurred in such account or accounts; or (iii) the construction, performance or breach of this or any other agreement between [Leonelli and MSSB], any duty arising from the business of [MSSB] or otherwise, shall be determined by arbitration before, and only before, any self-regulatory

organization or exchange of which [MSSB] is a member."

MSSB called this document the client agreement.

¶ 6 In June 2007, Leonelli gave Griffin a power of attorney for financial purposes, providing that if a physical or mental disability prevented Leonelli from managing his financial affairs, Griffin would have authority to write checks on and withdraw funds from all of Leonelli's accounts, including his accounts with MSSB. As part of permitting Griffin to use her power of attorney, MSSB required Griffin to sign a document titled "Agent Information, Agreement and Affidavit," which we will call the agent agreement. The agent agreement provides, "I the agent for the principals named in the power of attorney annexed hereto agree to be bound by the terms of the Client Agreement executed by the principal(s) including the provisions for the arbitration of disputes."

¶ 7 Leonelli died on February 1, 2010. In December 2011, Griffin sued MSSB and Anderson, an agent of MSSB who, according to Griffin, acted as financial adviser to Leonelli. In her complaint, Griffin alleged :

"Leonelli instructed ANDERSON that he wanted ownership of all of his accounts at [MSSB] to be changed to provide that Plaintiff was to be the beneficiary of the accounts upon his death. ***

*** One of the assets held by [MSSB] for John Leonelli was an annuity purchased through Lincoln National Life which had an initial value of \$150,000.00.

* * *

*** ANDERSON and [MSSB] owed Plaintiff a duty as an intended third-party beneficiary of the accounts of John Leonelli to handle those accounts in a reasonable, diligent, and careful manner.

*** ANDERSON and [MSSB] breached their duty by failing to change the name of the beneficiary of the annuity and the other accounts to name Plaintiff as the beneficiary.

*** As a direct result, Plaintiff could not recover the value of the annuity at John Leonelli's death which was approximately \$131,000.00."

¶ 8 Griffin phrased her complaint in two counts, alleging that Anderson acted negligently (count I) and breached his fiduciary duties to Leonelli (count II) when he failed to change Leonelli's accounts, including the Lincoln National annuity, to name Griffin as beneficiary.

¶ 9 MSSB and Anderson moved to compel Griffin to arbitrate the case. Griffin argued that the power of attorney had no bearing on her claims against MSSB and Anderson, especially because the power of attorney did not take effect until February 2009, when, according to Griffin's affidavit, Leonelli lost his capacity to manage his own finances. Griffin also said in her affidavit that she never read the client agreement that included the arbitration clause. The trial court denied the motion to compel arbitration. MSSB and Anderson now appeal.

¶ 10 ANALYSIS

¶ 11 The trial court heard no evidence before denying the motion to stay arbitration. Therefore, we review the trial court's order *de novo*. *Hollingshead v. A.G. Edwards & Sons, Inc.*, 396 Ill. App.

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3d 1095, 1099 (2009).

¶ 12 In the agent agreement, Griffin agreed "to be bound by the terms of the Client Agreement *** including the provisions for the arbitration of disputes." In the client agreement, Leonelli agreed to arbitrate any claim or controversy between Leonelli and MSSB concerning any account with MSSB or any duty arising from the business of MSSB. We see no language restricting Griffin's agreement to controversies arising out of the power of attorney or to controversies arising after the power of attorney took effect.

¶ 13 Griffin argues that she never agreed to arbitrate this dispute because she never actually read the client agreement Leonelli signed. But a party to a contract does not escape its terms by failing to read them. See *Burge Corp. v. Williams*, 45 Ill. App. 3d 359, 364 (1977). The agent agreement incorporated by reference Leonelli's client agreement, including its arbitration clause. See *Turner Construction Co. v. Midwest Curtainwalls, Inc.*, 187 Ill. App. 3d 417, 421 (1989).

¶ 14 By signing the agent agreement, Griffin agreed to arbitrate any claim concerning any account Leonelli had with MSSB or any duty arising from the business of MSSB. Griffin alleged in her complaint that Anderson negligently failed to change the names of the beneficiaries of Leonelli's accounts with MSSB, and that Anderson breached his fiduciary duty to Leonelli, arising from the business of MSSB, by failing to change the names of the beneficiaries of Leonelli's accounts in accord with Leonelli's instructions. The claims raised in the complaint fall within the purview of the arbitration clause incorporated by reference into the agent agreement.

¶ 15 The parties disagree about which arbitration act applies here. MSSB contends that the Federal Arbitration Act (9 U.S.C. § 1 *et seq.* (2006)) governs the dispute, because the contract with Leonelli involves interstate commerce. See *Hollingshead*, 396 Ill. App. 3d at 1099 (citing

Prudential Securities, Inc. v. Hornsby, 865 F. Supp. 447, 449 (N.D. Ill. 1994)). Griffin argues that a choice of law clause in the contract makes Illinois's arbitration law apply. See *Yates v. Doctor's Associates, Inc.*, 193 Ill. App. 3d 431, 437-38 (1990). We find we need not resolve the issue because even under Illinois law, the agent agreement includes an enforceable arbitration clause in which Griffin agreed to arbitrate a range of claims that includes the claims she raises in her complaint. See *Green v. Bank One LaGrange*, 266 Ill. App. 3d 344, 348 (1994). Under either law, MSSB has a right to arbitration of the claims Griffin raises. See *Maxum Foundations, Inc. v. Salus Corp.*, 779 F.2d 974, 978 (4th Cir. 1985); *J & K Cement Construction, Inc. v. Montalbano Builders, Inc.*, 119 Ill. App. 3d 663, 668-70 (1983).

¶ 16

CONCLUSION

¶ 17 Leonelli agreed to arbitrate any disputes with MSSB and its employees arising from the handling of any of his accounts with MSSB or any duty arising from MSSB's business. Griffin in the agent agreement made this arbitration agreement applicable to claims she might bring. In her complaint, Griffin alleged that MSSB, through Anderson, mishandled Leonelli's account and breached a duty to Leonelli arising from MSSB's business. Accordingly, we find that the arbitration clause in Leonelli's contract, incorporated by reference into the agent agreement, gives MSSB and its employee, Anderson, the right to arbitration of Griffin's claims. We reverse the judgment of the trial court and remand for entry of an order staying further litigation pending arbitration of Griffin's claims.

¶ 18 Reversed and remanded with instructions.