DOCKET NO. CV 10-6015858S	:	SUPERIOR COURT
AVIONICS TECHNOLOGIES INC.	:	JUDICIAL DISTRICT OF NEW HAVEN
V.	:	AT NEW HAVEN
ULTI-MATE CONNECTOR, INC.	:	APRIL 21, 2011

MEMORANDUM OF DECISION

RE: MOTION TO STAY LITIGATION AND TO COMPEL ARBITRATION

The Plaintiff, a Connecticut-based sales representative, has brought this action, which seeks the payment of unpaid commissions, against the defendant, a California corporation with whom the plaintiff has a contract to promote its products and services within the aerospace and defense industries. The defendant has filed the instant motion, in which it contends that, pursuant to the terms of their contract, the parties' dispute must be arbitrated in the State of California in accordance with California law and that this action must therefore be stayed in order to permit the arbitration to occur.

The parties' briefs and oral arguments suggest a scenario similar to, although with consequences far more serious than, the children's game of "Rock-Paper-Scissors."[1] The "Rock" in this case is a series of two contracts, the first in 2004 and the second in 2006, in which the defendant made the plaintiff its sales representative within a specific geographical area and at a specific commission rate and which required that all disputes under the contract be settled by arbitration in California under California law. The "Paper" is a Connecticut statute which, the plaintiff argues, supersedes and defeats the defendant's contractual rights to arbitration, and the "Scissors" is the Federal Arbitration Act which, according to the defendant, preempts the field and supersedes the state statute on which the plaintiff relies.

To be more specific, on March 1, 2004, the parties executed the first of two Manufacturer's Representative Agreements (the "2004 Agreement,") in which plaintiff was awarded the "non-assignable right" to sell Defendant's products in Florida, Georgia, Alabama, Mississippi, South Carolina, and North Carolina. Defendant agreed to pay plaintiff a commission rate of 7.5% during the term of this agreement. Then, on August 21, 2006, the parties executed a second Manufacturer's Representative Agreement (the "2006 Agreement,"), reducing the commission to 5% but adding New York, New Jersey, Pennsylvania, Delaware, Maryland, Washington DC, Virginia and [effective September 1, 2006] the six New England States" to the plaintiff's territory.

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[1] A game used to settle disputes, in which each party, on a given signal, displays a hand gesture: **Rock**, represented by a clenched fist; **Paper**, represented by an open hand, palm down, with the fingers connected; or **Scissors**, represented by the index and middle fingers extended and separated. The objective is to select a gesture which will defeat that of the opponent as follows: Rock breaks scissors (that is, rock defeats scissors); Scissors cuts paper(scissors defeats paper); Paper covers rock(paper defeats rock).

Paragraph 11 of both the 2004 Agreement and the 2006 Agreement contains the following provision:

> Any controversy or claim arising out of or relating to the Agreement shall be settled by Arbitration in accordance with the rules of the American Arbitration Association then in effect and judgment or any award rendered may be entered in any court having jurisdiction thereof. Such Arbitration hearing shall be entered and held in Orange County, CA.

The agreement also provides that the arbitration panel is to apply California law.

The plaintiff filed this lawsuit, claiming that defendant violated the Agreements by failing to pay all of the commissions owed to it and by failing to provide plaintiff with information concerning its sales within the designated territory. The defendant then filed the instant motion seeking to compel the defendant to arbitrate its complaint in accordance with the contract.

The plaintiff does not seriously dispute the defendant's contention that, assuming that the arbitration provision itself is valid, the agreement to apply California law at the arbitration is also valid. Connecticut will "give effect to the parties' contractual choice-of-law provisions, *New Falls Corp. v. Lerner*, 579 F. Supp. 2d 282, 286 (D. Conn. 2008) (citing *Elger v. Elger*, 679 A.2d 937 (Conn. 1996)), unless either "(a) the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice, or (b) application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue[.]" *Elger*, 679 A.2d at 942 n.7 (quoting Restatement (Second) of Conflict of Laws, § 187 (1971)). California obviously has a substantial relationship to the parties, as Defendant's principal place of business is located there, and the second exception would also not apply as

both California and Connecticut have policies strongly favoring arbitration. See, *Hartford v. Am. Arbitration Ass'n.*, 174 Conn. 472, 480 (1978) (recognizing that Connecticut public policy "has long favored arbitration as a means of settling disputes . . .")

The "Rock," as previously stated, is the parties' contractual agreement to arbitrate their disputes. The defendant contends that despite the fact that the plaintiff has sought to vindicate its claims by filing an action in a Connecticut court, the contractual provision mandating arbitration trumps any effort to resolve this case through litigation. The plaintiff, however, claims that its "Paper" . . . in this case a cause of action brought pursuant to Gen. Stats. §. 42-481 et. sec., the "Sales Representative's Commissions Statute" (hereinafter, "Commissions Statute) "covers" the defendant's "rock" and, by its own terms, trumps the defendant's reliance on the arbitration provision.

The Commissions Statute states, in pertinent part, that "any provision in a contract between a sales representative and a principal that provides for the waiver of any provision of sections 42-482 and 42-483 shall be void." See Gen. Stats. § 42-484(a). Section 42-482(b) provides for the right of a sales representative recover in "a civil action . . . twice the full amount of the commission owed to such sales representative." The defendant does not dispute either the plaintiff's contention that Avionics is a "sales representative" pursuant to Section 42-481(4) or that Ulti-Mate is a "principal" pursuant to Section 42-481(3).

Section 42-482(b) of the Commissions Statute provides a sales representative with an express right to assert a claim "in a civil action" for non-payment of sales commissions upon termination of the sales commission agreement:

> (b) Any principal who willfully, wantonly, recklessly or in bad faith fails to pay commissions due in accordance with the provisions of subsection (a) of this section shall

be liable in a civil action brought by a sales representative for twice the full amount of the commission owed to such sales representative.

The Commissions Statute also specifically authorizes this "civil action" to be brought in Connecticut by providing for Connecticut "jurisdiction over such principal in an action brought pursuant to subsection (b) of this section." See Gen. Stats. § 42-482(d).

The right to an "action" means more than just the right to submit a dispute to arbitration, and our Supreme Court has indeed stated that an "arbitration proceeding is not an 'action' . . ." in *Dayco Corp. v Fred T. Roberts and Co.,* 192 Conn. 497, 503 (1984). It has long been recognized that the word "action" generally means "the lawful demand of one's right in a court of justice; and in this sense it may be said to include any proceeding in such a court for the purpose of obtaining such redress as the law provides." Id. at 502 (quoting *Waterbury Blank-Book Mfg. Co. v. Hurlburt*, 73 Conn. 715, 717 (1901).

The plaintiff contends that the absolute right to bring a civil action in Connecticut under the Commissions Statute is protected by the non-waiver provision of the statute, which states, in § 42-484(a): "Any provision in a contract between a sales representative and a principal that provides for the waiver of any provision of sections 42-482 and 42-483 shall be void." Therefore, the plaintiff claims, the statutory right to a "civil action" in Connecticut state court authorized by § 42-482 cannot be waived by agreement between the parties and thus precludes the enforcement of the arbitration and choice-of-law provisions in the Agreements.

In response, the defendant brings out its "Scissors" in the form of the Federal Arbitration Act ("FAA") 9 U.S.C. §2, which, it claims, cuts the "Paper" on which the plaintiff's Commissions Statute is written. The FAA provides that any contract involving interstate

commerce, and containing a written provision agreeing to submit a controversy arising out of the contract to arbitration, "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 applies to written arbitration provisions in all transactions "affecting commerce." because "the Commerce Clause gives Congress the power to regulate" such commerce. *Citizen Bank v. Alafabco, Inc.*, 539 U.S. 52, 123 S.Ct. 2037, 2040, 156 L.Ed.2d 46 (2003) (per curiam). The plaintiff concedes, as it must, that this matter involves interstate commerce: plaintiff is based in Connecticut, defendant is based in California, and the subject matter of the Agreements involves product sales in eighteen states plus the District of Columbia. See, e.g., *Citizens Bank*, 123 S. Ct. at 2040 (FAA applies to agreement between local business establishments purchasing substantial quantities of goods that have moved in interstate commerce") (citing *Katzenbach v. McClung*, 379 U.S. 294 (1964)); *Mount Diablo Med. Ctr. v. Health Net of Cal.*, 101 Cal. App. 4th 711, 718 (Cal. App. 1st Dist. 2002) (recognizing that an agreement requiring a hospital to provide medications and supplies manufactured and distributed nationwide qualified as a contract involving interstate commerce and thus the FAA governed the substantive law of an arbitration provision). The present controversy clearly arises out of the parties' contracts, which include written arbitration provisions, thus satisfying the other requirement for coming within the scope of the FAA.

The FAA "establishes a national policy favoring arbitration when the parties contract for that mode of dispute resolution." *Preston v. Ferrer*, 552 U.S. 346, 349 (2008) (observing that "the preeminent concern of Congress in passing the Act was to enforce private agreements into which the parties had entered.") (quoting *Dean Witter Reynolds v. Byrd*, 470 U.S. 213, 221

(1985)). See also *Southland corp. v. Keating*, 465 U.S. 1, 7 (1984) ("Congress declared a national policy favoring arbitration and withdrew the power of the states to require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration.")

In furtherance of this national policy, and pursuant to Congress' authority under the Commerce Clause, "[t]he Supreme Court has declared that the FAA preempts all state laws that impermissibly burden arbitration agreements." *Doctor's Assocs. v. Hamilton*, 150 F.3d 157, 162 (2d Cir. 1998) (rejecting plaintiff's contention that arbitration provision was unenforceable under New Jersey's franchise protection act because of that act's language permitting redress in a judicial forum) (citing *Southland*, 465 U.S. at 10-11). The FAA's preemption language applies in actions commenced in both state and federal courts. See *Kogut v Chickosky*, No. X06CV030183485S, 2005 Conn. Super. LEXIS 1480 (Conn. Super. Ct. June 1, 2005) ("The FAA governs claims in state court as well as federal court and pre-empts all contrary state statutes.") (Citing *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265 (1995) and *Southland Corp. v. Keating*, 465 U.S. 1 (1984)); see also *Circuit City Stores, Inc v. Saint Clair Adams*, 532 U.S. 105, 112 (2001) (recognizing that the FAA is "applicable in state courts and preemptive of state laws hostile to arbitration.") (citations omitted).

Thus, to the extent that the Connecticut Sales Representatives' Commissions Statute conflicts with the FAA, the Supremacy Clause of the Constitution results in state law being rendered "preempted and unenforceable." *Citizens Bank,* supra, 123 S. Ct. at 2040. See also, *Am. Fin. Servs. Ass'n v. Burke*, 169 F. Supp. 2d 62, 69 (D. Conn. 2001) (Concluding that section

5(7) of the Connecticut Abusive Home Loan Lending Practices Act was inconsistent with the FAA because it voided any arbitration provisions and was therefore preempted).

Although no court has faced the precise question of whether the Connecticut Sales Representatives' Statute itself is preempted by the FAA, courts in this state have so far consistently held that when a particular Connecticut state statute would require a complaint concerning a matter involving interstate commerce to be addressed in a judicial forum despite the parties' express agreement to arbitrate, the state statute is preempted by the FAA. See, *e.g.*, *Topft v. Warnaco, Inc.*, 942 F. Supp. 762, 772 (D. Conn. 1996) (finding preemption of Connecticut Fair Employment Practices Act to the extent that the act precluded arbitration of plaintiff's claims); see also *Patrowicz v. Transamerica HomeFirst, Inc.*, 359 F. Supp. 2d 140, 158 (D. Conn. 2005) (concluding that with respect to arbitration, the fact that the plaintiff asserted claims under Connecticut Unfair Trade Practices Act was irrelevant because the FAA "deprives states of the authority to preclude arbitration of state statutory claims.") (citing *Circuit City Stores, Inc. v. Saint Clair Adams*, 532 U.S. 105 (2001)); *Discount Trophy & Co., Inc. v. Plastic Dress-Up Co.*, No. 3:03cv2167 (MRK) 2004 U.S. Dist. LEXIS 2659.

Although the court agrees that federal law, in this case the FAA, preempts the ability of the Commissions Statute to override the arbitration provisions in the parties' agreement, the plaintiff has in its arsenal one additional "rock," with which it proposes to smash the defendant's "scissors." The plaintiff argues that under either California or Connecticut law, the arbitration and choice-of-law provisions of the contract are unconscionable and therefore unenforceable. Under California law, a contract provision may be rendered unenforceable by showing both

procedural and substantive unconscionablility. *Armendariz v Found Health Pyschcare Servs., Inc.*, 24 Cal. 4th 83, 99 Cal. Rptr.2d 745, 6P.3d 669 (2000).

A contract is procedurally unconscionable if at the time it was formed there was "oppression" or "surprise." *Discover Bank v. Superior Court of L.A.*, 36 Cal. 4th 148, 160, 30 Cal. Rptr.3d 76, 113 p.3d 1100(2005). "Oppression exits if an inequality of bargaining power between the parties results in the absence of real negotiation and meaningful choice." *Stern,* supra, 453 F. Supp.2d at 1145. "A contract is substantively unconscionable if the contract or a provision thereof is overly harsh or one-sided." Id. Under Connecticut law, "[u]nconscionability generally requires a demonstration of an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party." *Emlee Equipment Leasing Corp. v. Waterbury Transmission, Inc.*, 31 Conn. App. 455, 464 (1993) (internal quotations omitted).

Plaintiff has tried to make a procedural unconscionability argument based on an implication of uneven bargaining power between sales representatives and their principals. It argues that it was given no choice as to the inclusion of the choice-of-law and arbitration provisions of the Agreement, that it was presented with the Agreement's boilerplate terms on a take-it-or-leave-it basis, and that this was essentially a contract of adhesion. Plaintiff's only evidence on this point, however, is that the contract was drafted by the defendant and was apparently a "form" contract, with the arbitration provisions as "boilerplate" and only a few blanks left to be filled in relevant to the names of the sales representative, territory to be covered, and commissions rate. The plaintiff provides no evidence that it was in fact pressured to accept the arbitration provisions despite a clear desire not to do so, or even that the plaintiff made any

attempt to discuss the arbitration provision, and there is nothing else before the court that suggests that the inclusion of the arbitration provision was procedurally unconscionable.

Plaintiff also contends that the arbitration and choice-of-law provisions are overly harsh and one-sided in that they force a sales representative from Connecticut to come to California to have any dispute resolved there. As failure to pay commissions is the primary, and, perhaps, only, dispute likely to arise from the agreement, plaintiff argues that requiring it to pursue its remedies three thousand miles away, simply to obtain payment of its commissions, is oppressive. In and of itself, however, this argument also fails in the absence of any actual evidence that in the 21st century, the necessity of a flight to California represents any kind of exceptional hardship for a company doing business for this defendant alone in 18 states and the District of Columbia.

The plaintiff's final argument, however, is grounded in the concept of "substantive unconscionability," the notion that enforcement of the arbitration and choice-of-law provisions deny the plaintiff certain substantive rights and run afoul of the public policy of Connecticut as evidenced by the Commissions Statute itself, whose terms include a double damages provision and bar waiver of the right to sue in Connecticut for unpaid sales commissions. It argues that the statute's legislative history, which demonstrates an intent to protect Connecticut sales representatives from having to leave the state to try to collect their sales commissions, would be thwarted by permitting the waiver.. The defendant replies that while it is true that, absent an arbitration provision, the Commissions Statute would secure a sales representative's right to bring an action for double damages here rather than accept arbitration in the defendant's home state and applying the laws of that home state, that intent does not specifically address the situation where parties engaged in interstate commerce have agreed to arbitrate their disputes.

Many courts that have addressed the unconscionability issue in the context of the FAA have done so in matters involving federal law and/or in cases involving class action lawsuits, where the contract called for individual arbitrations only in the defendant's home state, and several of these have affirmed trial court findings that such arbitration schemes are unconscionable. See, e.g. *Fensterstock v. Education Finance Parners.*, 611 F.3d 124 (2nd Cir. 2010). The situation here is not analogous, and the only potentially viable substantive unconscionability claim is based on the contention that by having to arbitrate under California law, the plaintiff gives up the double damages and any other provisions of the Commissions Statute that are particularly favorable to plaintiffs.

Nine years ago, Judge Hodgson considered a comparable claim in *Wyatt Energy, Inc. v. Motiva Enterprises LLC*, No.X01CV020467090S, 2002 WL 31374797 at*7, 33 Conn. L. Rptr. 225 (Conn. Super. Sept. 27, 2002). This appears to be the only Connecticut case in which a party sought to cite the specific plaintiff-favoring language of a domestic statute as the basis for determining that despite the terms of the FAA, requiring arbitration pursuant to contract would be unconscionable as a matter of substantive law. In *Wyatt*, the court was asked to decide whether an action should be stayed in favor of arbitration under circumstances where the plaintiff asserted claims under the both the Connecticut Antitrust Act and the Connecticut Unfair Trade Practices Act. The parties' agreement contained arbitration and choice-of-law clauses which provided that any dispute under the agreement should be resolved under Texas law in an arbitration to be held in Texas. Judge Hodgson determined that "the operation of the arbitration/choice-of-laws clause at issue would preclude [the plaintiff] from enforcing CUTPA and from vindicating the public policy of the State of Connecticut" and that "[b]y the terms of

the contract provision at issue, [the plaintiff] would likewise be unable to enforce the protections of the Connecticut Antitrust Act." Id. at *7. The court held that "the choice-of-forum and choice-of-law clauses in the [agreement] operate in this case in tandem to deprive [the plaintiff] of Connecticut statutory remedies that were enacted to effectuate important public policies of the State of Connecticut." Based on this finding of substantive unconscionability, the court denied the motion for a stay of the action as to these claims. Id. Moreover, because the plaintiff in *Wyatt* asserted common law claims in addition to its Connecticut statutory claims, the court went on to consider whether the entire arbitration clause was enforceable or whether it was unenforceable only as to the statutory claims. The court held that "where the arbitrable and nonarbitrable claims are intertwined, the correct remedy is to find that the arbitration provision as a whole is unenforceable." Id. at *8 (citing *Graham Oil Co. v. ARCO Products Co.*, 43 F.3d 1244, 1247-49 (9th Cir. 1994)).

The *Wyatt* decision was never appealed, and as a decision of the Superior Court, it is not binding on this court. Moreover, it seems to reflect a distinctly minority view, concluding that the public policy expressed by the double damages provisions of CUTPA are enough to trump the FAA's mandate to give effect to arbitration provisions in matters concerning interstate commerce. All statutes embody expressions of public policy, of course, and there is nothing in the FAA or the cases which have construed it that suggest that the inclusion of a double damages provision somehow puts the public policy expressions of CUTPA and the/or the Connecticut Antitrust Act into a category beyond the reach of the FAA. Other than *Wyatt*, the plaintiff has not provided, and the court has not found, any case that stands for the proposition that when a

statute with enhanced plaintiff's remedies includes a non-waiver provision, the non-waiver provision trumps the Federal Act.

The weight of authority is indeed to the effect that in the absence fraud, duress or something very close to those, the fact that a party loses certain local statutory advantages as the result of the requirement of arbitration, will not serve to defeat an otherwise valid arbitration clause in a contract dealing with interstate commerce. "The purpose of the [FAA] was to assure those who desired arbitration and whose contracts related to interstate commerce that their expectations would not be undermined by . . . state courts or legislatures." *Southland Corp. v. Keating*, 465 U.S. 1, 16 (1984) (Internal quotation and citation omitted). In passing Section 2 of the FAA, Congress "withdrew the power of the states to require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration," *id.* at 10, and "precluded States from singling out arbitration provisions for suspect status," *Doctor's Assocs. v. Casarotto*, 517 U.S. 681, 687(1996). Thus, courts have consistently invalidated state law provisions that purported to render arbitration clauses in certain contracts unenforceable. For example, in *Southland Corp v. Keating*, supra, the Supreme Court struck down a California statute banning arbitration under franchise agreements; in *Perry v. Thomas*, 482 U.S. 483 (1987), it struck down a California statute banning arbitration in actions for the collection of wages; in *Saturn Distribution Corp. v. Williams*, 905 F2d 719 (1990, the Fourth Circuit struck down a Virginia statute restricting arbitration in automobile dealership agreements; and in *Securities Industries Association et al v. Connolly, et al*, 883 F.2d 1114 (1989), the First Circuit struck down Massachusetts regulations restricting the use of mandatory arbitration in the securities industry.

In *American Financial Services. Ass'n v. Burke*, 169 F. Supp. 2d 62 (2001), the United States District Court for the District of Connecticut was called upon to construe a Connecticut statute that declared mandatory arbitration clauses in "high cost home loan" agreements to be unlawful, and hence invalid and unenforceable, and prohibited the formation of mandatory arbitration clauses in such agreements. The court struck down this prohibition, concluding that, "[t]he FAA does not permit a state to single out arbitration agreements in standardized contracts and, in effect, declare their very formation to be unconscionable." (citations omitted)

More recently, the Connecticut District Court considered and specifically rejected *Wyatt* as a basis for applying a statutory non-waiver provision as a basis for voiding an arbitration clause. In *Discount Trophy & Co., Inc. v. Plastic Dress-up Co.*, No. 3:03cv2167 (MRK) 2004 U.S. Dist. LEXIS 2659, the court noted that *Wyatt* had ignored Supreme Court precedent and opined that it had mis-read *Roby v. Corp. of Lloyd's,* 996 F.2d 1353 (2d Cir. 1993),on which it had purported to rely. The District Court recognized that "*Wyatt* did quote portions of the Second Circuit's decision in *Roby*, but in that case, the Second Circuit *rejected* arguments similar to those proffered by [the plaintiff]. And, the Second Circuit did so in language that causes the Court considerable doubt about the holding in *Wyatt*.. As the Second Circuit stated:

> It defies reason to suggest that a plaintiff may circumvent forum selection and arbitration clauses merely by stating claims under laws not recognized by the forum selected in the agreement. A plaintiff simply would have to allege violations of *his country's* tort law or *his country's* statutory law or *his country's* property law in order to render nugatory any forum selection clause that implicitly or explicitly required the application of the law of another jurisdiction.

996 F.2d at 1360 (emphasis in the original). Accordingly, the Second Circuit 'refused to allow a party's solemn promise to [arbitrate to] be defeated by artful pleading,'" *See* also *Patrowicz v.*

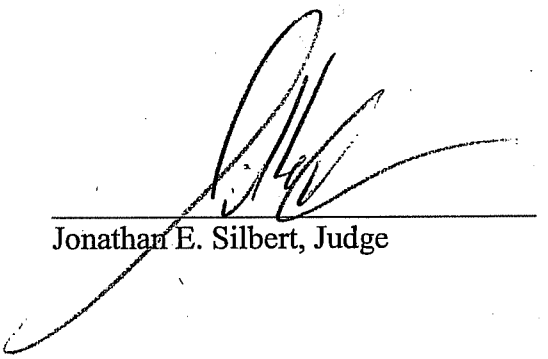
Transamerica HomeFirst, Inc., 359 F. Supp. 2d 140 (D. Conn. 2005), in which the Court recognized that even in a case in which the plaintiff had claimed a violation of the Connecticut Unfair Trade Practices Act ("CUTPA") (a violation of which was also at the heart of the claim in *Wyatt)*, such an allegation would not render the parties' contractual arbitration clause unconscionable and thus would not take it out of the FAA's purview. That the Commissions Statute also carries a double damages provision likewise is insufficient to negate the arbitration provision in the parties' contract.

It is true, as plaintiff points out, that unlike the situation in *Roby*, its invocation of the Commissions Statute does not raise an issue of "artful pleading," as the only actual dispute likely to arise under the contract with this defendant would be the non-payment of commissions alleged here, the precise issue contemplated by the Statute. Neither that fact, however, nor any other that the plaintiff has brought to the court's attention, merits a conclusion that the arbitration agreement is "unconscionable" or otherwise creates "grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2.

In summary, Gen. Stats. § 42-484(a) states that "[a]ny provision in a contract between a sales representative and a principal that provides for the waiver of any provision of sections 42-482 and 42-483 shall be void." If the contract in this case had made no mention of arbitration but simply called upon plaintiff to waive the double damages provisions and/or the right to bring an action pursuant to the Commissions Statute, that waiver would be considered void in the absence of any superseding law. This case, however, involves not a specific waiver of any portion of the Statute, or of the Statute as a whole, but rather an agreement to arbitrate which, bolstered by the FAA, serves to supersede the right to pursue a civil action under the Statute.

Plaintiff is not left without a remedy, but is rather restricted to the remedy to which it agreed in its contract with the defendant, pursuant to a process which federal law not only favors, but, due to the fact that federal law preempts the field in interstate commerce cases such as this, binds those parties who contract to resolve their disputes through arbitration to follow through with that mode of dispute resolution. The plaintiff has established neither procedural nor substantive unconscionability that might relieve it of the FAA's mandate, and the arbitration requirement of the contract must therefore be upheld.

In the final analysis, then, what the plaintiff thought was a bigger rock is in fact only another piece of paper, cut through in this case by the scissors of the FAA. The defendant's motion to stay these proceedings and to compel arbitration pursuant to the terms of the parties' contract is therefore granted.



Jonathan E. Silbert, Judge