

IN THE CIRCUIT COURT OF THE  
11<sup>TH</sup> JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

NANCY ALLEN, AMPARO AVILA, CALVIN  
BANKS, ASTRIDE BEIN-AIME, ANDRE  
BELIDOR, LORENA CASTILLO, TERESITA  
CERQUERA, JASON CHRISTIANSEN,  
ANTHONY CLARK, *et al*

Plaintiffs,

CASE NO: 09-82004-CA-01/25

v.

AMERICAN TRADES INSTITUTE OF  
FLORIDA, INC. A/K/A/ ATI ENTERPRISES  
OF FLORIDA, INC., A FOREIGN  
CORPORATION, AND ATI ENTERPRISES,  
INC., A FOREIGN CORPORATION,

Defendants.

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**ORDER GRANTING DEFENDANTS' MOTION FOR  
REHEARING AND RECONSIDERATION REGARDING MOTION  
TO COMPEL ARBITRATION AND STAY THE PROCEEDINGS**

This Cause came before the Court on August 12, 2011 upon Defendants' Motion for Rehearing and Reconsideration of Motion to Compel Arbitration and Stay the Proceedings (the "Motion"). The Court, having reviewed the Motion, reviewed the parties' various written submissions, conducted a lengthy hearing, and otherwise being advised in the premises, does hereby:

**ORDER** and **ADJUDGE** that the Motion is **GRANTED**. The parties' arbitration agreement "clearly and unmistakably" delegates the question of arbitrability to the arbitrator. Because there is no dispute that the arbitration agreement contains a delegation provision, and Plaintiffs do not contest the enforceability of the delegation provision specifically, the Court must enforce it. *Rent-A-Center West, Inc. v. Jackson*, 130 S.Ct. 2772 (2010) ("*Rent-A-Center*").

There is no dispute that the parties' arbitration agreement in the enrollment agreement states: "[a]ny Dispute....shall be resolved by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect..." Exhibit A to ATI's Motion to Compel, at p. 2, ¶2 (emphasis added). Rule R-7(a) of the Commercial Arbitration Rules of the American Arbitration Association (the "AAA Commercial Rules") provides that "[t]he arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement." (Emphasis added.) Therefore, the parties have contractually agreed that any question as to the "existence, scope, or validity of the arbitration agreement" is for the arbitrator to decide in the first instance. *Id.*

Courts that have reviewed similar language in arbitration agreements, including the Eleventh Circuit Court of Appeals and the U.S. District Court for the Southern District of Florida, have held that by incorporating the AAA Commercial Rules into an arbitration provision, the parties have "clearly and unmistakably" indicated their intent to delegate the issues of arbitrability to an arbitrator. *See e.g. Terminix Intern. Co., LP v. Palmer Ranch Ltd. P'ship*, 432 F.3d 1327, 1332-333 (11<sup>th</sup> Cir. 2005) (holding that, by incorporating the AAA Commercial Rules into the arbitration agreement, the parties had clearly and unmistakably agreed that an arbitrator must decide whether the arbitration clause is valid); *Brandon, Jones, Sandall, Zeide, Kohn, Shalal & Musso, P.A. v. Med Partners, Inc.*, 203 F.R.D. 677, 685 (S.D. Fla. 2001) (holding that an agreement's incorporation by reference of the AAA rules "provide[s] clear and unmistakable evidence that the parties agreed to arbitrate arbitrability"), *aff'd* on other grounds, 312 F.3d 1349 (11<sup>th</sup> Cir. 2002); *Fallo v. High-Tech Inst.*, 559 F.3d 874, 878 (8<sup>th</sup> Cir. 2009) (concluding that the arbitration provision's incorporation of the AAA Rules constituted a "clear

and unmistakable expression of the parties' intent to leave the question of arbitrability to an arbitrator"); *see also Qualcomm, Inc. v. Nokia Corp.*, 466 F.3d 1366, 1372-73 (Fed. Cir. 2006) (holding that an arbitration clause which incorporated the AAA Rules clearly and unmistakably showed the parties' intent to delegate the issue of determining arbitrability to an arbitrator); *Contec Corp. v. Remote Solution Co.*, 398 F.3d 205, 208 (2d Cir. 2005) (holding that when "parties explicitly incorporate rules that empower an arbitrator to decide issues of arbitrability, the incorporation serves as clear and unmistakable evidence of the parties' intent to delegate such issues to an arbitrator") citing *Shaw Group Inc. v. Triplefine Int'l Corp.*, 322 F.3d 115, 122 (2d Cir. 2003); *Kimble v. Rhodes College, Inc.*, 2011 WL 2175249 (N.D. Cal. June 2, 2011) (holding that "there is clear and unmistakable evidence of the parties' agreement to arbitrate arbitrability" because the arbitration agreement incorporated the AAA's Consumer Rules which also include the AAA's Commercial Rules); *Barkl v. Career Educ. Corp.*, 2010 WL 4979231 (D. Minn. Dec. 2, 2010) (holding that "the Court need not address whether the dispute resolution provision is invalid...or unconscionable" and that plaintiff's objections to arbitration must be decided by an arbitrator since the parties' arbitration agreement incorporated the AAA's Commercial Rules and thereby clearly and unmistakably delegated the question of arbitrability to an arbitrator); *Grynberg v. B.P., PLC*, 585 F.Supp.2d 50, 55 (D.D.C. 2008) citing to *Avue Technologies Corp. v. DCI Group, LLC*, Civ. A. No. 06-327 (JDB), 2006 WL 1147662 at \*6-7 (D.D.C. Apr. 28, 2006) (holding that under D.C. and federal law, incorporation of AAA Rules by reference constitutes clear and unmistakable evidence that the parties intended an arbitrator to determine arbitrability).

Several Plaintiffs submitted affidavits which make factual allegations regarding the circumstances surrounding the execution of their contractual enrollment agreement with

Defendants.<sup>1</sup> Defendants maintain that Plaintiffs' allegations (which Defendants dispute) attack the enrollment agreement as a whole. Plaintiffs argue that their factual allegations attack the arbitration agreement. The Court need not determine whether Plaintiffs' allegations attack the entire enrollment agreement or merely the arbitration agreement because the allegations do not specifically attack the delegation clause in the arbitration provision. The U.S. Supreme Court recently held that when an arbitration agreement includes a delegation clause, an arbitrator, and not the court, should determine the enforceability of the arbitration agreement. See *Rent-A-Center*, 130 S.Ct. 2772 (2010). There, the Supreme Court determined that "unless [the plaintiff] challenged the delegation provision specifically, we must treat it as valid...leaving any challenge to the validity of the [arbitration] Agreement as a whole for the arbitrator." *Id.* at 2779 (emphasis added).

Florida's Fourth District Court of Appeal recently applied the law established in *Rent-A-Center* in a case where the plaintiff made similar allegations as those that Plaintiffs make here. In *ATP Flight School, LLC v. Sax*, 44 So.3d 248 (Fla. 4<sup>th</sup> DCA 2010), the plaintiff alleged that the arbitration agreement was unenforceable because there was unequal bargaining power, because the agreement was against Florida public policy, because it was one-sided, and because the plaintiff was unable to review the agreement and fully consider it. *Id.* at 250. Citing *Rent-A-Center*, the 4<sup>th</sup> DCA held that the arbitrator should determine these issues because they did not relate to the enforceability of the delegation provision in the arbitration agreement. *Id.* at 252. As the 4<sup>th</sup> DCA explained, the Supreme Court in *Rent-a-Center* concluded that "unless a claimant specifically challenges the delegation of authority to the arbitrator, any challenges to the validity of the entire arbitration agreement, which the parties have assented to, was subject to arbitration and must be left to the arbitrator to resolve." *Id.* at 253.

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<sup>1</sup> Defendants moved to strike the affidavits that were belatedly filed by Plaintiffs.

In this case, just as in *Rent-A-Center* and *ATP*, Plaintiffs have not challenged the delegation provision specifically. Consequently, it is up to an arbitrator to determine any remaining questions of arbitrability.

Therefore, for the reasons stated above, the following Plaintiffs are hereby compelled to individual arbitration before the American Arbitration Association in accordance with the terms and conditions of his or her individual arbitration agreement:

1. Wendy Abranhamson
2. Nancy Allen
3. Amparo Avila
4. Calvin Banks
5. Marie Bazile
6. Astride Bein-Aime
7. Andre Belidor
8. Lorena Castillo
9. Teresita Cerquera
10. Jason Christiansen
11. Anthony Clark
12. Carole Cummings
13. Claudia De La Victoria
14. Filibert Desrosins
15. Angela Dockweiler
16. Beatha Dorsonne
17. Tabatha Dupuis
18. Vanessa Fernandez
19. Nora Gaston
20. Tsunami Gomez
21. Sandra Gustetic
22. Dwayne Hill
23. Jerline Jeanlouis
24. Flor De Lis Jimenez
25. Yieley Joseph
26. Amy Lancho
27. Latoya Lewis
28. Schirlene Lubin-Novell
29. Christee Mattingly
30. Orquidea Mayorga
31. Connie Y. Merchant-Banks
32. Melissa Merritt
33. Deborah Minogue
34. Carlene Moise
35. Tanisha Montgomery

36. Cesar Munante
37. Joline Narcisse
38. Lena Persad
39. Nancy Philemon
40. Sandy Pierre
41. Jacqueline Rodriguez
42. Nadia Rosell
43. Mary Ruden
44. Marie Siphort
45. Louise Saint-Fart
46. Vanessa Sybron
47. Nathaly Telbort
48. Diana Torres
49. Jose Vega
50. Karla Zaldivar

This action is stayed pending the contractually required individual arbitrations before the American Arbitration Association.

**DONE AND ORDERED** at Chambers in Miami, Florida this 2nd day of May, 2012.

  
BEATRICE BUTCHKO  
CIRCUIT COURT JUDGE

cc: all counsel

Beatrice A. Butchko  
Circuit Court Judge

2013 WL 2670946

Unpublished Disposition

Only the Westlaw citation is currently available.

NOT FINAL UNTIL TIME EXPIRES

TO FILE REHEARING MOTION

AND, IF FILED, DISPOSED OF.

District Court of Appeal of Florida,

Third District.

Nancy ALLEN, et. al., Appellants,

v.

AMERICAN TRADE INSTITUTES  
OF FLORIDA, etc., et. al., Appellees.

No. 3D12-1461. | June 12, 2013.

An Appeal from the Circuit Court for Miami-Dade County,  
Beatrice A. Butchko, Judge.

**Attorneys and Law Firms**

Marlene S. Reiss, for appellants.

Homer Bonner, P.A., and Peter W. Homer and Christopher J.  
King, for appellees.

Before EMAS and FERNANDEZ, JJ., and SCHWARTZ,  
Senior Judge.

**Opinion**

PER CURIAM.

\*1 Affirmed.