

AMERICAN ARBITRATION ASSOCIATION

LATOYA CHATMAN,)
)
 Claimant,)
)
 v.) AAA Case No. 01-23-0005-4632
)
 EXPERIAN INFORMATION SOLUTIONS, INC.,)
)
 Respondent.)

ORDER REGARDING ARBITRABILITY

In the preliminary hearing of this matter the parties notified the arbitrator that a threshold issue of arbitrability exists. The parties agreed to submit their arguments and support through briefing alone. Pursuant to the scheduling order presented after the preliminary hearing, both parties submitted their briefs on the matter. After considering same, the arbitrator FINDS as follows:

On April 4, 2022, Claimant LaToya Chatman [“Chatman”] filed claims in the Western District of Texas against Respondent, Experian Information Solutions, Inc. [“Experian”]. She asserted claims under the Fair Credit Reporting Act [“FCRA”], 15 U.S.C. §1681a(f), specifically asserting that Experian provided inaccurate reporting to third party prospective creditors, namely that she was deceased. Claimant alleges that the inaccurate reporting of her death to third parties caused them to take action that caused her pecuniary harm, mental distress and physical pain associated with a dental procedure put on hold due to loss of a credit line needed to complete same.

On July 19, 2023, Experian moved to compel arbitration and the federal court granted that motion, staying the Federal Action and finding that the issue of arbitrability is a question delegated to the arbitrator. This matter, filed with the American Arbitration Association, followed.

The parties agree that the issue of arbitrability is a threshold issue. The Terms of Use provided by Experian in this matter state that “all issues are for the arbitrator to decide, including the scope and enforceability of this arbitration provision as well as the Agreement’s other terms

and conditions, and the arbitrator shall have the exclusive authority to resolve any such dispute relating to the scope and enforceability of this arbitration provision...” Thus, as Claimant asserts and Respondent seems to agree, the arbitrator possesses the sole decision-making authority to determine whether or not Claimant’s federal statutory claims are within the scope of the arbitration agreement presented.

“Arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed to so submit.” *AT&T Techs. v. Communs. Workers of Am.*, 475 U.S. 643, 648 (1986). Thus, the question is whether the parties have agreed to arbitrate the claims as presented by the Claimant.

The Terms of Use presented by Experian includes a paragraph entitled, “General Description of Services.” Within that paragraph, it is stated:

The Services and Websites are meant to provide you a means to review your personal finance and/or credit information for educational purposes only, and to manage if and to the extent you so choose, and may notify you of credit opportunities and other products and services that may be available to you through ECS or through third parties. . . The Services and Website are meant for your personal use only.

Respondent even characterizes in its brief that the “fundamental purpose of CreditWorks” – the entity that had Claimant enter into the arbitration agreement - is as follows: “To allow consumers, like Claimant, to have 24/7 access to, and monitoring of, the credit information appearing in their EIS credit files.”

Further, under the paragraph entitled, “Overview and Acceptance of Terms,” it is stated:

For avoidance of doubt, this Agreement expressly applies to: (a) your access to and use of the Websites; (b) any and all transactions between you and ECS through the Websites, including for the provision of any Services or of any credit, personal, financial or other information delivered as part of or in conjunction with free Services or paid Services, including any such information that may be archived to the extent made available on the Websites, such as (i) for your purchase of non-membership based Services such as the 3 Bureau Credit Report and FICO Scores, the FICO industry or other Base FICO Scores and/or an Experian Credit Report and FICO Score, (ii) enrollment and use of free Services . . .and/or enrollment, purchase and use of membership based Services. . .; and (iii) your access to and use of calculators, credit resources, text, pictures, graphics, logos, button items, icons, images, works of authorship and other information

and all revisions, modifications, and enhancements thereto contained in the Websites.

From these paragraphs and from the remainder of the Terms of Use it is apparent that the agreement relates to the provision of information by and between ECS and Claimant, not the provision of information between Experian and third parties. In fact, the Terms of Use make it clear that any disclosure by ECS to the consumer may be different than the information that may be obtained from Experian or that which Experian may report to third parties.

Further, the arbitration provision within the Terms of Use refers to “all disputes and claims arising out of this Agreement directly related to the Services or Websites...” This language would require some nexus between the claims as alleged by Claimant and the Services or Websites at issue in the Terms of Use. There is none here. In fact, I find no relationship between the consumer’s request for information for her own use and Experian’s provision of information to a third party. Even if the consumer had never sought her own credit information, the alleged acts of Experian would have still taken place and the alleged damages would have still occurred. Under Experian’s argument, presumably a claimant could unknowingly agree to arbitrate a claim that has already arisen simply by seeking a credit report to understand why they were denied credit in the first place.

For these reasons, the arbitrator finds that the claims as alleged by Claimant do not fall within the scope of the arbitration agreement and the matter should be remanded back to the originating court.

Signed March 22, 2024

A handwritten signature in cursive script that reads "Lori Massey Brissette".

Lori Massey Brissette