

NO. A09-2216

State of Minnesota
In Court of Appeals

TRANSAMERICA FINANCIAL ADVISORS, INC.,
a Delaware corporation,

Appellant,

vs.

CRYSTAL D. KILCHER, DANIEL J. KILCHER,
ANTHONY C. MUELLENBERG AND
TROY D. MUELLENBERG,

Respondents.

RESPONDENTS' BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....ii

STATEMENT OF LEGAL ISSUES.....iv

STATEMENT OF THE CASE AND FACTS.....1

I. Respondents File Their Claims in Arbitration.....1

II. Helen Dale (but not TFA) Moves to Dismiss Securities Claims.....2

III. Respondents Pursue Their Claims in Court and TFA Moves to Compel Arbitration.....3

IV. The Hearing.....5

V. The Order.....6

ARGUMENT.....6

I. Standard of Review.....8

II. Arbitration is a Favored Means of Resolving Disputes and all Doubts or any Ambiguity are to be Construed in Favor of Arbitration.....8

III. The Arbitration Provision at Issue Compels Arbitration of Respondents' Securities Claims.....11

IV. The Court Should Stay the Insurance Claims against TFA.....15

CONCLUSION.....17

TABLE OF AUTHORITIES

Cases

<u>ABC Bus Leasing Inc. v. Traveling In Style (TIS) Inc.</u> , 2007 WL 2768292 (D. Minn. Sept. 18, 2007)	15
<u>Churchill Environmental & Industrial Equity Parties, L.P. v. Ernest Young, L.L.P.</u> , 643 N.W.2d 333 (Minn. Ct. App. 2002).....	9, 10
<u>Dean Witter Reynolds Inc. v. Byrd</u> , 470 U.S. 213 (1985).....	5
<u>Eco Systems LLC v. Kris Inc.</u> , 2007 WL 1321851 (D. Minn. May 4, 2007).....	15-16
<u>Employers Mutual Cas. Co. v. Wendland & UTZ, Ltd.</u> , 351 F.3d 890 (8th Cir. 2002).....	16
<u>In re Kennedy, Matthews, Landis, Healy & Decora, Inc.</u> , 524 N.W.2d 752 (Minn. Ct. App. 1994).....	8, 9
<u>Johnson v. Piper Jaffray, Inc.</u> , 530 N.W.2d 790 (Minn. 1995).....	10-11
<u>Medcam, Inc. v. MCNC</u> , 414 F.3d 976 (8th Cir. 2005).....	11, 15
<u>Moses H. Cone Hosp. v. Mercury Constr. Corp.</u> , 460 U.S. 1 (1983).....	10, 11
<u>Onvoy, Inc. v. Shal, LLC</u> , 669 N.W.2d 344 (Minn. 2003).....	8
<u>United Steelworkers v. Warrior & Gulf Nav. Co.</u> , 363 U.S. 574 (1960).....	11
<u>Volt Info. Sciences, Inc. v. Board of Trustees of the Leland Stanford Junior University</u> , 489 U.S. 468 (1989).....	10

Statutes

9 U.S.C. § 1, et seq.....3, 8
9 U.S.C. § 2.....9
9 U.S.C. § 4.....9
Minn. Stat. § 572.08.....3, 9, 10
Minn. Stat. § 572.09.....10

Other Authority

FINRA Code of Arbitration § 12200, et seq.....2
FINRA Code of Arbitration § 12206.....3, 4, 5, 12, 13

STATEMENT OF LEGAL ISSUES

Did the trial court err in denying Appellant, Transamerica Financial Advisors, Inc.'s ("TFA" or "Appellant") motion to compel arbitration of claims brought by Respondents Crystal D. Kilcher, Daniel J. Kilcher, Anthony C. Muellenberg, and Troy D. Muellenberg (collectively "Respondents") involving securities transactions and to stay proceedings against it?

Yes. Judge Blaeser erred in denying TFA's motion to compel arbitration. There was no dispute that Respondents signed arbitration agreements which covered the dispute at issue. Judge Blaeser erroneously interpreted the parties' arbitration agreement to allow another party to waive TFA's right to arbitration. In reaching this conclusion, Judge Blaeser ignored the plain terms of the arbitration agreement and did not resolve all doubts concerning the arbitration language in favor of arbitration.

Authorities

9 U.S.C. § 1 et. seq., the Federal Arbitration Act

Minn. Stat. §§ 572.08 and 572.09

Onvoy, Inc. v. Shal, LLC, 669 N.W.2d 344 (Minn. 2003)

Moses H. Cone Hosp. v. Mercury Constr. Corp., 460 U.S. 1 (1983)

Johnson v. Piper Jaffray, Inc., 530 N.W.2d 790 (Minn. 1995)

STATEMENT OF THE CASE AND FACTS

This appeal involves an order denying TFA's motion to stay and to compel arbitration. Order at 1-10.¹ Respondents, Crystal D. Kilcher, Daniel Kilcher, Anthony C. Muellenberg and Troy Muellenberg, were customers of TFA who engaged in securities transactions through TFA, a securities broker-dealer. Upon commencing their relationships with TFA, each of the Respondents signed binding arbitration agreements to arbitrate any controversy arising out of or relating to transactions with TFA or the breach of any agreement between them in accordance with the arbitration rules of the National Association of Securities Dealers, Inc. n/k/a Financial Industry Regulatory Authority ("FINRA"). Order at 3.² There was no dispute below that Respondents had signed binding arbitration agreements with TFA and that the dispute arising from securities transactions were subject to arbitration. Order at 3.

I. Respondents File Their Claims in Arbitration.

Indeed, Respondents originally filed arbitration claims against both TFA and Helen Dale ("Dale") on December 11, 2007 before FINRA. Order at 4. In submitting their claims to FINRA arbitration, each of the Respondents also executed Uniform Submission Agreements agreeing to arbitrate the dispute at issue subject to FINRA's

¹ References to the "Order" throughout this brief are to the Order and Memorandum dated October 16, 2009 as contained in the Appellant's Addendum.

² The National Association of Securities Dealers, Inc. is now known as the Financial Industry Regulatory Authority ("FINRA").

arbitration rules. AA-85, 87-90 (Coates Aff., Comp. Exh. A).³ In their arbitration claims, Respondents brought claims for churning, breach of fiduciary duty, unsuitability, misrepresentation, § 10(b) of the Exchange Act of 1934, SEC Rule 10b-5, and claims for violation of Minnesota's securities statutes. AA-27 (Crassweller Aff. at ¶ 15). Respondents alleged that some of their claims were based upon insurance transactions. Id. The Respondents' arbitration claims were subsequently consolidated. Order at 4, n.2.

TFA filed an answer to the statements of claim in arbitration, denying Respondents' claims relating to securities transactions and asserting affirmative defenses. TFA also moved to dismiss the insurance claims on the grounds that the FINRA Arbitration Code excludes such insurance claims from arbitration. AA-86, 99-71 (Coates Aff. at ¶ 5, Comp. Exh. C).⁴ TFA did not move to dismiss any portion of Respondents' claims regarding securities transactions (such as mutual funds and variable annuities) for lack of arbitral jurisdiction. Id. TFA expressly consented to arbitral jurisdiction over the claims involving securities transactions informing the arbitrators "TFA has not objected to the arbitrators' jurisdiction over the claims involving securities transactions, such as mutual funds." AA-86, 173 (Coates Aff. at ¶ 7, Comp. Exh. D, n.1).

II. Helen Dale (but not TFA) Moves to Dismiss Securities Claims.

Dale, who was represented by separate counsel, also moved to dismiss the insurance claims for lack of jurisdiction. In addition, and in contrast to TFA, Dale moved

³ References to "AA-____" throughout this Brief are to citations to pages of Appellant's Appendix.

⁴ Section 12200 of the FINRA Code of Arbitration Procedure excludes certain insurance disputes from FINRA arbitration. This provision is not at issue in this appeal.

to dismiss the securities law claims, arguing that certain claims were time-barred as to her under FINRA's six-year eligibility rule regarding FINRA claims.⁵ Order at 4. TFA did not move to dismiss any claims under the FINRA six-year eligibility rule. *Id.*; AA-86, 99-71 (Coates Aff. at ¶¶ 5-7, Comp. Exh. C).

By Order dated July 23, 2008, the FINRA arbitrators dismissed Respondents' insurance claims as to both TFA and Dale on the grounds that they did not have jurisdiction to hear disputes involving insurance products. AA-26 (Crassweller Aff. at ¶ 10). The arbitrators also granted Dale's separate motion to dismiss certain (but not all) of Respondents' securities law claims against Dale based on the six-year eligibility rule. *Id.* On July 28, 2008, Respondents voluntarily dismissed all of the claims in the FINRA arbitration against both TFA and Dale. *Id.* (Crassweller Aff. at ¶ 11).

III. Respondents Pursue Their Claims in Court and TFA Moves to Compel Arbitration.

Respondents subsequently pursued their claims in Hennepin County District Court alleging the same damages sought in the FINRA arbitration. On June 9, 2009, the district court consolidated Respondents' case with a case alleging similar claims brought by Kimberly McKinley ("McKinley"), who is the mother of the Respondents. Order at 3, n.1.⁶

TFA brought a motion to compel arbitration under the Federal Arbitration Act, 9 U.S.C. § 1, *et. seq.*, and the Minnesota Arbitration Act, Minn. Stat. § 572.08, *et. seq.*

⁵ The FINRA six-year eligibility states "that no claim shall be eligible for submission to arbitration under the [FINRA] Code when six years have elapsed from the occurrence or event giving rise to the claim." FINRA Code of Arbitration Procedure § 12206(a).

⁶ McKinley had not previously filed a FINRA arbitration proceeding. Order at 6.

regarding both Respondents' and McKinley's claims involving securities transactions pursuant to the arbitration agreements between the parties and to stay any proceedings as to any insurance claims against it pending the resolution of the FINRA arbitration. Order at 5; AA-17-24. TFA pointed out that the claims regarding securities transactions predominated and that the district court should stay the insurance claims pending arbitration. Id. TFA noted that Dale was an independent contractor at an independent insurance agent, who was agent for a number of insurance companies and that these insurance transactions were not placed through TFA. AA-82.

In response to TFA's motion to compel arbitration, Respondents incorrectly argued that TFA waived arbitration pursuant to the FINRA six-year eligibility rule. AA-65-73. Respondents relied on a provision in the six-year eligibility rule which states "[b]y filing a motion to dismiss a claim under this rule, the moving party agrees that if the Panel dismisses the claim under this rule, the non-moving party may withdraw any remaining claims without prejudice and then pursue all the claims in court." AA-69 (emphasis added); See FINRA Code of Arbitration Procedures § 12206(b). Respondents asserted this rule as a basis to oppose arbitration even though TFA was not a moving party within the meaning of the six-year eligibility rule - - it never moved to dismiss nor invoked the six-year eligibility rule. AA-70.

In addition, Respondents argued that the FINRA eligibility rule was ambiguous and should be construed against TFA and against arbitration. Respondents argued that the language of the eligibility rule was unclear when there were multiple parties, such as the present case, stating the rule "simply does not appear to specifically anticipate

multiple party arbitration.” AA-70. Respondents also argued that the presence of arbitral claims and non arbitral claims supported having all the parties’ disputes resolved in court rather than arbitration because it is more efficient. AA-72.

In its reply in support of motion to compel, TFA cited the controlling law expressly rejecting Respondents’ efficiency agreement. Dean Witter Reynolds Inc. v. Byrd, 470 U.S. 213, 217 (1985) (“The Arbitration Act requires district courts to compel arbitration of pendant arbitral claims, even when the result would be the possible inefficient maintenance of separate proceedings in different forums.”). AA-81-82.

IV. The Hearing.

On July 23, 2009, the district court heard argument on the motion. During oral argument, TFA reiterated its position that it consented to arbitral jurisdiction over the claims involving securities transactions. Trans. at 6-7⁷. TFA also pointed out that it was not a moving party under the FINRA eligibility rule and that the waiver provision did not apply to it. Trans. At 6-10. By moving to compel arbitration, TFA stated that, under FINRA rules, it was precluded from raising the eligibility rule as a defense and it stood ready to arbitrate the claims arising from securities transactions. Trans. At 12-13, 46-47.⁸

⁷ References to the “Trans.” throughout this brief are to the Transcript of Proceedings held on July 23rd, 2009.

⁸ FINRA Code of Arbitration Procedures § 12206(c) states in pertinent part “[t]he rule does not extend applicable statutes of limitations; nor shall the six-year time limit on the submission of claims apply to any claim that is directed to arbitration by a court of competent jurisdiction upon request of a member or associated person.” (emphasis added).

V. The Order.

In its Order dated October 16, 2009, the district court granted the motion to compel arbitration and stay proceedings as to McKinley. Order at 6. The district court, however, denied TFA's motion to compel arbitration with respect to the Respondents. *Id.* The district court found that a binding arbitration agreement existed between TFA and Respondents and that the underlying dispute fell within the scope of the arbitration agreement. Order at 5. Despite this ruling, the district court ruled that the FINRA eligibility rule waiver language applied to TFA based on Helen Dale's actions and permitted Respondents to pursue their claims in court even though TFA did not move to dismiss under the rule and was therefore not "a moving party." Order at 6.

In addition to the ruling on the arbitration issue, the district court granted Helen Dale's motion to dismiss the Respondents' federal securities claims for lack of jurisdiction finding they were subject to exclusive federal jurisdiction and dismissed the pendant state claims without prejudice. Order at 10.

The only disputed ruling in this appeal is the trial court's denial of TFA's motion to compel arbitration of Respondents' claims involving securities transactions against TFA and its motion to stay pending the outcome of the arbitration proceeding.

ARGUMENT

Contrary to controlling United States Supreme Court and Minnesota authority, the district court erred by refusing to compel to arbitration claims that the parties had agreed to arbitrate based solely on the actions of another party. There was no dispute below that the parties had signed a binding arbitration agreement and that the dispute fell within its

scope. The only issue before the district court was the interpretation of the six-year eligibility rule in the FINRA Code of Arbitration Procedure. The Supreme Court and Minnesota courts have repeatedly and consistently ruled that arbitration agreements are to be interpreted broadly with any doubts or ambiguity resolved in favor of arbitration.

In construing the FINRA rule at issue, the district court ignored its plain terms by ruling that Respondents did not have to arbitrate the dispute. The FINRA rule, on its face, only applies to waive arbitration for those parties who had successfully moved to dismiss under the six-year eligibility rule. It was undisputed below, that TFA never moved to dismiss under this rule and, in fact, reaffirmed that FINRA had jurisdiction to hear the claims involving securities transactions. AA-86, (Coates Aff. at ¶ 7). To the extent that the arbitration language was ambiguous (it was not), then the district court erred in narrowly interpreting the arbitration agreement and not resolving all doubts in favor of arbitration.

The district court's ruling is also predicated on the notion that Helen Dale (who is an independent contractor, not a TFA employee and represented by separate counsel) can waive TFA's federally protected right to arbitrate. Respondents cited no arbitration provision or case law to support this assertion. Helen Dale does not have the right under federal law (which governs), Minnesota law or the FINRA Arbitration Code to waive TFA's right to arbitrate the claims involving securities transactions.

The court should reverse the district court's order denying TFA's motion to compel arbitration as to the claims involving securities transactions and to stay the remaining claims pending the outcome of arbitration.

I. Standard of Review.

The standard of review of the arbitration provisions at issue is *de novo*. Onvoy, Inc. v. Shal, LLC, 669 N.W.2d 344, 349 (Minn. 2003) (“This court has *de novo* review when reviewing arbitration clauses.”). Additionally, Respondents bear the burden of proving that the dispute is outside the scope of the arbitration agreement. Id. (“The party opposing arbitration bears the burden of proving the dispute is outside the scope of the agreement.”).

II. Arbitration is a Favored Means of Resolving Disputes and all Doubts or any Ambiguity are to be Construed in Favor of Arbitration.

The Federal Arbitration Act, 9 U.S.C. § 1 et seq. (“FAA”) and the Minnesota Uniform Arbitration Act require courts to enforce arbitration agreements and to compel arbitration of disputes subject to arbitration agreements. The FAA applies and is binding in this case because the underlying agreement and securities transactions involve interstate commerce. See In re Kennedy, Matthews, Landis, Healy & Decora, Inc., 524 N.W.2d 752, 754 (Minn. Ct. App. 1994) (“Because this case involved the sale of securities, a matter of interstate commerce, the impact of the [FAA] in Minnesota law is a concern.”); Onvoy, 669 N.W.2d at 351 (“the FAA applies to transactions that in fact involve interstate commerce, whether or not the parties contemplated an interstate impact. It is now clear that Minnesota courts must apply the FAA to transactions that affect interstate commerce.”) (emphasis in original).

The FAA establishes “a strong presumption in favor of arbitration.” Id. The FAA requires courts to enforce arbitration provisions in written agreements such as those at

issue here. 9 U.S.C. § 2.⁹ The FAA also provides for the enforcement of arbitration agreements through a motion to compel arbitration. 9 U.S.C. § 4. That section provides:

A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States District Court . . . for an order directing that such arbitration proceed in the manner provided for in such agreement.

Minnesota law and policy also strongly encourages arbitration and the enforcement of arbitration agreements. Churchill Environmental & Industrial Equity Parties, L.P. v. Ernest Young, L.L.P., 643 N.W.2d 333, 336 (Minn. Ct. App. 2002) (“Federal and Minnesota law favor arbitration as an alternative to litigation.”); See also In re Kennedy, 524 N.W.2d at 755 (“Minnesota law is consistent with the policy behind the FAA. Like the FAA, Minnesota favors arbitration.”).

Specifically, the Minnesota Uniform Arbitration Act, like the FAA, provides that courts shall enforce a written arbitration agreements:

A written agreement to arbitrate any existing dispute to arbitration or a provision in a written contract to submit any controversy thereafter arising between the parties is valid, enforceable, and irrevocable . . .

Minn. Stat. § 572.08.

Further, similar to the FAA, the Minnesota Uniform Arbitration Act goes on to provide that courts shall enforce such arbitration agreements:

⁹ 9 U.S.C. § 2 states in pertinent part: A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform in whole or any part of thereof or an agreement in writing to submit to arbitration an existing controversy arising out of such contract, transaction, or refusal, shall be valid, irrevocable and enforceable, save upon such grounds as exist at law or equity for the revocation of any contract.

On application of a party showing an agreement described in Section 572.08, and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration . . .

Minn. Stat. § 572.09(a).

When ruling on a motion to compel arbitration, the court is limited to considering two issues: (1) "whether a valid arbitration agreement exists"; and (2) "whether the dispute falls within the scope of the arbitration agreement." Churchill Environmental Partners, 643 N.W.2d at 337.

The strong policy in favor of arbitration is enforced by the mandate that courts are to broadly interpret arbitration agreements and resolve all doubts in favor of arbitration. See, e.g., Moses H. Cone Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24-25 (1983) ("[The FAA] establishes that, as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability.").

In construing the language of an arbitration agreement subject to the FAA, "the parties' intentions control, but those intentions are generously construed as to issues of arbitrability." Volt Info. Sciences, Inc. v. Board of Trustees of the Leland Stanford Junior University, 489 U.S. 468, 475-76 (1989) (quotations omitted). Therefore, "in applying general state-law principles of contract interpretation to the interpretation of an arbitration agreement within the scope of the Act, due regard must be given to the federal policy favoring arbitration, and ambiguities as to the scope of the arbitration clause itself resolved in favor of arbitration." Id. at 476 (citations and quotations omitted); Johnson v.

Piper Jaffray, Inc., 530 N.W.2d 790, 795 (Minn. 1995) (“In evaluating whether the parties agreed to arbitrate the present dispute, we remain aware that we should resolve any doubts concerning the scope of arbitrable issues in favor of arbitration, ‘whether the problem is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability’”) (quoting Moses H. Cone Hosp., 460 U.S. 1, 24-25 (1983)). Further, “an order compelling arbitration should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.” Medcam, Inc. v. MCNC, 414 F.3d 976 (8th Cir. 2005) (quoting United Steelworkers v. Warrior & Gulf Nav. Co., 363 U.S. 574, 582-83 (1960)). These controlling rules of interpretation dispose of this appeal in favor of arbitration.

While the district court correctly ruled that: (1) TFA and Respondents entered into binding arbitration agreements; and (2) that the dispute at issue fell within their scope, the district court erred, however, in construing certain language in the FINRA six-year eligibility rule to rule against arbitration. The district court’s interpretation was at odds with the plain terms of the FINRA eligibility rule and erroneously construed this provision against arbitration.

III. The Arbitration Provision at Issue Compels Arbitration of Respondents’ Securities Claims.

There was no dispute below, that each of the Respondents entered into arbitration agreements when they opened up their TFA accounts. The arbitration clause in the Respondents’ TFA Account Agreements expressly provides:

In consideration of opening one or more accounts for the undersigned, the undersigned agree(s) that any controversy between us or arising out of or relating to my (our) account transactions with or for me (us), or this agreement or the breach thereof shall be settled by arbitration in accordance with the rules, then established, of the National Association of Securities Dealers, Inc. Nothing in this agreement shall limit or contradict the rules of any self-regulatory organization nor limit the ability of any arbitration panel to make any award.

AA-27, 34-41 (Crassweller Aff. at ¶ 16, Exh. C).

Respondents did not dispute that the above arbitration provisions applied to their securities claims against TFA. Nor did the district court rule that the underlying dispute before it regarding securities claims against TFA fell outside the scope of this broadly worded arbitration clause. Instead, the district court erroneously accepted Respondents' arguments that TFA waived the right to arbitrate based on the FINRA six-year eligibility rule.

On its face, however, the FINRA eligibility rule does not apply to waive TFA's right to arbitrate. The FINRA six-year eligibility rule states as follows:

12206 Time Limits

(a) **Time Limitation on Submission of Claims**

No claim shall be eligible for submission to arbitration under the Code if six years have elapsed from the occurrence or event giving rise to the claim. The Panel will resolve any questions regarding the eligibility of a claim under this rule.

See FINRA Code of Arbitration at § 12206(a).

The FINRA Arbitration Code goes on to provide that the party successfully moving to dismiss under the six-year eligibility rule agrees to waive arbitration of any remaining claims:

(b) **Dismissal Under Rule**

Dismissal of a claim under this rule does not prohibit a party from pursuing the claim in court. **By filing a motion to dismiss**, a claim under this rule, the **moving party agrees** that if the Panel dismisses the claim under this rule, **the non-moving party may withdraw any remaining claims without prejudice and then pursue all the claims in court.**

See Code of Arbitration at § 12206(b) (emphasis added).

The language of the FINRA eligibility rule is clear. “**The moving party agrees . . .** that the non-moving party may withdraw any remaining claims” and go to court. FINRA Code of Arbitration at § 12206(b) (emphasis added). As the district court’s order acknowledges, it was undisputed that TFA **never moved** to dismiss under the FINRA eligibility rule. Order at 6. Instead, TFA expressly stated in the arbitration proceeding that it consented to arbitrator jurisdiction of the claims involving securities transactions. AA-86, 99-211 (Coates Aff. at ¶ 7, Comp. Exhs. C, D). (“TFA has not objected to the arbitrators’ jurisdiction over the claims involving securities transactions such as mutual funds.”). TFA made the deliberate decision not to move to dismiss under the six-year eligibility rule and affirmatively reaffirmed its obligation to arbitrate the securities claims.

In its ruling denying arbitration, the district court simply ignored the operative and controlling phrase “the ***moving party*** agrees.” Instead, the district court began its analysis of the above provision in mid-sentence, ignored the first part of the provision,

and only gave effect to the second half of the clause to rule that “the non-moving party may withdraw any remaining claims without prejudice and then pursue all the claims in court.” Order at 6.¹⁰

Not only does the district court’s ruling violate basic principles of contract interpretation by ignoring the provision’s plain terms, but it also failed to apply the controlling standards to resolve any and all doubts regarding an arbitration provision in favor of arbitration. See Supra at 8-11. Courts from the Supreme Court down have repeatedly emphasized that any doubt, any ambiguity over the terms or interpretation of an agreement to arbitration must be decided in favor of arbitration. The district court erred in not following this clear-cut mandate.

Further, nothing in the FINRA six-year rule suggests that Helen Dale, who was the moving party, can waive TFA’s federally-protected right to arbitrate. While Helen Dale, by moving to dismiss under the rule, made an election and agreed to consent to court jurisdiction if she was successful in having certain claims dismissed, TFA expressly did not. Respondents could point to no case law supporting their contention that Helen Dale could waive another party’s right to arbitrate. Nor did Respondents offer any evidence supporting this waiver argument which was their burden.

Simply put, Respondents did not overcome their very high burden of proving the above language of the FINRA Code section is not susceptible to an interpretation that

¹⁰ While the district court, noting that TFA had not moved to dismiss under the six-year eligibility rule, apparently imposed an obligation on a third-party (like TFA) to object to the motion to dismiss. This language is not found anywhere in the rule and is an interpretation that is contrary to arbitration.

supports arbitration. Medcam Inc., 414 F.3d at 976 (“an order compelling arbitration should not be denied...unless the arbitration clause is not susceptible to an interpretation that covers the asserted dispute.”) (citation omitted).

IV. The Court Should Stay the Insurance Claims Against TFA.

In addition to moving to compel arbitration, TFA also moved to stay the non-securities insurance-based claims against TFA. The district court ruled in favor of TFA on this issue as to the McKinley’s claims, but did not reach this issue as to the Respondents’ claims because it denied the motion to compel. Order at 9-10.

The non-securities claims should be stayed pending the outcome of arbitration because, as the district court noted, the predominant claims against TFA are clearly the securities transactions, i.e., the complaints make allegations regarding products that are clearly securities products (i.e., mutual funds and variable annuities). Id.; See also ABC Bus Leasing Inc. v. Traveling In Style (TIS) Inc., 2007 WL 2768292, *12 (D. Minn. Sept. 18, 2007) (“Once a court has determined that a dispute falls within the scope of an arbitration agreement, the proceedings in the case, on the issues referable to arbitration, must be stayed pending completion of arbitration...Expanding the stay, so as to encompass all of the non arbitral claims in the case, is appropriate when the arbitral claims predominate.” Id. See also Eco Systems LLC v. Kris Inc., 2007 WL 1321851, * 5 (D. Minn. May 4, 2007) (“where parties have agreed that some, but not all, of the conflicts between parties are subject to arbitration, a stay of the non-arbitral issues is

appropriate when the arbitral claims predominate or where the outcome of the arbitral claims will depend upon the arbitrator's decision.”).¹¹

As the securities claims against TFA predominate the Court should stay any remaining insurance claims against TFA.

¹¹ The non-securities insurance claims have nothing to do with TFA. Helen Dale was an independent general insurance agent (broker) who sold insurance on behalf of a number of insurance companies. See Employers Mutual Cas. Co. v. Wendland & UTZ, Ltd., 351 F.3d 890, 896 (8th Cir. 2002) (liability of an insurance broker is not imputed to an insurance company). TFA had nothing to do with these insurance transactions.

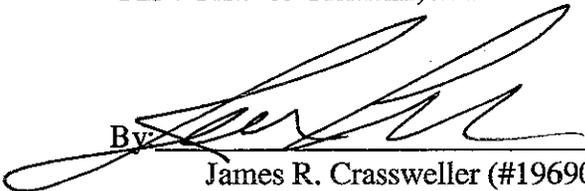
CONCLUSION

For the reasons set forth above, the Court should reverse the district court's order denying the motion to compel arbitration and to stay the remaining insurance claim pending the outcome of arbitration.

RESPECTFULLY SUBMITTED,

Dated: February 22, 2010

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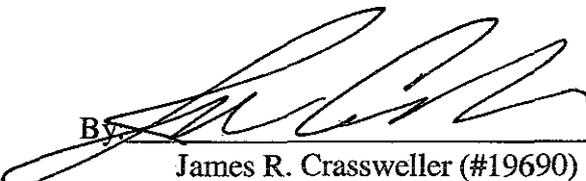
CONCLUSION

For the reasons set forth above, the Court should reverse the district court's order denying the motion to compel arbitration and to stay the remaining insurance claim pending the outcome of arbitration.

RESPECTFULLY SUBMITTED,

Dated: February 19, 2010

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