UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

PHILIP W GREEN,	§	
	§	
Plaintiff,	§	
VS.	§	CIVIL ACTION NO. H-06-833
	§	
SERVICE CORPORATION INTERNATIONAL,	§	
	§	
Defendant.	§	

ORDER COMPELING ARBITRATION

Before the court is a motion to compel arbitration brought by the Defendant, Service Corporation International (SCI). Doc. 8. The Plaintiff, Philip W. Green (Green), has filed a response. Doc. 10. The parties have also filed a number of subsequent documents elaborating on and supplementing their arguments. Doc. 11, Doc. 12, Doc. 13 and Doc. 14. The motion of SCI is GRANTED. Doc. 8.

On March 6, 2001, Green executed an agreement with SCI to arbitrate all disputes relating to his employment. Doc. 8, Exh. A. Green does not deny that this agreement would bind him to arbitrate his dispute, except that he claims SCI waived its right to compel arbitration by defending itself in an administrative proceeding through the Department of Labor (USDOL).

In a letter dated June 17, 2005, Green's attorney offered to conduct informal discussions of the claims. Doc. 10-3. SCI agreed in a letter dated June 27, 2005. Doc. 10-4. Following those discussions, SCI sent a letter dated July 18, 2005 in which it stated that Green would have to arbitrate any dispute. Doc. 10-5. Through a letter dated July 27, 2005, Green responded, claiming that he did not agree that he was limited to seeking relief only through an arbitration

proceeding, but agreed to "participate in arbitration, with the understanding that by doing so he [would] not [be] voluntarily foregoing any other means of relief he might have under the law." Doc. 10-6. Through a letter dated August 26, 2005 and described as a "Complaint of Discrimination," Green sought to begin administrative proceedings through the USDOL. Doc. 10-8. Later, Green objected to an investigator's findings and requested a hearing. Doc. 10-10. They also conducted discovery. Doc. 10-14 through Doc. 10-20.

The Supreme Court has held, "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." *Moses H. Cone Memorial Hosp. v. Mercury Const. Corp.,* 460 U.S. 1, 24-25 (1983). Accordingly, the Fifth Circuit has held, "[w]aiver [of the right to compel arbitration]will be found when the party seeking arbitration substantially invokes the judicial process to the detriment or prejudice of the other party." *Subway Equipment Leasing Corp. v. Forte,* 169 F.3d 324, 326 (5th Cir. 1999) (quoting *Miller Brewing Co. v. Fort Worth Distrib. Co.,* 781 F.2d 494, 497 (5th Cir.1986)). When determining whether a party has waived an arbitration provision, "[t]here is a strong presumption against waiver of arbitration." *Id.*

Although the Fifth Circuit has not determined whether admnistrative proceedings are the equivalent of judicial proceedings for the purpose of determining whether a party waived its right to compel arbitration, the First Circuit has addressed the issue and held, "it is to judicial, rather than administrative, proceedings that we look to determine whether such waiver has occurred." *Brennan v. King,* 139 F.3d 258, 264 (1st Cir. 1998) (citing *Sevinor v. Merrill Lynch, Pierce, Fenner & Smith, Inc.,* 807 F.2d 16, 18 (1st Cir. 1986)). The *Brennan* court did not explain how judicial proceedings differed from administrative proceedings and *Sevinor* did not

address the difference between judicial and administrative proceedings, but only whether the party seeking to avoid arbitration had suffered prejudice.

However, all doubts must be resolved in favor of arbitrating a dispute. Accordingly, this court accepts the result in *Brennan* and holds that SCI did not invoke the judicial process even though it may have used an administrative process similar to the judicial process.

Furthermore, SCI attempted to persuade Green to arbitrate his dispute. Green chose to disregard the letters from SCI unless it met his conditions. Thus, any prejudice that he suffered by pursuing administrative proceedings was self-inflicted and, therefore, is not actually the prejudice from which courts should protect parties.

Green also argues that it is not clear that the arbitration agreement applied to him. Doc. 10 at 8. Specifically, he claims that SCI did not identify itself as the party who could enforce the arbitration agreement. However, Green's argument is merely that the arbitration agreement was ambiguous. The court looks to the cover of the agreement to find the identity of the party bound by it: Even though SCI is not identified by its legal name, any ambiguity must be resolved in favor of creating a binding arbitration agreement. Thus, this court must infer that the arbitration agreement referred to SCI and that Green accepted a binding arbitration agreement.

Finally, Green asks that this case be dismissed, rather than stayed. However, district courts should stay, rather than dismiss cases governed by arbitration provisions. 9 U.S.C.A. § 3; *Mire v. Full Spectrum Lending Inc.*, 389 F.3d 163 (5th Cir. 2004). In fact, even if this court were to close the case, Green would not be entitled to appeal the decision as a final judgment. *Id;* and *CitiFinancial Corp. v. Harrison,* --- F.3d ----, 2006 WL 1644828 (5th Cir. 2006). Furthermore, and contrary to Green's concerns, leaving a case open, or closing it administratively, does not permit either party to relitigate the issues upon the conclusion of the

arbitration proceedings. Instead, once a district court has compelled the parties to arbitrate their dispute, it has nothing left to do but enter a judgment confirming the arbitrator's award. *CitiFinancial* , 2006 WL 1644828 (citing *Green Tree Financial Corp.-Alabama v. Randolph,* 531 U.S. 79, 86 (2000), *Digital Equipment Corp. v. Desktop Direct, Inc.,* 511 U.S. 863, 867 (1994); *Coopers & Lybrand v. Livesay,* 437 U.S. 463, 467 (1978)). Thus, this court will stay Green's proceedings and compel arbitration.

Because SCI did not use the judicial process and Green did not suffer any prejudice this courts holds that Green is bound to arbitrate his dispute with SCI. Accordingly, it is hereby

ORDERED that the motion of SCI is GRANTED. The parties shall resolve their dispute through binding arbitration according to the agreement. Doc. 8. It is further

ORDERED that the case is hereby STAYED and ADMINISTRATIVELY CLOSED pending a motion by either party for further judicial intervention.

SIGNED at Houston, Texas, this 30th day of June, 2006.

Melinda Harmon
United States District Judge

MELINDA HARMON
UNITED STATES DISTRICT JUDGE