

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

RAJESH GUPTA,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 17 C 8375
)	
MORGAN STANLEY SMITH)	
BARNEY, LLC, et al.,)	
)	
Defendants.)	

ORDER GRANTING MOTION TO COMPEL ARBITRATION

Rajesh Gupta sued his former employer Morgan Stanley Smith Barney, LLC, alleging that, in connection with the termination of his employment, Morgan Stanley violated his rights under the Uniformed Services Employment and Reemployment Rights Act (USERA) and defamed him. Morgan Stanley moved the Court to stay Gupta's lawsuit and compel him to arbitrate his claims. Morgan Stanley contended an agreement to arbitrate was formed when Gupta failed to opt out of the company's arbitration program following receipt of an e-mail, dated September 2, 2015, that said that by continuing employment, he agreed to submit claims to arbitration unless he opted out.

In addressing Morgan Stanley's motion to compel arbitration, the Court agreed with the company's contention that, under the circumstances, Illinois law permitted it to construe Gupta's silence as acceptance. Mem. Op. and Order of May 9, 2018 at 3. The application of this rule, however, required Morgan Stanley to prove that Gupta had received the September 2 e-mail. Gupta submitted an affidavit saying that he had never

seen the e-mail. The Court determined that a mere denial of *reading* the e-mail would not constitute a denial of receipt. But it appeared that Gupta was actually denying that he had received the e-mail in the first place, and this, plus an apparent discrepancy in the e-mail address to which Morgan Stanley had sent the e-mail, was sufficient to give rise to a genuine factual dispute regarding receipt. *Id.* at 5-7. The Court therefore deferred ruling on Morgan Stanley's motion to compel arbitration and set for trial the question of whether an agreement to arbitrate existed.

As trial approached, the Court inquired further regarding what was genuinely disputed. The apparent discrepancy regarding the e-mail address has been cleared up. And Gupta has now submitted a "stipulation regarding the September 2, 2015 e-mail" stating that he "stipulates that the email arrived at his in-box." See dkt. no. 64. In light of the stipulation, there does not remain a genuine dispute requiring a trial. The arrival of the September 2, 2015 e-mail at Gupta's Morgan Stanley work e-mail in-box, combined with his failure to opt out of the company's arbitration program, gives rise to an agreement to arbitrate for the reasons described in the Court's May 9 decision.

In its motion to compel arbitration, Morgan Stanley contended that the arbitration agreement covered Gupta's claims because they "relate[d] to his employment"—which is what the arbitration agreement covers—and that the agreement required arbitration of the claims before JAMS, an organization that provides arbitration and mediation services. In opposing Morgan Stanley's motion, Gupta did not challenge these contentions. He is therefore deemed to have conceded these points.

Conclusion

For the reasons stated above, the Court grants defendants' motion to compel arbitration and stay this action [7]. The final pretrial conference date of August 23, 2018 and the trial date of August 30, 2018 are vacated, and the parties' motions *in limine* [38] [39] are terminated as moot. The Court directs arbitration before JAMS of the claims made by plaintiff Rajesh Gupta in this lawsuit. The lawsuit is stayed, and the Clerk is directed to administratively terminate the case due to the likelihood of an extended stay. Briefing on Gupta's motion to certify for interlocutory appeal the granting of Morgan Stanley's motion to compel arbitration will proceed as scheduled.

Date: August 20, 2018


MATTHEW F. KENNELLY
United States District Judge