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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

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U.S. DISTRICT COURT
N.D. OF ALABAMA

FONZA LUKE,

Plaintiff,

vs.

BAPTIST MEDICAL CENTER
PRINCETON,

Defendant.

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CASE NO. CV 03-B-0646-S

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JUL 31 2003

MEMORANDUM OPINION AND ORDER

Currently before the court is a Motion to Stay and to Compel Arbitration, filed by defendant Baptist Medical Center Princeton (“Baptist”).¹ Upon consideration of the record, the submissions of the parties, the arguments of counsel, and the relevant law, the court is of the opinion that defendant’s motion is due to be granted.

I. FACTUAL SUMMARY

Baptist instituted a Dispute Resolution Program (“DRP”) to become effective in January 1998 whereby all employees who had disputes with Baptist were required to submit their claims to arbitration. A portion of a letter sent to Baptist employees in 1997 and attached to defendant’s motion reads as follows, “Effective January 1, 1998, all employee disputes will be resolved through the BHS [Baptist Health System] Dispute Resolution Program (“DRP” or “Program”); BHS and its employees will be required to use the DRP as the sole means of dispute resolution. If you accept employment or continue your current employment, you and BHS have agreed to and are bound by the terms of the DRP.” The DRP program itself includes the

¹The defendant refers to itself in the motion to compel as Baptist Health System, Inc., rather than Baptist Medical Center-Princeton.

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following paragraph: “The program is binding on all employees. This means that your decision to accept employment or continue your current employment, after receiving notice of this Program, will mean that you have agreed to and are bound by the terms of this Program. If you remain employed or accept employment, this document constitutes a binding contract between you and BHS. Likewise, the terms of this Program are binding on BHS. This Program precludes an employee and BHS from going to court to have disputes heard by a judge or a jury.”

A meeting of several employees was held on November 13, 1997, during which Baptist explained the new DRP to the employees. Plaintiff attended the meeting, signing a form to that effect. At the end of the meeting, the employees, including plaintiff, were asked to sign a document acknowledging that they would be bound by the DRP. Plaintiff refused to sign the form at this time. Her supervisor then instructed her that she would be terminated if she refused to sign. Plaintiff still refused, but was not terminated. Several weeks later her supervisor again asked her to sign a document accepting the new DRP. Plaintiff refused to sign this document as well. She continued to work for Baptist, apparently without incident, for approximately four more years before she was terminated for “insubordination.”

Baptist has moved to stay these proceedings and compel arbitration. Plaintiff opposes this motion.

II. DISCUSSION

Although there is a strong federal policy in favor of arbitration, “arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit.” *AT&T Techns., Inc. v. Communication Workers of Am.*, 475 U.S. 643, 648 (1986). Furthermore, an agreement to arbitrate future disputes must be in writing and sufficiently

affecting commerce to be enforceable under the Federal Arbitration Act. *See* 9 U.S.C. § 2; *Citizens Bank v. Alafabco, Inc.*, 123 S. Ct. 2037 (2003). Other issues about the formation of a contract containing an arbitration provision are governed by state law. *See Oakwood Mobile Homes, Inc. v. Barger*, 773 So. 2d 454, 459 (Ala. 2000) (“When deciding whether parties agree to arbitrate a certain matter (including arbitrability) courts generally . . . should apply ordinary state-law principles that govern the formation of contracts.”) (internal citations omitted).

Plaintiff does not contend that she did not know about or otherwise misunderstand the terms of the DRP. On the contrary, plaintiff’s affidavit makes clear that she understood the terms, including the arbitration provision. (*See* Pl.’s Aff. (“On the date of the aforesaid meeting, my immediate supervisor, Jamie Reynolds, told me that if I did not sign the form I would be terminated. I then specifically responded that I would not sign any Dispute Resolution agreement, *that I would not agree to be bound by any arbitration program and that I would not waive any of my rights.*”).) There is also no doubt that plaintiff remained employed by Baptist beyond January 1, 1998, the effective date of the DRP. These two points were relied on by the court in *Baptist Health System, Inc. v. Mack*, 2003 WL 1900697 (Ala. April 18, 18, 2003), a case factually similar to this one. In *Mack*, the court found that the plaintiff, was bound by the arbitration provision contained in the same DRP at issue in this case. The court stated, “[the plaintiff], who continued her employment with BHS subsequent to her receipt of the Program document, expressly assented to the terms of the Program document and is therefore bound by the arbitration provision contained in that document.” *Id.* at *8.

As the plaintiff points out, however, the facts in *Mack* are slightly different. In *Mack*, unlike this case, the plaintiff did not object to the DRP before the effective date of the DRP, and

did sign a form acknowledging that she received a copy of the DRP. The court is of the opinion that these differences do not compel a result different than that reached by the court in *Mack*. The DRP applied without exception to individuals who continued their at-will employment with Baptist after the effective date of the DRP. The documents of the DRP to this effect are unequivocal.² Plaintiff continued her at-will employment with Baptist and, as a result, accepted the terms of the DRP by performance.³ See *Baptist Health System, Inc. v. Mack*, 2003 WL 1900697 (Ala. April 18, 18, 2003); accord *Tinder v. Pinkerton Security*, 305 F.3d 728 (7th Cir. 2002) (affirming order compelling arbitration where plaintiff remained employed after effective date of company-wide policy to arbitrate disputes between itself and its employees). Plaintiff raises several other defenses to this motion which the court also rejects.⁴ See *Potts v. Baptist Health System, Inc.*, 2002 WL 31845929, *10-*12 (Ala. Dec. 20, 2002) (affirming trial court's order granting motion to compel arbitration in light of other defenses similar to the ones raised in this case; involved the same DRP at issue in this case).

III. CONCLUSION

Therefore, the court is of the opinion that defendant's Motion to Stay the Proceedings and Compel Arbitration is due to be, and hereby is, **GRANTED**. Pursuant to discussion with

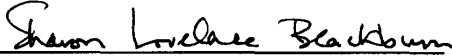
²Also, the arbitration agreement does not fail for lack of consideration. Continued at-will employment is sufficient consideration to support an arbitration agreement. See *Ameriquet Mortgage Co., Inc. v. Bentley*, 2002 WL 316643283, at *5 (Ala. Nov. 27, 2002).

³By not firing plaintiff, Baptist did not lose the right to insist on arbitration of any future claims between itself and plaintiff.

⁴As a final point, the contract is both in writing and sufficiently affects commerce, thus satisfying the requirements of § 2 of the Federal Arbitration Act. See 9 U.S.C. § 2; *Citizens Bank v. Alafabco, Inc.*, 123 S. Ct. 2037 (2003).

counsel, the court has decided not to Stay this action, but to dismiss it without prejudice to the right to reinstate this action to enforce any decision reached in arbitration. Plaintiff's action is, therefore, **DISMISSED WITHOUT PREJUDICE** to the right to reinstate the action to enforce any award or decision reached in arbitration.

DONE this the 31st day of July, 2003.


SHARON LOVELACE BLACKBURN
United States District Judge