

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 09-MD-02036-JLK

IN RE: CHECKING ACCOUNT
OVERDRAFT LITIGATION,

MDL No. 2036

THIS DOCUMENT RELATES TO:

Kennedy v. Wells Fargo Bank, N.A., et al.
N.D. Cal. Case No. 3:11-cv-01222
S.D. FL Case No. 1:11-cv-21313-JLK

ORDER GRANTING DEFENDANT'S MOTION TO COMPEL ARBITRATION

THIS CAUSE comes before the Court upon Defendant Wells Fargo Bank, N.A.'s Motion to Dismiss All Claims Or, in the Alternative, to Stay the Case in Favor of Arbitration (DE #3390) filed March 28, 2013. Parties fully briefed the motion¹ and presented oral argument on the issues contained therein on August 26, 2013.

Plaintiff filed the above-styled case on March 11, 2011. After its April 5, 2011 transfer to this Multidistrict Litigation (MDL), the case was stayed pursuant to this Court's Scheduling Order of September 14, 2009 (DE #59). At the time of the filing of the instant Motion to Compel, neither discovery nor motions practice had taken place. Therefore, this Motion to Compel represents the first time that the above-styled case has come before the Court for briefing and oral argument.

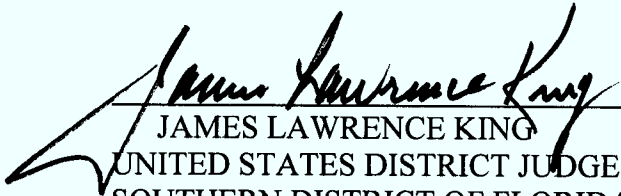
¹ Plaintiff filed a Response in Opposition on April 15, 2013 (DE #3433), and Defendant submitted its Reply on April 25, 2013 (DE #3442). On August 20, 2013, Plaintiff filed a Notice of Supplemental Authority (DE #3611), and Defendant filed its Response to the Notice on August 21, 2013 (DE #3613).

As Defendant correctly argued in its Motion to Compel and oral argument, the Deposit Agreement entered into by Plaintiff Alicia Kennedy contains a delegation clause assigning questions of arbitrability (such as an argument asserting the unconscionability of the arbitration provision) to an arbitrator rather than the Court. (DE #3390). Based on the arguments presented as well as a review of the record, the Court concludes that the delegation clause is enforceable. As the Court noted in its Order of March 12, 2013 (granting a similar motion in a different case in this MDL), “the delegation issue is dispositive, and a finding that the delegation clause is enforceable obviates the need to reach the question of unconscionability or any other argument concerning the enforceability of the arbitration agreement.” (DE #3334).

Accordingly, the following is **ORDERED, ADJUDGED and DECREED**:

1. Defendant’s Motion to Dismiss All Claims Or, in the Alternative, to Stay the Case in Favor of Arbitration (**DE #3390**) be, and the same is hereby, **GRANTED**.
2. The delegation provision in *Kennedy v. Wells Fargo Bank, N.A., et al.* **SHALL** be enforced and the case is hereby **DISMISSED** accordingly.

DONE AND ORDERED in chambers at the James Lawrence King Federal Courthouse in Miami, Florida, this 27th day of August, 2013.


JAMES LAWRENCE KING
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF FLORIDA

cc: All Counsel of Record