Superior Court of the District of Columbia.

Jalcia **JENKINS** Plaintiff,
v.
UNITED HEALTHCARE, et al. Defendants.

No. Civ.A. 7371-99.

Feb. 16, 2000.

ORDER

WINFIELD, J.

***1** Before the court is defendants' motion to compel arbitration and for stay of proceedings and plaintiff's opposition thereto. Upon careful review of the pleadings and the entire record herein, this court concludes that the motion must be denied for the reasons that follow.

Plaintiff sues her former employer for discrimination and retaliation under the District of Columbia Human Rights Act, D.C.Code § 1--2501 *et seq.* ("DCHRA"). Defendants argue that all claims are subject to a mandatory arbitration agreement between the parties. Defendants assert that in a written offer of employment, defendants conditioned plaintiff's employment upon her acceptance of the "United HealthCare Internal Dispute and Employment Arbitration Policy." (See Exhibit A, appended to defendants' Motion To Compel Arbitration and for Stay of Proceedings, ("Defendants' Motion"). Defendants concede, however, that the written policy was not provided to plaintiff until after she had begun employment. (See, Memorandum of Points and Authorities in Support of Defendants' Motion, "Defendants' Memorandum," at p. 4 and Affidavit of Jaicia Jenkins, Exhibit 1 of Plaintiff's Memorandum of Points and Authorities in Support of Plaintiff's Opposition to Defendants' Motion, "Plaintiff's Opposition"). Defendants argue that when plaintiff continued her employment, after receiving a copy of the Arbitration Policy, she thereby evidenced her acceptance of the policy. [FN1] The arbitration agreement was drafted to govern all disputes arising from the employment relationship, specifically including claims of employment discrimination. (Defendants' Memorandum at p. 7).

> FN1. Defendants rely on *Sisco v. GSA National Capital Federal Credit Union,* 689 A.2d 52 (D.C.1997); *Ellis v James V. Huson Associates, Inc.,* 565 A.2d 615 (D.C.1989); and *Turner v. United HealthCare Corp.,* Civil Action No. 98-RRA-0016-S (N.D.Ala.1999).

Plaintiff argues that although she received a copy of the offer of employment, she was unaware of the terms of the arbitration policy referenced in the letter. Plaintiff asserts that, in any event, she did not sign the job offer letter despite there being a place for her signature. Plaintiff argues further that when she later received a copy of the arbitration policy that was included in an employee handbook, she did not understand the terms to be mandatory. Moreover, she argues, there was no additional consideration provided for her assent to the agreement. Lastly, plaintiff argues that the terms of the agreement are so unilateral that this court cannot conclude that there was mutuality of obligations.

When the court is called upon to decide a motion to compel arbitration, it may properly determine whether the parties in fact reached the agreement in question. D.C.Code § 16--4301 provides:

> [o]n application of a party showing an agreement [to arbitrate] described in section 16--4301, and the opposing party's refusal to arbitrate, the Court shall order the parties to proceed with arbitration, but if opposing party denies the existence of the agreement to arbitrate the Court shall proceed summarily to the determination of the issue so raised and shall order arbitration if found for the moving party, otherwise, the application shall be denied.

***2** And although arbitration agreements are strongly favored in the law, *Hercules & Co. v. Shama Restaurant Corp.,* 613 A.2d 913, 922 (D.C.1992); *Friend v. Friend,* 609 A.2d 1137, 1138 (D.C.1992); *Haynes v. Kuder,* 591 A.2d 1286, 1290 (D.C.1991); *Sindler v. Batleman,* 416 A.2d 238 (D.C.1980), it must first be determined that the parties knowingly and intentionally entered into such an agreement. *Wright v. Universal Maritime Service Corporation,* 119 S.Ct. 391 (1998).

In the instant case, there is no dispute that plaintiff was unaware of the terms of the arbitration policy of defendant company when she received an offer of employment and when she began her employment. Although there is case law that permits the court to conclude that continuing employment with a company after receipt of its arbitration policies may constitute a binding agreement, *see n .1 supra,* this court concludes that the instant set of facts does not warrant this conclusion. In this case, it does not appear that any additional consideration was offered to the plaintiff in return for her agreement to be bound by the arbitration policy. Defendant did not point out the arbitration policy when it gave plaintiff a copy of the employee handbook. Defendant did not seek plaintiff's signature as evidence of her acceptance of the arbitration policy after plaintiff had had an opportunity to review it. A review of the arbitration agreement itself reveals that it does not establish a mutuality of obligations. Without such mutuality, there can be no contract. *Hackney v. Morelite Construction, D.C. Corp.,* 418 A.2d 1062 (D.C.1980); 1980; *Little v. Barry,* 417 A.2d 966 (D.C.1980).

In this case, the defendant's arbitration policy provides that

United HealthCare reserves the right to alter, amend, modify, or revoke the [arbitration policy] at any time with or without notice." (Plaintiff's Opposition at p. 9). In addition, the handbook provides "This Handbook, or any of the policies contained in it, may be updated, discontinued, replaced or revised at any time at UHC's sole discretion." See Exhibit 2 of Plaintiff's Opposition). These unilateral provisions did not give plaintiff adequate notice of the terms to which she might have agreed because they could be changed at any time without notice to the employees. Such a lack of consideration vitiates any contract between the parties.

Wherefore, based upon the foregoing and for the reasons argued in plaintiff's opposition, it is this *14 th* day of February 2000

ORDERED that defendants' motion to compel arbitration and for a stay of the proceedings be, and the same hereby is, DENIED.

2000 WL 298912, 2000 WL 298912 (D.C. Super.), 82 Fair Empl.Prac.Cas. (BNA) 984

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