UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

TAZENA KENNEDY, etc.,

Plaintiff,

v. Case No.: **3:12-cv-1128-J-25TEM**

COMPUCREDIT HOLDINGS, *et al*,

Defendants.
_____/

ORDER

This Cause is before the Court upon Defendant' Motion to Dismiss and Compel Arbitration (Dkt. 19) and Motion to File Reply (Dkt. 27).

As to the latter motion, it is denied. The Court does not need any additional briefing to render its decision.

Background

Plaintiff failed to pay $561.25 in debt. Her account was charged off and sold to Defendant Jefferson Capital. On October 24, 2011, Jefferson Capital sent Plaintiff a letter offering her the opportunity to pay down the debt while at the same time qualifying for a new credit card through its Fresh Start Solution Program (Program). This workout plan allows a consumer to pay down the debt for a discounted amount and potentially qualify for an unsecured credit

card.

On January 6, 2012, Plaintiff enrolled in the Program through the website www.freshstartsolutionprogram.com. Jefferson Capital sent Plaintiff an Emblem Mastercard Credit Card Program document which included a Bank Credit Card Agreement. This agreement included an arbitration provision.

Pursuant to the Program, Plaintiff made four monthly payments. Defendants removed her from the Program when she stopped the payments.

Plaintiff's Complaint before the Court is a putative class action lawsuit which alleges that Defendants violated the Fair Debt Collection Practices Act, 15 U.S.C. §1692 et seq. and the Credit Repair Organizations Act, 15 U.S.C. §1679 et seq. by making false, misleading, or deceptive representations and failing to make certain disclosures.

Defendants have moved to compel arbitration based on an arbitration provision contained in the Credit Card Agreement. Plaintiff asserts that she is not bound by the terms of this document.

Standard

Whether a matter is arbitrated is determined by examining the contract entered into by the parties. *AT & T Technologies, Inc. v.*

Communications Workers of America, 475 U.S. 643, 648-49 (1986). Section 3 of the Federal Arbitration Act (FAA) provides:

> If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the application for the stay is not in default in proceeding with such arbitration.

9 U.S.C. § 3.

The FAA reflects a strong federal policy favoring the enforcement of arbitration provisions. *Perry v. Thomas*, 482 U.S. 483, 490 (1987). "An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute." *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582-83 (1960). Therefore, "[a]ny doubts concerning the scope of arbitrable issues should be

resolved in favor of arbitration, whether the issue is the construction of the contract language itself or the allegation of waiver, delay or a like defense to arbitrability." *Knight v. Xebec*, 750 F. Supp. 1116, 1118 (M.D. Fla. 1990) (citation omitted).

Analysis

The threshold issue before the Court is whether the Parties entered into a valid arbitration agreement.

The arbitration provision at issue is contained not in the Fresh Start Solution Program's terms and conditions but rather in the Bank Credit Card Agreement. As stated in this document's section labeled "Effective Date of This Agreement," it "begins on the earlier of (i) the date that your request for a Card and Account is approved by us or (ii) the first date that we extend credit to you on your Account..."

Under "Signature; Acceptance of this Agreement" the document states that it is activated when "any action taken by you in activating your *Card*, making a payment on your Account or initiating any transaction on your Account will constitute your signature on this Agreement." (emphasis added)

As argued by Plaintiff, she never accepted the contract that contained the arbitration provision because she never qualified for, received or used the

credit card at issue. Simply put, the Program she did sign up for required her to make certain payments before qualifying for the card. Because she did not make all of the required payments, she never qualified for the card.

Clearly, she could not be bound by an arbitration agreement contained in a Bank Credit Card Agreement related to a card that she never qualified for, much less received. The Agreement clearly stated it was not effective until the bank approved Plaintiff's request for a card or extended her credit. Neither event transpired.[1] Accordingly, the Court need not reach the Parties' other arguments. Thus, it is **ORDERED**:

1. Defendants' Motion to Dismiss and Compel Arbitration (Dkt. 19) is **DENIED**;

2. Defendants' Motion to File Reply (Dkt. 27) is **DENIED**.

DONE AND ORDERED in Chambers this 7th day of May, 2013.

HENRY LEE ADAMS, JR.
UNITED STATES DISTRICT JUDGE

Copies to:
Counsel of Record

[1] Plaintiff points to language contained in an electronic page she received but she failed to provide a copy of the actual document.