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FILE

IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA: 16

JOSEPH M. RUCKI

DEBRA K. BAYLES,

Plaintiff,

VS. // **CIVIL ACTION NO. 14-C-139 H**

JEFFREY N. EVANS, INDIVIDUALLY and in his capacity as an EMPLOYEE, SERVANT, OR AGENT OF AMERIPRISE FINANCIAL SERVICES, INC., AMERIPRISE FINANCIAL SERVICES, INC., KRISTINA NICHOLLS, INDIVIDUALLY and STEPHEN BAYLES INDIVIDUALLY,

Filed 9-15-18 DWM.

Defendants.

ORDER

(DEFENDANTS' RENEWED MOTION TO COMPEL ARBITRATION)

Defendants, by counsel, filed *"Defendants' Renewed Motion to Compel Mandatory Arbitration."* The issues are fully briefed and counsel have argued their client's respective positions before the Court.

The Court **FINDS,** with guidance from the West Virginia Supreme Court of Appeals, that both of the subject accounts effectively incorporate by reference the *Brokerage Agreement* which includes the arbitration clause which is at the heart of this action.

The Court **FINDS** that there are two (2) separate and distinct accounts at issue in the instant litigation; to-wit: 1.) *Brokerage Account* and 2.) *Portfolios Account.*

The Court **FINDS** that William N. Bayles (Mr. Bayles) owned both accounts at all times pertinent hereto.

The Court **FINDS** that on the date of Mr. Bayles' passing the beneficiaries of the *Brokerage Account* were his natural children Kristina and Stephen (non-parties). Plaintiff Debra K. Bayles having been the original beneficiary of the *Brokerage Account*, but thereafter displaced.

The Court **FINDS** that the arbitration clause which is part of the *Brokerage Account* agreement is valid and enforceable. Plaintiff Debra K. Bayles' strongest argument in support of invalidating the arbitration clause is obviously her position that but for fraud she would not have consented to the rollover of her husband's NiSource 401k to fund the *Brokerage Account*. In declining to invalidate the arbitration clause on the basis of this argument, the Court **FINDS** Plaintiff Debra K. Bayles' evidence falls short.

The Court **FINDS** that Plaintiff Debra K. Bayles' claim for the assets of the *Brokerage Account* is within the substantive scope of the aforementioned arbitration clause.

Accordingly, as to Plaintiff Debra K. Bayles' claim to the assets of the *Brokerage Account,* it is the **ORDER** of this Court that such be and hereby is **DISMISSED** of and from this civil action and shall be arbitrated as per the terms and conditions of the *Brokerage Account* agreement's arbitration clause. What, if any, causes of action Plaintiff Debra K. Bayles' has or may assert against Defendants relative to fraud or concealment following the passing of William N. Bayles are not the subject this dismissal.

The Court **FINDS** that on the date of Mr. Bayles' passing the sole beneficiary of the *Portfolios Account* was his wife, Plaintiff Debra K. Bayles.

The Court **FINDS** that the "beneficiary confirmation letter" dated September 24, 2012, **DID NOTHING** to modify or otherwise affect the designation of Plaintiff Debra K. Bayles as the sole beneficiary of the *Portfolios Account* or the assets therein.

The Court **FINDS** that the arbitration clause which is part of the *Portfolios Account* agreement is valid and without any meritorious legal challenge.

The Court **FINDS** that as the sole beneficiary of the *Portfolios Account*, Plaintiff Debra K. Bayles' claim for the assets of said account is within the substantive scope of the aforementioned arbitration clause.

Accordingly, as to Plaintiff Debra K. Bayles' claim to the assets of the *Portfolios Account,* it is the **ORDER** of this Court that such be and hereby are **DISMISSED** of and from this civil action and shall be arbitrated as per the terms and conditions of the *Portfolios Account* agreement's arbitration clause. What, if any, causes of action Plaintiff Debra K. Bayles' has or may assert against Defendants relative to fraud or concealment following the passing of William N. Bayles are not the subject this dismissal.

It is the **ORDER** of this Court that this civil action be and hereby is **DISMISSED** from the Court's active docket, but that same shall remain within the province of the Court to enforce or otherwise address arbitration decisions.

It is so **ORDERED**.

The Clerk of this Court shall, in accord with W.Va. R.Civ.P. 77(d), transmit a copy of this Order to all counsel of record and any and all unrepresented (pro se) parties who have appeared in this action.

Dated: September 15, 2018.

HON. DAVID W. HUMMEL, JR.
Circuit Court Judge

A Copy Teste:
Joseph M. Rucki, Clerk
By Donna Crow Deputy