STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Curtis D. Bale, Plaintiff, v. John A. Dougherty; Wachovia Securities Financial Holdings, LLC; Wells Fargo Clearing Services, LLC, f/k/a Wells Fargo Advisors, LLC; Wells Fargo & Company; Wells Fargo Bank, N.A.; and LPL Financial, LLC, Defendants.	Civil Action No. 2023-CP-40-00242 **ORDER GRANTING DEFENDANT LPL'S MOTION TO COMPEL ARBITRATION**

THIS MATTER COMES BEFORE THE COURT on Defendant LPL Financial, LLC's ("LPL") Motion to Compel Arbitration under 9 U.S.C. § 4 (the "Motion"). For the reasons set forth below, this Court grants the Motion and compels arbitration of all claims raised by Plaintiff Curtis D. Bale ("Plaintiff") against LPL pursuant to a binding and enforceable arbitration agreement, and stays this action under 9 U.S.C. § 4.[1] Having considered the materials and arguments of counsel on the papers and during the hearing held on November 18, 2024, the Court hereby finds and concludes as follows:

[1] This Order addresses only the Motion to Compel Arbitration filed by Defendant LPL. This Court will address the Motions to Compel Arbitration filed by the remaining Defendants via separate orders.

BACKGROUND

In 2010, Plaintiff became a client of Dougherty, a financial advisor. (Compl. ¶¶ 22–23.) In 2013, Dougherty became affiliated with the Wells Fargo Advising Defendants[2]; Plaintiff chose to follow Dougherty to and open accounts with the Wells Fargo Advising Defendants. (*Id.* ¶ 25.) In January 2021, Dougherty became affiliated with LPL, and Plaintiff chose to leave Wells Fargo and follow Dougherty to LPL, where he opened four accounts. (*Id.* ¶ 43). When Plaintiff opened his first account with LPL, he executed an express agreement with LPL governing the parties' relationship (the "Account Application"). (LPL's Mem. in Supp. of Mot. to Compel Arb., Nov. 8, 2024, Ex. 1, Aff. of Kyle Poston, Ex. A.A ("Poston Aff.").)

Section I.1 of the Account Application completed by Plaintiff incorporates the accompanying "Account Packet" (the "Account Agreement") (Poston Aff. Ex. A.B). Each of the three subsequent account applications completed by Plaintiff (Poston Aff. Exs. A.C, A.E, & A.G) (collectively with Poston Aff. Ex. A.A, the "Account Applications") incorporate a similar account agreement (Poston Aff. Exs. A.D, A.F, & A.H) (collectively with Poston Aff. Ex. A.B, the "Account Agreements").

By signing each of the Account Applications, Plaintiff endorsed the following statement provided directly above the signature blocks: "This account is governed by and I acknowledge receipt of the predispute arbitration clause that is located in the last numbered section of the Account Agreement (included in the Account packe[t] specified in Section I), which is incorporated by reference into the Account Application."

[2] As used here, the term Wells Fargo Advising Defendants denotes Wells Fargo Clearing Services, LLC; Wells Fargo Advisors, LLC; and Wachovia Securities Financial Holdings, LLC. (*See* Compl. ¶ 4.)

This account is governed by and I acknowledge receipt of the predispute arbitration clause that is located in the last numbered section of the Account Agreement (included in the Account Packed specified in Section I), which is incorporated by reference into the Account Application.

DocuSigned by:
Curtis D. Bale
C8533BFB4BFF42A...
Account Holder Signature

Curtis Dalton Bale
Account Holder Name (print)

1/11/2021
Date

(*Id.*)[3]

As Plaintiff acknowledged, each of the incorporated Account Agreements contains an arbitration provision (the "Arbitration Provision"), which states in relevant part the following:

> In consideration of opening one or more accounts for you, you agree that ***any controversy*** between you and LPL and/or your Representative(s) (whether or not a signatory(ies) to this Master Account Agreement or Arbitration Agreement), arising out of or relating to your account, transactions with or for you, or the construction, performance, or breach of this agreement whether entered into prior, on or subsequent to the date hereof, ***shall be settled by arbitration in accordance with the rules, then in effect of the Financial Industry Regulatory Authority (FINRA)*** . . . . Any arbitration award hereunder shall be final, and judgment upon the award rendered may be entered in any court, state or federal, having jurisdiction. Nothing in this this [sic] Agreement requires arbitration of any claim that under the law cannot be made subject to a pre-dispute agreement to arbitrate claims, including any dispute or controversy nonarbitrable under federal law.

(Poston Aff. Ex. A.B, at 15 (emphasis added).)[4]

On January 17, 2023, Plaintiff filed his Complaint and initiated suit in the Richland County Court of Common Pleas. (*See generally* Compl.) Plaintiff asserted five causes of action against LPL: Breach of Fiduciary Duty (Count I); Breach of Contract (Count II); Breach of Contract Accompanied by a Fraudulent Act (Count III); Violation of the South Carolina Uniform Securities Act of 2005 (Count IV); and Violation of South Carolina Unfair Trade Practices Act (Count V). (*See id.* ¶¶ 49–84.) All causes of action against LPL are related to Plaintiff's accounts and transactions at LPL.

[3] (*See also* Poston Aff. Ex. A.C, at 7 (similar); *id.* Ex. A.E, at 6 (same); *id.* Ex. A.G, at 6 (same).)

[4] (*See also* Poston Aff. Ex. A.D, at 19–20 (similar); *id.* Ex. A.F, at 15 (same); *id.* Ex. A.H, at 15 (same).)

On February 16, 2023, LPL removed the present action to the United States District Court for the District of South Carolina, Columbia Division. The federal district court ultimately remanded the action to this Court on March 25, 2024. That same day, LPL filed in this Court its Motion to Compel Arbitration and Dismiss. This Court held a hearing on LPL's Motion and the motions to compel brought by the other Defendants on November 18, 2024. The Court granted LPL's Motion to Compel Arbitration by Form 4 Order dated March 26, 2025, and now enters this Order as to the LPL's Motion.

LEGAL STANDARD

In South Carolina, a party seeking to compel arbitration under the Federal Arbitration Act ("FAA") "must establish that (1) there is a valid agreement, and (2) the claims fall within the scope of the agreement." *Wilson v. Willis,* 426 S.C. 326, 336, 827 S.E.2d 167, 172 (2019). The FAA "applies in state or federal court to any arbitration agreement involving interstate commerce, unless the parties contract otherwise." *Id.* There is an "expansive view of interstate commerce" under the FAA, and the FAA requires courts to "enforce privately negotiated agreements to arbitrate, like other contracts, in accordance with their terms." *Zabinski v. Bright Acres Assocs.,* 346 S.C. 580, 592, 596, 553 S.E.2d 110, 116, 118 (2001) (citation omitted).

The party opposing arbitration "bears the burden of proving that the claims at issue are unsuitable for arbitration." *Dean v. Heritage Healthcare of Ridgeway, LLC,* 408 S.C. 371, 379, 759 S.E.2d 727, 731 (2014) (citation omitted). As explained below, the Court holds that Plaintiff has failed to satisfy his burden of proof in this case.

ANALYSIS

1. The Agreement to Arbitrate is Governed by the FAA and Enforceable under State and Federal Law.

The FAA governs written agreements to arbitrate involving the interstate commerce. *See* 9 U.S.C. §§ 1 *et seq.*; *Wilson*, 426 S.C. at 336, 827 S.E.2d at 172; *see also Conway v. CLC BIO, LLC*, 32 N.E.3d 330, 335–36 (Mass. Ct. App. 2015).[5] There is an "expansive view of interstate commerce" under the FAA. *Zabinski*, 346 S.C. at 592, 596, 553 S.E.2d at 116, 118 (citation omitted). The FAA "requires courts to enforce privately negotiated agreements to arbitrate . . . in accordance with their terms." *Cape Romain Contractors, Inc. v. Wando E., LLC*, 405 S.C. 115, 125, 747 S.E.2d 461, 466 (2013) (quoting *Zabinski*, 346 S.C. at 592, 553 S.E.2d at 116). The FAA confers a right "to obtain an order directing that arbitration proceed in the manner provided for in the parties' agreement." *Id.* at 126, 747 S.E.2d at 466 (original quotation marks and citation omitted). The Court shall direct the parties to proceed to arbitration upon showing there is a valid agreement for arbitration. *New Hope Missionary Baptist Church v. Paragon Builders*, 379 S.C. 620, 628 n.5, 667 S.E.2d 1, 4 n.5 (Ct. App. 2008) (citing 9 U.S.C. § 4). Arbitration provisions in contracts involving interstate commerce "shall be valid, irrevocable, and enforceable," and will be enforced by the court "save upon such grounds as exist at law or in equity for the revocation of any contract." *Wilson*, 426 S.C. at 336, 827 S.E.2d at 173 (quoting 9 U.S.C. § 2).

A court is obligated to "rigorously enforce" arbitration agreements. *Cape Romain Contractors*, 405 S.C. at 125, 747 S.E.2d at 466 (quoting *Am. Exp. Co. v. Italian Colors Rest.*, 570 U.S. 228, 228 (2013)).

[5] Massachusetts law governs LPL's account agreements with Plaintiff. (*See* Poston Aff. Ex. A.B, at 9; *id.* Ex. A.D, at 9; *id.* Ex. A.F, at 9; *id.* Ex. A.H, at 9.)

2. LPL Has Satisfied All of the Elements Necessary to Compel Arbitration Pursuant to the FAA.

As detailed above, a party seeking to compel arbitration under the FAA "must establish that (1) there is a valid agreement, and (2) the claims fall within the scope of the agreement." *Wilson*, 426 S.C. at 336, 827 S.E.2d at 172. Stated more fully, a party must establish "(1) the existence of a dispute between the parties, (2) a written agreement that includes an arbitration provision which purports to cover the dispute, (3) the relationship of the transaction, which is evidenced by the agreement, to interstate or foreign commerce, and (4) the failure, neglect or refusal of the defendant to arbitrate the dispute." *Am. Gen. Life & Acc. Ins. Co. v. Wood*, 429 F.3d 83, 87 (4th Cir. 2005) (citation omitted). The Court holds that LPL has satisfied each of these elements.

A. A Dispute Exists Between the Parties.

First, this Court finds that a dispute exists between the parties, as Plaintiff has filed a Complaint relating to his accounts at LPL, investments held at LPL, and advice received while at LPL. (*See* Compl. ¶¶ 54–79). Accordingly, this first element is met. *See Wood*, 429 F.3d at 87.

B. A Written Agreement Containing an Arbitration Clause Covers the Dispute.

Second, the Court finds that the arbitration agreements cover the dispute. Notably, Plaintiff signed four arbitration provisions with LPL covering this dispute. As noted above, arbitration is proper when there is a valid arbitration agreement, and the disputes are covered by the arbitration provision. *Landers v. Federal Deposit Ins. Corp.*, 402 S.C. 100, 109, 739 S.E.2d 209, 214 (2013); *see York*, 406 S.C. at 97, 749 S.E.2d at 154 (upholding trial court's decision to dismiss suit and compel arbitration, as "[e]very dispute was within the scope of at least one valid arbitration agreement"). Simply put, arbitration is required when "(1) an arbitration clause specifically encompasses the asserted claims; or (2) there exists a significant relationship between the asserted

claims and the parties' contract." *Timmons v. Starkey*, 380 S.C. 590, 596, 671 S.E.2d 101, 105 (Ct. App. 2008).

Here, the Court finds that each of the Account Agreements include a valid, written Arbitration Provision that is binding and enforceable against Plaintiff. (*See* Poston Aff. Ex. A.A, at 15).[6] Additionally, the Court finds that each of Plaintiff's claims falls within the Arbitration Provision's scope.

> Both the Fourth Circuit Court of Appeals and [the South Carolina Supreme Court] have held that the sweeping language of broad arbitration clauses applies to disputes in which a significant relationship exists between the asserted claims and the contract in which the arbitration clause is contained. Thus, the scope of the clause does "not limit arbitration to the literal interpretation of performance of the contract, but embraces every dispute between the parties having a significant relationship to the contract."

Landers, 402 S.C. at 109, 739 S.E.2d at 214 (citation sentences and original brackets omitted) (quoting *J.J. Ryan & Sons, Inc. v. Rhone Poulenc Textile, S.A.*, 863 F.2d 315, 321 (4th Cir. 1988)); *see also Com. v. Philip Morris Inc.*, 864 N.E.2d 505, 511 (Mass. 2007) ("[W]hen considering a broadly worded arbitration clause, there is a presumption that a contract dispute is encompassed by the clause unless it is clear the dispute is excluded."). Moreover, "under the expansive reach of the FAA[,] a tort claim need not raise an issue that requires reference to or the construction of some portion of the contract in order to be encompassed by a broadly-worded arbitration clause." *Landers*, 402 S.C. at 111, 739 S.E.2d at 214.

The Arbitration Provisions to which Plaintiff agreed require arbitration of a broad category of disputes:

> [A]ny controversy between you and LPL and/or your Representative(s) (whether or not a signatory(ies) to this Master Account Agreement or Arbitration Agreement), arising out of or relating to your account, transactions with or for you, or the construction, performance, or breach of this agreement whether entered into

[6] (*See also* Poston Aff. Ex. A.D, at 19–20; *id.* Ex. A.F, at 15; *id.* Ex. A.H, at 15.)

> prior, on or subsequent to the date hereof, shall be settled by arbitration in accordance with the rules, then in effect of the Financial Industry Regulatory Authority (FINRA).

(Poston Aff. Ex. A.B, at 15).[7]

As explained below, the Court finds that Plaintiff's five causes of action all fall within the scope of this Arbitration Provision because they arise out of or relate to Plaintiff's accounts, transactions with or for him, and performance under the Account Agreements. Indeed, Plaintiff did not challenge that the claims all fell within the scope of the Arbitration Agreements.

i. The Arbitration Provision Covers Plaintiff's Breach of Fiduciary Duty Claim.

First, Plaintiff's breach of fiduciary duty claim is contingent on Plaintiff's allegations that LPL assumed a duty but "failed to exercise reasonable care, diligence, and prudence in the performance of its duties when it engaged in reckless and imprudent trading schemes in a futile effort to recover losses caused by its predecessors' failed strategy and self-protective sell-off." (*See* Compl. ¶¶ 54(1), 58–59.)

Simply put, if any fiduciary duties arose, then they arose from the Account Agreements which govern LPL's conduct with respect to the operation and oversight of Plaintiff's LPL accounts. Any fiduciary duties would thus be encompassed in the Account Agreement and encompassed within the arbitration provision. Accordingly, Plaintiff's fiduciary breach claim arises from and relates to Plaintiff's account and performance under the Account Agreements. The Court finds that this claim must be arbitrated under the Arbitration Provision.

[7] (*See also* Poston Aff. Ex. A.D, at 20 (similar); *id.* Ex. A.F, at 15 (same); *id.* Ex. A.H, at 15 (same).)

ii. The Arbitration Provision Covers Plaintiff's Breach of Contract and Accompanying Fraudulent Act Claims.

Next, Plaintiff's claims for breach of contract and breach of contract accompanied by a fraudulent act also fall within the broad scope of the Arbitration Provision. Specifically, Plaintiff alleges that LPL executed the Account Agreements with Plaintiff and then "breached [its] Agreements with [Plaintiff]" through mismanagement—failing "to abide by the terms of the agreements." (*See* Compl. ¶¶ 58, 61–62, 65–58.) Manifestly, Plaintiff's breach of contract and breach of contract accompanied by a fraudulent act claims arise from and relate to the Account Agreements. The Court finds that these claims also must be arbitrated under the Arbitration Provision.

iii. The Arbitration Provision Covers Plaintiff's Statutory Violation Claims.

Plaintiff's claim for violation of the South Carolina Uniform Securities Act of 2005 ("SCUSA") likewise arises from and relates to Account Agreements. Plaintiff alleges that LPL "recommended and advised that he enter into imprudent transactions." (Compl. ¶ 72.) The Account Agreements governed LPL's conduct with respect to the operation and oversight of his LPL accounts. Thus, Plaintiff's SCUSA claim arises from and relates to Plaintiff's account and performance under the Account Agreements. It too must be arbitrated under the Arbitration Provision.

Finally, Plaintiff's claim for violation of the South Carolina Unfair Trade Practices Act ("SCUTPA") likewise arises from and relates to the Account Agreements. Plaintiff alleges that LPL "engaged in an unfair method of competition and/or an unfair or deceptive act or practice" by "recommending and implementing an investment scheme premised upon [Plaintiff's] continuing to maintain a substantial debt collateralized by his investments." (Compl. ¶ 79.) The Account Agreements governed LPL's conduct with respect to the operation and oversight of his LPL

accounts. Like the other claims asserted in the Complaint, Plaintiff's SCUTPA claim arises from and relates to Plaintiff's accounts, transactions with or for Plaintiff, and the Account Agreements, and the Court finds that it must be arbitrated under the Arbitration Provision.

iv. The Arbitration Agreements are Valid.

In the briefing and at the hearing, Plaintiff raised several arguments to challenge the Arbitration Agreements as unenforceable. The Court finds that none of those arguments have merit.

First, Plaintiff argued that his repeated decisions to enter arbitration agreements with LPL are nullified by alleged hyper-technical shortcomings in those agreements, citing certain FINRA rules. However, other courts confronting similar arguments have rejected them—finding instead that a technical rule promulgated by a self-regulatory organization cannot constitute an "exception[] to the FAA in order to invalidate an otherwise valid arbitration agreement." *See, e.g.*, *Singh v. Interactive Brokers LLC*, 219 F. Supp. 3d 549, 559 (E.D. Va. 2016); *Hillow v. E*Trade Sec., LLC*, No. 4:22-CV-145-JAR, 2022 WL 1165791, at *3–5 (E.D. Mo. Apr. 20, 2022). For the same reasons, the Court rejects that argument here.[8]

Second, Plaintiff also made several arguments that the agreement was void due to mistake. Plaintiff's purported mistake was, he alleged, brought on by LPL's failure to disclose some ostensible substantial prejudice inherent to the FINRA forum.[9] Plaintiff, however, cited no case law where a court refused to compel an eligible dispute to arbitration simply because one party

[8] Although Plaintiff attempted to distinguish these cases by framing his argument in terms of a condition precedent, the Court finds that he is simply seeking the same result by a different route—creating an exception to the FAA—and that the argument likewise fails.

[9] The Court declines to make the sweeping finding that the entire forum of FINRA is unconscionable on the basis of nothing more than Plaintiff's speculation as to the outcome of this particular case.

later disagreed on its forum selection choice. Moreover, even assuming that Plaintiff made a mistake, Plaintiff cannot evade his contractual obligations because Plaintiff himself bore the risk of that unilateral mistake. *See Dahua Tech. USA Inc. v. Feng Zhang*, 988 F.3d 531, 539 (1st Cir. 2021) ("Asserting a unilateral mistake defense requires a party to show that . . . [he] did not bear the risk of mistake."). The Court finds Plaintiff's argument meritless.

Finally, Plaintiff suggested that arbitration was improper because he could not "effectively vindicate his statutory rights in the arbitral forum" (citing *In re Cotton Yarn Antitrust Litig.*, 505 F.3d 274, 282 (4th Cir. 2007)). But the Court finds that this argument is misplaced because the "effective vindication" doctrine applies only to *federal* statutes—not *state* statutes like the South Carolina Uniform Securities Act of 2005 or the South Carolina Unfair Trade Practices Act raised by Plaintiff. *See Am. Exp. Co. v. Italian Colors Rest.*, 570 U.S. 228, 235 (2013) (addressing argument that "effective vindication" doctrine "serves to harmonize competing ***federal*** policies by allowing courts to invalidate agreements that prevent the 'effective vindication' of a ***federal*** statutory right" (emphasis added)). The Court also finds that Plaintiff has offered nothing more than mere speculation about his alleged inability to effectively vindicate his rights in FINRA, and the argument fails for this reason as well. *See Braintree v. Citigroup*, 671 F. Supp. 202, 210 (D. Mass. 2009) ("Specifically, the Court declines to engage in the speculative forecasting necessary to hold that FINRA is sure to ignore plaintiffs' state statutory claim for rescission whenever this dispute finally makes its way to arbitration.").

Accordingly, the Court finds that all five of Plaintiff's causes of action fall within the broad scope of this Arbitration Provision because they all relate to or arise out of Plaintiff's accounts, transactions with or for Plaintiff, or performance under the Account Agreements themselves. In

addition, the Court finds that the unenforceability arguments raised by Plaintiff fail and do not change the result that the Account Agreements are enforceable.

C. The Agreement Evidences a Relationship to Interstate Commerce.

Third, the Court finds that the transactions at issue in the Complaint relate to interstate commerce. It is well-settled that such agreements relating to investment and brokerage accounts "evidence[e] a transaction involving [interstate] commerce" such that the FAA applies. *See* 9 U.S.C. §§ 1, 2; *Dean,* 408 S.C. at 380, 759 S.E.2d at 732 (noting that courts must consider "the agreement, the complaint, and the surrounding facts" in determining whether an arbitration agreement implicates interstate commerce for purposes of the FAA); *Newcome v. Esrey*, 862 F.2d 1099, 1100, 1107 (4th Cir. 1988) (affirming district court's ruling that investment services and brokerage agreements for securities meet FAA requirements and that arbitration clauses will be held enforceable to prevent litigation). Accordingly, the Court finds that the FAA applies here because the Account Agreements for investment services involve interstate commerce in national and/or international financial markets. Additionally, the Court also finds that the Account Agreements involve interstate commerce because Plaintiff (located in South Carolina) contracted with the entity Defendants (located throughout the United States) for investment services to be provided by individual Defendant John Dougherty (located in Pennsylvania).

D. Plaintiff Refuses to Arbitrate the Dispute.

Fourth, and finally, the Court finds that Plaintiff has refused to arbitrate the dispute. Plaintiff filed this case in the South Carolina Court of Common Pleas on January 17, 2023, opposed the Motion to Compel Arbitration, and did not agree to refile in FINRA.

CONCLUSION

For the reasons detailed above, **IT IS THEREFORE ORDERED** that LPL's Motion to Compel Arbitration is hereby **GRANTED**;

IT IS FURTHER ORDERED that this matter is hereby STAYED pending arbitration.

IT IS SO ORDERED.

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The Hon. Jocelyn T. Newman
Presiding Judge
South Carolina Business Court

Date: April ___, 2025

Richland Common Pleas

Case Caption: Curtis D Bale vs John A Dougherty , defendant, et al

Case Number: 2023CP4000242

Type: Order/Compel

So Ordered

Jocelyn Newman