UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

STEVEN C. NEIL, et al.,	)	
	)	
Plaintiffs	)	
	)	
v.	)	Civil No. 97-0133-B
	)	
JOHN POIT, et al.,	)	
	)	
Defendants	)	

ORDER

Pending before the Court are Defendants' Motions to Compel Arbitration and Stay Litigation, to which Plaintiff Steven Neil, but not Plaintiff Cynthia Neil, has filed an Objection. At issue is whether Neil is bound by certain contracts entered into by his father. If Neil is bound by the contracts, it is undisputed that the contracts will require him to arbitrate the dispute raised in this litigation.

Factual History

Plaintiffs' Complaint alleges in pertinent part that on or about November 30, 1993, Robert M. Neil, Plaintiff Steven Neil's father, executed a Trustee Certification and Schwab One Trust Brokerage Agreement ["BROKERAGE AGREEMENT"] authorizing Charles Schwab & Co. to maintain a Schwab One Brokerage Account for the Robert M. Neil Revocable Trust ["LIVING TRUST"], a Living Trust for which Robert was the trustee. Robert Neil died on June 24, 1996. By operation of Robert Neil's will the Robert M. Neil Revocable Trust ceased and its assets automatically became the property of the Robert M. Neil Family Trust ["FAMILY TRUST"], of which Steven Neil became a trustee.

Discussion

The sole question raised by Plaintiff's Objection to the Motions to Compel Arbitration "is whether an 'heir' or 'successor' can be bound by a contract of which he had no knowledge and which he did not enter into voluntarily." Pltf. Response at 4.[1] If so, Plaintiff will be bound by language in the Brokerage Agreement providing that disputes regarding the account will be settled by arbitration, and further providing that the Agreement, including the arbitration clause, would be binding upon Robert Neil's "heirs, executors, administrators, successors, and assigns."

Both parties note that courts which have enforced arbitration clauses against non-signatories have done so only after careful analysis of whether the facts of each case place it within one of the traditional exceptions to the rule regarding successor liability; namely, that an unconsenting successor is not bound to a contract entered into by its predecessor. *See, e.g., John Wiley & Sons v. Livingston*, 376 U.S. 543, 551 (1964). Often the question arises in the context of collective bargaining agreements, as in *Wiley*, where "[t]he preference of national labor policy for arbitration as a substitute for tests of strength between contending forces could be overcome only if other considerations compellingly so demanded." *Id*.

Outside the labor context, the Court is directed to general principles of contract law. *Id.*; *see also First Options of Chicago v. Kaplan*, 514 U.S. 938, 944 (1995) ("When deciding whether the parties agreed to arbitrate a certain matter . . . courts generally . . . should apply ordinary state-law principles that govern the formation of contracts."). Where the arbitration provision "touches upon interstate commerce," the interpretation of the provision is a matter of federal common law, which in turn may be informed by state law. *McCarthy v. Azure*, 22 F.3d 351, 355-56 (1st Cir. 1994). The Brokerage

[1] Plaintiff's argument that the Court should not enforce the arbitration agreement because it would deprive him of his right to a jury trial is not a separate argument. If the Court finds that Plaintiff is bound by the agreement, Plaintiff will be deemed to have waived that right.

Agreement at issue here deals with transactions involving interstate commerce. *Painewebber v. Hartmann*, 921 F.2d 507, 510 (3rd Cir. 1990).

Both Defendants have cited a First Circuit case for the proposition that the continuity of enterprise test often utilized in the labor context applies in other contexts as well. The case cited, *Cyr v. B. Offen & Co.*, 501 F.2d 1145 (1st Cir. 1974), however, recognized in New Hampshire law a "product line" exception permitting successor corporate liability that has now been disclaimed by the New Hampshire Supreme Court. *Thibault v. Sears, Roebuck & Co.*, 118 N.H. 802 (1978). Those exceptions that are often recognized by various state courts are not recognized in the State of Maine. *Jordan v. Hawker Dayton Corp*., 62 F.3d 29, 31 (1st Cir. 1995); *Saco River Telegraph & Telephone v. Shooshan & Jackson, Inc.*, 286 F. Supp. 580, 583 (D. Me. 1993).

In the end, the Court is wary of applying law formulated in the context of collective bargaining disputes or corporate tort liability to the question of contract formation presented in this case. The Court is further dissatisfied with the "ordinary contract law" analysis presented by the parties thus far. Accordingly, it is hereby ORDERED that all parties to the pending motions shall file simultaneous briefs, no longer than five pages, addressing the concerns presented in this Order no later than November 14, 1997.

SO ORDERED.

Eugene W. Beaulieu
U.S. Magistrate Judge

Dated on November 19, 1997.