

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	Civil Action No. 5:05-393-JMH
Plaintiff,)	
)	
SRETTA REESE, BONNIE CENTERS,)	
FRAN HOWARD, & MELINDA COCHRAN)	
)	ORDER
Intervening Plaintiffs,)	
)	
v.)	
)	
PHYSICIAN SERVICES, P.S.C.,)	
)	
Defendant.)	

** ** * * *

Before the Court is Defendant's motion to compel arbitration and stay the proceedings [Record No. 14]. The Equal Employment Opportunity Commission ("EEOC") and all Intervening Plaintiffs responded to the motion [Record Nos. 15, 18, & 19]. After Defendant replied [Record Nos. 17 & 22], the Court held a hearing on the motion. Fully briefed, this matter is ripe for review.

In its complaint, the EEOC alleges that Defendant subjected one of its former employees, Melinda Cochran, to retaliation, constructive discharge, and harassment based on her sex and disability and subjected three other former employees, Bonnie Centers, Fran Howard, and Sretta Reese to retaliatory constructive discharge for complaining about Defendant's unlawful conduct.

The issue presented by Defendant's motion is whether the Court

must compel the intervening plaintiffs to arbitrate their claims against Defendant pursuant to an arbitration agreement while the EEOC pursues its claims against Defendant in this Court.¹ Defendant argues that the holding in *EEOC v. Rappaport, Hertz, Cherson & Rosenthal*, 273 F. Supp. 2d 260 (E.D.N.Y. 2003) supports its motion to compel arbitration. The intervening plaintiff in *Rappaport*, Rabbia Ashraf, intervened in a lawsuit brought by the EEOC "in its own name, both in the public interest and on behalf of Ashraf" and two other employees against their employer. *Id.* at 262. In *Rappaport*, the court held that "because the language under the Compulsory Arbitration Agreement makes clear that all of Ashraf's claims fall within the scope of the agreement, Ashraf must arbitrate her Title VII, state, and local claims." *Id.* at 264. The court stayed her claims against her former employer pending the conclusion of the arbitration proceedings, but refused to stay the EEOC's action against the employer. *Id.* at 265.

Although the *Rappaport* court relied upon *EEOC v. Waffle House, Inc.*, 534 U.S. 279 (2002) for the proposition that the EEOC cannot be compelled to arbitrate its claims against the employer, the court never addressed an aspect of the *Waffle House* opinion that the intervening plaintiffs in the case *sub judice* contend is key to their argument: "[Once] the EEOC files suit on its own, the

¹ Defendant does not dispute that the EEOC is not a party to the arbitration agreement and therefore cannot be compelled to arbitrate its claims against Defendant.

