

REGIONAL NEWS

Class Action Over Sunoco Rewards Card to Move Forward

BY P.J. DANNUZZIO

Of the Legal Staff

A federal judge has rejected Sunoco's bid to arbitrate a proposed class action over alleged false advertising of its fuel rewards card benefits.

U.S. District Judge Paul S. Diamond of the Eastern District of Pennsylvania denied Sunoco's motion to compel arbitration in lead plaintiff Donald White's proposed class action against the company because Sunoco was not contractually entitled to arbitration.

While the cardholder agreement does provide for arbitration, Diamond wrote in his memorandum, it only does so for cardholders and the issuer of the cards, Citibank. Sunoco was not a party to that agreement.

"Here it is apparent that the cardholder agreement was entered into by the parties directly and primarily for the benefit of Citibank," Diamond said. "The agreement does not even mention Sunoco or the rewards program."

He continued, "Rather, the record confirms that, like virtually all credit card contracts, this agreement sets out the terms and conditions by which the credit card provider (i.e. Citibank) makes credit available to the cardholder."

Additionally, the judge said White, a Florida resident, did not bring the class action on the basis of a breach of the agreement with Citibank, but over alleged fraud, negligent misrepresentation, unjust enrichment and violations of Florida's Deceptive and Unfair Trade Practices Act.

they frequent Sunoco locations," according to Diamond. Diamond said that courts have allowed nonsignatory parties to enforce a contract when that party is incorporated into the contract, or an alter ego of a signatory. However, "Sunoco has not even suggested, much less shown, that any of these theories

White alleged Sunoco knew its representations were intended to 'induce customers to sign up for the Sunoco Rewards credit card so they frequent Sunoco locations,' according to Diamond.

White claimed he was denied the five-cent-per-gallon discount offered by Sunoco through the rewards program, Diamond said. Sunoco's promotional materials never stated that some independently owned and operated Sunoco stations would not provide the discount.

White alleged Sunoco knew its representations were "false and misleading" and were intended to "induce customers to sign up for the Sunoco Rewards credit card so

is relevant here. Accordingly, it cannot seek enforcement of the cardholder agreement's arbitration provision."

Neither has Sunoco shown that it was an agent of Citibank, Diamond said.

"Sunoco alone is responsible for ensuring the fuel discount is properly applied," Diamond said. "Sunoco has admitted that neither company is a 'corporate affiliate' of the other."

"Finally, plaintiff has not alleged that Sunoco engaged in concerted action with

Citibank or even that Citibank committed any wrongdoing," Diamond added.

Lastly, Diamond held that estoppel did not require White to arbitrate his dispute with Sunoco.

Diamond explained that under alternative estoppel, a nonsignatory can seek enforcement of arbitration if it can show there is a close relationship between it and the signatory and the alleged wrongs are related to the nonsignatory's contractual obligations. However, the judge said the theory did not apply in the case against Sunoco.

"Even assuming arguendo, Sunoco could make out a close relationship with Citibank," Diamond said. "Sunoco has not shown that the instant dispute is intertwined with the underlying agreement."

Sunoco argued that White should "be held to the contract from which he benefited," Diamond said. "I do not agree."

"The existence of a separate agreement 'saves the day' for plaintiff," Diamond said.

In this case, Diamond explained, a separate agreement existed between Sunoco and White created by the promotional materials, one of which was not mentioned in the cardholder agreement.

White's attorney, Richard Golomb of Golomb & Honik, did not return a call seeking comment.

Katherine Villanueva of Drinker Biddle & Reath represented Sunoco and did not return a call seeking comment.

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Copies of the 17-page opinion in

White v. Sunoco, PICS No. 16-0681, are

available from *The Legal Intelligencer*.

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