



U.S. Supreme Court Bolsters Enforceability of Arbitration Agreements in New Opinion

May 18, 2017

The U.S. Supreme Court issued an opinion on May 15, 2017, reinforcing the Federal Arbitration Act's ("FAA") prohibition against rules that single out arbitration agreements or otherwise have the practical effect of discriminating against arbitration agreements.

In *Kindred Nursing Centers Limited Partnership v. Clark*, two separate attorneys-in-fact executed admission packets with the same nursing home on behalf of their respective family members. Each admission packet incorporated an arbitration agreement, which provided that claims arising out of the family member's stay at the nursing home would be resolved through binding arbitration. After the resident family members passed, their estates filed suit against the nursing home alleging substandard care. The nursing home moved to dismiss the actions based on the existence of the arbitration agreements.

The Kentucky Supreme Court refused to enforce the arbitration agreements, holding that a power of attorney must *specifically* authorize an attorney-in-fact to enter an arbitration agreement, or any agreement that would waive a principal's fundamental constitutional rights, such as the right to trial by jury. The Kentucky Supreme Court concluded that its rule did not "single out" arbitration agreements as the rule applied to any agreement that implicated a "fundamental right," such as freedom of expression or marriage. The U.S. Supreme Court disagreed and found that the rule violated the FAA prohibition against unequal treatment of arbitration agreements.

The U.S. Supreme Court premised its holding on the equal treatment principle arising under the FAA, which requires that an arbitration agreement be treated just like any other contract. The rule adopted by

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Kentucky held that although the ordinary language of a power of attorney would be sufficient to transfer nearly all other powers to an attorney-in-fact, something more was required to enter into an arbitration agreement, i.e. specific authorization. This requirement proved fatal to the rule.

The U.S. Supreme Court reasoned that in practice the rule would only apply to arbitration agreements, as people rarely if ever enter into contracts signing away other fundamental rights. The FAA's policy prohibits not only a rule that discriminates against arbitration on its face, but also one which covertly accomplishes this same goal by disfavoring agreements possessing the defining features of an arbitration agreement.

The takeaway from this case is the U.S. Supreme Court's clarification that the FAA applies not only to the enforceability of a properly formed agreement, but also to the contract formation process itself. Simply stated, the FAA protects arbitration agreements before they are even formed. Although traditional contract defenses may invalidate an arbitration agreement, such contract defenses may not be applied "in a fashion that disfavors arbitration."

This opinion bolsters the protection afforded to arbitration agreements under the FAA and will further ensure their enforceability in future cases.



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