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Rock Beats Scissor: Federal Law Cuts Through New York State's Attempt to Prohibit Mandatory Arbitration of Sexual Harassment Claims

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Proponents of mandatory arbitration in New York can collectively let out a sigh of relief as a federal court judge has weighed in on the question of whether New York State's law prohibiting mandatory arbitration of sexual harassment claims (CPLR § 7515), effective July 11, 2018, is preempted by federal law. The short answer, as reflected in a decision issued by the Hon. Judge Denise Cote, is yes: the Federal Arbitration Act (FAA) trumps New York State's attempt to prohibit mandatory arbitration of sexual harassment claims.

Although federal preemption of state law with respect to prohibitions against arbitration was first signaled by Governor Jerry Brown when he vetoed similar measures proposed in California, the question of whether state limitations on arbitration of sexual harassment claims would in fact be preempted by federal law remained unanswered, until recently. Judge Cote held in no uncertain terms that "[t]he FAA sets forth a strong presumption that arbitration agreements are enforceable and this presumption is not displaced by [CPLR] § 7515."

Relevant Background

The FAA requires courts to enforce arbitration agreements according to their terms. Consequently, "[a] party to an arbitration agreement seeking to avoid arbitration generally bears the burden of showing the agreement to be inapplicable or invalid." Under the FAA, a party may seek to invalidate an arbitration agreement on the basis of contract defenses (e.g., fraud, duress and unconscionability), but absent such a defense the U.S. Supreme Court has made clear that "state law is preempted to the extent it stands as an obstacle to the accomplishment and execution of the full purposes and objectives of the FAA."

In *Latif v. Morgan Stanley Co.* (S.D.N.Y. 2019), the plaintiff argued that his arbitration agreement was rendered unenforceable by the New York law prohibiting mandatory arbitration of sexual harassment claims. In that case, the employee signed an offer of employment which incorporated the employer's mandatory arbitration agreement. The parties agreed that the employee accepted the terms and conditions set forth in the arbitration agreement, which provided that any "covered claim" would be resolved through final and binding arbitration in accordance with the FAA. For purposes of the agreement, "covered claims" included common law claims and "statutory discrimination, *harassment* and retaliation claims" (emphasis added).

The employee later filed suit, claiming discrimination on various bases (e.g., religion, national origin, and race), and sexual harassment (e.g., inappropriate comments about his sexual orientation, unwelcome touching and sexual advances). The parties entered into a stipulation which provided that the arbitration agreement was enforceable as to all of the employee's claims except for sexual harassment, which prompted the employer to move to compel arbitration of all of the employee's claims (including sexual harassment).

The Decision

Based on the terms of the arbitration agreement in question, the court found that the employee's sexual harassment claims were subject to mandatory arbitration. Looking at the plain language of the relevant New York law (CPLR § 7515), the court noted that "agreements to arbitrate sexual harassment claims [are rendered] null and void exce*pt where inconsistent with federal law*[,]" and "[h]ere, application of Section 7515 to invalidate the parties' agreement *would be inconsistent with the FAA*" (emphasis added).

In reaching this decision, the court explained that the New York law does not fall under any exceptions to enforceability because the law only bans arbitration of a specific type of claim, not a broad defense to arbitration agreements generally.

Rejecting the employee's argument that the agreement should be revoked in equity based on the "substantial state interest in transparently addressing workplace sexual harassment," the court emphasized that the New York law "presents no generally applicable contract defense, whether grounded in equity or otherwise, and as such cannot overcome the FAA's command that the parties' Arbitration Agreement be enforced."

Takeaway

This decision, while important in its own right, may also signal similar implications for the forthcoming amendments to the New York State law, which seek to expand the prohibition on mandatory arbitration to *all* claims of discrimination and harassment.

Employers in New York who currently have mandatory arbitration agreements in place, and questioned whether they could enforce those agreements in light of NYS law prohibiting mandatory arbitration of sexual harassment claims, can continue to rely on such agreements under this decision. As always, Proskauer attorneys are standing by to discuss the implications of this decision and how employers should proceed going forward.

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