

Another California Court Strikes down yet Another Arbitration Agreement

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By: David Ian Dalby

The employee sued his former employer alleging several claims under the California Fair Employment and Housing Act (“FEHA”). The employer filed a petition to compel arbitration based upon an agreement to submit employment-related claims to final binding arbitration as provided in signed employment application, employment agreement and acknowledgment of receipt of the employee handbook. The trial court refused to compel arbitration because the arbitration agreement stated that the arbitration would occur pursuant to the applicable rules of the American Arbitration Association (“AAA”) in the state where employee was employed or was last employed. The trial court found that the employee was not provided with a copy of the controlling AAA rules, and was not advised how he could find or review them and provisions failed to identify which set of rules promulgated by AAA would apply. Significantly, the arbitration agreement further stated that the arbitrator shall be entitled to award reasonable attorney’s fees and costs to the prevailing party. The Court of Appeal affirmed the trial court’s refusal to compel arbitration holding the agreement did not pass the applicable test for unconscionability, because the AAA rules were not provided with the arbitration agreement and a prevailing party attorney’s fees provision exposed the employee to a greater risk of being liable to the employer for attorney’s fees than he would have been had he pursued his FEHA claims in court. Generally, FEHA claims only allow a prevailing employee to recover attorneys fees. Employers must be cognizant that only a well- drafted arbitration provision in an employment agreement be enforced in California. Arbitration provisions that are incomplete, appear to impair valuable employee rights and/or create a risk of loss to the employee are likely to fail.

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