

The Arbitration Newsletter

(Published by Whitaker Chalk Swindle & Schwartz PLLC)
(John Allen Chalk, Sr., Editor)

April, 2018

The Arbitration Newsletter is published periodically by Whitaker Chalk Swindle & Schwartz PLLC, Fort Worth, Texas, to explore the rapidly developing law and practice of commercial arbitration both in the U.S. and other countries.¹

ONE SMOOTHIE, WITH A SIDE OF ARBITRATION?

A.D. v. Credit One Bank, N.A., 2018 U.S. App. LEXIS 7156 (7th Cir. March 22, 2018)

After A.D. received several calls from Credit One regarding her mother's (Ms. Serrano) credit card debt², A.D. sued by and through her mother under the Telephone Consumer Protection Act.³ A.D. did not have an account with Credit One, but Ms. Serrano had opened an account in 2003.⁴ When Ms. Serrano opened her account, she signed a cardholder agreement.⁵ The agreement included an arbitration provision that required Ms. Serrano and any "authorized user" to arbitrate their claims against Credit One.⁶

Eighteen months after A.D. sued, Credit One filed a motion to compel arbitration after it learned that Ms. Serrano was the cardholder.⁷ When A.D. was fourteen, Ms. Serrano placed a smoothie order, and allowed A.D. to pick up and pay for the smoothies with her mother's Credit One card.⁸ Based on this transaction, Credit One asserted, and the district court agreed, that A.D. was an "authorized user" of the credit card account.⁹

The District Court for the Northern District of Illinois granted the motion to compel arbitration.¹⁰ According to the district court, A.D. could be compelled to arbitrate based on her

¹ Nothing in The Arbitration Newsletter is presented as or should be relied on as legal advice to clients or prospective clients. The sole purpose of The Arbitration Newsletter is to inform generally. The application of the comments in The Arbitration Newsletter to specific questions and cases should be discussed with the reader's independent legal counsel. My thanks to Aimee Kline, a third-year law student at Texas A&M University School of Law, for her research and drafting assistance.

² A.D.'s mother had previously, in 2010, used A.D.'s cell phone to access the mother's credit card account, which allowed Credit One's "ID capture software" to attach A.D.'s cell phone number to the mother's credit account. *A.D. v. Credit One Bank, N.A.*, 2018 U.S. App. LEXIS 7156, *3 (7th Cir. Mar. 22, 2018).

³ *Id.* at *1-4.

⁴ *Id.* at *3.

⁵ *Id.* at *4.

⁶ *Id.*

⁷ *Id.* at *5.

⁸ *Id.*

⁹ *Id.* at *10.

¹⁰ *Id.* at *6.

status as an “authorized user” of the account, and based on equitable estoppel.¹¹ A.D. moved to reconsider or certify to the Seventh Circuit the question of whether A.D. was bound by the arbitration agreement.¹² After the district court certified the question, the Seventh Circuit reversed.¹³

First, the circuit court determined that since A.D. was not an authorized user she was not bound by the arbitration agreement.¹⁴ When the district court determined that A.D. was an authorized user it cited language in the cardholder agreement that stated that if the account holder “allows someone to use [their] account, that person will be an Authorized User.”¹⁵ The circuit court determined that the district court’s reliance on this language was improper because it was taken out of context.¹⁶ The cardholder agreement laid out a process to add someone as an authorized user.¹⁷ This included notifying Credit One of intent to add an authorized user.¹⁸ Additionally, the authorized user had to be at least fifteen years old.¹⁹ Credit One and Ms. Serrano did not follow this process.²⁰ Further, A.D. did not consent to arbitration; she did not even have legal capacity to consent.²¹ Even if A.D. and Credit One formed a contractual relationship, A.D. disaffirmed that relationship based on her minority when she sued Credit One.²²

Second, direct benefits estoppel was not applicable.²³ A.D. did not benefit by her ability to use the credit card because her use of the card was limited to following her mother’s directions.²⁴ Additionally, the character of A.D.’s claim could not bind her to arbitrate.²⁵ A.D. based her claim on the Telephone Consumer Protection Act, and not on the cardholder agreement.²⁶

OBSERVATIONS

1. Arbitration is a creature of contract.
2. The non-signatory exceptions for requiring arbitration are related to contract defenses and doctrines.
3. The arbitration agreement controls.
4. A.D.’s claim against Credit One was not based on and did not arise out of the Credit One card agreement, so the non-signatory exceptions did not apply.
5. When drafting an arbitration agreement, consider carefully how to describe the parties to the agreement.

¹¹ *Id.* at *6.

¹² *A.D. v. Credit One Bank, N.A.*, 2016 U.S. Dist. LEXIS 193448, *1-2 (Ill. Cir. Ct. Dec. 11, 2016).

¹³ *A.D. v. Credit One Bank, N.A.*, 2018 U.S. App. LEXIS 7156, at *2.

¹⁴ *See id.* at *10-16.

¹⁵ *Id.* at *11.

¹⁶ *Id.* at *11-13.

¹⁷ *Id.* at *11-12.

¹⁸ *Id.* at *12.

¹⁹ *Id.*

²⁰ *Id.* at *14.

²¹ *Id.* at *15.

²² *Id.* at *16.

²³ *Id.* at *16-17.

²⁴ *Id.*

²⁵ *Id.* at *18-20.

²⁶ *Id.*