The Arbitration Newsletter

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

April 2020

****

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]

****

ARBITRATION OF TEXAS LABOR CODE DISCRIMINATION CLAIMS

STAGE STORES, INC. v. EUFRACIO
2019 Tex. App. LEXIS 6594 (August 21, 2019)

Race, national origin, and age claims arising under Chapter 21 ("Employment Discrimination") of the Texas Labor Code were filed by an ex-employee against his former employer in the Hidalgo County Court at Law Number 2. The employer had a "Dispute Resolution Program" in place at the time the ex-employee was hired that invoked the Federal Arbitration Act ("FAA") "to the maximum extent possible."[2] The ex-employee signed the employer's "Alternative Dispute Resolution Acknowledgement" form, although he denied signing it during the motion to compel trial court hearing.[3]

The trial court denied the employer's motion to compel arbitration (without explanation).[4] The ex-employee argued to the trial court that the arbitration agreement was "illusory due to a lack of consideration," "procedurally unconscionable," "indefinite," and deprived him of "an equivalent and accessible forum in which to effectively prosecute his [discrimination] claims."[5] But the trial court provided "no written findings of fact or conclusions of law in support of its ruling." The employer appealed the trial court denial to the Corpus Christi-Edinburg Court of Appeals who reviewed the denial on an abuse of discretion standard.[6] The Court also looked at the denial order with no supporting reasoning by the trial court as one to be upheld "on any legal theory supported by the evidence."[7] The Court viewed the only issue before it to be "whether that [arbitration agreement]

---

[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.

[2] 2019 Tex. App. LEXIS 6594, *6fn2 (August 21, 2019).

[3] The ex-employee failed to file a verified denial and also plead that he signed the "Alternative Dispute Resolution Acknowledgement" under duress. 2019 Tex. App. LEXIS 6594, *10-12fn4.

[4] *Id.* at *5.

[5] *Id.* at *3-4.

[6] *Id.* at *6.

[7] *Id.* at *5-6 (Although the appellee did not file a reply brief in the Court of Appeals.).

is valid and enforceable."[8] Therefore, the Court addressed the ex-employee's trial court defenses to a valid and enforceable arbitration agreement.[9]

The ex-employee's "illusory" argument was rejected on appeal because the arbitration agreement expressly bound both parties.[10] The ex-employee's "procedural unconscionability" defense was raised but no evidence supported it. No evidence was offered to show that the ex-employee had signed the arbitration agreement under duress. The uncompleted blanks in the "Alternative Dispute Resolution Acknowledgement" signed by the ex-employee (even with some blanks not completed), in the context of the entire document and the 20-page "Dispute Resolution Program" pamphlet, was sufficiently definite for the parties to know how to conduct the arbitration.[11] The arbitration agreement did not deprive the ex-employee of "an equivalent and accessible forum" to have his discrimination claims heard fairly and fully.[12] The failure to file a verified pleading or other evidence of non-execution coupled with the ex-employee's pleading that he signed the arbitration agreement under duress defeated the no execution claim.[13]

The trial court denial of the employer's motion to compel was reversed and remanded with the trial court instructed to grant the motion to compel.[14]

OBSERVATIONS

1. Arbitration is one of a number of ADR methods encouraged by the Texas Labor Code §21.203(a) for the resolution of statutory employment discrimination claims.[15]

2. The Court of Appeals abated the appeal of the trial court's denial of the motion to compel so that the parties could mediate their dispute.[16]

3. The Court of Appeals later "reinstated the appeal" after unsuccessful mediation.[17]

4. The employer's complete "Dispute Resolution Program" (a 20-page pamphlet) was not contained in the "Alternative Dispute Resolution Acknowledgement" allegedly signed by the ex-employee but it was "available … upon request."[18]

5. The best practice would have been to provide the employee and confirm in writing the employee's receipt of the "Dispute Resolution Program" pamphlet at initial employment intake.

---

[8] *Id.* at *6.
[9] *Id.* at *5fn1 (Ex-employee filed no brief with the Court of Appeals) and *7.
[10] *Id.* at *7-8.
[11] *Id.* at *3, *9 (There was no "indefiniteness" in the arbitration agreement.).
[12] *Id.* at *10 (Texas. Lab. Code §21.203(a) provides for and encourages the resolution of Texas Commission on Human Rights claims through arbitration and other ADR methods.).
[13] *Id.* at *10-12.
[14] *Id.* at *12.
[15] This means that it is public policy in Texas for employment discrimination claims to be arbitrated pursuant to Chapter 21 of the Texas Labor Code.
[16] *Id.* at *5.
[17] *Id.*
[18] *Id.* at *2.