Dodd-Frank Act Does Not Prevent Arbitration Of Non-Whistleblower Claims
Santoro v. Accenture Federal Services, LLC, 748 F.3d 217 (4th Cir. 2014)

Dodd-Frank does not invalidate pre-dispute arbitration agreements in employment contracts except when they are applied to whistleblower claims. Santoro v. Accenture Federal Services, LLC, 748 F.3d 217 (4th Cir. 2014).

Santoro, a 66-year-old account lead for Accenture, was terminated and replaced with a younger employee. Santoro sued Accenture in the Eastern District of Virginia, asserting age discrimination. Santoro's employment contract contained an arbitration clause that covered all disputes relating to Santoro's employment, and Accenture moved to compel arbitration.

In opposing the motion, Santoro argued that the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank") invalidated all arbitration agreements by publicly-traded companies that lack a carve-out for whistleblower claims, even if the plaintiff is not a whistleblower. The District Court rejected Santoro's argument and granted Accenture's motion. Santoro appealed.

The Fourth Circuit noted the national policy favoring arbitration agreements embodied in the Federal Arbitration Act, as well as the common-law exception where the FAA's mandate has been overridden by a contrary congressional command. Citing the Supreme Court's decision in Shearson/Am. Express, Inc. v. McMahon, 482 U.S. 220, 227, 107 S.Ct. 2332, 96 L.Ed.2d 185 (1987), the court explained that the burden is on the party opposing arbitration to show that Congress intended to preclude a waiver of judicial remedies for the statutory rights at issue.

The Court acknowledged that Dodd-Frank created a cause of action for employees reporting fraudulent activity by their employers and protected that cause of action by invalidating pre-dispute agreements that required the arbitration of whistleblower claims. Nonetheless, the

Court was not persuaded that an arbitration clause should be held invalid simply because it failed to carve out whistleblower claims.

The Fourth Circuit stated that Accenture was not trying to require Santoro to arbitrate a whistleblower claim "arising under" Dodd-Frank. Instead, Accenture was trying to require Santoro to arbitrate an age discrimination claim -- a claim that arose under a different federal statute. It held that "Under Dodd–Frank, Congress has protected the right to bring a whistleblower cause of action in a judicial forum, nothing more." Because he was not pursuing a whistleblower claim, Santoro was required to arbitrate.

The Takeaway

As a general matter, the federal courts will rigorously enforce arbitration provisions according to their terms. The language in Dodd-Frank applicable to whistleblower claims – "No predispute arbitration agreement shall be valid or enforceable, if the agreement requires arbitration of a dispute arising under this section" – provides an exception, because it shows a clear Congressional intent that whistleblower claims not be subject to pre-dispute arbitration agreements. But the exception in Dodd-Frank is limited to whistleblower claims. It does not provide a basis for overriding arbitration agreements when whistleblower claims are not involved.

Keywords: Federal Arbitration Act, Dodd-Frank Act, Congressional intent, whistleblower claims

Scott D. Simon, Goetz Fitzpatrick LLP, New York, New York