



DONNA GREENSPAN SOLOMON

Arbitration Case Law Update

The following are recent cases of interest regarding arbitration issues:

Managed Care Ins. Consultants, Inc. v. United Healthcare Ins. Co., 228 So. 3d 588, 589–90 (Fla. 4th DCA 2017). Court did not err in denying motion to vacate award where arbitrator's husband's medical practice had business connection with a party. Arbitrator was not obligated to disbelieve husband and investigate further; she did not have actual knowledge of the relationship or potential conflict; nor was there any actual bias shown.

Boardwalk Properties Mgmt., INC. v. Emerald Clinton, LLC, 42 Fla. L. Weekly D2221 (Fla. 4th DCA Oct. 18, 2017). Arbitrator exceeded authority under arbitration provision by determining ownership interests not pertinent to resolution of issue submitted to arbitration.

Lucky Star Horses, Inc. v. Diamond State Ins. Co., 233 So. 3d 1159 (Fla. 3d DCA 2017). Insurer did not waive right to arbitrate the value of stallion, despite the passage of time, filing of numerous pleadings, and taking of depositions, where insurer timely moved to compel arbitration after party to arbitration clause was brought into the case.

Chaikin v. Parker Waichman LLP, 42 Fla. L. Weekly D2165 (Fla. 2d DCA Oct. 11, 2017). Employer waived right to compel arbitration of counterclaims filed by former employee where employer had sued on its arbitrable claims in court.

Saunders v. St. Cloud 192 Pet Doc Hosp., LLC, 224 So. 3d 336 (Fla. 5th DCA 2017). Employee's claims not related directly to employment contract were not subject to provision to arbitrate all claims "arising out of or related to" the contract. Mere fact that employment-related claim would not have arisen but for existence of the contract does not transform tort claim into one "arising out of or relating to" the agreement.

Newman for Founding Partners Stable Value Fund, LP v. Ernst & Young, LLP, 231 So. 3d 464 (Fla. 4th DCA 2017). Receiver bound by delegation clause requiring arbitrability claims to be decided by arbitrator.

Inspired Capital, LLC v. Conde Nast, 225 So. 3d 980 (Fla. 3d DCA 2017). Claim "relates to" contract for purposes of arbitration clause where resolution of disputed issue requires either reference to, or construction of, a portion of the contract.

Pierre by & through Pierre v. Waste Pro USA, Inc., 2D17-4395, 2017 WL 6761664, at *1 (Fla. 2d DCA Dec. 1, 2017). Orders denying confirmation of arbitration awards are not appealable under Florida Rule of Appellate Procedure 9.130.

Reunion W. Dev. Partners, LLLP v. Guimaraes, 221 So. 3d 1278, 1280 (Fla. 5th DCA 2017). While arbitrability is generally an issue for trial courts to decide, courts must delegate the authority to the arbitrator if the parties' contract so provides.

Obolensky v. Chatsworth at Wellington Green, LLC, 4D16-3143, 2018 WL 1110892, at *4 (Fla. 4th DCA Feb. 28, 2018). Severance of illegal provisions from arbitration agreement does not impermissibly rewrite agreement that contains severability clauses and where removed provision is neither the "financial" heart nor "true essence" of agreement.

Northport Health Services of Florida, LLC v. Louis, 5D17-335, 2018 WL 1122117, at *2 (Fla. 5th DCA Mar. 2, 2018). Provision of arbitration agreement requiring application of Alabama Rules of Evidence at arbitration hearing did not go to the "very essence" of agreement and thus was severable because it concerned procedure and not substantive law or remedies under Florida law, to which the parties had specifically agreed.

Lowe v. Nissan of Brandon, Inc., 43 Fla. L. Weekly D103 (Fla. 2d DCA Jan. 5, 2018). Arbitration may be compelled even where contract does not contain arbitration provision where contract is incorporated into another contract with arbitration provision.

Lake City Fire & Rescue Ass'n, Local 2288 v. City of Lake City, 1D17-2965, 2018 WL 1189854, at *2 (Fla. 1st DCA Mar. 8, 2018). Arbitrator exceeded his power by reducing discipline imposed on firefighter where arbitration provision clearly and unambiguously limited arbitrator's power to determine only whether firefighter "engaged in the misconduct alleged."

Palisades Owners' Ass'n, Inc. v. Browning, 1D17-2129, 2018 WL 1341650, at *1 (Fla. 1st DCA Mar. 15, 2018). Claims of breach of fiduciary duty by Owners' Association were specifically excluded from class of disagreements statutorily required to be submitted to arbitration.

Florida Capital Group, Inc. v. Bishop, 3D16-1775, 2018 WL 1074257, at *1 (Fla. 3d DCA Feb. 28, 2018). Where trial court does not modify or correct arbitration award or vacate award pursuant to statute, it is required to "confirm the award as made."

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