

EMPLOYMENT LAW UPDATE

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Martinez v. Master Protection Corp.
04 C.D.O.S. 3744 (April 29, 2004, Cal.App.2 Dist.)

Employment Arbitration Agreement Found To Be “Unconscionable” And The Trial Court Lacked Authority To Appoint An Arbitrator After The Parties’ Chosen Arbitrator Refused To Conduct The Arbitration.

By Jason A. Geller and Juan C. Araneda

In 1999, Plaintiff Tony Martinez, Jr. was hired as a salesperson by defendant Master Protection Corporation. As a condition of employment, Martinez was required to sign an arbitration agreement that provided that all claims related to his employment, including claims for statutory violations, torts and discrimination, would be subject to arbitration in accordance with American Arbitration Association (“AAA”) procedures. Additionally, the arbitration agreement imposed a shortened statute of limitations of six months on all statutory and common law claims covered by the agreement and required Martinez to split the cost of arbitration and post fees in advance of the hearing.

Master Protection terminated Martinez in April 2000 and in February 2001 Martinez sued for alleged Labor Code violations, national origin discrimination in violation of the Fair Employment and Housing Act (“FEHA”) and wrongful termination. Master Protection moved to

compel arbitration based on the arbitration agreement. Martinez opposed the motion arguing that it was “unconscionable” and thus unenforceable. The trial court granted Master Protection’s motion, and stayed litigation pending completion of the arbitration.

When Martinez submitted his claims to the AAA, it determined that the arbitration agreement did not satisfy the requirements of its rules and due process protocols for employment-related disputes, and refused to conduct an arbitration. Martinez then filed a motion to lift the stay of court proceedings to revive the litigation, but the trial court denied the motion and instead appointed a retired Court judge as the new arbitrator.

On appeal, the Court of Appeal for the Second District found that the arbitration agreement was “unconscionable” and that the trial court lacked authority to appoint a new arbitrator after the parties’

chosen arbitral forum, AAA, refused to conduct the arbitration. The Court of Appeal found that the arbitration agreement was unfairly one-sided and was presented on a “take it or leave it” basis in which Martinez had no meaningful opportunity to negotiate its terms. The agreement required arbitration of all claims of interest to an individual employee, but exempted from arbitration those claims of primary interest to the employer. The agreement also imposed unacceptable costs on the employee and unlawfully restricted an employee’s ability to vindicate his civil and statutory rights by imposing a six-month statute of limitations. Because the arbitration agreement contained multiple defects and was permeated by “illegality”, the agreement was unenforceable.

Furthermore, the Court held that Code of Civil Procedure Section 1281.6 does not permit the trial court to choose an alternative forum when the parties’ chosen forum refuses to hear a case. Thus, because AAA declined to hear the matter, the dispute was to be tried in court. Accordingly, the trial court’s judgment was reversed and the case was remanded to the trial court for further proceedings.

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