

2nd Circuit: Award Permitting Class Arbitration of Discrimination Claims Confirmed

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By William N. Ota

Where a mandatory arbitration agreement was not completely silent as to the arbitrability of class claims, an arbitrator had sufficient authority to permit class arbitration of employment discrimination claims, the 2nd U.S. Circuit Court of Appeals held.

Sterling Jewelers Inc. employs each of its employees under a contract that mandates a three-step alternative dispute resolution (ADR) program. The third step of this program requires arbitration. Each Sterling agreement also specifies that employees are entitled to all relief that would have been available in court, and that the agreement is to be construed in accordance with Ohio law.

Laryssa Jock and 18 other female employees filed Equal Employment Opportunity Commission (EEOC) charges alleging that Sterling paid them, and other female employees, less than their male counterparts in violation of Title VII and the Equal Pay Act. These employees simultaneously initiated Sterling's ADR process.

The EEOC found reasonable cause to believe that Sterling had subjected female employees to a pattern or practice of sex discrimination in regard to promotion and compensation. The complaining employees then filed a federal class-action suit alleging Title VII, Equal Pay Act and Age Discrimination in Employment Act violations. Later that month, the plaintiffs initiated a class arbitration against Sterling, asserting the same claims alleged in their lawsuit.

Over Sterling's objection, the district court referred the matter to arbitration. The parties then asked the arbitrator to determine whether class arbitration is permitted or prohibited under the Sterling agreement. There was no dispute that the agreement did not expressly prohibit, or even reference, class claims. The arbitrator determined that, because the agreement was drafted by Sterling and was not the product of negotiation, and because Sterling had consciously elected not to revise the agreement in the wake of arbitral decisions permitting class arbitration, Ohio law precluded her from construing the agreement in a manner that would prohibit class arbitration. The arbitrator issued an award permitting the plaintiffs to proceed with their efforts to certify an arbitration class.

The court denied Sterling's motion to vacate the award, noting that the award was consistent with the 2nd Circuit's decision in *Stolt-Nielsen v. Animalfeeds Int'l Corp.*, which was then on appeal to the U.S. Supreme Court. The Supreme Court subsequently reversed the 2nd Circuit's *Stolt-Nielsen* decision, prompting the district court to reconsider, and ultimately grant, Sterling's motion to vacate on grounds that the arbitrator had, under the Supreme Court's *Stolt-Nielsen* decision, exceeded her authority by permitting class arbitration in the absence of any agreement on this issue.

On appeal, the 2nd Circuit reversed the district court and ordered the court to confirm the award. The 2nd Circuit held the Sterling dispute to be distinguishable from *Stolt-Nielsen* in that the *Stolt-Nielsen* agreement was completely silent as to class arbitration; that is to say, the agreement not only lacked express reference to class arbitration, but the parties

stipulated that there was no agreement at all as to that issue. Although the Sterling agreement similarly lacked express reference to class arbitration, the Sterling parties did not—unlike in *Stolt-Nielsen*—enter into a stipulation disclaiming the existence of any implicit agreement on that issue.

Because the class arbitration issue was clearly submitted to the arbitrator, the 2nd Circuit held that the award did not exceed the arbitrator's authority and should not have been vacated, even if the district court disagreed with the arbitrator's legal reasoning. The 2nd Circuit noted that, although the district court characterized its ruling as a determination of the arbitrator's authority, the court was actually and improperly substituting its own interpretation of the agreement for that of the arbitrator.

Jock v. Sterling Jewelers Inc., 2nd Cir, No. 10-3247-cv (July 1, 2011).

Professional Pointer: This case highlights the importance of considering—and, if necessary, addressing—the availability of class claims under a mandatory arbitration agreement. Although state law may, in certain jurisdictions, prohibit waiver of class arbitration rights, such law may no longer be valid following an April 2011 ruling by the Supreme Court. Thus, revisiting the class arbitration issue may be appropriate even for those employers that have not previously intended to preclude class claims in arbitration.

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Editor's Note: This article should not be construed as legal advice.

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