ASAP™ A Littler Mendelson **Time Sensitive** Newsletter

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MARCH 2008

The U.S. Supreme Court upholds the supremacy of the Federal Arbitration Act and confirms that state laws cannot compel parties to submit claims to a state administrative forum rather than to arbitration under an enforceable arbitration agreement.

Federal Arbitration Act Trumps State Laws Lodging Primary Jurisdiction in State Administrative Forums

By Douglas A. Wickham, Steven A. Groode and Robert P. Hennessy

In *Preston v. Ferrer*, No. 06-1463 (Feb. 20, 2008) ("*Preston*"), the U.S. Supreme Court once again upheld the supremacy of the Federal Arbitration Act and confirmed that state laws that compel parties to submit claims to a state administrative forum are not enforceable and cannot defeat the parties' valid, enforceable agreement to submit such claims to arbitration. In a decision extending far beyond the narrow California state law at issue, employers across the nation have been given an additional tool for enforcing arbitration agreements in the employment context.

"Judge Alex" Gets His Day in Court

The underlying case arose after Alex Ferrer — better known by his television pseudonym, "Judge Alex" — entered into a contract with Arnold Preston, a California entertainment lawyer. When a dispute over fees arose, Preston invoked the contract's broad arbitration clause, which required arbitration for "any dispute ... relating to the terms of [the contract] or the breach, validity, or legality thereof" in accordance with the rules of the American Arbitration Association.

Ferrer argued that the contract was invalid and unenforceable because Preston violated a California statute, the California Talent Agencies Act (TAA), by acting as an unlicensed talent agent. The TAA grants the California Labor Commissioner "exclusive original jurisdiction" to "hear and determine" any dispute arising under its provisions. Following the statute's language, California state trial and appellate courts denied Preston's motion to compel arbitration, finding that the Federal Arbitration Act (FAA) did not displace the Labor Commissioner's primary jurisdiction.

The U.S. Supreme Court disagreed. Writing for the 8-1 majority, Justice Ginsburg held that where parties agree to arbitrate all questions under a contract, state laws lodging primary jurisdiction in another forum, *whether judicial or administrative*, are superseded by the FAA. Accordingly, the parties' agreement to arbitrate won the day; it was up to a bargained-for arbitrator, not the Labor Commissioner, to decide whether the contract was valid and enforceable.

The Supreme Court rejected the argument that merely "postponing arbitration until after the Labor Commissioner has exercised her primary jurisdiction" was compatible with the FAA. Justice Ginsburg explained that although a party may file for a trial *de novo* in Superior Court after losing before the Labor Commissioner — and may even move to compel arbitration at that point — such a delay is "in contravention of Congress' intent to move the parties ... into arbitration as quickly and easily as possible." The mere involvement of an administrative agency in the enforcement of a statute, Justice Ginsburg wrote, does not limit private parties' obligation to comply with arbitration provisions to which they have agreed.

The Roles of Adjudicator Versus Prosecutor

Preston makes an important distinction between the role administrative agencies play as adjudicators versus their role as investigators and prosecutors. When private parties have agreed to arbitrate their claims, they have agreed that an arbitrator should hear and decide disputes within the scope of the agreement. Administrative agencies, like the EEOC, also play the role of adjudicator — they weigh evidence and make judgments regarding violations of the laws they are charged with enforcing. *Preston* reiterates that the agreed-to arbitrator must play this role.

However, administrative agencies, such as the EEOC and Labor Commissioner's office also play another role — they investigate claims of violations of antidiscrimination statutes, wage and hour laws, and others, and then prosecute violations where found. *Preston* does not foreclose this role of administrative agencies. For example, Justice Ginsburg explained that while the EEOC could not itself adjudicate claims subject to arbitration, it remained free to independently file enforcement suits in its own name against alleged violators. The key is that its prosecutorial role does not extend into the realm of adjudicating such disputes — that role is reserved to the arbitrator when parties have contractually agreed.

The crux of the problem with the Labor Commissioner's primary jurisdiction under the TAA, the California statute in question, is that it functions "not as an advocate advancing a cause before a tribunal authorized to find the facts and apply the law; instead, the Commissioner serves as impartial arbiter. That role is just what the FAA-governed agreement ... reserves for the arbitrator."

Implication of Preston

Although *Preston* arose in the context of a dispute under California's Talent Agency Act, its holding is not limited to that statute. *Preston* makes clear that when parties to an arbitration agreement in the employment context (or otherwise) have agreed to submit their claims to arbitration, a valid arbitration agreement is enforceable and overrides state laws that may purport to require the parties to submit such claims to a state administrative forum. In *Preston*, this meant that the parties' dispute must be arbitrated, and not submitted to the California Labor Commissioner. However, to the extent other states provide for and require adjudication of other types of disputes before administrative agencies, Preston indicates that such laws do not override the FAA; thus, the parties' arbitration agreement compels resolution of such claims in arbitration, not before the state administrative agency.

After *Preston*, the supremacy of the arbitral forum is far stronger, particularly where an arbitration clause encompasses all claims arising under its provisions, including its enforceability and legality. Broadly written and deftly drafted arbitration provisions are key. While the EEOC and state agencies such as the California Labor Commissioner may still play a traditional role of investigator or prosecutor, when it comes to the adjudication of such claims, administrative agencies are required to give way to an arbitral forum when the parties have so agreed.

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