Proskauer

Ninth Circuit Overturns Precedent and Sends ERISA Claims to Individual Arbitration

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In a case of first impression, the Ninth Circuit overturned 35 years of precedent and ruled that ERISA class action claims brought on behalf of an ERISA plan are subject to individual arbitration. The Court also enforced the arbitration agreement's class action waiver and sent plaintiff's putative ERISA class action to individual arbitration with relief limited to plaintiff's individual plan losses. Plaintiff—a former Charles Schwab employee and participant in the Charles Schwab 401(k) sponsored plan—brought a putative ERISA class action lawsuit against the fiduciaries of the Charles Schwab 401(k) plan. Despite the plan's arbitration provision and class action waiver and several other similar employment-related arbitration agreements, plaintiff brought his lawsuit on behalf of the entire 401(k) plan and a putative class of more than 25,000 participants. Plaintiff alleged that the company included proprietary Charles Schwab investment funds in the plan for self-gain in violation of ERISA's prohibited transaction rules and breached its fiduciary duties of prudence and loyalty by allowing participants to invest in proprietary investment options that were more expensive and underperformed comparable non-proprietary options available in the market.

Proskauer moved to compel individual arbitration of plaintiff's claims arguing that claims under ERISA, like any other federal statute, are subject to individual arbitration (class action waiver) under the Federal Arbitration Act. The district court denied Charles Schwab's motion to compel arbitration for multiple reasons, including that the arbitration provision was inserted into the plan document after plaintiff ceased being a plan participant and because plaintiff's claims were brought on behalf of the plan and the plan had not consented to arbitration. The district court also stated that even if the plan did consent to arbitration, the consent would not be valid under ERISA because it would inappropriately limit the plan fiduciaries' liability. Arguing for Charles Schwab before the Ninth Circuit, Howard Shapiro contended that the district court's order was incorrect both factually and legally on each point.

The Ninth Circuit reversed, adopting all of Defendants' arguments and becoming the first federal court of appeal to hold that class action ERISA claims brought on behalf of an entire ERISA plan are subject to individual arbitration with relief limited to the individual plaintiff's claims. *First*, in light of intervening Supreme Court case law, the Court overruled its longstanding precedent set forth in *Amaro v. Continental Can Co.*, 724 F.2d 747 (9th Cir. 1984), which held that ERISA claims were not arbitrable. *Second*, the Court ruled that the district court incorrectly found that plaintiff was not bound by the plan's arbitration provision as he was a participant in the plan for nearly a year after the provision was inserted. The Court noted that by participating in the plan plaintiff "agree[d] to be bound by" the arbitration provision. *Third*, the Court found that the plan had consented to individual arbitration by including the arbitration provision in the plan document. *Fourth*, the Court rejected the district court's conclusion that the arbitration provision/class action waiver limited the fiduciaries' liability as the arbitration provision merely provided for a different forum that "offered quicker, more informal, and [] cheaper resolutions for everyone involved." *Lastly*, the Court held that nothing in ERISA precludes limiting plaintiff's relief to his individual losses as the Supreme Court has recognized that claims brought on behalf of a plan "are inherently individualized when brought in the context of a defined contribution plan like that at issue." Therefore, the Court reversed and remanded with instructions for the district court to order arbitration of individual claims limited to seeking relief for the impaired value of the plan assets in the individual's own account.

The decision resulted in two separate opinions: *Dorman v. Charles Schwab Corp.,* No. 18-15281, 2019 WL 3926990, __F.3d__ (9th Cir. Aug. 20, 2019); *Dorman v. Charles Schwab Corp.*, No. 18-15281, 2019 WL 3939644, __F. App'x__ (9th Cir. Aug. 20, 2019). The Proskauer team representing Charles Schwab includes partners Howard Shapiro, Myron Rumeld, and Stacey Cerrone, senior counsel John Roberts , associates Tulio D. Chirinos and Lindsey Chopin, and senior paralegal Blair Jones.

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