
ARBITRATION - CALIFORNIA

Move, Inc. v. Citigroup Global Markets, Inc.

United States Court of Appeals, Ninth Circuit - November 4, 2016 - 840 F.3d 1152 - 2016 Daily Journal D.A.R. 11, 106

Investor filed complaint seeking to vacate arbitration award based on misrepresentations made by arbitrator affiliated with non-governmental organization that regulated member brokerage firms and exchange markets. Brokerage firm moved to dismiss.

The United States District Court for the Central District of California denied investor's motion to vacate and granted firm's motion to dismiss. Investor appealed.

The Court of Appeals held that:

- As an issue of first impression, Federal Arbitration Act (FAA) is subject to doctrine of equitable tolling;
- Investor was entitled to equitable tolling of three month limitations period under FAA; and
- As an issue of first impression, investor's rights were prejudiced as result of deceit by arbitrator, warranting vacatur.

Federal Arbitration Act (FAA) is subject to doctrine of equitable tolling. Text of statute does not preclude equitable tolling, FAA's structure is not incompatible with equitable tolling, and equitable tolling would not undermine the basic purpose of the FAA, which was enacted to make valid and enforceable written provisions or agreements for arbitration of disputes.

Investor was entitled to equitable tolling of three month limitations period under Federal Arbitration Act (FAA) in challenge to arbitration award based on misrepresentations made by arbitrator affiliated with non-governmental organization that regulated member brokerage firms and exchange markets. Investor acted with due diligence in pursuing its claim, as it justifiably relied on information provided by non-governmental organization regarding arbitrator, and tolling would not prejudice brokerage firm.

Investor's rights were prejudiced as result of deceit by arbitrator affiliated with non-governmental organization that regulated member brokerage firms and exchange markets, as required to vacate arbitration award under Federal Arbitration Act (FAA). Upon submitting claim against brokerage firm to arbitration, investor made clear throughout panel selection process that it was critical for attorney to chair proceedings, investor believed that arbitration of complex securities claim required a chairperson with requisite experience to understand and interpret sophisticated legal concepts, and as a result, investor struck candidates from proposed roster who were not experienced attorneys and ranked arbitrator first on its chairperson list, relying on arbitrator disclosure report in which arbitrator falsified credentials to state that he was attorney when he was not.

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