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FINRA ARBITRATION - MICHIGAN

Lebenbom v. UBS Financial Services, Inc.

Court of Appeals of Michigan - October 23, 2018 - N.W.2d - 2018 WL 5275314

Brokerage account holder brought action against brokerage for statutory and common law conversion.

The Circuit Court denied brokerage's motion for summary disposition, or in the alternative, to compel arbitration. Brokerage appealed.

The Court of Appeals held that:

- Account holder's claims were subject to arbitration;
- Terms of arbitration agreement were not ambiguous;
- Arbitration clause was not substantively unconscionable;
- Arbitration clause was not procedurally unconscionable; and
- Arbitrability of account holder's claims under Financial Industry Regulatory Authority (FINRA) regulations was a question to be determined in FINRA arbitration proceedings.

Brokerage account holder's claims against brokerage for wrongful conversion, alleging that brokerage wrongfully froze and withheld funds in the account after receiving a tax levy, were subject to arbitration pursuant to a mandatory arbitration agreement between account holder and brokerage; the agreement compelled into arbitration "any and all controversies" between the parties, account holder's allegations presented a disagreement between the parties with respect to whether brokerage's actions were lawful and appropriate, and the agreement did not provide any positive assurances that arbitration would not cover claims of wrongful conversion.

Terms of mandatory arbitration agreement between brokerage account holder and brokerage were not ambiguous, where the agreement provided that "any and all controversies" that arose between the parties "concerning any account, dispute, or transaction" would be submitted to and decided by arbitration.

Arbitration clause in brokerage agreement form was not substantively unconscionable, regardless of whether it disadvantaged the brokerage account holder, where the clause contained a mandatory arbitration provision for "all controversies" arising between the parties and contained no language that could have been construed as inherently unreasonable.

Arbitration clause in brokerage agreement form, executed between trustor and broker, was not procedurally unconscionable, despite brokerage account holder's contention that she thought the form was for free checks and that she was not asked to consent to the arbitration clause's inclusion in the brokerage agreement; as a matter of law, account holder was presumed to have known the nature of the document and to have understood its contents and, despite account holder's advanced age, there was no evidence to suggest coercion, mistake, or fraud or that she had no realistic alternative but to accept the disputed terms.

Question as to whether brokerage account holder's conversion claims against brokerage were arbitrable under Financial Industry Regulatory Authority (FINRA) regulations was one to be determined in FINRA arbitration proceedings; as a matter of law, disagreement as whether the parties' mandatory arbitration agreement settled the question of FINRA arbitrability was to be resolved in favor of arbitrability, the arbitration agreement itself was broadly worded to include "any controversy" arising between account holder and brokerage, and a FINRA arbitrator would have been better equipped than a court to settle interpretation of FINRA regulations.

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