

Bond Case Briefs

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Goldman, Sachs & Co. v. City of Reno

United States Court of Appeals, Ninth Circuit - March 31, 2014 - F.3d - 14 Cal. Daily Op. Serv. 3511

Underwriter and broker-dealer commenced action against municipality to enjoin arbitration that municipality had initiated before Financial Industry Regulatory Authority (FINRA) to resolve its claims against underwriter arising out of their contractual relationship. The District Court denied underwriter's motion for injunctive relief and entered final judgment in favor of municipality. Underwriter appealed.

The Court of Appeals held that:

- FINRA Rule 12200 that described certain circumstances under which FINRA Director could deny access to FINRA arbitration forum did not require FINRA members to consent to FINRA determination of issue of arbitrability;
- Municipality qualified as "customer" of underwriter; and
- Forum selection clause superseded default obligation of underwriter Rule 12200 to arbitrate.

Municipality qualified as "customer" of underwriter and broker-dealer, and thus FINRA rule required it to arbitrate at request of municipality unless municipality disclaimed its right to arbitrate through contract, where municipality issued approximately \$211 million in auction rate securities (ARS) to finance series of city projects, underwriter and broker-dealer provided services in course of its securities business activities, and municipality compensated it in form of underwriter's discounts and annual broker-dealer fees.

Forum selection clause superseded default obligation of underwriter and broker-dealer under FINRA rule to arbitrate, where parties agreed to bring claims that arose out of their contractual relationship in District of Nevada. Presumption in favor of arbitrability did not apply, express waiver of arbitration was not required, requirement to bring "all actions and proceedings" in District of Nevada included arbitration, and waiver of "all right to trial by jury" merely stated the obvious as to arbitration.