



Alerts

Florida Appellate Court Invalidates Arbitration Provision in Fee Agreement for Violating Florida Bar Rules

January 4, 2024

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Brief Summary

In a legal malpractice action arising out of an underlying commercial dispute, Florida's Third District Court of Appeal reversed and remanded a trial court's ruling, which ordered arbitration of the malpractice action because the arbitration provision in the fee agreement between the plaintiff and the defendants violated Rule 4-1.5(i) of the Rules Regulating the Florida Bar insofar as it failed to include the requisite notice.

Complete Summary

Rule 4-1.5(i) prohibits a lawyer from making an agreement with a "client prospectively providing for mandatory arbitration of fee disputes without first advising that person in writing that the potential client should consider obtaining independent legal advice as to the advisability of entering into an agreement containing such mandatory arbitration provisions."

Case Timeline

1. After the plaintiff filed a legal malpractice action against the defendants, they filed a motion to compel arbitration pursuant to the arbitration provision in the parties' fee agreement that was signed by the plaintiff midway through the defendants' representation of the plaintiff in an underlying commercial lawsuit.
2. The arbitration provision subjected all disputes arising out of the agreement and defendants' legal services to binding arbitration.
3. The arbitration provision failed to advise the plaintiff to seek independent counsel in deciding whether to agree to arbitration in violation of Rule Regulating the Florida Bar 4-1.5(i).
4. The trial court granted the motion to compel arbitration, and the plaintiff appealed.

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Court Ruling

The appellate court initially noted that Rule 4-1.5(i) prohibits a lawyer from making an agreement with a "client prospectively providing for mandatory arbitration of fee disputes without first advising that person in writing that the potential client should consider obtaining independent legal advice as to the advisability of entering into an agreement containing such mandatory arbitration provisions." The rule requires "the following language in bold print:"

NOTICE: This agreement contains provisions requiring arbitration of fee disputes. Before you sign this agreement you should consider consulting with another lawyer about the advisability of making an agreement with mandatory arbitration requirements. Arbitration proceedings are ways to resolve disputes without use of the court system. By entering into agreements that require arbitration as the way to resolve fee disputes, you give up (waive) your right to go to court to resolve those disputes by a judge or jury. These are important rights that should not be given up without careful consideration.

The court held that when an arbitration provision fails to include the requisite notice to seek independent counsel, the arbitration clause violates Florida Bar Rule 4-1.5(i) and is thus unenforceable on its face - regardless of the type of dispute that is brought. See *Owens v. Corrigan*, 252 So. 3d 747, 750-51 (Fla. 4th DCA 2018).

The court also stated that "because the mandatory arbitration of fee disputes went to the essence of the arbitration agreement, we decline to sever the invalid portion of the arbitration clause, which would require us to rewrite the agreement." *Id.* at 751.

The court concluded that the facts of this case were identical to the Fourth District's decision in *Owens* in that the requisite notice was completely absent from the arbitration provision, making the arbitration provision unenforceable on its face.

Because the court held that the arbitration agreement was unenforceable, the court reversed the trial court's order granting the motion to compel arbitration and remanded for further proceedings.

Significance of Decision

This decision underscores the importance of complying with the rules governing the legal profession (the rules of professional conduct) when making fee agreements or retention agreements with clients. A violation of those rules, particularly the notice and informed consent provisions, may render such an agreement unenforceable.