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Second Circuit Issues Another Arbitration-Friendly Decision

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On September 19, 2019, the Second Circuit issued a key pro-arbitration decision, which also decided issues of first impression about the Dodd-Frank Act ("DFA") and the Sarbanes-Oxley Act ("SOX"). *Daly v. Citigroup Inc. et al*.

Plaintiff brought claims for gender discrimination and whistleblowing under multiple federal, state and local statutes, including Title VII, the Equal Pay Act, the DFA and SOX. As often happens, all of her claims arose out of the same core factual allegations. Plaintiff admitted that she entered into a valid arbitration agreement with her employer, which covered all employment-related disputes other than those statutorily exempt from arbitration. SOX claims are exempted by statute, whereas the DFA is silent on arbitration. The other statutes, like the DFA, do not prohibit pre-dispute arbitration agreements, and the courts have already ruled that those claims are arbitrable. Nevertheless, Plaintiff argued that DFA claims are not arbitrable. In addition, she argued that none of the claims could be arbitrated in this case, because they were factually intertwined with her SOX claim, which cannot be arbitrated.

The Second Circuit rejected these arguments. On the DFA claim, the Court looked to the statutory language of the DFA to conclude, for the first time, that such claims are arbitrable. It relied strongly on the fact that the DFA specifically amended SOX to include an anti-arbitration provision, but did not include similar language for DFA claims.

Regarding the interrelatedness between Plaintiff's SOX claim and her other claims, the Court held that it did not matter if all of these claims were based on the same conduct. Rather, all that matters for arbitrability purposes is whether the claims at issue are covered by a valid arbitration agreement; if they are, a court must compel arbitration of all arbitrable claims.

Finally, the Second Circuit dismissed the SOX claims for lack of subject matter jurisdiction, because Plaintiff failed to timely file a complaint with OSHA within 180 days of the date of the violation as required. It held that this failure permanently robs a court of the ability to hear a SOX claim.

This decision adds to the growing body of arbitration-friendly rulings and adds new arrows into an employer's arsenal. Employers in the Second Circuit who have arbitration agreements should carefully examine them to ensure the widest application possible.

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