

## Second Circuit Finds Arbitrator Within Authority to Bind Absent Class Members to Arbitration

Article By:

Nora A. Valenza-Frost

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In reversing a New York federal court, the Second Circuit found the arbitration was within the arbitrator's authority in binding absent class members to class proceedings because, by signing the operative arbitration agreement, the absent class members — employees of the defendant — bargained for the arbitrator's construction of their agreement with respect to class arbitrability. The issue whether the arbitrator exceeded her authority in certifying an opt-out, as opposed to a mandatory, class was not before the Second Circuit, and thus the matter was remanded to the district court.

The court found that the arbitrator's decision was supported, in part, by the American Arbitration Association's Supplementary Rules for Class Arbitrations, which provide that "the arbitrator shall determine as a threshold matter ... whether the applicable arbitration clause permits the arbitration to proceed on behalf of ... a class." Furthermore, the arbitration agreement provided that questions of arbitrability and procedural questions were to be decided by the arbitrator.

The Second Circuit noted that it was not for the court to "decide whether the arbitrator's class certification decision was correct on the merits of issues such as commonality and typicality. We merely decide that the arbitrator had the authority to reach such issues even with respect to the absent class members."

[Jock v. Sterling Jewelers Inc.](#), No. 18-153 (2d Cir. Nov. 18, 2019).

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