

Crossman v. Life Care Centers of America, Inc.

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In [Crossman v. Life Care Centers of America, Inc.](#), the North Carolina Court of Appeals recently upheld the invalidation of a healthcare arbitration agreement as impossible to perform due to a failure of material terms. In January 2011, while serving as the administrator of her husband's estate, Lucille Crossman filed a wrongful death complaint against the Defendants, who own, operate, and manage the assisted living facility in Hendersonville in which Ms. Crossman's husband resided before his death. When Mr. Crossman entered the facility in 2004, he signed an agreement in which he stipulated that the parties agreed to submit all claims arising out of his care and treatment at the facility to binding arbitration. The agreement also specified that such disputes would go before an arbitration hearing before a board of three arbitrators selected from the American Arbitration Association ("AAA") and that the arbitrators would apply the rules of the AAA. Ms. Crossman did not sign the agreement.

When Ms. Crossman filed the wrongful death complaint, the Defendants filed a motion to dismiss and compel arbitration based on the terms of the arbitration agreement. The trial court denied the motion, holding that the agreement was unenforceable because it was impossible to perform due to a failure in its material terms and because arbitration agreements signed by decedents do not bind wrongful death beneficiaries.

On appeal, the Court agreed that the arbitration agreement was unenforceable. The Court explained that effective January 1, 2003, the AAA had issued a Healthcare Policy Statement informing all potential parties to an arbitration agreement in the field of healthcare that the AAA would no longer accept the arbitration of cases involving individual patients without a post-dispute agreement to arbitrate. Because the agreement had been signed before a dispute arose, and because the agreement stipulated that arbitration must occur under AAA rules and be presided over by persons approved by the AAA, the Court held that the agreement was unenforceable because it was impossible to perform due to a failure in material terms.

The Court distinguished the case from its earlier holding in *Westmoreland v. High Point Healthcare Inc.*, ___ N.C. App. ___, 721 S.E.2d 712 (2012), in which the Court held that a pre-dispute arbitration agreement signed on admittance to a nursing facility was enforceable. In that case, the agreement stipulated that any arbitration must follow the rules of the AAA and be conducted before one neutral arbitrator selected in accordance with the rules of the AAA. The Court held that the agreement was not impossible to perform despite the existence of the AAA Policy Statement, because it did not preclude arbitration of the claims by a non-AAA arbitrator. Here, in contrast, the agreement stated

that the arbitration would be conducted by arbitrators selected from the AAA. It specifically *required* the use of AAA arbitrators and was, therefore, unenforceable as impossible to perform.

Interestingly, the Court declined to reach the second question posed by the appeal: whether Ms. Crossman, as a beneficiary of Mr. Crossman's estate, would be bound by her husband's assent to the arbitration agreement. That question remains for another day. . .

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