

Arbitration Agreements are Not Enforceable if a Party Cannot Bear the Costs of Arbitration

Article By:

Corporate Practice Group

Parties to a business transaction frequently include mandatory arbitration clauses in their contracts believing that arbitration will be a faster, cheaper method to resolve potential disputes. The escalating administrative fees associated with certain arbitration forums have caused many litigants to question whether arbitration is really a better option than filing an action in state or federal court. And even if arbitration may seem like the better option, can your adversary still avoid mandatory arbitration by arguing they cannot afford it?

The **Arizona Court of Appeals** recently refused to enforce an arbitration agreement as unconscionable because the costs of arbitration precluded the plaintiff from obtaining redress for his claims. In *Clark v. Renaissance West, LLC*, a plaintiff filed an action in Superior Court based on injuries he suffered at a nursing facility. The plaintiff had previously signed a mandatory arbitration agreement with the facility. The nursing facility moved to dismiss the complaint and compel mandatory arbitration.

The Arizona Court of Appeals determined the arbitration agreement was unenforceable because the cost to arbitrate was prohibitively high. The factors supporting this decision were: (a) the need to pay arbitrator fees in the range of \$380-400 per hour; (b) the potential that a panel of 3 arbitrators would be required to resolve the dispute; (c) the parties had to split the fees regardless of who prevailed; (d) the arbitration would cost the plaintiff approximately \$22,800; (e) the plaintiff was retired and living on a fixed income; and (f) the arbitration rules that applied to the dispute did not provide for waiver and deferral of fees based on financial hardship.

Notably, the arbitration agreement in *Clark v. Renaissance West, LLC*, did not refer to the American Arbitration Association for its designated forum, which does provide for a waiver or reduction of fees in certain circumstances.

The court emphasized the importance of an arbitration agreement that accommodates individuals who cannot bear the costs of arbitration; the agreements should incorporate a reduction in costs or waiver of fees based on financial hardship. A drafter may also include language providing that any claim or dispute will be resolved under the American Arbitration Association Rules, which provide waivers or reductions in arbitration fees based on extreme financial hardships. Bottom line, an arbitration agreement will not be enforceable if the costs of arbitration are prohibitively expensive in

that a claimant cannot seek relief for his or her alleged injuries because they cannot bear the costs of arbitration. See *Clark v. Renaissance West, LLC*, 1 CA-CV 12-0692, 2013 WL 3914416 (Ariz. App. July 30, 2013).

Copyright © 2025 Ryley Carlock & Applewhite. A Professional Association. All Rights Reserved.

National Law Review, Volume IV, Number 108

Source URL: <https://natlawreview.com/article/arbitration-agreements-are-not-enforceable-if-party-cannot-bear-costs-arbitration>