

NJ Raises the Bar For Enforcement of Arbitration Provisions

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Arbitration provisions are routinely enforced by courts, however, a recent ruling by the US District Court of New Jersey just made enforcement a little harder.

In Schmell v. Morgan Stanley & Co. Inc., No. CV 17-13080, 2018 WL 1128502 (D.N.J. Mar. 1, 2018) a former employee alleged he was not bound by Morgan Stanley's mandatory arbitration agreement because he had never actually agreed to it. Morgan Stanley had sent an email to its employees alerting them to the fact they would be required to arbitrate all claims and indicated in the email that the employee's continued employment at Morgan Stanley would be considered consent to mandatory arbitration. Mr. Schmell argued he'd never received the email and as such, he had never agreed to mandatory arbitration. The District Court agreed finding that because Morgan Stanley could not show Mr. Schmell had received, reviewed or agreed to the provision, the mandatory arbitration agreement was not enforceable.

While these sorts of electronic notice have become common place, moving forward, any employer who wishes to have their employees be bound by an arbitration agreement sent electronically must take additional steps to confirm that its employees viewed the notice, reviewed it and agreed to be bound by it either by executing the agreement or failing to opt out in the time provided.

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