Supreme Court Says Credit Repair Companies Can Force Consumers Into Binding Arbitration

January 10, 2012 - In an 8 to 1 ruling, the US Supreme Court handed down a decision today that says that credit repair companies can force consumers who are unhappy with their results to engage in binding arbitration rather than litigation. The ruling will make it much more difficult for consumers seeking legal remedies against any companies they may hire to help them restore their credit.

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The particular case in question revolved around language in the Credit Repair Organization Act that gives consumers a right to sue. That language didn't distinguish between court litigation and binding arbitration. Because of this lack of specificity in the law, the court ruled that there was nothing to prevent credit repair companies from requiring their clients to use binding arbitration to settle any disputes.

Attorneys for the plaintiffs in the case had argued that Congress had never intended to allow credit repair companies to use the binding arbitration process. But the opinion, written by Justice Antonin Scalia firmly rejected that argument. Scalia wrote, "At the time of the CROAâ€™s enactment in 1996, arbitration clauses such as the one at issue were no rarity in consumer contracts generally, or in financial services contracts in particular. Had Congress meant to prohibit these very common provisions in the CROA, it would have done so in a manner less obtuse than what respondents suggest."

The case reversed a ruling by the 9th Circuit Court of Appeals.

The ruling is problematic for consumers because binding arbitration is usually results in a verdict in favor of the business. The reason for this is the system used to choose an arbitrator.

Any arbitrator has to be acceptable to both parties and is supposed to be impartial. But businesses will normally refuse to approve any arbitrator who is known to hand down ruling favoring consumers. Arbitrators know this and, since their income is dependent upon their ability to work on future disputes, the deck is stacked against consumers IMHO.

byJim Malmberg
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