

CFPB Targeting Binding Arbitration Clauses in Consumer Agreements

April 25, 2012 - The Consumer Financial Protection Bureau has decided to put mandatory binding arbitration clauses on its target list. These clauses appear in many forms of consumer contracts - everything from credit card agreements to new home purchase contracts. And when consumers do find themselves in a dispute with one of the companies they do business with, if they are forced into mandatory binding arbitration, consumers almost always come out on the short end of the stick.

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Mandatory binding arbitration clauses essentially force consumers to give up their right to go to court when wind up in a dispute with a company. A few years ago, California tried to put a stop these clauses but the federal court system stepped in and said that the state didn't have the authority to ban them.

These clauses appear in many contracts. Agreements for credit cards, cell phones, internet service and even agreements to purchase a newly built home contain them. And the companies that offer goods and services under contract with arbitration clauses almost never let the consumer select another option. That means that the consumer can either agree to the terms of the agreement or not buy the service in the first place. There is no middle ground.

There is a large amount of evidence that cases brought using mandatory binding arbitration are decided overwhelmingly in the favor of the companies being sued. There is a simple reason for this. The arbiters in such cases need to be acceptable to all parties. That means that both the plaintiff and the defendant need to agree to the person hearing the case. So far, so good.

But companies have found that it is very simple for them to simply disagree to allow anyone to hear one of their cases if the arbiter regularly decides in favor of consumers. Since the arbiters are reliant on hearing cases for their income, they are reluctant to rule against the companies who could essentially black-ball them. That means that in any binding arbitration case between a business and a consumer, the deck is stacked against the consumer right from the outset of the case.

While the courts have ruled that the states can't eliminate binding arbitration, Congress specifically gave the CFPB the authority to regulate the use of binding arbitration clauses in consumer contracts. That means that some changes to the process are likely, but any changes are equally likely to take some time.

by Jim Malmberg

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