

November 3, 2021

ADR Case Update 2021 - 20

Federal Circuit Courts

- **CA FEHA FEE STANDARD APPLIED WHEN A DEFENDANT EMPLOYER SUCCESSFULLY COMPELLED ARBITRATION**

Patterson v. The Superior Court of Los Angeles County
2021 WL 4843540
Court of Appeal, Second District, Division 7, California
October 18, 2021

Former Charter Communications employee Michael Patterson sued Charter for unlawful sexual harassment/hostile work environment, unlawful retaliation, and failure to prevent harassment and retaliation in violation of the California Fair Employment and Housing Act (FEHA). Charter moved to compel arbitration of Patterson's FEHA claims under the parties' written agreement to arbitrate all employment-related disputes. In his opposition to the motion, Patterson argued that the agreement was procedurally and substantively unconscionable, specifically challenging as one-sided and inconsistent with the policies underlying access to the courts in FEHA cases the attorney fee provision in the agreement authorizing attorney fees for a party who successfully compelled arbitration. After the court granted Charter's motion, Charter moved for an award of attorneys' fees incurred. The court granted Charter's motion in substantial part, awarding Charter reasonable attorney fees. The court ruled attorney fees incurred in connection with a petition to compel arbitration may be awarded before the merits of the dispute have been determined "where a party prevailed in a discrete proceeding on the contract." The court also ruled the asymmetric standard for attorney fees in FEHA cases applied only after adjudication of the case on the merits. Patterson filed a petition for a writ of mandate challenging the order of the court.

The Court of Appeal, Second District, Division 7, California granted the petition and directed respondent Los Angeles Superior Court to vacate its order awarding attorney fees to Charter and conduct a new hearing to reconsider Charter's motion for attorney fees. Because a fee-shifting clause directed to a motion to compel arbitration risks chilling an employee's access to court in a FEHA case absent the FEHA asymmetric standard for an award of fees, a prevailing defendant

may recover fees in this situation only if it demonstrated that the plaintiff's opposition was groundless. No such finding was made by the superior court in the underlying action.

Case research and summaries by Deirdre McCarthy Gallagher and Richard Birke.

Contact Information

David Brandon
Program Manager
JAMS Institute
415-774-2648

DBrandon@jamsadr.com