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Arbitrators Do Not Exceed Their Powers Simply Because They Render a "Bad or Ugly" Decision

By Christopher Moore – February 6, 2014

In *Oxford Health Plans LLC v. Sutter*, – U.S –, 133 S. Ct. 2064, No. 12-135 (June 10, 2013), the Supreme Court unanimously affirmed a Third Circuit decision holding that an arbitrator did not exceed his power when he found that an arbitration clause permitted class arbitration even though the clause was silent as to such matters. The decision distinguished *Stolt-Nielsen v. Animal Feeds Int'l*, 130 S.Ct. 1758 (2010), which held that an arbitration panel had exceeded its power by allowing class arbitration.

Sutter (plaintiff) was a doctor who provided services to Oxford Health Plans (defendant) under a contract (contract) that contained an arbitration clause (clause). The clause stated that "no civil action concerning any dispute arising under [the contract] shall be instituted before any court" and that "all such disputes" must be arbitrated. The clause did not mention class actions. Despite the clause, the plaintiff filed a purported class action in state court alleging that the defendant had failed to pay him and other doctors what was required under the contract. The defendant moved to compel arbitration. The motion was granted. The parties then agreed that the arbitrator should decide whether the contract authorized class arbitration.

The arbitrator construed the clause as allowing class arbitration even though it was silent as to class actions. The defendant moved in federal court to vacate pursuant to section 10(a)(4) of the Federal Arbitration Act (Section 10(a)(4)). It argued that the arbitrator had exceeded his powers in rendering his decision. The motion was denied. The defendant appealed. The Third Circuit affirmed. As the arbitration proceeded, the Supreme Court decided *Stolt-Nielsen*. The defendant immediately asked the arbitrator to reconsider his class-arbitration ruling, but he found that *Stolt-Nielsen* had "no effect" on that ruling. The defendant again asked the district court to vacate the decision under Section 10(a)(4). The motion was denied. The Third Circuit affirmed, and the Supreme Court granted the defendant's certiorari petition.

The defendant acknowledged that Section 10(a)(4) imposes a "high hurdle" on those seeking to vacate an arbitrator's decision, but the defendant also (a) noted that the clause contained no reference to class actions; and (b) argued that under *Stolt-Nielsen* Section 10(a)(4)'s "hurdle" is overcome "when an arbitrator imposes class arbitration without a sufficient contractual basis." The Supreme Court disagreed. It noted that the arbitrator twice had interpreted the clause and twice had concluded that it allowed class arbitration. Ruling against the defendant, the court held that the "sole question" was "whether the arbitrator (even arguably) interpreted the parties'

contract" and found that, because the arbitrator (twice) had done so, he did not exceed his powers:

> Twice, then, the arbitrator did what the parties had asked: He considered their contract and decided whether it reflected an agreement to permit class proceedings. That suffices to show that the arbitrator did not 'exceed[] [his] powers [under Section 10(a)(4)'.

The Court further observed (citations omitted):

> So long as the arbitrator was 'arguably construing the contract—which this one was—a court may not correct his mistakes under [Section 10(a)(4)]. The potential for those mistakes is the price of agreeing to arbitration . . . . 'It is the arbitrator's construction [of the contract] which was bargained for: and so far as the arbitrator's decision concerns construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his.' The arbitrator's construction holds, however good, bad, or ugly.

The Court rejected the defendant's reliance on *Stolt-Nielsen* and distinguished that decision. In that case, the Court noted, the parties had stipulated that they had not reached an agreement on class arbitration, and the arbitrators had not examined state or federal law to determine if a "default rule" would apply absent the parties' agreement. Thus, and unlike in *Sutter*, the arbitrators in *Stolt-Nielsen* could not have been construing the parties' agreement; instead, they were imposing their "own policy choice"—and hence exceeding their powers—in finding that class arbitration was permitted.

The *Sutter* decision appears to be limited. In fact, the Court expressly acknowledged that the outcome may have been different had the defendant "argued below that the availability of class arbitration is . . . a 'question of arbitrability'" generally and "presumptively for courts to decide" in the first instance. That argument would have prompted a de novo review by the Court. Indeed, in Justice Alito's concurrence, he observed that if the Court "were reviewing the arbitrator's interpretation of the contract de novo, we would have little trouble concluding that he improperly inferred an implicit agreement to authorize class-action arbitration." Justice Alito also questioned whether absent class members would be bound by the arbitrator's decision. "Arbitration 'is a matter of consent,'" he wrote, "and the absent class members of the plaintiff class have not submitted themselves to this arbitrator's authority in any way."

It will be interesting to see how courts will resolve future disputes when a party raises the "question of arbitrability" issue left open by the Court, and how courts will deal with Justice Alito's caution that arbitral decisions may not bind absent class members.

Keywords: ADR, litigation, class arbitration, exceed powers, motion to vacate, Supreme Court, Stolt-Nielsen, Section 10(a)(4), Federal Arbitration Act, absent class members

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