



Alerts

Attorney Cannot Agree to Arbitrate Without Client Consent

September 9, 2010

Lawyers for the Profession® Alert

D & D Carpentry, Inc. v. U.S. Bancorp, Slip Copy, 2010 WL 3389885 (Wis. App. 2010)

Brief Summary

A client will not be bound by an attorney's agreement to arbitrate if the client can meet her burden of establishing that she did not authorize the lawyer to arbitrate.

Complete Summary

After an attorney stipulated, in open court, to submit his client's case to binding arbitration, the client hired a new lawyer, who moved the court to reconsider the arbitration order. The client asserted that she had not consented to arbitration and that she wanted a jury trial. The trial court did not resolve the issue of authorization by the client, but rather held that the client's former lawyer had waived any objection to the arbitration by virtue of the stipulation in open court. The client appealed.

The Wisconsin Court of Appeals reversed and remanded for a factual determination on the issue of client authority. The appellate court stated that, as with settlement decisions themselves, the decision to arbitrate is a well-recognized "settlement tool." The court held that the decision to forego a jury trial and opt for arbitration is a fundamental litigation/settlement decision that is not the lawyer's to make but rather requires client consent. The court also held, however, that the burden is on the client to establish that the attorney lacked the authority to enter into an arbitration agreement.

The appeals court held that the client met her *prima facie* burden, based on the fact that the lawyer had admitted that the client did not authorize him to agree to arbitration and that the client had told the attorney that she wanted a jury trial. Because the trial court had made no findings of fact, the appellate court remanded the case to the trial court in order to have a fact finder decide whether the client had authorized the lawyer to enter the arbitration agreement.

Significance of Opinion

This opinion clearly places decisions to arbitrate into the class of fundamental litigation and settlement decisions strictly reserved for clients.

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