

New U.S. Supreme Court Decision on Nursing Home Arbitration Agreements

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Use of arbitration agreements in the nursing home context has been a hot topic across the country. The United States Supreme Court recently weighed in on the issue and held that the Federal Arbitration Act preempts any state rule that discriminates on its face against arbitration agreements, and, as such, state courts must treat arbitration agreements the same as other contracts. *See generally Kindred Nursing Centers Ltd. P'ship v. Clark, No. 16-32, (U.S. May 15, 2017).*

By way of background, the Kentucky Supreme Court consolidated two cases involving the use of arbitration agreements in the nursing home context. At issue were arbitration agreements executed by Beverly Wellner and Janis Clark—the wife and daughter, respectively, of Joe Wellner and Olive Clark—at the time of their respective admissions to Winchester Centre for Health and Rehabilitation. The Court decided the Wellner power of attorney did not permit Beverly Wellner to enter into an arbitration agreement on Joe Wellner's behalf. The language in the Clark power of attorney did, however, give Janis Clark the capacity to execute such an agreement on behalf of Olive Clark. Despite this distinction, the Kentucky Supreme Court ultimately decided that both agreements were invalid because neither specifically entitled the representative to enter into an arbitration agreement. Based on this ruling, for any arbitration agreement to be valid, the underlying power of attorney must specifically refer to the right to waive or confer waiver of the constitutional right to jury trial.

The nursing home petitioned the Supreme Court of the United States for review. This petition was granted. The Supreme Court held that the clear-statement rule violated the Federal Arbitration Act by singling out arbitration agreements for disfavored treatment. Per the Supreme Court, powers of attorney need not specifically reference the right to execute an arbitration agreement in order to grant the attorney in fact the right to do so.

In sum, the Supreme Court reversed the Kentucky Supreme Court's judgment in favor of the Clark Estate because the Clark arbitration agreement was deemed invalid solely due to the clear-statement rule. The issue regarding the enforceability of the Wellner arbitration agreement was remanded back to the Kentucky Supreme Court because it originally decided that the Wellner power of attorney was not sufficiently broad to authorize the execution of an arbitration agreement and did so irrespective of the clear-statement rule.

There are numerous avenues to contest the validity of arbitration agreements. However, this opinion handed down by the Supreme Court of the United States clarifies that the Federal Arbitration Act does, in fact, preempt state laws that seek to invalidate or are otherwise designed to disfavor arbitration agreements.

Here is the complete opinion: https://www.supremecourt.gov/opinions/16pdf/16-32_o7jp.pdf

