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Arbitration

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ARBITRATION

Adams v. Merrill Lynch Pierce Fenner & Smith, 888 F.2d 696
Author: Judge Brorby

Plaintiffs, Baker, Moore, L.A. Adams, and Johnnie Mae Adams ("Investors"), appealed three separate orders of the district court. These court orders compelled arbitration of claims arising under the Securities Act of 1933, the Securities Exchange Act of 1934, Oklahoma securities laws, common law fraud, breach of fiduciary duty, breach of contract, and negligent management. The Investors contended that: (1) Investor Moore could not be compelled to arbitrate because she did not sign a customer agreement with defendant Merrill Lynch Pierce Fenner & Smith ("Merrill Lynch"); (2) the agreements to arbitrate could not be enforced because they are contracts of adhesion; (3) the arbitration agreements were procured through fraud; (4) Merrill Lynch waived its right to arbitration; and (5) the district court erred in granting Merrill Lynch's FED. R. CIV. P. 60 (B)(6) motion, which asked the court to reconsider its refusal to compel arbitration of claims arising under the Securities Exchange Act of 1934.

The Tenth Circuit upheld the district court's decision. The court held that the district court's finding that all the Investors had executed customer agreements with Merrill Lynch was not clearly erroneous. The court stated that the agreements to arbitrate were not contracts of adhesion, neither were the agreements procured by fraud. The agreements clearly and unambiguously set forth the arbitration provisions. Moreover, the law presumes that one has read that which he has signed. The court further held that Merrill Lynch did not waive its right to arbitration when it attempted to resolve the dispute prior to suit. Also, Merrill Lynch's failure to demand arbitration prior to suit did not waive its right to arbitration. A party opposing a motion to compel arbitration must show it has been substantially prejudiced by the delay; the Investors in this case failed to meet that burden. The court then found that the district court did not abuse its discretion in granting Merrill Lynch's FED. R. CIV. P. 60 (B)(6) motion. The court reasoned that a change in relevant case law by the United States Supreme court warranted relief under the rule.