

Another Arbitration Agreement Found Unenforceable

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The tide may be turning in favor of the residents against facilities in defeating unjust arbitration agreements.

The New Jersey Legislature, in enacting NJ's Nursing Home Rights Act, recognized the unfairness of the agreements in the industry that is supposed to care for the elderly and infirm and rightly legislated against them. While that was preempted by the Federal Arbitration Act, it looks like state courts are across the nation are coming to the same understanding - that these agreements are unjust for their residents in nursing homes.

The Court of Appeal of the State of California Fourth Appellate Division Three has affirmed a trial court decision that denied a nursing home's petition to force arbitration in a nursing home negligence, elder abuse, and wrongful death case.

In 2015, an 87-year-old nursing home resident was transferred to the defendant nursing home. At the time, he was suffering from various conditions, including sepsis and chronic renal failure. He had previously named his son as his power of attorney agent 8 years prior.

The day after the resident had arrived and begun receiving care at the facility, his son was presented with a stack of documents to sign for his father's residency, including a document entitled "Voluntary Alternative Dispute Resolution (ADR) Agreement." The agreement stipulated arbitration after mediation, which submission to arbitration as provided by California law. Further, the ADR agreement stated that "any dispute as to medical malpractice" was subject to arbitration. The son signed this document on behalf of his father.

Five days after being admitted to the nursing home, the resident's feeding tube became dislodged and began infusing into his throat. The resident already suffered from an impaired gag reflex, and as a result was unable to clear his lungs and he aspirated, leading to cardiopulmonary arrest and rapid decline until his eventual death.

In March 2016, the son filed a complaint on behalf of his father and himself, alleging negligence/willful misconduct, elder abuse, and neglect. In addition, a third and final cause of action for wrongful death was filed on the son's behalf only.

In response, the defendant nursing home filed a petition to compel arbitration and motion to stay. The trial court denied the motion and concluded that the defendant had failed to show a valid arbitration agreement with respect to the son.

The California Appellate Court agree, and stated that the key issue with this case was whether or not the son was bound by the ADR Agreement. The Court stated that the complaint includes allegations that could be categorized as professional negligence as well as elder abuse, and that there was some overlap between the two.

The Appellate Court held that there was no evidence that when the son signed the Agreement as his father's agent that he had any intent to waive his right to a jury for any personal claims.

STARK & STARK
ATTORNEYS AT LAW

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