

THE
NATIONAL LAW REVIEW

West Virginia Supreme Court Reverses, Finds “Delegation Clause” in Employment Arbitration Agreement Neither Ambiguous nor Unconscionable

Monday, June 17, 2019

Petitioners, two Rent-A-Center entities, moved to compel arbitration of a lawsuit by Anita Ellis alleging that Rent-A-Center unlawfully terminated her employment for seeking workers’ compensation benefits. At the time she was hired, Ellis signed an arbitration agreement stating that she agreed to arbitrate any claims arising out of her employment and/or termination. In seeking to compel arbitration, Rent-A-Center specifically relied on a “delegation clause” in the arbitration agreement stating that the arbitrator — not any court — shall have exclusive authority to resolve any challenge to the applicability, enforceability, or formation of the arbitration agreement, including on the grounds that it was void, voidable, ambiguous, unconscionable, or in violation of state law. Ellis argued that the delegation clause was: (1) ambiguous and failed to reflect an unmistakable intent to delegate arbitrability issues to the arbitrator; (2) unconscionable under state common law; and (3) invalid for violating a West Virginia statute. The lower court held that the delegation clause was both procedurally and substantively unconscionable and that there was no mutual agreement to arbitrate. It therefore denied Rent-A-Center’s motion to compel arbitration, but the Supreme Court of West Virginia reversed.

With respect to Ellis’ first argument, the court noted that it had previously considered the exact delegation clause at issue here and held that it clearly and unmistakably expressed an intent to delegate arbitrability issues to the arbitrator. It thus rejected Ellis’ contrary argument. The court next rejected Ellis’ argument that the delegation clause was unconscionable or otherwise invalid under common law contract principles and West Virginia statute. Ellis claimed the provision suffered from various “contract of adhesion” characteristics often associated with procedural unconscionability (e.g., unequal bargaining power, “take-it-or-leave-it” terms, and others). The court disagreed, however, finding the failure to read a contract does not relieve a party of its binding effect. And while an arbitration clause generally will not be deemed “unconscionable” absent proof of both procedural and substantive unconscionability, the court found Ellis failed to prove substantive unconscionability nonetheless. The court noted that in order for it to consider Ellis’ delegation clause challenge, 9 U.S.C. § 2 and the “severability doctrine” required her to specifically object to the delegation clause, rather than the arbitration agreement as a whole. Because Ellis’ “statutory violation” argument was directed to the arbitration agreement as a whole, it could not serve as a basis for invalidating the delegation clause on unconscionability grounds.

[Rent-A-Center, Inc. v. Ellis](#), 827 S.E.2d 605 (W.Va. 2019)

© 2011-2019 Carlton Fields, P.A.

Source URL: <https://www.natlawreview.com/article/west-virginia-supreme-court-reverses-finds-delegation-clause-employment-arbitration>



Article By [Carlton Fields](#)
[Alex B. Silverman](#) [Reinsurance Focus](#)

[ADR / Arbitration / Mediation](#)
[Labor & Employment](#)
[West Virginia](#)