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ARTICLES

New Jersey's Supreme Court Upholds Automatic Application of NJAA in the Event of an FAA Exemption

By Kelly A. Ringston – November 24, 2020

On July 14, 2020, the New Jersey Supreme Court issued a joint decision in the matters of *Colon v. Strategic Delivery Solutions, LLC* and *Arafa v. Health Express Corp.*, 243 N.J. 147, and conclusively held that arbitration agreements exempt under section 1 of the Federal Arbitration Act (FAA) can still be enforced under the New Jersey Arbitration Act (NJAA), even where the parties' agreement expressly provides for the application of the FAA and makes no mention of the applicable state law.

Colon and *Arafa* both involved arbitration agreements in the contracts of pharmaceutical transportation workers and addressed the issue of whether those agreements could be enforced under the NJAA if they were exempt under section 1 of the FAA. The cases raised eyebrows when different panels of New Jersey's Appellate Division reached opposite conclusions just one day apart.

Colon v. Strategic Delivery Solutions, LLC

In *Colon*, the plaintiffs—workers, truck drivers, and delivery persons—filed a class action suit against defendant Strategic Delivery Solutions, LLC (SDS), alleging various violations of New Jersey's Wage Payment Law and Wage and Hour Law.

SDS moved to dismiss the complaint and compel the plaintiffs to arbitrate their claims on an individual basis in accordance with the Independent Vendor Agreement for Transportation Services that each plaintiff had executed. That agreement provided, among other things, that the plaintiffs were providing transportation services as independent contractors and agreed to comply with and be bound by the FAA and to arbitrate "any dispute, difference, question or claim" arising out of or in any way relating to the agreement or the transportation services provided thereunder. The plaintiffs opposed the motion, but the trial court found the parties' agreement to arbitrate "clear and unambiguous" and held that the plaintiffs were required to adjudicate their claims through arbitration.

The plaintiffs appealed and argued that they could not be compelled to arbitrate under the FAA, because they were exempt as interstate transportation workers, or under the NJAA, because its application was not contemplated by the parties' agreement.

In a decision dated June 4, 2019, *Colon v. Strategic Delivery Solutions, LLC*, 459 N.J. Super. 349 (App. Div. 2019), the Appellate Division remanded the matter back to the trial court, holding that the dismissal of the action was premature because the trial court had failed to first determine whether the plaintiffs were engaged in interstate commerce. The court did not opine on this unresolved issue but took note of the U.S. Supreme Court's January 15, 2019, decision in *New Prime, Inc. v. Oliveira*, 139 S. Ct. 532 (2019), highlighting its holding that an agreement to provide transportation services on an interstate basis falls under section 1 of the FAA, whether or not the worker is an employee or an independent contractor.

However, the Appellate Division went on to hold that even if the plaintiffs were exempt under the FAA, the NJAA remains applicable and the parties' arbitration agreement would be enforced in accordance with the state law.

Arafa v. Health Express Corp.
Incredibly, a different panel of New Jersey's Appellate Division reached the opposite conclusion the following day.

In *Arafa*, the plaintiff—a truck driver who delivered pharmaceutical products in and around New Jersey—filed a class action against defendant Health Express Corporation alleging that it violated the Wage Payment Law and the Wage and Hour Law, both in mischaracterizing him as an independent contractor and in failing to pay certain wages.

Like SDS, Health Express moved to dismiss the action and compel arbitration in reliance on the parties' employment and arbitration agreement, which stated that it was to be governed by the FAA. The plaintiff argued that he was exempt under section 1 of the FAA, but this argument was not addressed by the trial court and Health Express's motion was granted.

In a decision dated June 5, 2019, *Arafa v. Health Express Corporation*, 2019 WL 2375387 (N.J. App. Div. 2019), the Appellate Division reversed the order of dismissal and remanded the matter back to the trial court. In its brief decision, the court expressly relied on *New Prime* in finding that the plaintiff's employment agreement qualified for an exemption under section 1 of the FAA. The court then held that because the parties' agreement could not be enforced under the FAA, the entire premise of their contract was undermined and their agreement to arbitrate invalid due to lack of mutual assent.

The NJAA Prevails
In its July 14, 2020, decision resolving the split in favor of enforcing FAA section 1 exempt arbitration agreements through the NJAA, the New Jersey Supreme Court was guided by the history of each statute.

The court first emphasized that the FAA was enacted to combat the hostility of American courts to arbitration agreements, and while it preempts any state rule discriminating against arbitration, it "contains no express pre-emptive provision, nor does it reflect a congressional intent to occupy the entire field of arbitration." (citing *Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Jr. Univ.*, 489 U.S. 468, 477 (1989)). In fact, the FAA specifically permits states to regulate contracts containing arbitration agreements under general contract principles. The court noted that the NJAA is nearly identical to the FAA and enunciates the same policies favoring arbitration. As a result, it concluded that the NJAA's application to the *Colon* and *Arafa* arbitration agreements was not discriminatory and therefore did not render those agreements unenforceable under state law.

The court then rejected the argument that the NJAA cannot apply to the parties' arbitration agreements absent its specific invocation. Having determined that the agreements at issue were subject to New Jersey state law generally due to the "place of performance" of the contracts and the domicile, residence, and place of incorporation and business of the parties, the court addressed the NJAA specifically, finding that it applied automatically to all nonexempted arbitration agreements from its January 1, 2003, effective date on, as a matter of law. For arbitration agreements exempt under section 1 of the FAA and entered into after January 1, 2003, such as those in *Colon* and *Arafa*, the court held that there is no need for parties to express an intent that the NJAA will apply in order to achieve a contractual "meeting of the minds" because the application of the statute is automatic.

After examining the distinct issues presented by each agreement, the court affirmed the Appellate Division's decision in *Colon* and reversed its decision in *Arafa*. In holding that arbitration agreements exempt under section 1 of the FAA can still be enforced under the NJAA, even when not specifically contemplated by an agreement, the New Jersey Supreme Court both resolved a curious split in the state's Appellate Division and issued a stark reminder to parties and practitioners alike of the importance of understanding the intersection of state and federal arbitration laws.

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