The Voice of the Defense Bar

The Voice

And The Defense Wins

Published 6-25-14 by DRI

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DRI members **Joshua S. Whitley** and **Todd W. Smyth** of **Smyth Whitley LLC** in Charleston, South Carolina, recently obtained a favorable result in an appeal to the South Carolina Supreme Court whereby the court reversed the circuit court's decision denying a nursing home's motion to compel arbitration.

The defendant nursing facility filed a motion to compel arbitration based on an arbitration agreement signed at the time of the resident's admission to its facility. The plaintiff argued 1) the agreement was invalid because the agreement's designated forum was unavailable and that was a material term of the agreement; 2) that the Federal Arbitration Act (FAA) did not apply, as the agreement did not involve interstate commerce; and 3) the facility had waived its right to arbitration by participating in statutory pre-suit mediation and exchange of information. The trial court denied the defendant's motion to compel arbitration, holding that the agreement's designated forum was unavailable, that this was a material term of the agreement, and the failure of a material term rendered the entire arbitration agreement invalid.

On April 1, 2014, Whitley argued to the South Carolina Supreme Court that the trial court must be reversed and sought the enforcement of the agreement via an interlocutory appeal. Writing for a unanimous court, Chief Justice Jean Toal explicitly overruled a 21-year precedent, *Timms v. Greene*, 310 S.C. 469, 427 S.E.2d 642 (1993), and held that nursing home arbitration agreements do involve interstate commerce, thereby implicating the FAA. She further reversed the trial court and held that the named arbitral forum was not integral to the agreement, and the nursing home did not waive its right to compel arbitration by participating in a pre-suit mediation.

This is a significant result in South Carolina, as this opinion conclusively settles some important arbitration issues favorably for long-term care facilities.

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