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Client Alert

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Pennsylvania Appellate Court Upholds Arbitration Clause in Attorney-Client Engagement Letter

The American Bar Association and most state's Rules of Professional Conduct have long provided that arbitration provisions in attorney-client engagement agreements are ethically permissible so long as (1) the client is fully informed as to scope and effect of the agreement, and (2) the provision does not insulate the lawyer from liability or otherwise limit his or her exposure under controlling law.[i] A Pennsylvania trial court decision in late 2018 called that general principle in question by denying a law firm's request to compel a malpractice claim into arbitration, notwithstanding an engagement letter that made clear that any dispute arising out of the engagement would be subject to mandatory arbitration. A divided Pennsylvania Superior Court panel, however, recently confirmed the general rule and vacated the trial court's decision.

In Mackin Medical, Inc. v. Lindquist & Vennum LLP,[ii] the client, Mackin Medical, sued its former law firm in state court, alleging that it had been damaged by the firm's faulty advice. The engagement letter signed by the client required that all claims relating to the engagement be resolved through mandatory, binding arbitration:

> In the event of a dispute, controversy or claim arising out of or relating to our fees, costs, billing practices or this engagement, we mutually agree that any such dispute, controversy or claim will be submitted to mandatory binding arbitration before a single arbitrator in Minneapolis, Minnesota, in an arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules. The decision of the arbitrator will be final and binding on the parties. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Arbitration has the advantage of generally being faster, less expensive and more informal than traditional litigation and any decision is final and binding. It does not provide, however, for the assurance of as much pre-hearing discovery, public trial by jury, or appeal. Arbitration filing fees are typically more expensive, and the parties are responsible for paying the arbitrator. Your signature on the accompanying engagement letter acknowledges your informed consent to use of arbitration to resolve disputes with us.[iii]

Although the law firm touched upon some of the common advantages (faster, less expensive, more informal) and disadvantages (limited discovery, no jury, and restricted appeals) of arbitration in the engagement letter, it did not counsel the client to seek independent legal advice prior to signing.[iv]

The trial court rejected the firm's request to compel the case to arbitration, finding that the arbitration clause violated Pennsylvania Rules of Professional Conduct 1.8(h)(1) and 1.8(a)(1).[v] The former prohibits any agreements that prospectively limit the lawyer's liability for malpractice unless the client has independent representation in entering the agreement; the

latter forbids a lawyer from entering into a business transaction with a client unless the terms are fair, reasonable, and have been fully disclosed to the client in writing.

On appeal, a divided Superior Court panel rejected the trial court's decision.[vi] The Court first concluded that there was nothing about the arbitration clause that could or would limit the law firm's liability for malpractice. While conceding the trial court's observation that *procedural* differences exist between arbitration and court proceedings, the Court recognized that those procedural differences "do not, in any way, prospectively limit the substantive scope of Mackin Medical's potential claims against [the law firm] or limit [the law firm's] liability to Mackin Medical."[vii] In fact, the Court noted that the American Arbitration Association's Commercial Rules, which were referenced in the arbitration clause, grant the arbitrator broad power to "grant any remedy or relief that the arbitrator deems just and equitable."[viii] The trial court's reliance on Professional Rule of Conduct 1.8(h)(1) also contradicted the comments to the rule itself, which expressly allow for agreements between lawyer and client to arbitrate legal malpractice claims, "provided such agreements are enforceable and the client is fully informed of the scope and effect of the agreement."[ix] Because the agreement did not prospectively limit the law firm's liability, the Superior Court concluded that the arbitration clause was enforceable, notwithstanding Mackin Medical's lack of independent representation in entering into the agreement.

The Court likewise dispatched the trial court's conclusion that the agreement ran afoul of Rule of Professional Conduct 1.8(a)(1), which limits a lawyer's ability to enter into business transactions with a client. Here again, the Court determined that the comments to the rule defeated that rationale, as the comments make clear that the rule was designed to reach business, property or financial transactions between attorneys and clients beyond the terms of the engagement letter itself.[x]

Finally, although the trial court seemingly abandoned this rationale in its opinion, the Superior Court found that the arbitration provision was not ambiguous. It instead concluded that the provision was written in plain, easily understood language, sufficient to fully inform Mackin Medical of the scope and effect of the agreement.[xi]

While Mackin Medical has applied for reargument *en banc*, absent a different and unexpected outcome, this decision reaffirms what had been the long-standing rule in Pennsylvania: Where the client has been fully informed in writing as to scope and effect of the arbitration clause, and the provision does not prospectively limit the lawyer's liability, arbitration clauses in client engagement letters will be enforced.

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i See, e.g., ABA Formal Op. No. 02-425 (2002); N.Y. R. Prof. Conduct, 1.8(h)(1), cmt. 14; Pa. R. Prof. Conduct, 1.8, cmt. 14.

ii 2018 WL 6980890 (Phila. Cty. 2018)

iii Id. at *1.

iv Id.

v Id. at *3-4.

vi 2020 WL 1673809 (Pa. Super. April 6, 2020)

vii Id. at *5.

viii Id. (quoting AAA Commercial Rule 47(a)).

ix Id. (quoting Pa. R. Prof. Conduct cmt. 14).

x Id. at *6 (quoting Pa. R. Prof. Conduct 1.8 cmt. 1).

xi Id. at *6-7.

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