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Federal Court Enforces Arbitration Provision in Engagement Agreement

By Mark J. Fucile
Fucile & Reising LLP

The federal district court in Seattle recently enforced an arbitration provision in a lawyer's engagement agreement in *Dodo International, Inc. v. Parker*, No. C20-1116-JCC, 2021 WL 4060402 (W.D. Wash. Sept. 7, 2021) (unpublished). The lawyer had represented some of the plaintiffs in a series of business transactions that the court described as "ill-fated." Litigation followed against both the lawyer and the counterparties.

The lawyer sought to enforce an arbitration provision in his engagement agreement against the plaintiffs he had represented. The court agreed. In doing so, the court looked to both contract law and RPC 1.5(a)(9)—which requires "reasonable and fair disclosure" of the material terms of a fee agreement. The court rejected the former clients' arguments that the arbitration provision was either procedurally or substantively unconscionable under contract law because the provision was plainly disclosed in the engagement agreement and the bargaining power over the fee agreement was not completely one-sided. With RPC 1.5(a)(9), the court noted:

> The arbitration clause appears under the bold heading "**Arbitration**." . . . It discusses the process of selecting and paying an arbitrator, necessarily (if not explicitly) indicating that disputes will not be resolved in court . . . The engagement letter is only three pages long, with the clause at the end of page two, right above

> where . . . [the client] . . . signed. 2021 WL 4060402 at *6 (emphasis in original).

The arbitration provision involved was not limited to fee disputes, but, rather, encompassed "'any disputes . . . between us as to . . . any matter relating to our representation of you.'" *Id*. at *7. The court, therefore, directed arbitration of all of the former clients' claims against the lawyer.

Although not breaking new legal ground, *Dodo* is a useful reminder that for an arbitration provision in a law firm engagement agreement to be enforced, it needs to meet both the contractual and regulatory standards of adequate disclosure. Comment 14 to RPC 1.8 reinforces this point as it relates to malpractice claims in particular, noting that RPC 1.8(h) (which governs resolution of malpractice claims) "does not . . . prohibit a lawyer from entering into an agreement with the 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."

ABOUT THE AUTHOR

Mark J. Fucile of Fucile & Reising LLP advises lawyers, law firms and legal departments throughout the Northwest on professional responsibility and risk management. Mark has chaired both the WSBA Committee on Professional Ethics and its predecessor, the WSBA Rules of Professional Conduct Committee. Mark is a member of the Oregon State Bar Legal Ethics Committee and the Idaho State Bar Section on Professionalism & Ethics. Mark writes the

Ethics Focus column for the Multnomah (Portland) Bar's *Multnomah Lawyer*, the Ethics & the Law column for the WSBA *Bar News* and is a regular contributor on legal ethics to the WSBA *NWSidebar* blog. Mark is a contributing author and the editor-in-chief for the WSBA *Legal Ethics Deskbook* and is a contributing author and principal editor for the OSB *Ethical Oregon Lawyer* and the WSBA *Law of Lawyering in Washington*. Before co-founding Fucile & Reising LLP in 2005, Mark was a partner and in-house ethics counsel for a large Northwest regional firm. He also teaches legal ethics as an adjunct for the University of Oregon School of Law at its Portland campus. Mark is admitted in Oregon, Washington, Idaho, Alaska and the District of Columbia. He is a graduate of the UCLA School of Law. Mark's telephone and email are 503.224.4895 and Mark@frllp.com.