SUPREME COURT OF CALIFORNIA

Jevne v. Superior Court

35 Cal. 4th 935, 28 Cal. Rptr. 3d 685, 111 P.3d 954 (2005) · No. S121532 · Decided May 23, 2005

SUMMARY

The California Supreme Court held that Code of Civil Procedure section 1281.85 authorized the Judicial Council to adopt ethics standards for neutral arbitrators appointed by third-party arbitration providers. It further held that the Securities Exchange Act preempted those California standards as applied to arbitrations administered by NASD Dispute Resolution, but concluded that the delay in arbitrator selection did not relieve the plaintiffs of their duty to arbitrate.

CASE DETAILS

COURT	Supreme Court of California
WRITING FOR THE COURT	Kennard, J., Acting Chief Justice; Werdegar, J.; Chin, J.; Brown, J.; Moreno, J.; Vartabedian, J.; Ward, J.
JURISDICTION	California
DECIDED	May 23, 2005
DOCKET	S121532
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petition for writ of mandate and review of the Court of Appeal's denial of relief concerning an order compelling arbitration.
STANDARD OF REVIEW	Statutory and regulatory interpretation and federal preemption are reviewed independently. The court also examined whether the Judicial Council acted within its statutory authority and whether federal preemption applied.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Jack Jevne, Avalon Investments, S.A. v. Superior Court of Los Angeles County

TOPICS

arbitration · federalism · statutory interpretation · consumer protection · civil procedure

PRACTICE AREAS

arbitration · securities law · federal preemption · consumer protection · civil procedure

QUESTIONS PRESENTED

1. Whether Code of Civil Procedure section 1281.85 authorized the Judicial Council to adopt ethics standards for arbitrators appointed by arbitration providers such as NASD Dispute Resolution.
2. Whether the Securities Exchange Act preempted the California Standards as applied to NASD-administered arbitration.
3. Whether delay caused by uncertainty concerning the California Standards relieved the parties of their contractual duty to arbitrate.
4. Whether the parties could waive application of the California Standards.
5. Whether the Federal Arbitration Act preempted the California Standards.

HOLDINGS

1. Code of Civil Procedure section 1281.85 authorized the Judicial Council to adopt ethical standards for neutral arbitrators in private contractual arbitration, including arbitrators appointed by third-party dispute-resolution providers such as NASD Dispute Resolution.
2. The Securities Exchange Act, through the SEC's approval of the NASD Code and related rules, preempted California Standards 7, 8, and 10 concerning arbitrator disclosure and disqualification in NASD-administered securities arbitrations.
3. The California Standards as a whole were preempted in SRO-administered securities arbitrations because Standards 7, 8, and 10, and potentially Standard 9, were not functionally or volitionally severable from the remaining standards.
4. The delay in arbitrator selection and appointment did not relieve plaintiffs of their contractual duty to arbitrate.

KEY QUOTATIONS

> *"Accordingly, based on the views of the SEC discussed above, we conclude that the SEA preempts the California Standards' rules on arbitrator disclosure."* (28 Cal. Rptr. 3d 704)

> *"Therefore, we conclude that the SEA, through the SEC's approval of the NASD Code, preempts the California Standards dealing with disclosure and disqualification, including standards 7, 8, and 10."* (28 Cal. Rptr. 3d 705)

> *"Accordingly, we conclude that the preempted standards — standards 7, 8, and 10 (and possibly 9 as well, because it relates to disclosure) — are not severable from the remaining standards because they are not functionally or volitionally separable, and therefore the California Standards as a whole are preempted in SRO-administered securities arbitrations."* (28 Cal. Rptr. 3d 707)

FACTUAL BACKGROUND

Jevne opened a securities account with JB Oxford & Company for Avalon and agreed that disputes would be arbitrated under the NASD Code. He alleged that Oxford permitted unauthorized withdrawals totaling $1,026,535 between 1997 and 1999. After the superior court compelled arbitration and an arbitration panel was appointed, the California Standards for Neutral Arbitrators became effective. The NASD suspended the arbitration after one arbitrator withdrew and requested that plaintiffs waive the California Standards; plaintiffs refused and sought to return the dispute to court.

PROCEDURAL HISTORY

Jevne and Avalon sued Oxford-related defendants in superior court. The superior court compelled arbitration under the parties' NASD arbitration agreement. After the NASD arbitration was delayed and the NASD requested that plaintiffs waive application of the California Standards, plaintiffs sought to set aside the arbitration order and restore the matter to the civil calendar; the superior court denied the requests. The Court of Appeal denied plaintiffs' writ petition and concluded that the California Standards were authorized but preempted by the Securities Exchange Act as applied to NASD-administered arbitration. The California Supreme Court granted review and affirmed.

DISPOSITION

affirmed

CASES CITED

- Shearson/American Express, Inc. v. McMahon, 482 U.S. 220 (1987)
- People v. Mendez, 19 Cal. 4th 1084 (1999)
- People v. Hall, 8 Cal. 4th 950 (1994)
- In re Robin M., 21 Cal. 3d 337 (1978)
- Trans-Action Commercial Investors, Ltd. v. Firmaterr, Inc., 60 Cal. App. 4th 352 (1997)
- Van Arsdale v. Hollinger, 68 Cal. 2d 245 (1968)
- People v. Martinez, 22 Cal. 4th 106 (2000)
- People v. Cruz, 13 Cal. 4th 764 (1996)
- Dowhal v. SmithKline Beecham Consumer Healthcare, 32 Cal. 4th 910 (2004)
- Bronco Wine Co. v. Jolly, 33 Cal. 4th 943 (2004)
- Cipollone v. Liggett Group, Inc., 505 U.S. 504 (1992)
- Maryland v. Louisiana, 451 U.S. 725 (1981)
- English v. General Electric Co., 496 U.S. 72 (1990)
- Crosby v. National Foreign Trade Council, 530 U.S. 363 (2000)
- Olszewski v. Scripps Health, 30 Cal. 4th 798 (2003)
- Fidelity Federal Savings & Loan Ass'n v. de la Cuesta, 458 U.S. 141 (1982)
- Louisiana Public Service Commission v. FCC, 476 U.S. 355 (1986)
- New York v. F.E.R.C., 535 U.S. 1 (2002)

- Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Ware, 414 U.S. 117 (1973)
- Silver v. New York Stock Exchange, 373 U.S. 341 (1963)
- Perry v. Thomas, 482 U.S. 483 (1987)
- Geier v. American Honda Motor Co., 529 U.S. 861 (2000)
- Auer v. Robbins, 519 U.S. 452 (1997)
- Mayo v. Dean Witter Reynolds, Inc., 258 F. Supp. 2d 1097 (S.D. Cal. 2003)
- Peatros v. Bank of America, 22 Cal. 4th 147 (2000)
- Hotel Employees & Restaurant Employees International Union v. Davis, 21 Cal. 4th 585 (1999)
- Credit Suisse First Boston Corp. v. Grunwald, 400 F.3d 1119 (9th Cir. 2005)