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HRO Alert

COLORADO COURT OF APPEALS REINFORCES THE BROAD REACH OF ARBITRATION CLAUSES IN ACCOUNT AGREEMENTS

A recent decision by the Colorado Court of Appeals in *Smith v. Multi-Financial Securities Corp.* (No. 06CA0361) reinforces the notion that courts will broadly interpret arbitration clauses. In this case, the beneficiaries of a trust filed suit in state court against an investment company with which the trust had an account. The trustee opened the account, completed an account application containing an arbitration clause and signed it as the investment company's representative and as trustee of the trust. In their suit, the beneficiaries alleged that the investment company was liable for the trustee's breach of fiduciary duties because he was a registered representative of the investment company. The investment company moved to stay the proceedings and to compel arbitration pursuant to the arbitration clause contained in the account application.

The Court of Appeals held that the beneficiaries' claims must be arbitrated. "Although the beneficiaries' claims relate to the trust instrument," the court concluded, "they arise out of and relate to the account agreement, and therefore, are arbitrable." The Court of Appeals also held that, even though they didn't sign the agreement, the beneficiaries are bound by its arbitration clause. The Court reasoned that the beneficiaries cannot avoid the account agreement's arbitration provision while simultaneously seeking to invoke the duties the investment company allegedly owed them as a result of its representative's signature on the agreement.

The Court reached its decision in *Multi-Financial*, in part, by relying on Colorado's presumption in favor of arbitrability. Although courts will apply ordinary principles of contract interpretation in deciding whether a claim is within the scope of an arbitration clause, there is a presumption favoring arbitrability. Unless the court can say with "positive assurance" that the arbitration clause cannot be interpreted so as to encompass the subject matter of the dispute, the court will presume that the dispute must be arbitrated. Under this presumption, any doubts that a court has regarding the scope of an arbitration clause are resolved in favor of arbitration. This case serves as an important reminder of the broad reach of arbitration clauses in account agreements.

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