

Arbitration: Court Says Nursing Home Admission Agreement Not Enforceable, Jury Trial Ordered.

An elderly man was brought by his wife to a nursing home in a semi-conscious state, admitted to the nursing home, then taken right away to the hospital. Back at the nursing home three days later, he fell as he was being moved unrestrained in a wheelchair, was injured, was taken back to the hospital and died.

His widow sued the nursing home for negligence. The nursing home countered the lawsuit by insisting that the judge stop further proceedings in court and send the case to an outside arbitrator for binding arbitration according to the arbitration clause in the papers the wife signed the day when she first brought her husband to the nursing home.

Arbitration Clause Ruled Unconscionable

The Court of Appeals of Ohio ruled that under the circumstances of this case the arbitration clause was unconscionable, that is, fundamentally unfair and therefore legally unenforceable. The case would stay in court on track for trial by jury.

The court acknowledged that family members are often under a great deal of stress at the time they admit a loved one to a nursing home.

The court was not impressed that the admission papers with the arbitration clause were offered on a take-it-or-leave-it basis. She had to sign or her family member would not be admitted.

An arbitration clause in an admission agreement must be explained to the resident and/or the guardian or family. They must be made aware that disputes will be resolved by an arbitrator and not in court. They must be offered a choice to decline the arbitration clause and still be allowed to gain admission for their family member.

The court also found fault with the legal wording of the arbitration clause, finding that it is not customary in arbitration for the winning side to be forced to pay the other side's attorney fees. **Small v. HCF of Perrysburg, Inc.**, 2004 WL 2426244 (Ohio App., October 29, 2004).

The nursing home has asked the court to stop further court proceedings pending binding arbitration before an outside arbitrator.

Public policy encourages private arbitration as a method of dispute resolution when the dispute falls within a valid contractual agreement to arbitrate.

However, an arbitration agreement or arbitration clause in a contractual agreement may be legally unenforceable if the court finds it unconscionable.

An agreement is unconscionable and not enforceable if there is grossly unequal bargaining power and one side had no meaningful choice but to accept the agreement containing contractual terms that are unreasonably favorable to other side.

A resident cannot be given the all-or-nothing choice of accepting an arbitration clause or being denied admission.

The arbitration clause must be explained to the resident, including the fact that to be admitted the resident does not have to sign away the right to sue.

COURT OF APPEALS OF OHIO
October 29, 2004

Arbitration: Resident Was Legally Blind, Admission Contract Still Enforceable.

The personal representative of the probate estate of a deceased nursing home resident filed a lawsuit against the nursing home.

The nursing home countered the lawsuit by insisting that the judge dismiss the case in favor of arbitration by an outside arbitrator as an alternative to trial by jury in a civil court of law.

The judge agreed and ordered arbitration, based on the nursing home's admission contract which the resident had signed agreeing to binding arbitration of any and all disputes between herself or her estate and the nursing home.

A legal contract is not invalid just because a party who signed the contract did not read the contract, even if the party was blind.

There is no evidence anyone prevented her from having the contract read to her or coerced or fraudulently induced her to sign.

DISTRICT COURT OF APPEAL
OF FLORIDA
October 20, 2004

The District Court of Appeal of Florida affirmed the judge's decision in favor of arbitration. The court rejected the argument that the resident being legally blind at the time she signed the agreement, in and of itself, had any bearing on the legal validity of the admission contract or the arbitration clause contained in the admission contract. **Estate of Etting v. Regents Park at Ventura, Inc.**, __ So. 2d __, 2004 WL 2347560 (Fla. App., October 20, 2004).