FEDERAL COURT REJECTS PLAN FIDUCIARIES' MOTION TO COMPEL ARBITRATION

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A recent court ruling offers interesting insights as to how a court might analyze the enforceability of arbitration agreements and clauses. An employee of Charles Schwab participated in Charles Schwab's defined contribution retirement plan. The plan permitted the participant to choose to invest his contributions in one or more investment fund options made available by the plan. Several of those options were managed by Charles Schwab. In 2017, the participant commenced a lawsuit *on behalf of the plan* in which he alleged that the Schwab managed funds charged higher fees and performed more poorly than other investment options available on the market, and that the plan fiduciaries breached their fiduciary duties under the Employee Retirement Income Security Act (ERISA) by offering the funds without "meaningful investigation" into the prudence of those funds. The defendants named in the lawsuit attempted to head off the lawsuit by filing a motion to compel arbitration. The defendants' arguments in favor of arbitration were based on arbitration language in multiple documents, including a plan document executed a year after the participant's employment at Charles Schwab had ended.

A federal district court denied the defendants' motion to compel arbitration. The court held that a plan document issued a year after the participant ceased plan participation does not bind the participant. The court opined that it would disadvantage a participant to allow a plan defendant to amend plan documents unilaterally at any time, particularly if the amendments are made after the participant sued the defendant. The court noted that the defendants had failed to provide any authority in support of their position that an arbitration provision enacted after participation ceased could bind the participant to arbitration.

The court's opinion also considered other documents the participant signed during his employment which the defendants asserted included provisions obligating the participant to use individual arbitration to resolve his claims. The court found the arbitration clauses in these other documents either did not encompass the participant's claims or had an exception with respect to benefits under ERISA plans.

And even if the arbitration provisions cited encompassed the participant's claims, the court ruled that an arbitration clause intended to compel arbitration of individual claims could not be enforced where the participant brings the claims "on behalf of the plan." An individual participant cannot waive rights that belong to the plan, such as the plan's right to file a lawsuit in court, by entering into an arbitration agreement. *Dorman v. Charles Schwab & Co.* (N.D. Cal. 2017).