

9TH CIRCUIT ENFORCES PLAN ARBITRATION PROVISION

Hodgson Russ Employee Benefits Newsletter
September 30, 2019

In a recent case, the 9th Circuit Court of Appeals upheld a provision in the Schwab Retirement Savings and Investment Plan (the “Plan”) requiring that any dispute relating to the Plan be settled by binding arbitration. The arbitration provision also included a class action waiver.

The plaintiff in the case was a former participant in the Plan who filed a class action suit alleging that the Schwab defendants had breached their fiduciary duties under ERISA by including poorly performing Schwab-affiliated investment funds in the Plan’s investment lineup that generated fees for Schwab. In 2014, the Plan had been amended to add the arbitration provision, effective as January 1, 2015. Thus, in response to the plaintiff’s suit, the Schwab defendants moved to compel arbitration.

The district court refused to compel arbitration. On appeal, the 9th Circuit reversed, reasoning that Supreme Court precedent had effectively overturned prior 9th Circuit precedent that arbitrators were not qualified to hear ERISA arbitrations. The 9th Circuit further held that, because any fiduciary breach claim is brought on behalf of the Plan, and the Plan had agreed to arbitrate any claims as a result of the 2014 amendment, the plaintiff’s claim was covered by the arbitration provision.

The case leaves unanswered a number of critical questions, including how to reconcile an individual participant’s damages in an arbitration with the notion that a fiduciary breach claim is brought on behalf of the Plan as a whole. (*Dorman v. The Charles Schwab Corporation*, 9th Cir. 2019).

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