ARBITRATION CLAUSE IN EMPLOYEE HANDBOOK REQUIRES PARTICIPANT TO ARBITRATE FIDUCIARY BREACH CLAIMS AGAINST INVESTMENT ADVISOR

Hodgson Russ Newsletter
September 29, 2017

Practices & Industries

Employee Benefits

In a major victory for an investment management company defending a class action ERISA fiduciary breach lawsuit, a federal judge in the Southern District of New York has compelled plaintiffs to arbitrate their claims, although the investment manager was not a party to the agreement requiring arbitration of employment-related claims.

Clive Cooper participated in the DST Systems, Inc. 401(k) Profit Sharing Plan ("Plan"). The Plan consisted of a participant-directed 401(k) account, and a profit sharing account ("PSA") with investments managed by Ruane Cunniff & Goldfarb Inc. Participants were automatically enrolled in the PSA, paid the associated investment management fees, and could not transfer assets until they separated from employment. Cooper accused DST and Ruane of fiduciary breaches under ERISA, alleging losses exceeding $100 million arising from imprudent investments, failure to monitor, self-dealing, and excessive fees.

As a DST employee, Cooper received an Associate Handbook containing an Arbitration Program and Agreement covering "all legal claims arising out of or relating to employment." Cooper was permitted to opt out of the arbitration provision within 30 days, but he did not elect to do so. The Arbitration Agreement expressly excluded from the requirement to arbitrate, claims associated with "ERISA-related benefits provided under a Company sponsored benefit plan." The court found this carve-out did not apply to Cooper's claims, as none were claims for Plan benefits. Instead, they were claims to make the Plan whole for alleged fiduciary breaches.

The district court found that Cooper's claims for alleged mismanagement of Plan assets "arose out of" and "related to" his employment with DST and, hence, were subject to arbitration. Specifically, Cooper's allegations that Ruane and DST failed to prudently manage Plan assets involved a component of Cooper's compensation. The court rejected the notion that Cooper's claims arose from a breach of the Investment Management Agreement, which was "akin to an engagement letter." Instead, the judge found that Ruane's fiduciary status and duties were determined under ERISA, by virtue of the authority Ruane exercised over the Plan's assets.

The court also rejected Cooper's argument that the summary plan description permitted his lawsuit to proceed. The summary plan description for the PSA contained the standard ERISA language stating that if "Plan fiduciaries misuse the Plan's money…[he] may file suit in a federal court." The judge stated that the summary plan description had no "contractual force" and was superseded by the parties' agreement to arbitrate. Finding the carve-out of ERISA benefit claims from the purview of the Arbitration Agreement did not apply to Cooper's claims, the court also found that the Arbitration Agreement encompassed "other statutory" employee benefit claims, and required arbitration of Cooper's breach of fiduciary duty claims.

Next, the judge addressed whether Ruane as a non-signatory to the arbitration agreement could enforce its terms. Earlier in the lawsuit, Cooper voluntarily dismissed his claims against DST to seek private mediation. Regardless, the judge held that Ruane could compel arbitration because there was a "close relationship" among DST, Cooper and Ruane, and the fiduciary breach claims were "founded and intertwined" with the underlying Arbitration Agreement.

The court found "substantial overlap" in Cooper's claims against DST and Ruane: "While DST and Ruane may each have served different roles with respect to the Plan assets, the primary issue is the same, whether their actions breached their fiduciary duty to the Plan." Thus, the judge foreclosed Cooper's attempt to evade arbitration by dismissing DST from the case, leaving Ruane as the sole defendant. Rather, the Arbitration Agreement governed as it was broadly written to encompass statutory claims arising under ERISA that were the core of Cooper's complaint against Ruane, and were closely related to Cooper's employment and, hence, the Arbitration Agreement.

The result of the case is surprising given the recent scrutiny and disfavor displayed by the bench towards arbitration clauses used by retirement plans and advisors to deflect large scale ERISA class action litigation. The case is a reminder of the potential advantages for employers who adopt a mandatory arbitration program. Companies with large retirement plans may wish to discuss with legal counsel the possible implementation of an arbitration agreement to encompass ERISA fiduciary breach claims, where alleged damages may soar into the tens and even hundreds of million dollars. *Cooper v. Ruane Cunniff & Goldfarb Inc.* (S.D.N.Y. 2017).