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LAW CURRENTS An informational newsletter from
Richard A. Klass, Esq.

# Take it Outside!

## Enforcing an Arbitration Clause and Keeping the Case Out of Court

The company is well known for hosting seminars where attendees can learn the ins-and-outs of real estate investing through "house flipping." House flipping involves purchasing a house for a low price, fixing it up and then reselling the house for a profit. The company has all attendees register for its seminars by paying fees and signing its registration agreement.

One of the attendees was dissatisfied with the information she received at the company's seminar. She decided to sue in New York State Supreme Court for the return of all of her registration fees. The attendee alleged that the minimal "products and services" listed in the materials were "inherently of negligible worth" and "grossly disproportionate" to the money she paid for the seminar.

### Registration Contract Provides for Arbitration

The contract at issue contained terms and conditions which required the resolution of all disputes between the seminar company and its registrants through arbitration. Specifically, the terms and conditions stated "[Seminar Company] and Primary Student all agree to resolve those disputes through binding arbitration or small claims court instead of in courts of general jurisdiction." Despite the plaintiff's protestations to the contrary, the complaint alleged a cause of action for breach of contract. Her allegation that there was a failure of consideration because there was negligible value in the seminar services provided by the defendant was in essence an allegation of a contract breach.

The company hired **Richard A. Klass,** *Your Court Street Lawyer,* to defend the lawsuit. The company filed a motion to dismiss the action because of the clause in the contract (which the attendee signed in order to register for the seminar) requiring arbitration of any disputes.

*Attorney Advertising*

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## *Arbitration of Disputes Is Heavily Favored by the Courts*

New York State courts heavily favor the resolution of disputes through arbitration where the contracting parties agreed to arbitrate their claims. In this case, the contracts contained terms and conditions requiring the arbitration of disputes between the parties, with a particular process set forth in it.

The Second Department held, in *Markowits v. Friedman*, 144 AD3d 993, 996-997 [2 Dept. 2016], that "The Supreme Court properly granted that branch of the defendants' motion which was to stay all remaining proceedings in the action and compel arbitration. Arbitration is a favored method of dispute resolution in New York (*see Board of Educ. of Bloomfield Cent. School Dist. v. Christa Constr.,* 80 N.Y.2d 1031, 593 N.Y.S.2d 178, 608 N.E.2d 755; *Matter of Weinrott [Carp],* 32 N.Y.2d 190, 199, 344 N.Y.S.2d 848, 298 N.E.2d 42). The threshold issue of whether there is a valid agreement to arbitrate is for the courts (*see Matter of Primex Intl. Corp. v. Wal–Mart Stores,* 89 N.Y.2d 594, 598, 657 N.Y.S.2d 385, 679 N.E.2d 624; *Matter of County of Rockland [Primiano Constr. Co.],* 51 N.Y.2d 1, 6–8, 431 N.Y.S.2d 478, 409 N.E.2d 951). Once it is determined that the parties have agreed to arbitrate the subject matter in dispute, the court's role has ended and it may not address the merits of the particular claims (*see Matter of Praetorian Realty Corp. [Presidential Towers Residence],* 40 N.Y.2d 897, 389 N.Y.S.2d 351, 357 N.E.2d 1006; *Matter of Prinze [Jonas],* 38 N.Y.2d 570, 577, 381 N.Y.S.2d 824, 345 N.E.2d 295; *Brown v. Bussey,* 245 A.D.2d 255, 666 N.Y.S.2d 15)."

## *Dissatisfaction with the Seminar Doesn't Equate to Fraud*

The complaint did not allege in any way that fraud was involved in inducing the attendee to enter into the contract; rather, she was merely dissatisfied with the information she received from the company at seminars. Even if she was to have alleged fraud, her claims would still have been subject to arbitration under the contract.

In *Anderson Street Realty Corp. v. New Rochelle Revitalization LLC*, 78 AD3d 972 [2 Dept. 2010], the Second Department held: "On the question of whether the instant dispute should be submitted to arbitration, in *Matter of Weinrott* (*Carp* ), 32 N.Y.2d 190, 196, 199, 344 N.Y.S.2d 848, 298 N.E.2d 42, the Court of Appeals ruled that an arbitration clause is generally separable from substantive provisions of a contract, so that an agreement to arbitrate is valid even if the substantive provisions of the contract are induced by fraud (*id.* at 198, 344 N.Y.S.2d 848, 298 N.E.2d 42). Thus, as a general rule, the issue of fraud in the inducement should be determined by the arbitrator, except where the arbitration clause specifically excludes fraud in the inducement from the issues to be determined by arbitration (*see GAF Corp. v. Werner,* 66 N.Y.2d 97, 105, 495 N.Y.S.2d 312, 485 N.E.2d 977, *cert. denied* 475 U.S. 1083, 106 S.Ct. 1463, 89 L.Ed.2d 720; *Matter of Silverman* [*Benmor Coats* ], 61 N.Y.2d 299, 308, 473 N.Y.S.2d 774, 461 N.E.2d 1261). The court further held in *Anderson Street Realty Corp. v. New Rochelle Revitalization LLC*, *supra*, that "The issue of fraud in the inducement affects the validity of the arbitration clause only when the fraud relates to the arbitration provision itself, or was "part of a grand scheme that permeated the entire contract" (*Matter of Weinrott* [*Carp* ], 32 N.Y.2d at 197, 344 N.Y.S.2d 848, 298 N.E.2d 42; *see Jamaica Hosp. Med. Ctr. v. Oxford Health Plans* [*NY* ], *Inc.,* 58 A.D.3d 686, 871 N.Y.S.2d 665; *Riverside Capital Advisors, Inc. v. Winchester Global Trust Co. Ltd.,* 21 A.D.3d 887, 800 N.Y.S.2d 754). To demonstrate that fraud permeated the entire contract, it must be established that the agreement was not the result of an arm's length negotiation (*see Nastasi v. Nastasi,* 26 A.D.3d 32, 805 N.Y.S.2d 585), or the arbitration clause was inserted into the contract to accomplish a fraudulent scheme (*see Utica Mut. Ins. Co. v. Gulf Ins. Co.,* 306 A.D.2d 877, 880, 762 N.Y.S.2d 730; *Oberlander v. Fine Care,* 108 A.D.2d 798, 485 N.Y.S.2d 313)."

The New York State Supreme Court justice held that the attendee's lawsuit had to be dismissed because the arbitration clause of the contract was valid and enforceable. The attendee must now resort to filing a demand for arbitration pursuant to the contract.

***Note:*** *It is very common now for contracts between providers of consumer goods and services and consumers to include arbitration clauses. It is important to check for these clauses both before entering into the contract in the first instance and prior to commencement of litigation. While some consumer contract clauses may be stricken by a court as "against public policy," many times arbitration clauses are upheld.*

*— Richard A. Klass, Esq.*

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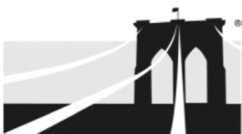

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