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NM Supreme Court rules against nursing home's requirement for resolving claims by arbitration

SANTA FE – The state Supreme Court today ruled that an Albuquerque nursing home's arbitration agreement was invalid and unenforceable in a wrongful death lawsuit brought by a former resident's family.

The agreement required mediation initially and then arbitration of all claims except those involving disputes over collection of money or discharge of patients. The arbitration agreement was part of the admission contract for residents of The Rehabilitation Center of Albuquerque, LLC.

In a unanimous decision, the Supreme Court concluded that the agreement was "substantively unconscionable" and that the nursing home "failed to present evidence justifying the one-sidedness of the Agreement as fair and reasonable."

The Court's ruling upheld a district court's order declining to compel arbitration. The case will return to the Second Judicial District Court for further proceedings in the lawsuit brought against the nursing home and other defendants by the estate of Beverly Peavy, who was a resident at the nursing home from 2007 until her death in 2010.

The arbitration agreement, according to the Court, allowed the nursing home to litigate in court the claims it likely would bring – those involving collections and discharge of residents – but required residents to resolve most of their disputes using a panel of three arbitrators.

"We conclude that under New Mexico conscionability law a presumption of unfair and unreasonable one-sidedness arises when a drafting party excludes its likeliest claims from arbitration, while mandating that the other party arbitrate its likeliest claims. This presumption stems from the lack of mutuality that correlates with overly one-sided contracts," the Court said in an opinion written by Justice C. Shannon Bacon.

The Court continued: “We emphasize, however, that this presumption may be overcome by an evidentiary showing that justifies the one-sidedness of the arbitration agreement. In other words, a defendant drafter may offer evidence showing that an arbitration agreement’s exceptions are reasonable and fair, such that enforcement of the agreement is not substantively unconscionable.”

The justices clarified a two-step approach for trial courts to follow in cases involving arbitration agreements: First, analyzing the agreement to determine whether it is “facially one-sided” and second, if a judge determines the agreement is one-sided, allowing the drafter of the arbitration requirement to present evidence justifying that it is “fair and reasonable.”

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To read the decision in *Peavy v. Skilled Healthcare Group, Inc.*, No. S-1-SC-37370, please visit the New Mexico Compilation Commission's website using the following link:

https://decisia.lexum.com/nmos/nmsc/en/item/468484/index.do