



## Legal Alert: Supreme Court Holds that FAA Overrides Conflicting State Law Jurisdictional Provision

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Citing the national policy favoring arbitration established in the Federal Arbitration Act (FAA) and *Southland Corp. v. Keating*, the U.S. Supreme Court has ruled that the contractual agreement to arbitrate disputes preempts contrary state law frameworks. Writing for the Court in *Preston v. Ferrer*, decided on February 20, 2008, Justice Ginsberg held that the FAA overrides state laws that would lodge primary jurisdiction in another forum beside arbitration, regardless of whether that forum is judicial or administrative.

This case involved fees claimed for services rendered pursuant to an agreement between Fox television's Judge Alex (Alex Ferrer) and entertainment lawyer Arnold Preston. In June 2005, Preston demanded arbitration of the fee dispute under the contract's arbitration provisions. Ferrer claimed the contract was void because Preston was not licensed as required by California's Talent Agencies Act (TAA). The TAA provides that an unlicensed person's contract with an artist to provide talent agent services is illegal and void. Preston countered that the contract was not void because he was acting as a personal manager, whose services are not governed by the TAA.

The TAA refers such disputes to the Labor Commissioner for resolution. The California Court of Appeal held that the TAA vests "exclusive original jurisdiction" over the relevant disputes with the Labor Commissioner and that the parties must use the Labor Commission's administrative procedures before they could arbitrate the dispute. The California Supreme Court denied the petition for review, but the U.S. Supreme Court granted *certiorari* on the issue of whether the FAA overrides a state law vesting initial adjudicatory authority in an administrative agency.

The Supreme Court, referencing Section 2 of the FAA and its 2006 decision in *Buckeye Check Cashing Inc. v. Cardegna*, held that the FAA preempts state law for the purposes of determining who will decide whether Preston was a personal manager or a talent agent. The Court stated that the nation policy favoring arbitration established in *Southland Corp.* forecloses "state legislative attempts to undercut the enforceability of arbitration agreements," and declined to overrule *Southland*.

Here, Ferrer did not challenge the arbitration clause specifically, but the contract as a whole. In its 1967 decision in *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, the Court held that "attacks on the validity of an entire contract, as distinct from attacks aimed at the arbitration clause, are within the

arbitrator's ken." *Prima Paint* was litigated in federal court, but in *Buckeye* the Court held that this same rule applies in state court. Accordingly, the Court in *Preston* held that "*Buckeye* largely, if not entirely, resolves the dispute before us."

The Court held that the TAA conflicts with the FAA in two ways: (1) by granting the Labor Commissioner exclusive jurisdiction to decide the issue the parties had agreed to arbitrate; and (2) by imposing prerequisites to enforcement of an arbitration agreement that are not applicable to contracts generally. Addressing the issue of administrative agency jurisdiction, the Court reconfirmed that the "mere involvement of an administrative agency ... does not limit private parties' obligation to comply with their arbitration agreements." The Court also rejected the argument that the Labor Commissioner could displace the role reserved by the FAA for the arbitrator as "impartial arbiter."

Additionally, the Court confirmed that parties do not forego statutory rights by submission of claims to an arbitrator; instead they have agreed to the forum in which those rights are to be considered: In sum, we disapprove the distinction between judicial and administrative proceedings drawn by Ferrer and adopted by the appeals court. When parties agree to arbitrate all questions arising under a contract, the FAA supersedes state laws lodging primary jurisdiction in another forum, whether judicial or administrative.

The Court also noted that the parties' arbitration agreement incorporated rules promulgated by the American Arbitration Association and that among those rules was the provision that the arbitrator would determine the existence or validity of the contract. The Court held that this incorporation weighed against any inference arising from a California choice of law clause that Ferrer and Preston understood that their disputes would be heard by the Labor Commissioner. Instead, the Court held that the best way to harmonize the parties' adoption of the AAA rules and their selection of California law is to "read the latter to encompass prescriptions governing the substantive rights and obligations of the parties, but not the State's 'special rules limiting the authority of arbitrators.' "

### **Bottom Line:**

Where the parties have entered into an arbitration agreement of matters involving interstate commerce governed by the FAA, the Supreme Court will give effect to that contract provision. The Court will not apply state laws that conflict with Section 2 of the FAA and have the effect of burdening the national policy favoring arbitration.

If you have any question regarding this decision or arbitration of employment-related disputes, please contact the Ford & Harrison attorney with whom you usually work or the author of this Alert, John Allgood at 404-888-3832 or [jallgood@fordharrison.com](mailto:jallgood@fordharrison.com).