

Federal Court Rejects Challenge To Arbitrability Of Cannabis Disputes

A recent federal district court decision held that a cannabis delivery app’s clickwrap dispute resolution provision requiring arbitration was enforceable. (*Williams v. Eaze Solutions* (N.D. Cal. No: 3:18-cv-02598-JD)). The Court rejected the argument that the contract containing the provision should not be enforced because it had an illegal purpose. The opinion provides insight into one approach a cannabis business can use to draft an enforceable arbitration clause.

I. Background

The Court described Eaze as a cannabis delivery app that facilitates the delivery of cannabis products from dispensaries to consumers. On May 2, 2018, app user Farrah Williams filed a putative class action against Eaze and alleged that Eaze violated the Telephone Consumer Protection Act (“TCPA”) by sending unsolicited, autodialed text messages.

On June 22, 2018, Eaze filed a motion to compel arbitration, citing the dispute resolution provision requiring binding arbitration that is part of the Eaze Terms of Service agreement. Williams admitted that she agreed to the Terms of Service agreement but contended that the entire contract, including the arbitration provision, was void. She argued that the contract lacked a lawful object because it involved the sale and distribution of cannabis, which is illegal under federal law.

Pointing to language in the Terms of Service agreement providing that the Federal Arbitration Act (“FAA”) would govern the dispute resolution provision, Eaze argued that the dispute resolution provision: (i) was severable from the rest of the Terms of Service; and (ii) should be treated as a separate contract, which, by its terms, would be interpreted and enforced by an arbitrator in the first instance.

Williams countered that the Terms of Service were governed by California law, and California law, not the FAA, should govern whether the dispute was subject to arbitration. Williams argued that, under California law, provisions of a void contract are not severable and therefore the dispute resolution provision was void. With respect to the FAA, Williams argued that Section 1 exempts contracts involving solely intrastate commerce.¹ Further, Williams asserted the contract was not governed by the FAA because Eaze operates solely in California.² Alternatively, Williams argued that, even under the FAA, the contract had never been properly formed, so there was no agreement to submit to binding arbitration.

II. District Court’s Ruling on Arbitration Enforcement

On October 21, 2019, the Northern District of California granted Eaze’s motion to compel arbitration. The Court determined that the FAA, not California law, governs the interpretation and enforcement of the dispute resolution provision.³ Citing *Gonzales v. Raich*, 545 U.S. 1, 17 (2003), the Court held that the FAA

¹ 9 U.S.C. § 1 (“exceptions to operation of title”).

² Eaze has since expanded to operate in 45 states, but operated solely in California at the time of filing.

³ *Williams v. Eaze Solutions*, N.D. Cal. No: 3:18-cv-02598-JD, 2019 U.S. Dist. LEXIS 182942, *4 (N.D. Cal. Oct. 21, 2019).

applies to contracts involving intrastate cannabis possession and distribution.⁴ The Court also found the FAA applied because the contract explicitly states that the FAA governs the dispute resolution provision.⁵

The Court then considered the argument that the contract had been improperly formed because the object of the contract was unlawful. The Court held that if a contract has an unlawful object, the consequence under California law “is not that a contract was not *formed*, but that the contract cannot be *enforced*.”⁶ The Court then found that, under the FAA, an arbitration provision is severable from the rest of a contract that is challenged as being void for illegality.⁷ As a result, even if the contract was unenforceable, the arbitration provision remains intact, and the validity of the contract should be determined by an arbitrator in the first instance.

III. Key Takeaways

The ruling provides a useful roadmap for structuring arbitration provisions in contracts involving or relating to the sale and distribution of cannabis. This opinion indicates that courts will enforce the parties’ agreement that their dispute resolution provision is governed by the FAA and that such a provision will be upheld in the face of a challenge based on illegality.

If you have any questions about the issues addressed in this memorandum, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to reach out to:

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⁴ *Id.*

⁵ *Id.* at *5.

⁶ *Id.* at *8 (emphases added).

⁷ *Id.* at *9, citing *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 445-46 (2006).