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ELEVENTH CIRCUIT ON ARBITRATION AGREEMENTS: CONTRACTING PARTIES MUST "LIVE WITH THE RESULTS"

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In *Christian S. Gherardi v. Citigroup Global Markets Inc*., the Eleventh Circuit Court of Appeals reversed the district court's ruling to vacate an arbitration award—finding that the arbitrators did not exceed their authority. In a split-decision, the majority's opinion relies heavily on the importance of arbitration and the requirement of finality in disputes. Ultimately, the Court of Appeals provides an analysis that shows great deference to arbitrators' roles in the judicial system.

Christian Gherardi was a Miami-based broker and investment advisor with Citigroup for almost twenty years; by all accounts, Mr. Gherardi was a top performer, but he faced complaints about "inappropriate behavior" related to his aggression in the workplace. Citigroup issued Mr. Gherardi a "final warning." In response, Mr. Gherardi vowed to challenge the warning letter in arbitration—three days later, Citigroup terminated Mr. Gherardi.

Mr. Gherardi initiated arbitration for wrongful termination and was awarded approximately $4 million. Subsequently, Citigroup moved to vacate the award in federal district court, arguing that the arbitration panel "exceeded their powers" in violation of Section 10(a)(4) of the Federal Arbitration Act ("FAA"). The district court agreed with Citigroup.

When presented with this matter, the Court of Appeals distilled the matter into a two-step analysis: (i) "First, did the parties agree to arbitrate wrongful termination disputes?" and (ii) "Second, was *Gherardi* a purely at-will employee, or did some provision in his agreements with Citigroup offer a way to contest his treatment?" The majority's opinion makes it clear that, if the answer is "yes" to the first question, courts do not have the jurisdiction to proceed to the second question. In *Gherardi*, the majority determined that the parties agreed to arbitrate, and, therefore, reversed the district court's ruling. The foundation for the majority's reasoning is grounded in the purpose of the FAA—to provide clarity and finality through alternative dispute resolutions when parties have contractually agreed to remain outside of the courtroom.

The decision was not unanimous. Judge Martin dissented, challenging the majority's decision to defer to the more simplistic analysis that the parties "agreed to arbitrate employment-related claims"; however, Judge Martin posited that the Court must look at the agreement at issue to determine if there are any limitations on the authority of the arbitrators. The dissent states that the majority's interpretation of the first step of the analysis is too narrow—the majority only looks to whether the parties agreed to arbitrate and gives no credence to the scope of the agreement to arbitrate. In *Gherardi*, the employment agreement explicitly stated that Mr. Gherardi was an at-will employee; and, therefore, the dissent finds that the award issued to Mr. Gherardi would not have been available due to his employment status because Citigroup was permitted to terminate Mr. Gherardi at any time.

The lesson from *Gherardi* lies in the power and irrevocability of arbitration when the contracting parties agree to arbitrate—even if the agreement at issue arguably contains limiting provisions in other parts of the

agreement.

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