

## Are You Getting What You Contracted for in Arbitration Provisions?

The New Jersey Supreme Court in *Annemarie Morgan v. Sanford Brown Institute, et al.* (A-31-14) determined that unless explicitly stated otherwise, the Courts of New Jersey have the responsibility to resolve whether an arbitration agreement is valid.

In the *Morgan* decision, handed down June 14, the plaintiff-students filed suit in State Court alleging Sanford Brown misrepresented its ultrasound technician program and engaged in deceptive business practices. Sanford Brown filed a motion to compel arbitration in New Jersey State Court based upon the arbitration provision in the enrollment agreement. The motion was denied because the Court determined the enrollment agreement did not include clear language that the students were waiving their rights to file suit in the Courts of New Jersey and did not "unmistakably" identify that the parties agreed to have an arbitrator, as opposed to the Court, decide whether the arbitration provision was enforceable.

On appeal, the Appellate Division reversed and found that the parties had agreed an arbitrator would decide "issues of arbitrability" and whether the arbitration provision was enforceable would not be a question for the Court. However, the New Jersey Supreme Court reversed and found that the arbitration provision did not satisfy New Jersey's requirement for formation of a valid contract to enforce the arbitration provision because there was no "clear and unmistakable" language that an arbitrator, instead of the Court, would decide enforceability issues, as well as no clear language that "arbitration is a substitute for the right to seek relief in Court." The Court further stated that without a clear and unambiguous provision in a consumer contract identifying that an arbitrator is delegated the responsibility to handle any and all issues arising out of or relating to arbitration, the issue is then for the Court.

**Comment:** The *Morgan* decision confirms the ongoing disputes over the enforceability of arbitration clauses in consumer contracts. Specifically, the decision affirms that businesses and organizations intending to rely upon or enforce arbitration clauses in consumer contracts must present clear and unambiguous language relative to who is responsible to decide arbitration disputes, as well as confirming the need for clear language that the parties agree to arbitration in lieu of their right to seek relief from the Court.