



## Bankruptcy ADVISORY ■

**MARCH 26, 2015**

### District Court Holds the Existence of Arbitration Clause in Agreement at Issue Is Insufficient Grounds for Withdrawing Reference

On March 10, 2015, the United States District Court for the Middle District of Alabama issued a memorandum decision in the case of *Harrelson v. DSS, Inc.* (No. 14-mc-03675), declining to withdraw the reference from the bankruptcy court and holding that the existence of an arbitration agreement and a class action waiver in that arbitration agreement did not require substantial consideration of the Federal Arbitration Act (FAA).

#### **Facts**

The debtor filed for Chapter 13 bankruptcy protection and brought an adversary proceeding against the defendants in connection with a contract she entered into with them to facilitate the elimination of her consumer credit card debt. In her complaint, the debtor alleged that the defendants violated certain sections of the Bankruptcy Code relating to debt relief agencies. In connection with that claim, the complaint sought certification of a nationwide class action.

In response, one of the defendants sought to withdraw the reference of the bankruptcy court because the debtor had signed an arbitration agreement that included class action waivers. The defendants argued that the arbitration agreement implicated issues under the FAA and thus withdrawal of the reference was mandatory.

#### **Court's Holding**

The court began by acknowledging that withdrawal of the reference is mandatory when resolution of the proceeding requires consideration of provisions of both the Bankruptcy Code and other federal laws that regulate interstate commerce. Since the Eleventh Circuit has not yet weighed in on the issue, the court considered varying approaches. While one approach to analyzing whether a proceeding involves consideration of both the Bankruptcy Code and non-bankruptcy law is to withdraw the reference if *any* consideration of non-bankruptcy law is involved, the court rejected that approach. Instead, the court held that it is necessary for resolution of the claims to require substantial and material consideration of non-bankruptcy statutes that have more than a de minimus impact on interstate commerce to warrant withdrawal of the reference. Specifically, the court held that withdrawal of the reference is not mandatory if there is sufficient case law relating to the non-bankruptcy law issue such that the bankruptcy court need only apply existing law, rather than resolve a new issue of law.

Applying the test it adopted, the court determined that whether the arbitration agreement at issue required the debtor to arbitrate her claims against the defendants and whether the arbitration agreement's class action waiver is enforceable do not require substantial and material consideration of the FAA. Rather, the issues implicated by the FAA were well-settled principles of law such that the bankruptcy court was well equipped to determine them. Accordingly, the court declined to withdraw the reference.

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