Arbitrations not considered "actions" or "proceedings" within the meaning of Florida Statutes of Limitations.

Last month, in an important decision, Florida 2nd District Court of Appeal held that state's statute of limitations do not apply to arbitrations governed by Florida law unless the arbitration agreement expressly provides for their application. Relying on the Florida Supreme Court case *Miele v. Prudential Bache-Securities, Inc.,* 656 So. 2d 470, 472 (Fla. 1995), 2nd DCA found that arbitrations are not "actions" or "proceedings" within the meaning of Section 95.011, Florida Statutes.

The 2nd DCA decision, *Raymond James Financial Services, Inc. v. Philips, et al*, No. 2D10-2144 involved a dispute between Raymond James Financial Services, Inc. and its account holders. Account holders submitted arbitration claims against Raymond James for negligence, misconduct, breach of fiduciary duty, and violations of state and federal securities laws. As is common in cases of broker-dealer/customer agreement, the agreement in question required that any disputes between the parties be submitted to arbitration to the National Association of Securities Dealers (currently FINRA).

Raymond James moved to dismiss the account holders' claims as time barred, based on the language in the agreement that "nothing in the agreement shall be deemed to limit or waive the application of any relevant state or federal statute of limitation, repose, or other time bar", and that "any claim made by either party to the agreement which is time barred for any reason shall not be eligible for arbitration". In response to the Motion to Dismiss, the account holders filed a declaratory judgment action in state court seeking determination of limitation periods by the court. The state court agreed with the account holders that Section 95.011, Florida Statutes, which governs limitation periods in Florida, does not apply to arbitration proceedings. Raymond James appealed.

In a per curiam decision, 2nd DCA affirmed. The court found Florida Supreme Court's interpretation of the term "civil action" - as proceedings filed in court – and not in arbitration – applicable in the case before it. Thus, the court concluded that the term "civil action or proceeding" in Section 95.011, Florida Statutes, did not apply to arbitration, and that the account holders' claims were, therefore, not time barred.

The court interpreted the language of the agreement against Raymond James, the drafter of the agreement, and found that its language - "nothing in the agreement shall be deemed to limit or waive the application of any relevant state or federal statute of limitation, repose, or other time bar" - was insufficient "to affirmatively incorporate Florida's statutes of limitations into the agreement."

The court held that Florida's statutes of limitations do not apply to arbitrations where the arbitration agreement does not expressly provide for their application.

2nd DCA was well aware of the importance of its decision in *Raymond James* [1]. Arbitration provisions are routinely incorporated in contracts by financial, securities, and construction industries, just to name a few. Counsel for these industries, and others utilizing arbitration provisions for dispute resolutions, need to be aware of this new 2nd DCA decision, and amend the arbitration provisions in accordance with the decision. Unless an arbitration agreement specifically provides for the application of the Florida Statue of Limitations, the parties could bring claims under arbitration agreements, long after they would be time-barred in court action or proceedings by the Florida Statute of Limitations.

I acknowledge Mr. Jose M. Ferrer who originally reported on the 2d DCA's decision in the Daily Business Review.

[1] It certified the following question to the Florida Supreme Court, as a question of "great public importance":
DOES SECTION 95.011, FLORIDA STATUTES, APPLY TO ARBITRATION WHEN THE PARTIES HAVE NOT EXPRESSLY INCLUDED A PROVISION IN THEIR ARBITRATION AGREEMENT STATING THAT IT IS APPLICABLE?