McInnes v. LPL Fin., LLC: Investment Fraud, the Continuing Trend of Courts to Favor of Enforcing Arbitration Clauses, and the Potential Impact on the Consumer

In 1998, Jane B. McInness (now deceased) of Massachusetts purchased a universal life policy from Karl McGhee, a then registered representative of LPL practicing in Pennsylvania, which cost her $330,000 in premiums over the next eight years. Jane B. McInness lived on an income of $30,000 a year. In 2010, she asked another financial advisor to review her investment who explained that the investment was inappropriate. In 2011, Jane B. McInness filed a complaint in Massachusetts Superior Court. LPL asked the proceedings be moved to arbitration based on an arbitration clause in a contract signed in 2003. The court ruled the case could not be forced into arbitration because the suit was brought under the Consumer Protections Act and all other causes of action were linked to that claim. In 2012, LPL argued Federal law trumps the state statute. The court again ruled against LPL because the extent to which the arbitration agreement was obtained through fraud was undecided.

In 2013, the Massachusetts Supreme Court reversed the Massachusetts Appeals Court's ruling. The Massachusetts Supreme Court found the Massachusetts Appeals Court's decision based on a state precedent (Hannon v. Original Gunite Aquatech Pools, Inc., 385 Mass. 813 (1982)) was no longer viable. The recent ruling found that Federal law governs the dispute. In 2011 the Supreme Court ruled in *AT&T Mobility v. Concepcion* that all state laws prohibiting forced arbitration clauses are preempted by the 1925 Federal Arbitration Act.

Arbitration clauses are often part of the terms of service agreements and must be agreed to in order to use the product or service. But are these clauses in the consumer's interest? Consumers usually have to pay an hourly fee to the arbitration provider and for travel expenses which can be costly if the hearing is not held at a convenient location. According to the June 21, 2013 Daily Finance article by Matt Brownell arbitration, "is costlier and regarded as more friendly to businesses than consumers. A few years ago, the advocacy group Public Citizen conducted a study of thousands of arbitration cases: Among those that ended with a decision by the arbitrator, the company won 95% of the time." Because arbitration providers want to get repeat business from companies, there is general concern from consumer protection groups that there is a financial incentive for the arbitrator to rule in the business's favor. With the high costs and low likelihood of a favorable outcome, the consumer is essentially discouraged from making a claim.