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Contact: Paul Bland, (202) 797-8600, Ext. 223 or pbland@publicjustice.net
Deborah Mathis, (202) 797-8600, Ext. 246 or dmathis@publicjustice.net

New Mexico Supreme Court Preserves Consumer's Right to a Day in Court

The New Mexico Supreme Court has rejected a title lender's attempt to force one of its customers into arbitration rather than take her case to court.

The state's high court ruled on Wednesday in the case of Kim Rivera, who had put up her \$15,500 truck as collateral for a \$6,517 title loan from American General Financial Services, Inc. Public Justice represented Rivera.

After her truck was destroyed in an accident, Rivera was no longer liable for the debt, but American General kept trying to collect, including by notifying credit reporting bureaus that Rivera was delinquent and by hiring a law firm to recover the debt.

Without a vehicle and unable to qualify for a loan to buy a new one because of the damage American General had done to her credit, Rivera ultimately lost her job because she had no reliable transportation.

She sued American General for breaching its contract, but the lender tried to force her into arbitration before the National Arbitration Forum – an arbitration provider that was notorious for its close association with banks and debt collectors. After a July 2009 consent decree with the Minnesota attorney general forced NAF to stop conducting consumer arbitrations, American General argued that the court should appoint a substitute arbitrator.

The court disagreed, holding instead that because the selection of the NAF was "integral" to the parties' contract, the court could not rewrite it to choose a new arbitrator.

"We're extremely pleased that the Supreme Court saw through American General's attempt to avoid the plain language of its own contract, which required arbitration before the NAF or not at all," said Public Justice Brayton-Thornton Attorney Melanie Hirsch, who argued the case. "The Court made clear that agreements to arbitrate, like all other contracts, must be read according to their terms."

The court also rejected as unconscionable American General's attempt to reserve its own right to go to court for its most valuable remedy—the right to repossess—while requiring consumers like Rivera to arbitrate all of their claims against the lender.

“With this decision, the New Mexico Supreme Court is telling businesses that if they want to force their customers into arbitration, they have to be willing to arbitrate their own claims, too,” said Bruce E. Thompson of Martinez, Hart & Thompson, P.C. in Albuquerque, co-counsel for Rivera.

Robert Treinen of the Treinen Law Office in Albuquerque, who also represented Rivera, said the court corrected the New Mexico Court of Appeals’ misapplication of precedent.

“The lower court had incorrectly concluded that arbitration clauses are unconscionable only if they are ‘completely’ one-sided,” he said. “It’s now clear that that’s not the proper test.”

In addition to Hirsch, Thompson, and Treinen, Rivera was also represented by Public Justice Senior Attorney Paul Bland.

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