

April 2, 2010

Even prominent arbitrators agree with us: Arbitrators shouldn't decide whether the arbitration process itself is fair. Instead, they say, courts must step in to prevent abuses.

That's the upshot of an *amicus* brief just filed in support of our position in *Rent-A-Center v. Jackson* by 23 prominent professional arbitrators and arbitration scholars. This critically important case will be argued before the U.S. Supreme Court on April 26. I sent you a Public Justice E-lert linking to our brief on Jackson's behalf last week.

The arbitrators' brief was one of seven friend-of-the-court briefs filed March 31 by a broad coalition of civil rights groups, labor unions and consumer advocacy organizations. Although Rent-A-Center has so far received little media attention, it could radically alter the landscape of access to the civil justice system.



The case stems from an employment discrimination suit brought by Antonio Jackson, a resident of Sparks, Nev., who was hired in 2003 as an account manager for Rent-A-Center, a rent-to-own company. He repeatedly sought promotion and non-African-American employees were promoted instead. He kept trying, was finally promoted, and then, three months later, was fired without cause. When he sued, Rent-A-Center insisted the lawsuit was barred because Jackson had signed an arbitration agreement, which said that any dispute would be resolved by an arbitrator, not a court. Jackson argued that the arbitration agreement was unconscionable and should not be enforced. Rent-A-Center said the court could not decide whether the agreement was enforceable, only an arbitrator could.

Increasingly, legal claims by employees, consumers and small businesses are forced into mandatory binding arbitration. Under current law, courts decide whether the arbitration process is fair before sending the case to an arbitrator. The question in *Rent-A-Center* is whether courts will continue to play that role.

The arbitrators' brief was signed by several past presidents of the National Academy of Arbitrators and arbitrators for Major League Baseball, the National Football League and the National Basketball Association, as well as arbitrators who have handled some of the largest labor disputes in U.S. history.

"The widespread support from honorable arbitrators eager to protect the integrity of their profession, and from the united civil rights and consumer communities, shows the extreme nature of Rent-A-Center's attempted power grab in this case," said Public Justice Staff Attorney Paul Bland, the primary author of our brief in the case. "If corporations can place their arbitration systems beyond the reach of any substantive judicial evaluation of their fairness, there will be nothing to prevent the arbitration system from devolving into a Wild, Wild West state of lawlessness."

Also filing a brief were six leading civil rights groups that represent large segments of society who rely on civil rights laws to protect them from workplace discrimination: Lawyers' Committee for Civil Rights Under Law, Alliance for Justice, Asian American Justice Center,

Constitutional Accountability Center, National Partnership for Women & Families and the National Women's Law Center. These groups pointed out that an individual's ability to seek redress in court for unlawful discrimination is critical to the eradication of discrimination in the workplace.

Especially notable is a brief filed by the National Consumer Law Center and Consumer Action, which detailed the pro-business bias shown by the National Arbitration Forum, formerly the nation's largest provider of consumer arbitrations.

Other briefs were filed by the National Association of Consumer Advocates, the Service Employees International Union and several other workers' rights groups, the AFL-CIO, and the American Association for Justice and AARP.

To read Public Justice's brief in the case, click [here](#).

To read the friend-of-the-court briefs, filed March 31, click on the links below:

[Arbitrators and arbitration scholars](#)

[National Consumer Law Center](#)

[National Association of Consumer Advocates](#)

[American Association for Justice](#)

[Lawyers' Committee for Civil Rights Under Law et al.](#)

[AFL-CIO](#)

[Service Employees International Union](#)

Ian Silverberg of Reno, Nev., is lead counsel in the case. In addition to Bland and Silverberg, the plaintiff is represented on appeal by Public Justice's Budd-Kazan Fellow Matt Wessler; Staff Attorneys Leslie Brueckner and Leslie Bailey; Goldberg, Waters & Kraus Fellow Amy Radon; Brayton-Baron Fellow Melanie Hirsch, and me; Del Hardy of Reno, Nev.; and Scott Nelson and Deepak Gupta of Public Citizen.

This is the second Public Justice case the high court will decide this year. In March, the Supreme Court heard oral arguments in *Hui v. Castaneda*, a Public Justice case that raises constitutional claims. **These two cases are precisely the kind of work that your support and contributions make possible.** Thank you for being there for us so that we, in turn, can continue to be there for the wronged, the poor and the powerless.

Arthur Bryant
Executive Director
Public Justice and the
Public Justice Foundation

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