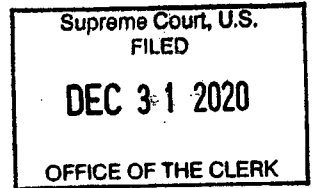


20-6855

IN THE
SUPREME COURT OF THE UNITED STATES



STACIA O'NEIL

Petitioner,

v.

MARISA BERQUIST,
COMMONWEALTH MEDIATION & CONCILIATION, INC.,
TRAVELERS INDEMNITY COMPANY OF CONNECTICUT,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

Petition for a Writ of Certiorari

STACIA O'NEIL
24 Milbern Avenue
Hampton, NH 03842
staciaoneil@gmail.com
603-396-9832

QUESTIONS PRESENTED FOR REVIEW

- Whether The Supreme Court of the State of Massachusetts denied the Petitioner Due Process of Law under the 14th Amendment, when it denied a timely filed Application For Further Appellate Review in a matter where the Petitioner did not receive Due Process in an Arbitration matter?
- Whether the Supreme Court of the State of Massachusetts incorrectly applied the State of Massachusetts' Uniform Arbitration Act for Commercial Disputes when it denied a timely filed Application For Further Appellate Review in a matter where the Petitioner did not receive Due Process in an Arbitration matter?
-

LIST OF PARTIES

The caption contains the names of all of the parties to the proceedings and they are also listed below:

- 1) STACIA O'NEIL, Petitioner;
- 2) MARISA BERQUIST, Respondent;
- 3) COMMONWEALTH MEDIATION & CONCILIATION, INC., Respondent;
- 4) TRAVELERS INDEMNITY COMPANY OF CONNECTICUT, Respondent;

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PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

Commonwealth of Massachusetts Supreme Judicial Court Order dated October 1, 2020.

JURISDICTION

This Petition is timely as pursuant to Supreme Court Rule 13, Review On Certiorari, Time For Petitioning, the time to file a Petition For a Writ of Certiorari runs from the date of entry of the judgment or order sought to be reviewed. This Petition is being filed by the 90 day deadline after the October 1, 2020 Order listed above.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the 14th Amendment of the U.S. Constitution.

STATEMENT OF THE CASE

1. This matter involves an ongoing dispute as to the allocation of settlement funds and an action that was filed below by Petitioner, STACIA O'NEIL ("Ms. O'Neil" or "Petitioner") seeking to vacate an arbitration award and a subsequent appeal of a Summary Judgment that was entered against Ms. O'Neil.
2. The appeals court upheld the Summary Judgment and this is an application for further appellate review.
3. This matter involves a car collision wherein Ms. O'Neil was a passenger in an automobile driven by Respondent, Marissa Berquist ("Ms. Berquist") and at issue was a settlement amount and a subsequent arbitration that resulted in an amount of the settlement being awarded to Ms. O'Neil and another amount being awarded to Ms. Berquist.

4. At issue in the ongoing appeals was language in the settlement agreement that provided that any disputes between Ms. Berquist and Ms. O'Neil would be subject to arbitration.

5. Ms. Berquist and Ms. O'Neil had a dispute as to how much of the settlement amount should go to each of them and on March 22, 2018, there was an arbitration award that awarded Ms. Berquist \$900,000 and Ms. O'Neil only \$76,176.

6. It is not in dispute that the settlement agreement provided the allocation of the settlement funds would be subject to arbitration, however it is not clear that the arbitration was properly conducted.

7. Ms. O'Neil brought an action seeking to vacate the arbitration award and the Superior Court judge granted a Summary Judgment by the Defendant, Ms. Berquist, and concluded that Ms. O'Neil's claims were untimely under the Uniform Arbitration Act for Commercial Disputes, G.L. c. 251 (the "Act").

8. The appeals court upheld the Summary Judgment and pursuant to Mass. R. App. P. 27.1, Ms. O'Neil respectfully requested that the Commonwealth of Massachusetts Supreme Judicial Court grant further appellate review of the Appeals Court's opinion issued on June 2, 2020.

9. The Commonwealth of Massachusetts Supreme Judicial Court issued an Order dated October 1, 2020, which denied the application for further review.

10. This Petition seeks a writ as to that Order.

REASONS FOR GRANTING THE WRIT

The issue of how arbitrations are conducted is of vital importance to the judiciary, as more and more disputes are referred to arbitration.

I. THE ACTIONS OF THE COURT IN DENYING THE APPLICATION FOR FURTHER REVIEW VIOLATED THE DUE PROCESS RIGHTS OF THE PETITIONER.

The issue of Due Process in Arbitrations was addressed in the case of At & T Mobility LLC v. Concepcion, 131 S. Ct. 1740 (2011), where the Supreme Court set forth that a party should be entitled to due process rights in an arbitration.

In the case of Concrete Pipe & Products of Cal., Inc. v. Construction Laborers Pension Trust for Southern Cal., 508 U.S. 602 (1993), the Supreme Court set forth that the potential of due process problems that can arise when an arbitrator is not neutral.

In the case of Pension Benefit Guaranty Corporation v. RA Gray & Co., 467 US 717 (1984), the issue was whether or not an arbitration had violated a parties Due Process Rights.

These cases are cited to demonstrate that Due Process is an issue that should be considered in Arbitrations.

As far back as 1995, there were issues with the demise of Due Process as it relates to Arbitrations and this as set forth in a 1995 law review article from the Penn State Law eLibrary and it can be found at: Arbitral Justice: The Demise of Due Process In American Law, Penn State Law eLibrary, by Thomas E. Carbonneau (1995) https://elibrary.law.psu.edu/cgi/viewcontent.cgi?article=1249&context=fac_works

Mr. Carbonneau was very clear that in 1995, "the idea of nonjudicial dispute resolution, and the recourse to arbitral adjudication in particular, has gained substantial standing the the U.S. legal system in the last ten to fifteen years. Owing largely to the holdings of the U.S. Supreme Court, arbitration law and procedure have emerged from the obscurity of specialized practice and entered the adjudicatory mainstream."

It was held in the case of Bd. of Educ. of Carlsbad v. Harrell, 882 P. 2d 511 (New Mexico Supreme Court 1994) that compulsory arbitration must comport with due process.

In the case of Hall Street Associates, LLC v. Mattel, Inc. 128 S. Ct. 1296 (2008), the U.S. Supreme Court held that the Federal Arbitration Act, 9 U.S.C. § 1 et seq. does allow a court to review an arbitration award based on common law, which would indicate that Due Process is an element that can be reviewed on appeal.

CONCLUSION

The petition for writ of certiorari should be granted for the foregoing reasons.

DATED this _____ day of _____, 2020.

/s/Stacia O'Neil
STACIA O'NEIL

24 Milbern Avenue

Hampton, NH 03842