
Hughes Hubbard & Reed

Lehman Team Wins Appeal Over Arbitration Bid

News & Events

Hughes Hubbard & Reed LLP • A New York Limited Liability Partnership
One Battery Park Plaza • New York, New York 10004-1482 • +1 (212) 837-6000

Attorney advertising. Readers are advised that prior results do not guarantee a similar outcome. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. For information regarding the selection process of awards, please visit <https://www.hugheshubbard.com/legal-notices-methodologies>.

In a win for Hughes Hubbard's Lehman team, a federal appeals court affirmed two lower court decisions holding that a Financial Industry Regulatory Authority (FINRA) arbitration was inappropriate in a core bankruptcy proceeding that would affect the rights of tens of thousands of estate creditors.

On Oct. 6, the U.S. Court of Appeals for the Second Circuit ruled that U.S. Bankruptcy Judge Shelley Chapman correctly denied a motion to compel arbitration filed by 341 claimants in the Lehman Brothers Inc. (LBI) SIPA liquidation.

"Based on our independent review of the record and the relevant case law, we conclude that the bankruptcy court did not abuse its discretion in denying plaintiffs' motion to compel arbitration," the panel wrote.

The plaintiffs participated in an Executive and Select Employees Deferred Compensation Plan (ESEP) with LBI, then known as Shearson Lehman Brothers Inc., from 1985 to 1988. After the commencement of LBI's SIPA proceeding in September 2008, the plaintiffs filed claims under the ESEP, and Trustee Jim Giddens objected based on the agreement's subordination provision, which states that their deferred compensation payments are subordinate to "all claims of all other present and future creditors of Shearson whose claims are not similarly subordinated."

Plaintiffs claimed that sending their dispute to arbitration would not impact the rights of other creditors. But HHR disagreed, stating that creditors are still actively receiving distributions and arguing that the relative priority of claims is a central bankruptcy issue that directly implicates the rights of other creditors. Judge Chapman denied the arbitration motion in August 2014. U.S. District Judge Edgardo Ramos upheld the decision a year later.

On appeal to the Second Circuit, plaintiffs argued that FINRA arbitrators should decide their level of priority because the subordination dispute was "narrow, unique and grounded in state law and federal nonbankruptcy law."

However, the appeals panel held that Judge Chapman correctly found that the dispute was a "core" bankruptcy

proceeding and did not abuse her discretion by finding that compelling arbitration would seriously jeopardize the objectives of the U.S. Bankruptcy Code.

"The bankruptcy court considered the conflicting policies of the Federal Arbitration Act and the Bankruptcy Code, made a particularized inquiry into the nature of the claims and the facts of LBI's bankruptcy, and found that an underlying purpose of the Bankruptcy Code would be jeopardized by enforcing an arbitration clause in this case," the panel wrote.

Jim Kobak and Chris Kiplok lead the team representing Giddens. Jim Fitzpatrick argued the appeal on Sept. 27. Karen Chau, Marlena Frantzides and Thom Sisson also represented Giddens in this particular matter.

Related People



James W. Giddens



James B. Kobak, Jr.



James C. Fitzpatrick



Karen M. Chau

Related Areas of Focus

Corporate Reorganization & Bankruptcy

Appellate