



Court Holds Separation Agreement Was Clear

July 19, 2011

Ridinger v. Dow Jones and Co., Inc., No. 10-1771-cv (C.A.2 (N.Y.))

On July 11, 2011, the Second Circuit Court of Appeals affirmed a Magistrate Judge's decision to summarily dismiss an age discrimination complaint as barred by a separation agreement entered into by a terminated employee.

The case centered on the issue of whether a separation agreement executed by the 62-year-old Plaintiff satisfied the clarity requirement of the Older Workers Benefit Protection Act (the "OWBPA"). The OWBPA imposes specific requirements for releasing Age Discrimination in Employment Act ("ADEA") claims. In the separation agreement, the Plaintiff waived and released his right to all claims he might have had against his employer through the date of the agreement.

Generally, an employee can't waive his/her right or claim under the ADEA unless the waiver is entered into knowingly and voluntarily. Under the OWBPA, a waiver will not satisfy that requirement unless six requirements are met. In the case at hand, the Plaintiff argued that the separation agreement entered into was not "written in a manner calculated to be understood by such individual, or by the average individual eligible to participate."

Ultimately, the Court disagreed with the Plaintiff and ruled that defendant satisfied its burden with respect to the clarity requirement by establishing that the separation agreement "was written in a manner calculated to be understood by the relevant Dow Jones employees", thus satisfying the requirements set forth in the OWBPA.

A special thanks to Sean Gajewski for helping with this post. Sean is a third-year law student at Hofstra University School of Law. You can reach him by email at [srgajewski \[at\] gmail dot com](mailto:srgajewski@gmail.com). Bio: www.sgajewski.com.