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The Ninth Circuit Confirms That Arbitration is Bilateral and Collateral Estoppel Cannot be used to Preclude Enforcement of Arbitration Agreements

by Michele Floyd

The Ninth Circuit addressed a novel procedural question in *O'Dell v. Aya Healthcare Servs., Inc.* , 171 F.4th 1173 (9th Cir. 2026): whether non-mutual offensive collateral estoppel can prevent enforcement of arbitration agreements under the Federal Arbitration Act ("FAA"). The answer is no.

The underlying dispute arose when four former employees of Aya Healthcare Services, a travel-nursing agency, brought wage-related claims against their employer under the Fair Labor Standards Act. Each employee had signed an arbitration agreement containing a delegation clause requiring the arbitrator—not a court—to determine the validity of the arbitration agreement. As a result, the fou disputes were sent to arbitration where two arbitrators upheld the agreements and two found them unconscionable and invalidated them. When 255 additional employees opted into the FSLA action, Aya moved to compel arbitration for each pursuant to the identical delegation clauses.

The district court, however, gave effect to the two awards invalidating the agreements because they were more "reasoned" and "thorough," and relied on those two awards to invalidate the remaining 255 identical arbitration agreements. *Id.* at 1175. Stated differently, because two arbitrators found the agreements to be invalid, the district court applied the collateral estoppel doctrine to invalidate the remaining 255 agreements, rendering the separate arbitrations required by the arbitration agreements unnecessary.

The Ninth Circuit rejected the district court's approach. The court emphasized that the FAA requires courts and arbitrators to enforce arbitration agreements as written, and to resolve disputes through individualized, bilateral proceedings. As the court put it: "Doing away with such bilateral proceedings between mutually consenting parties, because *other* arbitrators in *other* proceedings involving *other* parties have already decided the issue, is anathema to the FAA." *Id.* at 1174. In short, the district court's ruling undermined the principle of party consent and effectively imposed a bellwether-type proceeding where the parties had not agreed to one. *Id.* at 1177-78. The court further explained that non-mutual offensive collateral estoppel is not a "generally applicable contract defense" such as fraud, duress, or unconscionability, and therefore cannot serve as a basis for contract "revocation" under the FAA.

The *O'Dell* decision confirms that arbitration is a creature of contract and proceeds in accordance with the parties' agreement. Courts may not deprive arbitrators of their ability to resolve the threshold

question of arbitrability – as per the delegation clauses in those arbitration agreements – by relying on creative preclusions principles based on decisions made in other arbitration proceedings.