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Supreme Court holds district courts must stay and not dismiss cases subject to arbitration

by Michele Floyd

In a short but unanimous opinion, the Supreme Court resolved a Circuit split by confirming that district courts have no discretion under section 3 of the Federal Arbitration Act (FAA) to dismiss litigation. Rather, the district court's only option after granting a motion to compel arbitration (or similar motion directing a case to arbitration) is to stay the litigation pending arbitration. *Smith v. Spizzirri*, No. 22-1218, 144 S. Ct. 680 (2024).

Section 3 of the FAA states that when a dispute is subject to arbitration, a district court "shall, on application of one of the parties, stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement . . . ." 9 U. S. C. §3. Resorting to ordinary rules of statutory interpretation, the Court concluded that "shall" means "shall" and "stay" means "stay," such that the statutory language "creates an obligation impervious to judicial discretion." Accordingly, the Court rejected the arguments that: (1) a district court retains inherent discretion to dismiss regardless of the statutory language; and (2) "stay" as used in the statute simply means somehow ending the litigation, which a district court has discretion to accomplish through a dismissal.

The Court further noted that its interpretation of "shall" and "stay" was consistent with the overall statutory scheme of the FAA. First, because the FAA permits an immediate appeal of an order denying arbitration but forbids an immediate appeal of an order compelling arbitration, permitting a district court to dismiss rather than stay would trigger a right to appeal where Congress intended to prohibit one. Second, section 3 permits parties to return to court if the arbitration breaks down, which they cannot do if the litigation is dismissed. And last, the supervisory role of courts codified in sections 5 (assisting with appointment of arbitrator), 7 (enforcing subpoenas), and 9 (facilitating recovery on an arbitration award) would be thwarted by a dismissal.

Smith v. Spizzirri should close all doors to an immediate appeal of a decision to compel arbitration. The Court's recent decision in *Coinbase, Inc. v. Bielksi*, 599 U.S. 736 (2023), confirmed that a stay pending arbitration is mandatory, and *Smith v. Spizzirri* confirmed that "stay" means "stay" and does not include dismissal.