# CLIENT ALERT: Massachusetts Supreme Judicial Court Upholds Right of MCAD to Investigate Despite Employee's Arbitration Agreement

On March 10, 2011, the Massachusetts Supreme Judicial Court ("SJC") issued an opinion addressing the Massachusetts Commission Against Discrimination's ("MCAD's") power to investigate claims where the employee and employer have previously entered into a mandatory arbitration agreement. The SJC held that where a valid arbitration agreement exists between parties, complainants may file a complaint at the MCAD but are barred from participating as a party in an MCAD investigation. Rather, the MCAD may proceed with its own, independent investigation and resolution of a discrimination claim because the agency is not a party to the arbitration agreement. *Joulé, Inc. v. Simmons*, SJC-10712 (2011).

In February 2008, Joulé Technical Staffing, Inc. ("Joulé") hired Randi Simmons ("Simmons") as a "selling branch manager" in its Boston office. After beginning her employment, Simmons signed a contract containing a provision that required her to arbitrate any claims of discrimination related to her employment (among other claims). Joulé terminated Simmons in July 2009.

Following her termination from employment, Simmons filed a complaint with the MCAD alleging that Joulé discriminated against her on the basis of her pregnancy and gender. Joulé filed a motion to compel arbitration in Massachusetts Superior Court arguing that the arbitration agreement Simmons signed prohibited her from pursuing her claim at the MCAD and required her to arbitrate the dispute. A Superior Court judge denied Joulé's motion, holding that the arbitration agreement did not preclude Simmons from acting as a party in the MCAD investigation, and ordered a stay of the arbitration proceedings. Joulé appealed this decision.

The SJC vacated the Superior Court's order staying arbitration, but did not prohibit the MCAD from conducting its own investigation. The SJC explained that the MCAD cannot be precluded from conducting its own investigation even if the complainant executed an enforceable arbitration agreement. The SJC concluded, however, that the signatories to the agreement (in this case, Joulé and Simmons) may not intervene as parties to the MCAD proceeding. Although the individuals may not intervene as parties, they may still file an initial complaint at the MCAD, testify before the agency and provide other information or materials necessary to aid in the investigation of the case. The MCAD, if it so chooses, may then pursue its investigation in its own name. Should the MCAD find probable cause for discrimination, it may conduct a hearing and, upon a finding of unlawful discrimination, grant relief specific to Simmons. (It is important to note that the SJC was unclear regarding what types of recovery the MCAD could grant in such a matter, other than to note that the party would not be entitled to "double recovery" from the MCAD and an arbitrator.)

The SJC further explained that agreements to arbitrate employment disputes remain enforceable. Specifically, the opinion states: "If an employer and employee enter into a valid and sufficiently clear agreement to arbitrate any and all disputes relating to discrimination, then the party seeking arbitration of such a dispute is entitled to have the agreement enforced."

Through this decision, the SJC has reaffirmed the autonomy of the MCAD. Regardless of any private agreement between parties, the MCAD may conduct investigations and, if the evidence warrants, issue relief to any aggrieved individual. On the other hand, although an individual may file a complaint with the MCAD, participate in the investigation, and testify at a public hearing, an individual with an enforceable arbitration agreement is prohibited from acting as the lead party to the proceedings.

This decision raises questions regarding the effect of an arbitrator's decision on an MCAD investigation. In theory, an employer may compel arbitration while the MCAD conducts a concurrent investigation. This means that an arbitrator could issue a ruling prior to the MCAD concluding an investigation and vice versa. The law does not currently afford either decision preclusive effect on the other, which means employers could be faced with conflicting directives from adjudicatory bodies. As litigants are faced with this issue, it is likely that Massachusetts courts will revisit this fact pattern to resolve this uncertainty.

Please contact your Morgan, Brown & Joy attorney with questions regarding this decision or other labor and employment law matters.

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