

NLRB Continues To Go Against The Grain With Arbitration-Related Decisions

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Despite repeated rejections of the National Labor Board's (the "NLRB" or the "Board") decision in *D.R. Horton* by federal courts across the country, another NLRB judge has upheld the controversial ruling that some arbitration agreements are unlawful under the National Labor Relations Act (the "NLRA").

In his March 5 ruling in *Network Capital Funding Partners*, Administrative Law Judge William Nelson Cates found that the employer's attempt to enforce the arbitration agreement entered into between the company and employee was unlawful. Though Judge Cates found that the arbitration agreement was not unlawful as written, the company violated the NLRA by compelling individual arbitration: "[i]n summary, the Agreement, as enforced, clearly inhibits and interferes with employees' Section 7 rights in that it requires employees to waive their right to engage in concerted activity for mutual aid and protection by prohibiting class or collective action in any forum." Further, while Judge Cates acknowledged that three Federal Circuit Courts of Appeals have rejected *D.R. Horton*, he was bound by Board precedent, and only the Supreme Court or the NLRB itself could change the binding precedent of *D.R. Horton*.

The *Network Capital Funding* case serves as a reminder that although *D.R. Horton* has been summarily rejected in most courts where it has been challenged across the country, the NLRB considers it good law and challenges to arbitration agreements can still be successfully brought before the Board.

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