

California Court Of Appeals Not Persuaded By *D.R. Horton Inc. V. Michael Cuda*

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The California Court of Appeals recently declined to follow the NLRB's ruling in *D.R. Horton Inc. v. Michael Cuda*, where the Board held that arbitration agreements containing class waivers may violate the National Labor Relations Act.

Nelsen v. Legacy Partners Residential, Inc., involved a putative class action alleging that Defendant Legacy Partners Residential violated state wage laws when it, among other things, failed to pay overtime, provide meal and rest breaks, and timely pay wages owed. The trial court granted Defendant's request to compel arbitration based upon an arbitration agreement Plaintiff had entered into. On appeal, Plaintiff argued, among other things, the enforcement of the arbitration clause to preclude class arbitration would violate California and federal law, and public policy in the employment field. To that end, Plaintiff relied heavily on the Board's decision in *Horton*. The Court, however, was not persuaded:

Since we are not bound by the decisions of lower federal courts on questions of federal law, it follows we are also not bound by federal administrative interpretations ... Although we may nonetheless consider the *Horton* decision for whatever persuasive value it has, several factors counsel caution in doing so. Only two Board members subscribed to it, and the subscribing members therefore lacked the benefit of dialogue with a full board or dissenting colleagues. The subject matter of the decision—the interplay of class action litigation, the FAA, and section 7 of the NLRA—falls well outside the Board's core expertise in collective bargaining and unfair labor practices. The Board's decision reflects a novel interpretation of section 7 and the FAA. It cites no prior legislative expression, or judicial or administrative precedent suggesting class action litigation constitutes a —concerted activit[y] for the purpose of . . . other mutual aid or protection" ... or that the policy of the FAA favoring arbitration must yield to the NLRA in the manner it proposes.

[The Court ultimately held](#) that enforcement of the arbitration provision, despite the preclusion of class arbitration, did not violate the law or public policy.

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