

The Case Law Chronicle

New York court decisions of note for international arbitration practitioners

This is the third installment in a regular series on New York case law. This article was contributed by Mark Stadnyk of Norton Rose Fulbright US LLP (New York). Follow this series to learn about recent decisions by New York federal and state courts and for easy access to the [full text](#) of the decisions.

Below, read more about *Michael A. Katz v. Cellco Partnership dba Verizon Wireless*, Docket Nos. 14-138 and 14-291 (July 28, 2015), in which the U.S. Court of Appeals for the Second Circuit clarified that a district court order referring all claims to arbitration cannot be appealed on an interlocutory basis. The decision means that successful motions to compel arbitration cannot be delayed by further litigation in the form of an appeal, reinforcing the strong pro-arbitration policy of the Federal Arbitration Act.

"To Stay or Not To Stay": Second Circuit Clarifies Procedure Following Successful Motion to Compel Arbitration

by Mark Stadnyk, Norton Rose Fulbright US LLP (New York)*

In *Michael A. Katz v. Cellco Partnership dba Verizon Wireless*, Docket Nos. 14-138 and 14-291 (July 28, 2015), the U.S. Court of Appeals for the Second Circuit (the "Court") addressed an important procedural matter under the Federal Arbitration Act (the "FAA"). Namely, does the FAA require a stay of proceedings when all claims are referred to arbitration and a stay has been requested, or do federal district courts enjoy the discretion to dismiss the case outright after granting such a motion to compel arbitration?

The Court provided a clear answer to this question: a stay of proceedings is required following a successful motion to compel arbitration of all claims pending before the district court. The alternative—a final order from the district court dismissing the case—would open an avenue for further litigation in the form of an immediate appeal. In *Katz*, the Court clarified that the FAA and its policy in favor of arbitration leave no room for immediate appeal of a district court decision to compel arbitration.

Background

Katz sued Cellco Partnership d/b/a Verizon Wireless ("Verizon"), alleging breach of contract and consumer fraud under New York state law. Katz's agreement with Verizon incorporated an arbitration clause that invoked the FAA. While he conceded the *prima facie* arbitrability of his claims, Katz contended that "application of the FAA to those claims was, on various grounds, unconstitutional." Verizon moved to compel arbitration and to stay the court proceedings.

The District Court for the Southern District of New York (Briccetti, J.) dismissed the constitutional objections to the application of the FAA and granted Verizon's motion to compel arbitration of all of Katz's claims. However, it then dismissed the action, albeit recognizing that "whether district courts have such dismissal discretion remains an open question in this Circuit."ⁱ

State of Play Before Katz

On appeal, the Second Circuit affirmed the District Court's grant of Verizon's motion to compel arbitration. It then acknowledged that "[t]he question whether district courts retain the discretion to dismiss an action after all claims have been referred to arbitration, or whether instead they must stay proceedings, remains unsettled." The U.S. Supreme Court has not yet decided the matter,ⁱⁱ and the "Courts of Appeals [of the various Circuits] are about evenly divided."ⁱⁱⁱ Moreover, even earlier Second Circuit authority on the matter, while not "directly address[ing] the question posed here," nevertheless "suggested different conclusions."^{iv}

The Court's Decision – "To Stay or Not To Stay"

The Court held that "a stay of proceedings [is] necessary after all claims have been referred to arbitration and a stay requested." In other words, under the FAA, district courts in the Second Circuit lack the discretion to dismiss an action after all claims have been referred to arbitration.

First, the Court emphasized the language of the FAA, 9 U.S.C. § 3, which provides that when issues are referable to arbitration, a 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 [arbitration] agreement" (emphasis added).^v Second, the Court acknowledged that a "mandatory stay comports with the FAA's statutory scheme and pro-arbitration policy."^{vi} The FAA, it observed, "authorizes immediate interlocutory review of an order refusing to compel arbitration or denying a stay of proceedings," but "explicitly denies the right to an immediate appeal from an interlocutory order that compels arbitration or stays proceedings."^{vii} Yet, the effect of the district court's dismissal was to "effectively convert[] an otherwise-unappealable interlocutory stay order into an appealable final dismissal order," potentially leading to further litigation in contravention of the policy at the heart of the FAA.

While the Court acknowledged the validity of the judicial concern with "efficient docket management," it held that such interests "cannot trump a statutory mandate, like Section 3 of the FAA, that clearly removes such discretion" from the district courts.

Ramifications of Katz

While *Katz* was a domestic arbitration, the Court's interpretation of the FAA's Section 3 also clarifies the appropriate procedure in international cases within the Second Circuit. When a motion to compel arbitration has been granted with respect to all claims, and a stay has been requested, the district court has no discretion and must grant a stay of the proceedings. As observed by the Court, a stay is in accordance with the pro-arbitration policy of the FAA, as it curtails further litigation while the arbitration proceeds.

United States Court of Appeals for the Second Circuit: Judges Wesley, Livingston, and Carney.

Counsel to Michael A. Katz: William Robert Weinstein (Law Offices of William R. Weinstein).

Counsel to Cellco Partnership, dba Verizon Wireless: Andrew G. McBride and J. Michael Connolly (Wiley Rein LLP).

*The views expressed in this case note do not necessarily reflect the views of Norton Rose Fulbright US LLP or its clients.

ⁱ *Katz* at 5. All citations are to the Court of Appeals' opinion in *Katz*, unless otherwise noted.

ⁱⁱ See *Green Tree Fin. Corp.-Ala. v. Randolph*, 531 U.S. 79, 87 n.2 (2000).

ⁱⁱⁱ *Katz* at 7-8, contrasting the Circuit Courts of Appeals "h[o]ld[ing] or impl[y]ing that a stay must be entered" (Seventh, Third, Tenth and Eleventh Circuits) with those "suggest[ing] that district courts enjoy the discretion to dismiss the action" (First, Fifth and Ninth Circuits).

^{iv} *Katz* at 6-7 and n. 5.

^v FAA 9 U.S.C. § 3 provides as follows: "If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, **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, providing the applicant for the stay is not in default in proceeding with such arbitration." (Emphasis added.)

^{vi} *Katz* at 9.

^{vii} *Katz* at 10.