



Smith v. Spizzirri: **ROADBLOCK TO EXPEDITING ARBITRATION OR PATH TO A SOLUTION?**

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Arbitration has long been considered a faster, more cost-effective alternative to litigation. There is data to support this impression. According to a 2017 study by economic research firm Micronomics, on average arbitration takes slightly less than one year to resolve. By contrast, litigation takes about two years to resolve through trial, and almost three years to resolve through appeal. Litigation delays can impose substantial costs on businesses, including increased attorney fees and costs, and

prolonged lack of access to disputed funds.

If arbitrations were consistently commenced by plaintiffs filing arbitration demands, arbitration would be consistently faster than litigation. Unfortunately, that is not always the case. Plaintiffs frequently commence arbitrable claims by filing their claims in court. If defendants want to force those claims to arbitration, they typically move to stay the cases pending arbitration or move to dismiss the cases.

When defendants move to stay cases

pending arbitration, the faster pace of arbitration can be undermined if the plaintiffs do not promptly pursue their claims in arbitration. It can be easy for plaintiffs to delay because sometimes courts do not set deadlines by which plaintiffs must initiate arbitration. With stayed cases pending, plaintiffs typically need not worry about statutes of limitations. Plaintiffs are often not motivated to pursue arbitrations promptly, most likely due to the higher filing fees or the perception that arbitration

can be a less favorable forum for plaintiffs.

If excessive delay becomes a problem, defendants can usually ask the staying court to dismiss plaintiffs' claims. Courts have regularly dismissed such cases. Typically, courts have justified dismissals based on the rules governing failure to prosecute and the courts' inherent power to control their dockets. Such dismissals have been known to take place after months or even years of delays by plaintiffs.

A recent decision by the Supreme Court of the United States, *Smith v. Spizzirri*, 601 U.S. 472 (2024), seemingly calls into question whether defendants can still seek dismissal when plaintiffs attempt to litigate claims subject to arbitration, at least when the Federal Arbitration Act (FAA) applies. In *Smith*, several employees of an on-demand delivery service sued their employer in state court, alleging violations of various employment laws. The employer removed the case to federal court and then moved to dismiss the claims. The federal district court dismissed the claims, and the court of appeal affirmed. The plaintiffs then sought relief from the Supreme Court, which granted their writ application.

The Supreme Court reversed the decision of the court of appeal and remanded the case for further proceedings. In its decision, the Court held that in cases governed by the FAA, if a party requests a stay, the case must be stayed rather than dismissed. The Court based its decision on the plain text of the FAA. The relevant provision of the FAA, 9 U.S.C. § 3, states in pertinent part that when "any issue" in a suit is subject to arbitration, the 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."

The relevant language of the FAA is straightforward, and the *Smith* court disposed of the issue in a brief, unanimous opinion. However, this seemingly simple issue called for the Court's attention because a circuit split had developed regarding the interpretation of the relevant language of the FAA. Previously, several courts of appeal had determined that "shall" meant precisely what it said, and that courts had no alternative but to stay claims that were subject to arbitration. However, other courts had found that they could still dismiss such claims. Those courts recognized the mandatory nature of the term "shall" in the FAA. However, they focused on the "any issue" language and found that if "all issues" in the case are subject to arbitration, then the case can be dismissed.

Notably, neither *Smith* nor the cases at

issue in the circuit split involved the situation discussed herein, in which a court had previously stayed a case that was subject to arbitration, but a plaintiff delayed proceeding with arbitration. Under those circumstances, can a court still dismiss a plaintiff's claim if it is governed by the FAA? Based on language in *Smith* and one post-*Smith* case involving that situation, the answer appears to be yes.

At the conclusion of its opinion, the *Smith* Court noted that courts retain supervisory roles for cases in arbitration. For example, courts have powers to appoint arbitrators, enforce subpoenas, and enforce arbitration awards. The Court also noted that district courts can adopt practices to minimize any administrative burdens caused by the stays that the FAA requires.

Since *Smith*, at least one district court has found that such practices can include the dismissal of the claims of a plaintiff who delays proceeding with arbitration after a stay. The case in question, *Yanez v. Dish Network*, 21-cv-00129 (W.D. Tex. 2024), involved a plaintiff's claim against his employer, which was originally filed in October 2020. In April 2021, the Court granted a stay pending arbitration. Starting in October 2021, the Court began issuing orders requiring status reports.

According to the status reports, the arbitration was filed in November 2021, and it was originally set for a hearing in January 2023. Several months after the scheduled hearing date, the parties had not submitted a new status report, which prompted the Court to issue an order requiring another report. In the next status report, the parties advised that the hearing had been continued, an arbitrator had been recused, and the parties were briefing an objection to a new arbitrator. In response, the Court issued an order requiring a report every 90 days, failing which the Court would dismiss the action for failure to prosecute. When the parties failed to file a status report by one of the 90-day deadlines, the Court dismissed the claim. Evidently, the Court was frustrated with the pace of the arbitration, as the order stated that "the parties' leash of leniency has now run out."

After the dismissal, the plaintiff moved for a new trial or, alternatively, to amend the judgment. At the time, the *Smith* opinion had not yet been issued. In a brief in support of the motion, the plaintiff invoked *Smith* and asked that the case be reinstated pending the decision. The Court waited until the *Smith* opinion was issued before rendering its decision. However, the Court found that it could dismiss the plaintiff's claims, notwithstanding *Smith*.

To support its decision, the Court relied on two key passages in the *Smith* opinion. First, the Court cited the language in *Smith* regarding district courts' powers to adopt practices to minimize any administrative burden caused by arbitration stays. The Court noted that its requirement of periodic status reports, and dismissal for failure to comply with its deadline, were examples of such practices. Second, the Court referred to a footnote in *Smith* which stated that its decision would not preclude dismissal when there is a "separate reason to dismiss, unrelated to the fact that an issue in the case is subject to arbitration." The Court found that a valid "separate reason" for dismissal included the parties' failure to comply with the Court's deadlines and prosecute the arbitration. The *Yanez* ruling is currently on appeal.

Prior to *Smith*, courts consistently dismissed claims for failure to prosecute if plaintiffs failed to proceed with arbitration following the stay of a case. The *Yanez* court found that *Smith* did not preclude that practice. Although arbitration stays are now initially required in cases governed by the FAA, as things currently stand, nothing in *Smith* precludes dismissal if a plaintiff fails to make reasonable efforts to expedite arbitration following a stay.

Arbitration's utility as a faster alternative to litigation is thwarted if plaintiffs inordinately delay arbitration while cases remain stayed. With its mandate that cases referred to arbitration must be stayed rather than dismissed, the *Smith* Court seemingly created an opportunity for plaintiffs to avoid dismissals, even if they delay after a case is stayed. However, courts still retain the power to expedite matters on their dockets, which includes dismissing actions for failure to prosecute or comply with court orders. The *Smith* Court expressly recognized those powers with its comment about minimizing administrative burdens. Therefore, following the *Smith* decision, if defendants are confronted with unreasonable delays after arbitration stays, they may still advocate for dismissal based on plaintiffs' failure to prosecute their claims.



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