

Silence on Class Arbitration Does Not Necessarily Bar All Class Actions in Arbitration Forum, First Circuit Holds

An association representing its 35 regional franchisee members brought an arbitration proceeding against franchisor Fantastic Sams for breach of contract and other claims on behalf of its members. In *Fantastic Sams Franchise Corp. v. FSRO Association Ltd.*, 683 F.3d 18 (1st Cir. June 27, 2012), FSRO sought declaratory and injunctive relief, but not damages. Fantastic Sams filed a motion in federal court to stay the arbitration and to compel the Association's members to arbitrate their claims individually. The court granted that motion in part, finding that 25 of the members' franchise agreements expressly prohibited class arbitration. Because the remaining ten agreements did not expressly prohibit class arbitrations, FSRO was allowed to proceed with its claims on their behalf in arbitration. Under applicable AAA rules, the arbitrators were to decide whether FSRO could maintain the claims of the ten members.

On appeal to the First Circuit, the franchisor relied on the Supreme Court's decision in *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*. In that 2010 case the court held that "class arbitration may not be imposed on a party to an arbitration agreement 'unless there is a contractual basis for concluding that the party agreed to' submit to class arbitration." The Supreme Court did not indicate what a "contractual basis" for class arbitration is, and it did not rule out the possibility that parties may implicitly authorize class arbitration. The existence of an agreement concerning class arbitration is a question for arbitrators to decide under AAA rules. In *Fantastic Sams*, the franchisor maintained that, under the Supreme Court's decision, only when an arbitration clause expressly allows class arbitration could franchisees arbitrate as a class. The First Circuit rejected that interpretation and agreed with the district court that the decision of whether the parties had agreed to class arbitration was to be made by the appointed arbitrators.