
CLIENT ADVISORY

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OHIO SUPREME COURT RULING ON ARBITRATION PROVISION

In a case that will undoubtedly result in the greater use of arbitration clauses in home building contracts and consumer transaction contracts in general, the Ohio Supreme Court just decided, in *Taylor Bldg. Corp. of Am. v. Benfield*, that the proper standard for review by an appellate court of a claim that an arbitration clause is void as unconscionable is *de novo* rather than an abuse of discretion, but with any factual findings of the trial court being accorded appropriate deference. The Court went on to hold that in a trial court's determination of whether an arbitration clause was unconscionable, it was improper for a trial court to consider any claims of unconscionability that pertained to clauses other than the arbitration clause. The Court said that if the arbitration clause itself was not unconscionable and otherwise enforceable, claims that other provisions of the contract were unconscionable and unenforceable (for example, under the Consumer Sales Practices Act) would be decided by the arbitrator.

It should also be noted that the Court implicitly held that one illegal and unenforceable provision in an arbitration clause, if that illegal provision could be stricken and the arbitration clause applied without it, did not make an arbitration clause unconscionable. The contract of a Kentucky builder for construction of a home in Clermont County, Ohio provided for arbitration in Jefferson County, Kentucky in violation of Ohio Rev. Code § 4113.62(d)(2), which provides that provisions in contracts, etc. for improvements to real estate in Ohio that require litigation, arbitration or other dispute resolution processes to occur in another state are void and unenforceable as against public policy.

**DIAMONDS RECEIVE AWARD FOR "BEST COMMERCIAL REHABILITATION"
AT HERITAGE OHIO'S ANNUAL AWARDS CEREMONY**

Congratulations to Joe and Linda Diamond for receiving the "Best Commercial Rehabilitation" Award from Heritage Ohio for their rehabilitation of 25-31 North Sandusky Street, Delaware, Ohio. Joe and Linda accepted the award at the annual awards ceremony on May 8 on the campus of Bowling Green State University. The award is presented to one or more individuals, tenants, or business owners for the best storefront, interior, and/or total building improvement project. Joe and Linda took two buildings that were altered and abused by years of improper rehabilitation and lack of care and created a four-front row of stores that now includes the book store, Beehive Books.

IRS INCREASES MILEAGE DEDUCTIBLE

Due to the impact of higher gas prices on businesses and individuals, the Internal Revenue Service announced that it will raise its automobile mileage-deduction rate for the second half of 2008. The IRS will increase the optional standard rate, used to compute deductible operating costs for vehicles, to 58.5 cents a mile beginning July 1, 2008, up from 50.5 cents, the rate used since January. The firm will increase the amount it bills clients for mileage outside Franklin and Delaware counties to 58.5 cents a mile effective July 1, 2008.