

When The Power Of Attorney Is Vital: Court of Appeal Rules That An Arbitration Agreement For An Agreement With A Residential Care Facility Was Not Enforceable Where the Agreement Was Only Signed by a Family Member

By: Edward F. Morrison, Jr., Esq.  
Larry A. Schwartz, Esq.

Very common in residential care facility agreements is an arbitration clause in the event there is a dispute between the resident and the residential care facility. Given the age and capacity of many residents of residential care facilities, a serious issue can arise as to whether the residential care facility's arbitration agreement will be enforceable when not signed by the resident or if there is a question as to the capacity of the resident.

That very issue arose in Kathryn L. Rogers v. Roseville SH, LLC (2022) Westlaw 655631 ("Rogers case"). In the Rogers case, Claude Rogers (sometimes herein "Claude"), a former resident of the Meadow Oaks Residential Care Facility ("Meadow Oaks Facility") in Roseville, California, died after experiencing heat stroke. Mr. Rogers' wife and successor-in-interest, Kathryn, and sons Jeffrey, Phillip, and Richard ("Richard") sued the Meadow Oaks Facility for elder abuse, fraud, and wrongful death.

Prior to being admitted to the Meadow Oaks Facility, Claude's son, Richard, signed a Residential Agreement for Claude as Claude's "representative." However, Claude never signed the Residential Agreement. The Residential Agreement contained an arbitration clause and the Meadow Oaks Facility owner demanded arbitration. The Trial Court rejected the Petition to Compel Arbitration.

On appeal, the Court of Appeal affirmed.

Central to the Court of Appeal's analysis was the issue of whether the arbitration clause contained in the Residential Agreement was binding on Claude (or his estate) and his family because only the son, Richard, signed the Residential Agreement. Richard admitted that he had signed the Residential Agreement, by electronic means. However, Richard was not asked by the Meadow Oaks Facility whether he had a power of attorney, or had some other authority to sign the arbitration agreement on behalf of his father. And, Richard claimed he only signed the Residential Agreement because the Meadow Oaks Facility administrator told him had to sign the document in order to admit his father. Given the facts, the Court of Appeal ruled that, while Richard may have been an agent for his father, the Meadow Oaks Facility did not carry its burden of proving that Richard, the purported agent of Claude, had the authority to act for his father. The Court noted that the Residential Agreement did not define "representative," and there was no evidence that the father ever told Richard that Richard had authority to sign the agreement. The Court of

Appeal also noted that there was no evidence that any Meadow Oaks Facility representative ever spoke with Claude about the Residential Agreement that his son Richard had signed.

The Rogers case is yet another important reminder as to the difficulties in compelling arbitration. With respect to a residential care facility for the elderly, a power of attorney is certainly recommended (if not mandated) for the person signing for the resident.

About the Authors: Edward F. Morrison, Jr. is the founding partner and Larry A. Schwartz is Of Counsel to The Morrison Law Group, a professional corporation. Their biographies can be viewed at [morrisonlawgroup.com](http://morrisonlawgroup.com) .

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