

LAW REVIEW 839

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4.0—Soldiers’ and Sailors’ Civil Relief Act and the Servicemembers Civil Relief Act

SCRA Does Not Apply to Arbitration Proceedings, But It Should

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Q: I recently returned from an 18-month recall to active duty for service in Iraq. Before the recall, I had a dispute with a local business that claims I owe them money. I deny that I owe them anything; the service they provided was shoddy and worthless. While I was in Iraq, the business took its claim against me to binding arbitration, claiming that in the fine print of the order form I had agreed to arbitration. Because I was in Iraq, I was unable to appear for the arbitrator’s hearing. In fact, I was not even aware that the hearing was about to occur.

After I returned from Iraq, the business sued me in state court and got a judgment enforcing the arbitrator’s award. I showed up for the court proceeding and insisted that I had a defense against the claim and that my military service had prevented me from putting on my case before the arbitrator. The judge would not listen to my arguments. He said that I had agreed to the arbitration, that the arbitrator had held a valid hearing, and that the arbitrator was not required to continue the hearing based on my being thousands of miles away serving our country at the tip of the spear. The judge turned the arbitrator’s award into a state court judgment. Now, I guess that I must pay this unjust claim. If I don’t, the business will seize my car or other property.

This is not fair. I heard somewhere that the Soldiers’ and Sailors’ Civil Relief Act (SSCRA) protected me from things like this while military service requires me to be far away. Help!

A: In 1917, after the United States entered World War I, a group of eminent legal scholars quickly drafted and Congress quickly enacted the SSCRA, to protect the rights of those who had volunteered or been drafted to go “over there” to fight “the war to end all wars.” The original SSCRA expired in 1919, with the end of the wartime period of national emergency. In 1940, after World War II had broken out in Europe, Congress reenacted the SSCRA and made it permanent. The SSCRA served our nation reasonably well, but over the decades some of the provisions became obsolete because of changes that could not have been anticipated in 1917 or 1940.

In 2003, Congress enacted the Servicemembers Civil Relief Act (SCRA), a long-overdue rewrite of the SSCRA. The SCRA is codified in the Title 50 Appendix of the United States Code, sections 501-596.

The SSCRA provided for continuances and default judgment protections in federal and state civil *judicial* proceedings. The SCRA expanded the applicability of those provisions to make them apply to *administrative* proceedings as well as judicial proceedings—a long-overdue and necessary change.

The SCRA drafters accomplished this expansion by means of an expansive definition of the word “court.” “The term ‘court’ means a court *or an administrative agency* of the United States or of any State (including any political subdivision of a State), whether or not a court or administrative agency of record.” 50 U.S.C. App. 511(5) (emphasis supplied).

This language is certainly broad enough to cover federal, state, and local administrative agencies and boards and commissions and their proceedings. It is not broad enough, however, to cover arbitration proceedings. This is an oversight that Congress needs to correct. Your situation is an excellent illustration of the need for a legislative fix.

Update: December 2015

As explained in Law Review 15115, the editors of the United States Code (U.S.C.) recently eliminated the “Appendix” of title 50 of the Code, and the Servicemembers Civil Relief Act (SCRA) can now be found in title 50 at sections 3901 and following.