Fifth Circuit Finds Parties Can Authorize Arbitrators By Their Conduct

The 5th U.S. Circuit court of Appeals ruled in an arbitration award that a district court had wrongly concluded that the court was the proper decision-maker on contract formation, according to a report produced by Stinson Leonard Street and posted on JDSupra.

"Although courts are presumptively authorized to decide whether an arbitration agreement exists, the Fifth Circuit found the parties altered that presumption by 'submitting, briefing, and generally disputing that issue throughout the arbitration proceedings'," wrote Liz Kramer for the firm. The case was *OMG, L.P. v. Heritage Auctions, Inc.*, 2015 WL 2151779 (5th Cir. May 8, 2015).

She wrote that OMG claimed that it was owed more commissions than the auction house had paid it for firearm sales. The case involved a dispute between the parties on how to interpret the term "merchandise."

Read the article.