
Federal Arbitration Act—Delegation to Arbitrators

Henry Schein, Inc. v. Archer & White Sales, Inc., No. 17-1272

Under the Federal Arbitration Act (“FAA”), parties to an arbitration agreement may agree to delegate the threshold question of what disputes are arbitrable to the arbitrator. Several courts of appeals recognized an exception to this rule, holding that a court need not refer a dispute about arbitrability to the arbitrator if the argument for arbitrability is “wholly groundless.” Today, in a unanimous opinion authored by Justice Kavanaugh, the Court rejected the “wholly groundless” exception. The Court held that this exception had no basis in the text of the FAA and was inconsistent with the Court’s precedents, which established that when an issue has been properly delegated to an arbitrator, even frivolous arguments must be resolved by the arbitrator, not by a court. Mayer Brown LLP represented an *amicus curiae* in support of the successful petitioner.