SUPREME COURT OF LOUISIANA

NO. 99-C-1423

FREDERICK COLLINS

vs.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA D/B/A PRUDENTIAL PREFERRED FINANCIAL SERVICES AND LEO BEAULIEU

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, FOURTH CIRCUIT, PARISH OF ORLEANS

JOHNSON, J., Dissenting

The issues raised in this case were recently addressed by the United States Supreme Court in *Wright v. Universal Maritime Service Corp.*, 525 U.S. 70, 119 S.Ct. 391, 142 L.Ed. 2d 361 (1998). In *Wright,* the Court was required to determine whether an employee governed by a collective bargaining agreement ("CBA") could resolve a claim of employment discrimination under the Americans with Disabilities Act of 1990 ("ADA"), or whether he was required to use the arbitration procedures mandated by the CBA. The Court concluded that when an employee's claims arise out of a federal statute such as the ADA, the dispute concerns the interpretation of federal law, not the interpretation of the terms of the CBA. *Wright*, 119 S.Ct. at 396. To hold otherwise would be to extend the presumption of arbitrability "beyond the reach of the principal rationale" that justified it, such rationale being "that arbitrators are in a better position than courts to interpret the terms of a CBA." *Id.* at 395. Thus, claims which ultimately concern the interpretation of federal law will not be presumed to be subject to arbitration under a CBA. *Id.* at 396.

Likewise, claims which ultimately concern the interpretation of state law, such as defamation, libel, and intentional infliction of emotional distress, should not be presumed to be arbitrable. The arbitration agreement at hand is mandated by the National Association of Securities Dealers ("NASD") and it requires the arbitration of "any dispute, claim, or controversy arising out of or in connection with business of any member of the Association, or arising out of the employment or termination of employment of associated person(s) with any member. . . ." Presumably, NASD arbitrators are in a better position to resolve disputes relating to the business of its members, as well as disputes relating to the employment or termination of employment of persons associated with the NASD. This is not to say that arbitration is mandated for every facet of the employment relationship. Such a broad interpretation would, in effect, close the door to

judicial forums for persons associated with NASD. The Supreme Court has explained that the right to a federal judicial forum is of sufficient importance so as to be protected from a general contractual waiver in a CBA. *Wright*, 119 S.Ct. at 396-97. Without question, the right to a state judicial forum is of equal importance. Hence, some claims arising under specific state statutory provisions will fall outside the ambit of arbitration. In my opinion, such claims are better resolved by the courts, and the court of appeal was correct in concluding that this case fell outside the ambit of arbitration.

For these reasons, I respectfully dissent.