

# SUPREME COURT OF VIRGINIA



SUPREME COURT BUILDING  
100 NORTH NINTH STREET  
RICHMOND, VIRGINIA 23219  
(804) 786-2259

## **Granted Appeal Summary**

### **Case**

NC FINANCIAL SOLUTIONS OF UTAH, LLC v. COMMONWEALTH OF VIRGINIA EX REL. MARK R. HERRING, ATTORNEY GENERAL  
(Record Number 190840)

### **From**

From the Circuit Court of Fairfax County; D. Ortiz, Judge.

### **Counsel**

Charles K. Seyfarth, Elizabeth Scott Turner, and C. Quinn Adams (O'HAGAN MEYER) for appellant.

Mark R. Herring, Cynthia E. Hudson, Samuel T. Towell, Richard S. Schweiker, Jr., David B. Irvin, Erin E. Witte, and James E. Scott (Office of the Attorney General) for appellee.

### **Assignments of Error**

1. The Circuit Court erred in denying the Motion because the decision is in direct conflict with Federal Arbitration Act, 9 U.S.C. §§ 1-16 ("FAA"), the substantive federal law applicable to arbitration agreements subject to the FAA, and the strong public policy favoring enforcement of arbitration provisions recognized by this Court and the United States Supreme Court.
2. The Circuit Court erred in denying the Motion because the decision fails to enforce valid arbitration provisions, contractually agreed upon by NCFS-Utah and individual borrowers, that require claims seeking individualized restitution be resolved in the forum of arbitration.
3. The Circuit Court erred in denying the Motion because the decision fails to enforce a valid arbitration provision between NCFS-Utah and individual borrowers thereby depriving NCFS-Utah of valuable contractual rights.
4. The Circuit Court erred in denying the Motion because Plaintiff's claim seeking individual-specific restitution is precluded by the FAA and the valid arbitration agreements between NCFS-Utah and the individual borrowers on whose behalf and for whose direct benefit Plaintiff seeks to recover.

5. The Circuit Court erred in denying the Motion based on its incorrect interpretation and application of the United States Supreme Court's decision in *EEOC v. Waffle House, Inc.*, 534 U.S. 279 (2002).

6. The Circuit Court erred in denying the Motion and thereby failing to enforce the valid, FAA-governed arbitration provisions between NCFS-Utah and the individual borrowers due to the fact that Plaintiff is not a signatory to those arbitration agreements.

7. The Circuit Court erred in denying NCFS-Utah's Motion because the Virginia Consumer Protection Act, Va. Code §§ 59.1-196 et seq. ("VCPA"), does not expressly grant Plaintiff the statutory authority to recover individualized restitution on behalf of private individuals-thereby improperly expanding Plaintiff's authority under the VCPA.