

Pewaukee, WI

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

WATERSTONE MORTGAGE CORPORATION

and

Case 30-CA-073190

PAMELA E. HERRINGTON

**ORDER RESCINDING ORDER APPROVING STIPULATION,
GRANTING MOTION, AND TRANSFERRING PROCEEDING
TO THE BOARD**

This matter came before the Board pursuant to a Board Order granting a joint motion by the parties to transfer this proceeding directly to the Board for a decision based on the stipulated record. For the reasons that follow, the Board has now decided to rescind its prior Order and to deny the joint motion.

On August 10, 2012, the Acting General Counsel, through the Regional Director for Region 30, issued an amended complaint alleging that, beginning about April 2011, the Respondent violated Section 8(a)(1) of the National Labor Relations Act by promulgating, maintaining, and enforcing individual arbitration agreements as a condition of employment that interfered with, restrained, and coerced employees in their exercise of the rights guaranteed them in Section 7 of the Act. The amended complaint further alleges that, beginning about July 23, 2012, the Respondent violated Section 8(a)(1) of the Act by promulgating, maintaining, and enforcing individual employment agreements as a condition of employment that interfered with, restrained, and coerced employees in their exercise of the rights guaranteed them in Section 7 of the Act by requiring employees to choose to adhere to one of two dispute resolution options. On

August 28, 2012, the parties filed a joint motion to waive a hearing and a decision by an administrative law judge and to transfer this proceeding to the Board for a decision based on a stipulated record. On November 21, 2012, the Board issued an Order Approving Stipulation, Granting Motion, and Transferring Proceeding to the Board. Pursuant to that Order, the Board transferred the case to the Board for the purpose of issuing findings of fact, conclusions of law, and a Decision and Order, and set a briefing schedule. The parties thereafter filed briefs.

In support of the complaint's allegations, the Acting General Counsel relied on *D. R. Horton*, 357 NLRB 2277 (2012), enf. denied in relevant part, 737 F.3d 344 (5th Cir. 2013), where the Board held that the Respondents violated Section 8(a)(1) of the Act by maintaining an arbitration agreement that requires employees, as a condition of employment, to waive their rights to pursue class or collective actions involving employment-related claims in all forums, whether arbitral or judicial. In *Murphy Oil USA, Inc.*, 361 NLRB 774 (2014), enf. denied in relevant part 808 F.3d 1013 (5th Cir. 2015), issued subsequent to the order transferring this proceeding, the Board reaffirmed the relevant holdings of *D. R. Horton*, supra, and found unlawful the maintenance and enforcement of an arbitration agreement requiring employees to waive the right to commence or participate in class or collective actions in all forums, whether arbitral or judicial.

Recently, the Supreme Court issued its decision in *Epic Systems Corp. v. Lewis*, 584 U.S. ___, 138 S. Ct. 1612 (2018), a consolidated proceeding including review of court decisions below in *Lewis v. Epic Systems Corp.*, 823 F.3d 1147 (7th Cir. 2016), *Morris v. Ernst & Young LLP*, 834 F.3d 975 (9th Cir. 2016), and *Murphy Oil USA, Inc. v. NLRB*, 808 F.3d 1013 (5th Cir. 2015). *Epic Systems* concerned the issue, common to all three cases, whether employer-employee agreements that contain class- and collective-action waivers and stipulate that employment

disputes are to be resolved by individualized arbitration violate the National Labor Relations Act. Id. at ___, 138 S. Ct. at 1619–1621, 1632. The Supreme Court held that such employment agreements do not violate this Act and that the agreements must be enforced as written pursuant to the Federal Arbitration Act. Id. at ___, 138 S. Ct. at 1619, 1632.

In light of the Supreme Court’s decision in *Epic Systems*, which overrules the Board’s holding in *Murphy Oil USA, Inc.*, 361 NLRB 774 (2014), the Board now rescinds its November 21, 2012 Order and denies the parties’ August 28, 2012, joint motion without prejudice.

Dated, Washington D.C., July 31, 2018.

By Direction of the Board:

/s/ Farah Z. Qureshi

Associate Executive Secretary