that the FAA preempted state laws that prohibited a party from compelling bipolar (individual) arbitration in certain situations, even when it was specifically agreed to by contract. Thereafter, Defendants filed a motion to compel arbitration in the District Court. The court granted the motion, and the Plaintiffs appealed.
HOLDING: Affirmed and remanded.
REASONING: Plaintiffs argued that Defendants should not be allowed to compel arbitration because their actions constituted a waiver. Specifically, Plaintiffs argued that Defendants waited two and a half years to file a motion to compel arbitration. The court rejected these arguments and refused to apply traditional arbitration waiver analysis to situations where there is a substantial change in the law, as the *Concepcion* decision was to the present case.

The Third Circuit ruled that there was no requirement for Defendants to pursue what would have been a futile attempt at obtaining bipolar arbitration. Accordingly, the court found that Defendants should not be penalized for failing to pursue a right that did not exist under New Jersey law at the time of the initial suit. Defendants maintained the right to seek bipolar arbitration and did not waive that right since the ruling in Concepcion marked a substantial change in the law.

CONSUMER CREDIT

CLAIMS UNDER THE FAIR CREDIT REPORTING ACT BARRED BY STATUTE OF LIMITATIONS DISCOVERY RULE

Rocheleau v. Elder Living Construction, 814 F.3d 398 (6th Cir. 2016).
https://casetext.com/case/rocheleau-v-elder-living-constr-llc-1

FACTS: Plaintiff, Richard Rocheleau filed a lawsuit against defendants Elder Living Construction, LLC, and First Advantage LSN Screening Solutions, Inc., for violating 15 U.S.C. §1681, the Fair Credit Reporting Act. On September 15, 2011, Elder Living ordered a background screening report on Rocheleau from LexisNexis Screening Solutions, Inc. when he applied for employment. LexisNexis notified Rocheleau that the contents in the background report could adversely affect his employment status. LexisNexis notified him that he had not been hired because of the contents of his background report. Rocheleau did not dispute the accuracy of the background report and complained he had not authorized the release of the background report. Two years later, November 2013, Rocheleau filed for action against Elder Living and First Advantage.

The FCRA's statute of limitations requires claims to be commenced no later than two years after the date of discovery of the violation.

The district court granted summary judgment for both First Advantage and Elder Living, holding that the FCRA's two-year statute of limitations barred Rocheleau's lawsuit.
HOLDING: Affirmed.
REASONING: The court reasoned that Rocheleau's claim was time-barred because it was not filed within the two-year limitations period provided in 15 U.S.C. §1681p and the limitations period in 15 U.S.C. §1681s-2(b) did not apply because Rocheleau never disputed the completeness or accuracy of the report.

The FCRA's statute of limitations requires claims to be commenced no later than two years after the date of discovery of the violation that is the basis of liability. Rocheleau did not dispute that each of the alleged violations occurred in September 2011 and that he received notices on three separate dates in September 2011. So, his claim that he filed in November 2013 was barred by the statute of limitations.

The court also held 1681s-2b applies to disputes regarding the completeness or accuracy of any information provided by a person to a consumer reporting agency. Rocheleau did not dispute the completeness or accuracy of his background report in his appeal, district court filings or communications with LexisNexis. Therefore, his allegation regarding §1681-2(b)'s dispute process has no relevance to this action and does not affect the applicable statute of limitations in any way.