

THE SUPREME COURT OF ARKANSAS, WHILE HAVING THE
POWER TO REGULATE THE PRACTICE OF LAW, HOLDS THAT A
NONLAWYER COMMITS THE UNAUTHORIZED PRACTICE OF
LAW BY REPRESENTING A CORPORATION IN ARBITRATION
PROCEEDINGS.

In *NISHA, LLC v. TriBuilt Construction Group, LLC*,¹ the Supreme Court of Arkansas held that it retained the power to regulate the practice of law in Arkansas.² Further, the Supreme Court held that a corporation cannot be represented by a nonlawyer in arbitration proceedings.³

TriBuilt Construction Group, LLC (“TriBuilt”) entered into a contract with NISHA, LLC (“NISHA”) and Centennial Bank (“Centennial”) to construct a hotel in Conway.⁴ Upon completion of the hotel, TriBuilt sued NISHA and Centennial claiming that they refused to pay TriBuilt, defamed TriBuilt, and attempted to stop TriBuilt from getting a bond for the construction.⁵

NISHA submitted a motion to compel arbitration and to stay the circuit court proceedings until arbitration had concluded.⁶ The court denied both of these motions.⁷ Centennial then moved to compel arbitration and asked that TriBuilt enter arbitration on its own.⁸ Centennial also moved to stay the circuit court proceedings until after arbitration concluded.⁹ The court granted the motion to compel arbitration and granted the stay with regards to the contract claims.¹⁰

After the court granted the motion to compel arbitration, TriBuilt’s counsel withdrew from the court case and the arbitration.¹¹ TriBuilt’s President, Alan Harrison, informed NISHA and Centennial that he would represent the company himself.¹² Harrison was not a licensed attorney.¹³

NISHA and Centennial entered a “Joint Petition for Permanent Injunction” to stop TriBuilt from being represented by Harrison since he was not a

1. 2012 Ark. 130, 388 S.W.3d 444.

2. *Id.* at 5–6, 388 S.W.3d 447.

3. *Id.* at 13, 388 S.W.3d 451.

4. *Id.* at 1–2, 388 S.W.3d 445.

5. *Id.* at 2, 388 S.W.3d 445.

6. *Id.*

7. *NISHA, LLC*, 2012 Ark. 130, at 2, 388 S.W.3d 445.

8. *Id.*

9. *Id.*

10. *Id.*, 388 S.W.3d 446. Some of TriBuilt’s claims sounded in torts and were not compelled to be arbitrated. *Id.* The court did not stay those claims. *Id.*

11. *Id.* at 3, 388 S.W.3d 446.

12. *Id.*

13. *NISHA, LLC*, 2012 Ark. 130, at 3, 388 S.W.3d 446.

licensed attorney.¹⁴ International Fidelity Insurance Company (“IFIC”) responded to the petition by stating that the American Arbitration Association (“AAA”) rules allowed representation “by any . . . representative of the party’s choosing.”¹⁵

The circuit court agreed that Harrison could not represent TriBuilt in the circuit court proceedings; however, it denied the petition with regards to representing TriBuilt in the arbitration.¹⁶ The circuit court stated that representation by a nonlawyer in an arbitration did not constitute the practice of law and that the arbitration panel should be the ones to determine this issue.¹⁷ NISHA and Centennial then entered an interlocutory appeal which was ruled to be an issue of first impression and sent to the Supreme Court of Arkansas.¹⁸

NISHA and Centennial state on appeal that the “court should reverse the circuit court’s finding that nonlawyer representation in arbitration proceedings does not constitute the unauthorized practice of law, and . . . that the arbitrator should decide who can represent a party in arbitration proceedings.”¹⁹ Since the conclusions made by the circuit court are about matters of law, the court did not give deference to the conclusions on appeal and reviewed the issues *de novo*.²⁰

The court first tackled the issue of whether the arbitrator or the Supreme Court “has the power to determine if a nonlawyer can represent a corporation during arbitration proceedings.”²¹ The court noted that, according to *Preston v. Stoops*²² and the Arkansas Constitution,²³ it held the sole power to regulate the practice of law.²⁴ Therefore, the court held that this issue was one that it as within its powers to determine.²⁵

The court then moved on to whether or not a corporation can be represented by itself in an arbitration.²⁶ The court followed the cue of NISHA and Centennial in citing to the five conclusions regarding the practice of law

14. *Id.*

15. *Id.* at 3–4, 388 S.W.3d 446. IFIC states that it is a cross-defendant in its filings, though no pleadings against IFIC had been found by the Supreme Court of Arkansas. *Id.* at 3–4 n. 2, 388 S.W.3d 446. Some pleadings reference IFIC as a part of the arbitration. *Id.*

16. *Id.* at 4, 388 S.W.3d 446.

17. *Id.*

18. *Id.*, 388 S.W.3d 446–47.

19. *NISHA, LLC*, 2012 Ark. 130, at 4, 388 S.W.3d 447.

20. *Id.* at 5, 388 S.W.3d 447.

21. *Id.*

22. 373 Ark. 591, 594, 285 S.W.3d 606, 609 (2008).

23. ARK. CONST. amend. 28.

24. *NISHA, LLC*, 2012 Ark. 130, at 5, 388 S.W.3d 447.

25. *Id.* at 6, 388 S.W.3d 447.

26. *Id.*

made in *Arkansas Bar Association v. Union National Bank*.²⁷ The court in *Union* concluded that (1) “[c]orporations are prohibited from practicing law;” (2) a person can represent himself, but a corporation cannot; (3) “[a] trustee of personal representative does not act on his or her own behalf . . . ;” (4) a person engages in the practice of law when they interact with the court with regards to any pending litigation; and (5) “[t]he practice of law is regulated by the judiciary.”²⁸

NISHA and Centennial argued that arbitration is quasi-judicial and therefore engages the practice of law.²⁹ The court then outlined the circuit court’s involvement in arbitration, noting that courts can compel arbitration, appoint arbitrators, ask the arbitrator for a quick conclusion, and confirm awards.³⁰

The court then compared Arkansas to other states by first stating that Arkansas has not answered the question of whether “a nonlawyer’s pro se representation of a corporation in arbitration proceedings constitutes the unauthorized practice of law”³¹ Ohio, Arizona, and Florida have all specifically stated that nonlawyers may not represent corporations in arbitration.³²

The court did not have a concrete definition for the practice of law already in place.³³ However, it said that when a person “‘invoke[s] the processes of the court’” or “‘assist[s] the court in its process,’” then that person is acting in the practice of law.³⁴ Further, when a person “‘furnishes legal services or advice’” or “‘render[s] legal services of any kind in acts or proceedings of any nature,’” they are also acting in the practice of law.³⁵

Finally, the court stated that it had been stern in applying the rule that nonlawyer officers of a corporation cannot represent that corporation in court.³⁶ Based on this analysis, the court held that “a nonlawyer’s represen-

27. 224 Ark. 28, 273 S.W.2d 408 (1954).

28. *NISHA, LLC*, 2012 Ark. 130, at 6–7, 388 S.W.3d 447 (citing *Union*, 224 Ark. at 51–53, 273 S.W.2d at 410–11.)

29. *Id.* at 7, 388 S.W.3d 448.

30. *Id.* at 7–8, 388 S.W.3d 448.

31. *Id.* at 9, 388 S.W.3d 449.

32. *Id.* at 9–10, 388 S.W.3d 449–50 (citing *Disciplinary Counsel v. Alexicole, Inc.*, 105 Ohio St. 3d 52, 2004 Ohio 6901, 822 N.E.2d 348; *In re Creasy*, 198 Ariz. 539, 12 P.3d 214 (2000); *The Florida Bar re Advisory Opinion on Nonlawyer Representation in Securities Arbitration*, 696 So.2d 1178, 1180 (Fla. 1997)).

33. *Id.* at 10, 388 S.W.3d 449.

34. *NISHA, LLC*, 2012 Ark. 130, at 10, 388 S.W.3d 450 (quoting *Union*, 224 Ark. at 53–54, 273 S.W.2d at 411–12).

35. *Id.* at 11, 388 S.W.3d 450 (quoting ARK. CODE ANN. § 16-22-211(a) (Supp. 2011)).

36. *Id.* at 12, 388 S.W.3d 451.

tation of a corporation in arbitration proceedings constitutes the unauthorized practice of law.³⁷

This case clears up one question about the unauthorized practice of law: corporations cannot be represented by any nonlawyer executive, officer, or employee of that corporation. The Supreme Court of Arkansas also reiterated its power to regulate the practice of law.

**Riley A. Graber*

37. *Id.* at 13, 388 S.W.3d 451.