

Sunoco Loses Redo Bid At 3rd Circ. Over Rewards Program

By [Jeannie O'Sullivan](#)

Law360, New York (October 5, 2017, 5:58 PM EDT) -- The Third Circuit on Wednesday rejected [Sunoco Inc.](#)'s bid for review of the court's split decision refusing to allow the fuel giant to force arbitration in a credit card customer's proposed class action over an allegedly broken promise for rewards at gas stations.

Third Circuit Judge Michael A. Chagares issued the brief order denying an en banc rehearing, noting that none of the judges who concurred in the opinion nor any of the circuit judges in regular service had requested a rehearing.

In its motion for an en banc review, Sunoco had urged the court to reverse its decision that when credit card customer Donald White signed up for a [Citigroup Inc.](#) credit card marketed as providing a discount at Sunoco gas stations, he hadn't agreed to arbitrate disputes against Sunoco because the contract was only between White and card issuer Citi.

Sunoco **has argued** that because it was central in marketing the card with Citi, the fuel company should be allowed to compel arbitration under that contract. The Third Circuit's majority "misperceived" contract law and contravened relevant court precedents, Sunoco said.

The appeal involved "legal and factual questions of exceptional importance concerning consumer agreements for co-branded services in the consumer finance and retail industries, which the panel misperceived," according to Sunoco.

In his 2015 suit, White accused Sunoco of backing out on a promise to give him a 5-cent per gallon discount on gas at Sunoco stations for using the company's branded credit card, court records show. He seeks to represent a class of consumers who, White says, bought into Sunoco's promise only to discover after fueling up at Sunoco stations that only some of them actually provide the discount.

Sunoco sought to bump the case into arbitration, but U.S. District Judge Paul Diamond of the Eastern District of Pennsylvania found in May 2016 that Sunoco wasn't a party to the contract that included the arbitration clause, court records show.

In its Sept. 5 **decision affirming** the district court's decision, the Third Circuit's majority wrote that the credit card contract outlined the relationship between Citi and White but didn't even mention Sunoco.

Circuit Judge Jane Richards Roth, penning a dissent, said that multiple documents can make up a contract and that Sunoco's promotional materials about the partnered Citi credit card, together with the card agreement between White and Citi, make up the contract at issue in this case.

That makes Sunoco a party to the contract in a position to exercise its provisions, including arbitration, Judge Roth wrote.

Counsel for the parties didn't immediately respond to a request for comment Thursday.

White is represented by Richard M. Golomb, Ruben Honik, Kenneth J. Grunfeld and David J. Stanoch of [Golomb & Honik PC](#).

Sunoco is represented by Seamus C. Duffy, Kathryn E. Deal, Meredith C. Slawe and Katherine L. Villanueva of [Drinker Biddle & Reath LLP](#).

The case is Donald White v. Sunoco Inc., case number [16-2808](#), in the U.S. Court of Appeals for the Third Circuit.

--Additional reporting by Kat Greene. Editing by Jill Coffey.