

May 2026



Defendants Already Waived Right to Arbitrate By Litigation Conduct in Five-Month-Old Case

In *Kahal v. Justice for Housing, Inc.*, Plaintiff Rebekah J. Kahal brought suit against Defendants Justice for Housing, Inc. and Lesle Credle and asserted claims arising from her termination from employment. Five months after Kahal brought suit, Defendants moved to compel arbitration pursuant to an arbitration agreement Kahal had signed. Kahal opposed the motion, arguing that Defendants had waived the right to compel arbitration and enforce the agreement as a result of their conduct in the litigation. The Massachusetts Superior Court agreed with Kahal.

The Court first stated that waiver by conduct is considered a substantive issue of arbitrability presumptively reserved for a court to decide. The Court then explained that, as with any contractual right, the right to arbitration may be waived. “The essential question is whether, under the totality of the circumstances, the defaulting party acted inconsistently with the arbitration right.”

Here, the Court found that the Defendants had waived their right to arbitrate by: (i) invoking the jurisdiction of the court by filing two counterclaims in which they requested a jury trial; (ii) responding to discovery requests by producing documents and answering interrogatories; and (iii) participating in several 9C conferences. The Court also noted that Defendants did not raise arbitration as an affirmative defense in their answers to the complaint.

This case is another example of the importance of promptly raising any request to compel arbitration.

About OCM

OCM is boutique litigation firm based in Burlington, Massachusetts, whose clients include Fortune 500 companies as well as closely held businesses and astute individuals. OCM's attorneys help their clients not only resolve disputes but also avoid them altogether. Whether you are facing a courtroom battle, arbitration, mediation, or negotiation, OCM can help.





[View Our Website](#)

[Unsubscribe](#)

OCM Law 10 Burlington Mall Road Suite 301 Burlington, Massachusetts 01803 United States (781) 359-9000