

Review of Arbitral Award of Network Loan and Analysis of Construction of Implementation Review Rules

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Abstract: The network arbitration cases arising from the network lending disputes are pouring into the courts in large numbers. It is reported that the network arbitration system of some arbitration institutions even “can accept more than 10,000 cases every day,” while online lending is booming, it has also caused a lot of contradictions and disputes, and traditional dispute resolution methods have failed to effectively respond to the need for efficient and convenient resolution of online lending disputes. This paper tries to study the arbitral award of online loans and proposes the construction of implementation review rules.

Keywords: Online loan arbitration; Execute; Review rules; Construct

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1. Introduction

With the continuous development of the social economy, people’s lifestyle and consumption concepts have gradually changed, and the online lending platform supported by Internet technology has emerged, forming a P2P loan model. P2P is a new lending model in which individuals use online lending platforms to lend their idle funds to those who are short of funds^[1]. It has realized the successful transformation of private lending from “offline” to “online,” and has been accepted and recognized by more and more people due to its features such as easy operation, strong cash-out ability, low credit threshold, and fast approval procedures.

While facilitating the borrowing and lending of funds, P2P online lending platforms have prominent problems such as providing guarantees, collecting funds and charging high interest in disguise to evade laws, disrupting the order of the financial market, and causing a large number of lending disputes due to lagging laws and regulations, lack of government supervision, and uneven platform qualifications. The flexible, fast, unrestricted, and enforceable “arbitration” has become the preferred way for the parties to obtain the basis for execution. The enforcement cases of online lending arbitration awards accepted by the court have erupted. Even in the case of a significant pressure drop on P2P online lending platforms, there are still a large number of enforcement cases involving online lending arbitration awards flooding into the court. In the execution review

of such cases, the drawbacks of the one-sided pursuit of efficiency and neglect of case fact review, procedural norms, and unclear legal provisions are prominent ^[2].

This paper intends to study such cases, examine the problems existing in online lending arbitration award cases, and put forward normative opinions on the implementation review of such cases ^[3].

2. Implementation status of online lending arbitration awards

It is common for online lending arbitration awards to be rejected or not implemented due to various reasons, and the negative evaluation of implementation review leads to the loss of enforcement of online lending arbitration awards ^[4].

2.1. The number of enforcement cases of online lending arbitration awards has soared

The number of enforcement cases of online lending arbitration awards is large ^[5]. Online lending methods and arbitration award dispute resolution methods have the outstanding advantages of being fast and convenient, in the context of the emergence of a large number of online lending platforms, online lending arbitration award cases have also shown a trend of eruption, and the number of cases entering the court for enforcement review accounts for a large proportion.

2.2. The implementation of the online lending arbitration award is approved

Most of the applicants for the execution of online lending arbitration award cases are online lending platform companies, affiliated companies, or other companies and individuals who have obtained creditor qualifications through the transfer of claims. Only a very small number of online lending arbitration award cases are applied for execution by lenders, and the same subject applies to the execution of online lending arbitration award cases characterized by approval.

2.3. The execution review has more negative effects on online lending arbitration awards

The number of cases in which the application was rejected or not executed was high. After the parties have obtained the arbitration award ^[6], due to the borrower's failure to fulfill the repayment obligation, the lender has applied for the execution of the case, the parties raised objections or the court reviewed according to the authority, and the number of cases was ruled to reject the application and not to execute is relatively large.

3. Analysis of the causes of loss of enforcement of online lending arbitration awards

Through the analysis of the arbitral award enforcement cases of online lending that are ruled not to be executed or rejected, it is found that online lending cases lose their enforcement due to unclear review of the facts of the arbitration award, illegal procedures, and the implementation of the arbitration award is contrary to the public interest, and the implementation review procedures are lengthy and disorderly, which affects the enforcement effect of such cases ^[7].

3.1. The review of online loan contracts in arbitral awards is not strict

3.1.1. Failure to examine the existence of circumvention of legal supervision

To evade the supervision of laws and relevant departments, loan companies use the name of non-existent network lenders to carry out lending activities for unspecified borrowers as a legal form, and cover up their

illegal purposes of engaging in online financial lending activities^[8]. When the arbitration institution made the arbitration award, it did not review whether there was any circumvention of legal supervision in online lending. During the implementation review, the implementation of the arbitration award was ruled not to be implemented because it was against the public interest.

3.1.2. The legality of online lending is not examined

Online lending is a new model of private lending, and its essence is still private lending, which needs to comply with the constraints of relevant laws on private lending. However, there are still online lending platforms that provide intermediary services for lenders and borrowers and facilitate the establishment of a loan contract between the two sides, using the form of charging service fees, management fees, etc., to obtain high interest in disguise, and even deduct high “beheading interest” immediately after the loan is issued^[9]. In practice, arbitration institutions pay more attention to the efficient settlement of disputes, and when making arbitration awards, they do not review the validity of online lending contracts and the legality of contract contents, especially the situation that covers illegal purposes in legal forms is not deeply investigated, and finally, the arbitration award is ruled not to be implemented because of the illegal content^[10].

3.1.3. Failure to examine the authenticity and legality of the assignment of claims

In online lending arbitration award enforcement cases, only a small number of lenders directly claim rights, the majority of claims for arbitration and enforcement by the transferee of claims, multiple transfers of claims, and no transfer agreement are more common. After the arbitration institution accepts the case, it fails to verify the facts such as whether the creditor has obtained the subject qualification according to law, whether the transfer of the creditor’s rights is real and legal, and there may be situations in which the online lending platform transfers the creditor’s rights to others without compensation after the online lending platform has obtained the creditor’s rights, thereby empty-holing the online lending platform company and damaging the interests of the original creditor and the third party^[11]. During the execution, due to the free transfer of creditor’s rights, it was found that “providing a guarantee to the lender in the disguised form” and “collecting the lender’s funds,” which violated the mandatory provisions of the law, disrupted the order of Internet finance, increased the risk of Internet finance, and jeopardized the security of Internet finance, and was ruled not to be executed; It may also be because the applying executor has not signed a creditor’s rights transfer agreement with the lender, and under the premise of no creditor’s rights transfer, it is determined that the applying executor has not reached an arbitration agreement with the executed person, and the application is ruled to be rejected.

3.2. Issues of arbitration procedures affect the enforcement of arbitral awards

3.2.1. The examination of whether an arbitration agreement has been reached by the arbitration institution is not strict

In a large number of online lending arbitration cases, the arbitration commission, when accepting arbitration cases, reviews the arbitration clause or arbitration agreement mostly in a formal manner, and does not pay attention to whether the submission of arbitration is genuine and voluntary, which may lead to the imbalance between the rights of creditors and debtors. Some loan contracts signed by the lender and the borrower may not stipulate the way of dispute resolution, or it may stipulate that disputes should be brought to the people’s court, but in the process of performance, through supplements or changes, to create the illusion of reaching an arbitration agreement, and then apply for arbitration and obtain an arbitration award.

3.2.2. The arbitration service procedure is illegal

Through the analysis of the arbitration service procedure, it is found that for online lending cases, the arbitration institution's service procedure is simple, that is, electronic service is generally carried out through the email address and mobile phone number specified in the loan contract^[12]. Arbitration has the effect of a final award, and its service should refer to the service rules of civil litigation. Because the service procedure of arbitration documents is illegal, it may directly affect the loss of various rights of the parties.

3.2.3. Violation of “prior arbitration”

In the online lending relationship, some online lending platforms introduce arbitration for credit endorsement of lending transactions, and some arbitration institutions even expand their business scope by “pre-arbitration” in violation of regulations. When disputes do not occur after the lender and the borrower sign the loan contract, they apply to the arbitration institution for arbitration according to the agreement signed by both parties. The arbitration institution shall make an arbitration award with legal effect before the occurrence of a dispute and may apply for enforcement based on it once a dispute occurs.

4. Research on review standards and rules for the implementation of arbitral awards for online lending

To ensure the orderly implementation of the review, while taking into account the efficiency and effectiveness, we should first clarify the substantive review standards of such cases, screen them step by step according to the characteristics of online lending arbitration awards, achieve quick implementation of simple cases, fine handling of complex cases, unified review standards and legal application, and help improve the implementation effect.

4.1. Clarifying the scope of execution review and judgment standards

Compared with traditional arbitration cases, the arbitral award of online lending has a serious absence of the borrower, the lack of sufficient confrontation in arbitration, and the authenticity and legitimacy of the arbitral award in determining facts, accepting evidence, and applying procedures are difficult to guarantee. Therefore, the substantive review of such arbitral awards in the implementation is conducive to maintaining a fair and just social and economic order.

4.2. Clarifying the scope of authority to perform the review

According to Article 244 of the Civil Procedure Law of the People's Republic of China, if a party has evidence to prove that an arbitral award has violated procedural law, forged or concealed evidence, etc., it may apply to the enforcement court for not enforcing the arbitral award. At the same time, if the court considers that the enforcement of the award is against the public interest, it may also order not to enforce the award^[13]. Combined with the problems existing in the execution of arbitration cases of online lending, the author believes that for online lending, there are illegal lending, illegal lending, consulting fees, service fees, and other disguised high interest, beheading interest, as well as violation of mandatory provisions of the law, and even suspected of criminal crimes, but the arbitration award should be protected, It shall be determined that enforcement of the arbitral award will harm the public interest.

4.3. Clarifying the application of the law for rejection, rejection of applications, and non-enforcement

If the applicant submits incomplete materials and fails to supplement them or applies to a court without

jurisdiction for execution, the ruling of inadmissibility shall apply; If the arbitration award or arbitration mediation statement cannot calculate the specific amount due to the unclear subject, the amount of monetary payment or the calculation method, or the arbitration award is not corrected or explained due to errors in text or calculation, or the facts have been determined but the matters omitted in the award have not been corrected or explained, the case of “prior arbitration” exists, or if the application is found not to meet the conditions for acceptance after acceptance, the application shall be rejected by the ruling.

4.4. Clarifying the right relief channels

The existing law does not make clear provisions on the relief of ruling that the application is not accepted or rejected due to “advance arbitration”^[14]. In the author’s opinion, “advance arbitration” is denied because it deprives the parties of their basic procedural rights and violates the provisions of arbitration procedures, and it has no possibility of execution itself, and because the advance execution was formed before the dispute occurred, it has not substantively solved the problem. After the application for enforcement of the “advance arbitration” award is rejected, the parties may apply for arbitration or bring a suit in the people’s court in accordance with the arbitration agreement reached anew.

4.5. Simplifying the audit procedure for non-execution

The reasons for not implementing the arbitration award cases of online lending are concentrated in the lender’s illegal lending, high interest in guise, beheading interest, and other violations of the law^[12]. In the case of a large number of implementation cases of arbitration awards in online lending, and the arbitration institution’s review of illegal lending, high interest, and beheading interest is not strict, more cases have been ruled not to be implemented. The parties concerned may be granted the right to apply for reconsideration, that is, if the parties are not satisfied with the non-enforcement order, they may apply for reconsideration to the people’s court at the next higher level, and the court at the next higher level shall conduct a substantive review of the case in accordance with the law, which solves the problem that the non-enforcement affects the juridical power of the arbitral award and avoids affecting the efficiency of enforcement due to lengthy procedures.

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Exploring the establishment of rules for the execution and review of online lending arbitration award cases is of positive significance for resolving the inconsistent standards and procedures of judicial review and improving the efficiency of execution.

Disclosure statement

The author declares no conflict of interest.

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