masuda funai

News & Types: Commercial, Competition & Trade Update

Another Failed Effort to Overturn Arbitration Award

12/4/2017

Practices: Commercial, Competition & Trade, Litigation

In several previous Risk Management Updates, we have reported on losing parties' challenges to an arbitration award. While challenging an arbitration award is difficult, it is not impossible, as shown by the following cases discussed in earlier updates:

- An arbitration award was successfully challenged due to the bias of the arbitrator, the misconduct of counsel for the winning side, and the overall conduct of the arbitration. We called it "The Arbitration from Hell" as a glaring example of an arbitration that should not have been upheld. Link to article.
- An arbitration award was successfully challenged based on the panel's exceeding its authority and unjustified reliance on a contract disclaimer. Link to article. This was an opinion by Judge Posner of the 7th Circuit Court of Appeals and Judge Sykes wrote a vigorous dissent, arguing that even this type of error should not result in overturning the arbitration award.

But overturning an arbitration is still difficult, as shown by another 7th Circuit case that so annoyed the court that the court suggested it would have imposed sanctions on the loser for challenging the award, except for the fact that the loser was required to pay attorneys' fees by agreement anyway. Link to article.

Another recent 7th Circuit case illustrated the difficulty of challenging arbitration awards and the court's impatience with parties who try to do so. *(Hyatt Franchising, L.L.C. v. Shen Zhen New World I, LLC, and Shen Zhen New World Investment (USA) Inc., 7th Circuit Court of Appeals, No. 17-2071, decided November 28, 2017)*

In September 2012, Hyatt and Shen Zhen New World I entered into an agreement providing that Shen Zhen would renovate a hotel in Los Angeles and operate it using Hyatt's business methods and trademarks. Without going into much detail about the dispute, Judge Easterbrook (who wrote the opinion) noted that Hyatt claimed Shen Zhen breached and took the dispute to arbitration. Hyatt won an award of $7.7 million and attorneys' fees of $1.3 million.

Shen Zhen challenged the award. As it turned out, Shen Zhen was represented by an attorney named Lynn Cadwalader. Cadwalader joined DLA Piper, Hyatt's law firm, in 2015, three years after the Hyatt – Shen Zhen agreement was concluded and two years after she stopped working for Shen Zhen. Shen Zhen wanted to depose Cadwalader, but the arbitrator refused. The arbitrator also refused to disqualify DLA Piper.

Clearly the court did not see this as a close case. Regarding the arbitrator's refusal to allow Cadwalader's deposition, Judge Easterbrook noted that, "[N]othing in the Federal Arbitration Act requires an arbitrator to

©2026 Masuda, Funai, Eifert & Mitchell, Ltd. All rights reserved. This publication should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended solely for informational purposes and you should not act or rely upon information contained herein without consulting a lawyer for advice. This publication may constitute Advertising Material.

allow any discovery. Avoiding the expense of discovery . . . is among the principal reasons why people agree to arbitrate." In an implied dig at Hyatt's counsel, DLA Piper, Judge Easterbrook pointed out that Hyatt's more than $1 million in attorneys' fees suggested plenty of discovery occurred.

In addition, Cadwalader's representation of Shen Zhen in 2012 had no bearing on Shen Zhen's later breach. The contract included a customary integration clause that prevented looking at the negotiations to interpret the contract. Finally, the court dismissed Shen Zhen's far-fetched claim of unconscionability as seldom available in a commercial transaction between sophisticated parties.

Judge Easterbrook was equally dismissive of Shen Zhen's efforts to disqualify DLA Piper, Hyatt's counsel, because Cadwalader, representing Shen Zhen in the transaction, joined DLA Piper three years later. In fact, the court did not even discuss the merits. The arbitrator's decision, even if erroneous, is one the arbitrator was free to make without judicial intervention. The Federal Arbitration Act allows for judicial intervention in case an arbitrator commits "misbehavior", not an error.

> "Perhaps Shen Zhen believes that Cadwalader or other lawyers at DLA Piper have engaged in misbehavior, and if so it can complain to the state bar, but the arbitrator is free of any plausible charge of misbehavior – and only misbehavior by the arbitrator comes within the [Federal Arbitration Act]."

Then, citing earlier 7th Circuit cases, Judge Easterbrook took a very expansive view of the authority of arbitrators.

> " . . . [A]n arbitrator acts as the parties' joint agent and may do anything the parties themselves may do. . . . If they may reach a compromise over some legal issue without being accused of "violating the law," then the arbitrator may do so on their behalf."

One situation in which an arbitrator exceeds his or her authority is when an award impacts 3rd parties who are not part of the arbitration. But clearly that was not the case here.

Again, the 7th Circuit expressed its irritation and impatience with a party who agrees to arbitrate, loses, and then complains about the award.

> "More than 25 years ago, this court held that commercial parties that have agreed to final resolution by an arbitrator, yet go right on litigating, must pay their adversaries' attorneys' fees... The American Rule requires each side to bear its legal fees in an initial round, but an entity that insists on multiplying the litigation must make the other side whole for rounds after the first. Section 14.4 of the contract between Hyatt and Shen Zhen includes a fee-shifting clause... but if the parties cannot agree on how much Shen Zhen owes for pointlessly extending this dispute through the district court and the court of appeals, Hyatt should apply for an appropriate order. [citation omitted]"

This statement is very similar to the case discussed above where the court also said that, but for the fee shifting provision in the agreement, it would have awarded sanctions against the arbitration loser. So there are clearly risks in challenging an arbitration.

©2026 Masuda, Funai, Eifert & Mitchell, Ltd. All rights reserved. This publication should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended solely for informational purposes and you should not act or rely upon information contained herein without consulting a lawyer for advice. This publication may constitute Advertising Material.

It is interesting to note that the opinion by Judge Posner cited above overturning an arbitration award may not have met the criteria that Judge Easterbrook set forth. Now that Judge Posner has retired from the bench, arbitrations may be even more difficult to challenge in the 7th Circuit.

©2026 Masuda, Funai, Eifert & Mitchell, Ltd. All rights reserved. This publication should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended solely for informational purposes and you should not act or rely upon information contained herein without consulting a lawyer for advice. This publication may constitute Advertising Material.