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Don't Ignore the Procedural Requirements in Arbitration



Contracting and disputing parties agree to arbitration for varying reasons. These may include the right to select the arbitrator, the privacy of the procedure, and the earlier resolution of the matter with potentially lesser expense by reason of flexible rules of discovery and evidence.

Unquestionably, equally important to many parties is that arbitration awards are almost always final as the circumstances under which a party may seek to appeal are very limited. Moreover, this finality is generally reflected in court reluctance to vacate or reverse an arbitration award.

Accordingly, when a party feels that there is a basis upon which it may seek to have an arbitration award vacated, particular care should be taken to scrupulously conform to the applicable statutes as well as the procedural rules of both

courts and arbitration providers as judges will not hesitate to deny such motions unless such requirements have been met.

Recently, a party found that its motion to vacate an arbitration award was denied not based on any substantive issue, but simply because its motion had not been timely served. See *O'Neal Constructors v. DRT America*, 991 F.3d 1376 (11th Cir., April 1, 2021).

The matter involved a contractual dispute. The contract provided:

“Any claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the agreement.” (AAA Construction Rules).

On Jan. 7, 2019, the arbitration panel issued a final award consisting of two parts. Part one awarded a sum in favor of O'Neal and against DRT based upon the underlying dispute. Part two related to a claim for O'Neal's attorney fees which the arbitration panel determined DRT was required to pay. DRT paid the first part of the award but refused to pay the second part relating to attorney's fees. Accordingly, O'Neal, on April 4, 2019, filed a complaint in the state court seeking to confirm the award. This case was removed to the federal court on April 11.

On April 5, 2019, in a separate case in the state court, DRT filed a motion to vacate that part of the arbitration panel's decision awarding of attorney fees. That same night DRT's counsel emailed to O'Neal's counsel a “courtesy copy” of DRT's signed and dated 20-page memorandum in support of its motion to vacate. Subsequently, on April 30, 2019, DRT had the U.S. Marshal serve DRT'S federal court motion to vacate the award of attorney fees on O'Neal at its corporate headquarters.

The two cases were consolidated. The district court confirmed the arbitration award and denied the motion to vacate. This denial was based on the conclusion that O'Neal had not consented to service by email; and that even if it had, the email was insufficient in that it only included a copy of the memorandum in support of the motion but not a copy of the motion itself.

In affirming the ruling of the district court, the circuit court analyzed the interaction of the Federal Arbitration Act, 9 U.S.C. (FAA), the Federal Rules of Civil Procedure (F.R. Civ. P.) and the AAA Construction Rules. **[READ MORE..](#)**

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