Arbitration Award Confirmed Despite Denial of Discovery and Evidentiary Hearing

Judge Abraham J. Gafni (Ret.)
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Recently, a federal court confirmed an arbitration award in an amount in excess of $185 million in a proceeding in which the arbitrator denied the respondent the opportunity for discovery as well as an evidentiary hearing. See *245 Park Member v. HNA Group (International)*, No. 22-cv-1536-(JGK) (S.D.N.Y. July 25, 2022). What warranted such an unusual result?

The matter involved the investment by petitioner in an affiliate of respondent. As consideration and express inducement for its investment, petitioner secured contractual rights and protections including an absolute and unconditional guaranty from respondent and others. The guaranty contained an arbitration provision that provided in part:

“In the event of any dispute under this guaranty, such dispute shall be submitted to final and binding arbitration in New York, New York, administered by JAMS in accordance with JAMS streamlined arbitration rules and procedures … Each party shall submit to such arbitrator its position on each matter in dispute and any applicable materials that it desires that such arbitrator consider in making its determination within seven business days following the appointment of the arbitrator. Such arbitrator shall consider only the materials submitted to it for resolution. Each party shall cooperate with JAMS and with the other parties in scheduling the arbitration proceedings so that a final nonappealable award is rendered within 30 calendar days after submission thereof to arbitration ”

The petitioner commenced an expedited JAMS arbitration, contending that the respondent’s obligations under the guaranty had been triggered. The respondent argued that it was entitled to an evidentiary hearing under the JAMS rules, which had been incorporated into the parties’ arbitration agreement, and both discovery and an

evidentiary hearing as a matter of due process to investigate petitioner's claims of fraud and in pari delicto defenses.

The petitioner responded that the parties had agreed to waive discovery and an evidentiary hearing by the clear and unambiguous terms of the arbitration agreement.

The arbitrator issued a scheduling decision in which she concluded that, "It is clear from the express language of the guaranty that the parties agreed to an expedited arbitration process that include waiving discovery and an evidentiary hearing." She further noted that in light of the expedited schedule set out in the arbitration agreement, the parties "clearly did not contemplate time for discovery." Moreover, "there is no time allocated for a hearing and no language providing for one …"

The parties submitted their merits submissions within seven days following the issuance of the scheduling decision. The arbitrator issued her award in favor of the petitioner within 30 days of such submissions, as called for in the arbitration agreement. The award included all of the damages sought by petitioner plus reasonable attorney fees and costs, and all and all fees and disbursements due to JAMS. The award explicitly noted that the arbitrator had "examined the submissions, proofs, pleadings allegations, of the parties as well as the numerous letters, exhibits and caselaw provided by counsel."

In considering the opposing motions to confirm and vacate the award, the district court noted the following general principles:

- The review of arbitration awards is very limited in order to avoid undermining the twin goals of arbitration, namely settling disputes efficiently and avoiding long and expensive litigation.
- A high hurdle must be cleared to vacate an award.
- An arbitrator's contract interpretation is entitled to substantial deference as is the arbitrator's assessment of the evidence.
- A court may not conduct a reassessment of the evidence; that it may disagree with the arbitrator's assessment of the evidence is not sufficient to vacate an arbitration award under the Federal Arbitration Act, sec. 10(a)(3).

In light of these considerations as well as the reasons set forth by the arbitrator, the court confirmed the award and denied the motion to vacate. The court rejected the argument that that the arbitrator's decision denying the respondent's request for discovery and an evidentiary hearing was fundamentally unfair and contrary to the parties' arbitration agreement. The court instead recognized that "an award is

fundamentally unfair if the arbitrator did not give each of the parties to the dispute an adequate opportunity to present its evidence and argument." Put another way, an arbitration proceeding is fundamentally unfair only if the challenging party's "right to be heard has been grossly and totally blocked … Arbitrators are afforded broad discretion to determine whether to hear evidence or not hear evidence, or whether additional evidence is necessary or would simply prolong the proceedings … There is … no bright line that requires an arbitrator to conduct oral hearings … As long as the arbitrator's choice to render a decision based solely on documentary evidence is reasonable and does not render the proceeding 'fundamentally unfair,' the arbitrator is acting within the liberal sphere of permissible discretion."

In rejecting the contention of the respondent, the court accepted the reasoning of the arbitrator noted above that the parties had "agreed to an expedited arbitration process that included waiving discovery and an evidentiary hearing."

The court parenthetically added in this regard that "the parties-sophisticated entities-bargained for this streamlined proceeding. The very purpose of the guaranty is to provide prompt payment if a triggering event occurs."

An additional factor supported the court's conclusion. The subject matter of the arbitration fell under the "New York Convention" 9 U.S.C. sec 201 et seq., which provides that an award may be vacated if, among other things, "the arbitral procedure was not in accordance with the agreement of the parties." The respondent again argued, therefore, that the procedure imposed by the arbitrator was contrary to the terms of the arbitration agreement. This argument was similarly rejected for the reasons set forth above. "If the arbitrator has provided even a barely colorable justification for his or her interpretation of the contract, the award must stand."

In summary, the arbitrator had, in fact, analyzed the terms of the arbitration agreement. The arbitrator recognized that the JAMS rules do generally provide for discovery and a hearing. She noted however that these rules also explicitly allow parties to waive an oral hearing and agree on procedures not contained within them; and her reading led her to the conclusion that the terms of the arbitration agreement conflicted with and displaced the JAMS rules providing for discovery and a hearing.

This case suggests that when drafting arbitration agreements, parties must consider whether and to what extent they wish to deviate from the provisions of an arbitration statute or the rules of the chosen arbitration provider. Such amendments may, indeed, lessen discovery, costs and delays and may even provide for an earlier decision. On the other hand, it is possible that down the road a party may find, as the respondent

did here to its regret, that the procedure it has waived as a cost-saving or efficiency matter now impedes its attempts to present the evidence supporting its position.

One other factor, not addressed directly by the court, was alluded to in the opinion. The court here mentioned, without further comment, that the parties which bargained for this “streamlined agreement proceeding ” were “sophisticated entities.” One should consider whether the same result would have followed if the situation had not involved, as here, the purchase of multimillion-dollar Park Avenue real estate in New York City, but an arbitration agreement drafted by a company setting forth the required procedures to resolve disputes with its consumers.

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