
Arbitrator's Decision Stands Despite Manifest Disregard for Law

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Even if an arbitrator exhibits a manifest disregard for the law in rendering an award, that award may survive a court appeal. A recent case in Georgia, *Progressive Data Systems, Inc. v. Jefferson Randolph Corp.*, demonstrates that judicial deference to an arbitration award may allow an arbitration award to stand, even where the arbitrator clearly ignores relevant law.

Progressive Data Systems, Inc. involved a buyer of computer equipment and software which sued the seller for fraud. The seller counterclaimed for unpaid fees. The arbitrator awarded the seller \$81,540, plus attorney fees and administrative fees and expenses. On appeal, the Georgia Court of Appeals reversed the award, finding that the arbitrator manifestly disregarded the law by awarding damages for future license fees which he knew to be an unenforceable penalty. The Georgia Supreme Court reversed again, and reinstated the award. Relying on Georgia's state arbitration code, the Georgia Supreme Court ruled that an arbitration award could only be vacated under four statutory grounds: (1) corruption, fraud or misconduct in procuring the award; (2) bias on the part of the arbitrator; (3) overstepping of the arbitrator's authority; and (4) failing to follow the procedure of the state arbitration code. The Court found that because manifest disregard of law is not one of the grounds expressly listed in the state arbitration code, it could not be used as a ground for vacating an arbitration award.

Most courts have held that mere error of law is not a basis for overturning an arbitrator's award. See e.g. *Tanoma Mining Company v. Local Union No. 1269 United Mine Workers of America*, 896 F.2d 745, 748 (3d Cir 1990) and *Richmond, Fredericksburg & Potomac R. Co. v. Transportation Communications Intern. Union*, 973 F.2d 276 (4th Cir. 1992). Manifest disregard of the law presents a more serious dilemma for courts. Manifest disregard of the law means that there is a well defined, explicit and clearly applicable law which the arbitrator knew yet either refused to apply it or disregarded it altogether.

Whether a court will override an award due to "manifest disregard of the law" may depend on whether the question arises in state or federal court. State courts vary on this issue. State courts are governed by individual state arbitration statutes, which can differ on the grounds for vacating an arbitration award. In addition to Georgia, courts in California, Massachusetts, New Jersey and the

District of Columbia have found that, even with a manifest disregard of the law, courts are not permitted to extend judicial review beyond the parameters listed in the relevant state arbitration statute. See, for example, *Siegel v. Prudential Insurance Company of America*; *Massachusetts Highway Department v. Pernini Corporation*, 14 Mass.L.Rptr 452 (2002); *Tretina Printing, Inc. v. Fitzpatrick & Associates*, 135 N.J. 349, 640 A.2d 788 (1994) (but see *Selected Risks Ins. Co. v. Allstate Ins. Co.*, 432 A.2d 544 (NJ 1981)); and *Tauber v. Crow Real Estate Services* at FN 5. Other states, such as Delaware (*Beebe Medical Center, Inc v. InSight Health Services Corp.*, 751 A.2d 426, 441) (1999), New York (*Spear, Leed & Kellogg v. Bullseye Securities, Inc.*, 738 N.Y.S.2d 27) (N.Y. App. Div. 2002) and Virginia (*United Paperworkers Intern. Union, AFL-CIO v. Chase Bag Co.* 281 S.E.2d 807(Va., 1981) have vacated arbitration awards due to an arbitrator's manifest disregard of law, even though it is not expressly stated as ground for judicial review in their arbitration statutes.

In federal courts, a manifest disregard of the law standard has been recognized as a ground for vacating an arbitration award. The U.S. Supreme Court has stated that parties are bound by an arbitrator's decision, so long as that decision is not in manifest disregard of the law. *First Options of Chicago, Inc. v. Kaplan*.

Can parties to a contract address this issue themselves, and specifically permit a court to reject the arbitrator's decision based on manifest disregard of law? On the state level, courts in Indiana, see *Northern Indiana Commuter Transportation District v. Chicago Southshore and South Bend Railroad* have been willing to allow parties to expand grounds for judicial review, while courts in California, see *Crowell v. Downey Community Hospital Foundation*, and Washington, see *Barnett v. Hicks*, have refused to do so. On the federal level, although manifest disregard is already a ground for rejecting the decision, the U.S. Supreme Court has ruled that parties are free to specify by contract the rules under which the arbitration will be conducted, *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ*. There has been disagreement among the circuits as to whether the parties' right to contract as to valid grounds for appeal of an arbitral award can include an expansion of judicial review to grounds not specifically mentioned in the relevant arbitration statute or recognized under earlier cases. Some circuits have allowed for the enforcement of an expanded judicial review provision: (*Lapine Tech Corp. v. Kyocera Corp.*, and *Gateway Tech. Inc. v. MCI Telecomm. Corp*. Others, however, have not supported expanded judicial review. *UHC Management Co. v. Computer Sciences Corp.*; and *Chicago Typographical Union No. 16 v. Chicago-Sun Times Inc.*, 935 F.2d 1501 (7th Cir. 1991).

In conclusion, the grounds for reversing an arbitrator's decision, as well as the ability of parties to expand on those grounds by contract, vary from state to state as well as on the federal level. When relying on contractual arbitration clauses to resolve disputes, care should be taken to consider how these issues are addressed by the jurisdiction whose laws are chosen to govern the agreement, balancing the interests of finality of an arbitral award against the ability to correct an award so as to meet the expectations of the parties.

with contributions from summer associate Reena Vaidya