WILMERHALE

Supreme Court Rejects Expanded Judicial Review of Arbitral Awards in *Hall Street v. Mattel*

APRIL 3, 2008

On March 25, in *Hall Street Associates, L.L.C. v. Mattel, Inc.,* No. 06-989 (US March 25, 2008), the Supreme Court, by a 6–3 vote, held that the enumerated grounds for judicial review of an arbitral award set out in the Federal Arbitration Act, 9 U.S.C. §§ 1, et seq. (FAA or Act), are "exclusive," and that contracting parties cannot expand the scope of judicial review of an arbitral award under the Act. In its decision, the Court also considered, but did not decide, whether "manifest disregard of the law" provides a further ground for vacatur of arbitral awards in addition to those listed in § 10 of the FAA.

The FAA's Grounds for Review of Arbitral Awards Are Exclusive

The federal courts of appeal have long been divided on the question of whether judicial review of an arbitration award under the FAA was limited to the grounds listed in §§ 10 and 11 of the Act, or whether the parties could expand the scope of judicial review by agreement. The Tenth Circuit and (in dicta) the Eighth Circuit had found that the FAA's enumerated grounds for judicial review were exclusive, whereas the First, Third, Fifth, Sixth, and (in dicta) Fourth Circuits had held that parties could validly agree to broader judicial review under the FAA. In *Hall Street,* the Court reviewed and affirmed a decision of the Ninth Circuit that the FAA's enumerated grounds are "exclusive."

The Court concluded that the text of the FAA requires this decision. First, the grounds for vacatur in §§ 10 and 11 of the FAA address "egregious departures from the parties' agreed-upon arbitration," including corruption, fraud, evident partiality, and misconduct. Applying the maxim *ejusdem generis*, the Court concluded that there was no basis for concluding that statutory sections emphasizing "extreme arbitral conduct" also permitted review for "just any legal error."

The Court noted the mandatory nature of § 9 of the FAA, which provides that a court "must grant" confirmation of an award unless the award is vacated "as prescribed in sections 10 or 11." The Court contrasted this unequivocal language with § 5 of the FAA, which clearly sets out a default provision (for appointment of arbitrators) that the parties may alter by agreement. Concluding that Hall Street's argument was "fighting the text," the Court concluded that it "makes more sense" to

view the FAA as providing "just the limited review needed to maintain arbitration's essential virtue of resolving disputes straightaway."

Review for "Manifest Disregard of the Law"

The Court also commented on a line of cases in the courts of appeals that permit vacatur of arbitral awards where the arbitrator has engaged in "manifest disregard of the law." Hall Street invoked those cases--which rest on dicta in the Supreme Court's now-overruled 1953 decision of *Wilko v. Swan*--as evidence that the FAA provided for judicial vacatur of awards on grounds not specifically enumerated in § 10. The Court concluded that *Wilko* did not support an argument that parties acting through a contract (as opposed to courts interpreting the FAA) could supplement the grounds for review under the FAA.

The Court went further, however, suggesting that it was possible to interpret *Wilko's* use of the phrase "manifest disregard" as a reference to § 10's grounds "collectively, rather than adding to them," or as shorthand for the subsections allowing vacatur when arbitrators were guilty of "misconduct" or "exceeded their powers." The Court did not ultimately decide whether *Wilko* had created a new ground for judicial review or had merely referred to the statutory grounds in § 10 collectively. Nor did the Court rule out the possibility that an arbitrator who "manifestly disregarded" the law likewise engaged in misconduct or an excess of powers, which could permit vacatur under the FAA's enumerated grounds.

Other Avenues for Review of Arbitral Awards

Although the Court rejected the possibility of expanded judicial review under the FAA, it left open the possibility that parties might seek broader judicial review without relying on the FAA. First, the Court suggested that parties could seek review of awards under "state statutory or common law." Second, the Court noted the possibility that, because the arbitration agreement in *Hall Street* was entered into in the course of district court litigation, the agreement could be considered a case management order of the district court. If so, the district court may have the ability to provide for broader review of awards without running afoul of the FAA. The Supreme Court remanded to the Ninth Circuit to address this argument, which had not previously been considered.

An expanded version of this note, authored by Mark Fleming, can be found on the website of the ABA's Alternative Dispute Resolution Committee. Matthew Draper in New York contributed to this note.

Authors

Steven P. Finizio

PARTNER

steven.finizio@wilmerhale.com

+44 (0)20 7872 1073

Mark C. Fleming

PARTNER

Co-Chair, Appellate and Supreme Court Litigation Practice

mark.fleming@wilmerhale.com

+1 617 526 6909

David W. Bowker

PARTNER

Partner-in-Charge, Washington DC Office

david.bowker@wilmerhale.com

+1 202 663 6558

David W. Ogden

PARTNER

Chair, Government and Regulatory Litigation Practice Group

david.ogden@wilmerhale.com

+1 202 663 6440

Rachael D. Kent

PARTNER

Vice Chair, International Arbitration Practice Group

rachael.kent@wilmerhale.com

+1 202 663 6976