

CASE UPDATE: Texas Supreme Court Issues Opinion Holding That Parties Can Seek Expanded Judicial Review of Arbitration Awards in Texas Under TAA

CONSTRUCTION LAW TELEPHONE CLE SEMINAR

TUESDAY, JUNE 7, 2011 ♦ 12:30 P.M. – 1:30 P.M. CENTRAL TIME

Presented by: David F. Johnson, Winstead PC, Fort Worth, Texas

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One of the main concerns that litigants have about arbitration is that there is very little appellate review. The fear of a “run-away” arbitrator with no real judicial review of an award has resulted in parties taking out arbitration clauses and inserting jury waiver clauses in their contracts. But a recent Texas Supreme Court opinion alleviates some of the judicial review concerns that have stigmatized arbitration and may once more make arbitration a more attractive alternative to the public justice system.

As background, the United States Supreme Court held that the Federal Arbitration Act’s grounds for vacatur and modification “are exclusive” and cannot be “supplemented by contract.” *Hall Street Associates, L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 578 (2008). Under that decision, parties’ attempts to contract for expanded judicial review of an arbitrator’s award are unenforceable.

The Texas Supreme Court recently held the opposite regarding the Texas General Arbitration Act (“TAA”). See *Nafta Traders, Inc., v. Quinn*, No. 08-0613, 2011 Tex. LEXIS ___ (Tex. May 13, 2011). In *Nafta Traders*, an employee sued her employer for sex discrimination in violation of state law. The dispute was sent to arbitration, where the employee prevailed. The employer challenged the award in court, arguing that it contained damages that were either not allowed or for which there was no supporting evidence. The arbitration agreement stated that “The arbitrator does not have authority (i) to render a decision which contains a reversible error of state or federal law, or (ii) to apply a cause of action or remedy not expressly provided for under existing state or federal law.” *Id.* The employer alleged that the arbitrator exceeded his authority in making the award. The trial court confirmed the award, and the court of appeals held that the employer could not assert its complaints citing the *Hall Street* opinion.

The Texas Supreme Court held that under the TAA, parties can expand judicial review of an arbitrator’s award. If the parties limit an arbitrator’s authority to render awards, e.g., cannot make awards that contain errors of law or fact, then the parties can provide for further and more detailed judicial review of the award. The Texas Supreme Court stated: “We must, of course, follow *Hall Street* in applying the FAA, but in construing the TAA, we are obliged to examine *Hall Street’s* reasoning and reach our own judgment.” *Id.* The Court then concluded:

Under the TAA (and the FAA), an arbitration award must be vacated if the arbitrator exceeds his powers. Generally, an arbitrator’s powers are determined by agreement of the parties. Can the parties agree that the arbitrator has no more power than a judge, so that his decision is subject to review, the same as a judicial decision? *Hall Street* answers no, based on an analysis of the FAA’s text that ignores the provision that raises the problem, and a policy that may be at odds with the national policy favoring arbitration. With great respect, we are unable to conclude that *Hall Street’s* analysis of the FAA provides a persuasive basis for construing the TAA the same way.... Accordingly, we hold that the TAA presents no impediment to an agreement that limits the authority of an arbitrator in deciding a matter and thus allows for judicial review of an arbitration award for reversible error.

The Court then held that the FAA would not preempt the TAA’s allowance of expanded judicial review for an arbitration award enforceable under both the FAA and the TAA. The Court then remanded the case to the court of appeals for further review of the employer’s grounds.

This case will have an important impact on the review of arbitrators’ awards where the parties choose to retain the right to challenge errors of fact or law.

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