
Second Circuit Vacates Award for Manifest Disregard of the Law

By Justin Kelly, ADRWorld.com

(8.20.2007) Emphasizing that arbitration panels must follow clearly explained law on a statutory award of attorney's fees to a prevailing party, the U.S. Court of Appeals for the Second Circuit recently vacated an arbitration award based on the rarely successful manifest-disregard-of-the-law doctrine.

In an Aug. 7 opinion in [Bernhard B. Porzig v. Dresdner, Kleinwort, Benson, North America LLC](#) (No. 06-1212), the appeals court noted that the district court vacated the original attorney's fee award for manifest disregard of the law and that the panel, when it issued a modified award, disregarded the moving party's clear explanation of settled law on the issue of attorney's fees and the district court's direction that the panel award such fees under the Age Discrimination in Employment Act (ADEA).

David White, an attorney with White & Associates in New York and an adjunct professor at Fordham University School of Law, said the ruling provides "a useful reality check against the wrongly held belief that arbitral panels can exercise unfettered discretion." He said the holding also is consistent with Supreme Court jurisprudence regarding the prohibition against capping attorney fee awards where statutory authority is to the contrary.

Calling the ruling a "huge deal," Steven B. Caruso, an attorney with Maddox, Hargett & Caruso in New York, said the ruling "sends a powerful warning shot to all arbitrators that they must award all statutory remedies to successful claimants."

Terry L. Trantina, an attorney with Stern & Kilcullen in Roseland, N.J., pointed out that the court was clearly upset by the facts of the case and made sure that its opinion could not be used to expand the doctrine of manifest disregard beyond the rather unusual facts presented there.

Case History

The case arose out of Bernhard Porzig's termination of employment in January 1998. Porzig sued his employer, Dresdner, Kleinwort in federal court, alleging violations of the ADEA. The suit was stayed and referred to arbitration according to a contract between the parties. The arbitrators found in Porzig's favor and awarded him compensatory and punitive damages. But in direct contravention of the ADEA, they did not award him attorney's fees and costs. Instead, they assessed him forum, filing and arbitration fees.

Porzig filed a motion in district court to modify the award to grant him his attorney's fees and vacate the portion of the award that assessed fees against him. The district court vacated the entire award. It found that the arbitrators acted in manifest disregard of the law with regard to the attorney's fee issue, finding ample evidence that the arbitrators had been made aware of the applicable law but either refused to apply it or ignored it altogether. The court also found that the arbitrators improperly assessed costs against Porzig. The court remanded the case to the arbitrators to determine Porzig's reasonable attorney's fees and directed it to assess costs against Dresdner.

On remand in arbitration, Porzig submitted a memorandum of law that clearly stated that under applicable case law, he was entitled to recover for the time his attorney spent preparing the fee application and for litigating the attorney's fee claim. Dresdner opposed the fee application and its papers argued that the contingency fee arrangement between Porzig and his attorney should set the maximum limit that Porzig could recover under the fee shifting statute and, in any event, an award of attorney's fees might not be necessary to achieve the

purposes of the statute in the circumstances of this case.

The panel, in a modified award, awarded Porzig \$83,500 in attorney's fees and costs, which was almost exactly the amount of his attorney's contingency fee. The panel also ordered his attorney to remit that fee back to Porzig.

Porzig filed a motion to vacate the modified award and direct the panel to recalculate his attorney's fees using the "lodestar" method. This method calls for the decision maker to take into account the case-specific variables courts have identified as being relevant to determine reasonable legal fees. This time the district court denied the motion to vacate and Porzig appealed.

Panel Ignored Clearly Explained Law

The Second Circuit vacated the district court's judgment after finding that the panel's modified award was issued partially in violation of the statute and in manifest disregard of the law. It remanded the case back to the district court with instructions to determine the appropriate amount of attorney's fees to award to Porzig.

After noting the extreme deference that courts give to arbitration awards in order to foster the basic premise of arbitration as an efficient and cost-effective form of dispute resolution, the court observed that awards are "not totally impervious to judicial review."

In deciding that the award must be vacated, the court identified a number of circumstances in the case that it said were of great concern. These included (1) the district court's decision to vacate the initial award on the ground of manifest disregard of the law, (2) the panel's ruling that Porzig's counsel remit the contingency fee back to Porzig, (3) Porzig accurately described the controlling law on attorney's fees to the panel, while Dresdner's arguments that the contingency fee should limit Porzig's recovery and that the statute may not require an award of attorney's fees in this case were "contrary to law," and (4) the panel's failure to explain how it came up with an attorney's fee award that was virtually identical to Porzig's attorney's contingency fees.

The court said that taken individually, these circumstances would not be enough to alter the deference given to arbitration awards, but taken together, they "create, if not the perfect storm, then a disturbance ample enough to give us pause." Despite the narrow lens through which the court reviews arbitration awards, it concluded that the modified award had to be overturned.

First the appeals court explained that the panel was "plainly without jurisdiction" to order Porzig's lawyer to pay the contingency fee back to his client. The court reasoned that the arbitrator's authority resides in the contract and here Porzig's attorney had no relationship with the panel except as an attorney representing a client in arbitration.

Next, the court addressed the panel's modified attorney's fee award, focusing on the circumstances in which it was issued. The court emphasized the absence of any explanation by the panel of the attorney's fee award—the very issue that led to the district court's decision to vacate the award in the first place. Given this, plus the fact that the panel exceeded its authority with respect to one part of the award, the court said it could consider the lack of an explanation in deciding whether the panel acted in manifest disregard of the law.

The court said in a footnote that this ruling does not require arbitrators to explain their awards. It suggested, however, that where an award is vacated based on manifest disregard of the law, a panel "would consider its subsequent actions with careful regard."