



Top NY Court Sets High Bar for Challenging Arbitration Awards

By Staff Reporters, ADRWorld.com

(2.28.2006) New York's highest court last week set a tough standard for challenges to arbitration awards on the grounds that the arbitrator disregarded the law, ruling that legal principles and statutes must have deliberately ignored to justify vacating an arbitrator's decision.

In its Feb. 21 opinion in *Wien & Malkin, LLP et al. v. Helmsley-Spear, Inc.* (No. 10), the New York Court of Appeals said a party must show an arbitrator knew of but refused to apply a legal principle and disregarded a well-defined and clearly applicable law before a court may vacate an award based on a manifest disregard of the law.

According to Howard Graff, counsel for Helmsley-Spear, said the opinion "sets the bar for challenging an arbitral decision at an extremely high level with regard to manifest disregard of the law," adding that it "obviously will have broad application in as much as it will apply to virtually all arbitration proceedings in New York."

David White, an attorney with White & Associates in New York and an adjunct professor at Fordham Law School, said the ruling boosts the authority of arbitration panels. He said it establishes that "only in the rarest instance will the court disturb the independent factual findings of a panel."

The case arose out of a dispute over the attempted termination by Wien & Malkin of Helmsley-Spear's management contract covering eleven Manhattan properties. After Wien & Malkin obtained the agreement of three owners to terminate the agreement Helmsley-Spear obtained an injunction and an order directing the parties to arbitration.

A three-member arbitration panel heard testimony over 60 days and ruled in favor of Helmsley-Spear. The panel found Helmsley-Spear, Inc. was the successor to the former Helmsley-Spear Corporation and entitled to enforce its contracts.

A trial court confirmed the award and the Appellate Division, after concluding the Federal Arbitration Act did not apply, upheld the confirmation. The U.S. Supreme Court granted certiorari and vacated the Appellate Division's ruling, remanding the case based on its ruling in *Citizens Bank v Alafabco, Inc.* (539 US 52, 2003) that the general business activity of the company need only merely impact interstate commerce for an agreement to be subject to the FAA's coverage.

On remand, the Appellate Division vacated the arbitration award based on the arbitration panel's manifest disregard of the law, concluding that Helmsley-Spear was not the successor in interest to the former Helmsley-Spear Corporation.

No Manifest Disregard by Arbitration Panel

The Court of Appeals said in its ruling last week that manifest disregard of the law is the only common law ground recognized under the FAA for vacating an arbitration award, but it is a very limited doctrine reserved for "egregious impropriety" on the part of an arbitrator or panel.

The court said it has "stated time and again that an arbitrator's award should not be vacated for errors of law and fact committed by the arbitrator and the courts should not assume the role of overseers to mold the award to conform to their sense of justice."

The U.S. Court of Appeals for the Second Circuit has recognized manifest disregard as grounds for vacating an award but views the doctrine as requiring much more than a mistake of law or fact on the part of an arbitrator or panel, it noted.

The Appellate Division found Helmsley-Spear, Inc. was not the successor in interest to the Helmsley-Spear Corporation because the new owners did not exercise an option agreement that authorized them to take the company over upon the death of Harry Helmsley.

"Thus, the Appellate Division reasoned, the assignment of the eleven management contracts to the new Helmsley-Spear was invalid because those eleven contracts were contracts for personal services, which may not be assigned absent the principal's consent," the court said.

While it is correct that personal service contracts may not be assigned without the principle's consent, that rule does not necessarily apply to the present case, the court said. Whether the option agreement was exercised or not is a factual determination made by the arbitration panel and it should not be second-guessed, the court added.


"Accordingly, even if the property management agreements constituted unassignable personal service contracts, the Arbitration Panel did not manifestly disregard the law because its conclusion, that Helmsley-Spear remained the managing agent as the valid successor in interest to the former Helmsley-Spear, was more than 'barely colorable,'" the court said.

There was no showing the arbitrators disregarded the law on personal service contracts or any evidence they thought the contractual assignment law applied, the court said.

The Appellate Division also found the arbitrators manifestly disregarded the law in finding a proxy vote defective, but according to the Court of Appeals, the award did not contradict any express provision in the parties' contract.

"The Panel, therefore, did not manifestly disregard the law in annulling the proxy votes," the court concluded.

The court concluded by adopting the Second Circuit's view of manifest disregard of the law. For a court to vacate an award there must be a finding that "both that (1) the arbitrators knew of a governing legal principle yet refused to apply it or ignored it altogether and (2) the law ignored by the arbitrators was well defined, explicit, and clearly applicable to the case," it said.

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