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Third Circuit Distinguishes Arbitrator Error from Misconduct

Bellantuono v. ICAP Securities USA, LLC
557 Fed. Appx. 168 (3rd Cir. Jan. 30, 2014)

In *Bellantuono v. ICAP Securities USA, LLC*, 557 Fed. Appx. 168 (3rd Cir. 2014), the Third Circuit affirmed an arbitration award even though it disagreed with the arbitration panel's rulings on discovery. The opinion distinguishes arbitrator error from the arbitrator misconduct required for an award to be overturned.

Defendant ICAP Securities USA, LLC, terminated plaintiff Joseph Bellantuono from its mortgage-backed securities desk for violations of its trading policies. Bellantuono commenced a Financial Industry Regulatory Authority (FINRA) arbitration, alleging that ICAP terminated him as a sacrificial lamb for the Securities and Exchange Commission (SEC), which had begun an investigation of ICAP. The FINRA panel awarded Bellantuono only partial relief and the district court denied Bellantuono's petition to vacate the award and instead confirmed it. On appeal, Bellantuono argued that the panel manifestly disregarded the law and engaged in misconduct in refusing to hear relevant evidence.

The Third Circuit noted that since the Supreme Court's decision in *Hall Street Associates LLC v. Mattell, Inc.* 552 U.S. 576 (2008), the circuits have split on whether an arbitration award may be vacated for manifest disregard of the law. However, it did not reach the issue because it held that the panel did not manifestly disregard the law in any event. *Bellantuono*, 557 Fed. Appx. at 173-74 & nn. 3-4.

To vacate an award for manifest disregard of the law, a party must show that the arbitrators were aware of "a clearly defined governing legal principle, but refused to apply it, in effect, ignoring it." Bellantuono argued that the panel manifestly disregarded the law in refusing to compel production of certain documents ICAP produced to the SEC and ICAP's counsel's internal-investigation files relating to those documents. The court disagreed, stating that "[i]f a court can find any line of argument that is legally plausible and supports the award, then it must be confirmed." It held that Bellantuono had not shown that ICAP's objections to production were implausible or that the panel manifestly disregarded any law. This was particularly true because "discovery rulings are largely discretionary, and [the court could not] say that there [was] 'absolutely no support at all in the record justifying the [Panel's] determinations' that would warrant denial of enforcement of the award."

Bellantuono also argued that the panel manifestly disregarded the law when it refused to award him a mistrial and sanctions after ICAP moved for admission of a key email that it failed to disclose during discovery. The court rejected Bellantuono's argument. As Bellantuono conceded, the issue was governed by New Jersey Supreme Court authority giving courts "wide discretion" in considering sanctions for discovery violations. The Third Circuit held that Bellantuono's argument "was nothing more than a disagreement with the [Panel's] application of such authority which 'is not the standard by which the Court may vacate an arbitration award.'"

Finally, Bellantuono argued that the panel's failure to compel further document production constituted "misconduct . . . in refusing to hear evidence pertinent and material to the controversy." Bellantuono urged that he was unable to show that he was terminated as a sacrificial lamb for the SEC. The court disagreed, stating that to warrant vacatur, "the error must be one that is not simply an error of law, but which so affects the rights of a party that it may be said that he was deprived of a fair hearing." The court held that Bellantuono was not so deprived because he was able to question witnesses regarding his theory even if he was not granted access to all of the documents he sought. The court stated, "[t]he

Panel's rulings may indeed have been incorrect, and we may not agree with its exercise of discretion; nonetheless, even erroneous Panel rulings hardly can be characterized as misconduct."

Keywords: litigation, alternative dispute resolution, ADR, circuit split, discovery, sanctions, manifest disregard, misconduct

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