



Legal Alert: Texas Supreme Court Permits Expansive Review of Arbitration Awards

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Executive Summary: The Texas Supreme Court recently held that parties to an arbitration agreement governed by the state's arbitration act can agree that the arbitrator's decision will be subject to review to the same extent as a court decision would be – that is, appellate review.

Background

In an opinion issued on May 13, 2011, the Texas Supreme Court addressed the question of whether parties may contract for more expansive grounds for review of arbitration awards under the Texas General Arbitration Act (TAA). See *Nafta Traders, Inc. v. Quinn*.

The case arose out of an arbitration between Nafta's former VP of Operations, who was terminated in a RIF and subsequently sued for sex discrimination under the Texas Commission for Human Rights Act (TCHRA). Nafta moved to compel arbitration based on an arbitration agreement in its employee handbook. The arbitration agreement did not specify whether state or federal law would apply.

The arbitration agreement had a provision stating that the arbitrator does not have authority to render a decision that contains a reversible error of state or federal law. In essence, this means that the parties had agreed that a court could review, and potentially refuse to enforce, an arbitration decision for reversible error, the standard of review of judges. Historically arbitration decisions have not been reviewed for "reversible error," meaning that these decisions can bind parties even when a court finds that the award was largely unsupported by the evidence.

Texas Supreme Court Rejects Holding of *Hall Street Associates*

Under the Federal Arbitration Agreement (FAA) and the TAA, there are limited grounds on which a court to refuse to enforce an arbitrator's award. The United States Supreme Court held in *Hall Street Associates, L.L.C. v. Mattel, Inc.* that the grounds listed in the FAA are exclusive and that parties cannot contract for additional grounds for review. Given the similar scheme of the TAA, the Texas Supreme Court analyzed the *Hall Street* decision to determine if it should adopt the same holding as to the TAA.

The Court rejected both the reasoning and the holding of *Hall Street* wholly. In doing so, the Court emphasized that the TAA's and the FAA's overriding

goal is to enforce the arbitration agreements for which parties have contracted. The Court noted that the parties should be able to contract for the scope of the arbitrator's powers. Both the TAA and the FAA provide a ground to vacate an arbitrator's award if the arbitrator has exceeded his powers. As the arbitrator's powers are determined by the agreement of the parties, the Court held that it stands to reason the parties could agree that the arbitrator's decision is subject to review to the same extent a judge's would be.

The Court also addressed whether the FAA preempts the TAA, effectively cutting off this state right to contract for greater judicial review. It found that the TAA is not preempted, reiterating its previous holding that the FAA only preempts state laws that require the judiciary to resolve claims that parties previously agreed to resolve by arbitration. Where, as here, the state law only served to enforce the agreement as written, there is no preemption.

Employers' Bottom Line:

This case reflects one solution to the biggest flaw of arbitration: the lack of substantive review of decisions in other than the most extreme circumstances. Though arbitration has fallen out of fashion for exactly this reason, Texas employers may now want to reconsider including arbitration clauses in employment agreements.

If you have any questions about the issues addressed in this Alert, please contact the author, Allyn Jaqua Lowell, alowell@fordharrison.com, an attorney in our Dallas office, or the Ford & Harrison attorney with whom you usually work.