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Chapter 15: Procedures in International Arbitration

(Selected excerpts only)

§ 15.03 ARBITRAL TRIBUNAL'S DISCRETION TO DETERMINE PROCEDURES IN INTERNATIONAL ARBITRATION

Although national law in most states permits the parties to agree upon the arbitral procedures, subject only to minimal mandatory due process requirements, parties in practice often do not agree in advance on detailed procedural rules for their arbitration. Instead, the parties' arbitration agreement will ordinarily provide for arbitration pursuant to a set of institutional rules, which supply only a broad procedural framework, without addressing other procedural issues. (124) As summarized by the ICC Task Force on *Controlling Time and Costs in International Arbitration*:

"One of the salient characteristics of arbitration as a dispute resolution mechanism is that the rules of arbitration themselves present a framework for arbitral proceedings but rarely set out detailed procedures for the conduct of the arbitration." (125)

Filling in the considerable gaps in the framework provided by institutional rules is left to the subsequent agreement of the parties or, if they cannot agree, the arbitral tribunal. The arbitrators' discretion to determine the arbitral procedure, in the absence of agreement between the parties on such matters, is one of the foundational elements of the international arbitral process. (126)

[A] Arbitral Tribunal's Procedural Discretion Under International Arbitration Conventions

Leading international arbitration conventions confirm the arbitral tribunal's power, in the absence of agreement by the parties, to determine the arbitral procedures. Most explicitly, Article IV(4)(d) of the European Convention provides that, where the parties have not agreed upon arbitral procedures, the tribunal may "establish directly or by reference to the rules and statutes of a permanent arbitral institution the rules of procedure to be followed by the arbitrators." (127)

The Inter-American Convention also expressly recognizes the arbitral tribunal's procedural authority, albeit indirectly, providing in Article 3 that, "in the absence of an express agreement between the parties, the arbitration shall be conducted in accordance with the rules of procedure of the Inter-American Commercial Arbitration Commission." (128) In turn, Article 15 of the IACAC Rules grants the arbitrators broad procedural authority, subject only to basic requirements of equality and fairness. (129)

● The New York Convention refers less directly to the arbitral tribunal's power to determine the arbitral procedures, but produces the same result. The Convention makes no direct reference to the tribunal's authority to conduct the proceedings, only indirectly acknowledging such powers in Articles V(1)(b) and (d) (as discussed above). (130) At the same time, Article II(3) of the Convention requires giving effect to the parties' agreement to arbitrate, an essential element of which is either express or implied authorization to the arbitrators to conduct the arbitral proceedings as they deem best (absent contrary agreement by the parties on specific matters). (131)

Even where the tribunal's procedural authority is not expressly recognized in applicable international conventions, there can be no doubt as to such authority. An inherent characteristic of the arbitral process is the tribunal's adjudicative role and responsibility for establishing and implementing the procedures necessary to resolve the parties' dispute. (132) The tribunal's procedural authority is an implicit part of the parties' agreement to arbitrate (133) and is an indispensable precondition for an effective arbitral process.

Accordingly, just as Article II of the New York Convention guarantees the parties' procedural autonomy, (134) the Convention also guarantees the tribunal's authority over the arbitral procedures (absent contrary agreement). (135) As discussed below, the tribunal's authority is subject to restrictions, imposed by mandatory national laws regarding procedural matters, but these limitations are very narrow. (136)

[B] Arbitral Tribunal's Procedural Discretion Under National Arbitration Legislation

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Consistent with the New York Convention, most national legal systems provide the arbitral tribunal with substantial discretion to establish the arbitral procedures in the absence of agreement between the parties, subject only to general due process requirements. Article 19(2) of the UNCITRAL Model Law is representative, providing that, where the parties have not agreed upon the arbitral procedures, “the arbitral tribunal may...conduct the arbitration in such a manner as it considers appropriate.” (137) Likewise, the Swiss Law on Private International Law provides “[i]f the parties have not determined the procedure, the Arbitral Tribunal shall determine it to the extent necessary, either directly or by reference to a statute or to rules of arbitration.” (138) French, German, Austrian and other civil law arbitration statutes in Europe are similar, (139) as is contemporary arbitration legislation in much of Asia (140) and Latin America. (141)

In the United States, the FAA does not contain provisions addressing the subject of arbitral procedures or providing a basic procedural framework for arbitrations; rather, the FAA effectively leaves all issues of procedure entirely to the parties and arbitrators. The FAA does so by providing for the validity of agreements to arbitrate, including their procedural terms, in §2, and by providing for orders to compel arbitration, in §4; (142) both provisions require giving effect to the parties’ agreed arbitral procedures and, in the absence of any such agreement, leaving the arbitral procedures by default to the arbitrators’ general adjudicative authority, without imposing any statutory limitations on that authority.

The Revised Uniform Arbitration Act makes the arbitrators’ procedural authority explicit in §15(a), which provides:

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“An arbitrator may conduct an arbitration in such manner as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and, among other matters, determine the admissibility, relevance, materiality and weight of any evidence.” (143)

Although the FAA does not expressly address the subject of arbitral procedures, U.S. courts have uniformly held that arbitrators possess broad powers to determine arbitral procedures, absent agreement on such matters by the parties. (144) As one U.S. court concluded:

“Unless a mode of conducting the proceedings has been prescribed by the arbitration agreement or submission, or regulated by statute, arbitrators have a general discretion as to the mode of conducting the proceedings and are not bound by formal rules of procedure and evidence, and the standard of review of arbitration procedures is merely whether a party to an arbitration has been denied a fundamentally fair hearing.” (145)

Or, in another U.S. court’s words: “An arbitrator typically retains broad discretion over procedural matters.” (146)

Particularly following the 1996 Arbitration Act, English law is to the same effect, with §34(1) of the Act providing that “[i]t shall be for the tribunal to decide all procedural and evidential matters, subject to the right of the parties to agree any matter.” (147) Other common law jurisdictions also affirm the arbitrators’ broad procedural authority. (148)

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● Civil law courts have also reached the same conclusions, repeatedly upholding the arbitrators’ broad procedural discretion. (149) In the words of an Austrian decision: “The parties may determine the arbitral procedure in the arbitration agreement or in a separate written agreement. Lacking such agreement, the arbitrators decide on the procedure.” (150) Likewise, commentary uniformly confirms the arbitral tribunal’s broad procedural discretion under leading national arbitration regimes (subject only to mandatory due process requirements). (151)

[C] Arbitral Tribunal’s Procedural Discretion Under Institutional Rules

Leading institutional rules complement and generally parallel the Model Law and other developed arbitration legislation. With no material exceptions, these rules uniformly confirm the arbitrators’ authority to determine the arbitral procedures, while subjecting that discretion to the parties’ procedural autonomy and limited mandatory protections of procedural fairness, regularity and efficiency.

The 2010 UNCITRAL Rules are representative. As discussed above, Article 1(1) recognizes the parties’ general procedural autonomy, providing that disputes referred to arbitration under the UNCITRAL Rules “shall be settled in accordance with these Rules *subject to such modification as the parties may agree.*” (152) Nonetheless, as also discussed above, Article 17(1) of the 2010 UNCITRAL Rules also provides for the arbitrators to conduct the arbitration in the manner it considers most appropriate, without express reference to the parties’ procedural autonomy: “Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate....” (153)

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Moreover, Article 17(1) of the 2010 Rules goes on to provide that “[t]he arbitral tribunal, in exercising its discretion, shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties’ dispute.” (154) At the same time, as also discussed above, several provisions of the Rules concerning basic structural aspects of the arbitration such as seat, language and selection of the arbitrators and choice of applicable law are specifically made subject to the parties’ agreement. (155)

The interaction of these provisions of the UNCITRAL Rules is not precisely defined and there is very little arbitral or judicial authority on the subject. The better view of the Rules is that the arbitral tribunal is granted broad procedural authority by Article 17(1), subject only to mandatory obligations under the same provision of (a) equal treatment and due process; (b) efficiency; and (c) a general obligation to give effect to the parties’ agreed arbitral procedures.

With regard to the first of these categories, it is clear that arbitrators are permitted (and required) to override the parties’ procedural agreements where they would violate mandatory guarantees of equal treatment or due process (*i.e.*, an opportunity to present a party’s case). These mandatory guarantees include both those of the arbitral seat (pursuant to Article 1(3) of the UNCITRAL Rules) and the arbitrators’ conception of such requirements under Article 17(a). As discussed below, the procedural requirements imposed by mandatory law are exceptional, generally leaving both the parties and the arbitrators very wide discretion to adapt procedures suited to particular settings. (156) Nonetheless, there are (rare) instances in which requirements of equal treatment or due process will mandatorily require a particular procedural decision, regardless of the parties’ agreement or the arbitrators’ preferences.

Second, with regard to considerations of procedural efficiency, Article 17(1) of the 2010 UNCITRAL Rules requires that arbitrators “shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties’ dispute.” (157) The language of Article 17(1) appears to accord considerations of efficiency identical status with mandatory requirements of equal treatment and due process: the references to “unnecessary delay and expense” and an ● “efficient process” are phrased in mandatory terms (“shall”) and are referred to together with considerations of fairness. As with requirements of equal treatment and due process, however, it is only in very exceptional circumstances where considerations of efficiency warrant overriding the parties’ procedural agreements.

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Finally, with regard to the parties’ procedural autonomy, Article 17(1) makes no reference to the parties’ agreed arbitral procedures – in contrast to other provisions of the Rules, concerning basic structural aspects of the arbitration (such as the arbitral seat, language, choice of arbitrators and applicable substantive law). (158) That omission reflects the ultimate primacy of the arbitral tribunal’s procedural authority, other than with respect to the basic structure of the arbitral process as set forth in the parties’ arbitration agreement. (159)

Thus, as to most procedural matters arising in the course of the arbitration (*e.g.*, timing, number, length of written submissions; number of witnesses; availability and scope of disclosure; structure and length of hearing; admissible evidence; nature of witness examination), the arbitral tribunal retains the ultimate authority under the UNCITRAL Rules to prescribe the arbitral procedures, including where the parties have agreed otherwise and including where mandatory requirements of equal treatment and due process would permit the parties’ agreed procedures. Under Article 17(1), it is ultimately the tribunal that is authorized to prescribe the arbitral procedures, notwithstanding the parties’ agreements on the subject.

This conclusion can appear to be in tension with general conceptions of party autonomy. In principle, however, there can be little doubt that the parties are free to compromise their procedural autonomy by an agreement to institutional rules containing provisions like those in the UNCITRAL Rules – this itself being an exercise of the parties’ autonomy. One award adopted just this rationale, concluding:

“In accordance with Article 32 of the UNCITRAL Rules, and with the general principles of arbitral procedure, it is for the Tribunal to determine which issues need to be dealt with and in what order....If the parties are not content with the submission of the dispute to arbitration under the UNCITRAL Rules and under the auspices of the Permanent Court of Arbitration, they may no doubt, by agreement notified to the Permanent Court, terminate the arbitration. What they cannot do, in the Tribunal’s view, is by agreement to change the essential basis on which the Tribunal itself is ● constituted, or require the Tribunal to act other than in accordance with the applicable law.” (160)

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That rationale is well-considered. The parties’ ceding of their procedural authority, to the arbitrators, under Article 17 of the 2010 UNCITRAL Rules (and equivalent provisions of other institutional rules) is an exercise of their procedural autonomy. Once that autonomy has been exercised by concluding a binding agreement on arbitral procedures, it cannot be unilaterally revoked by either party, just as other agreements cannot be unilaterally revoked. Moreover, once a tribunal is appointed pursuant to the parties’ arbitration

agreement, and an arbitrator contract formed (as discussed below), (161) the tribunal's procedural authority cannot be revoked or altered by either one party unilaterally or both parties acting jointly; rather, such a change requires the consent of the arbitrators or, alternatively, termination of the arbitration by mutual consent and commencement of a new arbitration, with a new tribunal, pursuant to a revised arbitration agreement with a different treatment of arbitral procedures. (162) Thus, notwithstanding the parties' general procedural autonomy, where they exercise that autonomy by granting procedural authority to the arbitral tribunal, and then appointing a tribunal pursuant to that agreement, they may not subsequently alter their agreement, absent the arbitrators' consent.

Notwithstanding this, Article 1(1) and the central importance of party autonomy in the arbitral process generally, (163) also argue strongly against arbitrators exercising their authority to override the parties' procedural agreements absent compelling justifications. (164) Where sophisticated commercial parties, advised by external counsel, have agreed to particular procedures, an arbitral tribunal properly may override those agreements only in very exceptional cases.

Particularly at the outset of an arbitration, where the parties have substantially greater familiarity with the dispute, an arbitral tribunal should virtually never override the parties' agreement regarding particular procedural matters; in these instances, the arbitrators must recognize their inevitable lack of knowledge about the underlying dispute and give broad deference to the parties' informed (and mutual) choices regarding what would constitute a fair and efficient arbitral procedure. As an arbitration progresses, and the arbitrators become more familiar with the parties' dispute and claims, the possibility of rejecting the parties' agreed arbitral procedures becomes more concrete; that is particularly true with respect to ancillary aspects of the arbitral procedure (e.g., length of pre-hearing written submissions), as distinguished from fundamental choices about the arbitral process (e.g., whether to permit document disclosure).

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● As a practical matter, it is relatively unusual that the arbitrators will disagree sufficiently seriously with the parties' agreed arbitral procedures that they will overrule that agreement. Moreover, it is even more unusual that, when arbitrators seek to do so, that the parties (and the tribunal) will not agree upon alternative procedural arrangements that satisfy all concerned.

Ultimately, however, there is a category of issues under the UNCITRAL Rules as to which an arbitral tribunal may properly override the parties' agreed arbitral procedures, simply because it concludes that those procedures would be inefficient, unnecessary, less effective, or less fair than an alternative approach. Tribunals should rarely exercise this authority, but it is contemplated by the UNCITRAL Rules and arbitrators do not violate their mandate by doing so.

Other leading institutional arbitration rules are broadly similar to the UNCITRAL Rules in their treatment of the arbitrators' procedural discretion. As discussed above, the LCIA, ICDR, HKIAC, SIAC, VIAC and SCC Rules all grant the tribunal power to determine the arbitral procedures in terms parallel to those of the UNCITRAL Rules. (165) Like the UNCITRAL Rules, the provisions of these institutional rules all provide the arbitrators with the ultimate authority over the arbitral procedure, subject to mandatory law protections (166) and to the parties' power to agree on basic structural aspects of the arbitration. (167) As to these basic elements of the institutional arbitration regime (i.e., the choice of the arbitral seat, arbitrators and applicable law), arbitrators may not, even if they consider it efficient and sensible to do so, derogate from the provisions of the institutional rules and parties' agreement. (168)

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● Under many institutional arbitration regimes, the arbitrators' procedural discretion is also subject to mandatory requirements imposed by the institutional arbitral regime itself. The nature of these mandatory requirements varies among institutional regimes, but includes matters such as the ICC's Terms of Reference, (169) the ICC's and LCIA's confirmation of arbitrators, (170) and the ICC's and SIAC's scrutiny of draft arbitral awards. (171) As to these aspects of the arbitral procedure, institutional rules forbid either the parties or the arbitrators from adopting inconsistent procedural provisions. Where parties or an arbitral tribunal disregard such prohibitions, the arbitral institution will typically refuse to continue to administer the arbitration, which gives rise to both significant practical difficulties (in continuing a smooth and efficient arbitral procedure) and risks with respect to annulment or non-enforcement of the arbitral award (on the grounds that it will not have been rendered in accordance with the parties' agreed arbitral procedures, which included institutional arbitration rules). (172)

References

124) See §15.03[C].

125) ICC, *Controlling Time and Costs in International Arbitration* 5 (2d ed. 2012).

- 126)** The arbitrators' broad procedural discretion was and remains an attribute of state-to-state arbitrations. See 1907 Convention for the Pacific Settlement of International Disputes (Second Hague Conference), Art. 74 ("The Tribunal is entitled to issue rules of procedure for the conduct of the case, to decide the forms, order, and time in which each party must conclude its arguments, and to arrange all the formalities required for dealing with the evidence."); Institute of International Law, *Projet de règlement pour la procédure arbitrale internationale* Art. 15 (1875); ILC, *Memorandum on Arbitral Procedure, Prepared by the Secretariat*, U.N. Doc. A/CN.4/35, II Y.B. I.L.C. 157, 165-66, 171-74 (1950) ("where such rules [concerning the procedure] are lacking in the *compromis*, it has been customary for tribunals to adopt their own rules"); K. Carlston, *The Process of International Arbitration* 204 (1946) ("We may therefore regard it as established that whether so expressed or not in the protocol, commissions have an inherent right to establish rules governing the method of presentation and the consideration of cases submitted to them.").
- 127)** European Convention, Art. IV(4)(d).
- 128)** Inter-American Convention, Art. 3.
- 129)** IACAC Rules, Art. 15(1) ("Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting his case.").
- 130)** Both Articles V(1)(b) and (d) of the New York Convention provide grounds for non-recognition of an award that presuppose the tribunal's power to determine arbitral procedures in the absence of agreement by the parties. New York Convention, Arts. V(1)(b), (d). See §15.02[A]; §26.05[C][3] & [5].
- 131)** See §§15.01[A]-[B]; §15.03.
- 132)** See §2.02[C][4]; §15.03.
- 133)** As discussed below, most institutional arbitration rules expressly provide the arbitrators discretion to establish the arbitral procedures (absent agreement between the parties). See §15.03[C]. This grant of authority forms part of the parties' arbitration agreement and is entitled to recognition under Article II of the Convention.
- 134)** See §15.02[A].
- 135)** See §15.03[A]; G. Petrochilos, *Procedural Law in International Arbitration* 84 (2004) (imposition of archaic procedural requirements on international arbitration seated locally would "in the view of this author...be an excess of jurisdiction, a delict under international law").
- 136)** See §§15.04[A]-[B].
- 137)** UNCITRAL Model Law, Art. 19(2). As discussed below, Article 19(2) limits the tribunal's powers by reference to the "provisions of this Law," which includes Article 18's requirements that the parties be treated "with equality" and be given a "full opportunity of presenting [their] case[s]." See §15.04[B]. Article 24(1) of the Model Law is similar, providing that "[s]ubject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold an oral hearing for the presentation of evidence or for oral argument..." UNCITRAL Model Law, Art. 24(1). See §15.08[AA].
- 138)** Swiss Law on Private International Law, Art. 182(2).
- 139)** See, e.g., French Code of Civil Procedure, Arts. 1509, 1464 ("Unless otherwise agreed by the parties, the arbitral tribunal shall define the procedure to be followed in the arbitration. It is under no obligation to abide by the rules governing court proceedings."); German ZPO, §1047 ("Subject to agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings or whether the proceedings shall be conducted on the basis of documents and other materials."); Belgian Judicial Code, Art. 1700(2); Netherlands Code of Civil Procedure, Art. 1036 ("Subject to the provisions of this Title, the arbitral proceedings shall be conducted in such manner as agreed between the parties or, to the extent that the parties have not agreed, as determined by the arbitral tribunal."); Austrian ZPO, §598; Russian Arbitration Law, Art. 19(2).
- 140)** See, e.g., UNCITRAL Model Law, Art. 24(1); Singapore International Arbitration Act, 2012, Schedule 1, Art. 19(2); Hong Kong Arbitration Ordinance, 2013, §47(2); Japanese Arbitration Law, Art. 26(2) ("Failing such agreement [between the parties], the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitral proceedings in such manner as it considers appropriate."); Korean Arbitration Act, Arts. 20(2), 25(1); Indian Arbitration and Conciliation Act, §19(3) ("Failing any agreement (between the parties)..., the arbitral tribunal may...conduct the proceedings in the manner it considers appropriate."); Malaysian Arbitration Act, §21(2).
- 141)** See, e.g., Chilean International Commercial Arbitration Law, Art. 24(1); Costa Rican Arbitration Law, 2011, Art. 19(2); Mexican Commercial Code, Art. 1435(2).
- 142)** See U.S. FAA, 9 U.S.C. §§2, 4; §1.04[B][1][e][ii].
- 143)** Revised Uniform Arbitration Act, §15(a) (2000).

- 144)** *Berhardt v. Polygraphic Co. of Am.*, 350 U.S. 198, 203 (U.S. S.Ct. 1956); *D.E.I., Inc. v. Ohio & Vicinity Reg'l Council of Carpenters*, 155 F.Appx. 164, 170 (6th Cir. 2005) (“Arbitrators are not bound by formal rules of procedure and evidence, and the standard for judicial review of arbitration procedures is merely whether a party to arbitration has been denied a fundamentally fair hearing.”) (quoting *Nat'l Post Office Mailhandlers v. U.S. Postal Serv.*, 751 F.2d 834, 841 (6th Cir. 1985)); *Parsons & Whittemore Overseas Co. v. Societe Generale de L'Industrie du Papier*, 508 F.2d 969, 975-76 (2d Cir. 1974) (“By agreeing to submit disputes to arbitration, a party relinquishes his courtroom rights – including that to subpoena witnesses – in favor of arbitration with all of its well known advantages and drawbacks.”); *Local 12934 of Int'l Union v. Dow Corning*, 459 F.2d 221, 223 (6th Cir. 1972) (“it has long been settled that where the substantive issues of a dispute are a proper subject for arbitration, procedural matters arising out of that dispute are for the arbitrator, not the courts, to determine”); *PK Time Group, LLC v. Robert*, 2013 WL 3833084, at *3-4 (S.D.N.Y.) (“The actions [that petitioner] alleges constitute misconduct were clearly just standard procedural rulings, well within the discretion of the Arbitrators in the control of the proceedings.”); *Laminoirs-Trefileries-Cableries de Lens, SA v. Southwire Co.*, 484 F.Supp. 1063, 1067 (N.D. Ga. 1980) (“arbitrators are charged with the duty of determining what evidence is relevant and what is irrelevant, and that barring a clear showing of abuse of discretion, the court will not vacate an award based on improper evidence or the lack of proper evidence”).
- 145)** *U.S. Turnkey Exploration, Inc. v. PSI, Inc.*, 577 So.2d 1131, 1135 (La. App. 1991).
- 146)** *Int'l Union, United Mine Workers of Am. v. Marrowbone Dev. Co.*, 232 F.3d 383, 389 (4th Cir. 2000).
- 147)** [English Arbitration Act, 1996, §51, 34\(1\)](#); *ABB Attorney Gen. v. Hochtief Airport GmbH* [2006] EWHC 388 (Comm) (English High Ct.) (“[i]t is not a ground for intervention that the court considers that it might have done things differently”); *Petroships Pte Ltd of Singapore v. Petec Trading & Inv. Corp. of Vietnam, The Petro Ranger* [2001] 2 Lloyd's Rep. 348, 351 (QB) (English High Ct.) (award may be annulled under §68(2)(a) only “where it can be said that what has happened is so far removed from what can reasonably be expected of the arbitral process, that the Court will take action”); R. Merkin, *Arbitration Law* ¶14.2 (1991 & Update August 2013).
- 148)** See, e.g., [Canadian Commercial Arbitration Act, 2013, Art. 19\(2\)](#) (“Failing such agreement, the arbitral tribunal may, subject to the provisions of this Code, conduct the arbitration in such manner as it considers appropriate.”); [Alberta International Commercial Arbitration Act, Art. 19\(2\)](#); [British Columbia International Commercial Arbitration Act, §19\(2\)](#); [Ontario International Commercial Arbitration Act, Art. 19\(2\)](#); [Singapore International Arbitration Act, 2012, §3\(1\), Schedule 1, Art. 19\(2\)](#); [Hong Kong Arbitration Ordinance, 2013, §47\(2\)](#); [Australian International Arbitration Act, 2011, Schedule 2, Art. 19\(2\)](#); [New Zealand Arbitration Act, Schedule 1, Art. 19\(2\)](#). See also *Mungo v. Saverino*, [1995] O.J. No. 3021, ¶80 (Ontario Super. Ct.) (“If an arbitration is basically fair, Courts should resist the temptation to plunge into detailed complaints about flaws in the arbitration process.”).
- 149)** See, e.g., *Judgment of 15 June 1995, Sonidep v. Sigmoil*, 1995 Rev. arb. 88 (French Cour de cassation civ. 1e) (generally for tribunal, by agreement with parties or acting under its own authority, to fix timetable for arbitral proceedings); *Éditions Chouette (1987) Inc. v. Desputeaux*, [2003] 1 S.C.R. 178, 220 (Canadian S.Ct.) (“Articles 2643 C.C.Q. and 944.1 C.C.P....affirm the principle of procedural flexibility in arbitration proceedings, by leaving it to the parties to determine the arbitration procedure or, failing that, leaving it up to the arbitrator to determine the applicable rules of procedure.”); *Dens Tech-Dens KG v. Netdent-Techs. Inc.*, [2008] QCCA 1245 (Québec Ct. App.) (arbitral tribunal has jurisdiction to decide validity of request for arbitration where request was filed by non-lawyer on behalf of company).
- 150)** *Judgment of 25 June 1992, XXII Y.B. Comm. Arb.* 619, 625 (Austrian Oberster Gerichtshof) (1997).
- 151)** See, e.g., Kaufmann-Kohler, *Globalization of Arbitral Procedure*, 36 Vand. J. Transnat'l L. 1313 (2003); M. Kurkela & S. Turunen, *Due Process in International Commercial Arbitration* 3 (2d ed. 2010) (“Most of the provisions of the national arbitration laws are not mandatory. Accordingly, parties may agree on some other way of trying the case instead of following a certain procedural detail or provision in national law....Also, the national law is typically relatively open, at least compared to laws concerning ordinary civil procedure. The arbitrators have a lot of discretion on many specific questions.”); Park, *Arbitration's Protean Nature: The Value of Rules and the Risks of Discretion*, 19 Arb. Int'l 279 (2003); Park, *Two Faces of Progress: Fairness and Flexibility in Arbitral Procedure*, 23 Arb. Int'l 499, 500-01 (2007); Pryles, *Limits to Party Autonomy in Arbitral Procedure*, 24 J. Int'l Arb. 327 (2007); Wetter, *The Conduct of the Arbitration*, 2(1) J. Int'l Arb. 7 (1985).
- 152)** 2010 UNCITRAL Rules, Art. 1(1). See §15.02[D], p. 2138.

- 153)** 2010 UNCITRAL Rules, Art. 17(1). See generally Bagner, *Enforcement of International Commercial Contracts by Arbitration: Recent Developments*, 14 Case W. Res. J. Int'l L. 573, 577 (1982) (Article 17(1) is “heart” of UNCITRAL Rules); D. Caron & L. Caplan, *The UNCITRAL Arbitration Rules: A Commentary* 30-36 (2d ed. 2013); T. Webster, *Handbook of UNCITRAL Arbitration* ¶¶17-29 (2010) (“The basic rule in Art. 17(1) is that the Tribunal is responsible for conduct of the arbitral proceedings. The responsibility is tempered by issues relating to (i) agreements or submissions of the parties on procedure; (ii) equal treatment of the parties; (iii) providing an opportunity to the parties to present their cases; and (iv) procedural efficiency.”).
- 154)** 2010 UNCITRAL Rules, Art. 17(1).
- 155)** See§15.02[D].
- 156)** See§15.04.
- 157)** 2010 UNCITRAL Rules, Art. 17(1).
- 158)** See2010 UNCITRAL Rules, Art. 7 (number of arbitrators), Art. 8-10 (appointment of arbitrators), Art. 18(1) (“If the parties have not previously agreed on the place of arbitration, the place of arbitration shall be determined by the arbitral tribunal...”), Art. 19(1) (“Subject to an agreement by the parties, the arbitral tribunal shall, promptly after its appointment, determine the language or languages to be used in the proceedings.”), Art. 35(1) (“The arbitral tribunal shall apply the rules of law designated by the parties as applicable to the substance of the dispute.”); §15.02[D].
- 159)** Thus, an arbitral tribunal could not, unless it found the parties’ agreement invalid as a substantive matter, override the parties’ choice of arbitral seat, language or substantive law. Only if that portion of the parties’ arbitration agreement were formally defective, invalid (on grounds of duress, mistake, unconscionability, or the like), or impossible to perform, would a tribunal be authorized to disregard the parties’ choice.
- 160)** *Larsen v. Hawaiian Kingdom, Award in PCA Case of 5 February 2001*, 119 I.L.R. 566, 579-80 (2001).
- 161)** See§13.02[C], p. 1969.
- 162)** Parties would also in principle be free, pursuant to Article 1(1) of the UNCITRAL Rules, to modify Article 17(1) in their initial agreement to arbitrate, to require an arbitral tribunal to give effect to the parties’ procedural agreements. That virtually never occurs in practice. If an arbitration agreement contained such provisions, they would likely be enforceable, subject to any applicable mandatory laws regarding arbitral procedures (e.g., requirements regarding equality of treatment or opportunity to be heard).
- 163)** See§15.02.
- 164)** As discussed above, Article 1(1) confirms the parties’ basic procedural autonomy, including the autonomy to modify the UNCITRAL Rules themselves. See§15.02[D], p. 2138.
- 165)** See, e.g., 2012 ICC Rules, Art. 19(2); LCIA Rules, Art. 14(1); ICDR Rules, Art. 16(1); ICSID Rules, Rule 20; 2013 HKIAC Rules, Art. 13(1).
- 166)** See, e.g., 2012 ICC Rules, Art. 22(4); ICDR Rules, Art. 16(2); LCIA Rules, Art. 14(1)(i); 2013 HKIAC Rules, Art. 13(1); 2010 SCC Rules, Art. 19(1); 2013 SIAC Rules, Art. 16(1); 2013 VIAC Rules, Art. 28. See also J. Fry, S. Greenberg & F. Mazza, *The Secretariat’s Guide to ICC Arbitration* ¶¶3-814 (2012) (“Article 22(4) affirms an overriding and fundamental principle of arbitration, which finds expression in virtually all arbitration laws and rules as well as the New York Convention.”).
- 167)** See, e.g., 2012 ICC Rules, Art. 12(2) (“Where the parties have not agreed upon the number of arbitrators, the Court shall appoint a sole arbitrator.”), Art. 18(1) (“The place of arbitration shall be fixed by the Court, unless agreed upon by the parties.”), Art. 20 (“In the absence of an agreement by the parties, the arbitral tribunal shall determine the language...”); ICDR Rules, Art. 3(3) (“the number of arbitrators, the place of the arbitration or the language(s) of the arbitration”), Art. 6(1) (“parties may mutually agree upon any procedure for appointing arbitrators”), Art. 8 (challenge of arbitrators), Art. 18(1) (service of notices), Arts. 20(1), (2) (interpretation of oral testimony and whether hearing is private); LCIA Rules, Art. 16(1) (“The parties may agree in writing the seat (or legal place) of their arbitration.”), Art. 17(1) (“The initial language of the arbitration shall be the language of the Arbitration Agreement, unless the parties have agreed in writing otherwise...”); 2010 SCC Rules, Art. 19(1); 2013 SIAC Rules, Art. 5(2)(c) (whether to decide dispute on documentary evidence only), Art. 6(1) (number of arbitrators), Art. 18(1) (“The parties may agree on the seat of arbitration...”), Art. 19(1) (language of arbitration); 2013 VIAC Rules, Art. 25 (place of arbitration and place of hearing), Art. 16(1) (additional qualifications of arbitrators), Art. 14 (number of arbitrators), Art. 20(1) (conduct of proceedings, subject to Rules).

- 168)** Y. Derains & E. Schwartz, *A Guide to the ICC Rules of Arbitration* 224 (2d ed. 2005) (“[The ICC Rules] establish[] the following hierarchy among the governing rules: first, the Rules themselves; second, where no provisions of the Rules apply, any rules that the parties may agree upon; and third, any rules the arbitrators may settle.”); J. Fry, S. Greenberg & F. Mazza, *The Secretariat’s Guide to ICC Arbitration* 209 (2012) (“[T]he provisions of the Rules lie at the top of the hierarchy established by Article 19. In practice, agreements between the parties and decisions by the arbitral tribunal will have a greater role in determining the nature of the procedure.... Article 22 places a limit on the arbitral tribunal’s freedom to determine procedure by requiring it to conduct the arbitration fairly and impartially.”).
- 169)** See 2012 ICC Rules, Art. 23; §15.08[S], p. 2246.
- 170)** See 2012 ICC Rules, Art. 13; LCIA Rules, Art. 5(5); §12.03[D][4], p. 1710; §12.03[D][5].
- 171)** See 2012 ICC Rules, Art. 33; 2013 SIAC Rules, Art. 28(2); §15.08[KK], pp. 2304-05.
- 172)** See J. Fry, S. Greenberg & F. Mazza, *The Secretariat’s Guide to ICC Arbitration* ¶¶3-420, 3-1183 (describing case where arbitration clause sought to exclude ICC Court’s power to confirm arbitrator appointment and award scrutiny: “[g]iven this was an affront to a fundamental feature of ICC arbitration, the Court determined that the arbitration could not proceed”). See §26.05[C][5][b].

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Chapter 7: Action Points

(Selected excerpts only)

c Critical Appraisal Of How Icann'S New Bylaws Address The Authority Of Irp Panels

With its new Bylaws, ICANN simply made the list of possible IRP measures longer without clarifying the illustrative nature of the list. (1774) The list now mentions *inter alia* that IRP panels may '[c]onsolidate Disputes if the facts and circumstances are sufficiently similar, and take such other actions as are necessary for the efficient resolution of Disputes.' (1775) It is not clear whether the last part of this phrase may be taken as a recognition by ICANN that IRP panels may order whatever measures they deem fit for the effective resolution of the dispute. It could be that the panel's authority in this respect is intended to be limited to orders of a procedural nature only. In view of ICANN's obligation to enhance its accountability mechanisms on a continuous basis, we would favor the former interpretation. However, it would have been helpful if ICANN had been more explicit about the panel's authority in its new Bylaws.

References


1774) ICANN, Bylaws as amended on 1 October 2016, Article 4(3)(o).

1775) ICANN, Bylaws as amended on 1 October 2016, Article 4(3)(o)(v).

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 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

United States Code Annotated
Title 9. Arbitration (Refs & Annos)
Chapter 1. General Provisions (Refs & Annos)

9 U.S.C.A. § 10

§ 10. Same; vacation; grounds; rehearing

Effective: May 7, 2002

[Currentness](#)

(a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration--

(1) where the award was procured by corruption, fraud, or undue means;

(2) where there was evident partiality or corruption in the arbitrators, or either of them;

(3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or

(4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

(b) If an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.

(c) The United States district court for the district wherein an award was made that was issued pursuant to [section 580 of title 5](#) may make an order vacating the award upon the application of a person, other than a party to the arbitration, who is adversely affected or aggrieved by the award, if the use of arbitration or the award is clearly inconsistent with the factors set forth in [section 572 of title 5](#).

CREDIT(S)

(July 30, 1947, c. 392, 61 Stat. 672; [Pub.L. 101-552](#), § 5, Nov. 15, 1990, 104 Stat. 2745; [Pub.L. 102-354](#), § 5(b)(4), Aug. 26, 1992, 106 Stat. 946; [Pub.L. 107-169](#), § 1, May 7, 2002, 116 Stat. 132.)

Relevant Additional Resources

Additional Resources listed below contain your search terms.

LAW REVIEW COMMENTARIES

[Contractual expansion of the scope of judicial review of arbitration awards under the **Federal Arbitration Act**](#). Notes, 76 St. John's L. Rev. 633 (2002).

[Court review of labor arbitration awards under the **Federal Arbitration Act**](#). Douglas E. Ray, 32 Vill.L.Rev. 57 (1987).

[Welcome to the jungle: Rethinking the amount in controversy in a petition to vacate an arbitration award under the **Federal Arbitration Act**](#). Christopher L. Frost, 32 Pepp. L. Rev. 227 (2005).

RESEARCH REFERENCES

ALR Library

[27 American Law Reports, Federal 3rd Series 4](#), May Courts "Look Through" **Federal Arbitration Act** Section 10 Petition to Vacate Arbitration Award in Order to Find Federal Question Jurisdiction Based on Underlying Federal Substantive Claims Addressed in Arbitration.

[3 American Law Reports, Federal 2nd Series 419](#), Statute of Limitations Under **Federal Arbitration Act** on Filing of Motion to Confirm Award.

[10 American Law Reports, Federal 2nd Series 489](#), When Does Contract Evidence Transaction Involving Interstate Commerce Within Meaning of **Federal Arbitration Act** (FAA)--Legal Issues and Principles.

[11 American Law Reports, Federal 2nd Series 233](#), When Does Contract Evidence Transaction Involving Interstate Commerce Within Meaning of **Federal Arbitration Act** (FAA)--Service Contracts.

[28 American Law Reports, Federal 2nd Series 1](#), Construction and Application of **Federal Arbitration Act**--Supreme Court Cases.

[41 American Law Reports, Federal 2nd Series 261](#), Modification or Correction of Arbitration Award Under **Federal Arbitration Act** Where There was Evident Material Miscalculation of Figures or Evident Material Mistake in Description of Any Person, Thing, or Property Referred to in Award Under 9 U.S.C.A. § 11(A).

[45 American Law Reports, Federal 2nd Series 51](#), Discovery in Federal Arbitration Proceedings Under Discovery Provision of **Federal Arbitration Act** (FAA), 9 U.S.C.A. § 7, and Federal Rules of Civil Procedure, as Permitted by Fed. R. Civ. P. 81(A)(6)(B).

[108 American Law Reports, Federal 179](#), Pre-Emption by **Federal Arbitration Act** (9 U.S.C.A. §§ 1 et seq.) of State Laws Prohibiting or Restricting Formation or Enforcement of Arbitration Agreements.

[136 American Law Reports, Federal 183](#), Construction and Application of § 10(A)(4) of **Federal Arbitration Act** (9 U.S.C.A. § 10(A)(4)) Providing for Vacating of Arbitration Awards Where Arbitrators Exceed or Imperfectly Execute Powers.

[141 American Law Reports, Federal 1](#), Construction and Application of § 10(A)(1)-(3) of **Federal Arbitration Act** (9 U.S.C.A. § 10(A)(1)-(3)) Providing for Vacating of Arbitration Awards Where Award Procured by Fraud, Corruption, or Undue Means, Where Arbitrators Evidence Partiality or Corruption and Where Arbitrators Engage in Particular Acts of Misbehavior.

Encyclopedias

[4 Am. Jur. 2d Alternative Dispute Resolution § 211](#), Statutory Grounds for Vacating Arbitration Award-Under Uniform Arbitration Act and **Federal Arbitration Act**.

Forms

[2A Am. Jur. Pl. & Pr. Forms Arbitration and Award § 210](#), Order in Federal Court-Remanding Arbitrator's Award for Clarification-Under **Federal Arbitration Act**.

[2A Am. Jur. Pl. & Pr. Forms Arbitration and Award § 233](#), Motion in Federal Court-To Vacate Arbitrator's Award and Remand for Clarification-Under **Federal Arbitration Act**.

Treatises and Practice Aids

[1A Eckstrom's Licensing in Foreign and Domestic Operations § 8D:9](#), **Federal Arbitration Act**-Organization and Overview of the Act-Domestic Arbitration.

[2 Employment Discrimination Coordinator Analysis of Federal Law § 55:18](#), **Federal Arbitration Act**.

Relevant Notes of Decisions (376)

[View all 1776](#)

Notes of Decisions listed below contain your search terms.

Generally

Arguments by foreign licensee for vacating arbitral award in favor of patentee regarding dispute over licensed products could be made under both Convention on Recognition and Enforcement of Foreign Arbitral Awards and domestic standards for review under **Federal Arbitration Act**, since review by competent authority of country in which award was made was contemplated by Convention. [Immersion Corporation v. Sony Computer Entertainment America LLC](#), N.D.Cal.2016, 188 F.Supp.3d 960. [Alternative Dispute Resolution](#) 🔑 515; [International Law](#) 🔑 292

Construction

Grounds stated in the **Federal Arbitration Act** (FAA) either for vacating, or for modifying or correcting, arbitration award address egregious departures from parties' agreed-upon arbitration. [Hall Street Associates, L.L.C. v. Mattel, Inc.](#), U.S.2008, 128 S.Ct. 1396, 552 U.S. 576, 170 L.Ed.2d 254, on remand 531 F.3d 1019. [Alternative Dispute Resolution](#) 🔑 362(2)

Courts' authority to vacate arbitration awards made pursuant to **Federal Arbitration Act** are read very narrowly. [Blue Tee Corp. v. Koehring Co.](#), S.D.N.Y.1990, 754 F.Supp. 26, judgment clarified on other grounds 763 F.Supp. 754. [Alternative Dispute Resolution](#) 🔑 363(6)

Construction with other laws

Provisions of **Federal Arbitration Act** (FAA) authorizing courts to vacate, modify, or correct arbitration awards did not provide independent statutory grant of federal subject matter jurisdiction, and thus borrowers' claims against lender brought under those provisions did not raise federal question as required for court to have subject matter jurisdiction over their request to vacate \$17,808.43 arbitration award issued in favor of lender. [Bailey v. Wells Fargo Bank, N.A.](#), N.D.Ga.2016, 174 F.Supp.3d 1359. [Federal Courts](#) 🔑 2235

Federal Arbitration Act (FAA) did not preempt Puerto Rico Arbitration Act (PRAA) in insurer's action against contractor seeking revocation or modification of arbitration award arising from controversy over contractor's performance in managing insurer's mechanical breakdown policies program; grounds for vacating arbitration award had been identical under both PRAA and FAA, and PRAA provision providing that award could be vacated when arbitrator committed "any other error impairing the rights of any of the parties" had not been interpreted as providing more protection than FAA. [Universal Ins. Co., Inc. v. Warrantech Consumer Product Services, Inc.](#), D.Puerto Rico 2012, 849 F.Supp.2d 227. [Alternative Dispute Resolution](#) 🔑 117; [Statutes](#) 🔑 1520

Action under **Federal Arbitration Act** (FAA), rather than motion for relief from judgment, was proper vehicle for employee's challenge to arbitration award in favor of his former employer on his race discrimination claim, inasmuch as arbitration award

was not “judgment” for purposes of such motion, and final judgment had not been rendered regarding arbitration award by any district court. [Smith v. Shell Chemical Co., M.D.La.2004, 333 F.Supp.2d 579](#), appeal dismissed [166 Fed.Appx. 109, 2006 WL 272540](#), certiorari denied [127 S.Ct. 70, 549 U.S. 814, 166 L.Ed.2d 25](#), rehearing denied [127 S.Ct. 621, 549 U.S. 1084, 166 L.Ed.2d 458](#). [Alternative Dispute Resolution 363\(2\)](#); [Alternative Dispute Resolution 365](#)

Mandatory administrative proceedings conducted under Uniform Domain-Name Dispute Resolution Policy (UDRP) of Internet Corporation for Assigned Names and Numbers (ICANN) did not constitute “arbitration” subject to **Federal Arbitration Act** (FAA), and thus Act's restrictions on judicial review of arbitration awards were not applicable. [Parisi v. Netlearning, Inc., E.D.Va.2001, 139 F.Supp.2d 745, 59 U.S.P.Q.2d 1051](#). [Alternative Dispute Resolution 110](#); [Alternative Dispute Resolution 367](#); [Alternative Dispute Resolution 374\(1\)](#)

Purpose

The **Federal Arbitration Act** (FAA) does not allow a party to initiate a challenge to an arbitration award by filing a complaint or a petition to vacate the award. [Contech Const. Products, Inc. v. Heierli, D.D.C.2011, 764 F.Supp.2d 96](#). [Alternative Dispute Resolution 363\(2\)](#)

Law governing

Federal Arbitration Act (FAA) governed any vacatur of arbitration award, not California law, entered in favor of co-managers of financial services limited liability company (LLC) with respect to their claims arising from expulsion of manager from LLC for alleged breach of contract, breach of fiduciary duty, conversion, and fraud, since agreement did not expressly reference California arbitration law, but only contained choice-of-law provision, which stated that agreement would be “governed by and construed and interpreted in accordance with the laws of the State of California.” [Cooper v. WestEnd Capital Management, L.L.C., C.A.5 \(La.\) 2016, 832 F.3d 534](#). [Alternative Dispute Resolution 362\(2\)](#)

Federal Arbitration Act's (FAA) vacatur standards applied to determination of whether to vacate award that was rendered in United States in dispute between shareholder and company arising from earn/in option agreement. [Goldgroup Resources, Inc. v. DynaResource De Mexico, S.A. De C.V., D.Colo.2019, 381 F.Supp.3d 1332](#). [Alternative Dispute Resolution 116](#)

Exclusiveness of remedy

Grounds stated in the **Federal Arbitration Act** (FAA) either for vacating, or for modifying or correcting, arbitration award constitute the exclusive grounds for expedited vacatur and modification of arbitration award pursuant to provisions of the FAA; parties cannot, by contract, expand upon these grounds. [Hall Street Associates, L.L.C. v. Mattel, Inc., U.S.2008, 128 S.Ct. 1396, 552 U.S. 576, 170 L.Ed.2d 254](#), on remand [531 F.3d 1019](#). [Alternative Dispute Resolution 362\(2\)](#)

Reinsurer would not have been irreparably injured by allowing arbitrator on prior panel to serve on subsequent panel for arbitration of alleged fraud by insurer in not disclosing documents relevant to prior arbitration, and thus reinsurer was not entitled to preliminary injunction, since reinsured had agreed to arbitrate question of whether contracts had provided reinsurance for certain risks, proceeding under **Federal Arbitration Act** to deny enforcement of award was designated remedy for that situation, and only potential injury from waiting until arbitrators had made their award was delay and out-of-pocket costs of paying arbitrators and legal counsel. [Trustmark Ins. Co. v. John Hancock Life Ins. Co. \(U.S.A.\), C.A.7 \(Ill.\) 2011, 631 F.3d 869](#), rehearing and rehearing en banc denied, certiorari denied [131 S.Ct. 2465, 563 U.S. 989, 179 L.Ed.2d 1212](#). [Insurance 3626](#)

Chapter 12 debtor, who failed to file a motion to vacate or modify prepetition National Grain and Feed Association (NGFA) arbitration award upon which creditor's claim was based, in accordance with the terms of the **Federal Arbitration Act** (FAA),

could not subsequently challenge the award in his bankruptcy proceeding. [In re Robinson, C.A.6 2003, 326 F.3d 767](#), rehearing denied [330 F.3d 834](#). [Bankruptcy 🔑 2921](#); [Bankruptcy 🔑 3031](#)

If there is a valid contract between the parties providing for arbitration, and if the dispute resolved in the arbitration was within the scope of the arbitration clause, then substantive review of the arbitrator's decision is limited to those grounds set out in [Federal Arbitration Act](#) (FAA). [Choice Hotels Intern., Inc. v. Felizardo, D.Md.2003, 278 F.Supp.2d 590](#). [Alternative Dispute Resolution 🔑 362\(2\)](#)

[Federal Arbitration Act](#) (FAA) provides the exclusive remedy for challenging an appraisal, and the award is presumed valid unless one of those grounds is affirmatively shown to exist. [Portland General Elec. Co. v. U.S. Bank Trust Nat. Ass'n, D.Or.1999, 38 F.Supp.2d 1202](#), reversed and remanded [218 F.3d 1085](#). [Alternative Dispute Resolution 🔑 501](#)

Duty and function of court

Supplier's motion to vacate arbitrator's order joining it as party to arbitration proceeding between developer, builder, and site owner was request to vacate non-final, nondispositive "order," rather than request to vacate arbitration "award," and thus district court lacked authority to vacate order under [Federal Arbitration Act](#) (FAA). [Northland Truss System, Inc. v. Henning Const. Co., LLC, S.D.Iowa 2011, 808 F.Supp.2d 1119](#). [Alternative Dispute Resolution 🔑 213\(3\)](#)

[Federal Arbitration Act](#) (FAA) empowers courts to vacate award, not to disqualify arbitrator before arbitration is over. [Aviall, Inc. v. Ryder System, Inc., S.D.N.Y.1996, 913 F.Supp. 826](#), affirmed [110 F.3d 892](#). [Alternative Dispute Resolution 🔑 361](#)

Federal court has jurisdiction to vacate or modify arbitrator's award in labor relations action, but only in very limited circumstances as specified in [Federal Arbitration Act](#). [New York Air Brake Corp. v. General Signal Corp., N.D.N.Y.1995, 873 F.Supp. 747](#). [Labor And Employment 🔑 1613](#)

Objections to confirmation

Buyer's objections to the arbitration award in favor of supplier, which were essentially disagreements with the arbitrators' conclusions, did not constitute grounds for vacatur of award under [Federal Arbitration Act](#) (FAA). [Puerto Rico Telephone Co., Inc. v. U.S. Phone Mfg. Corp., C.A.1 \(Puerto Rico\) 2005, 427 F.3d 21](#), certiorari denied [126 S.Ct. 1785, 547 U.S. 1071, 164 L.Ed.2d 518](#). [Alternative Dispute Resolution 🔑 362\(3\)](#)

Timeliness of motion

[Federal Arbitration Act](#) (FAA) is subject to doctrine of equitable tolling; text of statute does not preclude equitable tolling, FAA's structure is not incompatible with equitable tolling, and equitable tolling would not undermine the basic purpose of the FAA, which was enacted to make valid and enforceable written provisions or agreements for arbitration of disputes. [Move, Inc. v. Citigroup Global Markets, Inc., C.A.9 \(Cal.\) 2016, 840 F.3d 1152](#), rehearing and rehearing en banc denied [691 Fed.Appx. 834, 2017 WL 117150](#). [Limitation Of Actions 🔑 104.5](#)

Three-month statute of limitations period for vacating awards contained in [Federal Arbitration Act](#) (FAA), rather than three-year limitations period for confirming awards under the Convention on Recognition and Enforcement of Foreign Arbitral Awards, applied to action brought by cruise ship stateroom attendants who were citizens of India seeking to vacate arbitration award in favor of cruise line under the Convention, where Convention did not supply a limitations period for vacatur actions, which triggered application of Convention's residual clause which utilized the FAA to supply provisions that were not contained within, and not in conflict with, the Convention. [Gonsalvez v. Celebrity Cruises Inc., C.A.11 \(Fla.\) 2013, 750 F.3d 1195](#), certiorari denied [135 S.Ct. 58, 190 L.Ed.2d 32](#). [Alternative Dispute Resolution 🔑 515](#); [International Law 🔑 292](#)

District court lacked authority to grant Argentina's motion to extend three month period under **Federal Arbitration Act** (FAA) for serving notice of motion to vacate foreign arbitral award in favor of United Kingdom company; motion to extend time to serve notice could be used only to extend time limits imposed by court or the Federal Rules of Civil procedure, but not by statute. [Argentine Republic v. National Grid Plc, C.A.D.C.2011, 637 F.3d 365, 394 U.S.App.D.C. 431](#), rehearing en banc denied, certiorari denied 132 S.Ct. 761, 565 U.S. 1059, 181 L.Ed.2d 484. [Alternative Dispute Resolution](#) 🔑 514

Arbitration panel's written confirmation of its prior decision, which stated that prior decision was final as of day it was issued, constituted an effort by panel to have losing party comply with its decision, rather than an improper attempt to immunize decision from review pursuant to provision of **Federal Arbitration Act** (FAA) under which a motion to vacate must be filed within three months of date decision issued. [Nationwide Mut. Ins. Co. v. Home Ins. Co., C.A.6 \(Ohio\) 2002, 278 F.3d 621](#). [Insurance](#) 🔑 3626

Employer's failure to challenge arbitration award reinstating six fired employees and ordering them to be made whole within requisite 90-day limitation period precluded employer from invoking stay provisions of **Federal Arbitration Act** (FAA) to derail confirmation of award pending further arbitration of damages issue; although employer had plausible argument that arbitrator's ruling on damages issue without evidence of lost wages and interim earnings was inappropriate and thus subject to modification, correction, or remand, once three-month limitation period expired, employer was precluded from advancing as defenses to union's confirmation action arguments that it could have asserted in conjunction with timely motion to vacate, modify or correct award. [International Union of Operating Engineers, Local No. 841 v. Murphy Co., C.A.7 \(Ill.\) 1996, 82 F.3d 185](#). [Labor And Employment](#) 🔑 1614

Individual and her individual retirement account (IRA) and living trust failed to seek to vacate, modify, or correct the arbitration award within three months of its filing or delivery, as required under **Federal Arbitration Act** (FAA), and thus, they could not defend against securities firm's and financial services firm's petition for confirmation by asserting grounds for vacating, modifying, or correcting the award under § 10 or § 11 of FAA, where individual, IRA, and trust did not challenge award until, in response to firms' confirmation petition, they filed a "petition to deny" the award, and their filing occurred more than three months after the filing or delivery of award. [Western International Securities v. Devorah, D.D.C.2014, 181 F.Supp.3d 85](#), appeal dismissed 2014 WL 6725803. [Alternative Dispute Resolution](#) 🔑 363(4)

Financial Industry Regulatory Authority (FINRA) rule requiring that monetary judgments in arbitration awards be paid out within 30 days, unless a motion to vacate is filed, did not impose a 30-day time limit on employer for filing such a motion challenging arbitration award in favor of employee, even though dispute was submitted pursuant to another FINRA rule requiring application of the 30 day rule for payment, where plain language of 30-day rule in no way addressed time limitations for motions to vacate, and did not supersede the 90-day time limit provided by the **Federal Arbitration Act** (FAA) provision governing motions to vacate. [Questar Capital Corp. v. Gorter, W.D.Ky.2012, 909 F.Supp.2d 789](#). [Alternative Dispute Resolution](#) 🔑 424

Grounds for vacating

While the grounds stated in the **Federal Arbitration Act** (FAA) either for vacating, or for modifying or correcting, arbitration award provide the exclusive regimes for the review provided by statute, this is not to say that they exclude more searching review based on authority outside the statute as well. [Hall Street Associates, L.L.C. v. Mattel, Inc., U.S.2008, 128 S.Ct. 1396, 552 U.S. 576, 170 L.Ed.2d 254](#), on remand 531 F.3d 1019. [Alternative Dispute Resolution](#) 🔑 362(2)

When considering commercial arbitration award which is not silent as to its rationale, party seeking vacatur may raise any **Federal Arbitration Act** (FAA) grounds or nonstatutory grounds in support of its motion to vacate award. [Brown v. Rauscher Pierce Refsnes, Inc., C.A.11 \(Fla.\) 1993, 994 F.2d 775](#). [Alternative Dispute Resolution](#) 🔑 362(1)

Judicial review of arbitration award is narrowly limited, and award may be vacated only if at least one of the grounds specified in **Federal Arbitration Act** is found to exist. *Barbier v. Shearson Lehman Hutton Inc.*, C.A.2 (N.Y.) 1991, 948 F.2d 117. [Alternative Dispute Resolution](#) 🔑 362(2); [Alternative Dispute Resolution](#) 🔑 363(6)

The defenses recognized under the **Federal Arbitration Act** (FAA) are not available to a party petitioning a court to deny confirmation of an arbitral award under Convention on the Recognition and Enforcement of Foreign Arbitral Awards. *International Trading and Indus. Inv. Co. v. DynCorp Aerospace Technology*, D.D.C.2011, 763 F.Supp.2d 12. [Treaties](#) 🔑 8

In determining whether to vacate arbitrator's award in favor of terminated employee arising from employee's underlying claim of employment discrimination under Louisiana Pregnancy Discrimination Act (LPDA), Title VII, and Pregnancy Discrimination Act (PDA), court was not obligated to consider factors beyond the scope of **Federal Arbitration Act** (FAA) sections related to vacatur and modification and correction; sections provided the exclusive regimes for review under FAA, regardless of terms of parties' arbitration agreement purporting to expand upon grounds for vacatur or modification. *Rent-A-Center, Inc. v. Barker*, W.D.La.2009, 633 F.Supp.2d 245. [Alternative Dispute Resolution](#) 🔑 363(6)

Arbitration award may be overturned where arbitrator deliberately disregards law, there is evident material miscalculation of figures, arbitrator exceeds his or her powers, or as otherwise stated under **Federal Arbitration Act**. *Matter of Arbitration Between Household Mfg., Inc. and Kowin Development Corp.*, N.D.Ill.1993, 822 F.Supp. 505, affirmed in part, reversed in part on other grounds 14 F.3d 1250, rehearing and suggestion for rehearing en banc denied, certiorari denied 114 S.Ct. 2675, 512 U.S. 1205, 129 L.Ed.2d 810. [Alternative Dispute Resolution](#) 🔑 362(3)

Fraud or corruption

Domestic defense contractor's allegedly improper motion for summary judgment before arbitral tribunal in its breach of contract dispute with foreign relationship-management firm was not made in bad faith, as required for court's vacatur of award under the **Federal Arbitration Act** (FAA) provision permitting vacatur of awards obtained through corruption, fraud, or undue means; there was no indication that seeking summary judgment precluded discovery or the chance to question witnesses, and firm actually encouraged summary judgment. *ARMA, S.R.O. v. BAE Systems Overseas, Inc.*, D.D.C.2013, 961 F.Supp.2d 245. [Alternative Dispute Resolution](#) 🔑 332

Arbitration award in favor of corporation, which required trusts to transfer to corporation ownership of insurance policies, was not the product of corruption, fraud, or undue means, as would require vacatur of award under the **Federal Arbitration Act**. *Kolel Beth Yechiel Mechil of Tartikov, Inc. v. YLL Irrevocable Trust*, S.D.N.Y.2012, 878 F.Supp.2d 459, reconsideration denied 881 F.Supp.2d 532, affirmed 729 F.3d 99. [Alternative Dispute Resolution](#) 🔑 334

Financial broker formerly employed by bank failed to establish that bank engaged in fraud and undue means by refusing to comply with discovery orders issued by arbitration panel and by intentionally misrepresenting whether certain evidence was available for discovery, and thus did not show that vacatur of arbitration award entered against him was warranted under **Federal Arbitration Act** (FAA) on such grounds. *Wells Fargo Advisors, LLC v. Watts*, W.D.N.C.2012, 858 F.Supp.2d 591, affirmed in part, reversed in part 540 Fed.Appx. 229, 2013 WL 5433635, on remand 2014 WL 1316090, certiorari denied 135 S.Ct. 210, 190 L.Ed.2d 131. [Alternative Dispute Resolution](#) 🔑 333

Even if employer procured two-month delay in arbitration hearing based upon fraudulent and false statements, in employee's suit for breach of contract, there was no evidence that allegedly fraudulent misrepresentations and resulting delay was material to arbitration's final award, as required, under **Federal Arbitration Act** (FAA), for court to vacate award. *Owen-Williams v. BB & T Inv. Services, Inc.*, D.D.C.2010, 717 F.Supp.2d 1, reconsideration denied 797 F.Supp.2d 118. [Alternative Dispute Resolution](#) 🔑 333

Alleged fraudulent conduct of health insurer's representatives was not basis for arbitration panel's decision, precluding vacatur of award under provision of **Federal Arbitration Act** (FAA) allowing vacatur when award was procured by fraud or corruption; insurer's allegedly fraudulent conduct was explained by the employer prior to issuance of the final award, employer repeatedly directed arbitrators' attention to the documents they contended were not produced by insurer, and decision indicated that the representatives' conduct could be considered a mutual mistake, rather than attempt to deceive. *Crye-Leike, Inc. v. Thomas*, W.D.Tenn.2002, 196 F.Supp.2d 680. [Insurance 🔑 3315](#)

Federal question

A federal district court faced with a **Federal Arbitration Act** (FAA) petition under provision permitting vacating a decision if certain grounds for vacatur exist may look through the petition to the underlying dispute, applying to it the ordinary rules of federal-question jurisdiction; overruling *Greenberg v. Bear, Stearns & Co.*, 220 F.3d 22. *Doscher v. Sea Port Group Securities, LLC*, C.A.2 2016, 832 F.3d 372, on remand 2017 WL 6061653. [Federal Courts 🔑 2235](#)

In-home medical services provider's identified federal issue in action seeking to set aside arbitration award in favor of insurer pursuant to provision of **Federal Arbitration Act** (FAA), namely, that the arbitration tribunal violated provider's Fourteenth Amendment due process right to communicate with counsel, was not "necessarily raised," as required for federal question jurisdiction; provider's due process argument was merely one theory, among many, found in provider's motion to vacate, and a court could vacate the arbitration award on the other grounds presented by provider without addressing the due process issue. *Texas Health Management LLC v. HealthSpring Life & Health Insurance Company, Inc.*, E.D.Tex.2019, 380 F.Supp.3d 580. [Federal Courts 🔑 2351\(1\)](#)

Exceeding authority--Generally

It is only when an arbitrator strays from interpretation and application of the agreement and effectively dispenses his own brand of industrial justice that his decision may be unenforceable under the **Federal Arbitration Act** (FAA). *Stolt-Nielsen S.A. v. AnimalFeeds International Corp.*, U.S.2010, 130 S.Ct. 1758, 559 U.S. 662, 176 L.Ed.2d 605, on remand 624 F.3d 157. [Alternative Dispute Resolution 🔑 324](#)

Only in the rare instance where a court finds that a contract lacks any contractual basis for ordering class procedures must a court, when determining whether to vacate the award on the ground under the **Federal Arbitration Act** (FAA) that the arbitrator exceeded his powers, ask whether the arbitrator identified and applied a rule of decision derived from the FAA or other applicable body of law or, alternatively, merely imposed its own policy choice and thus exceeded its powers. *Southern Communications Services, Inc. v. Thomas*, C.A.11 (Ga.) 2013, 720 F.3d 1352, certiorari denied 134 S.Ct. 1001, 571 U.S. 1163, 187 L.Ed.2d 850. [Alternative Dispute Resolution 🔑 316](#)

An arbitrator exceeds his powers under the **Federal Arbitration Act** (FAA) when he reforms material terms of a contract so that the agreement conforms with his own sense of equity or justice. *Axia NetMedia Corporation v. Massachusetts Technology Park Corporation*, D.Mass.2019, 381 F.Supp.3d 128. [Alternative Dispute Resolution 🔑 316](#)

Arbitrator did not exceed her powers under the **Federal Arbitration Act** (FAA) in applying the Pennsylvania statute of limitations for contract claims by ignoring the parties' waiver of operating agreement's 90-day filing deadline for demand for arbitration following wrongful termination; waiver of filing deadline was separate and distinct issue from application of statute of limitations, and parties did not agree to waive relevant statute of limitations. *Balberdi v. Fedex Ground Package System, Inc.*, D.Hawai'i 2016, 209 F.Supp.3d 1160. [Alternative Dispute Resolution 🔑 316](#)

--- Attorney fees, exceeding authority

Under **Federal Arbitration Act** (FAA), arbitration panel considering employee's age discrimination claim was without jurisdiction to order employee's attorney to pay contingency fee back to employee, where attorney was not before arbitration panel in any manner other than as employee's counsel, employee was not before panel with respect to his relationship with his attorney, and neither employee nor attorney had agreed to arbitrate any dispute over their fee contract. [Porzig v. Dresdner, Kleinwort, Benson, North America LLC, C.A.2 \(N.Y.\) 2007, 497 F.3d 133. Alternative Dispute Resolution 231](#)

Arbitrators did not exceed scope of their authority under **Federal Arbitration Act** in awarding attorney fees; arbitration panel had evidence in front of it as to obstinate or frivolous conduct, both parties requested attorney fees and applicable New York Stock Exchange (NYSE) rules provided for award of fees. [Prudential-Bache Securities, Inc. v. Tanner, C.A.1 \(Puerto Rico\) 1995, 72 F.3d 234. Alternative Dispute Resolution 423](#)

Arbitrator that awarded attorney fees to limited liability company (LLC) in arbitration proceeding against its former Chief Executive Officer (CEO), arising out of CEO's use of corporate funds for personal expenses, did not exceed its authority under broad arbitration provisions in employment agreement and LLC agreement, as would have supported vacatur of award under the **Federal Arbitration Act** (FAA); while agreements also included provisions calling for LLC and CEO to each pay their own attorney fees in arbitration, those provisions did not deprive arbitrator of authority to award attorney fees as sanction for bad faith conduct, and arbitrator's misidentification of clause in agreement under which fees were awarded did not indicate arbitrator lacked authority. [Salus Capital Partners, LLC v. Moser, S.D.N.Y.2018, 289 F.Supp.3d 468, appeal withdrawn 2018 WL 3954332. Alternative Dispute Resolution 354; Alternative Dispute Resolution 357](#)

Arbitration clause in agreement between insurer and reinsurer was "broad," and thus arbitrator had discretion to order such remedies as he deemed appropriate, including attorneys' fees, and thus arbitrator did not exceed his authority under **Federal Arbitration Act** (FAA) in doing so, since the parties had used expansive language to define the types of disputes to be submitted to arbitration and declined to carve out or limit the types of relief that arbitrator was entitled to award; language in arbitration agreement included arbitration of "any disagreement or dispute" regarding "terms, provisions or conditions" of agreement or "performance" of either party. [In re Arbitration Between General Sec. Nat. Ins. Co. and AequiCap Program Administrators, S.D.N.Y.2011, 785 F.Supp.2d 411. Insurance 3626](#)

To the extent that licensee argued that attorney fee award was unreasonable, in challenging arbitrator's award of attorney fees and costs to licensor, its founder, and its successors as prevailing parties in action for breach and rescission of license agreement, rather than that arbitrator lacked power to determine whether fee requests were reasonable, licensee's contentions did not form basis for review of award under provision of **Federal Arbitration Act** (FAA) permitting vacatur of award when arbitrators exceeded their powers. [WRW Chocolates, LLC v. Moonstruck Chocolatier, Inc., E.D.N.Y.2006, 432 F.Supp.2d 306. Alternative Dispute Resolution 362\(3\)](#)

--- Costs, exceeding authority

Even if arbitrator erred in applying employment arbitration rules by shifting cost of arbitration to franchisor, she did not exceed her powers, as would warrant vacatur of arbitration award under the **Federal Arbitration Act** (FAA), where arbitrator did not arrive at final award based on her application of employment arbitration rules; although arbitration agreement provided that arbitration would be conducted in accordance with commercial arbitration rules, which required each party to equally bear expenses, award was based on arbitrator's determination of substantive issue finding that worker was an employee, and, thus, that franchisor had violated Massachusetts Wage Act by misclassifying him as independent contractor. [System4, LLC v. Ribeiro, D.Mass.2017, 275 F.Supp.3d 297. Alternative Dispute Resolution 329](#)

--- Damages, exceeding authority

Arbitration panel did not exceed its powers in calculating damages award against Republic of Argentina and in favor of British corporation that was member of private consortium that contracted with Argentina to provide water and sewage services, such as would provide grounds to vacate award under **Federal Arbitration Act** (FAA); by estimating profits each member of consortium would have received had Argentina complied with investment treaty's fair-treatment provisions, from when Argentina began treating consortium unfairly until contract's default expiration date, panel assumed that, had Argentina treated consortium fairly, it would have granted consortium some relief from country's emergency economic policies and preserved, not canceled, contract, and Argentina failed to show how arbitration agreement prohibited making that assumption or how panel exceeded its powers by basing corporation's compensation on payments that were not discounted to account for risk of lawful termination. [Republic of Argentina v. AWG Group LTD., C.A.D.C.2018, 894 F.3d 327. Alternative Dispute Resolution 316](#)

Under arbitration clause of license agreement, it was for arbitrator to decide who breached agreement first, and what damages were recoverable as consequence, and therefore corporation's argument that arbitrators exceeded their powers, or so imperfectly executed them that mutual, final, and definite award on subject matter submitted was not made was insufficient to overcome arbitral award's presumption of validity under **Federal Arbitration Act** (FAA) and Wisconsin Arbitration Act. [Flexible Mfg. Systems Pty. Ltd. v. Super Products Corp., C.A.7 \(Wis.\) 1996, 86 F.3d 96. Alternative Dispute Resolution 363\(8\)](#)

Arbitrator did not exceed the scope of his powers, as would warrant vacatur of award under **Federal Arbitration Act**, in awarding beauty pageant organization \$5 million in damages for its defamation claim against pageant contestant, even if organization's statement of claim was too vague to include defamatory comments contestant made during television interview, where factual allegations of entire statement included assertions that contestant's defamatory online social media post concerning organization was republished and widely disseminated through, inter alia, television, and contestant's television comments were directly submitted to arbitrator in organization's pre-hearing brief and at the arbitration. [Miss Universe L.P., LLLP. v. Monnin, S.D.N.Y.2013, 952 F.Supp.2d 591. Alternative Dispute Resolution 316](#)

Arbitrator's final award to Puerto Rico distributor of \$1,854,000 for lost benefits, under Puerto Rico Dealer's Act, for Columbia supplier's termination of distribution agreement without just cause, did not exceed arbitrator's powers or disregard governing law, and thus order would be confirmed under **Federal Arbitration Act** (FAA); arbitrator's "streamline" approach for determining damages, which deducted from distributor's gross profits only expenses directly related to sale of supplier's products, was in comportment with Dealer's Act use of benefits, rather than more limited profits, as measure of damages, and arbitrator's damages determination used accounting information that was stipulated by the parties. [Thomas Diaz, Inc. v. Colombina, S.A., D.Puerto Rico 2011, 831 F.Supp.2d 528. Alternative Dispute Resolution 316; Alternative Dispute Resolution 329](#)

Arbitration panel did not exceed its powers under **Federal Arbitration Act** (FAA) in awarding party \$2.75 million in damages for breach of financial services contract, since the award of monetary damages fell within category of relief the panel was empowered to grant; arbitration agreement between the parties granted arbitrators wide discretion to "fashion appropriate relief when the circumstances warranted" doing so, and such broad grant of authority empowered panel to award both monetary damages and equitable relief. [Affinity Financial Corp. v. AARP Financial, Inc., D.D.C.2011, 794 F.Supp.2d 117, affirmed 468 Fed.Appx. 4, 2012 WL 1138821. Alternative Dispute Resolution 316](#)

Arbitration award could have accounted for amounts due under guaranty executed by principal of bankrupt franchisee based upon covenant of good faith and fair dealing under Illinois law, despite blanket waiver of defenses in guaranty, and thus arbitrator did not necessarily exceed his powers or manifestly disregard the law as required for court to vacate arbitration award that was subject to **Federal Arbitration Act** (FAA), where arbitrator found in favor of bankruptcy trustee on breach of contract claim and there had not been express disavowal of covenant of good faith and fair dealing. [Jimmy John's Franchise, LLC v. Kelsey, C.D.Ill.2008, 549 F.Supp.2d 1034. Alternative Dispute Resolution 316; Alternative Dispute Resolution 329](#)

Arbitrator did not exceed scope of his power within meaning of **Federal Arbitration Act** (FAA) by awarding sports agent "relief not requested," when arbitrator considered National Football League (NFL) player's multi-million dollar contract that was not yet in existence at time of arbitration hearing, where complaining agent's own exhibit showed that agent requested

half of the fees received for future contracts on NFL player at issue, there was no allegation that the damages summaries that parties provided to arbitrator were intended to preclude award of fees on future contracts, and the agents' agreement to arbitrate provided that arbitration should completely resolve all disputes between them and should resolve rights, liabilities, obligations, and indebtedness with respect to numerous athletes including player at issue. [Weinberg v. Silber, N.D.Tex.2001, 140 F.Supp.2d 712](#), affirmed [57 Fed.Appx. 211, 2003 WL 147530](#). [Alternative Dispute Resolution](#) 🔑 235

---- **Findings and conclusions, exceeding authority**

Arbitrator issued “reasoned award,” thereby not exceeding its powers as would allow vacatur of arbitral award under **Federal Arbitration Act** (FAA), in concluding seller owed buyer \$9.8 million as sales price adjustment for purchased assets pursuant to sale and purchase agreement (SPA) and arbitrator's engagement letter that was part of arbitration agreement in SPA, although award did not provide mathematical computations supporting determination, since letter allowed parties to bring arithmetic error to arbitrator’s attention, but SPA and letter did not require arbitrator to provide detailed mathematical calculations, and arbitrator noted that analysis was based on parties' statements and accounting records, identified finding on accrual of liabilities, and explained relevant documentation. [YPF S.A. v. Apache Overseas, Incorporated, C.A.5 \(Tex.\) 2019, 924 F.3d 815](#). [Alternative Dispute Resolution](#) 🔑 305

Arbitrators did not exceed their power by straying from the essence of agreement between food vendor and government contractor, as would support court's vacatur of award under **Federal Arbitration Act** (FAA), instead, in reaching conclusion that contract required government contractor to reimburse food vendor for post-termination fees for inbound airlift services, arbitrators examined text of original contract as well as side agreement, considered evidence of the parties' intent, including parties' course of performance, and provided both parties with ample opportunity to present arguments and testimony. [Agility Public Warehousing Co. K.S.C. v. Supreme Foodservice GmbH, S.D.N.Y.2011, 840 F.Supp.2d 703](#), affirmed [495 Fed.Appx. 149, 2012 WL 3854880](#). [Alternative Dispute Resolution](#) 🔑 316

Employer's contention, that arbitrators who entered award against employer determining that employee's firing was without cause and requiring employer to pay damages plus interest in the amount of \$5,695,124 exceeded their powers by misapprehending material fact regarding employee's minimum revenue requirements, was an argument that the arbitrators reached the wrong decision on the facts, and as such was not a basis for vacating the award on grounds that the arbitrators exceeded their powers under the **Federal Arbitration Act** (FAA). [Fellus v. Sterne, Agee & Leach, Inc., S.D.N.Y.2011, 783 F.Supp.2d 612](#). [Alternative Dispute Resolution](#) 🔑 316

Arbitration panel did not exceed its powers by determining that arbitration agreement authorized class arbitration of dispute between insurer and health care provider, where panel's determination was based on legal principles under **Federal Arbitration Act** (FAA), state law, and arbitration association's rules. [Louisiana Health Service Indem. Co. v. Gambro A B, W.D.La.2010, 756 F.Supp.2d 760](#), appeal dismissed [422 Fed.Appx. 313, 2011 WL 1419229](#). [Insurance](#) 🔑 3316

Arbitration panel's determination, in construction dispute between charter boat business and boat builder, that two of business's claims had been proven “by the greater weight of the evidence,” and otherwise denying remaining claims without offering any reasons for the result, failed to provided a reasoned award, as required by parties arbitration agreement, such that the awarded exceeded the power of the panel and warranted vacatur under the **Federal Arbitration Act** (FAA). [Cat Charter L.L.C. v. Schurtenberger, S.D.Fla.2010, 691 F.Supp.2d 1339](#), reversed and remanded [646 F.3d 836](#). [Alternative Dispute Resolution](#) 🔑 307

Court could not conclude on limited record presented by franchisor that arbitrator did not interpret contract at all by granting award for principal of franchisee as third-party beneficiary of franchisee under Illinois franchising contract that allegedly precluded any claims for third-party beneficiaries, as required for court to modify arbitration award that was subject to **Federal Arbitration Act** (FAA), since arbitrator could have found that other clauses of agreement and discussions that occurred at time

of contract negotiations indicated intent to confer benefit to principal. [Jimmy John's Franchise, LLC v. Kelsey, C.D.Ill.2008, 549 F.Supp.2d 1034. Alternative Dispute Resolution 363\(8\)](#)

Arbitration award resolving dispute between corporation's shareholders was not imperfectly executed, for purposes of **Federal Arbitration Act** (FAA) section permitting vacation of imperfectly executed arbitration awards, even if reasoning behind arbitrator's decision was somewhat ambiguous, where award disposed of all claims before arbitrator, and fully resolved stock ownership issue. [Van Horn v. Van Horn, N.D.Iowa 2005, 393 F.Supp.2d 730. Alternative Dispute Resolution 303](#)

Arbitration panel, in determining that employer constructively discharged employee and thus that employee was entitled to enhanced severance package (ESP) benefits, did not exceed its authority, so as to warrant vacatur of its award under the **Federal Arbitration Act** (FAA); arbitration clause in ESP authorized panel to determine application of section that defined constructive discharge, and employee's claim was that he was constructively discharged by change in his work duties. [Cunningham v. Pfizer Inc., M.D.Fla.2003, 294 F.Supp.2d 1329. Alternative Dispute Resolution 316](#)

---- Interest, exceeding authority

Prejudgment interest award did not result from arbitrator misconduct or arbitrators exceeding their authority, so as to warrant vacatur of award under **Federal Arbitration Act** (FAA); it could not be said that award was such a mistake as to deprive party of fair hearing, and arbitration panel was charged with resolving all allocation claims between parties to arbitration agreement. [Halliburton Energy Services, Inc. v. NL Industries, S.D.Tex.2008, 553 F.Supp.2d 733. Alternative Dispute Resolution 329; Alternative Dispute Resolution 334](#)

---- Issues subject to arbitration, exceeding authority

Arbitrator did not exceed his authority in violation of the **Federal Arbitration Act** by deciding issues of arbitrability, as would warrant vacatur of portion of arbitration award that construed two employees' contracts with employer to permit class-wide arbitration of their claims, where district court explicitly delegated question of class arbitrability to the arbitrator, and contrary to employer's contentions otherwise, fact that arbitrator adopted court's reasoning rather than conducting his own analysis whether parties' arbitration agreements clearly and unmistakably delegated the issue of arbitrability did not mean that he acted outside scope of his powers. [Wells Fargo Advisors, LLC v. Sappington, S.D.N.Y.2018, 328 F.Supp.3d 317. Alternative Dispute Resolution 316](#)

Issue of whether seller, private investment holding company, could offset escrow amount against amount equal to any independent payment made to purchasers of common stock of company's subsidiary to satisfy interim award was not relevant to interim arbitration award that required seller to reimburse purchasers for full amount of claims for indemnification regarding various taxes assessed against entity that purchasers had acquired, or supplemental interim award concluding that seller was not permitted to satisfy interim award with escrowed funds, and thus remand was not required under **Federal Arbitration Act** (FAA) on basis that interim awards were not complete. [Ecopetrol S.A. v. Offshore Exploration and Production LLC, S.D.N.Y.2014, 46 F.Supp.3d 327. Alternative Dispute Resolution 352](#)

---- Class actions, exceeding authority

Cellular telephone service provider's contention that arbitrator refused to apply applicable law, in certifying class arbitration of customers' challenge to provider's early termination fees (ETF), was at its core simply an argument that the arbitrator applied the agreed-upon class certification standard erroneously, which did not provide grounds under the **Federal Arbitration Act** (FAA) for vacating the class certification based on arbitrator having exceeded his powers. [Southern Communications Services, Inc. v. Thomas, C.A.11 \(Ga.\) 2013, 720 F.3d 1352, certiorari denied 134 S.Ct. 1001, 571 U.S. 1163, 187 L.Ed.2d 850. Alternative Dispute Resolution 316](#)

---- Punitive damages, exceeding authority

Under **Federal Arbitration Act** (FAA), magistrate judge had authority to vacate arbitration award on ground that arbitrator exceeded his powers in awarding punitive damages to manufacturer's nonparty nonservicing dealers; arbitrator exceeded his authority by resolving dispute which may or may not have existed between manufacturer and its other nonservicing dealers, and by determining rights of individuals who were not parties in arbitration proceedings. [NCR Corp. v. Sac-Co., Inc., C.A.6 \(Ohio\) 1995, 43 F.3d 1076](#), rehearing and suggestion for rehearing en banc denied, certiorari denied 116 S.Ct. 272, 516 U.S. 906, 133 L.Ed.2d 193. [Alternative Dispute Resolution](#) 🔑 315

Arbitrators did not exceed powers in awarding \$120,000 in punitive damages to broker who alleged that he was defamed by termination form submitted by employer to National Association of Securities Dealers (NASD); in arbitrations governed by **Federal Arbitration Act**, arbitrators are authorized to award punitive damages unless parties have withdrawn that power. [Baravati v. Josephthal, Lyon & Ross, Inc., C.A.7 \(Ill.\) 1994, 28 F.3d 704](#). [Alternative Dispute Resolution](#) 🔑 416

---- Sanctions, exceeding authority


District court acted within its discretion in declining to impose sanctions against consignor's successor-in-interest for bringing action alleging fraud against consignee, although **Federal Arbitration Act** precluded successor's action because consignment contracts contained arbitration clause; although successor's arguments against validity of contracts were weak, the division of responsibility between courts and arbitrators to determine whether contracts were validly formed was confusing. [Ipcor Collections LLC v. Costco Wholesale Corp., C.A.2 \(N.Y.\) 2012, 698 F.3d 58](#). [Federal Civil Procedure](#) 🔑 2775


Arbitration panel exceeded its authority in reinsurance dispute by imposing \$10,000-a-day sanction against reinsurer for its noncompliance with panel's order to make interim payment to insurer, warranting vacatur under **Federal Arbitration Act** (FAA), where there was no clear evidence of parties' intent to confer such authority on arbitrators; nothing in FAA conferred inherent power upon arbitrators to impose what amounted to equivalent of civil contempt sanction, imposition of daily penalty could burden party's right to pursue judicial review of underlying order, and amount of sanction did not relate to any provision in reinsurance agreement. [Certain Underwriters at Lloyd's London v. Argonaut Ins. Co., N.D.Cal.2003, 264 F.Supp.2d 926](#). [Insurance](#) 🔑 3626




---- Miscellaneous cases exceeding authority

Arbitration panel exceeded its powers under the **Federal Arbitration Act** (FAA) by imposing its own policy choice in concluding that arbitration clauses in charter party agreements between charterers and vessel owners allowed for class arbitration of charterers' antitrust claims, despite the fact that the clauses were silent as to class arbitration; rather than inquiring whether the FAA, maritime law, or New York law contained a default rule under which an arbitration clause would be construed as allowing class arbitration in the absence of express consent, the panel perceived an emerging consensus among arbitrators that class arbitration was beneficial in a wide variety of settings, and the panel then considered only whether there was any good reason not to follow that consensus in this dispute. [Stolt-Nielsen S.A. v. AnimalFeeds International Corp., U.S.2010, 130 S.Ct. 1758, 559 U.S. 662, 176 L.Ed.2d 605](#), on remand 624 F.3d 157. [Shipping](#) 🔑 39(7)


Arbitrator exceeded his powers pursuant to the **Federal Arbitration Act** (FAA) by prospectively voiding parent corporation's performance and payment guaranty agreement of its subsidiary's network operation agreement with independent public instrumentality that owned fiber optic infrastructure, while re-writing the terms of the network operation agreement, warranting vacatur of the arbitration award; the parties never intended to bestow that power upon the arbitrator, and in re-writing the contract, the arbitrator fundamentally altered the relationship between the parties to adhere to his own conception of fairness, as the arbitrator constructed an arrangement that public instrumentality would never have agreed to ex ante. [Axia NetMedia](#)


[Corporation v. Massachusetts Technology Park Corporation, D.Mass.2019, 381 F.Supp.3d 128. Alternative Dispute Resolution](#)  316


Arbitration panel's conclusion that insurer could avoid asbestos exclusion in direct access treaty and other treaties with reinsurer because insurer did not know about underlying asbestos exposure of insured was directly contrary to plain language of exclusion and thereby exceeded panel's powers, in support of vacating \$14 million award in favor of insurer, under **Federal Arbitration Act** (FAA) and Michigan law; panel ruled that it was insurer's underwriting judgment as manifested by absence of exclusion in its policies that encapsulated asbestos gaskets used by insured did not constitute known exposure, but panel impermissibly replaced exclusion's contractually-mandated inquiry into insurer's objective knowledge of insured's asbestos exposure with panel's own inquiry into insurer's subjective underwriting assessment about extent of exposure. [Amerisure Mut. Ins. Co. v. Everest Reinsurance Co., E.D.Mich.2015, 109 F.Supp.3d 969. Insurance](#)  3626

Arbitrator exceeded the scope of bankruptcy court's instructions, in modifying stay solely for purpose of allowing arbitrator to determine the disputed amount of Chapter 13 debtor's state law claims against contractor for failing to properly perform its contract to provide her with modular housing, and to adjust contractor's own claim against estate based on any amounts awarded to debtor, when arbitrator purported to require debtor to obtain permanent financing and to pay net amount owing to contractor within 90 days; accordingly, bankruptcy court had jurisdiction to modify and correct this portion of arbitrator's award under both the **Federal Arbitration Act** and modification provision of Georgia Arbitration Code. [In re Clark, Bkrcty.S.D.Ga.2009, 411 B.R. 507. Alternative Dispute Resolution](#)  196; [Bankruptcy](#)  2442; [Bankruptcy](#)  3031

---- Miscellaneous cases not exceeding authority

Independent accountant that issued arbitral award, concluding that seller owed buyer \$9.8 million as adjustment to sales price for purchased assets pursuant to sale and purchase agreement (SPA) and accountant's engagement letter that formed part of arbitration agreement in SPA, did not exceed its powers, as would allow vacatur of award under **Federal Arbitration Act** (FAA), by substituting another partner to conduct five-day review during which parties could call attention to patent arithmetical inaccuracy in arbitral determination, although letter provided that “engagement and the Determination shall be made” by two named partners of accountant, since letter did not define “engagement” and stated that accountant should conduct five-day review, without specifying particular partners' names. [YPF S.A. v. Apache Overseas, Incorporated, C.A.5 \(Tex.\) 2019, 924 F.3d 815. Alternative Dispute Resolution](#)  316

Arbitration panel did not exceed its powers, such as would provide grounds to vacate award under **Federal Arbitration Act** (FAA), when, in awarding damages against Republic of Argentina and in favor of British corporation that was member of private consortium that contracted with Argentina to provide water and sewage services, panel, without explanation, rejected necessity defense raised by Argentina; although panel rejected Argentina's assertions with brief conclusions, left unsupported by particular evidence, about panel's understanding of Argentine government's role in the country's economic crisis and the actions it might have taken to comply with bilateral investment treaties' fair-treatment provisions, Argentina did not point to anything in the record suggesting that panel's cursory dismissal of its defense was done to suit its own policy preferences instead of criteria set out in parties' arbitration agreement. [Republic of Argentina v. AWG Group LTD., C.A.D.C.2018, 894 F.3d 327. Alternative Dispute Resolution](#)  515

Arbitrator did not exceed his powers in making arbitration award, in arbitration proceeding between manager, who was expelled from financial services limited liability company (LLC) by vote of his co-managers pursuant to their operating agreement for alleged breach of contract, breach of fiduciary duty, conversion, and fraud, and co-managers, and, thus award would not be vacated under **Federal Arbitration Act** (FAA) on such basis, since parties expressly adopted arbitration rules, and arbitration rules did not require arbitration company to resolve manager's venue dispute prior to appointing arbitrator, and even if arbitrator erred in applying statute of limitations, such alleged mistake would not justify vacatur. [Cooper v. WestEnd Capital Management, L.L.C., C.A.5 \(La.\) 2016, 832 F.3d 534. Alternative Dispute Resolution](#)  316

Arbitrator who interpreted parties' arbitration provision and applicable legal authorities in rendering award did not exceed the scope of his contractually delegated authority under the **Federal Arbitration Act** (FAA). *Jones v. Dancel*, C.A.4 (Md.) 2015, 792 F.3d 395, certiorari denied 136 S.Ct. 591, 193 L.Ed.2d 470. [Alternative Dispute Resolution 🔑 316](#)

Arbitration panel arguably was interpreting maintenance contract between railroad and contractor when it concluded that Illinois law required that railroad pay contractor out-of-pocket damages and lost profits after railroad terminated contract, and thus panel's award was not subject to vacatur pursuant to **Federal Arbitration Act** (FAA) on ground that panel exceeded its authority, even if panel misinterpreted applicable law, where there was no evidence that panel referred to sources besides parties' contract or relevant Illinois case law in determining amount of award. *BNSF R. Co. v. Alstom Transp., Inc.*, C.A.5 (Tex.) 2015, 777 F.3d 785. [Alternative Dispute Resolution 🔑 316](#); [Alternative Dispute Resolution 🔑 329](#)

Arbitrator determining price formula for parties to long-term green anode coke supply agreement, by inadvertently including two provisions from seller's proposed draft award, although adopting buyer's price formula, did not exceed his authority, as would warrant vacatur of award pursuant to **Federal Arbitration Act** (FAA); although parties' supply agreement provided that if a dispute arose regarding price formula, arbitrator would have to select only one of the proposals submitted by the parties, arbitrator's inclusion of the provisions from the seller's proposed draft was a clerical error that the arbitrator corrected upon buyer's request. *Rain CII Carbon, LLC v. ConocoPhillips Co.*, C.A.5 (La.) 2012, 674 F.3d 469. [Alternative Dispute Resolution 🔑 316](#)

In dispute arising from a contract for the sale of steel pipe, arbitrator did not exceed his powers under the **Federal Arbitration Act** (FAA), by revising his original award in a way consistent with his interpretation of his reconsideration authority under American Arbitration Association's International Centre of Dispute Resolution (ICDR) rule permitting an arbitrator to correct clerical errors, where the parties' arbitration agreement empowered the arbitrator to determine for himself the scope of his reconsideration authority under the rule. *T.Co Metals, LLC v. Dempsey Pipe & Supply, Inc.*, C.A.2 (N.Y.) 2010, 592 F.3d 329. [Alternative Dispute Resolution 🔑 343](#)

Arbitrators did not exceed scope of their authority under arbitration agreement by deciding merits of partnership's claim against individual securities dealer, although one partner had settled claim against dealer; claims were within scope of arbitration provision, and evaluation of weight, if any, to be accorded settlement agreement was determination committed to arbitrators' discretion under agreement and **Federal Arbitration Act**. *DVC-JPW Investors v. Gershman*, C.A.8 (Minn.) 1993, 5 F.3d 1172, rehearing denied. [Alternative Dispute Resolution 🔑 415](#)

Arbitrator acted within scope of his authority by interpreting franchise agreement to permit an award of expectation damages, and thus franchisee was not entitled to vacatur of arbitration award to franchisor based on arbitrator's alleged exceeding of his powers, pursuant to **Federal Arbitration Act** (FAA), where franchise agreement gave arbitrator right to award relief he deemed proper, consistent with terms of agreement, expectation damages were preferred form of relief for breach of contract, and no part of franchise agreement prohibited such remedy. *V5 Investments, LLC v. GoWaiter Business Holdings, LLC*, M.D.Fla.2016, 210 F.Supp.3d 1329. [Alternative Dispute Resolution 🔑 316](#)

Arbitrator did not exceed his authority in exercising jurisdiction over school system's former emergency manager, in dispute between school system and contractor hired to perform facilities management services, and thus vacatur of \$24 million arbitration award was not necessary under **Federal Arbitration Act** (FAA); school system did not object to exercise of jurisdiction over emergency manager and actively participated in arbitration, and emergency manager was the signing representative for school system on payment agreement with contractor, which expressly incorporated the dispute resolution procedure established in the initial contract. *Sodexo Management, Inc. v. Detroit Public Schools*, E.D.Mich.2016, 200 F.Supp.3d 679. [Alternative Dispute Resolution 🔑 316](#)

Arbitration panel's ruling that insurer could aggregate individual losses in underlying asbestos injury suits into single claim for indemnification from reinsurer as single occurrence or series of occurrences arising out of one event under direct access

treaty did not exceed panel's powers, as would be required to vacate \$14 million award in favor of insurer, under **Federal Arbitration Act** (FAA) and Michigan law; panel followed customary and appropriate interpretative path in determining that ambiguity allowed panel to look beyond four corners of treaty, panel analyzed competing extrinsic evidence as to meaning of terms “occurrence” and “event” and as to whether aggregation of insurer's losses was consistent with those terms, panel found insurer's evidence more persuasive, and panel adopted interpretation supported by that evidence. [Amerisure Mut. Ins. Co. v. Everest Reinsurance Co., E.D.Mich.2015, 109 F.Supp.3d 969. Insurance 🔑 3626](#)

In determining that arbitration agreement allowed former employee to bring collective arbitration action under the FLSA against employer, arbitrator did not fail to decide dispute in accordance with governing principles of law and equity, such that he exceeded his authority under the **Federal Arbitration Act** (FAA), as would warrant vacating arbitration award; even if arbitrator did not cite law in award, he applied guiding principles of law in determining that agreement, which required employer's consent for class action, did not require consent for collective action. [International Bancshares Corp. v. Lopez, S.D.Tex.2014, 57 F.Supp.3d 784. Alternative Dispute Resolution 🔑 316](#)

Arbitrator did not exceed his authority, as would support vacating an arbitration award under the **Federal Arbitration Act** (FAA), in allegedly reviewing a decision of a Canadian stock exchange to refuse approval of a joint venture agreement with an American mining company to operate an Armenian gold mine in a dispute over that joint venture agreement, where the arbitrator instead made a factual finding that the stock exchange never approved the joint venture agreement as a condition precedent to the agreement becoming operational. [Global Gold Min. LLC v. Caldera Resources, Inc., S.D.N.Y.2013, 941 F.Supp.2d 374. Alternative Dispute Resolution 🔑 316](#)

Financial Industry Regulatory Authority (FINRA) arbitration award in favor of securities firm on investor's claim could not be vacated under **Federal Arbitration Act's** (FAA) “exceeding powers” provision on grounds that FINRA improperly classified one arbitrator as a public arbitrator; allegedly improperly designated arbitrator in particular, and the three-person arbitration panel in general, made a good faith attempt to comply with their mandate, and arbitrators decided the issues submitted to them and unanimously denied investor's claims, an outcome the parties' must have envisioned when agreeing to arbitrate the dispute. [Stone v. Bear, Stearns & Co., Inc., E.D.Pa.2012, 872 F.Supp.2d 435, entered 2012 WL 1946970, affirmed 538 Fed.Appx. 169, 2013 WL 5788762, certiorari denied 134 S.Ct. 2292, 572 U.S. 1115, 189 L.Ed.2d 201. Alternative Dispute Resolution 🔑 416](#)

Term “decision” in payment agreement between employer and workers' compensation carrier, requiring arbitrators to render their decision based upon a hearing referred to a final decision on the merits, referred to a final decision on the merits, and thus arbitration panel did not act outside the scope of the its powers, in violation of the **Federal Arbitration Act** (FAA), by requiring employer to post pre-hearing security in arbitration proceedings initiated by carrier to collect past due premium payments; prior to the rendering of its final decision, the panel, in the absence of language in the arbitration agreement expressly to the contrary, possessed the inherent authority to preserve the integrity of the arbitration process to which the parties had agreed. [On Time Staffing, LLC v. National Union Fire Ins. Co. of Pittsburgh, PA, S.D.N.Y.2011, 784 F.Supp.2d 450. Alternative Dispute Resolution 🔑 316](#)

Arbitration panel's decision that even if obligor was required to indemnify surety, surety's right to indemnity was extinguished by a stipulation and order, which dismissed its claim for exoneration with prejudice, did not exceed panel's authority and exhibit a manifest disregard of the law, as would warrant vacatur of the arbitration award under the **Federal Arbitration Act**, where panel relied on Restatement in determining that indemnification and exoneration claims were sufficiently connected to support conclusion that they arose from single transaction or series of transactions. [Cardell Financial Corp. v. Suchodolksi Associates, Inc., S.D.N.Y.2009, 674 F.Supp.2d 549, affirmed 409 Fed.Appx. 458, 2011 WL 441384. Alternative Dispute Resolution 🔑 316; Alternative Dispute Resolution 🔑 329](#)

Arbitration panel did not exceed its powers in issuing award to former securities trader and against trader's former broker dealer and its owner arising out of their failure to pay commissions to trader, as was required to vacate award pursuant to **Federal Arbitration Act** (FAA); a mutual, final, and definite award upon subject matter submitted was made, and evidence was lacking

as to whether arbitrators exceeded their powers in issuing award. [Legacy Trading Co., Ltd. v. Hoffman, W.D.Okla.2008, 627 F.Supp.2d 1260, reconsideration denied 2008 WL 5146258, affirmed in part, reversed in part 363 Fed.Appx. 633, 2010 WL 325893. Alternative Dispute Resolution 🔑 423](#)

Vacatur of arbitration award which held that vessel owner's affiliate, although a non-signatory to arbitration agreement in time charter, was entitled to assert its claim in arbitration against charterer was not warranted under provisions of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the **Federal Arbitration Act** which allowed a party to attack an award predicated upon arbitration of a subject matter not within the agreement to submit to arbitration, where charterer agreed to submit issue of arbitrability to arbitrators, and arbitrators did not exceed their powers in deciding the issue. [In re Arbitration between Halcot Navigation Ltd. Partnership and Stolt-Nielsen Transp. Group, S.D.N.Y.2007, 491 F.Supp.2d 413. Shipping 🔑 39\(7\)](#)

Where insurer and insurance agent agreed to submit to National Association of Security Dealers (NASD) arbitrators "all claims which are asserted in or might otherwise have been asserted in" stayed state-court action arising out of their contract, arbitrators did not exceed their powers within meaning of **Federal Arbitration Act** (FAA) by considering issue within that framework that was not identified until shortly before arbitration hearing. [Lincoln Nat. Life Ins. Co. v. Payne, S.D.Iowa 2003, 286 F.Supp.2d 1023, affirmed 374 F.3d 672. Alternative Dispute Resolution 🔑 416](#)

--- Consideration of evidence, misconduct

Arbitration panel's determination, in rejecting employee's claims asserting principally that her employer discriminated against her on the basis of gender in violation of Title VII, that acts performed more than six months prior to the period for which employee could seek recovery pursuant to the arbitrators' interpretation of release entered between employee and employer were "too remote," did not constitute "misconduct . . . in refusing to hear evidence pertinent and material to the controversy," so as to permit vacatur of the award under the **Federal Arbitration Act** (FAA). [Schwartz v. Merrill Lynch & Co., Inc., C.A.2 \(N.Y.\) 2011, 665 F.3d 444. Alternative Dispute Resolution 🔑 334](#)

Arbitrators were not guilty of misconduct, under the **Federal Arbitration Act**, in refusing to hear evidence pertinent and material to farmers' tort claims against poultry processor, as second arbitration panel faced initial controversy of whether res judicata barred the farmers' subsequent tort claims, and it made little sense for arbitration panel to hear evidence relating to substance of tort claims after determining claims were barred by res judicata. [Hudson v. ConAgra Poultry Co., C.A.8 \(Ark.\) 2007, 484 F.3d 496. Alternative Dispute Resolution 🔑 326](#)

Arbitration award in favor of employee who was discharged for refusing to take drug test would be vacated pursuant to **Federal Arbitration Act** section stating that arbitration award may be vacated where arbitrator is guilty of misconduct in refusing to hear evidence; arbitrator prevented employer from presenting additional evidence by misleading employer into believing that report, confirming presence of marijuana on cigarette found in employee's car, had been admitted as a business record and then used employer's failure to present evidence, that he told employer not to present, as a predicate for ignoring test results. [Gulf Coast Indus. Workers Union v. Exxon Co., USA, C.A.5 \(Tex.\) 1995, 70 F.3d 847. Labor And Employment 🔑 1608](#)

Under provision of **Federal Arbitration Act** governing vacation of arbitration award, arbitration award must not be set aside for arbitrator's refusal to hear evidence that is cumulative or irrelevant; vacatur is appropriate only when exclusion of relevant evidence so affects rights of party that it may be said that he was deprived of fair hearing. [Hoteles Condado Beach, La Concha and Convention Center v. Union De Tronquistas Local 901, C.A.1 \(Puerto Rico\) 1985, 763 F.2d 34. Alternative Dispute Resolution 🔑 326](#)

Arbitrator did not refuse to hear pertinent and material evidence in wrongful termination action, as would allow for vacatur of arbitration award under the **Federal Arbitration Act** (FAA); employee had a sufficient opportunity to respond to employer's motion for summary judgment in arbitration proceedings, including submitting any relevant evidence to the arbitrator for her

consideration. [Balberdi v. Fedex Ground Package System, Inc., D.Hawai'i 2016, 209 F.Supp.3d 1160. Alternative Dispute Resolution !\[\]\(35e4f762fc1cfea5610d92e2d225d5b4_img.jpg\) 326](#)

Arbitration panel did not commit misconduct within the meaning of the **Federal Arbitration Act** (FAA) by requiring employer, in arbitration proceedings initiated by workers' compensation carrier to collect past due premium payments from employer, to post pre-hearing security without first conducting a full evidentiary hearing, where employer had ample opportunity to oppose the motion for pre-hearing security, and did, in fact, vigorously oppose it. [On Time Staffing, LLC v. National Union Fire Ins. Co. of Pittsburgh, PA, S.D.N.Y.2011, 784 F.Supp.2d 450. Alternative Dispute Resolution !\[\]\(d84e7ea36f695d92cb39ec32c307ac93_img.jpg\) 334](#)

Arbitrator did not ignore material evidence that manufacturer had developed a prototype of ultra fast low voltage static transfer switches (UFLVSTS), as would support manufacturer's motion to vacate arbitration award against it, pursuant to the **Federal Arbitration Act**, on its breach of contract claims against its exclusive distributor related to the development and sales of low voltage static transfer switches (LVSTS), although arbitrator misstated in final arbitration award that manufacturer had not built a prototype of UFLVSTS, where arbitrator actually meant only that manufacturer had not developed a commercially viable prototype. [Silicon Power Corp. v. General Elec. Zenith Controls, Inc., E.D.Pa.2009, 661 F.Supp.2d 524. Alternative Dispute Resolution !\[\]\(feabb98897b440bc8695a03336a6e2df_img.jpg\) 324](#)

Absent a prior request in accordance with arbitration body's rules, arbitration panel's failure to permit cross-examination of parties at an arbitration hearing did not reflect bad faith or amount to affirmative misconduct that would support vacation of arbitration award under **Federal Arbitration Act** (FAA). [Lunsford v. RBC Dain Rauscher, Inc., D.Minn.2008, 590 F.Supp.2d 1153. Alternative Dispute Resolution !\[\]\(9dfdaff1d86ba3c1f8353b4d1b61b8c5_img.jpg\) 334](#)

The provision of the **Federal Arbitration Act** (FAA) which authorizes courts to vacate an award where the arbitrators were guilty of misconduct in refusing to hear evidence pertinent and material to the controversy applies to cases where an arbitrator, to the prejudice of one of the parties, rejects consideration of relevant evidence essential to the adjudication of a fundamental issue in dispute, and the party would otherwise be deprived of sufficient opportunity to present proof of a claim or defense; the misconduct in that event amounts to a denial of fundamental fairness in the proceeding, and renders the resulting arbitral decision biased, irrational or arbitrary. [Fairchild Corp. v. Alcoa, Inc., S.D.N.Y.2007, 510 F.Supp.2d 280. Alternative Dispute Resolution !\[\]\(83f22ed94ec5517769dd76d702c6bfd8_img.jpg\) 334](#)

Even if arbitrator received evidence of settlement offer from general contractor to subcontractor, and even though arbitrator failed to disclaim reliance on such alleged offer in reaching his decision, arbitrator did not thereby engage in misbehavior by which general contractor's rights were prejudiced; thus, such alleged errors did not provide basis for vacating award under **Federal Arbitration Act** (FAA). [U.S. ex rel. Nat. Roofing Services, Inc. v. Lovering-Johnson, Inc., D.Kan.1999, 53 F.Supp.2d 1142. Alternative Dispute Resolution !\[\]\(8d0f0e0fe25b320c33272c52aec1fbca_img.jpg\) 334](#)

Arbitrators' refusal to allow investors to present testimony of brokerage firm's chief financial officer did not deny investors fundamentally fair hearing in arbitration for fraud and claims under Commodity Exchange Act, and therefore, was not "misconduct" warranting vacatur of arbitration award under **Federal Arbitration Act**; investors called other employees of brokerage firm as witnesses, and officer's testimony would have been either irrelevant or cumulative of other testimony. [Areca, Inc. v. Oppenheimer & Co., Inc., S.D.N.Y.1997, 960 F.Supp. 52. Alternative Dispute Resolution !\[\]\(642aa997563f9a325b310230bb5078b7_img.jpg\) 415](#)

Fact that arbitrator in matter involving dispute between estate of baseball star and trading card company had read documents submitted in response to subpoena by former executive for company, which were subject of motion to quash by company, did not render arbitrator partial to estate as would require vacatur of arbitrator's award in estate's favor under **Federal Arbitration Act** (FAA), even though documents contained assessment of settlement value of case; arbitrators must review such documents to rule on discovery and privilege issues, and no showing was made that assessment was anything more than unilateral opinion. [Mantle v. Upper Deck Co., N.D.Tex.1997, 956 F.Supp. 719. Alternative Dispute Resolution !\[\]\(2b376d1a92330ab09dad2665d2f89bf5_img.jpg\) 335](#)

Arbitrator's refusal to consider evidence of handwritten adjustments to preliminary statement for division and valuation of drilling rig inventory in valuation dispute under asset purchase agreement was not refusal to hear evidence, within meaning of **Federal Arbitration Act**, since refusal did not deny parties fundamentally fair hearing. *Blue Tee Corp. v. Koehring Co.*, S.D.N.Y.1990, 754 F.Supp. 26, judgment clarified 763 F.Supp. 754. [Alternative Dispute Resolution 🔑 265](#)

--- **Ex parte contact, misconduct**

Canadian mining company was not prejudiced by any alleged ex parte communications with an arbitrator, as would support vacating the arbitration award under the **Federal Arbitration Act** (FAA), in a dispute with American mining company over a joint venture agreement to operate an Armenian gold mine; alleged ex parte communication that Canadian company provide certain documents only helped to cause the truth to come out and did not constitute undue prejudice, and arbitrator's alleged statement questioning Canadian company's attempts to settle because it had American mining company "on the run," only reflected a present assessment of the proceedings that was subject to change. *Global Gold Min. LLC v. Caldera Resources, Inc.*, S.D.N.Y.2013, 941 F.Supp.2d 374. [Alternative Dispute Resolution 🔑 334](#)

--- **Improper purpose, misconduct**

Arbitration panel's order requiring employer, in arbitration proceedings initiated by workers' compensation carrier to collect past due premium payments from employer, to post pre-hearing security was not issued to force employer to settle, and thus was not misconduct within the meaning of the **Federal Arbitration Act** (FAA); although panel accompanied its order with a direction that the parties must meet and confer in good faith to attempt to resolve the outstanding issues between them, a majority of the Panel persisted in requiring On Time to post pre-hearing security after the initial settlement negotiations had failed, and the panel did not renew its original mandate that the parties engage in settlement discussions. *On Time Staffing, LLC v. National Union Fire Ins. Co. of Pittsburgh, PA*, S.D.N.Y.2011, 784 F.Supp.2d 450. [Alternative Dispute Resolution 🔑 334](#)

--- **Refusal to postpone, misconduct**

Arbitrator's refusal to adjourn arbitration proceeding brought by executor of investor's estate against corporation's registered representative was not misconduct under the **Federal Arbitration Act** (FAA), where arbitrator's decision was based on clear and reasonable justification, and was fundamentally fair; representative's claim that he could not participate in hearing via videotape or telephone was not credible in light of fact that he was working 30 hours per week as a stockbroker, and arbitrator provided representative with less stressful alternatives to offer evidence on his behalf. *Bisnoff v. King*, S.D.N.Y.2001, 154 F.Supp.2d 630. [Alternative Dispute Resolution 🔑 263](#)

Arbitrators' refusal to postpone final arbitration session when plaintiff's principal witness was unable to attend did not rise to level of misconduct necessary to vacate arbitration award; nothing in **Federal Arbitration Act** requires arbitrators under all circumstances to adjust their schedules to suit requests of any party, absent witness had attended and given testimony at first two arbitration sessions, absent witness had opportunity to fully present his story and had completed his testimony, and plaintiff's interests were adequately represented by its two attorneys who were present during all three arbitration sessions. *Concourse Beauty School, Inc. v. Polakov*, S.D.N.Y.1988, 685 F.Supp. 1311. [Alternative Dispute Resolution 🔑 326](#)

Because expeditious resolution of dispute is one of principal purposes for referring matter to arbitration, **Federal Arbitration Act** limits court's review of grant or denial of adjournment to determination of whether arbitrators were guilty of misconduct in denying request for adjournment. *Storey v. Searle Blatt Ltd.*, S.D.N.Y.1988, 685 F.Supp. 80. [Alternative Dispute Resolution 🔑 374\(1\)](#)

---- **Miscellaneous cases, misconduct**

Arbitrator's failure to disclose his previous mediation involving investment firm did not constitute misbehavior under **Federal Arbitration Act** so as to require vacatur of subsequent arbitration award in favor of firm and against trustee who alleged that firm transferred funds from trust's account without authorization; trustee contended that arbitrator's failure to disclose prejudiced her disclosure "rights" under applicable Financial Industry Regulatory Authority (FINRA) rules, but trustee did not contend arbitration was unfair and did not allege any irregularities in arbitral hearings themselves. [Ploetz for Laudine L. Ploetz, 1985 Trust v. Morgan Stanley Smith Barney LLC, C.A.8 \(Minn.\) 2018, 894 F.3d 894. Alternative Dispute Resolution 🔑 417](#)

District court's alleged misbehavior, in declining to stay litigation of investors' claims against non-arbitrating limited liability company (LLC) pending resolution of arbitration, did not provide basis under **Federal Arbitration Act** (FAA) for vacating arbitration award in favor of promoters of investment with respect to investors' fraud claims in connection with sale of fractional tenant-in-common interests in property leased by LLC; provision of FAA permitting district court to vacate arbitration award based on "misbehavior by which the rights of any party have been prejudiced" applied to conduct of arbitrators, not court. [Rainier DSC 1, L.L.C. v. Rainier Capital Management, L.P., C.A.5 \(Tex.\) 2016, 828 F.3d 362. Alternative Dispute Resolution 🔑 334](#)

Arbitration panel chairman was not guilty of "corruption" or "misbehavior," within meaning of **Federal Arbitration Act** (FAA), based on his failure to disclose his illness to parties prior to arbitration, even though parties' private arbitral rules which governed the conduct of arbitration required such disclosure; parties could not expand FAA's grounds for vacating award by adopting private arbitral rules. [Zurich American Ins. Co. v. Team Tankers A.S., C.A.2 \(N.Y.\) 2016, 811 F.3d 584. Alternative Dispute Resolution 🔑 335](#)

Even if procedural mandates of South Carolina Frivolous Civil Proceedings Act (FCPA) applied in arbitration of employment dispute between brokerage firm and its former employees, firm did not allege that arbitration panel engaged in "misconduct" or "misbehavior" in failing to comply with FCPA requirement to provide firm with 30 days to respond after employees requested fees, as would require vacatur of FCPA fees award to employees under **Federal Arbitration Act** (FAA); firm alleged that arbitrators made mistake in handling FCPA fees request, not that they intentionally contradicted the law. [Wachovia Securities, LLC v. Brand, C.A.4 \(S.C.\) 2012, 671 F.3d 472. Alternative Dispute Resolution 🔑 416](#)

Arbitrator's denial of labor union's request for subpoenas for contemporaneous notes made by supervisor and co-worker concerning incident in which employee was found sleeping at work did not rise to the level of misconduct sanctionable under the **Federal Arbitration Act** (FAA) nor did it yield a fundamentally unfair hearing under the LMRA, where union had received notes from the company, albeit late. [International Chemical Workers Union v. Columbian Chemicals Co., C.A.5 \(La.\) 2003, 331 F.3d 491. Labor And Employment 🔑 1569](#)

Arbitrator's discovery-related decisions relating to booking records were not misconduct under **Federal Arbitration Act** (FAA) that would warrant vacatur of arbitration award in favor of employer, in action by African-American female former employee against employer, alleging discrimination based on race and pregnancy and asserting claims for violations of [Title VII, § 1981](#), and District of Columbia Human Rights Act, although employer delayed in producing records, and those produced were incomplete; record revealed employee was able to present detailed arguments about pertinence and materiality of booking records and that arbitrator considered aspects of that evidence in reaching her final decision, and employee was not denied fundamentally fair hearing. [White v. Four Seasons Hotel and Resorts, D.D.C.2017, 244 F.Supp.3d 1. Alternative Dispute Resolution 🔑 334](#)

Letter sent by law firm partner to arbitration association, in which partner threatened association with litigation after it declined to reopen arbitration of dispute with law firm founder regarding terms of dissolution of firm, did not allow partner to obtain final arbitral award by undue means within the meaning of the **Federal Arbitration Act** (FAA), as would warrant vacatur of award; even if letter constituted misconduct by partner's counsel, effect of the letter was, at worst, that the arbitration was reopened,

which did not deprive founder of a fundamentally fair hearing. [Ray v. Chafetz, D.D.C.2017, 236 F.Supp.3d 66. Alternative Dispute Resolution 🔑 333](#)

Arbitrator's failure, in arbitration of dispute between school system and contractor hired to provide facilities management services, to disclose that he had been counsel in a lawsuit against school system's newly-appointed emergency manager was not misconduct, nor did it evince evident partiality, under **Federal Arbitration Act** (FAA), as would warrant vacatur of \$24 million award in contractor's favor, where arbitrator was not aware of the circumstances giving rise to the potential conflict until after he issued interim award. [Sodexo Management, Inc. v. Detroit Public Schools, E.D.Mich.2016, 200 F.Supp.3d 679. Alternative Dispute Resolution 🔑 334; Alternative Dispute Resolution 🔑 335](#)

Arbitration panel's decision, in arbitration proceeding relating to bond trader's claims for unpaid wages, to deny broker dealer's request to postpone hearing on last day of hearing, did not rise to level of misconduct required to vacate arbitration award under **Federal Arbitration Act** (FAA), even if trader introduced new damages model through his expert on last day of hearing, where dealer voluntarily ended cross-examination of trader's expert after arbitrators refused broker's request to postpone hearing. [Odeon Capital Group, LLC v. Ackerman, S.D.N.Y.2016, 182 F.Supp.3d 119, affirmed in part, vacated in part and remanded 864 F.3d 191, on remand 2018 WL 1089749. Alternative Dispute Resolution 🔑 423](#)

Arbitrator, in disciplinary proceedings brought by orchestra against union-represented musician, did not refuse to hear pertinent evidence when he reserved deciding whether a recording and transcript of meetings between musician and orchestra management was admissible, as would support musician's claim of arbitrator misconduct under the **Federal Arbitration Act** (FAA); even if the evidence proved that musician's version of the conversation were true, the contents of that conversation did not factor into the arbitrator's final decision, and musician's union representation did not re-offer the evidence after the arbitrator's initial reservation. [Roy v. Buffalo Philharmonic Orchestra Society, Inc., W.D.N.Y.2016, 161 F.Supp.3d 187, affirmed 682 Fed.Appx. 42, 2017 WL 951461. Labor and Employment 🔑 1587](#)

Arbitrator's decision to allow limited liability company (LLC) to supplement its discovery responses six days before the arbitration hearing to include an e-mail message written by the LLC's compliance specialist did not warrant vacatur of arbitration award, pursuant to **Federal Arbitration Act** (FAA), on grounds of arbitrator misconduct, in employee's action against LLC, although employee claimed that the e-mail would have assisted him in preparation for the arbitration, and that the statement in the e-mail undermined the LLC's argument that it did not breach its contract, where employee was able to call and cross-examine witnesses about the e-mail during the arbitration hearing, employee was able to submit post-hearing briefs where he could have used the e-mail to support his case, and the e-mail appeared to be more favorable to LLC's position than employee's position. [Ostrom v. Worldventures Marketing, LLC, M.D.La.2016, 160 F.Supp.3d 942. Alternative Dispute Resolution 🔑 252](#)

Decision by arbitrators to subpoena only 10 of 55 potential witnesses who were clients of employee was not misconduct under provision of the **Federal Arbitration Act** (FAA) allowing for vacatur in cases of misconduct by arbitrators for failure to receive evidence; arbitrators were within their discretion to decide that all 55 clients were not necessary, and only the 10 clients that employer viewed as imperative in its proceeding with employee were necessary. [Questar Capital Corp. v. Gorter, W.D.Ky.2012, 909 F.Supp.2d 789. Alternative Dispute Resolution 🔑 334](#)

Arbitration panel did not commit misconduct under **Federal Arbitration Act** (FAA) by allegedly imposing unreasonable time limits during hearing, with respect to award entered pursuant to United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards against rice broker in favor of commodities trader, stemming from breach of sales contract; there was no evidence that time limits deprived either party of adequate opportunity to present their evidence and argument. [Al-Haddad Commodities Corp. v. Toepfer Intern. Asia Pte., Ltd., E.D.Va.2007, 485 F.Supp.2d 677. Alternative Dispute Resolution 🔑 514](#)

Confirmation and enforcement of arbitration award was warranted under **Federal Arbitration Act** and Pennsylvania law, although opponent's counsel had other cases before arbitrator and other party objected to how arbitration proceeding was conducted, i.e., arguments advanced by counsel, and evidence offered by opponent and admitted into evidence by arbitrator;

other party did not produce any evidence whatsoever to support its contentions, and its asserted grounds for relief from award did not rise to level of misconduct, corruption, fraud, undue means or improper partiality. [Rath v. Casey, E.D.Pa.2004, 309 F.Supp.2d 661. Alternative Dispute Resolution 🔑 335](#)

Any violation by arbitrator of alleged agreement to return documents which had been submitted in response to subpoena, which was challenged by party, after temporary restraining order (TRO) was granted regarding documents did not constitute misconduct and willful misbehavior that prejudiced rights of party who challenged subpoena, and thus did not warrant vacatur of arbitrator's award under **Federal Arbitration Act** (FAA); record indicated that arbitrator either determined that agreement did not require return or modified agreement, either of which was permissible. [Mantle v. Upper Deck Co., N.D.Tex.1997, 956 F.Supp. 719. Alternative Dispute Resolution 🔑 334](#)

Partiality of arbitrators--Generally

With respect to the “evident partiality” ground for disqualification of an arbitrator in the **Federal Arbitration Act** (FAA), the standard of “appearance of bias” is too low and the standard of “proof of actual bias” is too high; rather, “evident partiality” within the meaning of the FAA will be found where a reasonable person would have to conclude that an arbitrator was partial to one party to the arbitration. [Applied Indus. Materials Corp. v. Ovalar Makine Ticaret Ve Sanayi, A.S., C.A.2 \(N.Y.\) 2007, 492 F.3d 132. Alternative Dispute Resolution 🔑 222](#)

An arbitrator's award can be vacated for reasons provided in the **Federal Arbitration Act** (FAA), including corruption, fraud, undue means, evident partiality, misconduct, or ultra vires acts. [Schoch v. InfoUSA, Inc., C.A.8 \(Neb.\) 2003, 341 F.3d 785, certiorari denied 124 S.Ct. 1414, 540 U.S. 1180, 158 L.Ed.2d 81. Alternative Dispute Resolution 🔑 334; Alternative Dispute Resolution 🔑 335](#)

Under **Federal Arbitration Act** (FAA), federal court did not have authority to disqualify umpire for bias while reinsurance arbitration proceeding was still pending, even though court could review interim arbitration order and vacate it for evident partiality of arbitrator. [Certain Underwriters at Lloyd's London v. Argonaut Ins. Co., N.D.Cal.2003, 264 F.Supp.2d 926. Insurance 🔑 3626](#)

Party asserting “evident partiality,” as ground for vacation of arbitration award under **Federal Arbitration Act** (FAA), must establish specific facts that indicate improper motives on part of arbitrator. [Hobet Mining, Inc. v. International Union, United Mine Workers of America, S.D.W.Va.1994, 877 F.Supp. 1011. Alternative Dispute Resolution 🔑 335](#)

---- Appearance of bias, partiality of arbitrators

Employer failed to provide any facts that would indicate that arbitrator was biased against it in employer's arbitration with employee, as required for vacatur of arbitration award in favor of employee under **Federal Arbitration Act** (FAA) provision allowing vacatur for bias, even though arbitrator had connections to a union branch that employee helped found, where employer failed to show motive, arbitrator averred that he had never represented union, and employee's involvement with union had ended at least 30 years prior to the arbitration proceeding. [Questar Capital Corp. v. Gorter, W.D.Ky.2012, 909 F.Supp.2d 789. Alternative Dispute Resolution 🔑 335](#)

Conduct of party-appointed neutral arbitrator, in failing to disclose that she was personally involved in prior arbitration that involved same issues of contractual interpretation, same damages calculation, and same expert witnesses, created reasonable impression of bias under **Federal Arbitration Act** (FAA), and thus vacatur of arbitral award on basis of evident partiality was warranted in breach of contract dispute between automobile dealership and software manufacturer, since arbitrator had previously considered evidence and legal arguments regarding proper interpretation of contract at issue, previously concluded that manufacturer's interpretation of contract was correct, and previously adopted manufacturer's expert testimony on damages

as accurate and reasonable. [Dealer Computer Services, Inc. v. Michael Motor Co., Inc.](#), S.D.Tex.2010, 761 F.Supp.2d 459, vacated and remanded 485 Fed.Appx. 724, 2012 WL 3317809, certiorari denied 133 S.Ct. 945, 568 U.S. 1124, 184 L.Ed.2d 727. [Alternative Dispute Resolution](#) 🔑 335

--- Comments or statements, partiality of arbitrators

Non-party witness' affirmation as to conversation he overheard, in which neutral arbitrator allegedly indicated corporation would receive favorable decision in arbitration of its dispute with trusts over insurance policies, was not objective evidence of arbitrator's impartiality, as would under [Federal Arbitration Act](#) require vacatur of award transferring ownership of policies from trusts to corporation; there was no foundation for witness' assertion he knew corporation's president was "very close associate" of arbitrator, and witness did not explain why he was in arbitrator's office when conversation took place, the basis for his knowledge about identity of corporation's president, how he ultimately came to learn subject of conversation, or why he relayed it to trusts. [Kolel Beth Yechiel Mechil of Tartikov, Inc. v. YLL Irrevocable Trust](#), S.D.N.Y.2012, 878 F.Supp.2d 459, reconsideration denied 881 F.Supp.2d 532, affirmed 729 F.3d 99. [Alternative Dispute Resolution](#) 🔑 335

--- Disclosure duty, partiality of arbitrators

Although, under the Supreme Court's [Commonwealth Coatings test](#), 393 U.S. 145, the "evident partiality" standard of the [Federal Arbitration Act](#) (FAA) requires an arbitrator to disclose an interest only when she has a substantial interest in a firm which has done more than trivial business with a party, parties who seek additional protection may agree that the arbitrators of their disputes must make known trivial passive-investor relationships that would not trigger the Act's rule. [Republic of Argentina v. AWG Group LTD.](#), C.A.D.C.2018, 894 F.3d 327. [Alternative Dispute Resolution](#) 🔑 222

Arbitrator's nondisclosure of campaign contributions from minority owner of employer arbitrating age discrimination dispute with employee did not constitute "evident partiality," within meaning of [Federal Arbitration Act](#) provision allowing arbitration award to be vacated, since no reasonable person would conclude that arbitrator was partial to employer, as campaign funds were matter of public record, employer's contributions were far less than 1% of \$1.7 million that arbitrator raised during her campaign, arbitrator could not directly solicit funds during campaign and instead had to establish committee to secure her campaign funds, and arbitrator received fivefold contribution from law firm representing employee. [Freeman v. Pittsburgh Glass Works, LLC](#), C.A.3 (Pa.) 2013, 709 F.3d 240. [Alternative Dispute Resolution](#) 🔑 335

Failure of two reinsurance arbitrators to disclose their concurrent service as arbitrators in another, arguably similar, arbitration did not constitute "evident partiality" within meaning of [Federal Arbitration Act](#) (FAA); two of three members of arbitral panel failed to disclose their simultaneous service as arbitrators in another proceeding in which common witness, similar legal issues, and related party had been involved. [Scandinavian Reinsurance Co. Ltd. v. Saint Paul Fire and Marine Ins. Co.](#), C.A.2 (N.Y.) 2012, 668 F.3d 60. [Insurance](#) 🔑 3626

Reinsurer's appointed arbitrator's alleged failure to fully disclose fact that he represented reinsurer in another unrelated arbitration several years prior to arbitration between reinsurer and reinsured did not render arbitrator "evidently partial," and thus, did not require vacatur of arbitration award invalidating six reinsurance agreements, under provision of [Federal Arbitration Act](#) (FAA), allowing vacatur of arbitration award due to arbitrator's partiality. [Sphere Drake Ins. Ltd. v. All American Life Ins. Co.](#), C.A.7 (Ill.) 2002, 307 F.3d 617, rehearing and rehearing en banc denied, certiorari denied 123 S.Ct. 1754, 538 U.S. 961, 155 L.Ed.2d 512. [Insurance](#) 🔑 3626

Arbitrator's failure to disclose attenuated connections between his law firm and one of arbitrating parties did not permit nullification of arbitration award of award in that party's favor, even if failure to disclose violated Commercial Arbitration Rules of American Arbitration Association (AAA), which governed arbitration, inasmuch as court remained bound by grounds for vacatur set forth in [Federal Arbitration Act](#) (FAA), which did not include disclosure violation. [ANR Coal Co., Inc. v.](#)

[Cogentrix of North Carolina, Inc., C.A.4 \(N.C.\) 1999, 173 F.3d 493](#), certiorari denied 120 S.Ct. 186, 528 U.S. 877, 145 L.Ed.2d 156. [Alternative Dispute Resolution](#) 🔑 335

Fact that member of arbitration panel had previously been disciplined by National Association of Securities Dealers (NASD) did not cause award to be obtained by undue means in violation of **Federal Arbitration Act**; NASD Code of Arbitration Procedure required arbitrators to disclose information that would affect impartiality, but did not require disclosure of prior discipline. [Remmey v. PaineWebber, Inc., C.A.4 \(N.C.\) 1994, 32 F.3d 143](#), certiorari denied 115 S.Ct. 903, 513 U.S. 1112, 130 L.Ed.2d 786. [Alternative Dispute Resolution](#) 🔑 417

Arbitrator's disclosure to American Arbitration Association (AAA) that she had previously served on panel that had considered dispute between software manufacturer and "another party" did not put automobile dealership on notice of arbitrator's potential partiality in contract dispute between manufacturer and automobile dealership, and thus disclosure was insufficient to satisfy arbitrator's duty to disclose information bearing on partiality under **Federal Arbitration Act** (FAA), since disclosure did not specify that prior arbitration involved dispute with another automobile dealership involving same contractual provision and expert witnesses, and disclosure did not reveal that arbitrator had ruled in manufacturer's favor in prior arbitration. [Dealer Computer Services, Inc. v. Michael Motor Co., Inc., S.D.Tex.2010, 761 F.Supp.2d 459](#), vacated and remanded 485 Fed.Appx. 724, 2012 WL 3317809, certiorari denied 133 S.Ct. 945, 568 U.S. 1124, 184 L.Ed.2d 727. [Alternative Dispute Resolution](#) 🔑 222

Arbitrator's tardy disclosure of potential conflict of interest arising out of his son's employment with investment manager's affiliate, while somewhat inaccurate, was not materially incomplete, such that investors' attorney would have objected to arbitrator's continued participation in arbitration of investors' claims against their investment manager, arising out of alleged mismanagement of their stock portfolio, and, thus, vacatur of arbitration award in favor of manager was not warranted under the **Federal Arbitration Act** on basis of evident partiality, where neither arbitrator nor his son had any financial interest in the proceeding. [Vigorito v. UBS PaineWebber, Inc., D.Conn.2007, 477 F.Supp.2d 481](#), adhered to on reconsideration 557 F.Supp.2d 303, reconsideration denied 2009 WL 1789443. [Alternative Dispute Resolution](#) 🔑 416

Even if arbitrator should have disclosed, prior to arbitration of dispute between seller and prospective buyer of turbine equipment, that he had represented seller's parent corporation in antitrust action 39 years earlier, his failure to do so did not indicate "evident partiality" or "misconduct" requiring vacation of his award under the **Federal Arbitration Act** (FAA); arbitrator disclosed facts indicating a significant relationship between his law firm and the parent, and his failure to disclose the prior relationship was too remote to create appearance of partiality. [Power Services Associates, Inc. v. UNC Metcalf Servicing, Inc., N.D.Ga.2004, 338 F.Supp.2d 1375](#). [Alternative Dispute Resolution](#) 🔑 335

Arbitrator's ex parte lunches with insurer's counsel and representatives during pendency of arbitration of insurer's breach of contract action against reinsurer did not rise to level of "evident partiality" under **Federal Arbitration Act** (FAA), where arbitrator made full disclosure of contacts beforehand, extended same invitation to reinsurer, did not discuss pending arbitration during lunches, and had no business relationship with insurer. [Nationwide Mut. Ins. Co. v. Home Ins. Co., S.D.Ohio 2000, 90 F.Supp.2d 893](#), affirmed 278 F.3d 621. [Insurance](#) 🔑 3314

---- Former representation, partiality of arbitrators

Even assuming that reinsurer's appointed arbitrator spent two months of equivalent full-time service as counsel for reinsurer in prior unrelated international insurance arbitration, four-years earlier, such relationship with reinsurer did not render arbitrator "evidently partial," and thus vacatur of arbitration award invalidating six reinsurance agreements was not warranted, under provision of **Federal Arbitration Act** (FAA), allowing vacatur of arbitration award due to arbitrator's partiality. [Sphere Drake Ins. Ltd. v. All American Life Ins. Co., C.A.7 \(Ill.\) 2002, 307 F.3d 617](#), rehearing and rehearing en banc denied, certiorari denied 123 S.Ct. 1754, 538 U.S. 961, 155 L.Ed.2d 512. [Insurance](#) 🔑 3626

---- **Miscellaneous cases with evident partiality, partiality of arbitrators**

There was evident partiality of arbitrator, warranting vacation of arbitration award under the **Federal Arbitration Act**, where arbitrator learned of potential conflict of interest arising from contract discussions between arbitrator's company and parent of party to arbitration, but arbitrator decided to erect a "Chinese Wall" instead of investigating further, and did not inform the parties of the "Chinese Wall." [Applied Indus. Materials Corp. v. Ovalar Makine Ticaret Ve Sanayi, A.S., C.A.2 \(N.Y.\) 2007, 492 F.3d 132. Alternative Dispute Resolution 🔑 335](#)

Members of joint labor-management panel that concurrently served as trustees of local union's employment benefits funds had conflicting responsibilities that constituted evident partiality under standard of **Federal Arbitration Act** (FAA), for purposes of funds' Labor Management Relations Act (LMRA) suit against employers, seeking enforcement of arbitral decision, where issues in dispute, specifically amount of money that employers owed in deficient benefits contributions, directly concerned funds to which trustees owed fiduciary duty, trustees, as members of panel, were making adjudicative determinations that affected employers' financial liability, and there was no evidence that employers knowingly, intentionally, or voluntarily agreed to have trustees act as arbitrators. [Gambino v. Alfonso, D.Mass.2012, 2012 WL 5866202, Unreported, on reconsideration, on reconsideration 2013 WL 2362262, affirmed 566 Fed.Appx. 9, 2014 WL 2793626. Labor and Employment 🔑 1576](#)

In an arbitration proceeding between insurer and reinsurer regarding validity of reinsurance contract, material conflict was created by two of the three arbitrators' simultaneous service in subsequently initiated arbitration also involving validity of a reinsurance contract, and therefore, arbitrators' failure to disclose relationship created evident partiality, warranting vacatur of arbitration award under **Federal Arbitration Act** (FAA); reinsurer in subsequent arbitration proceeding was allegedly a successor-in-interest to insurer in first arbitration, proceedings had a key witness in common, and arbitrators' failure to disclose conflict deprived reinsurer in first proceeding of opportunity to object to their service on both arbitration panels or adjust their arbitration strategy. [Scandinavian Reinsurance Co. Ltd. v. St. Paul Fire & Marine Ins. Co., S.D.N.Y.2010, 732 F.Supp.2d 293, reversed 668 F.3d 60. Insurance 🔑 3626](#)

---- **Miscellaneous cases without evident partiality, partiality of arbitrators**

Arbitrator who failed to disclose his previous mediation involving investment firm was not thereby rendered evidently partial under **Federal Arbitration Act** so as to require vacatur of subsequent arbitration award in favor of firm and against trustee who alleged that firm transferred funds from trust's account without authorization; parties submitted to arbitration under Financial Industry Regulatory Authority (FINRA) rules, which required disclosure of previous mediation, but previous mediation was years old and unrelated to firm's dispute with trust, and since arbitrator timely disclosed ten other cases he arbitrated that involved family related to firm, his undisclosed mediation represented at most a trivial and inconsequential addition to that relationship. [Ploetz for Laudine L. Ploetz, 1985 Trust v. Morgan Stanley Smith Barney LLC, C.A.8 \(Minn.\) 2018, 894 F.3d 894. Alternative Dispute Resolution 🔑 335](#)

Vacatur of international arbitration award rendered against Republic of Argentina and in favor of British corporation that was member of private consortium that contracted with Argentina to provide water and sewage services was not warranted under **Federal Arbitration Act's** (FAA) "evident partiality" standard; while Argentina contended that arbitrator had direct interest in outcome of case because she sat on board of directors of company that managed over \$2 billion in investments in two members of consortium, and had not disclosed that relationship, company's investment in members amounted to 0.06% of its invested assets, most of which was credited to its clients and not its own bottom line, company's interests in members, as passive shareholder without management role or entitlement to profits, were thus trivial, interest of arbitrator, of which she was unaware, was insignificant, and her brief service on board ended over year before panel rendered its decision against Argentina. [Republic of Argentina v. AWG Group LTD., C.A.D.C.2018, 894 F.3d 327. Alternative Dispute Resolution 🔑 338](#)

Arbitrator's nondisclosure of teaching relationship with attorney for employer's minority owner did not constitute “evident partiality,” within meaning of **Federal Arbitration Act** provision authorizing arbitration award to be vacated, since professional relationship with employer's minority owner was, by itself, not powerfully suggestive of bias and did not indicate improper motives on part of arbitrator. [Freeman v. Pittsburgh Glass Works, LLC, C.A.3 \(Pa.\) 2013, 709 F.3d 240. Alternative Dispute Resolution 🔑 335](#)

Feed corn business failed to show that arbitrators of its dispute with grain buyer were evidently partial, so as to establish grounds for vacating award in buyer's favor under **Federal Arbitration Act** (FAA), even though arbitrators were affiliated with association in which buyer was member; rejection of business' adequate assurances defense did not give rise to reasonable impression of bias, arbitrators were all employees of farmer-owned or controlled cooperatives, and business failed to show how arbitrators were improperly motivated. [Andersons, Inc. v. Horton Farms, Inc., C.A.6 \(Mich.\) 1998, 166 F.3d 308. Alternative Dispute Resolution 🔑 415](#)

Arbitrator's continued participation in dispute between school system and contractor hired to provide facilities management services, after becoming aware that he had been counsel in a lawsuit against school system's newly-appointed emergency manager, did not amount to “evident partiality” under **Federal Arbitration Act** (FAA), as would warrant vacatur of \$24 million arbitration award in contractor's favor; appointee was a named party in arbitrator's prior cases only because of his employment position, was not an active or key participant, and had no contact with arbitrator during proceedings. [Sodexo Management, Inc. v. Detroit Public Schools, E.D.Mich.2016, 200 F.Supp.3d 679. Alternative Dispute Resolution 🔑 335](#)

Arbitrator's alleged untimely disclosure, in arbitration involving insurer's alleged obligation to reinsure losses suffered by a Brazilian company in Brazil, of his role as party-arbitrator in another arbitration involving related entity of insurer, which was represented in the other arbitration by the same attorney as insurer in the instant arbitration, did not constitute “evident partiality” within meaning of **Federal Arbitration Act** (FAA). [National Indemnity Company v. IRB Brasil Resseguros S.A., S.D.N.Y.2016, 164 F.Supp.3d 457, amended 2016 WL 3144057, affirmed 675 Fed.Appx. 89, 2017 WL 421944, enforcement granted 2018 WL 739450, vacated 767 Fed.Appx. 154, 2019 WL 1755232. Alternative Dispute Resolution 🔑 335](#)

Arbitrator's failure to disclose that he and his law firm had been involved in litigation with law firm representing limited liability company (LLC) in certain unrelated litigation did not warrant vacatur of arbitration award pursuant to **Federal Arbitration Act** (FAA) on “evident partiality” theory; although arbitrator's law firm and law firm representing LLC had been involved together in more than one litigation, a majority of the litigations did not involve arbitrator, neither arbitrator nor his law firm ever represented the same client as LLC's law firm, signed the same pleadings, or attended the same meetings, hearings, or trials together. [Ostrom v. Worldventures Marketing, LLC, M.D.La.2016, 160 F.Supp.3d 942. Alternative Dispute Resolution 🔑 265](#)

Arbitration umpire for reinsurance dispute did not display evident partiality against reinsurer, as umpire had no motive to favor insurer and did not take any concrete actions to unfairly favor insurer, as would be required to vacate \$14 million award against reinsurer, under **Federal Arbitration Act** (FAA); although reinsurer alleged that umpire was biased toward insurer in order to receive additional umpire appointments, unfairly favoring insurer would have been counterproductive to securing additional work as neutral umpire selected with consent of both parties, umpire did not know which party nominated him and did not hide any arbitration engagements involving insurer, and umpire's post-hearing predecisional e-mail stating he was preliminarily inclined to rule in favor of reinsurer since before hearing started, but accusations by reinsurer's counsel about denying reinsurer fair hearing “piss me off,” also stated umpire was still inclined to rule in reinsurer's favor and would put aside his frustration with reinsurer at deliberations. [Amerisure Mut. Ins. Co. v. Everest Reinsurance Co., E.D.Mich.2015, 109 F.Supp.3d 969. Insurance 🔑 3626](#)

Arbitration panel member's statement that panel would “take into consideration and weigh the issue” when judging testimony of former employee and his witness in arbitration following his termination as a financial advisor, after denying employer's request that panel prohibit employee's presence in hearing room during witness's testimony, was not sufficient basis for finding that arbitrator possessed “evident partiality” in violation of **Federal Arbitration Act** (FAA), and thus, vacation of award was

not required, even though employee asserted that statement was an imposition of extra scrutiny on employee's and his witness's testimony; panel member simply addressed employer's concerns and reassured employer that issue would be taken into account when considering testimony, and at no point did panel member relate to parties that she would impose extra scrutiny. [Blackwell v. Merrill Lynch, Pierce, Fenner & Smith Inc.](#), W.D.N.C.2014, 22 F.Supp.3d 565. [Alternative Dispute Resolution](#) 🔑 335

Neutral arbitrator was not partial to corporation, or biased against trusts, as would under the [Federal Arbitration Act](#) require vacatur, on grounds of evident partiality, of arbitration award transferring ownership of insurance policies from trusts to corporation; neutral arbitrator did not have any special relationship with corporation or any financial interest in favoring corporation in the arbitration proceeding. [Kolel Beth Yechiel Mechil of Tartikov, Inc. v. YLL Irrevocable Trust](#), S.D.N.Y.2012, 878 F.Supp.2d 459, reconsideration denied 881 F.Supp.2d 532, affirmed 729 F.3d 99. [Alternative Dispute Resolution](#) 🔑 335

Arbitrator of dispute over drug testing policy between National Football League (NFL) and players who tested positive for banned substances under policy was not a “partial” arbitrator, as would warrant setting aside arbitration award under [Federal Arbitration Act](#) (FAA), even though he was chief legal officer for the NFL; fact that arbitrator gave advice to NFL and to players' team when players threatened legal action was foreseeable, players' union did not object to his service as arbitrator while negotiating policy, and union requested he serve as arbitrator because of his involvement giving advice to NFL and the team. [National Football League Players Ass'n v. National Football League](#), D.Minn.2009, 654 F.Supp.2d 960, affirmed 582 F.3d 863, rehearing and rehearing en banc denied 598 F.3d 932, certiorari denied 131 S.Ct. 566, 562 U.S. 1029, 178 L.Ed.2d 413. [Labor And Employment](#) 🔑 1576; [Labor And Employment](#) 🔑 1608

Arbitration panel did not exhibit evident partiality against securities broker dealer and its owner in issuing award to broker dealer's former securities trader, as was required to vacate award pursuant to [Federal Arbitration Act](#) (FAA), absent any dealings, personal interests or relationships which would establish panel's bias. [Legacy Trading Co., Ltd. v. Hoffman](#), W.D.Okla.2008, 627 F.Supp.2d 1260, reconsideration denied 2008 WL 5146258, affirmed in part, reversed in part 363 Fed.Appx. 633, 2010 WL 325893. [Alternative Dispute Resolution](#) 🔑 423

Arbitration award would not be vacated under [Federal Arbitration Act](#) on grounds of evident partiality, based on fact that principal owners of company involved in arbitration contributed to funding of chair at university at which arbitrator taught, where it was unlikely that arbitrator was aware of such connection, arbitrator had no financial interest in outcome of arbitration, and party challenging award could easily have obtained information concerning such connection prior to issuance of award. [Toroyan v. Barrett](#), S.D.N.Y.2007, 495 F.Supp.2d 346. [Alternative Dispute Resolution](#) 🔑 335

Arbitration panel did not show “evident partiality” or engage in misconduct within meaning of [Federal Arbitration Act](#) (FAA), precluding vacatur on grounds of umpire's alleged bias, by issuing interim order in reinsurance dispute requiring reinsurer to make interim payment of disputed amount to insurer; there was no extrinsic evidence of secret relationship between insurer and umpire or pre-existing bias on umpire's part, and interim order was modified by panel, after receiving reinsurer's objection, to protect reinsurer's ultimate position in arbitration. [Certain Underwriters at Lloyd's London v. Argonaut Ins. Co.](#), N.D.Cal.2003, 264 F.Supp.2d 926. [Insurance](#) 🔑 3626

Employer did not establish evident partiality of arbitrator, as required by [Federal Arbitration Act](#) (FAA) in order to vacate arbitration award favorable to union, by stating that arbitrator was recommended for arbitration panel years before by former business agent for union, was assigned to case only after first arbitrator was removed due to scheduling problems caused by union delays, and that employer was not adequately informed about process by which arbitrator would be selected. [Kiewit/Atkinson/Kenny v. International Broth. of Elec. Workers, Local 103, AFL-CIO](#), D.Mass.1999, 76 F.Supp.2d 77. [Labor And Employment](#) 🔑 1608

--- Heightened standard, partiality of arbitrators

Reinsurer's complaint, that party-appointed arbitrator's failure to disclose extent of relationship with reinsured constituted evident partiality warranting vacatur of arbitration award under **Federal Arbitration Act** (FAA), was subject to heightened standard, whereby reinsurer was required to show, by clear and convincing evidence, that the arbitrator's failure to disclose either violated the qualification of disinterestedness, or had a prejudicial impact on the award, rather than reasonable person standard applicable to neutral arbitrators. [Certain Underwriting Members of Lloyds of London v. Florida, Department of Financial Services, C.A.2 2018, 892 F.3d 501. Alternative Dispute Resolution 🔑 222](#)

Undue means

Franchisor's interception of franchisee's e-mails did not constitute "undue means" by which franchisor procured arbitration award against franchisee, and thus was not sufficient basis for vacatur of arbitration award under **Federal Arbitration Act** (FAA), where franchisee knew of franchisor's interception of emails prior to commencement of arbitration, and arbitrator determined that franchisee had consented to franchisor's interception of e-mails by accepting terms of use when franchisor issued e-mail address to him. [V5 Investments, LLC v. GoWaiter Business Holdings, LLC, M.D.Fla.2016, 210 F.Supp.3d 1329. Alternative Dispute Resolution 🔑 332](#)

Failure by counsel for insurer in arbitration involving alleged obligation to reinsure losses suffered by a Brazilian company in Brazil to disclose umpire's participation in another arbitration involving related entity of insurer did not constitute procurement of the awards by "undue means" within meaning of **Federal Arbitration Act** (FAA); lack of earlier disclosure was the result of Brazilian company's own position in earlier litigation, specifically, its resistance to insurer's request that umpire candidates submit up-to-date questionnaires, and there was no evidence of deceptive conduct by insurer, such as an affirmative misrepresentation regarding umpire's past service as an arbitrator. [National Indemnity Company v. IRB Brasil Resseguros S.A., S.D.N.Y.2016, 164 F.Supp.3d 457, amended 2016 WL 3144057, affirmed 675 Fed.Appx. 89, 2017 WL 421944, enforcement granted 2018 WL 739450, vacated 767 Fed.Appx. 154, 2019 WL 1755232. Insurance 🔑 3626](#)

"Undue means" required to vacate an award under the **Federal Arbitration Act** (FAA) connotes behavior that is immoral, if not illegal. [Conoco, Inc. v. Oil, Chemical & Atomic Workers Intern. Union, N.D.Okla.1998, 26 F.Supp.2d 1310. Alternative Dispute Resolution 🔑 332](#)

Petitioner's untimely production of report was not ground for vacating arbitration award under **Federal Arbitration Act** (FAA) as having been procured by fraud or undue means; report was inadvertently misfiled by petitioner's principal and was turned over before arbitration hearing started, and delay in its production was brought to attention of arbitrators. [Matter of Arbitration Between Trans Chemical Ltd. and China Nat. Machinery Import and Export Corp., S.D.Tex.1997, 978 F.Supp. 266, affirmed 161 F.3d 314. Alternative Dispute Resolution 🔑 333](#)

Ambiguous awards

Vacatur of employer's arbitration award under **Federal Arbitration Act** (FAA) was not warranted on basis that written award, which allegedly copied word-for-word language from employer's briefs, evidenced arbitrator's partiality, prejudiced employee's rights, or demonstrated absence of a mutual, final, and definite award, since employee failed to identify any language in award copied from employer's briefs, and employee offered no rationale for why it was permissible for federal courts to incorporate language from parties' submissions into their orders, but it was not permissible for arbitrators. [Samaan v. General Dynamics Land Systems, Inc., C.A.6 \(Mich.\) 2016, 835 F.3d 593. Alternative Dispute Resolution 🔑 303](#)

Alleged inconsistency within arbitration award denying claims of securities broker and life insurance company that sold securities that competing brokers tortiously interfered with their contracts with their employees by representing to employees that covenants not to compete with broker and company were unenforceable on one hand, and refusing to grant competing brokers' request to declare covenants not to compete unenforceable on other hand, did not render award incomplete or indefinite

under **Federal Arbitration Act**; award clearly and completely denied relief to all parties, and resolved all claims submitted. *IDS Life Ins. Co. v. Royal Alliance Associates, Inc.*, C.A.7 (Ill.) 2001, 266 F.3d 645. [Alternative Dispute Resolution](#) 🔑 423

Federal Arbitration Act did not authorize district court to remand for explanation of method by which arbitration panel computed damages in favor of securities investor; neither Arbitration Act nor New York Stock Exchange required an explanation, and interest in assuring swift and economical judgment outweighed any possible interest in rooting out possible error in award. *Sargent v. Paine Webber Jackson & Curtis, Inc.*, C.A.D.C.1989, 882 F.2d 529, 280 U.S.App.D.C. 7, certiorari denied 110 S.Ct. 1474, 494 U.S. 1028, 108 L.Ed.2d 612. [Alternative Dispute Resolution](#) 🔑 417

Arbitrary and capricious awards

Arbitrariness and capriciousness is not independent ground for vacatur of arbitration award that court is reviewing under the **Federal Arbitration Act** (FAA). *Brabham v. A.G. Edwards & Sons Inc.*, C.A.5 (Miss.) 2004, 376 F.3d 377. [Alternative Dispute Resolution](#) 🔑 324

Arbitrary and capricious standard did not apply, in action brought by postal workers' labor union challenging arbitrator's decision granting default judgment in favor of United States Postal Service, in labor dispute involving postal worker's claim for leave under the FMLA; labor union did not provide any legal authority or argument on the issue, and fact that arbitrator's decision was arbitrary and capricious was codified in **Federal Arbitration Act** (FAA) as reason to vacate decision. *American Postal Workers Union, AFL-CIO v. U.S. Postal Service*, D.D.C.2005, 362 F.Supp.2d 284. [Labor And Employment](#) 🔑 1619


--- Exceeding authority, collective bargaining agreements


In action by union and trustees of union's benefit funds against employer alleging violation of their collective bargaining agreement (CBA), arbitrator was arguably applying the CBA when she closed the case without conducting an evidentiary hearing, on the basis of delay, even though the CBA prohibited technical defenses to prevent the holding of an arbitration, and thus vacatur under the **Federal Arbitration Act** (FAA) was not warranted; while union and trustees interpreted the CBA's provision to require an evidentiary hearing, and this interpretation was plausible, it was not so clear from the wording of the contract that deviance from it would warrant vacatur, given that the CBA used the term "arbitration" rather than "evidentiary hearing," and that it was unlikely that the parties would have agreed to submit all disputes to "evidentiary hearing" rather than to "arbitration." *Local 210 Warehouse & Production Employees Union, AFL-CIO v. Environmental Services, Inc.*, E.D.N.Y.2016, 221 F.Supp.3d 306, appeal withdrawn 2017 WL 6520464. [Labor and Employment](#) 🔑 1582

Arbitrator did not exceed his authority by discussing instances of musician's alleged "musical sabotage" in connection with the orchestra's termination of musician, as would support vacatur of the award under the **Federal Arbitration Act** (FAA); although the collective bargaining agreement provided that issues of musical incompetence were not arbitrable, musician's termination was based on his anger issues, his aggressive behavior with orchestra musicians, and his poor inter-personal relationships with orchestra administration, and arbitrator's only mention of musical incompetence was in connection with claims of musician's colleagues that he repeatedly and intentionally played below his skill level to create difficulty for his fellow orchestra members. *Roy v. Buffalo Philharmonic Orchestra Society, Inc.*, W.D.N.Y.2016, 161 F.Supp.3d 187, affirmed 682 Fed.Appx. 42, 2017 WL 951461. [Labor and Employment](#) 🔑 1595(10)


In determining that arbitration agreement allowed former employee to bring collective arbitration action under the FLSA against employer, arbitrator did not fail to interpret agreement, which barred class arbitration without employer's consent, such that he exceeded his authority under the **Federal Arbitration Act** (FAA), as would warrant vacating arbitration award; arbitrator determined that agreement incorporated American Arbitration Association (AAA) employment rules, which distinguished between collective and class actions, and concluded that agreement did not require employer's consent for collective actions

under the FLSA. [International Bancshares Corp. v. Lopez, S.D.Tex.2014, 57 F.Supp.3d 784. Alternative Dispute Resolution](#)  316


Arbitrator's finding that parcel delivery service driver who was unable to perform essential functions and duties of his position more than two years after work-related injury was terminated for just cause did not fall under any of the **Federal Arbitration Act** (FAA) grounds that would warrant vacatur; arbitrator did not exceed his powers as his interpretation was not modification of collective bargaining agreement (CBA), which arbitrator found modified statutory provisions of U.S. Virgin Islands Worker's Compensation Statute. [Union De Tronquistas De Puerto Rico, Local 901 v. United Parcel Service, Inc., D.Puerto Rico 2013, 960 F.Supp.2d 354. Labor and Employment](#)  1595(10)

Arbitrator did not exceed his authority under collective bargaining agreement (CBA) between employer and union by ordering the parties to proceed in front of a different arbitrator, as would warrant vacatur of the award under the **Federal Arbitration Act** (FAA) and Labor Management Relations Act (LMRA), where CBA's use of the singular in requiring "an Arbitrator" meant that the arbitration process was to involve one rather than a panel of arbitrators. [New United Motor Mfg., Inc. v. United Auto Workers Local 2244, N.D.Cal.2008, 617 F.Supp.2d 948. Labor And Employment](#)  1578


---- Essence of agreement, collective bargaining agreements

Employer failed to properly challenge arbitration award under the "draws its essence" analysis for purposes of finding that an arbitrator acted outside the scope of his power under the **Federal Arbitration Act** (FAA) provision allowing vacatur if such authority has been exceeded, where employer focused its challenge of the award based on language in its employment agreement with employee, rather than language in its arbitration agreement with employee for which the "draws its essence" analysis was intended. [Questar Capital Corp. v. Gorter, W.D.Ky.2012, 909 F.Supp.2d 789. Alternative Dispute Resolution](#)  316

---- Plain language or express terms, collective bargaining agreements

Arbitrator's construction of collective bargaining agreement, as allowing employers to change employee's work shift and assignments, could not be characterized as arbitrary or as otherwise demonstrating manifest disregard of law, as would provide grounds under **Federal Arbitration Act** (FAA) for vacating the award, which denied union's grievance on behalf of employee; arbitrator's decision fell well within plain language of agreement and bounds of reasonable application of principles of contract interpretation. [Tucker v. American Bldg. Maintenance, S.D.N.Y.2006, 451 F.Supp.2d 591. Labor And Employment](#)  1595(9)

---- Miscellaneous cases, collective bargaining agreements

Arbitration award which found that employer's sick leave policy violated its collective bargaining agreement (CBA) with union was sufficiently mutual, final, and definite, and, thus, vacatur of the award was not warranted under the **Federal Arbitration Act** (FAA), although it directed the parties to proceed before a different arbitrator to determine the remedy for the violation, where arbitrator personally relinquished jurisdiction of the dispute, and the award conclusively decided every point required by and included in the liability phase. [New United Motor Mfg., Inc. v. United Auto Workers Local 2244, N.D.Cal.2008, 617 F.Supp.2d 948. Labor And Employment](#)  1608

Contract interpretation

Arbitration panel arguably was interpreting maintenance contract between railroad and contractor when it concluded that Illinois law imposed limitation on right to terminate "without cause" based on covenant of good faith and fair dealing, thereby permitting contractor to collect damages after railroad terminated contract, and thus panel's award was not subject to vacatur pursuant to

Federal Arbitration Act (FAA) on ground that panel exceeded its authority, even if panel misinterpreted applicable law. [BNSF R. Co. v. Alstom Transp., Inc., C.A.5 \(Tex.\) 2015, 777 F.3d 785. Alternative Dispute Resolution 🔑 316](#)

Arbitrator, in determining that class arbitration was allowed for customers' claims challenging cellular telephone service provider's early termination fees (ETF), arguably interpreted the parties' contract, and thus, the arbitration award allowing class arbitration would not be vacated on the ground under the **Federal Arbitration Act** (FAA) that the arbitrator exceeded his powers; arbitrator began his award by recounting the text of contract's arbitration clause, he acknowledged that the contract was silent with respect to class actions and went on to examine the text of arbitration organization's rule that was incorporated by reference into the contract, arbitrator, after parsing the rule's language, went on to consider the meaning of the words "any disputes" in the arbitration clause itself, and arbitrator then interpreted the meaning of silence as to class arbitration within the clause and determined that it was fair to conclude that clause's intent was not to bar class arbitration. [Southern Communications Services, Inc. v. Thomas, C.A.11 \(Ga.\) 2013, 720 F.3d 1352, certiorari denied 134 S.Ct. 1001, 571 U.S. 1163, 187 L.Ed.2d 850. Alternative Dispute Resolution 🔑 316](#)

In rejecting employee's claims asserting principally that her employer discriminated against her on the basis of gender in violation of Title VII, arbitration panel's limitation of employee's proof to events that occurred no more than six months prior to date of release entered between employee and employer, which provided that employee "irrevocably and unconditionally waive [d], release[d] and forever discharge[d] [employer] with respect to any and all claims of any kind whatsoever, . . . to the day of the date [employee] execute [d] [the release] including, without limitation, any and all claims arising out of or relating to [employee's] employment, compensation and benefits with [employer]," did not constitute a manifest disregard of the terms or meaning of the release, so as to permit vacatur of the award under the **Federal Arbitration Act** (FAA). [Schwartz v. Merrill Lynch & Co., Inc., C.A.2 \(N.Y.\) 2011, 665 F.3d 444. Alternative Dispute Resolution 🔑 329](#)

Arbitrator's decision as to ambiguous nature of clause in arbitration agreement providing for limited waiver of punitive damages to extent permitted by law was not irrational, and neither this decision nor arbitrator's decision to construe provision against lender, as drafting party, would be disturbed on judicial review, where arbitration clause stated that any claims would be resolved in accordance with the **Federal Arbitration Act** (FAA), which permits waiver of punitive damages, while choice-of-law provision stated that claims would be resolved in accordance with Missouri law, which did not permit waiver of punitive damages. [Stark v. Sandberg, Phoenix & von Gontard, P.C., C.A.8 \(Mo.\) 2004, 381 F.3d 793, rehearing and rehearing en banc denied, certiorari denied 125 S.Ct. 1943, 544 U.S. 1000, 161 L.Ed.2d 774, certiorari denied 125 S.Ct. 1973, 544 U.S. 1027, 161 L.Ed.2d 872. Alternative Dispute Resolution 🔑 324](#)

The **Federal Arbitration Act** does not permit federal courts to vacate an award solely because of an alleged error in contract interpretation. [Employers Ins. of Wausau v. National Union Fire Ins. Co. of Pittsburgh, C.A.9 \(Cal.\) 1991, 933 F.2d 1481. Alternative Dispute Resolution 🔑 328](#)

Arbitration panel's determination that shareholders' agreement required shareholder to contribute necessary funds to company was not in manifest disregard of law, and thus was not subject to vacatur under **Federal Arbitration Act** (FAA), despite shareholder's contention that it did not believe that it would be required to make any loans after initial period, where agreement provided that "[a]ll requirements of the Company exceeding the Company's own resources from time to time shall be procured by borrowing from the Shareholders on a pro rata basis," that non-defaulting shareholders had right to cure any loan defaults, and that any advances to cure such defaults would be considered open account demand loan to defaulting shareholder, and, when company required funds to cover anticipated operating costs and to satisfy outstanding mortgage, it required additional funds to cover portion of bank loan. [Sea Shipping Inc. v. Half Moon Shipping, LLC, S.D.N.Y.2012, 848 F.Supp.2d 448. Alternative Dispute Resolution 🔑 329](#)

Arbitrators of demurrage dispute between vessel owner and charterer had "colorable justification" for accepting owner's amendment to demurrage claim after evidentiary hearings had closed, thereby giving meaning to ambiguous terms of the contract grounded in the essence of the charter party and the Maritime Arbitration Rules of the Society of Maritime Arbitrators; thus,

awarding panel did not exceed its powers in violation of section of the **Federal Arbitration Act** (FAA). [Matter of Arbitration between Carina Intern. Shipping Corp. and Adam Maritime Corp., S.D.N.Y.1997, 961 F.Supp. 559. Shipping 🔑 39\(7\)](#)

Findings

Financial Industry Regulatory Authority (FINRA) arbitration panel's failure to provide a written explanation of its decision in arbitration between employer and employee, did not justify vacatur of arbitration award, since neither FINRA or **Federal Arbitration Act** (FAA) required that panel state its reasons for its decision. [Owen-Williams v. BB & T Inv. Services, Inc., D.D.C.2010, 717 F.Supp.2d 1, reconsideration denied 797 F.Supp.2d 118. Alternative Dispute Resolution 🔑 424](#)

In determining whether to vacate arbitration award, under **Federal Arbitration Act** (FAA), district court would not reconsider arbitrators' findings of fact or interpretations. [Cunningham v. Pfizer Inc., M.D.Fla.2003, 294 F.Supp.2d 1329. Alternative Dispute Resolution 🔑 358](#)

Irrational awards

Arbitrator determining price formula for parties to long-term green anode coke supply agreement rendered a reasoned award, so that award was valid under **Federal Arbitration Act** (FAA); in eight pages, the arbitrator laid out the facts, described the contentions of the parties, and decided which of the two proposals for a price formula should prevail, and the parties did not request findings of fact and conclusions of law. [Rain CII Carbon, LLC v. ConocoPhillips Co., C.A.5 \(La.\) 2012, 674 F.3d 469. Alternative Dispute Resolution 🔑 307](#)

Even if subsidiary of successor to issuer of variable annuity of which trust was beneficiary carried its burden by presenting more complete excess of power argument to support vacatur of \$579,995.15 arbitration award in favor of trustee, pursuant to **Federal Arbitration Act**, Financial Industry Regulatory Authority (FINRA) panel did not exceed power in granting award, despite subsidiary's argument that successor, not subsidiary, was proper party to dispute, since award did not escape bounds of rationality and was supported by record, including that trustee argued and subsidiary did not dispute that original contract allowed FINRA arbitration, that trustee introduced into record website indicating that subsidiary was underwriter for variable annuities, and that proper party according to trustee was subsidiary of issuer that was proper party according to subsidiary. [Popkave v. John Hancock Distributors LLC, E.D.Pa.2011, 768 F.Supp.2d 785. Alternative Dispute Resolution 🔑 416](#)

Even if arbitration agreement between licensor of agricultural chemical and its licensee permitted court to review arbitrator's award, award was not completely irrational, as would justify vacatur under **Federal Arbitration Act** (FAA), since ruling drew its essence from the contract; under arbitration agreement, parties entered into baseball style arbitration, where arbitrator was required to adopt only one party's proposed rulings without explaining rationale for choosing that ruling over the other, and since one possible interpretation of licensing contract was that it did not govern the parties' relationship if licensee failed to purchase requisite amount of chemicals, award determining that licensee did not breach contract, but that licensing contract did not apply, although seemingly inconsistent, was justified. [Kim-C1, LLC v. Valent Biosciences Corp., E.D.Cal.2010, 756 F.Supp.2d 1258. Alternative Dispute Resolution 🔑 324](#)

Errors of law

In ruling on trustee's motion under **Federal Arbitration Act** to vacate arbitration award in favor of investment firm that allegedly transferred funds from trust's account without authorization, district court erred in requiring trustee to demonstrate that arbitrator's partiality prejudicially affected arbitration award, where trustee and firm intended arbitrator to be neutral, and thus prejudice could have been assumed if arbitrator had been evidently partial. [Ploetz for Laudine L. Ploetz, 1985 Trust v. Morgan Stanley Smith Barney LLC, C.A.8 \(Minn.\) 2018, 894 F.3d 894. Alternative Dispute Resolution 🔑 363\(8\)](#)

Fact that arbitrator makes mistake, by erroneously rejecting valid, or even dispositive legal defense, does not provide grounds for vacating award under **Federal Arbitration Act** (FAA) unless arbitrator deliberately disregarded what she knew to be law. [Flexible Mfg. Systems Pty. Ltd. v. Super Products Corp., C.A.7 \(Wis.\) 1996, 86 F.3d 96. Alternative Dispute Resolution 329](#)

Even if arbitrator committed serious error by interpreting limitation of repose in contract between property owner and builder as a contractually shortened statute of limitations, and thus, failed to consider Massachusetts law imposing a six-year limitation of repose of construction defect claims, such error did not warrant vacatur of award under the **Federal Arbitration Act** (FAA). [Sanwan Trust v. Lindsay, Inc., D.Mass.2017, 251 F.Supp.3d 353. Limitation Of Actions 95\(1\)](#)

A federal court cannot vacate an arbitral award in arbitration under the **Federal Arbitration Act** (FAA) merely because it is convinced that the arbitration panel made the wrong call on the law; on the contrary, the award should be enforced, despite a court's disagreement with it on the merits, if there is a barely colorable justification for the outcome reached. [Tucker v. American Bldg. Maintenance, S.D.N.Y.2006, 451 F.Supp.2d 591. Alternative Dispute Resolution 329; Alternative Dispute Resolution 358](#)

Error of law standard of review expressed in arbitration agreement applied to employee's action seeking confirmation of arbitration award, rather than **Federal Arbitration Act's** (FAA) manifest disregard of law standard, even though employee, as nonbargaining unit employee, did not bargain for this lowered standard; standard was not inherently unfair to either party such that arbitration agreement did not resemble adhesion contract, and, moreover, if employer's assertions were unable to overcome even this lower standard, they would certainly fail under more stringent federal standard. [Collins v. Blue Cross Blue Shield of Michigan, E.D.Mich.1995, 916 F.Supp. 638, vacated 96 F.3d 1448, published in full at 103 F.3d 35. Alternative Dispute Resolution 329](#)

Manifest disregard of law--Generally

Arbitration award may be set aside based on arbitrators' "manifest disregard of the law" only if arbitrators directed parties to violate the law; such manifest disregard is within **Federal Arbitration Act's** express ground for setting aside award, "arbitrators exceeded their powers." [Wise v. Wachovia Securities, LLC, C.A.7 \(Ill.\) 2006, 450 F.3d 265, rehearing denied, certiorari denied 127 S.Ct. 582, 549 U.S. 1047, 166 L.Ed.2d 458. Alternative Dispute Resolution 329](#)

Arbitrator's award under **Federal Arbitration Act** (FAA), compulsorily adjudicating an individual employee's federal statutory employment claim based on employee's non-collective bargaining agreement to arbitrate as a pre-condition of his employment, may be vacated for manifest disregard of the law, so as to ensure that arbitrators comply with requirements of federal employment discrimination statutes. [Williams v. Cigna Financial Advisors Inc., C.A.5 \(Tex.\) 1999, 197 F.3d 752, certiorari denied 120 S.Ct. 1833, 529 U.S. 1099, 146 L.Ed.2d 777. Alternative Dispute Resolution 329](#)

Court's power to vacate arbitration award is almost exclusively confined to four grounds specified in **Federal Arbitration Act** (FAA), though court may additionally vacate award if conduct of arbitrator constitutes manifest disregard of applicable law. [NCR Corp. v. Sac-Co., Inc., C.A.6 \(Ohio\) 1995, 43 F.3d 1076, rehearing and suggestion for rehearing en banc denied, certiorari denied 116 S.Ct. 272, 516 U.S. 906, 133 L.Ed.2d 193. Alternative Dispute Resolution 362\(2\)](#)

Court may vacate arbitration award only if there is showing that one of the limited circumstances enumerated in the **Federal Arbitration Act** (FAA) is present, or if the arbitrator acted in manifest disregard of the law. [International Thunderbird Gaming Corp. v. United Mexican States, D.D.C.2007, 473 F.Supp.2d 80, affirmed 255 Fed.Appx. 531, 2007 WL 4165398, rehearing en banc denied. Alternative Dispute Resolution 329; Alternative Dispute Resolution 362\(2\)](#)

If none of the grounds for vacatur specified in the **Federal Arbitration Act** (FAA) applies, an arbitration award may nevertheless be set aside if it exhibits a manifest disregard of the law. [MetLife Securities, Inc. v. Bedford, S.D.N.Y.2006, 456 F.Supp.2d 468, affirmed 254 Fed.Appx. 77, 2007 WL 4007582. Alternative Dispute Resolution 329](#)

On motion to set aside arbitration award in arbitration under **Federal Arbitration Act** (FAA), district court is precluded from reviewing the adequacy of factual record developed by arbitrator as basis for award, except to extent such assessment may bear upon determination as to whether award was product of manifest disregard of law. [Tucker v. American Bldg. Maintenance, S.D.N.Y.2006, 451 F.Supp.2d 591. Alternative Dispute Resolution 363\(6\)](#)

Sole statutory bases for vacatur of arbitration award are found in section of the **Federal Arbitration Act**, but motion to vacate arbitration award can also be based on judicially created defense of manifest disregard of the law. [Pompano-Windy City Partners, Ltd. v. Bear Stearns & Co., Inc., S.D.N.Y.1992, 794 F.Supp. 1265. Alternative Dispute Resolution 329; Alternative Dispute Resolution 362\(1\)](#)

Standard of review for arbitration decisions is extremely deferential, and courts may vacate award only upon showing of one of grounds listed in **Federal Arbitration Act**, or if arbitrator acted in manifest disregard of law. [In re A.H. Robins Co., Inc., E.D.Va.1994, 197 B.R. 516. Alternative Dispute Resolution 329; Alternative Dispute Resolution 362\(2\); Alternative Dispute Resolution 363\(6\)](#)

--- Error of law, manifest disregard of law

The manifest disregard exception under the **Federal Arbitration Act** (FAA), allowing a court to vacate an arbitration award, requires something beyond and different from a mere error in the law or failure on the part of the arbitrators to understand and apply the law. [Collins v. D.R. Horton, Inc., C.A.9 \(Ariz.\) 2007, 505 F.3d 874, certiorari denied 128 S.Ct. 1739, 552 U.S. 1295, 170 L.Ed.2d 539. Alternative Dispute Resolution 329](#)

Vacating arbitration award calculating amounts reimbursable to insurer for services unperformed by contractor retained to manage insurer's mechanical breakdown policies program was not warranted under **Federal Arbitration Act** (FAA) or Puerto Rico Arbitration Act (PRAA), even if arbitration panel's obligation to render award with regard to customs and usage of insurance industry equated to conforming with substantive law, where insurer had agreed to submit claims arising from parties' agreement to arbitration, insurer had opportunity to select arbitrator with purported experience in customs and usage of insurance industry, and district court had been foreclosed from substituting its reasoning for that of panel's as to what constituted custom and usage of insurance industry. [Universal Ins. Co., Inc. v. Warrantech Consumer Product Services, Inc., D.Puerto Rico 2012, 849 F.Supp.2d 227. Alternative Dispute Resolution 325](#)

Arbitrators did not manifestly disregard law, allowing for award to be set aside under **Federal Arbitration Act** (FAA), when they did not give preclusive effect to court decision awarding chief executive officer of merger target corporation his portion of 30,000 shares payable as compensation for stock options lost through merger, while denying similar award to two other high ranking officers having similar employment agreements; arbitrators recognized legal principle that issue preclusion applied generally, but erroneously reasoned that there was exception in present case, precluding claim that existing law was disregarded. [Collins v. D.R. Horton, Inc., D.Ariz.2005, 361 F.Supp.2d 1085, affirmed 505 F.3d 874, certiorari denied 128 S.Ct. 1739, 552 U.S. 1295, 170 L.Ed.2d 539. Alternative Dispute Resolution 329](#)

In addition to statutory grounds set forth in **Federal Arbitration Act**, arbitration award will be vacated if it is deemed to be in manifest disregard of the law; "manifest disregard" of the law means more than error or misunderstanding with respect to the law, rather, arbitrator must appreciate existence of clearly governing, well-defined, explicit legal principle and decide to ignore or pay no attention to it. [First Interregional Equity Corp. v. Haughton, S.D.N.Y.1994, 842 F.Supp. 105. Alternative Dispute Resolution 329](#)

--- Damages, manifest disregard of law

Limited judicial review of arbitrator's award of punitive damages in defamation action brought by former securities employee against former employer afforded by the **Federal Arbitration Act** (FAA) did not violate employer's Fifth Amendment right to due process of law; manifest disregard standard for reviewing FAA claims would allow for vacatur of punitive damages where no evidence supported arbitration panel's award. *Glennon v. Dean Witter Reynolds, Inc.*, C.A.6 (Tenn.) 1996, 83 F.3d 132, rehearing and suggestion for rehearing en banc denied. [Alternative Dispute Resolution](#) 🔑 329; [Constitutional Law](#) 🔑 4476

Arbitration award of \$2.6 million against former Chief Executive Officer (CEO) of limited liability company (LLC), arising out of his use of company funds for personal expenses, and resulting investigation by law firm, did not constitute an award of punitive damages, and thus was not in manifest disregard of law, as required to warrant vacatur under **Federal Arbitration Act** (FAA); damages award included disgorgement of CEO's compensation pursuant to New York's faithless servant doctrine, attorney fees incurred for law firm's investigation, and for misconduct by CEO as a litigant in arbitration, and requirement that CEO pay his share of arbitration costs, pursuant to employment agreements, was not a damages award at all. *Salus Capital Partners, LLC v. Moser*, S.D.N.Y.2018, 289 F.Supp.3d 468, appeal withdrawn 2018 WL 3954332. [Labor And Employment](#) 🔑 211

Arbitrator's final award to Puerto Rico distributor of \$1,841,000 for loss of goodwill, under Puerto Rico Dealer's Act, for Columbia supplier's termination of distribution agreement without just cause, did not exceed arbitrator's powers or disregard governing law, and thus order would be confirmed under **Federal Arbitration Act** (FAA); arbitrator considered relevant elements of Dealer's Act, including number of years distributor acted as supplier's representative, proportion that supplier's products represented for distributor, and percent of export sales Puerto Rico represented for distributor, and used well-acknowledged and accepted capitalization-of-future-benefits method for valuation of lost goodwill. *Thomas Diaz, Inc. v. Colombina, S.A.*, D.Puerto Rico 2011, 831 F.Supp.2d 528. [Alternative Dispute Resolution](#) 🔑 316; [Alternative Dispute Resolution](#) 🔑 329

Arbitration panel's alleged misinterpretation and misapplication of state law concerning breach of contract damages did not constitute ground for vacating its award pursuant to **Federal Arbitration Act** (FAA), where panel was presented with two opposing views of law, and it adopted one of those views, and there was no evidence of fraud, corruption, or similar misconduct. *Abbott v. Mulligan*, D.Utah 2009, 647 F.Supp.2d 1286, motion to amend denied 2010 WL 2375944, affirmed 440 Fed.Appx. 612, 2011 WL 4375087. [Alternative Dispute Resolution](#) 🔑 329; [Alternative Dispute Resolution](#) 🔑 334

Arbitrator did not display manifest disregard for law in awarding employee damages on Title VII and Kansas Act Against Discrimination claims and attorney fees, and thus, Court of Appeals could not, pursuant to **Federal Arbitration Act** (FAA), overturn arbitrator's decision based on employer's assertion that arbitrator erred in manner in which he applied law, where arbitrator considered and applied relevant statutes and cases interpreting those statutes. *Durkin v. CIGNA Property & Cas. Corp.*, D.Kan.1997, 986 F.Supp. 1356. [Alternative Dispute Resolution](#) 🔑 329

--- Interest, manifest disregard of law

By adopting setoff methodology that effectively retroactively offset certain claims between Chapter 11 debtor and its affiliated workers' compensation insurers arising under debtor's two insurance programs, thereby decreasing amount of debtor's claim which accrued interest, arbitration panel did not manifestly disregard the law or proceed in way that permitted arbitration award to be vacated or modified under **Federal Arbitration Act** (FAA); setoff was equitable remedy that could be calculated in way deemed most equitable, underlying indemnity agreement specifically allowed arbitration panel to deviate from strict rules of law, arbitration panel did not commit egregious impropriety in calculating setoff, which was not completely irrational, and none of statutory grounds for vacating or modifying award applied. *In re Fruehauf Trailer Corp.*, Bkrcty.D.Del.2009, 414 B.R. 36. [Alternative Dispute Resolution](#) 🔑 329

---- **Labor and employment law, manifest disregard of law**

Labor arbitration award in favor of employee, which determined that employer filed disciplinary charges outside of time limits prescribed by the parties' collective bargaining agreement (CBA), was not made in manifest disregard of the law, as would warrant court's vacatur of the award under **Federal Arbitration Act** (FAA); although employer asserted the arbitrator failed to properly consider its unconditional offer of reinstatement to employee, award drew its essence from arbitrator's interpretation of the language of the parties' collective bargaining agreement (CBA) governing certain deadlines, an analysis which did not include the issue of reinstatement, and there was no indication arbitrator ignored well defined law applicable to the case in making his determination. [Transport Workers Union of America v. Veolia Transportation Services, Inc., E.D.N.Y.2016, 211 F.Supp.3d 505, appeal dismissed 2017 WL 5133195. Labor And Employment 🔑 1619](#)

The **Federal Arbitration Act** (FAA) grants considerable discretion to arbitrators and provides only a narrow set of statutory grounds for a federal court to vacate an award. [Union de Tronquistas de Puerto Rico, Local 901 v. Crowley Liner Services Inc., D.Puerto Rico 2015, 107 F.Supp.3d 213. Alternative Dispute Resolution 🔑 362\(2\)](#)

Under the **Federal Arbitration Act** (FAA), an arbitration panel's award in favor of employee did not manifestly disregard the law, where employer failed to show that panel expressly disregarded an applicable legal standard, and arbitration panel issued its award without an explanation that would permit the court to review the award, the evidence supporting employee's claims, or whether the remedy was inconsistent. [Questar Capital Corp. v. Gorter, W.D.Ky.2012, 909 F.Supp.2d 789. Alternative Dispute Resolution 🔑 329](#)

---- **Securities law, manifest disregard of law**

Arbitrators did not manifestly disregard securities laws of California and Washington, so as to allow court to set aside decision under **Federal Arbitration Act**, in concluding that securities broker executing transactions was jointly and severally liable with introducing broker for alleged securities fraud. [Koruga v. Fiserv Correspondent Services, Inc., D.Or.2001, 183 F.Supp.2d 1245, affirmed 40 Fed.Appx. 364, 2002 WL 530548.](#)

---- **Miscellaneous cases, manifest disregard of law**

Arbitrator did not act in manifest disregard of the law in awarding personal representative of nursing home resident's estate \$245,462.75 in costs and interest following \$475,000 award for compensatory damages on wrongful death claim against nursing home; even though arbitrator erroneously made decision under New Mexico Uniform Arbitration Act (NMUAA), rather than under **Federal Arbitration Act** (FAA), as set forth in arbitration agreement, there was no indication that it was result of arbitrator's willful inattentiveness to the governing law, or that arbitrator knew the law and explicitly disregarded it. [THI of New Mexico at Vida Encantada, LLC v. Lovato, C.A.10 \(N.M.\) 2017, 864 F.3d 1080. Alternative Dispute Resolution 🔑 329](#)

Arbitrators' alleged error in their failure to apply Wisconsin Fair Dealership Law (WFDL), as allegedly required by franchise agreement, to financial adviser's termination fell short of manifest disregard of the law, and thus arbitral award in favor of brokerage firm could not be vacated pursuant to the **Federal Arbitration Act**; arbitrators analyzed WFDL and its relation to federal law and then concluded that WFDL did not apply because it was preempted. [Renard v. Ameriprise Financial Services, Inc., C.A.7 \(Wis.\) 2015, 778 F.3d 563. Alternative Dispute Resolution 🔑 423](#)

Arbitrator did not manifestly disregard law in deciding that franchisor violated Massachusetts Wage Act by misclassifying worker as independent contractor rather than employee, and ruling against franchisor on its statute of limitations defense, and, thus, vacatur of arbitration award was not warranted under **Federal Arbitration Act** (FAA) on ground that arbitrator exceeded her powers, where arbitration award was supported in reason and fact, and not so palpably faulty that no judge could ever conceivably have made such a ruling; arbitrator analyzed cases related to misclassification issue and found that franchisor could

be liable for misclassification even when no contract existed between it and worker, and arbitrator carefully considered, and rejected, franchisor's arguments, and reasoned that worker was putative member of class, such that class action tolling doctrine applied to him. [System4, LLC v. Ribeiro, D.Mass.2017, 275 F.Supp.3d 297. Alternative Dispute Resolution 329](#)

Arbitrator did not manifestly disregard New York law or reach an arbitrary or capricious decision, as would support vacating an arbitration award under the **Federal Arbitration Act** (FAA), in finding that Canadian mining company failed to satisfy a condition precedent to a Joint Venture Agreement with an American mining company to operate an Armenian gold mine by not delivering stock issued in the name of American company to the company; assuming New York law required delivery and acceptance, as argued by Canadian company, the company's own testimony showed a lack of delivery. [Global Gold Min. LLC v. Caldera Resources, Inc., S.D.N.Y.2013, 941 F.Supp.2d 374. Alternative Dispute Resolution 324; Alternative Dispute Resolution 329](#)

Arbitrators did not act against explicit New York public policy, or in manifest disregard of the law, as would support court's vacatur of award under **Federal Arbitration Act** (FAA), when they decided that they would assess the evidence, or lack of it, as a whole and reach a determination on the merits of claim that food vendor breached contract with government contractor; even though food vendor refused to testify about contract pricing at arbitration, to the detriment of contractor, since it was under indictment for another similar contract at the time, the parties had produced a considerable amount of documentary and testimonial evidence with which to analyze claim, and arbitrators arrived at careful conclusion to draw adverse inference against food vendor as sanction for failing to testify. [Agility Public Warehousing Co. K.S.C. v. Supreme Foodservice GmbH, S.D.N.Y.2011, 840 F.Supp.2d 703, affirmed 495 Fed.Appx. 149, 2012 WL 3854880. Alternative Dispute Resolution 312; Alternative Dispute Resolution 329](#)

Arbitration panel did not manifestly disregard New York law when denying surety's demand for indemnification from obligor, as would warrant vacatur of the arbitration award under the **Federal Arbitration Act**, where panel considered New York law generally applying to surety relationships, which required a court to find an explicit agreement not to indemnify in order to deny a surety's claim for indemnification, but determined that it was inapplicable under the facts of the case, and that indemnification was not required under parties' contract. [Cardell Financial Corp. v. Suchodolksi Associates, Inc., S.D.N.Y.2009, 674 F.Supp.2d 549, affirmed 409 Fed.Appx. 458, 2011 WL 441384. Alternative Dispute Resolution 329](#)

Arbitration award of \$41,257.59 in favor of credit card issuer and against cardholder was not arbitrary or capricious or made in manifest disregard for the law; arbitrator did not know of any conflicts of interest, matter involved interstate commerce, **Federal Arbitration Act** (FAA) governed arbitration, claim was properly served on creditor, parties had entered into valid, written agreement to arbitrate dispute, arbitration proceeded in accord with Code of Procedure Rules, and evidence and applicable substantive law supported issuance of award. [Daniel v. Chase Bank USA, N.A., N.D.Ga.2009, 650 F.Supp.2d 1275. Alternative Dispute Resolution 324; Alternative Dispute Resolution 329](#)

Arbitration panel did not manifestly disregard the law by finding retrocessionaire responsible for payments to reinsurer following reinsurer's settlement of contingent liabilities with primary insurer, and therefore, award to reinsurer was confirmed pursuant to **Federal Arbitration Act** (FAA), even though reinsurer allegedly did not provide notice to retrocessionaire of settlement negotiations as required by retrocessional reinsurance contract; failure to give notice was not material to the reinsurance agreements, and was not prejudicial to retrocessionaire. [Global Reinsurance Corp. of America v. Argonaut Ins. Co., S.D.N.Y.2009, 634 F.Supp.2d 342. Insurance 3626](#)

Arbitration panel did not manifestly disregard law in issuing award to former securities trader and against trader's former broker dealer and its owner arising out of their failure to pay commissions to trader, as was required to vacate award pursuant to **Federal Arbitration Act** (FAA); while award did not provide explanation for their conclusion that broker dealer was liable to trader, arbitrators were not required to explain reasons for award, absence of express reasoning did not support conclusion that they disregarded law, broker dealer and owner were provided with fundamentally fair arbitration proceeding where they had opportunity to fully brief and argue various matters before arbitral panel, and there was no indication that the panel engaged in

any misconduct in conducting the arbitral proceeding. [Legacy Trading Co., Ltd. v. Hoffman](#), W.D.Okla.2008, 627 F.Supp.2d 1260, reconsideration denied 2008 WL 5146258, affirmed in part, reversed in part 363 Fed.Appx. 633, 2010 WL 325893. [Alternative Dispute Resolution](#) 🔑 423

Decision of arbitration panel to dismiss franchisee's claims under Minnesota Franchise Act (MFA) did not evidence manifest disregard of law, and thus arbitration award could not be vacated on that basis, where panel was aware that MFA specifically voided choice-of-law provision, but panel engaged in choice-of-law analysis and held that California law governed parties dispute because Minnesota did not have materially greater interest in matter than did State of California, and panel further reasoned that **Federal Arbitration Act** (FAA) preempted any application of MFA's anti-waiver provision that would have rendered parties' choice of California law unenforceable. [Twin Cities Galleries, LLC v. Media Arts Group, Inc.](#), D.Minn.2006, 415 F.Supp.2d 967, stay granted 431 F.Supp.2d 980, reversed and remanded 476 F.3d 598. [Alternative Dispute Resolution](#) 🔑 329

Misinterpretation of law

Arbitration award may not be vacated under **Federal Arbitration Act** on grounds that arbitrator failed to interpret correctly law applicable to issue in dispute or misinterpreted underlying contract, although arbitration award based on manifest disregard of law will not be enforced. [Concourse Beauty School, Inc. v. Polakov](#), S.D.N.Y.1988, 685 F.Supp. 1311. [Alternative Dispute Resolution](#) 🔑 324; [Alternative Dispute Resolution](#) 🔑 329

Parties

Arbitration award directing wrestling association to rerun wrestling bout, after original bout had resulted in another wrestler, rather than grievant, being nominated as member of United States Olympic wrestling team, was not subject to vacatur on ground that nominee-wrestler was not a party to the arbitration; **Federal Arbitration Act** (FAA) did not allow an arbitration participant to disregard decision based on absence of an interested person, and both Olympic and Amateur Sports Act and United States Olympic Committee (USOC) Constitution called for arbitration between aggrieved athlete and governing body, not arbitration among athletes. [Lindland v. United States of America Wrestling Ass'n, Inc.](#), C.A.7 (Ill.) 2000, 230 F.3d 1036. [Alternative Dispute Resolution](#) 🔑 326

Perjury

Domestic defense contractor did not commit perjury in arbitration proceeding that would warrant vacatur of award in its contract dispute with foreign relationship-management firm under the **Federal Arbitration Act** (FAA) provision allowing vacatur of awards procured through corruption, fraud, or undue means; allegedly perjured statements were merely opinion testimony, neither party testified under oath or submitted affidavits, some of the allegedly fraudulent statements were merely firm misquoting contractor's brief, and even if statements were fraudulent, such fraud was readily discoverable during the proceeding. [ARMA, S.R.O. v. BAE Systems Overseas, Inc.](#), D.D.C.2013, 961 F.Supp.2d 245. [Alternative Dispute Resolution](#) 🔑 333

Procedural regularity

Arbitration panel's refusal to schedule extra day of hearings for brokerage firm to present evidence on its former employees' request for attorney's fees under South Carolina Frivolous Civil Proceedings Act (FCPA) did not deprive firm of fundamentally fair hearing in arbitration of employment dispute between firm and employees, as would require vacatur of FCPA fees award to employees under **Federal Arbitration Act** (FAA), which employees requested for first time in brief submitted on penultimate day of arbitration; firm itself cut short hearing on issue of attorney's fees by submitting its brief late, on final day of arbitration,

thereby leaving no time for parties to debate issue, and turned down opportunity to submit additional briefs. [Wachovia Securities, LLC v. Brand, C.A.4 \(S.C.\) 2012, 671 F.3d 472. Alternative Dispute Resolution 416](#)

Federal Arbitration Act (FAA) did not permit district court to compel securities broker to issue amended Internal Revenue Service (IRS) form 1099 to reflect diminished distribution from his Individual Retirement Account (IRA) in action to vacate arbitration award dismissing investor's claim that broker recklessly permitted him to use margin to purchase a non-marginable stock, where investor had not asked arbitration panel to permit him to amend his requested relief to include issuance of and amended form 1099. [DeSilva v. First Union Securities, Inc., S.D.N.Y.2003, 249 F.Supp.2d 286. Alternative Dispute Resolution 414](#)

Public policy

Arbitration panel did not violate public policy of Oklahoma in issuing award to former securities trader and against trader's former broker dealer and its owner arising out of their failure to pay commissions to trader, as was required to vacate award pursuant to **Federal Arbitration Act** (FAA); broker dealer and owner could not establish specific contractual terms between parties as they argued that no contract was formed, any purported contract was for indefinite duration and thus not subject to statute of frauds, statute of frauds affirmative defense was nonetheless waived when broker dealer moved to dismiss arbitral matter without raising issue, and panel had full discretion to decide whether to dismiss matter. [Legacy Trading Co., Ltd. v. Hoffman, W.D.Okla.2008, 627 F.Supp.2d 1260, reconsideration denied 2008 WL 5146258, affirmed in part, reversed in part 363 Fed.Appx. 633, 2010 WL 325893. Alternative Dispute Resolution 423](#)

Client was not entitled under **Federal Arbitration Act** (FAA) to vacate arbitration award in law firm's favor on ground that award constituted violation of public policy because fees for legal representation billed by firm were excessive. [Carey Rodriguez Greenberg & Paul, LLP v. Arminak, S.D.Fla.2008, 583 F.Supp.2d 1288. Alternative Dispute Resolution 312](#)

Extensive regulatory oversight of liquid natural gas storage facilities did not amount to a well-defined, dominant public policy that barred labor arbitration award requiring employer to reinstate employee who was terminated for violating certain safety regulations at such a facility, as would warrant vacatur of arbitration award under the **Federal Arbitration Act**, where regulations did not expressly mandate a discharge or prohibit reinstatement of an employee who violated them, state regulatory agency did not indicate its approval of employee's termination, and award did not condone employee's conduct, but rather, suspended him without back pay. [MidAmerican Energy Co. v. International Broth. of Elec. Workers Local 499, S.D.Iowa 2002, 228 F.Supp.2d 949, affirmed in part, reversed in part and remanded 345 F.3d 616. Labor And Employment 1609\(2\)](#)

Statement of reasons

Arbitrators are not required to explain their decisions, and if they choose not to do so, it is all but impossible to determine whether they acted with manifest disregard for the law, for purposes of determining whether the award should be vacated under the **Federal Arbitration Act**. [Dawahare v. Spencer, C.A.6 \(Ky.\) 2000, 210 F.3d 666, certiorari denied 121 S.Ct. 187, 531 U.S. 878, 148 L.Ed.2d 130. Alternative Dispute Resolution 307](#)

Employer's failure to provide a statement of claim to employee's attorney or advise an arbitrator that the employee was represented by counsel did not constitute "corruption, fraud, or under means" justifying vacatur of an arbitration award under the **Federal Arbitration Act** (FAA); employer complied with the arbitral forum's procedural rules, incorporated into the arbitration contract, by sending the statement of claim directly to the arbitrator, who sent multiple reminders to the employee to file her answer and warnings as to the consequences of failing to do so, and due diligence on the employee's part, namely, forwarding the documents to her attorney, would have ensured notice to her attorney and prompted discovery of any problem. [Domnarski v. UBS Financial Services, Inc., D.Mass.2013, 919 F.Supp.2d 183. Alternative Dispute Resolution 333](#)

Unconscionability

Arbitration agreement between employee and employer was not procedurally unconscionable on ground that it did not explicitly provide an opportunity for judicial review, since the **Federal Arbitration Act** permitted district courts to vacate, modify, or correct arbitration awards under certain circumstances. *Ortiz v. Hobby Lobby Stores, Inc.*, E.D.Cal.2014, 52 F.Supp.3d 1070. [Alternative Dispute Resolution 🔑 134\(6\)](#)

Violation of agreement

Shipper did not breach charter agreement by seeking to vacate arbitration award, and thus carrier, as prevailing party, was not entitled to recoup the fees and costs it incurred in seeking to confirm the arbitral award pursuant to charter agreement provision allowing damages for breach of the agreement; by including consent-to-confirmation term in agreement, shipper and carrier also agreed that federal court would have authority to confirm award under standards provided by **Federal Arbitration Act** (FAA), FAA allowed shipper to try to vacate award, and any provision requiring shipper to resist confirmation of award would be unenforceable. *Zurich American Ins. Co. v. Team Tankers A.S.*, C.A.2 (N.Y.) 2016, 811 F.3d 584. [Alternative Dispute Resolution 🔑 405](#)

Waiver

Argument that the question on which certiorari was granted, namely whether arbitration panel's award imposing class arbitration on charterers and vessel owners, whose arbitration clauses were "silent" on that issue, was consistent with the **Federal Arbitration Act** (FAA), was prudentially unripe was waived before the Supreme Court, where argument was not pressed in, or considered by, the courts below. *Stolt-Nielsen S.A. v. AnimalFeeds International Corp.*, U.S.2010, 130 S.Ct. 1758, 559 U.S. 662, 176 L.Ed.2d 605, on remand 624 F.3d 157. [Federal Courts 🔑 3181](#)

Insured waived right to challenge arbitration award in crop insurer's favor, which was issued three days after the 30-day deadline imposed by American Arbitration Association (AAA) rule, as untimely, where insured did not object at the expiration of the 30-day period or when the untimely decision was issued three days later, but rather waited until filing action in district court seeking vacatur of the award pursuant to the **Federal Arbitration Act** (FAA), and insured made no effort to show that he was prejudiced by the delay. *Davis v. Producers Agr. Ins. Co.*, C.A.11 (Ga.) 2014, 762 F.3d 1276, certiorari denied 135 S.Ct. 1555, 191 L.Ed.2d 638, on remand 2015 WL 7195714. [Insurance 🔑 3320](#)

Under **Federal Arbitration Act** (FAA), statutory grounds for vacatur of arbitration award could not be waived or eliminated by contract; thus, nonappealability clause in arbitration agreement that eliminated all federal court review of arbitration awards, including those grounds, was not enforceable. *In re Wal-Mart Wage and Hour Employment Practices Litigation*, C.A.9 (Nev.) 2013, 737 F.3d 1262, for additional opinion, see 550 Fed.Appx. 373, 2013 WL 6623882. [Alternative Dispute Resolution 🔑 362\(2\)](#); [Alternative Dispute Resolution 🔑 374\(1\)](#)

Class action waiver provision in arbitration agreement between employee and employer, prohibiting employee from bringing any claim as part of a class action, collective action, or a joint third party action, did not render arbitration agreement substantively unconscionable under California law, although it allegedly impeded employee's ability to vindicate unwaivable statutory rights; state laws conditioning enforceability of arbitration provisions on availability of classwide relief were prohibited, since they would interfere with fundamental attributes of the **Federal Arbitration Act**, which was to ensure enforcement of arbitration agreements according to their terms so as to facilitate streamlined proceedings. *Ortiz v. Hobby Lobby Stores, Inc.*, E.D.Cal.2014, 52 F.Supp.3d 1070. [Alternative Dispute Resolution 🔑 134\(6\)](#)

Incumbent local exchange carrier (ILEC) waived its argument that arbitrator exceeded his authority by determining that it had double-billed competing local exchange carrier (CLEC) for use of leased facilities and ordering it to return the money; issue was

a question of arbitrability properly decided by the arbitrator, record was not clear as to whether issue was raised before arbitrator, and ILEC did not invoke **Federal Arbitration Act's** (FAA) vacatur provision. *P.R. Tel. Co., Inc. v. WorldNet Telecomm., Inc.*, D.Puerto Rico 2014, 52 F.Supp.3d 370, appeal dismissed. *Telecommunications* 🔑 870(2); *Telecommunications* 🔑 905

Under the **Federal Arbitration Act** (FAA) provision allowing vacatur of an arbitration award for bias of an arbitrator, employer waived its objection to alleged partiality of arbitrator in its arbitration proceeding with employee, where arbitrator made the disclosure of his connection to a union branch that employee helped found numerous times, employer failed to object at each of those times, and employer's ability to object to arbitrator's alleged bias was not chilled or coerced by arbitrator's statement following his disclosure, that he did not believe his connection to a union that employee had helped found would affect his impartiality. *Qwestar Capital Corp. v. Gorter*, W.D.Ky.2012, 909 F.Supp.2d 789. *Alternative Dispute Resolution* 🔑 277

Investors' attorney waived claim that vacatur of arbitration award in favor of investment manager was warranted under **Federal Arbitration Act** on basis of arbitrator's evident partiality, on investors' claims arising out of alleged mismanagement of their stock portfolio, even though arbitrator's disclosure of fact that his son worked for manager's affiliate was belated, and arbitrator misrepresented details of son's employment, where investors' attorney never asked arbitrator to recuse himself or otherwise attempted to preserve her objection to either late conflict disclosure or conflict itself, and instead expressly assented to arbitrator's continued participation on panel. *Vigorito v. UBS PaineWebber, Inc.*, D.Conn.2008, 557 F.Supp.2d 303, reconsideration denied 2009 WL 1789443. *Alternative Dispute Resolution* 🔑 417

Investors' attorney waived claim that vacatur of arbitration award in favor of investment manager was warranted under the **Federal Arbitration Act** on basis of evident partiality, on investors' claims arising out of alleged mismanagement of their stock portfolio, where arbitrator disclosed that he had a potential conflict of interest arising out of his son's employment with manager's affiliate, but investors' attorney did not object until after award was issued against investors and in favor of manager. *Vigorito v. UBS PaineWebber, Inc.*, D.Conn.2007, 477 F.Supp.2d 481, adhered to on reconsideration 557 F.Supp.2d 303, reconsideration denied 2009 WL 1789443. *Alternative Dispute Resolution* 🔑 415

Investors' attorney waived claim that vacatur of arbitration award in favor of investment manager was warranted under the **Federal Arbitration Act** on basis of evident partiality, on investors' claims arising out of alleged mismanagement of their stock portfolio, where arbitrator disclosed that he had a potential conflict of interest arising out of his son's employment with manager's affiliate, but investors' attorney did not object until after award was issued against investors and in favor of manager. *Vigorito v. UBS PaineWebber, Inc.*, D.Conn.2007, 477 F.Supp.2d 481, adhered to on reconsideration 557 F.Supp.2d 303, reconsideration denied 2009 WL 1789443. *Alternative Dispute Resolution* 🔑 415

Employment contract provision stating that parties waive any right of appeal to arbitration decision did not prevent parties from appealing decision resulting from arbitrator's abuse of authority or bias, and, thus, did not nullify limited right to appeal provided for in **Federal Arbitration Act** (FAA) and Indiana's arbitration statute. *Baughner v. Dekko Heating Technologies*, N.D.Ind.2002, 202 F.Supp.2d 847. *Alternative Dispute Resolution* 🔑 152

Civil rights plaintiff who submitted arbitrable claims to arbitration and who made no protest during 19 days of arbitration proceedings, waived any right he may have had to contest agreement to arbitrate under **Federal Arbitration Act** (FAA). *Owen-Williams v. Merrill Lynch, Pierce, Fenner and Smith, Inc.*, D.Md.1995, 907 F.Supp. 134, affirmed 103 F.3d 119. *Alternative Dispute Resolution* 🔑 276

Collateral attack

Action in which investor in whose favor award had been entered in securities arbitration alleged that investment firm had tortiously interfered with arbitration contract by having its subsidiary hire chairperson of arbitration panel, had breached its obligations under arbitration contract and duty of good faith under contract, had breached its contract with National Association of Securities Dealers (NASD), and had acted negligently, constituted an impermissible collateral attack on arbitration award, in

violation of **Federal Arbitration Act** (FAA); proper means for challenging award was a motion to vacate under FAA. [Decker v. Merrill Lynch, Pierce, Fenner & Smith, Inc., C.A.6 \(Mich.\) 2000, 205 F.3d 906. Alternative Dispute Resolution 417](#)

Those counts of amended complaint brought by Chapter 7 trustee against law firm that had engaged in collection efforts with respect to debtor's credit card account, which alleged misconduct on the part of firm's agents during arbitration proceedings, were, in substance, an impermissible collateral attack on the underlying arbitration awards; having failed to pursue the exclusive remedy provided under the **Federal Arbitration Act** (FAA) for challenging conduct that taints arbitration awards, trustee could not thereafter collaterally attack those awards. [Nazar v. Wolpoff & Abramson, LLP, D.Kan.2008, 530 F.Supp.2d 1161. Alternative Dispute Resolution 378](#)

Jurisdiction

Federal district court would have had subject matter jurisdiction over e-mail subscriber's dispute with online service provider alleging that its disclosure of information regarding his account to law enforcement officials without warrant, subpoena, or his consent violated Stored Communications Act, and thus it had subject matter jurisdiction over subscriber's motion under **Federal Arbitration Act** (FAA) to vacate or nullify arbitration award entered in dispute. [McCormick v. America Online, Inc., C.A.4 \(Va.\) 2018, 909 F.3d 677. Federal Courts 2235](#)

Investors' motion to vacate adverse arbitration award rendered by the Financial Industry Regulatory Authority (FINRA), pursuant to the **Federal Arbitration Act** (FAA), was essentially a breach-of-contract complaint alleging that their former financial advisor and his firm, with the aid of the FINRA panel, engaged in procedural chicanery and failed to honor the agreement to arbitrate; as such, for jurisdictional purposes, it arose under state, not federal, law. [Goldman v. Citigroup Global Markets Inc., C.A.3 \(Pa.\) 2016, 834 F.3d 242, certiorari denied 137 S.Ct. 2159, 198 L.Ed.2d 232. Alternative Dispute Resolution 114](#)

Former employee asserting, in petition to vacate arbitration award pursuant to **Federal Arbitration Act** (FAA), that self-regulatory organization (SRO) did not follow its own rule requiring parties to cooperate in employee's arbitration against former employers, alleging various claims, including breach of contract and securities fraud under the Securities Exchange Act, did not raise substantial federal question on face of petition, as would establish subject matter jurisdiction in federal court over petition, even though SRO rules were subject to Securities and Exchange Commission (SEC) approval, abrogation, or modification; federal law imposed obligations on the SRO, not on the arbitration panels applying the SRO's rules, and the rule implicated by employee was directed at the parties. [Doscher v. Sea Port Group Securities, LLC, C.A.2 2016, 832 F.3d 372, on remand 2017 WL 6061653. Federal Courts 2235](#)

District court had subject matter jurisdiction over employee's **Federal Arbitration Act** (FAA) challenge to arbitrator's award, notwithstanding that employee, instead of filing motion to vacate award, erroneously filed "appeal" of arbitrator's decision under same case number as federal court action that had been dismissed pursuant to arbitration agreement; basis for diversity jurisdiction existed, arbitration agreement recognized district court's jurisdiction and contemplated review under FAA, employee's challenge fell into a category listed in FAA, and employee's error did not deprive district court of jurisdiction it otherwise would have had. [Green v. Ameritech Corp., C.A.6 \(Mich.\) 2000, 200 F.3d 967. Alternative Dispute Resolution 363\(3\); Federal Courts 2235](#)

Federal Arbitration Act section creating federal cause of action to vacate arbitrator's award does not create federal question jurisdiction over such action, even when the underlying arbitration involves federal law, and district court thus lacked jurisdiction over investor's action to vacate arbitration award in favor of investment firm, notwithstanding alleged jurisdictional basis provided by section of Act creating action to compel arbitration. [Kasap v. Folger Nolan Fleming & Douglas, Inc., C.A.D.C.1999, 166 F.3d 1243, 334 U.S.App.D.C. 280. Federal Courts 2235](#)

Section of the **Federal Arbitration Act** providing that in cases described in that section, federal district court may make order vacating award upon application of any party to arbitration does not constitute a grant of subject matter jurisdiction. [Ford v. Hamilton Investments, Inc., C.A.6 \(Mich.\) 1994, 29 F.3d 255. Federal Courts 🔑 2235](#)

Provision of **Federal Arbitration Act** establishing grounds for vacation of arbitration award does not provide independent federal question jurisdiction for federal courts to review arbitration awards. [Garrett v. Merrill Lynch, Pierce, Fenner & Smith, Inc., C.A.9 \(Cal.\) 1993, 7 F.3d 882. Federal Courts 🔑 2235](#)

New § 1983 claims asserted by in-home medical services provider could not form basis for establishing retroactive supplemental jurisdiction over original claim seeking to set aside arbitration award in favor of insurer pursuant to provision of **Federal Arbitration Act** (FAA). [Texas Health Management LLC v. HealthSpring Life & Health Insurance Company, Inc., E.D.Tex.2019, 380 F.Supp.3d 580. Federal Civil Procedure 🔑 392](#)

Arbitral panel did not manifestly disregard New York law by determining that arbitration clause did not render forum selection clause void and controlled parties dispute, which concerned whether purchasers could require seller under stock purchase agreement to satisfy interim award without drawing from escrow amount, and thus panel had jurisdiction under **Federal Arbitration Act** (FAA) to issue award, since forum selection and arbitration clauses could be read in manner that permitted arbitration clause to remain in effect. [Ecopetrol S.A. v. Offshore Exploration and Production LLC, S.D.N.Y.2014, 46 F.Supp.3d 327. Alternative Dispute Resolution 🔑 329](#)

District court lacked subject matter jurisdiction under the **Federal Arbitration Act** (FAA) to consider the merits of an automobile buyer's petition to vacate an arbitration award in favor of the seller; the FAA did not create federal question jurisdiction, and the court would not look through the petition to any of the underlying claims for jurisdiction. [Crews v. S & S Service Center Inc., E.D.Va.2012, 848 F.Supp.2d 595, affirmed 474 Fed.Appx. 370, 2012 WL 2628298. Federal Courts 🔑 2235](#)

Federal Arbitration Act (FAA) does not create an independent basis for federal question jurisdiction. [Madeoy v. American Arbitration Ass'n, D.D.C.2008, 534 F.Supp.2d 138, affirmed 296 Fed.Appx. 95, 2008 WL 4552796. Federal Courts 🔑 2235](#)

Independent subject matter jurisdiction was not conferred upon federal court by **Federal Arbitration Act** (FAA) provisions authorizing federal courts to vacate arbitration awards in excess of arbitrators' powers and allowing application to be made in district where award was made if parties' agreement specified no particular court, and so some other basis was required for federal district court to have jurisdiction over credit card holder's motion to vacate arbitration award against him. [Fisher v. MBNA America Bank, N.A., S.D.Ohio 2006, 422 F.Supp.2d 889. Federal Courts 🔑 2235](#)

Court had authority only to vacate or modify arbitration award based upon grounds contained in **Federal Arbitration Act** (FAA), and, consequently, court could not modify arbitration award to apportion liability under it. [Gwynn v. Clubine, W.D.N.Y.2004, 302 F.Supp.2d 151. Alternative Dispute Resolution 🔑 362\(2\)](#)

District court had authority under its supplemental jurisdiction to confirm or vacate arbitration award under **Federal Arbitration Act** (FAA), based on fact that court already had jurisdiction over patent infringement dispute underlying arbitration. [Rocket Jewelry Box, Inc. v. Noble Gift Packaging, Inc., S.D.N.Y.1997, 986 F.Supp. 231, affirmed in part, vacated in part 157 F.3d 174. Federal Courts 🔑 2550; Federal Courts 🔑 2553](#)

Federal district court exercised discretionary jurisdiction over suit brought under **Federal Arbitration Act** to vacate arbitration award rendered by panel of National Association of Securities Dealers, even though petition to confirm same award was filed minutes earlier in the Superior Court of the District of Columbia given that motions in Superior Court mirrored motions presented to federal court, no Superior Court judge had yet become significantly involved in merits, federal court had obligation to exercise

jurisdiction, and federal court could provide earlier hearing. *Johnston Lemon & Co., Inc. v. Smith*, D.D.C.1995, 882 F.Supp. 4. Federal Courts 🔑 2631

Portion of **Federal Arbitration Act** (FAA) providing that “the United States court in and for the district wherein the award was made may make an order vacating the award* * *” does not confer exclusive jurisdiction upon such court. *Dombrowski v. Swiftships, Inc.*, S.D.Fla.1994, 864 F.Supp. 1242. Alternative Dispute Resolution 🔑 363(3)

District Court of Virgin Islands had jurisdiction under common-law principles over petition of Virgin Islands employee for equitable relief in form of vacation of arbitrator's award regarding employment dispute, regardless of whether it also had jurisdiction pursuant to **Federal Arbitration Act** and Virgin Islands arbitration statutes. *United Indus. Workers, Service, Transp. Professional and Government of North America, of Seafarers' Intern. Union of North America, Atlantic Gulf, Lakes and Inland Waters Dist. AFL-CIO, (Local No. 16) on Behalf of Bouton v. Government of Virgin Islands*, D. Virgin Islands 1992, 792 F.Supp. 420, affirmed 987 F.2d 162. Federal Courts 🔑 2264(4)

District court had subject matter jurisdiction under **Federal Arbitration Act** over motion to vacate arbitration award rising out of construction contract dispute; court's prior order refusing to stay arbitration gave court jurisdiction, and there was both diversity of citizenship and contract evidencing transaction involving commerce. *Concourse Beauty School, Inc. v. Polakov*, S.D.N.Y.1988, 685 F.Supp. 1311. Federal Courts 🔑 2235; Federal Courts 🔑 2411

Bankruptcy court had ability to confirm, modify or vacate arbitrator's award that was entered, in dispute between Chapter 13 debtor and creditor that had agreed to provide her with modular home, after automatic stay was modified to allow arbitration to proceed, regardless of whether these arbitration proceedings were governed by the Georgia Arbitration Code or the **Federal Arbitration Act**. *In re Clark, Bkrcty.*S.D.Ga.2009, 411 B.R. 507. Alternative Dispute Resolution 🔑 354; Alternative Dispute Resolution 🔑 363(9); Alternative Dispute Resolution 🔑 363(10); Bankruptcy 🔑 3031

Venue

The venue provisions of the **Federal Arbitration Act** (FAA) are permissive, permitting a motion to confirm, vacate, or modify an arbitration award either where the award was made or in any district proper under the general venue statute, and do not restrict such a motion to the district where the award was made; enactment of the special venue provisions in the FAA was to provide a liberalizing effect, and restrictive interpretation would place special venue provisions in needless tension with provision authorizing a binding agreement selecting a forum for confirming an arbitration award and provision for stay of trial pending arbitration, and would create anomalous results in the aftermath of arbitrations held abroad; abrogating *Central Valley Typographical Union No. 46 v. McClatchy Newspapers*, 762 F.2d 741; *Island Creek Coal Sales Co. v. Gainesville*, 729 F.2d 1046; *Sunshine Beauty Supplies, Inc. v. United States District Court, Central Dist. of Cal.*, 872 F.2d 310; *United States ex rel. Chicago Bridge & Iron Co. v. Ets-Hokin Corp.*, 397 F.2d 935; *Bonner v. Prichard*, 661 F.2d 1206; *Naples v. Prepakt Concrete Co.*, 490 F.2d 182. *Cortez Byrd Chips, Inc. v. Bill Harbert Const. Co.*, U.S.Ala.2000, 120 S.Ct. 1331, 529 U.S. 193, 146 L.Ed.2d 171, on remand 211 F.3d 1209. Alternative Dispute Resolution 🔑 355; Alternative Dispute Resolution 🔑 363(3); Alternative Dispute Resolution 🔑 376

District court's dismissal of motion to vacate arbitration award on venue grounds would be vacated, and matter remanded for reconsideration, in light of intervening decision by Supreme Court holding that venue provisions of **Federal Arbitration Act** (FAA) are permissive, not mandatory. *Theis Research, Inc. v. Brown & Bain*, C.A.9 (Cal.) 2001, 240 F.3d 795. Alternative Dispute Resolution 🔑 326; Alternative Dispute Resolution 🔑 363(9)

Federal Arbitration Act (FAA) section which provides that federal court in district in which arbitration award was made may vacate that award is permissive, not mandatory, and thus, it does not establish exclusive forum for suits upon arbitral awards. *Sutter Corp. v. P & P Industries, Inc.*, C.A.5 (Tex.) 1997, 125 F.3d 914. Alternative Dispute Resolution 🔑 363(3)

Venue provisions of **Federal Arbitration Act** (FAA) do not require that action to vacate or modify award be brought in United States court in district where award was made; rather, Act merely permits jurisdiction and venue in that court. [Delta Dental of Rhode Island v. Dental Service of Massachusetts, Inc., D.R.I.1996, 918 F.Supp. 46](#). [Alternative Dispute Resolution](#) 🔑 363(3); [Alternative Dispute Resolution](#) 🔑 376

Venue provisions of sections of **Federal Arbitration Act** regarding applications for confirmation and vacation of awards are permissive. [Denver & Rio Grande Western R. Co. v. Union Pacific R. Co., D.Kan.1994, 868 F.Supp. 1244](#), reconsideration denied 1995 WL 41682, affirmed 119 F.3d 847. [Alternative Dispute Resolution](#) 🔑 355; [Alternative Dispute Resolution](#) 🔑 363(3)

Federal Arbitration Act venue provision limited proper venue in action challenging arbitration decision to district where arbitration award was made. [Soo Line R. Co. v. Chicago and North Western Transp. Co., D.Minn.1990, 737 F.Supp. 68](#). [Alternative Dispute Resolution](#) 🔑 365

Venue provision in **Federal Arbitration Act** providing that application to confirm or vacate arbitration award may be made to United States court in and for district wherein such award was made is permissive rather than exclusive. [Concourse Beauty School, Inc. v. Polakov, S.D.N.Y.1988, 685 F.Supp. 1311](#). [Alternative Dispute Resolution](#) 🔑 355; [Alternative Dispute Resolution](#) 🔑 363(3)

Action to vacate arbitration award, maintained in federal court pursuant to **Federal Arbitration Act**, had to be brought in court for district wherein award was made. [Enserch Intern. Exploration, Inc. v. Attock Oil Co., Ltd., N.D.Tex.1987, 656 F.Supp. 1162](#). [Alternative Dispute Resolution](#) 🔑 365; [Federal Courts](#) 🔑 2825(1)

Removal

District court had removal jurisdiction over Spanish bank's petition to vacate arbitration award entered against it on behalf of British Virgin Islands investment company for manifest disregard of law, pursuant to removal provisions of **Federal Arbitration Act**; statutory scheme allowing removal was enacted to serve and promote federal goals on comprehensive basis, and removal comported with comity considerations by following interpretation of arbitration agreement under Spanish law. [Banco De Santander Central Hispano, S.A. v. Consalvi Intern. Inc., S.D.N.Y.2006, 425 F.Supp.2d 421](#). [Removal Of Cases](#) 🔑 19(1)

Standing

Prior owners and officers of crude oil transport company lacked standing under the **Federal Arbitration Act** (FAA) to intervene in action by rail terminal operator seeking to confirm stipulated arbitration award against company, arising out of breach of contract dispute; owners and officers failed to demonstrate substantial interest in arbitration, as would have entitled them to intervene as of right in confirmation proceeding, since company had already been sold at time of arbitration, and owners and officers alleged that sale was legitimate, so there was no reason from them to have intervened in arbitration, though they also asserted that they feared being subject to alter ego liability for company's obligation in operator's direct action against them. [Eddystone Rail Company, LLC v. Jamex Transfer Services, LLC, S.D.N.Y.2018, 289 F.Supp.3d 582](#), reconsideration denied 2019 WL 181308. [Alternative Dispute Resolution](#) 🔑 357

Burden of proof

Broker dealer failed to establish that bond trader's alleged perjury in arbitration proceeding, in testifying that an investigation of his trading, which was the subject of an on-the-record interview (OTR) request that Financial Industry Regulatory Authority's (FINRA) had made, was not still pending, and in testifying that FINRA investigators had told him during the OTR that there was nothing improper with a bond trade that formed the basis of his retaliation claim against dealer, had any impact on FINRA's

arbitration award of \$1.1 million in unpaid wages to bond trader who had been fired by dealer, as would be required for award to be vacated under **Federal Arbitration Act** (FAA) on ground that it was fraudulently procured; arbitrators granted relief to bond trader only on his claim for unpaid wages, bond trader had sought more than \$5 million in damages based on 11 claims, and neither party asked for reasoned decision from arbitration panel, so there was no basis for finding that bond trader's testimony regarding the FINRA investigation played any role in arbitrators' award on his unpaid wages claim. [Odeon Capital Group LLC v. Ackerman, C.A.2 2017, 864 F.3d 191](#), on remand [2018 WL 1089749](#). [Alternative Dispute Resolution](#) 🔑 374(6); [Alternative Dispute Resolution](#) 🔑 374(7)

Law firm founder failed to establish that arbitrator demonstrated evident partiality within the meaning of the **Federal Arbitration Act** (FAA), as would warrant vacatur of award issued in favor of law firm partner in dispute between partner and founder regarding terms of dissolution of firm; alleged evidence of partiality, including arbitration association's decision to reopen the arbitration, rewriting of partnership agreement, denial of discovery to founder's husband, improper appointment of arbitrator, and the award of sanctions against firm amounted only to a series of unfavorable rulings by the arbitrator, but did not meet heavy burden to establish specific facts that indicated improper motives. [Ray v. Chafetz, D.D.C.2017, 236 F.Supp.3d 66](#). [Alternative Dispute Resolution](#) 🔑 335

Marketing company that purchased solar panels from manufacturer failed to establish that arbitration tribunal overseeing breach of contract dispute between marketing company and manufacturer engaged in misconduct so as to render arbitration fundamentally unfair, and thus did not provide a basis for court to vacate arbitration award pursuant to the **Federal Arbitration Act** (FAA), where marketing company contended that it was prejudiced because the level of detail afforded to each side to prepare for cross examination of witnesses was asymmetric, but it did not identify any specifically precluded evidence or argument, that marketing company did receive a witness statement, and that tribunal had broad discretion to resolve evidentiary issues. [Trina Solar US, Inc. v. JRC-Services LLC, S.D.N.Y.2017, 229 F.Supp.3d 176](#). [Alternative Dispute Resolution](#) 🔑 334

Former employee, a financial advisor, failed to carry heavy burden of showing that arbitration panel which heard dispute arising out of his termination was biased in violation of **Federal Arbitration Act** (FAA) so as to require vacation of arbitration award, even though former employee asserted that panel was biased against him because he was a pro se litigant, given that chairperson of panel explicitly stated that she and other panel members tried to be unprejudiced toward employee. [Blackwell v. Merrill Lynch, Pierce, Fenner & Smith Inc., W.D.N.C.2014, 22 F.Supp.3d 565](#). [Alternative Dispute Resolution](#) 🔑 335

Subsidiary of successor to issuer of variable annuity of which trust was beneficiary failed to meet burden of proving appropriateness of vacatur of \$579,995.15 arbitration award in favor of trustee, based on alleged excess of power by Financial Industry Regulatory Authority (FINRA) panel, pursuant to **Federal Arbitration Act**, where subsidiary invoked excess of power in petition to vacate, but then mainly discussed manifest disregard of law to support vacatur, presented facts from arbitration that allegedly illustrated manifest disregard, and then only cursorily returned to excess of power at end of brief. [Popkave v. John Hancock Distributors LLC, E.D.Pa.2011, 768 F.Supp.2d 785](#). [Alternative Dispute Resolution](#) 🔑 417

The party seeking vacatur of an arbitration award on basis that the award was procured by corruption, fraud, or undue means in violation of the **Federal Arbitration Act**, must show the other party's improper conduct led to the award. [Tassin v. Ryan's Family Steakhouse, Inc., M.D.La.2007, 509 F.Supp.2d 585](#). [Alternative Dispute Resolution](#) 🔑 332

Party seeking to vacate arbitral award under **Federal Arbitration Act** (FAA) bears burden of asserting sufficient grounds to vacate award. [Washington Mut. Bank, F.A. v. American Financial Network, S.D.Fla.2006, 414 F.Supp.2d 1155](#). [Alternative Dispute Resolution](#) 🔑 363(8)

To demonstrate "evident partiality," as ground for vacation of arbitration award under **Federal Arbitration Act** (FAA), party seeking vacation has burden of proving that reasonable person would have to conclude that arbitrator was partial to one party in arbitration. [Hobet Mining, Inc. v. International Union, United Mine Workers of America, S.D.W.Va.1994, 877 F.Supp. 1011](#). [Alternative Dispute Resolution](#) 🔑 363(8)

Notice

Inadequate notice was not proper grounds to set aside arbitration award under **Federal Arbitration Act** (FAA). [Gingiss Intern., Inc. v. Bormet, C.A.7 \(Ill.\) 1995, 58 F.3d 328. Alternative Dispute Resolution 🔑 326](#)

Beauty pageant contestant received due notice of arbitration hearing concerning beauty pageant organization's defamation claim against her, and thus, the arbitration was not fundamentally unfair in violation of **Federal Arbitration Act**; contestant received both actual and constructive notice through her counsel of the arbitration proceedings, contestant was initially served with organization's statement of claim, the onus was on contestant to inquire as to the status of those proceedings when she had heard nothing from her counsel, the organization, or arbitrator for several months, and contestant's apparent objections to arbitrability could have been preserved despite her participation. [Miss Universe L.P., LLLP. v. Monnin, S.D.N.Y.2013, 952 F.Supp.2d 591. Alternative Dispute Resolution 🔑 259](#)

Party filing a motion to vacate, correct, or modify an arbitration award, brought under the **Federal Arbitration Act** (FAA), must serve notice on any foreign adverse party consistent with the Federal Rule of Procedure governing service of process, as opposed to the rule governing the service of "pleadings and other papers." [Technologists, Inc. v. MIR's Ltd., D.D.C.2010, 725 F.Supp.2d 120. Alternative Dispute Resolution 🔑 363\(1\)](#)

Hearings

Pro se prisoners were not prejudiced by testifying telephonically at arbitration hearing conducted on their claims against brokerage clearing house and brokerage in connection with closure of their accounts, particularly where arbitration rule granted arbitrators discretion to determine location of hearing, and thus arbitration panel's decision did not reflect bad faith or amount to affirmative misconduct that would support vacation of arbitration award under **Federal Arbitration Act** (FAA). [Lunsford v. RBC Dain Rauscher, Inc., D.Minn.2008, 590 F.Supp.2d 1153. Alternative Dispute Resolution 🔑 416](#)

Question of whether arbitration panel inadvertently neglected to hold hearings was inapposite and reconsideration did not compel any change to prior opinion and judgment confirming arbitration awards, where court already determined that a deliberate refusal by panel to hold hearings in matter would not constitute misconduct under **Federal Arbitration Act** sufficient to justify vacating arbitral awards, and record did not support inference that panel inadvertently failed to hold hearings. [Griffin Industries, Inc. v. Petrojam, Ltd., S.D.N.Y.1999, 72 F.Supp.2d 365. Alternative Dispute Resolution 🔑 334](#)

Arbitrators' failure to conduct oral hearings was not "misconduct," so as to warrant vacation of award under **Federal Arbitration Act** (FAA), where parties were given notice that decision based solely on papers submitted by parties was possible, and party challenging award submitted brief and exhibits. [In re Arbitration between Griffin Industries, Inc. and Petrojam, Ltd., S.D.N.Y.1999, 58 F.Supp.2d 212, reconsideration denied 72 F.Supp.2d 365. Alternative Dispute Resolution 🔑 334](#)

Arbitration panel's reliance upon constructive discharge theory in awarding damages to independent contractor for real estate company did not result in denial of fundamental fairness, nor was company prejudiced within meaning of **Federal Arbitration Act**; there was full opportunity given both sides during arbitration hearing concerning reason for contractor's resignation and those reasons included emotional stress under which contractor was placed because she felt that she was being wronged by what panel had determined to be breaches of conduct by company. [Jih v. Long & Foster Real Estate, Inc., D.Md.1992, 800 F.Supp. 312. Alternative Dispute Resolution 🔑 324](#)

Res judicata

Even though it was questionable whether employer could avoid three-month limitations period, borrowed from **Federal Arbitration Act** (FAA), for vacation of labor arbitration award on reasoning that it had no knowledge of relationship between arbitrator and employee of international mine workers union until after limitations period governing arbitrator's award expired, district court would address employer's claim of evident partiality on part of arbitrator; limitations period did not bar vacation of second arbitrator's award that was based, in part, on res judicata effect of first arbitrator's award. [Hobet Mining, Inc. v. International Union, United Mine Workers of America, S.D.W.Va.1994, 877 F.Supp. 1011. Labor And Employment 🔑 1614](#)

Estoppel

Arbitrators did not “manifestly disregard law” in denying high-ranking officers of merger target corporation their alleged portion of 30,000 shares of surviving corporation claimed as compensation for stock options lost as result of merger, because of arbitrators' failure to give preclusive effect to prior federal court decision, which was pending on appeal, awarding another high-ranking officer his portion of the 30,000 shares, and thus, arbitration award could not be set aside or vacated under **Federal Arbitration Act** (FAA); no clear and binding precedent existed as to whether arbitrators were required to afford federal judgments preclusive effect, arbitrators possessed the same broad discretion as district courts in determining whether to apply offensive non-mutual collateral estoppel, and the qualitative difference between a district court judgment and an arbitration award rendered unfair the application of offensive non-mutual collateral estoppel in arbitration on the basis of a prior judgment pending appeal. [Collins v. D.R. Horton, Inc., C.A.9 \(Ariz.\) 2007, 505 F.3d 874, certiorari denied 128 S.Ct. 1739, 552 U.S. 1295, 170 L.Ed.2d 539. Alternative Dispute Resolution 🔑 329](#)

Chemical firm which had entered into distribution agreement under which it agreed to submit any dispute arising under agreement to final and binding arbitration in California, and filed successful motion to compel arbitration there after dispute arose from its termination of agreement, willingly initiated enforcement of its agreement under supervision of California courts, and thus could not bring independent action in federal district court in Virginia under **Federal Arbitration Act** (FAA) in which it sought to have award in favor of distributor vacated. [Vulcan Chemical Technologies, Inc. v. Barker, C.A.4 \(Va.\) 2002, 297 F.3d 332. Alternative Dispute Resolution 🔑 365](#)

Evidence--Admissibility

Record did not support arbitrators' finding that production company's official's testimony would have been cumulative in arbitration concerning claims by production company and manufacturer that each fraudulently induced other into entering contract under which company was to prepare manufacturer's products for sale, and thus, arbitrators' refusal to continue hearings to allow that official to testify resulted in exclusion of evidence “pertinent and material to the controversy,” in violation of **Federal Arbitration Act** (FAA); although arbitrators considered documents authored or received by official, those documents did not focus on inducements to enter contracts, and because official allegedly made misrepresentations to manufacturer, he was only person who could have rebutted claim that such misrepresentations were made. [Tempo Shain Corp. v. Bertek, Inc., C.A.2 \(N.Y.\) 1997, 120 F.3d 16, on remand 1997 WL 580775, clarified. Alternative Dispute Resolution 🔑 265](#)

Arbitration panel did not deny surety its right under the **Federal Arbitration Act** and the Due Process Clause to present evidence pertinent and material to the controversy, as would warrant vacatur of arbitration award, which declared that borrower's sale of surety's shares of its stock, which surety had pledged as collateral for borrower's performance under term loan agreement, was conducted in a commercially reasonable manner, and denied surety's indemnification claim, where surety was afforded an opportunity to present evidence, but failed to do so. [Cardell Financial Corp. v. Suchodolksi Associates, Inc., S.D.N.Y.2009, 674 F.Supp.2d 549, affirmed 409 Fed.Appx. 458, 2011 WL 441384. Alternative Dispute Resolution 🔑 326; Constitutional Law 🔑 4476](#)

Even if statement of arbitration panel hearing dispute between wireless telecommunications technology developer and wireless handset manufacturer regarding royalty payments required by patent licensing agreement that settlement between developer

and other handset manufacturer was not to be considered was an effective refusal to hear pertinent and material evidence, in violation of the **Federal Arbitration Act** (FAA), such misconduct did not result in a “fundamentally unfair” outcome as to warrant vacatur of arbitration award against manufacturer, where panel reached precisely the conclusion urged on the panel by manufacturer. [In re Arbitration Between Interdigital Communications Corp. and Samsung Electronics Co., Ltd., S.D.N.Y.2007, 528 F.Supp.2d 340. Alternative Dispute Resolution 🔑 326](#)

---- Weight and sufficiency, evidence

Arbitrator's credibility determinations and decision to not consider earlier incident in which employee was found sleeping at work did not warrant vacating arbitration award, since circumstances did give rise to the level of the arbitrator applying his own industrial brand of justice under the LMRA, a manifest disregard for the law, or inherently egregious acts under the **Federal Arbitration Act** (FAA); arbitrator relied on inconsistencies and denials in testimony, corroborating testimony, and self-interest present in the testimony in determining that evidence presented by the employer was more credible than the testimony provided by the union. [International Chemical Workers Union v. Columbian Chemicals Co., C.A.5 \(La.\) 2003, 331 F.3d 491. Labor And Employment 🔑 1595\(1\)](#)

Insufficiency of evidence is not ground for setting aside arbitration award under **Federal Arbitration Act** (FAA). [Flexible Mfg. Systems Pty. Ltd. v. Super Products Corp., C.A.7 \(Wis.\) 1996, 86 F.3d 96. Alternative Dispute Resolution 🔑 324](#)

Insufficiency of the evidence is not ground for setting aside arbitration award under **Federal Arbitration Act** (FAA). [Gingiss Intern., Inc. v. Bormet, C.A.7 \(Ill.\) 1995, 58 F.3d 328. Alternative Dispute Resolution 🔑 324](#)

Arbitrator did not give unfair weight to testimony of orchestra musicians who alleged that union-represented musician mocked, mimicked, confronted, or otherwise behaved inappropriately in the workplace, as would support vacatur of award upholding musician's termination under the **Federal Arbitration Act** (FAA); arbitrator evaluated testimony from several witnesses, some of whom made allegations of impropriety against musician and others who witnessed no misbehavior and had good working relationships with him, arbitrator noted that there was abundant and consistent testimony about musician's playing issues, as well as consistent and cumulative observations of physical actions that demonstrated anger, and in support of his conclusion, arbitrator devoted an extensive explanation discussing the motivation of the witnesses in reaching his decision. [Roy v. Buffalo Philharmonic Orchestra Society, Inc., W.D.N.Y.2016, 161 F.Supp.3d 187, affirmed 682 Fed.Appx. 42, 2017 WL 951461. Labor And Employment 🔑 1595\(10\); Labor And Employment 🔑 1609\(2\)](#)

Arbitrator's evidentiary rulings regarding issue of acquiring company's costs and actual expenditures did not constitute misconduct under the **Federal Arbitration Act** (FAA) warranting order vacating award of \$12,455,585.88 to acquiring company and against acquired company for indemnification for cost of corrective work at various acquired facilities; arbitrator considered and accepted or rejected other evidence of acquiring company's costs and actual expenditures based on materials in the record, specifying precise amounts derived not from the summaries itemizing the volumes of invoices and receipts, but from other testimony and reports of experts. [Fairchild Corp. v. Alcoa, Inc., S.D.N.Y.2007, 510 F.Supp.2d 280. Alternative Dispute Resolution 🔑 334](#)

Even if a federal court is persuaded that an arbitrator has reached an incorrect legal result in arbitration under the **Federal Arbitration Act** (FAA) it should not conduct an independent review of the factual record presented to the arbitrator in order to achieve the “correct” result, because manifest disregard of the evidence is not recognized as a proper ground for vacating an arbitrator's award. [Tucker v. American Bldg. Maintenance, S.D.N.Y.2006, 451 F.Supp.2d 591. Alternative Dispute Resolution 🔑 324](#)

Refusal to hear evidence

Labor arbitration award in favor of employee, which determined that employer filed disciplinary charges outside of time limits prescribed by the parties' collective bargaining agreement (CBA), was not result of arbitrator's refusal to hear evidence pertinent and material to the controversy, as would warrant court's vacatur of the award under **Federal Arbitration Act** (FAA); although employer's unconditional offer of reinstatement to employee might have had probative value in a proceeding involving back pay and mitigation of damages, it had no relevance to the proceeding focused on whether the charges against employee were timely, so was properly excluded in bifurcated proceeding. [Transport Workers Union of America v. Veolia Transportation Services, Inc.](#), E.D.N.Y.2016, 211 F.Supp.3d 505, appeal dismissed 2017 WL 5133195. [Labor and Employment](#) 🔑 1587

Attorney fees

Petition to vacate arbitration award in favor of government of Canada was not frivolous and did not indicate subjective or objective bad faith, and thus award of attorney fees and costs to government of Canada as prevailing party was not warranted; seeking vacatur was not an indication of bad faith, and petition for vacatur was based on two grounds explicitly enumerated in **Federal Arbitration Act** (FAA), and one that was arguably implied and had been previously recognized. [Mesa Power Group, LLC v. Government of Canada](#), D.D.C.2017, 255 F.Supp.3d 175. [Alternative Dispute Resolution](#) 🔑 316

Sales broker who prevailed on motion to confirm arbitration award in his favor under both **Federal Arbitration Act** (FAA) and District of Columbia Revised Uniform Arbitration Act (DCRUAA) could recover attorney fees, pursuant to DCRUAA, for time spent in opposing former employer's petition to vacate award, even though petition was brought only pursuant to FAA, which did not authorize fee awards, since both of broker's briefs, that supporting his own motion and that opposing former employer's petition, presented identical facts and arguments, such that work on either amounted to work on both. [FBR Capital Markets & Co. v. Hans](#), D.D.C.2014, 12 F.Supp.3d 59. [Alternative Dispute Resolution](#) 🔑 424

Contractor, although the substantially prevailing party in arbitration with homeowners, was not entitled to attorneys fees, where **Federal Arbitration Act**, rather than state law, governed contractor's motion to confirm and homeowners' petition to vacate arbitration award. [Metzler Contracting Co. LLC v. Stephens](#), D.Hawai'i 2011, 774 F.Supp.2d 1073, affirmed 479 Fed.Appx. 783, 2012 WL 2951418. [Alternative Dispute Resolution](#) 🔑 359; [Alternative Dispute Resolution](#) 🔑 364

Hawaii development agency waived sovereign immunity protection, and thus arbitrator's award of \$361,804.07 in attorneys' fees to Texas developer in contract dispute with agency was not manifest disregard of law; parties contractually agreed to arbitration, identified specific arbitrator, and agreed that dispute and claims fell within jurisdiction of **Federal Arbitration Act** (FAA). [Kenneth H. Hughes, Inc. v. Aloha Tower Development, Corp.](#), D.Hawai'i 2009, 654 F.Supp.2d 1142. [Alternative Dispute Resolution](#) 🔑 329

Provision of **Federal Arbitration Act**, allowing award to be set aside if arbitrators refused to hear evidence pertinent and material to controversy, did not apply to losing party's claim that arbitrators should not have awarded attorney fees to prevailing party based upon affidavits of expenses, without taking testimony as to expenses and allowing cross-examination; fees were an ancillary question and did not constitute evidence pertinent to controversy. [U.S. for Use and Benefit of Skip Kirchdorfer, Inc. v. Aegis/Zublin Joint Venture](#), E.D.Va.1994, 869 F.Supp. 387. [Alternative Dispute Resolution](#) 🔑 269

In proceedings under the **Federal Arbitration Act**, an arbitration award lawfully may include an award of attorney fees if the underlying agreement between the parties so provides. [Ceco Concrete Const., a Div. of Robertson-Ceco Corp. v. J.T. Schrimsher Const. Co., Inc.](#), N.D.Ga.1992, 792 F.Supp. 109. [Alternative Dispute Resolution](#) 🔑 269

Prevailing party

Under North Carolina's Revised Uniform Arbitration Act law, which authorizes an award of reasonable attorney fees to a prevailing party in contested judicial actions, sales representative was entitled to award of attorney fees as prevailing party

in contested judicial proceeding concerning its motion to confirm arbitration award in its favor and oppose motion to vacate, modify, or correct award under **Federal Arbitration Act** (FAA). *Astanza Design, LLC v. Gienne Stile, S.p.A.*, M.D.N.C.2016, 220 F.Supp.3d 641. [Alternative Dispute Resolution 🔑 359](#)

Interim awards

Requirement, under interim arbitration award, that management company post \$4,000,000 bond to secure portion of counterclaims against it was not fundamentally unfair, and thus did not warrant vacating award under **Federal Arbitration Act** (FAA), notwithstanding contentions that posting bond in amount equal to almost all of company's current cash assets would likely force it into bankruptcy and render it unable to pay counsel in arbitration and other ongoing actions; it was mere conjecture that posting bond would result in bankruptcy, bankruptcy trustee's counsel would pursue and defend claims for company in such circumstances, company was already effectively in liquidation, and arbitrators, in ordering such relief, did nothing to diminish their responsibility to allow parties to develop the record and to accord them full and fair hearing on the merits of their claims. *In re Cragwood Managers, L.L.C. (Reliance Ins. Co.)*, S.D.N.Y.2001, 132 F.Supp.2d 285. [Alternative Dispute Resolution 🔑 324](#)

Final and definite awards

Arbitration panel's failure to break down award by each county where insured had corn crop did not mean panel imperfectly executed its powers such that it rendered no mutual, final, and definite award in favor of insured and against insurer for wrongfully denying claim under crop insurance policy for damage to corn crop, as would require vacatur of award under **Federal Arbitration Act**; federal regulation required that award describe "breakdown by claim for any award" and defined "claim for indemnity" as "claim made on [the insurer's] form," insured submitted single claim covering his corn crop, insurer assigned single claim number, panel accepted insurer's decision to treat claim as singular, and no regulation required panel to segregate claim into multiple separate claims. *Great American Insurance Company v. Russell*, C.A.8 (Mo.) 2019, 914 F.3d 1147. [Alternative Dispute Resolution 🔑 307](#)

Arbitration award, in which two appraisers compromised on amount that telecommunications provider must pay to railroad to continue using railroad's rights of way for provider's fiber optic telecommunications system during renewed 25-year term under license agreement, was not "final" within meaning of **Federal Arbitration Act** (FAA), where one appraiser did not merely base his assent to award on certain appraisal assumptions, but reserved his right to withdraw his assent if either of two assumptions, that railroad had marketable title and that across-the-fence (ATF) value used by other appraiser was reasonable, ever proved to be incorrect, and neither license agreement nor e-mail from parties to appraiser removed such assumptions from scope of what appraisers were asked to decide. *Norfolk Southern Railway Company v. Sprint Communications Company L.P.*, C.A.4 (Va.) 2018, 883 F.3d 417. [Alternative Dispute Resolution 🔑 374\(1\)](#)

Arbitrators' determination that electrical contractor owed contributions to electricians' union's welfare fund, and direction to contractor and union to compute amount owed, was mutual, final, and definite award not subject to vacatur on contractor's challenge in district court under **Federal Arbitration Act's** (FAA); parties were free to confine arbitrators to deciding liability to economize on cost of arbitration procedure. *Smart v. International Broth. of Elec. Workers, Local 702*, C.A.7 (Ill.) 2002, 315 F.3d 721, rehearing and rehearing en banc denied. [Labor And Employment 🔑 1542](#)

Failure of arbitration award expressly to deny claims of insurance company that sold securities, along with those of securities broker, alleging that competing securities brokers tortiously interfered with company's contracts with its employees by representing to employees that covenants not to compete with company were unenforceable, did not render award incomplete under **Federal Arbitration Act**; read charitably, and in its entirety, award indicated arbitrators did not believe company made claims distinct from those made by broker worth discussing. *IDS Life Ins. Co. v. Royal Alliance Associates, Inc.*, C.A.7 (Ill.) 2001, 266 F.3d 645. [Alternative Dispute Resolution 🔑 423](#)

Federal Arbitration Act (FAA) provision governing vacatur of awards authorizes court action only after final award is made by arbitrator. [Folse v. Richard Wolf Medical Instruments Corp., C.A.5 \(La.\) 1995, 56 F.3d 603, on remand 1997 WL 277458. Alternative Dispute Resolution 🔑 361](#)

Final order requiring members of reinsurance pool to make payments into escrow account pending arbitrators' decision in dispute under reinsurance management agreement was subject to confirmation and enforcement in district court under **Federal Arbitration Act**. [Pacific Reinsurance Management Corp. v. Ohio Reinsurance Corp., C.A.9 \(Cal.\) 1991, 935 F.2d 1019. Insurance 🔑 3626](#)

Arbitrators' award, entered before arbitration had taken place over disputed amount of insurance premium owed, ordering insured to immediately pay undisputed portion of premium to insurer, was sufficiently "final" to be judicially confirmable under **Federal Arbitration Act**; insurer's demand for undisputed portion of premium was separate and independent claim, which was conclusively decided by award in question. [Home Ins. Co. v. RHA/Pennsylvania Nursing Homes, Inc., S.D.N.Y.2001, 127 F.Supp.2d 482. Alternative Dispute Resolution 🔑 319](#)

Arbitration "award" finding manufacturer liable for wrongfully terminating distribution agreement was not "final," and thus, not subject to judicial review under **Federal Arbitration Act** (FAA) and the Rhode Island Arbitration Act (RIAA); arbitrator's decision did not address the damages issue that also was submitted to arbitration, nor did it fully and finally resolve the dispute that was the subject of the arbitration in a way that made clear the rights and obligations of the parties under the "award." [Hart Surgical, Inc. v. Ultracision, Inc., D.R.I.2000, 92 F.Supp.2d 40, vacated 244 F.3d 231. Alternative Dispute Resolution 🔑 319](#)

Arbitration award deciding dispute concerning purchase price of drilling rig inventory was final, within meaning of **Federal Arbitration Act**, since award clearly set forth liability, assigned dollar figure to such liability, and award did not omit to decide any specific valuation issues set forth by parties in arbitrator's engagement proposal. [Blue Tee Corp. v. Koehring Co., S.D.N.Y.1990, 754 F.Supp. 26, judgment clarified 763 F.Supp. 754. Alternative Dispute Resolution 🔑 319](#)

Agreement precluding review

Arbitrator's decision, awarding personal representative of nursing home resident's estate \$245,462.75 in costs and interest following \$475,000 award for compensatory damages on wrongful death claim against nursing home, found support in terms of the parties' arbitration agreement, as required for court's confirmation; even though agreement designated as governing law the **Federal Arbitration Act** (FAA), which did not authorize recovery of costs and interest by prevailing party, rather than the New Mexico Uniform Arbitration Act (NMUAA), under which arbitrator made decision with implied consent of the parties, and which did authorize such awards, the recovery of costs and interest was within the realm of the parties' agreement, given language in contract setting forth that "all issues" pertaining to scope of agreement would be determined by arbitrator. [THI of New Mexico at Vida Encantada, LLC v. Lovato, C.A.10 \(N.M.\) 2017, 864 F.3d 1080. Alternative Dispute Resolution 🔑 325](#)

Contractual bars on appealing decision of the arbitrator, in manufacturer and its exclusive distributor's agreements related to the development and sales of low voltage static transfer switches (LVSTS), did not bar manufacturer's motion to vacate arbitration award, pursuant to the **Federal Arbitration Act**, on ground that arbitrator was guilty of misconduct and exceeded his powers, where the motion challenged only the conduct of the arbitrator, and did not go to the merits of the arbitration. [Silicon Power Corp. v. General Elec. Zenith Controls, Inc., E.D.Pa.2009, 661 F.Supp.2d 524. Alternative Dispute Resolution 🔑 316; Alternative Dispute Resolution 🔑 334](#)

Judicial review of arbitration award was available on grounds set forth in **Federal Arbitration Act** (FAA), even though agreement stated that arbitration award was "binding, final and non-appealable." [Team Scandia, Inc. v. Greco, S.D.Ind.1998, 6 F.Supp.2d 795. Alternative Dispute Resolution 🔑 362\(1\)](#)

Review--Generally

Question of whether arbitration panel's award imposing class arbitration on charterers and vessel owners, whose arbitration clauses were "silent" on that issue, was consistent with the **Federal Arbitration Act** (FAA) was ripe for judicial review; the panel's award meant that owners had to submit to class determination proceedings before arbitrators who, if owners were correct, had no authority to require class arbitration absent the parties' agreement to resolve their disputes on that basis, and should owners refuse to proceed with what they maintained was essentially an ultra vires proceeding, they would almost certainly be subject to a petition to compel arbitration under the FAA. *Stolt-Nielsen S.A. v. AnimalFeeds International Corp.*, U.S.2010, 130 S.Ct. 1758, 559 U.S. 662, 176 L.Ed.2d 605, on remand 624 F.3d 157. [Shipping](#) 🔑 39(7)

De novo review provision of binding arbitration clause in tribal-state gaming compact was legally invalid, since such provision conflicted with review standards set out in **Federal Arbitration Act**. *Citizen Potawatomi Nation v. Oklahoma*, C.A.10 (Okla.) 2018, 881 F.3d 1226, certiorari denied 139 S.Ct. 375, 202 L.Ed.2d 286. [Alternative Dispute Resolution](#) 🔑 374(1)

Arbitration award appropriately was reviewed under **Federal Arbitration Act**, rather than under Wisconsin Arbitration Act, where agreement stated that arbitration clause "is governed by and enforceable under the terms of the **Federal Arbitration Act**"; although franchise agreement generally was governed by state law, it specifically removed arbitration from that blanket statement. *Renard v. Ameriprise Financial Services, Inc.*, C.A.7 (Wis.) 2015, 778 F.3d 563. [Federal Courts](#) 🔑 3053

Court of Appeals would not review merits of arbitrator's conclusion that franchisor was entitled to lost future profits due to franchisee closing franchise, where franchisees' claims, including claim that arbitrator disregarded law which required that future fees be ascertained with reasonable certainty, did not allege any corruption, fraud, partiality, or abuse of power, which were grounds enumerated in **Federal Arbitration Act** (FAA). *Medicine Shoppe Intern., Inc. v. Turner Investments, Inc.*, C.A.8 (Mo.) 2010, 614 F.3d 485. [Alternative Dispute Resolution](#) 🔑 374(3)

Arbitrator's determination that insured's field had been properly treated before planting tomatoes, and thus was covered under multi-peril crop insurance (MPCI) policy, was factual finding, rather than policy interpretation, and thus was not subject to judicial review under **Federal Arbitration Act** (FAA). *Great American Ins. Co. v. Moye*, M.D.Fla.2010, 733 F.Supp.2d 1298. [Insurance](#) 🔑 3327

---- Deference, review

Under the **Federal Arbitration Act** (FAA), vacatur was unwarranted for arbitration award finding that government of Canada did not violate the North American Free Trade Agreement (NAFTA) based on tribunal's deference to Canada's policy choices in awarding of renewable energy contracts; tribunal did not presume that Canada's factual assertions were correct or defer to Canada's legal interpretations of NAFTA's requirements, and tribunal closely and exhaustively analyzed whether Canada acted fairly, examined facts, made de novo factual findings on contested issues, treated parties equally, and did not change the standard of proof. *Mesa Power Group, LLC v. Government of Canada*, D.D.C.2017, 255 F.Supp.3d 175. [Alternative Dispute Resolution](#) 🔑 515; [International Law](#) 🔑 292

Arbitration panel's ruling that reinsurer and insurer submitted to panel for resolution their arbitrable dispute about asbestos losses of insured's affiliate was entitled to extraordinary deference and did not exceed panel's powers, as would be required to vacate \$14 million award in favor of insurer, under **Federal Arbitration Act** (FAA) and Michigan law; although insurer explained to panel that its original demand may not have used name of insured's affiliate, amounts in demand did include insurer's payments to affiliate for asbestos losses, reinsurer did not dispute insurer's explanation before panel and did not dispute it before district court, and insurer filed letter brief with panel setting forth in detail many ways in which parties addressed affiliate's losses in proceedings leading up to arbitration. *Amerisure Mut. Ins. Co. v. Everest Reinsurance Co.*, E.D.Mich.2015, 109 F.Supp.3d 969. [Insurance](#) 🔑 3626

---- **Scope and standard of review**

Parties' contractual agreement to expand judicial review, by stating that errors of law in arbitration decision shall be subject to appeal, supplemented **Federal Arbitration Act's** (FAA) default standard of review and allowed for de novo review of issues of law embodied in arbitration award and, thus, district court erred when it refused to review errors of law de novo, opting instead to apply harmless error standard. [Gateway Technologies, Inc. v. MCI Telecommunications Corp., C.A.5 \(Tex.\) 1995, 64 F.3d 993. Alternative Dispute Resolution 🔑 363\(6\)](#)

Under **Federal Arbitration Act** (FAA), validity of arbitration award is subject to attack only on grounds listed in FAA and policy of FAA requires that award be enforced unless one of these grounds is affirmatively shown to exist. [Wall Street Associates, L.P. v. Becker Paribas Inc., C.A.2 \(N.Y.\) 1994, 27 F.3d 845. Alternative Dispute Resolution 🔑 362\(2\)](#)

Under **Federal Arbitration Act** (FAA), arbitration agreement between licensor of agricultural chemical and its licensee, which stated that the ruling of the arbitrator shall be “binding, non-reviewable, and non-appealable” did not permit court to review substance of arbitration award; language of parties to narrow the scope of review of arbitration award was clear and unequivocal. [Kim-C1, LLC v. Valent Biosciences Corp., E.D.Cal.2010, 756 F.Supp.2d 1258. Alternative Dispute Resolution 🔑 363\(7\)](#)

Judicial review of arbitration awards pursuant to employment agreement to arbitrate is limited to (1) enumerated reasons in **Federal Arbitration Act** (FAA), (2) when award is contrary to some explicit, well-defined, and dominant public policy, (3) when award is in manifest disregard of the law. [Sapiro v. VeriSign, D.D.C.2004, 310 F.Supp.2d 208. Alternative Dispute Resolution 🔑 312; Alternative Dispute Resolution 🔑 329; Alternative Dispute Resolution 🔑 374\(1\)](#)

District court's review of arbitration decision under **Federal Arbitration Act** (FAA) is limited to grounds set forth in FAA. [Owen-Williams v. Merrill Lynch, Pierce, Fenner and Smith, Inc., D.Md.1995, 907 F.Supp. 134, affirmed 103 F.3d 119. Alternative Dispute Resolution 🔑 362\(2\)](#)

---- **Fair hearing, review**

Arbitration award in favor of securities broker and brokerage firm on investors' claims for violation of federal securities laws and Puerto Rico laws, due to losses investors incurred on brokerage investment accounts, did not warrant vacatur or modification, under **Federal Arbitration Act**, based on arbitrators' decisions sustaining defense counsel's evidentiary objections based on relevancy, since investors were not deprived of fair hearing by arbitrators' refusal to admit evidence relating to claims previously brought against broker by unrelated parties, investors were permitted to ask some questions about prior actions against broker, and arbitrators sustained evidentiary objections because prior actions had been settled. [Ortiz-Espinosa v. BBVA Securities of Puerto Rico, Inc., C.A.1 \(Puerto Rico\) 2017, 852 F.3d 36. Alternative Dispute Resolution 🔑 326](#)

National Football League (NFL) Commissioner's denial, as arbitrator, of NFL players' union's motion to produce investigative files, including notes of witness interviews, for player's use at arbitral hearing concerning his suspension was fundamentally unfair and in violation of **Federal Arbitration Act** (FAA); player was prejudiced by denial, inasmuch as he was denied opportunity to examine and challenge materials that may have led to his suspension and which likely facilitated opposing counsel's cross-examination of him, and attorney for NFL during arbitration acted as alleged “independent” counsel during investigation. [National Football League Management Council v. National Football League Players Ass'n, S.D.N.Y.2015, 125 F.Supp.3d 449, reversed 820 F.3d 527, for additional opinion, see 647 Fed.Appx. 32, 2016 WL 1622366, rehearing and rehearing en banc denied, rehearing and reargument denied. Labor and Employment 🔑 1569](#)

Arbitration panel's allegedly erroneous procedural and evidentiary rulings did not deprive reinsurer of fair arbitration hearing on reinsurance dispute with insurer, as would be required to vacate \$14 million award in favor of insurer, under **Federal Arbitration**

Act (FAA); reinsurer said nothing about any unfairness at close of arbitration hearing when umpire directly asked if reinsurer had sufficient opportunity to present its arguments and evidence, umpire questioned qualifications of insurer's expert that reinsurer alleged umpire had "fawned over," panel allowed reinsurer opportunity to move for individual admission of exhibits while actually refusing to grant insurer's motion to strike exhibits, and panel allowed insurer to supplement record with post-hearing submission related to insurer's claim for interest but ultimately declined to award any interest. [Amerisure Mut. Ins. Co. v. Everest Reinsurance Co.](#), E.D.Mich.2015, 109 F.Supp.3d 969. [Insurance](#) 🔑 3626

Preservation of issues

Contract packager for owner of household lubricant brand failed to preserve for appellate review District Court's conclusion that the parties clearly and unmistakably intended to delegate the issue of arbitrability to arbitrators; in packager's motion under **Federal Arbitration Act** (FAA) to vacate arbitration award for owner on packager's breach of contract claim relating to termination of parties' business relationship, packager noted that District Court had considered the delegation issue at length and packager stated that it did not challenge "that aspect" of arbitrators' decision, and in packager's objections to magistrate judge's recommendation that district judge deny packager's motion to vacate, packager stated that there was a clear delegation of the arbitrability issue to arbitrators. [IQ Products Company v. WD-40 Company](#), C.A.5 (Tex.) 2017, 871 F.3d 344, certiorari denied 138 S.Ct. 2620, 201 L.Ed.2d 1026. [Alternative Dispute Resolution](#) 🔑 371

Remand

While the Court of Appeals, in reversing district court order vacating arbitration award, properly found that grounds stated in the **Federal Arbitration Act** (FAA) either for vacating, or for modifying or correcting, arbitration award comprised the exclusive grounds for expedited vacatur and modification of arbitration award pursuant to provisions of the FAA, case had to be remanded for consideration of whether arbitration agreement, having been entered into by parties in course of district court litigation, having been submitted to district court as request to deviate from the standard sequence of trial procedure, and having been adopted by district court as order, should be treated as exercise of district court's authority to manage its cases, such that relief from arbitration award might be sought upon more than just the limited grounds permitted for expedited vacatur and modification under the FAA; issue could not be addressed for first time by the Supreme Court on certiorari. [Hall Street Associates, L.L.C. v. Mattel, Inc.](#), U.S.2008, 128 S.Ct. 1396, 552 U.S. 576, 170 L.Ed.2d 254, on remand 531 F.3d 1019. [Alternative Dispute Resolution](#) 🔑 375; [Federal Courts](#) 🔑 3181; [Federal Courts](#) 🔑 3216(2)

Fundamental fairness

Rendering of arbitrator's decision without an evidentiary hearing in action by union and trustees of union's benefits funds against employer alleging violation of their collective bargaining agreement (CBA) did not violate union and trustees' right to fundamental fairness, as required by the **Federal Arbitration Act** (FAA); after repeated requests from both parties to delay the evidentiary hearing, and failure by the parties to respond to arbitrator's inquiries about the status of their case, arbitrator provided parties with notice that she intended to close out their file "shortly" without conducting such a hearing, but union and trustees waited nine months before seeking to have the case placed back on arbitrator's active docket, at which point arbitrator set a briefing schedule on this issue, then found that the case had been closed. [Local 210 Warehouse & Production Employees Union, AFL-CIO v. Environmental Services, Inc.](#), E.D.N.Y.2016, 221 F.Supp.3d 306, appeal withdrawn 2017 WL 6520464. [Alternative Dispute Resolution](#) 🔑 374(3)

Arbitration panel's determination, in arbitration proceeding relating to bond trader's claims for unpaid wages, that broker dealer was not deprived of opportunity to challenge trader's damages claim, was not bad faith or gross error, and, thus, determination was not violation of fundamental fairness, and arbitration award would not be vacated under **Federal Arbitration Act** (FAA), even if trader was tardy in introducing damages calculations, where panel determined that dealer had access to information about trades that trader executed and could have analyzed such transactions to determine whether he was underpaid. [Odeon](#)

[Capital Group, LLC v. Ackerman, S.D.N.Y.2016, 182 F.Supp.3d 119](#), affirmed in part, vacated in part and remanded [864 F.3d 191](#), on remand [2018 WL 1089749](#). [Alternative Dispute Resolution](#) 🔑 423

National Football League (NFL) Commissioner's denial, as arbitrator, of player's motion to compel testimony of co-lead investigator during arbitration hearing concerning player's suspension was fundamentally unfair and in violation of **Federal Arbitration Act** (FAA); given investigator's role as executive vice president and general counsel for NFL, and his designation as co-lead investigator, he would have had valuable insight into course and outcome of investigation and into content of investigation report, and player was prejudiced by being denied opportunity to examine investigator, as he was foreclosed from exploring, among other things, whether investigation was truly "independent." [National Football League Management Council v. National Football League Players Ass'n, S.D.N.Y.2015, 125 F.Supp.3d 449](#), reversed [820 F.3d 527](#), for additional opinion, see [647 Fed.Appx. 32, 2016 WL 1622366](#), rehearing and rehearing en banc denied, rehearing and reargument denied. [Labor and Employment](#) 🔑 1582

Arbitration panel's evidentiary determinations did not violate fundamental fairness, as would require vacatur, under the **Federal Arbitration Act** or United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, of award requiring trusts to transfer to corporation ownership of insurance policies; although panel heard only one witness before issuing award, panel held at least seven sessions to consider parties' legal arguments on primary issue of contractual interpretation as to whether purchase agreement transferring ownership of policies was conditional on trusts' payment of premiums. [Kolel Beth Yechiel Mechil of Tartikov, Inc. v. YLL Irrevocable Trust, S.D.N.Y.2012, 878 F.Supp.2d 459](#), reconsideration denied [881 F.Supp.2d 532](#), affirmed [729 F.3d 99](#). [Alternative Dispute Resolution](#) 🔑 515; [International Law](#) 🔑 292

Dismissal

Court would not dismiss or deny employer's petition to vacate arbitration award in favor of employee, even though employer failed to comply with local Kentucky court rule requiring the filing of a memorandum in support of a petition to vacate, where court rule's language including the word "may" indicated that the rule was permissive rather than mandatory, and employer's petition adequately put employee on notice of the grounds for employer's request for vacatur under the **Federal Arbitration Act** (FAA), and indicated that a supporting memorandum would be filed within the 90 day time period allowed under the FAA provision governing timeliness of appeals. [Questar Capital Corp. v. Gorter, W.D.Ky.2012, 909 F.Supp.2d 789](#). [Alternative Dispute Resolution](#) 🔑 424

Compliance with arbitration rules

Foreign relationship-management firm was not prejudiced by allegedly improper summary judgment proceeding in its arbitration with domestic defense contractor over a contract dispute, as required to obtain vacatur of the award under the **Federal Arbitration Act** (FAA) provision allowing for vacatur of awards obtained through corruption, fraud, or undue means; firm repeatedly declared that there were no material facts in dispute, that the dispute could be resolved through a summary judgment proceeding, and even requested that the arbitral tribunal dispense with oral argument. [ARMA, S.R.O. v. BAE Systems Overseas, Inc., D.D.C.2013, 961 F.Supp.2d 245](#). [Alternative Dispute Resolution](#) 🔑 332

Canadian mining company's claim that arbitrator failed to comply with certain American Arbitration Association (AAA) deadlines in the resolution of a dispute with American mining company over a joint venture agreement to operate an Armenian gold mine was not cognizable under the **Federal Arbitration Act** (FAA), where Canadian company did not cite any AAA rules governing the objection, which made it impossible for the court to determine whether the arbitrator breached any AAA rules. [Global Gold Min. LLC v. Caldera Resources, Inc., S.D.N.Y.2013, 941 F.Supp.2d 374](#). [Alternative Dispute Resolution](#) 🔑 326

Vacatur

Arbitration award, in which two appraisers compromised on amount that telecommunications provider must pay to railroad to continue using railroad's rights of way for provider's fiber optic telecommunications system during renewed 25-year term under license agreement, was not outside scope of appraiser's contractually delegated authority, and, thus, vacating award under **Federal Arbitration Act** (FAA) on such basis was not warranted, where arbitration decision addressed rental renewal rate and based its conclusions on interpretation of license agreement, and any belief by one appraiser that method used by railroad's appraiser could be better defended in court than method used by provider's appraiser did not mean that award was based on his own notion of economic justice. [Norfolk Southern Railway Company v. Sprint Communications Company L.P., C.A.4 \(Va.\) 2018, 883 F.3d 417. Alternative Dispute Resolution 🔑 316](#)

Arbitrator arguably interpreted solicitation agreement's venue provision by determining that venue for American real estate developer's counterclaim was proper in same venue as Israeli company's breach of contract claim, despite fact that provision required disputes "submitted" by developer to be arbitrated in different venue and, thus, arbitration award would not be vacated on grounds that, under Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), arbitral procedure was not in accordance with parties' agreement, or that arbitrator exceeded his powers under **Federal Arbitration Act** (FAA); agreement's solicitation clause was binding, and in deciding whether venue for counterclaim was proper, arbitrator determined that dispute was "submitted" by Israeli company. [Bamberger Rosenheim, Ltd., \(Israel\) v. OA Development, Inc., \(United States\), C.A.11 \(Ga.\) 2017, 862 F.3d 1284, certiorari denied 138 S.Ct. 654, 199 L.Ed.2d 587. Alternative Dispute Resolution 🔑 515; International Law 🔑 292](#)

Investor's rights were prejudiced as result of deceit by arbitrator affiliated with non-governmental organization that regulated member brokerage firms and exchange markets, as required to vacate arbitration award under **Federal Arbitration Act** (FAA); upon submitting claim against brokerage firm to arbitration, investor made clear throughout panel selection process that it was critical for attorney to chair proceedings, investor believed that arbitration of complex securities claim required a chairperson with requisite experience to understand and interpret sophisticated legal concepts, and as a result, investor struck candidates from proposed roster who were not experienced attorneys and ranked arbitrator first on its chairperson list, relying on arbitrator disclosure report in which arbitrator falsified credentials to state that he was attorney when he was not. [Move, Inc. v. Citigroup Global Markets, Inc., C.A.9 \(Cal.\) 2016, 840 F.3d 1152, rehearing and rehearing en banc denied 691 Fed.Appx. 834, 2017 WL 117150. Alternative Dispute Resolution 🔑 416](#)

Provision in arbitration agreement between employee and employer stating that arbitration award "shall be made no later than 30 days" from date of closing of hearing did not apply to hearing on employer's motion for summary disposition, and, thus, vacatur of employer's arbitration award under **Federal Arbitration Act** (FAA) on basis that arbitrator exceeded his powers due to alleged delinquent ruling on motion was not warranted, even though arbitrator issued ruling and award more than 30 days after hearing, since dispositive motions, including motion for summary disposition, were governed by separate provision in arbitration agreement that allowed arbitrator to order hearing as he deemed necessary, and mandatory 30-day deadline applied to arbitration hearing that was equivalent to a trial. [Samaan v. General Dynamics Land Systems, Inc., C.A.6 \(Mich.\) 2016, 835 F.3d 593. Federal Courts 🔑 3053](#)

Even if arbitrator misapplied Missouri law relative to interpretation of an unambiguous contract, thereby turning to extrinsic evidence in making determination that arbitration provision in two employees' employment contracts permitted class arbitration of claims, that did not provide basis to vacate his arbitration decision under the **Federal Arbitration Act**; at best, the decision was a legal error and basis for construction award was at least colorable, but question of whether arbitrator exceeded scope of his authority focused on whether he considered issues beyond those submitted for consideration or reached issues clearly prohibited by law or terms of the agreements, which he did not do. [Wells Fargo Advisors, LLC v. Sappington, S.D.N.Y.2018, 328 F.Supp.3d 317. Contracts 🔑 143\(2\)](#)

Arbitrator issued award that conflicted directly with parties' contract, and, thus, arbitrator exceeded his powers, warranting vacatur of arbitration award, under the **Federal Arbitration Act** (FAA), in favor of Afghan subcontractor on its claim to recover from prime contractor for certain costs, lost profits, and attorney fees after government terminated project for reconstruction

of police training facilities in Afghanistan, where arbitrator voided and reconstructed parts of subcontracts based on belief that they did not reflect true meetings of the minds, and ruled that subcontractor was not required to comply with subcontracts' extensive detailed requirements pertaining to federal regulations to correct what he perceived as an injustice. [Aspic Engineering and Construction Company v. ECC Centcom Constructors, LLC, N.D.Cal.2017, 268 F.Supp.3d 1053, affirmed 913 F.3d 1162. Alternative Dispute Resolution 🔑 316](#)

Under the **Federal Arbitration Act** (FAA), tribunal's interpretation of word "procurement" in North American Free Trade Agreement (NAFTA) did not warrant vacatur of arbitration award finding that government of Canada did not violate NAFTA in awarding renewable energy contracts; tribunal's interpretation was based on analysis of the text, context, and structure of treaty, other relevant treaties, and relevant precedent from similar arbitration awards, and tribunal did not disregard or modify the text of the treaty. [Mesa Power Group, LLC v. Government of Canada, D.D.C.2017, 255 F.Supp.3d 175. Alternative Dispute Resolution 🔑 326](#)

Property owner's challenge to arbitration award on ground that it allegedly contravened public policy was not a viable ground for vacatur of award under the **Federal Arbitration Act** (FAA). [Sanwan Trust v. Lindsay, Inc., D.Mass.2017, 251 F.Supp.3d 353. Limitation Of Actions 🔑 14](#)

Neither the reopening of the arbitration after its initial termination nor the acceptance of arbitral fees from law firm's escrow account constituted undue means within the meaning of the **Federal Arbitration Act** (FAA), as would warrant vacatur of arbitral award issued in favor of law firm partner in dispute between partner and founder of firm regarding terms of dissolution of firm; actions did not deny founder a fundamentally fair hearing or constitute misconduct, decision to reopen arbitration was prerogative of arbitration association, and partner's counsel wired monies from escrow account to association to pay for founder's share of arbitral fees. [Ray v. Chafetz, D.D.C.2017, 236 F.Supp.3d 66. Alternative Dispute Resolution 🔑 333](#)

Arbitrator's award of attorney fees to sale representative for breach of representation agreement with furniture manufacturer and wholesaler complied with agreement and International Center for Dispute Resolution (ICDR) rules of procedure, such that vacatur of award under the **Federal Arbitration Act** (FAA) was unwarranted; agreement declared that disputes would be resolved by arbitration under ICDR rules which plainly allowed for attorney fees, parties acknowledged arbitrator's authority to award attorney fees, in 13-page decision arbitrator acknowledged his authority, noted that parties had requested attorney fees, and noted record evidence for attorney fees, and there was no argument that requested legal fees were unreasonable, excessive, or unsupported by record. [Astanza Design, LLC v. Giemme Stile, S.p.A., M.D.N.C.2016, 220 F.Supp.3d 641. Alternative Dispute Resolution 🔑 326](#)

Arbitrator's finding without conducting a hearing that employee's claims for wrongful termination were barred by Pennsylvania's statute of limitations for contract claims did not require vacatur of arbitration award in favor of employer under the **Federal Arbitration Act** (FAA) on the grounds of evident partiality in the arbitrator; only issue submitted to arbitration was wrongful termination pursuant to the operating agreement, parties' stipulation for arbitration instructed employee to promptly initiate arbitration, and employee stated in arbitration demand that he had been an independent contractor with employer but had been terminated over seven years prior to demand. [Balberdi v. Fedex Ground Package System, Inc., D.Hawai'i 2016, 209 F.Supp.3d 1160. Alternative Dispute Resolution 🔑 326](#)

Appearance at arbitration hearing by senior partner at law firm representing limited liability company (LLC) was not evidence of evident partiality based on actual bias, in employee's action against LLC, and thus vacatur of arbitration award pursuant to **Federal Arbitration Act** (FAA) was not warranted; although arbitrator did not disclose his relationship with LLC's law firm prior to issuing his decision in favor of employer, employee did not demonstrate that arbitrator's partiality was direct, definite, and capable of demonstration, but rather employee's allegations of actual bias were remote, uncertain, and speculative. [Ostrom v. Worldventures Marketing, LLC, M.D.La.2016, 160 F.Supp.3d 942. Alternative Dispute Resolution 🔑 326](#)

Arbitrator's tardy disclosure of potential conflict of interest arising out of his son's employment with investment manager's affiliate, while somewhat inaccurate, was not materially incomplete, such that investors' attorney would have objected to arbitrator's continued participation in arbitration of investors' claims against their investment manager, arising out of alleged mismanagement of their stock portfolio, and, thus, vacatur of arbitration award in favor of manager was not warranted under the **Federal Arbitration Act** on basis of evident partiality, where neither arbitrator nor his son had any financial interest in the proceeding. [Vigorito v. UBS PaineWebber, Inc., D.Conn.2007, 477 F.Supp.2d 481](#), adhered to on reconsideration [557 F.Supp.2d 303](#), reconsideration denied [2009 WL 1789443](#). [Alternative Dispute Resolution](#) 🔑 416

Bias

Vacatur of employer's arbitration award under **Federal Arbitration Act** (FAA) was not warranted on basis that lack of evidentiary hearing in which employee could present evidence or call witnesses evidenced arbitrator's partiality, prejudiced employee's rights, or demonstrated absence of a mutual, final, and definite award, since provision in arbitration agreement between employee and employer that governed dispositive motions, such as employer's motion for summary disposition, allowed arbitrator to order hearing as he deemed necessary, and such permissive language established parties' agreement that employee's claims could be resolved based on dispositive motion without motion hearing, let alone evidentiary hearing. [Samaan v. General Dynamics Land Systems, Inc., C.A.6 \(Mich.\) 2016, 835 F.3d 593](#). [Alternative Dispute Resolution](#) 🔑 326

Manager, who was expelled from financial services limited liability company (LLC) by vote of his co-managers pursuant to their operating agreement for alleged breach of contract, breach of fiduciary duty, conversion, and fraud, failed to show that it was clearly evident that their arbitrator was biased against him, and, thus, arbitration award entered in favor of co-managers would not be vacated under **Federal Arbitration Act** (FAA) on such basis, even though one of the co-managers had relationship with another arbitrator from same arbitration company, since arbitrator in their suit explicitly stated that he and the other arbitrator never discussed arbitration between manager and co-managers, and that other arbitrator did not know that arbitrator in their suit was even at their hearing. [Cooper v. WestEnd Capital Management, L.L.C., C.A.5 \(La.\) 2016, 832 F.3d 534](#). [Alternative Dispute Resolution](#) 🔑 335

Pleadings

In-home medical services provider's petition seeking to set aside arbitration award in favor of insurer pursuant to provision of **Federal Arbitration Act** (FAA) did not allege a federal cause of action sufficient to establish federal question jurisdiction on the face of its well-pleaded complaint; the FAA did not create federal subject matter jurisdiction. [Texas Health Management LLC v. HealthSpring Life & Health Insurance Company, Inc., E.D.Tex.2019, 380 F.Supp.3d 580](#). [Federal Courts](#) 🔑 3931

Justification

In action by union and trustees of union's benefit funds against employer alleging violation of their collective bargaining agreement (CBA), there was at least a barely colorable justification for the arbitrator's decision to close file without an evidentiary hearing, even though CBA provided that the arbitrator "shall conduct a hearing in such manner as he shall consider proper," and thus vacatur under the **Federal Arbitration Act** (FAA) was not warranted; while the union and trustees interpreted the CBA to compel the arbitrator to hold an evidentiary hearing before issuing a decision, given that the CBA also afforded the arbitrator at least some discretion in determining how the arbitration would proceed, union and trustees' proposed interpretation was plausible but was not sufficiently clear and explicit that a refusal to apply it would require that the arbitrator's decision be vacated. [Local 210 Warehouse & Production Employees Union, AFL-CIO v. Environmental Services, Inc., E.D.N.Y.2016, 221 F.Supp.3d 306](#), appeal withdrawn [2017 WL 6520464](#). [Alternative Dispute Resolution](#) 🔑 251; [Alternative Dispute Resolution](#) 🔑 257

Confirmation

Confirmation of an arbitration award under the **Federal Arbitration Act** (FAA) is required even when the award is attributable to erroneous findings of fact or misinterpretations of law; this is because the risk that arbitrators may construe the governing law imperfectly in the course of delivering a decision that attempts in good faith to interpret the relevant law is a risk that every party to arbitration assumes. [Tutor Perini Building Corp. v. Southern California District Council of Laborers, C.D.Cal.2019, 373 F.Supp.3d 1309. Alternative Dispute Resolution 329](#); [Alternative Dispute Resolution 330](#)

Preemption

Under the **Federal Arbitration Act** (FAA), sound engineer's disagreement with arbitrator's decision that copyright law did not preempt breach-of-contract and conversion claims against sound engineer by personal representative of estate of musician and corporation owned by estate regarding previously unreleased recordings could not support vacatur of arbitration award requiring sound engineer to return all of musician's materials to corporation and personal representative. [Paisley Park Enterprises, Inc. v. Boxill, D.Minn.2019, 371 F.Supp.3d 578. Alternative Dispute Resolution 334](#)

9 U.S.C.A. § 10, 9 USCA § 10
Current through P.L. 116-68.

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