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INSIGHTS

Manifest Disregard for the Law is Not a Ground for Vacating TAA Arbitration Awards

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Last Friday, the Texas Supreme Court, in *Hoskins v. Hoskins*, No. 15-0046, --- S.W.3d --- (Tex. May 20, 2016), ruled that an arbitration award may not be vacated under the Texas Arbitration Act ("TAA") on grounds other than those specifically enumerated in the TAA, and in particular may not be vacated on common-law grounds or for the arbitrator's manifest disregard for the law.

Hoskins involves siblings in a dispute over the family's mineral holdings. Two brothers were ordered to arbitrate their dispute and one of the brothers later asked a trial court to vacate the arbitrator's decision because of the arbitrator's manifest disregard for the law and other grounds. The trial court confirmed the award. In the brother's appeal to the Fourth Court of Appeals in San Antonio, he focused his arguments on the arbitrator's alleged manifest disregard for the law. The Court of Appeals affirmed, holding that "manifest disregard is not a valid ground to vacate an arbitration award under the TAA…." --- S.W.3d ---, 2014 WL 5176384, at *4-5 (Tex.App.—San Antonio 2014). The Supreme Court of Texas granted the brother's petition for review to resolve a split in the courts of appeals on whether the TAA permits vacatur of an arbitration award on common-law grounds not enumerated in the TAA. The Supreme Court noted several courts of appeals decisions between 2006 and 2014 falling on one side or the other of the argument.

The Court set out the relevant language of the TAA, noting that a court "shall confirm" an arbitration award unless grounds are offered for vacating, modifying or correcting an award based on corruption, fraud, partiality of the arbitrator, misconduct of the arbitrator, the arbitrators exceeding their powers, and the like.[1]

The Court concluded:

The statutory text could not be plainer: the trial court "shall confirm" an award unless vacatur is required under one of the enumerated grounds in section 171.088…. [T]he TAA leaves no room for courts to expand on those grounds, which do not include an arbitrator's manifest disregard for the law."[2]

The brother argued that *Nafta Traders, Inc. v. Quinn*, 339 S.W.3d 84 (Tex. 2011) supported his position. However, the *Hoskins* Court pointed out that the arbitration agreement in *Nafta Traders* expressly limited the powers of the arbitrator, stating that "the arbitrator does not have authority to (i) to render a decision which contains a reversible error of state or federal law, or (ii) to apply a cause of action or remedy not expressly provided for under existing state or

federal law."[3] The Court concluded that the contracting parties in *Nafta Traders* agreed that the arbitrator could not render a decision that contained reversible error of state or federal law.[4] The arbitrator's issuance of an award containing reversible error exceeded his powers, which is a statutory ground for vacatur in the TAA.[5] In *Hoskins*, however, the parties did not restrict the arbitrator's authority in this way, and the Court made clear that the "manifest-disregard complaints" asserted in this case "cannot be characterized as assertions that the arbitrator exceeded his powers."[6]

The Court summarized:

[T]he TAA mandates that, *unless* a statutory vacatur ground is offered, the court *shall* confirm the award…. [W]e may not rewrite or supplement a statue to overcome its perceived deficiencies. The parties signed an agreement to arbitrate under the TAA, and that agreement contained no limitations on the arbitrator's authority beyond those enumerated in the statute.[7]

Texas Take Away

Hoskins is a significant decision in Texas because it makes clear that arbitration awards can be vacated under the TAA based *only* on the specific statutory grounds enumerated in the TAA. As Justice Willett's concurring opinion notes, the law is not as clear where arbitration awards are governed by the FAA. In addition, while *Hoskins* repeats the holding from *Nafta Traders* that parties can contract for fuller judicial review in their arbitration agreements where the TAA governs, parties conducting business in Texas should remember that the U.S. Supreme Court held that parties cannot contract for fuller judicial review under the FAA. *Hoskins* therefore highlights the importance of determining whether the TAA or FAA applies to arbitration agreements.

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[1] *Hoskins*, No. 15-0046, slip op. at 6-7 (citing Tex. Civ. Prac. & Rem. Code§§ 171.087, 171.088(a)). Tex. Civ. Prac. & Rem. Code § 171.088(a) provides:

(a) On application of a party, the court shall vacate an award if:

(1) the award was obtained by corruption, fraud, or other undue means;

(2) the rights of a party were prejudiced by: (A) evident partiality by an arbitrator appointed as a neutral arbitrator; (B) corruption in an arbitrator; or (C) misconduct or wilful misbehavior of an arbitrator;

(3) the arbitrators: (A) exceeded their powers; (B) refused to postpone the hearing after a showing of sufficient cause for the postponement; (C) refused to hear evidence material to the controversy; or (D) conducted the hearing, contrary to [various statutory provisions], in a manner that substantially prejudiced the rights of a party; or

(4) there was no agreement to arbitrate, the issue was not adversely determined in a proceeding under Subchapter B, and the party did not participate in the arbitration hearing without raising the objection.

Id. at 7 (citing Tex. Civ. Prac. & Rem. Code § 171.088(a)).

[2] *Id.* at 7-8.

[3] *Id.* at 8 (citing *Nafta Traders*, 339 S.W.3d at 88).

[4] *Id.*

[5] *Id.* at 8 (citing Tex. Civ. Prac. & Rem. Code§ 171.088(a)(3)(A)).

[6] *Id.* at 8-9.

[7] *Id.* at 10 (emphasis in original).