

Practice Update

Don't Bet on Appeal: Challenging Final Arbitration Awards Is an Uphill Battle

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Attacking a final arbitration award in the United States is not an easy proposition, contrary to some popular beliefs. The grounds to challenge a final award are controlled and follow the narrow standards set forth in the Federal Arbitration Act (FAA), found in Title 9 U.S. Code Section 10.

In order to vacate or nullify a final arbitral award, the challenge must be brought in the United States district court where the award was made; such challenge may be brought by any party to the arbitration. A summary of the grounds allowed are:

- The award was procured by corruption, fraud, or undue means
- Evident partiality or corruption by the arbitrators
- Arbitrators are guilty of misconduct
- Arbitrators exceeded their powers

As can be seen from this very short list, the grounds focus on the actions by the arbitrators, not the substantive issues of the underlying case. This clearly demonstrates a reluctance by the courts to re-litigate the case in chief or delve into the merits of the claims or defenses.

Thus, when considering an attack on a final award or *vacatur*, counsel must properly advise their clients

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that there are very narrow grounds that can be considered by the courts and that this exercise entails the traditional “uphill” battle.

Moreover, a challenge to the final arbitration award will not automatically suspend its enforcement. It is up to the court to determine if the award should not be enforced while the challenge is pending, an entirely discretionary decision. Nonetheless, stays are often denied unless the challenger can make a strong showing that it has a significant likelihood of success. In addition, courts generally require the challenger to post a supersedeas-type bond.

Counsel representing clients in arbitration should set realistic expectations early, so the clients are prepared in the event of an unfavorable final award. Ultimately, a challenge to a final arbitration award is a high-risk, resource-intensive undertaking that should be pursued only when the facts clearly implicate one of the FAA’s enumerated grounds.

This information is intended to inform firm clients and friends about legal developments, including recent decisions of various courts and administrative bodies. Nothing in this Practice Update should be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this Practice Update without seeking the advice of legal counsel. Prior results do not guarantee a similar outcome.