

TEXAS CIVIL PROCEDURE UPDATE

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Arbitration

Jefferson County v. Jefferson County Constables Assoc., 546 S.W.3d 661, 674 (Tex. 2018) (Common-law grounds for vacating an arbitration award are exceedingly narrow and do not include an arbitrator's mere error in applying the law in ruling on a matter within the scope of the arbitration agreement.).

Tex. Windstorm Ins. Ass'n v. Jones, 512 S.W.3d 434, 441, 444 (Tex. App.—Houston [1st Dist.] 2016, no pet.) (The standard of review of a trial court's decision to confirm or vacate an arbitration award is de novo. The arbitration agreement in this case provided the arbitrator with the authority to resolve "all disputes concerning the proper interpretation and application of this Agreement." Appellee's successfully moved for summary judgment on the ground the arbitrator exceeded its authority by deciding the issue incorrectly, not that the arbitrator lacked the authority to interpret the agreement. The appellate court reverses, explaining that in determining whether the arbitrator exceeded its authority, courts need not decide whether the arbitrator made a correct decision under the law and facts of the case. The court's review focuses on the integrity of the process, not the propriety of the result. Consequently, even a mistake of fact or law by an arbitrator is not a proper ground for vacating an award.).

Hoskins v. Hoskins, 497 S.W.3d 490, 496 (Tex. 2016) (The Texas Supreme Court addressed, as a matter of first impression, whether the Texas General Arbitration Act (hereafter "TAA") permits vacatur of an arbitration award on common-law grounds not enumerated in the statute. Resolving the split in the lower courts of appeals, the Court concludes that section 171.088 of the Texas Civil Practice and Remedies Code provides the *exclusive* grounds for vacatur of an arbitration award. Accordingly, manifest disregard and all other common-law vacatur doctrines are not viable grounds for vacating an arbitration award under the TAA. The Court notes:

In sum, the TAA mandates that, *unless* a statutory vacatur ground is offered, the court *shall* confirm the award. TEX. CIV. PRAC. & REM. CODE ANN. § 171.087 (West 2011). Thus, a party may avoid confirmation only by demonstrating a ground expressly listed in section 171.088. Leonard complains that "the TAA contains gaps that need [common-law] supplementation" in order to foreclose arbitration awards that are "unquestionably" improper. But we may not rewrite or supplement a statute 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. Because manifest disregard is

not an enumerated vacatur ground under section 171.088, the court of appeals correctly declined to consider it in affirming the trial court's confirmation order.

The concurrence highlights the advantages in establishing the exclusivity of the TAA's vacatur grounds. Not only does the Court's decision provide lower courts with clear instruction, it also eradicates the ambiguity surrounding vacatur grounds that is still present in the Federal Arbitration Act. (at *6)

The American Arbitration Association adopted rules allowing parties to agree to submit commercial arbitration decisions to appellate review before an appellate arbitral panel. www.adr.org/ If the parties have not appointed an appeal tribunal nor not provided for any other method of appointment, the appeal tribunal will be appointed by the AAA. A notice of appeal must be filed with the AAA within thirty days of the arbitration agreement. The rules call for the filing of briefs and permit review of errors of law that are material and prejudicial, and determinations of fact that are clearly erroneous.

See also: <http://www.lexology.com/library/detail.aspx?g=1d466bd0-aeff-43e5-96b9-def338ff7baf>.

Good Times Stores, Inc. v. Macias, 355 S.W.3d 240, 244 (Tex. App.—El Paso 2011, pet. denied) (The grounds to vacate an arbitration award under the Federal Arbitration Act are exclusive under the U.S. Supreme Court decision of *Hall Street Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 128 S. Ct. 1396, 1404, 170 L.Ed.2d 254 (2008) and forecloses any common law grounds for vacatur. The FAA applies to maritime transactions and actions involving interstate commerce.).

Guerra v. L&F Distributors, LLC, 521 S.W.3d 878, 882-83 (Tex. App.—San Antonio 2017, no pet.) (A trial judge must confirm the amount of an arbitration award under the Federal Arbitration Act unless: (1) there was an evident material miscalculation of figures or mistake in description, (2) award over a matter without submission, or (3) the award is imperfect in a matter of form not affecting the merits. Here the trial court modified the award by subtracting “any and all federally required withholdings” which was considered a substantial alteration and reversed by the court.

Chief Justice Marion dissented, reasoning the trial court did not modify the arbitration award because complying with federal tax withholding laws is implied in arbitration awards. “Federal taxes must be withheld from settlement payments even where the settlement agreement is silent on the issue.”).

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