
by Brian J. Ellis

Arbitration continues to replace litigation as a means for dispute resolution. Increasingly, commercial agreements include arbitration provisions, which courts continue to interpret broadly. Indeed, it is “the long-standing policy” of New Jersey courts “to favor arbitration as a speedy and efficient approach to dispute resolution.”

Arbitration provisions typically include language ostensibly covering “all transactions” or “any dispute arising from” the parties’ relationship. A party contesting the validity of an arbitration provision faces a formidable challenge. In close cases, courts are to err on the side of ordering arbitration.

This article is written for attorneys and clients who are emerging from arbitration, in receipt of an award (either good or bad), and wondering what to do next. The discussion below considers the processes of both confirming and appealing arbitration decisions under the New Jersey Arbitration Act of 2003.

Arbitration: Background

Pursuant to prior contractual agreements, parties may be required to submit their disputes to arbitration forums such as the American Arbitration Association (AAA), Judiciary Arbitration and Mediation Services (JAMS), and the Financial Industry Regulatory Authority (FINRA). Each forum has its own procedural rules and interpretive guidance. By submitting a dispute to a particular forum, parties agree to abide by that forum’s procedural rules. However, in certain circumstances, parties may agree to modify the procedural rules.

Typically, parties select an arbitrator from a pool of individuals with varied experience, education, and expertise. Arbitrators are generally compensated neutrals who need not be judges or attorneys. They need only satisfy the forum’s requirements to serve as an arbitrator. Once chosen and confirmed, the arbitrator’s decisions will be final and binding.

The arbitration process can seem foreign to some. Attorneys may be unfamiliar with the procedural rules, and may find certain informalities of the arbitration process frustrating. Clients may not understand the process. When the matter has concluded, some may be perplexed by the arbitrator’s decision, which may not include any written explanation or reasoning.

The Award

The arbitration award represents the end result of a dispute resolution process that is designed to be inexpensive, efficient, and final. As a counterbalance to the increased efficiency, parties contractually agree to waive the right to a jury trial and must operate under procedural rules that may permit only limited discovery or motion practice.

An arbitration award may be a single page containing nothing more than an order directing one party to pay the other. Arbitrators are not bound by legal precedent and need not provide a written opinion or rationale for their decision. An arbitrator’s misapplication of the law or violation of the rules of evidence will not generally rise to the level of appealable error.

In cases where no rationale is given for an award, a court reviews the award only to determine if there is a rational basis for it. “Monetary awards will be upheld as long as such awards bear a logical relationship to the evidence or as long as there is a rational basis therefore.” As one federal appellate court stated, “[t]he onus is on the party requesting the vacatur...to
refute every rational basis upon which the arbitrator could have relied."

**Vacating the Award**

**The Process**

Courts will not disturb an arbitrator’s decision unless a contestant can show that certain statutory grounds for vacatur exist. A party may seek vacatur by filing a summary action in the superior court for the county in which the arbitration proceeding was conducted. A party has 120 days from the date of notice of the award to initiate an action to vacate the award. A party alleging the award was procured by fraud or corruption must file within 120 days from the date the movant knew or should have known of the fraud.

**The Standard**

Judicial review of an arbitrator’s decision is “extremely narrow.” The arbitrator’s decision “will not be set aside merely because the court would have decided the facts or construed the law differently.” Indeed, the burden is heavy for the party seeking to appeal from an arbitrator’s decision. Appellants should be cautioned because courts have sanctioned parties for appealing arbitration awards without reasonable grounds for doing so.

**Potential Sanctions for Frivolous Vacatur Motions**

Federal and state courts have exhibited intolerance toward vacatur actions filed without a reasonable basis. In *B.L. Harbert International, LLC v. Hercules Steel Co.*, the 11th Circuit issued the following warning:

When a party who loses an arbitration...drags the dispute through the court system without an objectively reasonable belief it will prevail, the promise of arbitration is broken. Arbitration’s allure is dependent upon the arbitrator being the last decision maker in all but the most unusual cases....[T]he parties must be able to trust that the arbitrator’s decision will be honored sooner instead of later.

**Grounds for Vacatur**

**The New Jersey Arbitration Act of 2003**

In 2003, the state of New Jersey enacted the New Jersey Arbitration Act (NJAA). The NJAA “recognizes the contractual nature of the arbitration remedy and sets forth the details of the arbitration procedure that will apply unless varied or waived by contract.”

“The NJAA precludes judicial interference with an arbitrator’s award except in extremely limited circumstances.” Under the NJAA, a court will vacate an arbitration award only if:

1. the award was procured by corruption, fraud, or other undue means;
2. the court finds evident partiality by an arbitrator; corruption by an arbitrator; or misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;
3. an arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to section 15 of this act, so as to substantially prejudice the rights of a party to the arbitration proceeding;
4. an arbitrator exceeded the arbitrator’s powers;
5. there was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection pursuant to subsection c. of section 15 of this act not later than the beginning of the arbitration hearing; or
6. the arbitration was conducted without proper notice of the initiation of an arbitration as required in section 9 of this act so as to substantially prejudice the rights of a party to the arbitration proceeding.

A modification of the award may be ordered by the court if:

1. there was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;
2. the arbitrator made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or
3. the award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.
**Manifest Disregard of the Law**

As stated, arbitrators are not bound by legal precedent, nor must they adhere to state or federal evidentiary rules. However, where a party can demonstrate the arbitrator knowingly misapplied or disregarded the law, a party may attempt to seek vacatur under the manifest disregard of the law doctrine.

While the doctrine has not generally been recognized by New Jersey courts, it provides compelling grounds for invalidating an arbitrator’s decision in appropriate cases. The manifest disregard of the law doctrine is comprised of two elements. As one Law Division court explained:

One element looks to the result reached in arbitration and evaluates whether it is clearly consistent or inconsistent with controlling law. For this element to be satisfied, a reviewing court must conclude that the arbitrator misapplied the relevant law touching upon the dispute before her in a manner that constitutes something akin to a blatant, gross error of law that is apparent on the face of the award.

The other element of the “manifest disregard of the law” standard requires a reviewing court to evaluate the arbitrator’s knowledge of the relevant law. Even if a reviewing court finds a clear error of law, vacatur is warranted under the “manifest disregard of the law” ground only if the court is able to conclude that the arbitrator knew the correct law but nevertheless “made a conscious decision” to ignore it in fashioning the award.

While not prevalent in New Jersey, New York courts have demonstrated a willingness to vacate arbitration awards under the manifest disregard of the law doctrine. One would expect that, given an appropriate case, New Jersey courts may find occasion to apply the doctrine.

**Confirming the Award**

Confirmation of an arbitration award transforms it into an enforceable judgment. In most cases, a party in receipt of a monetary award must seek confirmation in order to enforce the award against the other party. For arbitrations conducted in New Jersey, parties may seek confirmation by initiating a summary proceeding. The New Jersey arbitration act provides compelling grounds for vacatur in the superior court for the county in which the arbitration was conducted. An arbitration award will also be confirmed where an action to vacate the award fails.

**Concluding Thoughts: Preserve the Record**

When considering an appeal from an arbitration award, a court will review the record of the arbitration proceedings. Therefore, parties should be diligent to create and preserve the record of the arbitration proceeding throughout the arbitration process. When applicable, a party should request a certified transcription of the arbitration hearing and keep track of all documents, correspondence, pleadings, filings, and exhibits related to the arbitration.

Courts have rejected vacatur motions where no record or transcript was available. The Appellate Division recently reversed an order vacating an arbitration decision where no record of the arbitration proceeding was available for review. The court noted that the arbitration “was conducted without being formally recorded,” and that there was no transcript. The court stated that, in arriving at its decision to reverse the vacatur order, it did not consider “representations in the briefs for which there is no record support.” Instead, the court “only considered the documentary record set forth in the appendices.”

Where grounds for vacatur are present, diligence in preserving the record of the arbitration proceedings may be critical to a successful appeal.

**Endnotes**

1. See, e.g., Garfinkel v. Morristown Obstetrics & Gynecology Assocs., P.A., 168 N.J. 124, 137 (2001) (“As a general rule, courts have construed broadly worded arbitration clauses to encompass tort, as well as contract claims”); EPIX Holdings Corp. v. Marsh & McLennan Companies, Inc., 410 N.J. Super. 453, 477 (App. Div. 2009) (“[W]hen phrases such as ‘arising under’ and ‘arising out of’ appear in arbitration provisions, they are normally given broad construction, and are generally construed to encompass claims going to the formation of the underlying agreements.”).


3. See Moses H. Cone Memorial Hospital v. Mercury Construction Corp. 460 U.S. 1, 24-25 (1983) (“[A]s a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability”); see also Yale Materials Handling Corp. v. White Storage & Retrieval Systems, 240 N.J. Super. 370, 375 (App. Div. 1990) (“New Jersey law [is] consonant with federal law which liberally enforces arbitration agreements.”).


8. Id.
11. See infra notes 12-14 and accompanying text.
12. 441 F.3d 905, 913-14 (11th Cir. 2006) (regarding motions to vacate arbitration awards under the Federal Arbitration Act (9 U.S.C. § 1 et seq.)).
14. Id.
15. N.J.S.A. 2A:15-59.1 (frivolous causes of action) and R. 1:4-8 (frivolous litigation) provide for the imposition of sanctions, including reasonable litigation costs and attorneys’ fees.
16. The focus of this article is limited to proceedings conducted under the provisions of the NJAA. Arbitration of disputes arising from a collective bargaining agreement or a collectively negotiated agreement continues to proceed under N.J.S.A. 2A:24-1 et seq., which is not the purview of this article.
19. Fawzy, 199 N.J. at 470 (citing N.J.S.A. 2A:23B-23(a)).
23. See Barclays Capital Inc. v. Shen, No. 111720/07, 2008 NY Slip Op 28146 (N.Y. Sup. Ct. 2008) (“It is beyond dispute that the panel was familiar with the Rosenberg II decision. The decision and its impact on the pending arbitration had been vigorously argued before the panel in both oral and written motions by petitioner....Thus, the court holds that this is one of those rare cases where the panel, aware of the applicable law and attendant public policy considerations, chose to ignore it. The two prongs of the manifest disregard doctrine are satisfied in this case.”).
24. N.J.S.A. 2A:23B-23d (“If the court denies an application to vacate an award, it shall confirm the award unless an application to modify or correct the award is pending.”).
25. The Appellate Division has rejected attempts to vacate awards even where the record of the underlying arbitration had not been provided. See, e.g., Riccio v. Riccio, Docket: A-2805-05T2 at *5 (Feb. 27, 2007) (rejecting vacatur motion where none of a moving party’s contentions “could possibly have warranted vacation of the arbitration award under NJSA 2A:23B-23”).
27. Id. at *1 n. 1.
28. Id.
29. Id.

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