

Arbitration Award Overturned Because Panel Not Impartial

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On November 4, 2015, the New York Supreme Court vacated an arbitration award concerning the right to televise baseball games on the ground that the arbitration panel was not impartial. The arbitration involved the Baltimore Orioles (Orioles), the Commissioner of Baseball (Commissioner) and the Washington Nationals (Nationals). *TCR Sports Broadcasting Holding, LLP d/b/a Mid Atlantic Sports Network ("MASN") v. WN Partner, LLC*, No. 652011/2014.

The arbitration proceedings were governed by the Revenue Sharing Definitions Committee of Major League Baseball. Mid Atlantic Sports Network (MASN) and the Orioles moved to vacate the award, and their motion was opposed by the Commissioner and the Nationals who moved to confirm the award.

The court reviewed the award pursuant to the FAA because of the dispute's impact on interstate commerce. Accordingly, the review was extremely limited and the burden of proof lies with MASN and the Orioles to show that the award should be vacated.

In its decision, the court discussed each of the elements for vacating an award under the FAA, including corruption, fraud, arbitrator misconduct, the use of undue means to procure the award, evident partiality, and corruption. The court rejected each of these grounds except for evident partiality.

The finding of evident partiality was based on the fact that Proskauer Rose LLP, the law firm representing the Nationals and the Commissioner in the arbitration, concurrently represented in unrelated matters every entity in the arbitration, including the individual arbitrators, except for MASN and the Orioles. In fact, the same lawyers handling the arbitration were involved in each of the other representations. The court noted that:

To the extent that "there is no authority for a finding of 'evident partiality' in such a relationship," the Court suspects "the simple reason for this lack of precedent is that arbitrators in similar situations have disqualified themselves rather than risk a charge of partiality."

In its finding the court pointed out that the "appearance of bias" is not a basis under the FAA so that it was not able to rely upon the appearance of bias as a ground for vacating the award. However, the court stated that it would have used this ground as a basis for vacatur had it been legally available. The court found that MASN and the Orioles had established that their frequent claims of prejudice based on Proskauer's selection as counsel were completely ignored by the arbitration panel, objectively demonstrating "an utter lack of concern for fairness of the proceeding that is 'so inconsistent with basic principles of justice' that the award must be vacated.

Practice Pointers: Parties and their counsel need to recognize that impartiality is an important principal in arbitration and that arbitrators must recuse themselves when a significant conflict of interest is apparent. Here, either the arbitrators or Proskauer should have been recused. Obviously, there is little point in winning an arbitration only to have it overturned by the courts particularly where the entire problem could have been avoided by being more circumspect at the outset.

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