



## News & Trending

PUBLICATIONS & ALERTS

### FOURTH CIRCUIT STAYS AWAY FROM REVIEWING ARBITRATION AWARD

Publication | 05.11.2021

By Michael W. Mitchell and Edward Roche

Published by LAW.COM

***Parties to arbitration agreements can, to a degree, control the amount of judicial review. A recent decision shows the various levels of judicial involvement to which parties can agree, and highlights the need for precision in arbitration agreements.***

Many contracts—consumer contracts, vendor agreements, employment contracts, settlement agreements, and others—have provisions requiring arbitration in the event of a dispute. Arbitration can offer significant advantages over traditional litigation in the court system. Arbitration offers privacy and greater flexibility, and it can be faster and cheaper. But courts may still need to be involved after the arbitrator renders a final decision. At a minimum, the court can actually enforce an arbitration award, whereas the arbitrator cannot. And parties sometimes ask the court to vacate an arbitrator's decision if it is based on serious errors.

A **recent decision** from the U.S. Court of Appeals for the Fourth Circuit analyzed the arbitration provisions in an employment contract between a doctor and a medical practice to determine the extent to which the courts could be involved in reviewing an arbitrator's award. The court's decision in *Beckley Oncology Associates v. Abumasmah* gives parties reason to think carefully about the extent of judicial review they want to allow when drafting their contractual arbitration provisions. There can be a delicate balance between efficiency and sufficient due process.

### A Court's Role in Reviewing and Confirming an Arbitration Award

In certain ways, an arbitrator's award is like a court order. It states that a party is liable (or not) and, if a party is liable, that it owes the other side a certain amount of damages. But an arbitration award is not self-enforcing. The arbitrator has no power to enforce it. The arbitrator cannot freeze assets, garnish wages, hold a party in contempt, or use any of the tools a court could use to compel payment.

So, the winning party in arbitration may need to turn to the courts to obtain payment from the losing party. The winner files a motion for the court to "confirm" the award. If confirmed, the court will then enter a judgment on the award. The judgment, specifying that the losing party must pay the amount specified in the arbitration award, then becomes an enforceable court order.

Importantly, the court has power to confirm and enforce the award only if the parties have agreed in their arbitration provisions that a court may do so. Absent this consent, the winning party cannot invoke the court's power to compel payment.

The losing party can also seek the assistance of the courts. The losing party can seek to vacate the arbitration award on certain grounds. If the award is vacated, the losing party has no obligation to pay. Under the Federal Arbitration Act ("FAA"), which governs most arbitration awards in the United States, a court may vacate an award only in narrow circumstances. Those circumstances include where the arbitrator showed bias or refused to hear relevant evidence.

## Background to the *Beckley Oncology Case*

An oncologist resigned from his position at a medical practice. He had some disputes with the practice after he left. Pursuant to the arbitration provision in his employment agreement, he brought claims in arbitration. The arbitrator decided that the practice owed the doctor a total of almost \$400,000 as compensation for a bonus the doctor was wrongfully denied, plus interest and fees.

The medical practice asked a federal court in West Virginia to vacate the arbitration award, arguing that the arbitrator had incorrectly applied contract law principles and should not have awarded the doctor any money. The district court disagreed and confirmed the award. The practice appealed.

On appeal, the doctor argued that the courts should not be considering the case at all. The arbitration clause in the parties' arbitration agreement stated that the arbitrator's decision "shall be final and conclusive and enforceable in any court of law . . . *without any right of judicial review or appeal.*" Accordingly, the doctor argued, the court only had the power to confirm and enforce the award; it had no power to review the substance of the award.

## The Fourth Circuit's Decision

The Fourth Circuit addressed two questions on appeal, both of which concerned the extent to which the parties' arbitration provision had given the courts authority to review the award. First, the Fourth Circuit asked whether the trial court had the authority to review the substance of the arbitrator's decision, as distinct from simply rubber-stamping the award so that it would be enforceable. Second, the Fourth Circuit asked whether it had any authority to review the arbitration award, or whether the district court had the final word.

On the first question, the Fourth Circuit decided that the trial court did indeed have the power to review the arbitrator's decision. If the parties consent to a court being able to confirm the award, this inherently allows the trial court to review the decision, even if the parties attempted to exclude judicial review. The bases on which a court can vacate an award are, as mentioned earlier, very limited under the FAA. But that limited review allows the court to ensure that the parties receive at least a minimum degree of due process.

If the parties want to bypass the courts altogether, they can do so. They can omit from their agreement any ability for the court to confirm the award. But they cannot have it both ways—they cannot consent to the court confirming the award and also prohibit all judicial review.

On the second question, however, the Fourth Circuit concluded that parties can agree to waive appeals. That is what the parties did in the *Beckley Oncology* case when they used the language "without any right of judicial review" in their arbitration provision. By including such language, the parties ensured that the trial court's review of the arbitrator's decision—resulting in the court either confirming or rejecting the award—would be the final word on the matter. The Fourth Circuit therefore refused to review the substance of the arbitrator's decision,

leaving the district court's confirmation intact and allowing the doctor to enforce the award.

## Takeaways from the *Beckley Oncology* Decision

When drafting and negotiating agreements that include arbitration provisions, businesses should be mindful of the options the Fourth Circuit's decision leaves:

1. Should you avoid consenting to any judicial involvement, including confirmation of the arbitration award and, if so, how will the award be enforced otherwise?
2. Should you consent to judicial confirmation (which also will allow the trial court to vacate the award if it finds any of the narrow bases for doing so), but not to further review (which will mean there is no appeal from the trial court decision)?
3. Should you consent to judicial confirmation and do not restrict judicial review (which will allow a party to appeal the trial court decision).

The further a party moves from option 1 to option 3, the more judicial involvement, but also the more complexity and cost. Avoiding complexity and cost may well be valuable. After all, that is one of the primary benefits of arbitration. But without the ability to get the award confirmed by a court, there may be no way to enforce an arbitration award, so parties should strongly consider consenting at least to confirmation.

Whatever the parties choose, they should make sure their arbitration provisions are drafted clearly and that they understand the potentially significant consequences of even subtle differences in the provisions.

---

This article was first published on [LAW.COM](https://www.law.com) on May 11, 2021, and is republished here with permission. ©2021 ALM Media Properties, LLC. All rights reserved.

## PROFESSIONALS

[Michael W. Mitchell](#)

[Edward F. Roche](#)

## PRACTICE AREAS

[Appellate Advocacy](#)

[Commercial Contracts](#)

[Employment Litigation](#)

[Employment, Labor and Human Resources](#)

[Health Care](#)

