



New Appellate Division Decision Highlights Limited Scope of Review of Arbitration Awards

Mar 08, 2023

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In a recent to-be-published opinion, the New Jersey Appellate Division held that parties may not agree to expand the scope of judicial review of an arbitral award in an arbitration agreement governed by the Federal Arbitration Act (FAA), which does not permit courts to vacate or modify awards for errors of fact or law.

The case, [*Strickland v. Foulke Management Corp.*](#), arose out of the plaintiffs' purchase of a used car from the defendant. The parties executed an arbitration agreement, which provided that it was governed by the FAA except as provided elsewhere in the agreement. The agreement also stated that the arbitrator should render a decision only in conformity with New Jersey law and that a court may reverse the award based on "mere errors of New Jersey law." The defendant repossessed the vehicle after the plaintiffs missed several monthly payments. The plaintiffs filed an arbitration demand asserting violations of the New Jersey Consumer Fraud Act and other state and federal statutes, as well as common law fraud.

Following an arbitration hearing, the arbitrator entered an award dismissing all of the plaintiffs' claims, finding that the claims were barred by contractual limitations periods contained in the arbitration agreement and other purchase documents and also that they lacked merit. The plaintiffs sought to vacate the award in the Superior Court of New Jersey, contending that the arbitrator failed to render a decision in conformance with New Jersey law. That court denied the plaintiffs' request.

In affirming the trial court's decision, the Appellate Division was guided by the United States Supreme Court's 2008 decision in [*Hall Street Associates, L.L.C. v. Mattel, Inc.*](#), which held that the FAA's grounds for vacating and modifying awards are exclusive and may not be supplemented by contract. Observing that this was a case of first impression in New Jersey, the Appellate Division looked to the decisions of several federal appellate courts and found no clear and

unambiguous intent in the parties' arbitration agreement and other purchase documents to opt out of the FAA's statutory framework. The arbitration agreement did not reference the New Jersey Arbitration Act (NJAA), and references to New Jersey law in other areas of the purchase documents were deemed insufficient to remove the arbitration from the FAA's purview. The court thus held that the provision in the arbitration agreement allowing for expanded review was unenforceable and could be severed from the remainder of the agreement. Because the plaintiffs challenged the award solely on the ground that it did not conform to New Jersey law – and did not contend that the FAA provided any basis for vacatur – there were no grounds on which the award could be vacated.

Strickland does not preclude parties from contracting for expanded review in agreements that are not governed by the FAA. Indeed, section 4(c) of the NJAA provides that “nothing in this act shall preclude the parties from expanding the scope of judicial review of an award by expressly providing for such expansion in a record.” As the New Jersey Supreme Court observed in [*Fawzy v. Fawzy*](#), such an agreement must accurately reflect the circumstances under which a party may challenge the award, as well as the level of review agreed upon. While the arbitration agreement in *Strickland* was explicit as to such matters, it was made subject to the FAA and not the NJAA, and, therefore, the plaintiffs could not enforce the provision entitling them to judicial review of the arbitrator's award for mere errors of New Jersey law.

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