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ADR Case Update 2018 - 2

Federal Circuit Courts

- **ARBITRATOR DID NOT EXCEED AUTHORITY**

Sanchez v. Elizondo
2018 WL 297352
United States Court of Appeals, Ninth Circuit
January 5, 2018

Elizondo brought a claim against Sanchez for alleged mismanagement of a financial portfolio. The parties engaged in arbitration pursuant to FINRA rules, providing for one arbitrator for a claim less than \$100,000 and three arbitrators for a claim over \$100,000. Elizondo's claim was for less than \$100,000; before the hearing, he increased his damages claim to \$125,500. Sanchez objected to a single arbitrator; however, the arbitrator proceeded because neither party made a motion to dismiss or amend the complaint. Sanchez's petition to vacate the award in Elizondo's favor was granted and the case was remanded for a new arbitration. Elizondo appealed.

The United States Court of Appeals for the Ninth Circuit reversed and remanded. At issue was whether the arbitrator exceeded his powers when he proceeded with a single arbitrator. This is applicable when an award is irrational, failing to draw its "essence" from the agreement. This award was grounded in the agreement, which empowered the arbitrator to interpret and determine the applicability of all provisions under the FINRA Code. The arbitrator did so, choosing to rely on the amount Elizondo sought in the operative complaint rather than any amount he later sought. Manifest disregard for the law was not demonstrated; it was clear that the arbitrator recognized the law – and applied it.

- **ARBITRATION AGREEMENT DOES NOT DIVEST FEDERAL COURTS OF SUBJECT MATTER JURISDICTION**

Scott Seldin v. Theodore Seldin, et al.
2018 WL 258437
United States Court of Appeals, Eighth Circuit
January 2, 2018

Scott Seldin filed suit against Theodore Seldin and others for an accounting of a family trust. Theodore filed a motion to dismiss for lack of subject matter jurisdiction. The district court granted the motion, holding that they did not have jurisdiction because there was a binding arbitration agreement, which gave the arbitrator authority to first decide the extent of his jurisdiction.

The United States Court of Appeals for the Eighth Circuit reversed and remanded. An arbitration agreement alone, without other statutory or binding jurisdictional limitations, does not divest the federal courts of subject matter jurisdiction.

- **PARTY WAIVED CHALLENGE ABOUT ARBITRATOR'S INTERPRETATION**

Laborers' Pension Fund v. WR Weis Company, Inc.
2018 WL 316555
United States Court of Appeals, Seventh Circuit
January 8, 2018

The Laborers' Pension Fund (Fund) brought an action against WR Weis (Weis), seeking to vacate an arbitration finding that Weis was not subject to withdrawal liability for ceasing contributions to a pension fund. Weis counterclaimed to confirm the award. The court granted summary judgment to Weis but denied the request for attorneys' fees. Both parties appealed.

The United States Court of Appeals for the Seventh Circuit affirmed. The Fund argued that the arbitrator misinterpreted the language of 29 USC §1383 concerning withdrawal from a multi-employer pension plan. The Fund waived this argument, however, by failing to raise it before the arbitrator. The Fund did not challenge the arbitrator's finding regarding the collective-bargaining agreement until its reply brief. Arguments raised for the first time in a reply brief are waived. The arbitrator's unchallenged interpretation survived a clear error review.

Case research and summaries by Richard Birke, Executive Director, JAMS Institute.

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