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Arbitration Clause in Beer Distribution Agreement Enforced by the Virginia ABC

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On May 7, 2019, the Virginia Department of Alcoholic Beverage Control (VABC) published a decision confirming the enforceability of arbitration clauses in distribution agreements between brewers and beer distributors under Virginia's Beer Franchise Act (BFA). In *Loveland Distributing Co., Inc. and Premium of Virginia, LLC v. Bell's Brewery, Inc.*, the VABC panel ruled unanimously in favor of compelling the parties to resolve their dispute through arbitration, as provided for in the parties' distribution agreement (the Agreement).

The decision is good news overall for beer and wine suppliers hoping to avoid the cost of litigation before the VABC. Continue reading for details of the dispute and further considerations.

A. The Dispute

Loveland and Bell's had executed the Agreement in June 2015 for the distribution of Bell's brands in portions of Virginia. The Agreement states that "All claims disputes and other matters arising out of or relating to this Agreement … shall be decided by binding arbitration…"

In October 2018, Loveland entered into an asset purchase agreement (APA) to sell substantially all of its assets to Premium Distributors of Virginia. Loveland requested Bell's consent to the transfer of its distribution rights to Premium, but declined Bell's request to provide Bell's with the APA schedules in order for Bell's to evaluate the transaction. Bell's declined to approve the transfer and filed a notice of intent to terminate Loveland for unreasonably failing to comply with a material provision of the parties' Agreement.

In response, Loveland and Premium filed a complaint with the VABC alleging that Bell's unreasonably failed to approve the transfer to Premium. After some procedural delays, Bell's filed a Motion to Dismiss and Compel Arbitration, invoking the Agreement and the Federal Arbitration Act.

B. The VABC's Decision

The VABC granted Bell's motion to compel arbitration, subject to further review of the arbitrator's decision by the VABC in order to ensure compliance with the BFA. In doing so, the VABC attempted to preserve its authority by stressing that arbitration advances the goals of the BFA and Virginia's

alcohol control objectives under the Twenty-First Amendment.

Notably, the VABC panel *rejected* the application of US Supreme Court precedents, holding that the Federal Arbitration Act (FAA) preempts state law providing for an administrative tribunal in cases where the parties have a written agreement to arbitrate their dispute. The panel asserted that the Twenty-First Amendment gives states wide-ranging powers in the area of alcohol beverage control, resulting in a "strong presumption of validity" for state alcohol regulatory schemes, including Virginia's exercise of its "power to monitor compliance" with the "unquestionably valid three-tier system."

While unconvinced that federal law required arbitration, the panel then held that both Virginia statutory law and other Supreme Court case law favored compelling the parties to arbitrate their dispute, subject to further review of the outcome by the VABC to ensure compliance with the BFA. The VABC reasoned that:

1. the BFA contemplates and even favors the resolution of disputes through arbitration;

2. the Agreement itself was valid and enforceable, and required arbitration of the dispute;

3. both the US Supreme Court and Virginia's courts have consistently favored the enforcement of arbitration clauses in contracts; but that

4. the holding in *Hall St. Assoc., LLC v. Mattel, Inc.*, 552 U.S. 576 (2008), permits the VABC to retain "docket control" over the dispute during the arbitration so that it can "ensure that any final order entered does not adversely influence the operation and effectiveness of [Virginia's] unquestionably valid three tier system."

Thus, the VABC's decision enforced the arbitration clause and ordered the parties to proceed to arbitration, but retained jurisdiction to review the arbitrator's final decision, albeit with "appropriate deference." In a footnote, the panel added that "review for consistency with the BFA presumably will be cursory." This suggests a review in keeping with the limited scope of review that courts undertake under the FAA.

One member of the panel dissented from the majority's decision to retain docket control, and would instead simply have compelled binding arbitration.

C. Further Considerations

The VABC's decision in *Loveland* provides a strong indication that, absent an obvious attempt by the parties to evade its statutory authority, the VABC will enforce arbitration clauses in written beer distribution agreements. The decision will help future parties (likely suppliers) seeking to compel the arbitration of beer and wine distribution disputes in Virginia, and also strengthens the negotiating position of beer and wine suppliers seeking to include an arbitration clause in Virginia distribution agreements.

The panel, however, rejected the argument that the FAA and its procedures supersede Virginia's alcohol regulatory statutes and procedures, given the "strong presumption of validity" that the latter enjoy under the Twenty-First Amendment. Furthermore, the decision shows that the VABC will, under some circumstances, assert jurisdiction (at least for a "cursory" review) over the final rulings of

arbitrators, thus maintaining some control over the outcome of brewer-distributor disputes in Virginia. Despite this, the decision is good news overall for beer and wine suppliers hoping to avoid the cost of litigation before the VABC. Moreover, the *Loveland* decision provides at least persuasive authority to tribunals in other states (Connecticut, Georgia, Massachusetts, etc.) where a non-judicial body acts as the initial trier-of-fact in supplier-distributor disputes.

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