

The Finality of Arbitration: Supreme Court of South Carolina Curbs Arbitration Panel's Authority

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One of the several attractive aspects of arbitration is the finality of the decision. With limited grounds to appeal or vacate an arbitration award, litigants can generally expect a final award to end any controversy between them. There are, however, rare situations where an arbitration decision is reconsidered by a court and overturned. In a notable decision, the Supreme Court of South Carolina did just that in the case of *Waldo v. Cousins*, No. 2022-000134, 2024 WL 1900583 (S.C. May 1, 2024).

In *Waldo*, the petitioner was a broker in charge of a realty company that represented the buyers of golf courses. The respondent, a broker in charge of the realty company that represented the golf course sellers, sued the petitioner, the petitioner's firm and agents, and the buyers and sellers of the courses for commission on the sale. In arbitration, despite the respondent not having a written agency agreement as required under S.C. Code Ann. § 40-57-139(G) (2011) [the "act"], the arbitration panel awarded the respondent half of the commission.

As a justification for the decision, the arbitration panel cited four decisions from the Supreme Court of South Carolina and the South Carolina Court of Appeals, all of which were decided prior to and superseded by the act's passing. Despite being aware of the act and having "in hand the unappealed circuit court order dismissing similar claims arising from the same transaction on the ground that § 40-57-139(G) had rendered oral and implied contracts for real estate commissions unenforceable," the panel focused on the previously decided cases and awarded damages.

In overturning the arbitration panel's decision, the state Supreme Court noted the rarity of such a decision. Beginning by stating that "we may only vacate the award where the arbitrator knew of well-defined, explicit, and clearly applicable controlling law, yet still refused to apply it," the court determined that the arbitrator "exceeded his power by manifestly disregarding or perversely misconstruing the law governing the dispute." Accordingly, the panel's decision did not have an "arguably colorable" basis in the law.

The Supreme Court acknowledged the high bar for overturning an arbitration award. However, in support of its decision, the Supreme Court noted, "[w]e have progressed from the days" where the arbitrator may rule with "despotic power," and the court may overturn a decision where the arbitrator "manifestly disregarded" several statutes and case law.

The conclusion from *Waldo* is one of caution in the supremacy of arbitration, yet confidence in the arbitration decision-making process. Courts generally defer to the decision of an arbitrator, but that deference is not universal, and there are instances where a “reckless flouting of the law” may result in vacatur of a final award.

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