

Arbitrator's Manifest Disregard of the Law is No Basis for Vacating Arbitration Award – So Rules the Supreme Court of Texas

Article By:

Litigation and Dispute Resolution

Until this month, Texas appellate courts were split as to whether an arbitration award under the Texas General Arbitration Act (“TAA”) can be vacated on common-law grounds not expressly enumerated by the TAA. The Texas Supreme Court, in *Hoskins v. Hoskins*, resolved this split holding that an arbitrator’s “manifest disregard” of the law is not a basis to vacate an arbitration award under the TAA, because it is not an expressly enumerated grounds for vacatur. No. 15-0046, 2016 WL 2993929, at *5 (Tex. May 20, 2016) (publication pending). Lawyers and their clients should consider the implications of this holding when entering into arbitration agreements.

The award stands despite arbitrator’s alleged disregard of the law

Hoskins held that common-law grounds could not serve as a basis to vacate an arbitration award under the TAA where the parties agreed to conduct the arbitration under the TAA and did not agree to further restrain the arbitrator’s powers. Noting that Texas law favors arbitration, and judicial review of arbitration awards is extraordinarily narrow, the Court found that the TAA demands that courts “shall confirm” arbitration awards unless a statutory ground is offered for vacating, modifying, or correcting the award. Those statutory grounds include partiality by an arbitrator, corruption in an arbitrator, and an arbitrator’s exceeding his powers, among others. Looking to the text of the TAA, the Court held that “the TAA leaves no room for courts to expand on those grounds, which do not include an arbitrator’s manifest disregard of the law.”

Contrast with interpretation and application of the FAA

In *Hoskins*, the Court analyzed the motion to vacate solely under the TAA, stating that the parties agreed to arbitrate under the TAA and neither party argued the Federal Arbitration Act (“FAA”) applied. The concurring opinion, penned by Justice Don Willett, underscored the import of the Court’s decision, noting that it clears up the “quagmire” that has ensnared the FAA. Currently, there is a split among the federal circuit courts as to the viability of common-law grounds as a basis for vacating an arbitration award under the FAA.

Points to consider in light of *Hoskins*

The most important teaching of *Hoskins* is that the parties' arbitration agreement should contain all the protections the parties want, where the parties exclusively elect for the TAA to apply. This should include not only the procedure for the arbitration (number of arbitrators, scope of discovery, remedies, etc.), but also whether the parties want to include grounds for judicial review, in addition to those enumerated by the TAA. Parties may agree to expanded judicial review under the TAA, as the Court held in *Nafta Traders, Inc. v. Quinn*, 339 S.W.3d 84 (Tex. 2011). However, under the FAA, parties cannot contract for expanded judicial review. *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576 (2008).

Even under the TAA, parties cannot agree to a different standard of judicial review than a court would employ in a judicial proceeding involving the same subject matter. Parties must also ensure a sufficient record of the arbitral proceedings is kept and preserve their complaints, in order for a court to review and vacate an award under expanded judicial review. Finally, no matter what contractual provisions the parties choose, the parties should engage in appropriate due diligence when selecting an arbitrator. As *Hoskins* shows, courts may confirm arbitration awards even when an arbitrator manifestly disregards applicable law.

Copyright © 2025, Hunton Andrews Kurth LLP. All Rights Reserved.

National Law Review, Volume VI, Number 154

Source URL: <https://natlawreview.com/article/arbitrator-s-manifest-disregard-law-no-basis-vacating-arbitration-award-so-rules>