Arbitration-What You See is What You Get

In general, it is a wise policy to assume that each of the provisions in any contract will be interpreted rigidly, this is particularly true when it comes to arbitration clauses. In a recent Minnesota Court of Appeals case *Seagate Technology v. Western Digital,* Western Digital learned this lesson the hard way.

Sining Mao was employed by Seagate until October 2006, when he secured employment at Western Digital. Seagate commended an action in District Court seeking an injunction against Dr. Mao to prevent him from disclosing sensitive trade secrets. Seagate's employment agreement with Dr. Mao contained an arbitration clause which stated that it would be settled in accordance "with the rules then in effect of the American Arbitration Association".

Western Digital presented evidence that Seagate had publicized trade secret information prior to Dr. Mao leaving for Western Digital. However, the arbitrator found that Dr. Mao had fabricated the evidence of publication, and that Western Digital was complicit in submitting the false evidence. The arbitrator imposed a sanction in the form of striking "any evidence or defense by Western Digital and Dr. Mao disputing the validity" of the trade secrets at issue and "[e]ntry of judgment against Western Digital and Dr. Mao of liability for misappropriation and use of" the trade secrets. The arbitrator then awarded damages of approximately $634 million to Seagate.

Minnesota District Court vacated the decision, ruling that the arbitrator did not have the authority to impose such sanctions, and that the sanctions were procedurally importer. The Court of Appeals reversed the District Court ruling that the scope of the arbitrator's power is a "matter of contract to be determined from a reading of the parties' arbitration agreement". Western Digital has appealed to the Minnesota Supreme Court, and a decision is pending.

Often parties will include an arbitration clause in a contract based on a belief that arbitration is always preferable to litigation. This is not always the case. Although traditional litigation can be slow and frustrating it is subject to checks and balances which do not exist in arbitration.

The American Arbitration Association's rules provide enormous leeway for arbitrators, including imposing sanctions on the inclusion of evidence, elimination of cross examination, or awarding of punitive damages. The Appellate court decision clearly states than absent an agreement to the contrary the arbitrator may impose any sanction or finding it deems fit. An arbitrator's award will not be overturned simply because the court disagrees with it, rather the only grounds for overturning arbitration award are "fraud, mistake…[or] misconduct".

Thus, whenever an arbitration clause is included in a contract, the parties should not count on later judicial review or mitigation of an arbitration award. Rather, Minnesota courts have sent a clear message that parties to an arbitration clause will have to bear the full impact of almost all arbitration decisions. Any party that includes an arbitration clause must keep in mind that arbitrators are not limited to decisions supported by law. The arbitrator may choose any remedy

they see fit, and may not be reversed by any court. Wise practitioners must carefully consider the consequences for their clients of arbitration clauses.

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