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THE TEXAS SUPREME COURT FINDS THAT FEDERAL ARBITRATION LAW DOES NOT PREEMPT THE TEXAS ARBITRATION ACT, FOR ISSUES OF EXPANDED JUDICIAL REVIEW

In a recent significant decision, the Texas Supreme Court, in the case of *Nafta Traders, Inc. v. Margaret A. Quinn*, 554 Tex. Sup. J. 961 (2011,) analyzed whether the Federal Arbitration Act preempts the Texas Arbitration Statute on the issue of expanded judicial review. In this case, the Texas Supreme Court identified a substantial difference between the Texas Arbitration Act and the Federal Arbitration Act.

FACTS OF THE CASE

Margaret Quinn filed a sex discrimination suit against Nafta Traders after her employment was terminated. The arbitrator awarded damages for back pay, mental anguish damages, special damages, attorney's fees, and costs which were more than three times Quinn's back pay award. A state District Court confirmed the arbitrator's finding. Nafta appealed to the Court of Appeals which affirmed the District Court's judgment.

ISSUES

The principal issues before the Supreme Court were: (1) whether under the Texas Arbitration Act parties can agree to limit an arbitrator's scope of authority or expand judicial review of an arbitration award and (2) whether the Federal Arbitration Act preempts the Texas Arbitration Statute on the issue of expanded judicial review.

The arbitration provision in Nafta’s employee handbook barred arbitration awards that contain reversible legal error or that applied a cause of action or remedy not expressly provided by law. Margaret Quinn argued that the Federal Arbitration Act controlled, which under the U.S. Supreme Court decision in *Hall Street Associates, L.L.C. v. Mattel, Inc.*, 552 U.S. 576 (2008), does not allow judicial review to be expanded by agreement beyond what the federal arbitration statute provides.

The parties signed an agreed order to arbitrate the dispute under the terms of the arbitration clause set out in Nafta’s employee handbook. The arbitration clause did not specify that it was to be governed by the Federal Arbitration Act or the Texas Arbitration Act; however, the parties agreed to try the case under the rules of the Federal Arbitration Act.

The Nafta Traders arbitration clause defined the scope of judicial review of the arbitrator’s decision as follows: “The arbitrator does not have authority (i) to render a decision which contains a reversible error of state or federal law, or (ii) to apply a cause of action or remedy not expressly provided under existing state or federal law.”

HOLDING

The Texas Supreme Court held that the Texas Arbitration Act does not prevent an agreement that limits the authority of an arbitrator in deciding a matter and thus allows for judicial review of an arbitration award for reversible error. Further, the court found that the Federal Arbitration Act does not prevent enforcement of an agreement for expanded judicial review of an arbitration award enforceable under the Texas Arbitration Act.

IMPACT UPON ARBITRATIONS IN TEXAS

The Texas Supreme Court’s decision in *Nafta Traders, Inc. v. Margaret Quinn* could significantly impact both the expense and ability to appeal arbitration awards. In response to the Supreme Court’s decision, parties to arbitration agreements should:

- (1) Analyze their arbitration agreements in light of the Court’s decision to determine whether modifications of the agreement are desired to limit the authority of an arbitrator;
- (2) Understand that the Court’s decision could result in increased appeals of arbitration awards, thus increasing costs;
- (3) Utilize the Court’s decision as a ground for appeal of erroneous arbitration awards; and

(4) Take heed of the Supreme Court's warning that a court must have a sufficient record of arbitration proceedings, and complaints must be preserved, as if the award were a court judgment on appeal. In *Nafta* a transcript was prepared of the entire proceedings. The Supreme Court advised that "The parties can decide for themselves whether the benefits (of having a court reporter maintain a record of the proceedings) are worth the additional cost and delay..." and warned "If error cannot be demonstrated, an award must be presumed correct."



The Bassett Firm

**Two Turtle Creek Village
3838 Oak Lawn Avenue
Suite 1300
Dallas, Texas 75219
(214) 219-9900 Telephone
(214) 219-9456 Facsimile
Toll Free: 1-800-310-9769
www.thebassettfirm.com**

ATTORNEYS

- **MIKE H. BASSETT**
- **JENNIFER R. ASHMORE**
- **ROBERT L. MCGEE, JR.**
- **WILLIAM A. NEWMAN**
- **MICHAEL J. NOORDSY**
- **J. DANIEL OLIPHANT**
- **JOHN J. ROBERTS**
- **J. ANDREW ROBERTSON**

Information regarding *The Bassett Bulletin*™ is available from Annie Copeland (acopeland@thebassettfirm.com) at (214) 219-9900. ©2004 The Bassett Firm. All rights reserved.

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