



*Passion. Preparation. Persistence.*

*Volume 8, Issue 3*

## THE BASSETT BULLETIN™

### HOW WELL DO YOU KNOW YOUR ARBITRATOR?

Increasingly employer/employee relationships are governed by a dispute resolution plan which requires binding arbitration of employment disputes before a neutral arbitrator. In *Alim v. KBR*, 2011 WL 61868, Dallas' Fifth Court of Appeals found that an arbitrator failed to disclose that he previously served as arbitrator for a corporate defendant, involving the same corporate representative, six years earlier. This case examines the importance of all parties fully disclosing potential conflicts of interest, well in advance of arbitration.

### BACKGROUND FACTS

Mohammad Alim filed an arbitration claim, in 2007, for employment discrimination, breach of contract, and retaliation against Kellogg, Brown & Root (KBR), a former subsidiary of Halliburton Energy Services, pursuant to the applicable Halliburton Dispute Resolution Plan. The Dispute Resolution Plan was governed by the Federal Arbitration Act.

Before the arbitrator's appointment, he was required by the rules of the American Arbitration Association, and the Code of Ethics for Commercial Arbitrators, to disclose whether any of the party representatives, law firms, or parties had appeared before him in past arbitration cases. In his disclosures, the arbitrator attested, under oath, that he had diligently conducted a conflicts check and that the parties, their law firms, and the party representatives, had not appeared before him in past arbitration cases. The arbitrator never amended his erroneous statement, although he did advise the parties, just prior to the start of the arbitration hearing, that he had met KBR's attorney several years before at a deposition, and that Halliburton's corporate representative had represented a party appearing before him in arbitration years earlier.

Petitioner Alim did not object to the arbitrator's belated disclosure and allowed the arbitration to proceed. After the arbitrator issued an award denying all of Alim's claims, the Petitioner objected to the award because the arbitrator failed to disclose his prior relationships with KBR and its counsel. KBR argued that the Petitioner waived any objection by not raising it following the arbitrator's comment at the beginning of the hearing. After considering the parties' arguments, the trial court signed an order denying the Motion to Vacate the arbitration award and confirmed the award.

## CONTROLLING LAW

In this case, the court found that the Federal Arbitration Act applied to the proceeding. Under the Federal Arbitration Act, “evident partiality” of the arbitrator is a substantive ground for vacating an arbitration award. A neutral arbitrator has been found to exhibit “evident partiality” if he does not disclose facts that might, to an objective observer, create reasonable impression of the arbitrator’s partiality. *Burlington North Railroad v. TUCO, Inc.*, 960 S.W.2d 629, 636 (Tex. 1997). In *TUCO*, the Texas Supreme Court emphasized that “evident partiality is established from the non-disclosure itself, regardless of whether the non-disclosed information necessarily establishes partiality or bias.” *TUCO*, 960 S.W.2d at 636.

## HOLDING

Dallas’ Fifth Court of Appeals found during its review that the arbitrator’s conflict check was nothing more than an exercise he conducted from memory. According to the Court, the fact that the same corporate representative appeared before the arbitrator in a prior arbitration as a party representative for Halliburton Energy Services, the former owner of KBR, and also the former employer of the petitioner, was not a trivial matter. The Court found that the arbitrator was specifically required to disclose if any party representative had appeared before him in past arbitration cases.

Since the arbitrator swore in his notice of appointment that none of the parties, their representatives, or attorneys had previously appeared before him in an arbitration, and the arbitrator failed to amend or correct his answer to disclosures specifically inquiring as to that fact, these acts were found to constitute “evident partiality” and provided grounds to vacate the arbitrator’s award under the Federal Arbitration Act. Accordingly, the trial court’s order denying the Petition to Vacate and confirming the award was reversed and the case was remanded to the trial court for further proceedings.

## CONCLUSION

The case of *Alim v. Kellogg, Brown & Root* demonstrates the importance of an arbitrator, and the parties, fully disclosing to one another all prior dealings which could be used to establish evident partiality. The Court’s ruling demonstrates:

1. That an arbitrator’s failure to disclose “evident partiality” creates strong grounds to obtain reversal of an arbitrator’s award;
2. An arbitrator should fully disclose all prior dealings with a party, its attorneys, and corporate representatives, no matter how trivial. A systematic conflicts check should also be performed by the arbitrator. Moreover, arbitrators should amend their written disclosures of conflicts immediately upon determining that they have had a prior relationship with a party, its attorney, or corporate representative; and
3. To avoid the potential that a favorable arbitration award will be reversed, we believe it is extremely prudent for all attorneys and parties to carefully examine and disclose prior relationships with the arbitrator to the opposing party and its counsel, in writing.



## **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](http://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**
- **MATHEW SAMUEL**

---

Information regarding *The Bassett Bulletin*<sup>TM</sup> is available from Sabrina K. ([skereta@thebassettfirm.com](mailto:skereta@thebassettfirm.com)) at (214) 219-9900. ©2004 The Bassett Firm. All rights reserved.

*The Bassett Bulletin*<sup>TM</sup> is published twenty-six times a year, and is a complimentary publication of The Bassett Firm.

---