

litigation lawflash

May 12, 2014

Texas Appellate Court Rules Late Arbitration Awards Are Void

Parties arbitrating in Texas should set formal agreements for delayed awards and should consider whether to object to awards that are not timely.

In an arbitration case of first impression—*Sims v. Building Tomorrow's Talent, LLC*—the Seventh Court of Appeals of Texas held that courts have no authority to confirm an arbitration award issued after the deadline established by the arbitration agreement or ordered by the court.¹ Because many arbitration agreements have short deadlines, this decision has significant implications for all parties who arbitrate in Texas.

Background

The dispute in *Sims* arose when parties to a mediated settlement agreement could not resolve a dispute related to the agreement. In lieu of further mediation, the parties agreed that the mediator would arbitrate the dispute and issue a final award within 14 days of final written submissions. The arbitrator did not make an award by the deadline, despite repeated inquiries by the parties.

Under the Texas Arbitration Act section 171.053(c)(1), (2), an arbitrator “shall make” an award either within the time established by an arbitration agreement or as ordered by the court upon a party’s application. If that award is not timely made and a party objects before the award is delivered to the objecting party, the arbitrator loses the authority make an award at all. Relying on section 171.053, the plaintiff in *Sims* objected to the award as not timely and withdrew consent to arbitrate.

Ultimately, the arbitrator issued an award approximately 19 months after the initial deadline. The order did not award anything to the plaintiff. The trial court then confirmed the award over the plaintiff’s objection.

The Court of Appeals’ Decision

The court of appeals reversed, holding that the arbitrator had no authority to issue the award and the trial court had no authority to confirm it. In an issue of first impression, the court of appeals relied on the plain language of the Texas Arbitration Act in concluding that the use of the term “shall” in the act affords the arbitrator no discretion to ignore the deadlines. The court of appeals thus concluded that the trial court erred in confirming the belated arbitration award, which was issued long after the deadline had passed.

Implications

Many arbitration agreements have short deadlines. If an arbitration award is not timely or appears to not be timely, parties should ensure that formal agreements are reached to permit any delayed ruling. Otherwise, the other party may be able to void the entire process by lodging a timely objection. Conversely, if there is a delay in a ruling and there is interest in objecting to the award, that objection should be made before any late award is received.

1. No. 07-12-00170-CV (Tex. App. Apr. 30, 2014), available at <http://www.search.txcourts.gov/SearchMedia.aspx?MediaVersionID=343c2d3c-950d-4cd7-9200-e4b9390a3e1b&coa=coa07&DT=Opinion&MedialD=7199bd68-7d73-40ce-9752-d97722dc678d>.

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