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HOW TO ADDRESS MOTIONS TO VACATE OR CONFIRM AN ARBITRATION AWARD

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Confirming and Vacating Arbitration Awards

Arbitration awards in some forums, like FINRA arbitration, tend to be self-executing in that they rarely need to be confirmed nor are there many efforts to vacate them. However, in order to have the force of law of a judgement, arbitration awards need to be confirmed in an appropriate court. Similarly, unlike judgements in court, arbitration awards are not easily appealed. I fact, arbitration awards cannot be appealed. Instead, a party must petition the court to vacate the entire award. Since vacating an award essentially extinguishes it, the standard for vacating an arbitration award is necessarily very high.

I. Confirming Arbitration Awards

Confirming arbitration awards is meant to be a simplified process under Federal Rules. And, the Federal Arbitration Act requires confirmation of any award and issue final judgment in accordance with that award. "confirmation of an arbitration award 'is a summary proceeding that merely makes what is already a final arbitration award a judgment of the court.'" *D.H. Blair & Co. v. Gottdiener*, 462 F.3d 95, 110 (2d Cir. 2006) (*quoting Florasynth, Inc. v. Pickholz*, 750 F.2d 171, 176 (2d Cir. 1984)). The Federal Arbitration Act ("FAA") requires such confirmation unless an award is vacated, modified, or corrected. *See* 9 U.S.C. § 9; *Hall St. Assocs., L.L.C. v. Mattel, Inc*., 552 U.S. 576, 582 (2008).

Generally speaking, a party has up to one year to confirm an arbitration award, while a party has only 90 days to seek to vacate an award. *See* 9 U.S.C. § 12 and Tex. Civ. Prac. & Rem. Code Ann. § 171.088(b). As a result, from a practice tip prospective, it is generally best to wait for the 90 days to pass prior to seeking to confirm an arbitration award so the other party will have waived their right to vacate the award.

II. Vacating Arbitration Awards

Vacating an arbitration an arbitration award is purposely difficult. The FAA was enacted to combat the judicial hostility towards arbitration that had historically existed. *See* Hall Street Assocs. v. Mattel, Inc., 552 U.S. 576, 581 (2008). Part of the manner in which the courts protect arbitration is to make sure that undoing, or vacating, an arbitration award is difficult.

A. The Standard for Vacating Arbitration Awards

The law requires that courts reviewing arbitration awards do so narrowly and with great deference to the arbitration award. "Indeed, the scope of review of an arbitrator's valuation decision is among the narrowest known at law because to allow full scrutiny of such awards would frustrate the purpose of having arbitration at all--the quick resolution of disputes and the avoidance of the expense and delay associated with litigation." *Apex Plumbing Supply*, 142 F.3d at 193 (emphasis added). The strict deference courts owe to arbitrators applies to factual findings as well as legal determinations. *See Wells Fargo Advisors, LLC v. Watts*, 540 Fed. Appx. 229, 231 (4th Cir. 2013).

A court considering an arbitration award under the Federal Arbitration Act ("FAA") applies a deferential standard of review. *See Gulf Coast Indus. Workers Union v. Exxon Co.*, 991 F.2d 244, 248 (5th Cir. 1993); *Psarianos v. Standard Marine, Ltd.*, 790 F. Supp. 134, 135 (E.D.Tex.1992), *aff'd*, 12 F.3d 461 (5th Cir.), cert. denied, 511 U.S. 1142, 128 L. Ed. 2d 887, 114 S. Ct. 2164 (1994). Judicial review of arbitrators' decisions is "extraordinarily narrow" under the Federal Arbitration Act. *See In the Matter of the Arbitration Between Trans Chem. Ltd. & China Nat'l Mach. Import & Exp. Corp.*, 978 F. Supp. 266, 303 (S.D. Tex. 1997) (citing *Gulf Coast Indus. Workers Union v. Exxon Co*., 70 F.3d 847, 850 (5th Cir. 1995), and *Forsythe Int'l. S.A. v. Gibbs Oil Co. of Texas*, 915 F.2d 1017, 1020 (5th Cir. 1990)); *see also Executone Info. Sys., Inc. v. Davis*, 26

F.3d 1314, 1320 (5th Cir. 1994). The United States Supreme Court has expressly cautioned that judicial review of arbitration awards is "among the narrowest known to the law." *Atchison, T. & S. F. R. Co. v. Buell*, 480 U.S. 557, 563, 107 S. Ct. 1410, 1414 (1987) (quoting *Union Pacific R. Co. v. Sheehan*, 439 U.S. 89, 91 (1978)).

"[R]eview of an arbitration award under the Federal Arbitration Act is exceedingly limited and deferential." *St. John's Mercy Med. Ctr. v. Delfino*, 414 F.3d 882, 884 (8th Cir.2005); *Williams v. National Football League*, 582 F.3d 863, 883 (8th Cir.2009) (noting a court's "'review is restricted by the great deference accorded arbitration awards.'") (quoting *Winfrey v. Simmons Foods, Inc*., 495 F.3d 549, 551 (8th Cir.2007)); *Bureau of Engraving, Inc. v. Graphic Commc'n. Int'l Union, Local 1B*, 284 F.3d 821, 824 (8th Cir.2002) ("Judicial review of a final arbitration award is extremely narrow."); *Keebler Co. v. Milk Drivers & Dairy Employees Union, Local No. 471*, 80 F.3d 284, 287 (8th Cir.1996) (noting reviewing courts must accord "an extraordinary level of deference" to the underlying arbitration award). "[A]rbitration awards are entitled to extreme deference and the statutory grounds for vacatur focus on 'egregious departures from the parties' agreed-upon arbitration.'" *Stone v. Bear, Stearns & Co.*, 538 Fed. Appx. 169, 170 (3d Cir. Oct. 29, 2013)(citing *Dluhos v. Strasberg*, 321 F.3d 365, 370 (3d Cir. 2003)).

The narrow review of arbitration awards limits courts to being able to only look at whether the arbitrators did the job required under the arbitration agreement, not whether they did the job well or even whether they followed the law. "The courts' review of arbitration awards is extremely narrow. The courts' sole function is to decide whether the arbitrators' decision draws its essence from the contract." *Executive Life Ins. Co. v. Alexander Ins. Ltd.*, 999 F.2d 320 (8th Cir. 1993). "[I]n reviewing arbitral awards, a district or appellate court is limited to determining 'whether the arbitrators did the job they were told to do--not whether they did it well, or correctly, or reasonably,

but simply whether they did it.' Courts are not free to overturn an arbitral result because they would have reached a different conclusion if presented with the same facts." *Remmey v. PaineWebber, Inc.*, 32 F.3d 143, 146 (4th Cir. 1994) (citing *Richmond, Fredericksburg & Potomac R.R. Co. v. Transportation Communications Int'l Union*, 973 F.2d 276, 281 (4th Cir.1992)).

"A court sits to determine only whether the arbitrator did his job—not whether he did it well, correctly, or reasonably, but simply whether he did it." *U.S. Postal Serv. v. Am. Postal Workers Union,* 204 F.3d 523, 527 (4th Cir2000). Courts may not "'reconsider the merits of an award even though the parties may allege that the award rests on errors of fact or on misinterpretation of the contract.'" *Bureau of Engraving, Inc.,* 284 F.3d at 824 (quoting *United Paperworkers Int'l Union v. Misco, Inc*., 484 U.S. 29, 36, 108 S.Ct. 364, 98 L.Ed.2d 286 (1987)).

'[A]s long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, that a court is convinced he committed serious error does not suffice to overturn his decision .'" *Bureau of Engraving, Inc.,* 284 F.3d at 824.

In addition, similar to the standard of review for Motions to Dismiss or for Summary Judgement, courts must resolve all issues in favor of confirming an arbitration award. Given the deference afforded arbitration awards under the FAA, a district court should "interpret the arbitrator's award and the contract broadly so as to uphold the award." *Manville Forest Prods. Corp.*, 831 F.2d 72, 74 (5th Cir. 1987)(citing *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 598, 4 L. Ed. 2d 1424, 80 S. Ct. 1358).

B. The Grounds of Vacating Arbitration Awards

Not only is the standard of review very limited, so are the possible grounds for vacating an arbitration award. There are limited grounds for vacating an arbitration award. For example, an arbitration award, unlike a lower court judgement, cannot be attacked merely on the basis of legal

error. As one court noted, "[t]he FAA notably does not authorize a district court to overturn an arbitral award just because it believes, however strongly, that the arbitrators misinterpreted the applicable law. When parties consent to arbitration, and thereby consent to extremely limited appellate review, they assume the risk that the arbitrator may interpret the law in a way with which they disagree. Any more probing review of arbitral awards would risk changing arbitration from an efficient alternative to litigation into a vehicle for protracting disputes." *Wachovia Sec., LLC v. Brand*, 671 F.3d 472, 478 n.5 (4th Cir. 2012) (internal citations omitted).

But, there are various basis for vacating an arbitration award other than for failure to interpret the law correctly. Some of the basis have been coined "common law" grounds for vacating an award, such as arguing the award was irrational or arbitrary and capricious. *See SBC Advanced Sols., Inc. v. Commc'ns Workers of Am., Dist. 6*, 794 F.3d 1020, 1027(8th Cir. 2015) (noting that an arbitrator's decision may be vacated if it is "completely irrational" (citation omitted)); *French v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 784 F.2d 902, 906 (9th Cir. 1986) (same); *Ainsworth v. Skurnick*, 960 F.2d 939, 941 (11th Cir. 1992) ("[A]n award that is arbitrary or capricious is not. required to be enforced."). In addition, "[t]he permissible common law grounds for vacating such an award include those circumstances where an award fails to draw its essence from the contract, or the award evidences a manifest disregard of the law.'" *MCIConstructors, LLC v. City of Greensboro*, 610 F.3d 849, 857 (4th Cir. 2010) (quoting *Patten*, 441 F.3d at 234); *Choice Hotels Int'l v. SM Prop. Mgmt*., LLC, 519 F.3d 200, 207 (4th Cir. 2008) (quoting Patten).

However, as discussed in more detail below, those "common law" grounds have largely been found inconsistent with the FAA. Nevertheless, there are a number of basis under the FAA for vacatur. For example, 9 U.S.C. § 10(a)(3) provides in part that a court may vacate an award

"where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown[.]". To establish a panel was "guilty of misconduct" pursuant to section 10(a)(3) in denying postponement of an **arbitration** hearing, the party seeking vacatur of the award must show there was no reasonable basis for the panel's refusal to postpone the hearing.

The FAA also provides that an award may be vacated, inter alia, where "the arbitrators exceeded their powers." 9 U.S.C. § 10(a)(4).

Very specifically, the FAA provides that an arbitration award may be vacated under the following four basis:

"(1) where the award was procured by corruption, fraud, or undue means;

(2) where there was evident partiality or corruption in the arbitrators, or either of them;

(3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or

(4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made."

9 U.S.C. § 10(a)(1-4)

In 2008, the Supreme Court ruled that under the FAA (it may be different under state law), the enumerated grounds for vacating an arbitration award in 9 U.S.C. § 10(a)(1-4) are the exclusive basis for vacating an arbitration award. *See Hall Street Securities, LLC v. Mattel, Inc.,* 552 U.S. 576, 128 S. Ct. 1396, 170 L. Ed. 2d 254 (2008). Specifically, the Hall Street Securities decision held "The question here is whether statutory grounds for prompt vacatur and

modification may be supplanted by contract. We hold the statutory grounds are exclusive." *Id* at 578-9.

C. Manifest Disregard of the Law

In *Hall Street Assocs., LLC v. Mattel, Inc.,* the Supreme Court had before it the issue of whether or not parties to an arbitration agreement could expand the grounds for vacating an award under §§ 10 and 11 of the FAA. In holding that parties to an arbitration agreement cannot by private agreement expand the grounds for the reviewing an arbitration award, the Court also said that the FAA provides the exclusive grounds for confirming, vacating or modifying an arbitration award. The Court rejected Hall Street's argument that "manifest disregard of the law" was an independent ground for vacatur on top of those grounds listed in §10. In holding that §10 and §11 provide the exclusive grounds for review of an award, the Court explained that its decision applies only to the review of an award under the FAA and not, for example, to the review of arbitration awards under state statutory or common law. The Court recognized, however, that before *Hall Street*, a number of courts had considered "manifest disregard of the law" as merely a shorthand for §10(a) (3) or §10(a) (4), which authorize vacatur when arbitrators are guilty of misconduct or exceed their powers. A number of federal circuits, in decisions after *Hall Street*, have interpreted *Hall Street* as not rejecting, *in toto,* manifest disregard as basis for seeking to vacate an award, but that it has survived as being a "judicial gloss" on the enumerated basis in §10(a) (3) or §10(a) (4). This has resulted in a split among the various District Courts as to whether manifest disregard of the law is still an acceptable argument for vacating an award.

1. Districts Dis-Allowing Manifest Disregard of the Law

The First Circuit, in *Ramos – Santiago v. United Parcel Service,* 524 F.3d 120 (1st Cir 2008) has interpreted *Hall Street* as holding that that manifest disregard of the law is no longer a valid ground for vacating or modifying an award.

The Fifth Circuit, in *Citigroup Global Markets, Inc. v. Bacon*, 562 F. 3d 349 (5th Cir. 2009) has also held that manifest disregard as a ground for vacatur does not survive *Hall Street*. The Court said that "In the light of the Supreme Court's clear language that, under the FAA, the statutory provisions are the exclusive grounds for vacatur, manifest disregard of the law as an independent, non-statutory ground for setting aside an award must be abandoned and rejected." *Id*. at 358.

The Seventh Circuit, in *Affymax, Inc. v. Ortho- McNeil- Janssen Pharms, Inc, 660 F. 3d 281 (7th Cir. 2011)* rejected the conclusion of the district court that the arbitrator disregarded the law stating "This list [under § 10(a)] is exclusive; neither a judge nor a contracting party can expand it." *Id.* at 283

Similarly, the Eight Circuit, in *Med. Shoppe Int'l., Inc. v. Turner Invs., Inc.,* 614 F. 3d 485 (8th Cir. 2010) after quoting the four statutory grounds in §10 (a), rejected the claim that the arbitrator manifestly had disregarded the law because "Appellant's claims, including the claim that arbitrator disregarded the law, are not included among those specifically enumerated in §10 and are not cognizable." *Id.* at 487.

The view of the Eleventh Circuit is also that "manifest disregard of the law" is no longer valid as a ground for vacatur. *See Campbell's Foliage, Inc. v. Fed. Crop Ins. Corp.* 562 Fed. Appx. 828 (11th Cir. 2014).

2. Districts Continuing to Accept Manifest Disregard of the Law

The Second Circuit has held that manifest disregard has survived *Hall Street*. *See Stolt-Nielsen SA v. Animal Feeds Int'l Corp,* 548 F. 3d 85 (2d Cir. 2008). Although the court acknowledged that *Hall Street*'s holding was in direct conflict with allowing manifest regard as a non-statutory ground for review, the court resolved the conflict by considering manifest regard simply as shorthand for §10(a)(4). Although this case was reversed by the Supreme Court, 559 U.S. 662, 130 S. Ct. 1757, 176 L. Ed 2d 605 (2010) based upon a finding that the arbitrators exceeded their powers by allowing class arbitration which was not within the scope of the parties' agreement, the Supreme Court specifically declined to decide whether manifest disregard has survived its decision in *Hall Street*. The Court did, however, mention that Animal Feeds' characterization of the standard for manifest disregard was that the arbitrators "knew of the relevant [legal] principle, appreciated that this principle controlled the outcome of the disputed issue, and nonetheless willfully flouted the governing law by refusing to apply it." *Id.* at footnote 3. Without deciding whether such a standard applies, the Court did find it satisfied for the reasons stated in its opinion.

In *Sutter v. Oxford Health Plans LLC,* 675 F. 3d 215 (3d Cir. 2012) the Third Circuit said: "An award may be vacated only upon one of the four narrow grounds enumerated in the Federal Arbitration Act" and that "These grounds are exclusive and may not be supplemented by contract," citing *Hall Street.*" *Id.* at 219 Then the court went on to say that "when the arbitrator 'strays from

interpretation and application of the agreement' and effectively 'dispenses his own brand of industrial justice, he exceeds his powers.'" *Id.* at 220 The court also cited *Hall Street* as "suggesting without deciding that the judicially created manifest disregard of law ground for vacatur may be proper only as a judicial gloss on the statutory grounds." *Id*.

The Fourth Circuit, in its 2012 decision in *Wachovia Sec., LLC v. Brand,* 671 F. 3d 472 (4th Cir. 2102) found that manifest disregard did survive *Hall Street* as an independent ground for vacatur based upon the Supreme Court later decision in *Stolt-Nielsen*. *See* 671 F. 3d 472(4th Cir. 2012).

The Sixth Circuit in *Grain v. Trinity Health 551 F.3d 374 (6th Cir.. 2008)* said that manifest disregard of the law is no longer a ground for modifying an award but the court did not decide the question of whether or not manifest disregard remains as a ground for vacating an award. However, in *Coffee Beanery, Ltd v. WW, L.L.C. 300 Fed. No.07-1830. App. 415 (6th Cir. 2008),* an unpublished decision, the Sixth Circuit held the holding of *Hall Street* applies only to contractual expansions of the grounds for review, so it appears that the Sixth Circuit's view is that manifest disregard has survived *Hall Street* as a ground for vacating an award.

The Ninth Circuit, in *Comedy Club, Inc. v. Improv West Assoc.,* 553 F.3d 1277 (9th Cir 2009) has said that, based upon prior decisions holding that manifest disregard as a ground for vacatur was only a shorthand for the statutory grounds under the FAA, "after *Hall Street Associates*, manifest disregard of the law remains a valid ground for vacatur because it is a part of §10(a) (4)." After granting certiorari, the Supreme Court vacated the Ninth Circuit's judgment and remanded the case "for further consideration" in the light of *Hall Street*. 555 U.S. 801, 129 S. Ct. 45, 172 L. Ed. 2d 6 (2009). On remand, the court reaffirmed its prior precedent that manifest

disregard of the law remains a valid ground for vacatur under §10(a) (4) of the FAA. 553 f. 3d 1277, 1290 The court made it clear, however, that for an award to be in manifest disregard of the law, it must be clear form the record that the arbitrator recognized the applicable law and ignored it.

Even if you are in a district that still recognizes manifest disregard, the standard for demonstrating that basis is exceedingly high. "In making a claim based on 'manifest disregard,' an appellant once again shoulders a heavy burden." Remmey, 32 F.3d at 149 (emphasis added). Manifest disregard requires "the applicable legalprinciple [be] clearly defined and not subject to reasonable debate." Wachovia Sec., LLC v. Brand, 671 F.3d 472, 483 (4th Cir. 2012).

"If party's briefing of 'correct' legal rules (as that party saw them) and panel's failure to apply that party's 'correct' legal rules were enough to qualify as 'manifest disregard' under 9 U.S.C.S. § 10(a)(4), then repeated teaching of precedent, that even gross errors of fact or law are inadequate to vacate arbitral award, would mean nothing." Holden v Deloitte & Touche LLP, 390 F. Supp. 2d 752 (ND Ill. 2005).

Essentially, to prove manifest disregard, a party must demonstrate (1) the law is very clear and not subject to any interpretation, (2) the panel was aware of and appreciated the law and that it applied to the case and (3) disregarded it anyway. To meet this standard, it appears, it requires a panel to say "I know this is the law, but I don't care …", which is highly unlikely. As a result, even being in a district with manifest disregard may not be helpful.

D. Sanctions for Meritless Motions to Vacate

Unlike a traditional appeal that can be made for almost any reason and "bad faith" for an appeal is typically not a basis for sanctions, a baseless attempt to vacate an arbitration award can be met with sanctions. For example, § 1927 has been relied upon by many courts to sanction meritless motions to vacate arbitration awards, such as the one here. *See Prospect Capital Corp. v. Enmon,* No. 08 Civ. 3721, 2010 WL 907956 (S.D.N.Y. Mar. 9, 2010); *see also Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Whitney,* 419 Fed. App'x 826 (10th Cir. 2011); *DMA Int'l, Inc. v. Qwest Commc'ns Int'l, Inc.,* 585 F.3d 1341 (10th Cir. 2009); *Dominion Video Satellite, Inc. v. Echostar Satellite L.L.C.,* 430 F.3d 1269 (10th Cir. 2005); *United States ex rel. Superior Steel Connectors Corp. v. RK Specialties Inc.,* No. 11–cv–01488, 2011 WL 5176157 (D. Colo. Oct. 3, 2011); *Interface Sec. Sys., LLC v. Edwards,* No. 03-cv-4054, 2007 WL 178276 (C.D. Ill. Jan. 19, 2007).

Where an attorney unjustifiably multiplies proceedings by seeking to vacate an arbitration award on a "completely meritless" basis, he may be subject to sanctions. *DMA Int'l, Inc. v. Qwest Commc'ns Int'l, Inc.*, 585 F.3d 1341, 1345 (10th Cir. 2009) ("If we permit parties who lose an arbitration to freely litigate their cases in court, arbitration will do nothing to reduce congestion in the judicial system; dispute resolution will be slower instead of faster and reaching a final decision will cost more instead of less."); *Lewis v. Circuit City Stores. Inc.*, 500 F.3d 1140, 1153 (10th Cir. 2007) (providing that sanctions pursuant to 28 U.S.C. § 1927 are warranted where arguments are "completely meritless").

Courts justifiably want to protect the sanctity and finality of arbitration awards and therefore can, and will, punish parties who appear to be filing a motion to vacate simply to lengthen and undermine the arbitration process.

E. Other Procedural Issue for Seeking a Motion to Vacate

In addition to the standards and basis discussed above, there additional procedural hurdles to vacating an arbitration award. The party moving to vacate an arbitration award has the burden of proof. *See Lummus Glob. Amazonas, S.A. v. Aguaytia Energy Del Peru, S.R. Ltda.*, 256 F. Supp. 2d 594, 604 (S.D. Tex. 2002). When a non-prevailing party seeks to **vacate** an **arbitration** award, it bears the burden in the trial court of bringing forth a complete record that establishes its basis for **vacating** the award. *See Statewide Remodeling, Inc*., 244 S.W.3d at 568. "When there is no **transcript** of the **arbitration** hearing, the appellate court will presume the evidence was adequate to support the award." *Id*.; *see also Glenn A. Magarian, Inc. v. Nat'l Fin. Corp*., No. 05-97-00663-CV, 1999 Tex. App. LEXIS 7603, 1999 WL 814289, at *2 (Tex. App.--Dallas Oct. 13, 1999, pet. denied) [**35] (not designated for publication) ("Likewise, if the appellant brings a record showing only a portion of the proceedings, we presume the remaining evidence supports the award.").

"When a non-prevailing party seeks to vacate an arbitration award, it bears the burden in the trial court of bringing forth a **complete record** that establishes its basis for vacating the award." *Chestnut Energy Partners v. Tapia (In re Chestnut Energy Partners, Inc.)*, 300 S.W.3d 386, 401 (Tex. App.—Dallas 2009) (emphasis added); *see also Glenn A. Magarian, Inc. v. Nat'l Fin. Corp.*, No. 05-97-00663-CV, 1999 Tex. App. LEXIS 7603, 1999 WL 814289, at *2 (Tex. App.--Dallas Oct. 13, 1999, pet. denied) ("Likewise, if the appellant brings a record showing only a portion of the proceedings, we presume the remaining evidence supports the award.").

"[I]n a motion to vacate an arbitration award, arguments not raised before the arbitrator are waived." *R.H. Cochran & Assocs. v. Sheet Metal Workers Int'l Ass'n Local Union No. 33*, 335 F. App'x 516, 522 (6th Cir. 2009). "[I]t is well settled that defenses or issues not raised in the

arbitration proceeding are waived." *Trs. of the Plumbers & Pipefitters Nat'l Pension Fund v. Mar-Len, Inc.*, 864 F. Supp. 599, 606 (E.D. Tex. 1994); *Weinberg v. Silber*, 140 F. Supp. 2d 712, 718, 721 (N.D. Tex. 2001); *Von Essen, Inc. v. Marnac, Inc.*, Civil Action No. 3:00-MC-73-L, 2002 U.S. Dist. LEXIS 34, at *10 (N.D. Tex. 2002); *Gateway Techs., Inc. v. MCI Telecomms. Corp.*, 64 F.3d 993, 997-98 (5th Cir. 1995) (holding that a party to arbitration "cannot stand by during arbitration, withholding certain arguments, then, upon losing the arbitration, raise such arguments in federal court.").

III. Conclusion

Confirming an arbitration award is a very simple process that can be handled in an almost summary proceedings. However, vacating an arbitration award is much more difficult. The standard is high and arbitration awards are given great deference. The basis for vacating an award is very limited and in roughly half of the districts, manifest disregard is no longer an available option.