

By Joseph Colagiovanni and Thomas Hartmann of the St. Louis office of Bryan Cave

Winning an arbitration award may not immediately end the dispute, especially when it comes to collecting payment from the losing party. What can be done to enforce the decision of the arbitrator? The authors provide a step-by-step approach to giving the award binding effect and also address motions to vacate, modify or correct.

One of the most commonly asked questions concerning arbitration is: "What can I do with the arbitration award once it is rendered?" The short answer is that absent very unusual circumstance's (such as fraud or corruption in the procurement of the award), an arbitration award can easily be confirmed as a court judgment, which can then be used to collect payment from the losing party through judicial enforcement. This article will discuss the basic steps needed to enforce an arbitration award.

Enforcement procedures for arbitration awards are primarily governed by the Federal Arbitration Act (Federal Act) and the Uniform Arbitration Act (Uniform Act).¹ If an arbitration case involves interstate commerce or maritime issues, the Federal Act² applies.³ Those cases which have considered the meaning of the phrase "interstate commerce" (as used in the Federal Act) have universally held that very little "interstate" connection is necessary.⁴ Accordingly, the Federal Act is likely to apply to the overwhelming majority of modern day arbitrations. State arbitration statutes, including those which derive from the Uniform Act, apply to the extent the Federal Act does not apply or has not preempted them.⁵ As a general matter, both Acts provide simplified enforcement procedures which require only that the winning party file a motion in an appropriate court to confirm the arbitration award. The court must confirm the award and enter judgment on it unless, upon timely motion of the unsuccessful party and for one of the very few reasons allowed by the Federal Act or Uniform Act, the court vacates, modifies or corrects the arbitration award. There is a presumption in favor of the validity of the award, and under either Act a party's ability to block entry of judgment is extremely limited. Once a court enters judgment, relatively simple procedures exist to execute the judgment and pursue collection from the losing party's assets.

The first eight sections of the Federal Act discuss: (1) the controversies to which the statute applies (maritime transactions and contracts involving inter state commerce; (2) the enforceability of contractual provisions requiring arbitration (a written agreement to arbitrate is generally "valid, irrevocable and enforceable"; (3) remedies when a party fails to arbitrate as required by its agreement; (4) methods for appointing arbitrators; and (5) certain procedural matters dealing with arbitration (witnesses; proceedings in admiralty). In sections 9 through 13, the Federal Act discusses the method by which arbitration awards are enforced.

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The Uniform Act contains provisions concerning: (1) the validity of arbitration agreements; (2) procedures to compel or stay arbitration; (3) the appointment of

arbitrators; (4) certain procedural rules regarding the arbitration hearing; (5) calling witnesses and engaging in discovery; and (6) the format and timing of arbitration awards. Sections 11 through 18 of the Uniform Act discuss jurisdiction, venue, and enforcement of the arbitration.

Federal Act: Under 9 of the Federal Act, if the parties to an arbitration agreement concur that the judgment of a court will be entered on the arbitration award, and if they specify the court in which that judgment will be entered, then within one year after the award is made any party to the arbitration may apply to the designated court for an order confirming the award.⁶ Upon such application, the court must grant the order unless grounds exist to vacate, modify or correct the award. An action under the Federal Act also may be brought in state court.⁷ Therefore, the parties may agree (under the Federal Act) to confirm the award in either a state court or a federal court (provided the selected court has jurisdiction). Under the Federal Act, if the parties specify that the award will be enforced in court but fail to identify the particular court in which enforcement will occur, application for enforcement may be made to the federal court for the district in which the award "was made." Where the arbitrator's award "was made" is not necessarily the location where the arbitrator signed or posted the decision. Instead, the courts, in decisions where an award "was made," will consider not only where the award was actually written or posted, but which locale has had the most significant contacts with the contract to arbitrate, the issues in dispute, and the resolution of those issues, and will also evaluate which jurisdiction has had the greatest involvement with the parties and the action.⁸

Uniform Act: In 16 and 17, the Uniform Act provides that an application for confirmation and enforcement may be made in any court of competent jurisdiction within the state. According to 17: "The making of an agreement . . . providing for arbitration in this State confers jurisdiction on the court to enforce the agreement under this Act and to enter judgment on an award thereunder." In short, if parties enter into an agreement to arbitrate in a state that has adopted the Uniform Act (and the Federal Act does not apply), the award will be enforceable in that state's courts.

Section 18 of the Uniform Act provides that applications for enforcement of arbitration awards may be made to a court of the county in which the arbitration hearing was held. If the hearing is held in another state, the application is made to a court where the adverse party resides or has a place of business. If neither of those provisions apply, application may be made to the court of any county within the state.

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Federal Act: The proper method for seeking to enforce an arbitration award under the Federal Act is to file a motion for confirmation in the appropriate court. That court must grant the motion and enter judgment on the confirmation order unless the opposing party files a timely motion to vacate, modify or correct the award.⁹ Section 13 of the Federal Act designates the papers that a party moving for an order to confirm an award must file with the clerk when seeking to have judgment entered on the order. That section requires that the following be filed: (1) the arbitration agreement; (2) all papers dealing with the

selection or appointment of additional arbitrators or extensions of time; (3) the award itself; and (4) each notice, affidavit or other paper upon which the application to confirm the award is based.

Uniform Act: The Uniform Act, like the Federal Act, specifies that upon submission of an award to a court, the court shall confirm the award and enter judgment on the award, absent a timely motion to vacate, modify or correct the award.¹⁰ Since the Uniform Act itself provides that arbitration agreements made in the particular state are enforceable in that state's courts, it does not require that the parties include such a provision in their agreement. However, because of the wide scope of the Federal Act and the possibility that interstate commerce may be involved in some aspect of the agreement between the parties, it would be prudent for all arbitration agreements or clauses (even those which do not appear to involve interstate commerce) to include language stating that the award is intended to be "final and binding and enforceable in any court of competent jurisdiction".

The Uniform Act does not require that the parties file any particular documents in connection with an application to confirm, vacate, modify or correct an award. Section 16 simply requires that all applications be made by motion consistent with local law or court rule. Upon entry of judgment, however, the clerk must include, as part of the judgment roll, documents nearly identical to those required under the Federal Act.

Under the Federal Act, a party seeking to enforce an arbitration award must do so within one year after the award is made. However, nothing prevents a successful party from seeking to enforce the award immediately upon its issuance.¹¹ Unless the unsuccessful party has filed a proper motion to vacate, modify or correct the award (within the time required, as discussed below) the court must enter a judgment confirming the award.

The Uniform Act does not specify a time frame within which a party seeking to enforce an arbitration award must apply for confirmation. However, separate state statutes of limitation may impose time limits. More importantly, in light of how broadly courts have construed the "interstate commerce" phrase in the Federal Act, it would be wise to seek enforcement as soon as possible, and certainly no later than one year after the award is issued.

Modifying an Award

In some cases, you may wish to vacate part or all of an award entered against you or you may wish to ask that an award be modified or corrected. Both the Federal and Uniform Acts provide for this.

A party's ability to vacate an award is not open-ended. 9 U.S.C 10 states that an order vacating the arbitration award may be entered only where: (a) the award was procured by corruption, fraud, or other undue means; b) there was evident partiality or corruption among the arbitrators; c) the arbitrators were guilty of misconduct by refusing to postpone the hearing upon sufficient cause, by refusing to hear pertinent and material evidence or by engaging in any other misbehavior which prejudiced the parties; or (d) the

arbitrators exceeded their powers or so improperly executed them that a mutual, final and definite award on the subject matter was not made. Similar bases for moving to vacate the arbitration award are set forth in the Uniform Act, 12.

Under both Acts, a party may seek to modify or correct an award, but only where: (a) there is evidence of a material miscalculation of figures or a material mistake in a description of a person, place or thing referred to in the award; (b) the arbitrators have awarded on a matter not submitted to them (unless the matter does not affect the merits); or (c) there is an error in the form of the award, not affecting the merits.

In light of these narrow grounds for vacating, modifying or correcting an award, the scope of judicial review is extremely limited and courts will not examine the merits of the decision except to the extent that the award exceeds the agreement of the parties.¹² A district court enforcing an arbitration award does not engage in de novo review of the award, but may reverse or modify the award only on the grounds specified in the Act.¹³ Arbitration awards are presumed to be based on proper grounds.¹⁴ Under the Federal Act, the procedures to be used to vacate, modify or correct the award are found in 12, which provides that notice of a motion seeking such relief must be served within three months after the award is filed or delivered. Note that this is nine months earlier than the time when an enforcement motion must be filed.

If a party fails to file a motion to vacate, modify or correct within three months and the successful party in the arbitration timely seeks to enforce the award, the party opposing confirmation and entry of judgment may not move to vacate, modify or correct the award and may not even defend the award on grounds that could have been the basis for a timely motion.¹⁵ Right is Waived In effect, if an unsuccessful party fails to move rapidly to challenge an award, it waives (or at least risks waiver of) its right to have a court intervene on its behalf.¹⁶ The Uniform Act requires a party seeking an order vacating, modifying or correcting the award to file its motion within 90 days of delivery of a copy of the award. If the basis for the motion to vacate is corruption, fraud or other undue means, however, the party only need file the motion within 90 days of the time the party knew or should have known of the grounds for the motion.

Under both the Federal and Uniform Acts, an entry of judgment confirming an arbitration award will have the same force and effect as a judgment entered in a court initiated litigation.¹⁷ This means that the successful party in an arbitration can use the judgment confirming the award to execute against the unsuccessful party's assets (by using all of the means available to a successful litigant in a judicial proceeding).

Once the successful party (the "judgment creditor") obtains a judgment on the arbitration award, that party may wait for the unsuccessful party (the "judgment debtor") to voluntarily comply or may seek an order of execution from the court. An order of execution (often in a standard, prescribed format) directs a sheriff to seize the property of the debtor. In Missouri, for example, execution orders may be directed to and executed in any county within the state.¹⁸ If execution is sought against property in a state other than that in which the judgment was entered, the execution will be governed by the other

state's statute on the execution of foreign judgments. Most states have adopted some version of the Uniform Enforcement of Foreign Judgments Act (Uniform Enforcement Act) or the Revised Uniform Enforcement of Foreign Judgments Act, an abbreviated version of the Uniform Enforcement Act. Under 2 of the Uniform Enforcement Act, the judgment creditor registers the judgment by filing an authentic copy of it in a court of the other state. As soon as registration occurs, the court may direct a sheriff to attach available property of the judgment debtor. Sale of property cannot occur, however, until the new court enters a final judgment, and this may require a hearing. Final judgment call be entered automatically, without a hearing, if the judgment debtor fails to respond after the court obtains personal jurisdiction or, if personal jurisdiction is not possible, after the court mails notice of the enforcement proceedings to the judgment debtor. Under the Uniform Enforcement Act, a state court can execute the judgments not only of other state courts, but of federal courts as well.

Conclusion

While winning an arbitration award may not immediately end the dispute, particularly where the unsuccessful party refuses to voluntarily comply with the award or seeks to vacate, modify or correct the award, streamlined rules are in place to enforce awards in federal and state courts. This makes arbitration a particularly valuable tool for conflict resolution, especially when compared with the alternative of litigation in the federal or state court systems.

ENDNOTES

1 Thirty-four states and the District of Columbia, have enacted some version of the Uniform Act, including: Alaska, Arizona, Arkansas, Colorado, Delaware, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Carolina, South Dakota, Texas, Vermont, Virginia and Wyoming. If you want to enforce an arbitration award in a state that has not adopted the Uniform Act (and the Federal Act does not apply), you should first consult the appropriate state statute.

2 9 U.S.C. @1 et seq. 3 Pennsylvania Eng. Corp. v. Islip Res. Recovery A, 710 F. Supp. 456, 461 (E.D.N.Y. 1989).

4 See for example, Enameling Corp. v. General Bronze Corp., 434 F.2d 330 (5th Cir. 1970) (contract for Purchase of construction materials involved interstate commerce where parties were citizens of different states and transaction necessitated crossing state lines); *Petition of Provost Lefebvre, Inc.*, 105 F. Supp. 757 (S D.N.Y. 1952) (shipment of wool within the same state still involved interstate commerce because instructions for shipment came from outside the state); *Starr Electric Co. v. Basic Construction Co.*, 586 F. Supp. 964 (M@D.N.C. 1982) (interstate commerce was involved in a construction contract where building supplies came from out-of-state suppliers).

5 *Bunge Corp. v. Perryville Feed & Produce*, 685 S.W.2d 837, 839 (MO. banc 1985).

6 The provisions of 9 in the Federal Act imply that the failure to state that judgment may be entered on the award may mean that a court will not enforce it. But even if the arbitration agreement between the parties does not contain an express provision regarding entry of judgment, the court in which enforcement is sought is likely to read such a provision into the agreement. *I/S Stavborg v. National Metal Converters, Inc.*, 500 F.2d 424, 426-7 (2nd Cir. 1974) (based on the arbitration agreement, it was clear that parties intended for the arbitration award to be final and binding and not to be tried de novo in any court, state or federal). In addition, the parties' adoption of the American Arbitration Association (AAA) rules (or any other rules of an arbitration organization which contains language similar to AAA Commercial Arbitration Rule 47c, stating that 'Parties to these rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof') may be so construed. *Dan River Inc. v. Cal-Togs Inc.*, 451 F. Supp. 497, 501 (S.D.N.Y. 1978) (although the arbitration agreement contained no provision on consent to an entry of judgment, incorporation of an earlier AAA Commercial Arbitration Rule virtually identical to Rule 47c satisfied 9 U.S.C.9). To avoid any risk, however, at least in arbitration agreements covered by the Federal Act, a provision that any award will be "final and binding and may be enforced in any court of competent jurisdiction" should be included. Once the parties agree that the arbitration award will be final and binding, they implicitly consent to enforcement of the award in court. *Pennsylvania Eng Corp.*, supra, note, 3, at 456, 460 (E.D.N.Y. 1989); *Ruby-Collins, Inc. v. City of Huntsville, Ala.*, 748 F.2d , 573, 576 (11th Cir. 1984).

7 *Bunge Corp.*, supra, note 5, at 837, 839-40; *State ex rel. St. Joseph Light & Power Co. v. Donelson*, 631 S.W.2d 887 (Mo. App 1982); *Monte v. Southern Delaware County Authority*, 321 F.2d 870, 874 (3rd Cir. 1963).

8 *Motion Picture Laboratory Technicians Local 780, I.A.T.S.E v. McGregor & Wenier, Inc.*, 804 F.2d 16, 18 (2nd Cir. 1986); *Central Valley Typographical Union, No. 46 v. McClatchy Newspapers*, 762 F.2d 741, 744 (9th Cir. 1985); *J. V.B. Industries, Inc. v. Federated Dept. Stores, Inc.*, 684 F. Supp. 22, 24 (E.D.N.Y. 1988). Regardless of the agreement or the intent of the parties, however, 9 of the Federal Act does not provide an independent legal or jurisdictional basis for the court to act. It is only a special venue provision designed to allow the parties to choose the court in which to enforce their arbitration award, *Stroh Container Co. v., Delphi Industries, Inc.*, 783 F.2d 743, 47 n.7 (8th Cir. 1986); *General Atomic Co. v. United Nuclear Corp.*, 655 F.2d 968, 970 (9th Cir. 1981). Because federal courts, unlike state courts, are courts of limited jurisdiction whose authority to decide a particular case is constrained by statute, mere agreement by parties to enforce an award in federal court does not necessarily mean the particular federal court can act. Before a federal court can act, the parties must show that the case involves an interpretation or question of federal law (28 U.S.C. 1331) or arises out of a dispute between parties from different states and involves more than \$50,000 (28 U.S.C. 1332). Merely because the arbitration is under the Federal Act does not provide an independent basis for federal question jurisdiction. *Pennsylvania Eng, Corp, v., Islip Red. Recovery*

A., 710 F. Supp, 456, 460 (E.D.N.Y. 1989). A similar problem could arise if the parties designate a state court that does not have sufficient connection with the arbitration to obtain jurisdiction. Parties to an arbitration agreement should carefully analyze jurisdictional issues if they intend to designate a particular federal or state court for enforcement. In drafting an arbitration agreement or clause, it would be best simply state that the arbitration award "may be enforced in any court of competent jurisdiction."

9 *Supra*, note 2, at 9, 13.

10 Uniform Act, 11, 14.

11 *RPJ Energy Fund Management v. Collins*, 552 F. Supp. 946 (D. Minn. 1982)

12 *Coast Trading Co. v Pacific Molasses Co.*, 681 F.2d 1195, 1197-98 (9th Cir. 1982).13 *Ibid.*; *Parsons & Whittemore Alabama Machinery and Services Corp. v. Yeargin Const. Co. , Inc.*, 744 F.2d 1482, 1484 (11th Cir. 1984); *Boise Cascade v. United Steelworkers of America*, 588 F.2d 127, 128 (5th Cir. 1978).

14 *Saturday Evening Post Co., v. Rumbleseat Press, Inc.*, 816 F.2d 1191, 1197 (7th Cir. 1987). In rare cases, some courts have subjected arbitration awards to a generalized abuse of discretion or breach of public policy standard under either the courts' inherent judicial power or under a broad interpretation of 9 U.S.C. 10(d), prohibiting arbitrators from exceeding their powers. *Seymour v. Blue Cross/Blue Shield*, 988 F.2d 1020 (10th Cir. 1993); *Jenkins v. Prudential-Bache Secur., Inc.*, 847 F.2d 631 (10th Cir. 1988).

15 *Sanders Midwest, Inc. v. Midwest Pipe Fabricators, Inc.*, 857 F.2d 1235, 1237-8 (8th Cir., 1988) (party may not raise grounds in defense of motion to confirm awards after the party failed to file a timely motion to vacate on these grounds). Accord, *Florasynth, Inc. v. Pickholtz*, 750 F.2d 171, 174-77 (2nd Cir. 1984); *Intern U. of Operating Eng. v. Centor Contractors*, 831 F.2d 1309, 1311 (7th Cir. 1987). But see *Chauffeurs, Teamsters, Etc. v., Ruan Transport Corp.*, 473 F. Supp. 298 (N.D. Ind. 1979) (where the court concluded that 9 U.S.C. 12 prohibits only the filing of untimely independent motions to vacate, modify or correct an award, but does not prevent a party from raising such issues after the three month period in order to defend against a motion to confirm).

16 *Piccolo v. Dain, Kalman & Quail, Inc.*, 641 F.2d 598 (8th Cir. 1981).

17 *Parsons*, *supra*, note 13, at 1482.

18 R.S., Mo., 513.035.

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