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What is a “Reasoned” Arbitration Award?

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It is not unusual for an arbitration agreement to require, expressly or impliedly, a “reasoned award.” Indeed, that is very likely. And if the parties have stipulated that any award is to be “reasoned,” an arbitrator who fails to satisfy that requirement arguably is exceeding his/her powers by rendering an award in a non-compliant form, thereby making it vulnerable to vacatur under FAA § 10(a)(4). So what is a “reasoned” award?

In *Smarter Tools, Inc. v. Chongqing SENCI Import & Export Trade Co.*, 2019 U.S. Dist. LEXIS 50633 (S.D.N.Y. Mar. 26, 2019), it was undisputed that the parties had requested a “reasoned award,” but the award in question was found lacking in that regard.

The underlying dispute concerned sales by SENCI (a Chinese company) to STI (a Virginia corporation) of thousands of a particular model gas-powered inverter generator. STI maintained that it had required that the generators be compliant with both EPA and California air standards, but that they were not. SENCI disputed both points. STI claimed that because the generators were not compliant, it was (i) forced to end sales of the generators in the U.S. and (ii) fined $507,000 for selling non-compliant generators in California. *Id.* at *2. STI also alleged that SENCI

unilaterally cancelled previously-placed orders for generators. This was also denied. It was undisputed, however, that STI failed to pay SENCI for some of the delivered generators. *Id.*

The purchase orders for the generators provided for arbitration of disputes in New York "under the International Commercial Dispute Resolution Proceedings of the [AAA]." *Id.* at *3. Accordingly, SENCI commenced arbitration to recover over $3 million owed for delivered generators. *Id.* STI counterclaimed, alleging that "many of the generators received were defective" and non-compliant with California and EPA (national) standards. *Id.* On that basis, STI sought to recover for (i) the fine it paid to California, (ii) costs associated with storing and returning unsaleable generators, (iii) lost profits, and (iv) damage to STI's "goodwill." *Id.* at *3.

The arbitrator awarded SENCI approximately $2.4 million, considering that to be the net balance due after credit for generators that were returned to SENCI, commenting that SENCI's claims were "well-founded and supported by the evidence." *Id.* at *4.

In contrast, the arbitrator gave short shrift to STI's counterclaims, in effect dismissing them entirely on the basis that (i) he did not find evidentiary support for STI's claims and (ii) he did not find the testimony of STI's expert witness to be credible (and he therefore "excluded" that testimony). *Id.* at *4-*5. But, among other things, the award "ma[de] no finding as to whether any generators provided by SENCI were defective or non-compliant, nor whether SENCI unilaterally cancelled scheduled deliveries." *Id.* at *5.

On ensuing cross-motions to confirm and to vacate, the Court recognized that its review of the award should be extremely deferential to the arbitrator, and that "[o]nly a 'barely colorable justification for the outcome reached' by the arbitrator is necessary to confirm" an award. *Id.* at *6. Indeed, the Court noted that an award should be confirmed if a ground for the arbitrator's decision "can be inferred from the facts of the case." *Id.*, *citing D.H. Blair & Co., Inc. v. Gottdiener*, 462 F.3d 95, 110 (2nd Circuit 2006). The Court furthermore acknowledged that a party seeking to vacate an arbitral award has a very high burden of persuasion. *Id.* at *6.

STI had moved to vacate the award on the basis that, among other things, "the arbitrator exceeded its authority in failing to issue a reasoned award…" *Id.* at *7. The Court recognized that an arbitrator generally need not explain the rationale for an award, but that parties may contract to require arbitrators to issue more detailed awards. *Id.* at *7-*8. It was undisputed that the parties had requested a reasoned award in this instance. *Id.* at *8.

The rule in the Second Circuit is that a "reasoned award" is something more than a line or two of unexplained conclusions, "but something less than full findings of fact and conclusions of law on each issue raised before the panel." *Id.* at *8, *citing Leeward Const. Co., Ltd. v. Am. Univ. of Antigua – College of Medicine*, 826 F.3d 634, 640 (2nd Circuit 2016). Therefore, what was required was the basic reasoning on the central issue or issues raised, but not an exploration of every argument made by the parties. *Id.* at *8. The Court concluded that the award in question did not meet that standard "because it contains no rationale for rejecting STI's

claims." *Id.* at *8.

The Court pointed in particular to the arbitrator's conclusory dismissal of STI's counterclaims without describing a basis for that decision. See *Id.* at *9. The Court opined that "the arbitrator was not obliged to discuss each piece of evidence presented by STI, [but] he must at least provide some rationale for the rejection of STI's overall argument for [SENCI's] liability." *Id.*

The Court furthermore noted that precedent in the Southern District holds that "an arbitrator exceeds his or her powers when the arbitrator renders a form of award that does not satisfy the requirements the parties stipulated to in the arbitration agreement." *Id.* at *10. In this case the parties agreed that the award should be "reasoned," but the award in question was not.

However, the Court concluded that the proper remedy was not *vacatur* of that award, but rather to remand the matter to the arbitrator "so that he can issue a 'reasoned award' in accordance with the parties' agreement." *Id.* at *13-*14. The Court thus determined that a remand for clarification of findings would better facilitate the purpose underlying arbitration: "to provide parties with efficient dispute resolution, thereby obviating the need for protracted litigation." *Id.* at *13, citing *T. Co. Metals, LLC v. Dempsey Pipe & Supply, Inc.*, 592 F.3d 329, 342 (2d Cir. 2010).

We note that the "reasoned award" requirement is ubiquitous, either based on an express provision in the operative arbitration clause or on the adoption, and thus incorporation by reference, of the rules of a principal arbitration administrative organization. *See*, *e.g.*, LCIA

Arbitration Rules Art. 26.2 (“The Arbitral Tribunal shall make any award in writing and, unless all parties agree in writing otherwise, *shall state the reasons* upon which such award is based.”); ICC Arbitration Rules Art. 32(2) (“The award *shall state the reasons* upon which it is based.”); SIAC Arbitration Rule 32.4 (“The Award shall be in writing and *shall state the reasons* upon which it is based unless the parties have agreed that no reasons are to be given.”)

Notably, the Commercial Arbitration Rules of the American Arbitration Association present an exception. *See* AAA CAR-46(b) (“The arbitrator need not render a reasoned award unless the parties request such an award in writing prior to appointment of the arbitrator or unless the arbitrator determines that a reasoned award is appropriate.”) Indeed, even the international arbitration rules of the same organization, administering under the name International Centre for Dispute Resolution, require a reasoned award. *See* ICDR Arbitration Rules Art. 30(1) (“The tribunal *shall state the reasons* upon which an award is based, unless the parties have agreed that no reasons need be given.”)

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