Review of New York Federal Petitions for Confirmation of Arbitral Awards Shows Swift Resolutions and Certainty of Awards

By Tim McCarthy, David Hoffman, and Ryham Ragab

Introduction

To allay any possible concern that American litigiousness could make New York a difficult venue for expeditious confirmation of arbitral awards,[1] the authors undertook a review of post-award proceedings in the United States District Court for the Southern District of New York, under the auspices of the Arbitration Committee of the New York City Bar Association. This review of the 200 cases decided since 2005 reveals that post-award proceedings generally are decided by the Southern District expeditiously, with an average time from petition to final judgment of 42 weeks for all arbitrations. For awards in international arbitrations, the average time from petition to final judgment was shorter, at 35 weeks. Additionally, and in keeping with New York law's and American federal law's deference to arbitral decisions, the Southern District confirms the overwhelming majority of awards presented to it.[2]

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The Research

Petitions to confirm or vacate arbitration awards adjudicated by the United States District Court for the Southern District of New York ("SDNY") were collected and reviewed for the period from the start of 2005 through year-end 2011. The petitions reviewed involved all sorts of arbitral awards, including awards arising from domestic commercial arbitrations, international arbitrations, labor, securities, admiralty and insurance arbitrations. The international awards included awards issued by both *ad hoc* and institutional tribunals in London, Paris, Hong Kong and Stockholm to name but a few. The arbitral institutions and providers involved included the American Arbitration Association, the International Chamber of Commerce ("ICC") International Court of Arbitration, the Financial Industry Regulatory Authority, the Judicial Arbitration and Mediation Service, the Society of Maritime Arbitrators, regional centers around the world, and industry-specific institutions.

The data collected included the type of arbitrations; whether the petition sought confirmation or vacatur of the award; whether the petition was opposed; whether the award was in fact confirmed or vacated; and centrally, the time from filing of the initial petition to an order of confirmation or vacatur, and then final judgment.

The United States generally is pro-arbitration, and its statutory *lex arbitri* provides very narrow grounds for nullifying arbitral awards. The Federal Arbitration Act ("FAA") applies to both domestic and international arbitration awards. Reflecting the stated policy priorities of U.S. and New York law, the FAA limits the intervention of courts in the results of arbitration, thus upholding the parties' agreement to arbitration.[3]

The Results

Distribution of Awards and Proceedings

As noted, the arbitrations that gave rise to the post-award proceedings reviewed involved a wide range of subject matters. Of the 200 petitions reviewed, the largest number were labor and employment arbitrations, which accounted for 68 post-award proceedings. In keeping with New York's role as a preferred seat for international arbitration, international arbitrations accounted for 45 post-award proceedings, or almost one-quarter of the total. Reflecting New York's position as a center of finance and trade, 25 of the post-award petitions were brought upon awards in securities arbitrations, and 17 were brought in admiralty cases. Insurance and reinsurance proceedings accounted for 18 of the petitions reviewed. Domestic commercial arbitrations, somewhat surprisingly, resulted in only 27 petitions, or just over 10 percent of the total.

Relief Sought and Frequency of Opposition

In keeping with usual arbitral practice, the majority of the petitions presented to the Southern District during the period studied sought confirmation rather than vacatur of an arbitral award. Specifically, 136 of those petitions were for confirmation, while 64 were for vacatur. Most of the petitions heard by the Southern District were opposed, but a significant minority were unopposed: Out of the 200 petitions, 54 (or over one-quarter) were unopposed, with the remaining 146 being contested.

Frequency of Confirmation, Partial Confirmation, and Denial of Confirmation

Both New York and American federal law maintain a policy of deference to arbitral decision-making,[4] and the results of the Southern District post-award proceedings during the period studied reflect this policy. Of the 200 proceedings reviewed, only 15 resulted in a complete denial of confirmation. The arbitral awards at issue were wholly confirmed in 136 of the proceedings, and partially confirmed in another 8 cases. Eleven proceedings concluded with the

entry of an order granting some other kind of relief other than denial of confirmation—including most often instances in which a petition seeking vacatur was denied, but no order of confirmation was entered.

Awards in almost all categories of arbitrations enjoyed roughly the same high level of deference. The outliers were found in post-award proceedings arising out of domestic commercial arbitrations, in which 5 out of 27 petitions—or almost 20%—resulted in a denial of confirmation or the granting of a motion for vacatur. However, international arbitrations enjoyed a very high rate of confirmation, with 40 out of 45 petitions—or approximately 90%—being confirmed in whole or in part. With regard to the five international awards that were denied confirmation or vacated, one award was vacated due to an untimely disclosure of a conflict of interest by the Chairman of the tribunal and another was denied confirmation because the governing forum selection clause provided for confirmation proceedings only in Bulgaria. The remaining three international awards were denied confirmation due to lack of U.S. personal jurisdiction over the respondent.

In sum, the few denials of confirmations found by the study arose from plain errors of administration, a clearly mistaken choice of venue, or simple lack of U.S. personal jurisdiction over the respondent upon the petition. Tellingly, not a single international arbitral award was denied confirmation by the Southern District on the ground that the arbitrators' decision involved a manifest disregard of applicable law (a widely circulated shibboleth regarding U.S. *lex arbitri*). Thus, it appears from the results of the study that international arbitral awards may be presented to the Southern District for confirmation with a very high degree of confidence, provided that jurisdiction is proper.

Insurance and reinsurance arbitration awards were uniformly confirmed, with zero denials of confirmation in 18 cases. Labor and employment awards were denied confirmation in only 2 of 68 cases, and only 1 securities award was denied confirmation, out of 25 such petitions. In admiralty cases, similarly, only 2 of 17 awards were denied confirmation.

Time from Petition to Final Judgment

The key metric that the project sought to discern was the time taken from the filing of a petition for confirmation or vacatur until the entry of a final, enforceable judgment by the Court. Across all of the 200 Southern District proceedings reviewed, and across all sorts of arbitrations, the average time from petition to final judgment was 42 weeks, or just over three calendar quarters. This average varied across different categories of arbitrations. Admiralty proceedings were the shortest of all, at 27 weeks. Petitions resulting from international arbitrations took the second-shortest length of time to resolve, at 35 weeks. Insurance and reinsurance petitions took an average of 38 weeks, and squarely in the middle were domestic commercial arbitrations, averaging 41 weeks from petition to final judgment. Labor and employment post-award proceedings took an average of 47 weeks. Securities arbitrations resulted in the lengthiest post-award proceedings, averaging 56 weeks.

For many years, New York has traditionally been among the most favored seats for international arbitrations, along with London and Paris.[5] In recent years, Singapore, Hong Kong, and Dubai have also become leading options. Similar data regarding post-award confirmation proceedings in these other jurisdictions are not readily available. Our study indicates that parties choosing venues for enforcement of international awards can be confident that New York courts are likely to consider their petitions promptly and that their awards are highly likely to be confirmed.[6]

Conclusion

The results of the study strongly indicate that the Southern District's swiftness in resolving post-award proceedings, as well as New York and federal law policy favoring deference to arbitral decision-making, are compelling incentives for parties to arbitrate in New York and, when jurisdictional prerequisites are met, to submit their post-award petitions for confirmation to the Southern District.

Endnotes

1. *See, e.g.*, Final Report of the New York State Bar Association's Task Force on New York Law in International Matters ("Task Force Report"), at 32; Loukas A. Mistelis, *Arbitral Seats: Choices and Competition*, Wolters Kluwer Arbitration Blog, Nov. 26, 2010 (listing New York third as a chosen seat of arbitration, behind London and Paris).
2. The authors identified cases in the Southern District involving the confirmation or vacatur of awards since filing of cases by ECF became obligatory. First, decisions were identified through Lexis or Westlaw by boolean searching, *e.g.*, "arbitrat! w/p (confirm! or vacat!) w/p award." Relevant decisions were then categorized by type of arbitration proceeding. The ECF docket sheet for each case was then examined and the time periods from petition to judgment were calculated. While there may have been cases during the relevant time frame that were not captured by this methodology, there is no indication that any omitted materials would change the conclusions of this report.
3. *See* Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq.*
4. *See* Task Force Report, at 36 (recounting policy and citing cases); *David L. Threlkeld & Co., Inc. v. Metallgesellschaft Ltd (London)*, 923 F.2d 245, 248 (2nd Cir. 1991).
5. *See* Prof. Christophe Seraglini, *et al.*, *The battle of the seats: Paris, London or New York?* (Practical Law Company ed., 2011).
6. In keeping with these findings, the International Chamber of Commerce has opened an office in New York in 2012. In 2013, the New York International Arbitration Center will open, providing additional infrastructure for the conduct of proceedings in New York.

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