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Supreme Court Limits Federal Court Jurisdiction Under the Federal Arbitration Act

April 4, 2022

In a little-noticed recent decision, a nearly-unanimous U.S. Supreme Court significantly narrowed the jurisdiction of the federal courts to confirm, vacate or modify arbitration awards under the Federal Arbitration Act (FAA). The decision, *Badgerow v. Walters*, issued March 31, 2022, sets a jurisdictional trap for the unwary attorney.

Some background: Section 2 of the FAA, enacted in 1922, requires enforcement of "a contract . . . involving [interstate] commerce" to settle controversies by arbitration. Section 4 of the FAA provides that a party "may petition any United States district court which, save for such agreement, would have jurisdiction under title 28" to compel arbitration. Section 5 allows the same court to appoint an arbitrator if the parties fail to do so. Sections 9, 10 and 11 allow a federal court "in and for the district within which such award was made" to confirm an arbitration award, or to vacate or modify an arbitration award on narrow grounds. Most states have enacted similar statutes. State courts are also obligated to enforce the FAA.

In *Hall Street Assoc. v. Mattel, Inc.*, decided in 2008, the Supreme Court held that the FAA does not itself establish federal subject matter jurisdiction, but only venue. Thus, the petitioner must identify an "independent jurisdictional basis" for the relief requested under the FAA. The next year, in *Vaden v. Discover Bank*, the Court held that federal jurisdiction over a motion to compel arbitration under Section 4 can be established by "looking through" the petition to determine whether the underlying arbitration involves diversity of citizenship or a federal question.

In *Badgerow v. Walters*, the Court held that "look-through" federal question jurisdiction is not available under Sections 9, 10 or 11 of the FAA. The petitioner in *Badgerow* argued that the arbitration award should be vacated under Section 10 because it was tainted by fraud, and respondent asked the court to confirm the award under Section 9. Although diversity was lacking, the district court found it had "look through" jurisdiction under *Vaden* because the underlying claim raised a federal question. The Fifth Circuit affirmed. Parsing the differences in language between the FAA sections, the Supreme Court reversed. Eight of the nine justices joined in the opinion. Only soon-to-be-retired Justice Breyer dissented.

Badgerow requires an action to confirm, vacate or modify an arbitration award to be filed in state court unless the petition shows that (1) there is complete diversity of citizenship between the parties and at least $75,000 in dispute; or (2) the action to confirm, vacate or modify the arbitration award itself raises a question of federal law. Neither the FAA nor the issues in the underlying arbitration will be sufficient to satisfy (2). The *Badgerow* Court does not identify any federal claims that would satisfy (2). Instead, the Court explains—counter-intuitively—that a challenge to the arbitrator's application of federal law generally states a claim only under state contract law. This is so, reasons the Court, because arbitration is a creature of contract: "[C]laims between non-diverse parties involving federal law . . . may have originated in the arbitration of a federal-law dispute. But the underlying dispute is not now at issue" in a petition to confirm, vacate or modify the award. "Rather, the application concerns the contractual rights provided in the arbitration agreement, generally governed by state law. And adjudication of such state-law contractual rights—as this Court has held in addressing non-arbitration settlement of such state-law contractual rights—typically belongs in state courts."

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In his dissent, Justice Breyer denied the result was mandated by the statutory language, and questioned the practicality of the line the majority drew: "Where the parties' underlying dispute involves a federal question (but the parties are not diverse), the majority holds that a party can ask a federal court to order arbitration under Section 4, but it cannot ask that same court to confirm, vacate or modify the order resulting under that arbitration under Section 9, 10 or 11. But why prohibit a federal court from considering the results of the very arbitration it has ordered and is likely familiar with? Why force the parties to obtain relief—concerning arbitration of an underlying federal-question dispute—from a state court unfamiliar with the matter?"

If you have questions about *Badgerow v. Walters* or arbitration generally, please contact the authors or your Miller Canfield attorney.