

Justices Leave Federal Jurisdiction over Enforcement of Arbitration Awards Unclear

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The Federal Arbitration Act (FAA) requires federal courts to enforce agreements to arbitrate that impact interstate commerce. The FAA and its body of case law are binding on state courts and many states have adopted similar statutes. In *Hall Street Assoc. v. Mattel, Inc.*, 552 U.S. 576 (2008), the Supreme Court held that the FAA does not itself establish federal subject matter jurisdiction, but only venue. Thus, a petitioner must identify an "independent jurisdictional basis" for relief requested under the FAA. In *Vaden v. Discover Bank*, 556 U.S. 49 (2009), the Court held that federal question jurisdiction over a petition to compel arbitration under FAA Section 4 can be established by "looking through" the petition if the underlying arbitration involves a federal question.

In *Badgerow v. Walters*, 596 U.S. 1 (2022), the Court distinguished *Vaden*, holding that "look-through" federal jurisdiction is not available under Sections 9, 10 or 11 of the FAA, which provide for filing of a petition to confirm, vacate or modify an arbitration award. The Court concluded that the underlying federal question merged into the arbitration award, leaving before the federal court only the enforcement of an agreement to arbitrate, which is governed by the state law of contract. After *Badgerow*, a federal court has jurisdiction over a post-award petition only if there is complete diversity among the parties and the jurisdictional amount is met, or if the petition itself somehow raises a federal question. Where federal jurisdiction is lacking, post-award proceedings belong in state court, even if a federal court originally ordered arbitration under Section 4.

Last month, in *Smith v. Spizzirri*, 144 S.Ct. 1173 (2024), the Court unanimously held that when a federal court orders arbitration in a pending proceeding, Section 3 of the FAA requires the court to stay the litigation, rather than dismiss it. Section 3 provides that when a dispute in a pending federal lawsuit is subject an agreement to arbitrate, the court "shall on application of one of the parties stay the trial of the action until such arbitration has been had" Plaintiff in *Spizzirri* filed suit in state court and defendant removed, relying on the court's federal question jurisdiction. But—after the district court stays proceedings under Section 3—can the parties return to the federal court in to confirm, vacate, or modify the arbitration award, relying on FAA Sections 9, 10 or 11?

Shortly before the Supreme Court decided *Spizzirri*, one federal court of appeals answered this question "no". In *SmartSky Networks, LLC v. DAG Wireless, Ltd.*, 93 F.4th 175 (4th Cir. 2024). The district court granted defendant's motion to stay the action pending arbitration under FAA Section 3, and later granted plaintiff's motion to confirm the arbitration award and denied defendants' motions to vacate or modify the award. The Fourth Circuit reversed, holding that under the reasoning of *Badgerow*, the district court lacked federal question jurisdiction over the motions to confirm, vacate or modify the arbitration award. While *Badgerow* involved Section 4, the court saw no reason to distinguish Section 3 from Section 4.

Spizzirri does not mention *Badgerow*. But in a portion of the opinion, which is arguably dicta, the Court comments that after staying proceedings under Section 3, a federal court "with proper jurisdiction" retains jurisdiction to appoint an arbitrator under Section 5, to enforce an arbitrator's subpoena under Section 7, and to "facilitate[e] recovery on an arbitral award" under Section 9. The Court concludes that "[k]eeping the suit on the court's docket makes good sense in light of this potential ongoing role, and it avoids costs and complications that might arise if a party were required to bring a new suit and pay a new filing fee to invoke the FAA's procedural protections." 144 S.Ct. at 1178. Thus, whether

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a federal court has jurisdiction to confirm, vacate or modify an arbitration award may depend on whether arbitration was compelled under Section 3 or Section 4. The Court will need to resolve the apparent tension between *Badgerow* and *Spizzirri* in the future.

In the meantime, should you have any questions about arbitration, please contact your Miller Canfield attorney or the authors of this alert.