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CPLR 7511(b)(1)(iii): Court of Appeals Establishes Criteria for Determining Whether Arbitrator Has Exceeded His Powers

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the court concluded that if the ten-day period is indeed a statute of limitations, a party must be given a *full* ten days in which to apply for a stay of arbitration.

A contrary decision would presumably frustrate the purpose of permitting service by certified mail. For, to insure timely receipt, a party would often be compelled to post his moving papers at least three days before the ten-day period expired. Or, service by mail would be abandoned in favor of personal delivery.

CPLR 7511(b)(1)(iii): Court of Appeals establishes criteria for determining whether arbitrator has exceeded his powers.

In marked contrast to earlier hostility,[220] courts have demonstrated an extreme reluctance to interfere with the arbitral process,[221] except to scrutinize the arbitration agreement itself.[222] Recognizing the contractual right of parties to choose arbitration as the proper forum in which to settle their disputes,[223] thereby waiving the substantive and procedural law of the state,[224] courts have been similarly hesitant in vacating an arbitrator's award.[225] Indeed, it is generally accepted that an award cannot be vacated for errors of law or fact.[226] The CPLR reflects this approach inasmuch as the grounds for vacating an award focus primarily on the integrity of the participants[227] and the arbitrator,[228] rather than on the wisdom of the award. Even CPLR 7511 (b)(1)(iii), which provides for vacation if the arbitrator has exceeded his power, has been emasculated by an earlier decision that to fall within the ambit of this subsection, a contract must be given an irrational construction by the arbitrator: one that, in effect, makes a new contract for the parties.[229] Quite surprising, therefore, is the Court of Appeals' decision vacating an arbitrator's award in *Granite Worsted Mills v. Aaronson Cowen, Ltd.*[230]

220 *See* 8 WK&M ¶ 7501.01.

221 *See, e.g.*, Astoria Medical Group v. Health Ins. Plan, 11 N.Y.2d 128, 182 N.E.2d 85, 227 N.Y.S.2d 401 (1962).

222 For a discussion of the "threshold questions," *i.e.*, those to be decided by the court, see 7B McKINNEY'S CPLR 7503, commentary at 488-89 (1963).

223 Astoria Medical Group v. Health Ins. Plan, 11 N.Y.2d 128, 182 N.E.2d 85, 227 N.Y.S.2d 401 (1962).

224 Spectrum Fabrics Corp. v. Main St. Fashions, 285 App. Div. 710, 139 N.Y.S.2d 612 (1st Dep't 1955).

225 *See, e.g.*, Torano v. MVAIC, 15 N.Y.2d 882, 206 N.E.2d 353, 258 N.Y.S.2d 418 (1965).

226 Wilkins v. Allen, 169 N.Y. 494, 62 N.E. 575 (1902).

227 CPLR 7511(b)(1)(i): "corruption, fraud or misconduct in procuring the award."

228 CPLR 7511(b)(1)(ii): "partiality of an arbitrator appointed as a neutral."

229 National Cash Register Co. v. Wilson, 8 N.Y.2d 377, 171 N.E.2d 302, 208 N.Y.S.2d 951 (1960).

230 25 N.Y.2d 451, 255 N.E.2d 168, 306 N.Y.S.2d 934 (1969), *rev'g* 29 App. Div. 2d 303, 287 N.Y.S.2d 765 (1st Dep't 1968).

In *Granite*, the parties had provided that the buyer was not entitled to consequential damages in the event of breach. In fact, damages were limited to the difference in value on the date of delivery between the goods specified and those actually delivered. The total price of the goods was $984. Nevertheless, the buyer submitted a claim for $7,000 and the arbitrator awarded $3,780.51.

In vacating the award, the Court of Appeals established the rule that where it is clear "from the face of the award itself or from an examination of the computations made by the arbitrator that [he] has included an element of damages specifically excluded by the contract . . . ,"[231] the award must be vacated. Since the maximum award under the contract, even if the goods were valueless on the date of delivery, would be $984, the Court held that the arbitrator had exceeded his power.

The dissent, reiterating the conclusion of the appellate division,[232] stressed the fact that the arbitrator could have found that the clause limiting damages was unconscionable and therefore refused to enforce it. And, such an interpretation would not constitute a "perverse misconstruction"[233] since the arbitrator possessed such power,[234] and the criterion on judicial review is whether the award is rational — not whether a court would have reached a similar conclusion.[235]

Since arbitrators need not state the reasons behind their award,[236] courts should be cautious in attempting to pinpoint the exact basis for the arbitrator's decision. As pointed out by the dissenting opinion, the courts should be guided by whether a rational construction can be accorded the arbitrator's award. Although such an approach may appear to be dangerous, it is a "logical outgrowth of the tendency to make the arbitrator the judge of his own jurisdiction once validity of the arbitration clause is determined."[237]

The issue in *Granite* is yet unsettled since the Court of Appeals has recently granted a motion for reargument.[238] In view of the soundness of the dissenting opinion, it is quite conceivable that it will prevail.

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231 25 N.Y.2d at 456, 255 N.E.2d 170, 306 N.Y.S.2d at 938.

232 29 App. Div. 2d 303, 287 N.Y.S.2d 765 (1st Dep't 1968). *See The Quarterly Survey*, 43 ST. JOHN'S L. REV. 345 (1968).

233 *See* S&W Fine Foods, Inc. v. Office Employees Int'l Union, 8 App. Div. 2d 130, 185 N.Y.S.2d 1021 (1st Dep't 1959).

234 *See, e.g.*, Staklinski v. Pyramid Elec. Co., 6 N.Y.2d 159, 160 N.E.2d 78, 188 N.Y.S.2d 541 (1959).

235 *Id.*

236 Bay Ridge Medical Group v. Health Ins. Plan, 22 App. Div. 2d 807, 254 N.Y.S.2d 616 (2d Dep't 1964).

237 8 WK&M ¶ 7511.18, at 75-170 & 75-171.

238 26 N.Y.2d 881, 258 N.E.2d 215, 309 N.Y.S.2d 932 (1970).