Anchin Alert

Anchin, Block & Anchin LLP
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Arbitrator's Award Over Gas Sensors Sold During 'Earn Out' Period Confirmed

Although arbitration awards can be challenged in court, these awards will only be overturned by the court in rare and limited cases. Courts will vacate or refuse to confirm an arbitration award if the award is the product of fraud, corruption, or serious misconduct by the arbitrator.

In order to have an arbitration award vacated, it is usually necessary to demonstrate at least one of the following in court: (1) there was a serious conflict of interest on the part of a neutral arbitrator; (2) the award was not final and thus failed to constitute a definitive end to the issue; or (3) the award covered an issue that was outside the scope of the arbitration agreement.

Arbitrator fraud or misconduct claims are rare because actual evidence of arbitrator misconduct is hard to uncover. Furthermore, when courts are faced with motions to vacate an arbitration award, they will generally only look at the procedural details of the arbitration, not the substantive details. This means that courts won't look at the merits of the case unless the claim involves the award itself being unreasonable or unethical. Ultimately, fraud is very unlikely to be a winning argument in court unless there is definitive evidence. An arbitrator's binding decision isn't fraudulent just because it's unfavorable.

This rationale is also why, you are unlikely to get a court to overturn an arbitration award simply because the arbitrator interpreted the law differently from how a court might have. Even clear misinterpretations of law (but not manifest disregard for the law) or fact sometimes will not justify an arbitration award being overturned. This is the significance of the term binding in binding arbitration.

In a case[1] recently reported on by the *New York Law Journal*, an arbitrator's $6.3 million award over gas sensors sold during an earn-out period was confirmed by the courts.

Inficon Inc. makes high-end sensors that semiconductor makers use to detect and identify gases in vacuum environments used to make microchips. Infection acquired Verionix Inc. for $500,000 plus earn-out payments dependent on total unit sales for Verionix gas sensors during the previous four years. As the earn-out period drew to a close, Inficon sold fewer than 40 sensors. An arbitral panel's award found Inficon breached its earn-out obligations, that Inficon's merchantability claim was not "credible" and awarded Verionix damages of over $6,000,000.

Denying Inficon's motion to vacate the award, the district court granted Verionix confirmation thereof. The court found that the arbitral panel did not manifestly disregard the law by awarding Verionix damages, nor did the panel deny Inficon fundamental fairness by refusing to consider evidence of merchantability. Further, the court rejected Inficon's challenge that the award's calculation violated New York law as to lost profit calculations for new businesses. Inficon's own erroneous financial projections were used to calculate damages and the court barred Inficon's manifest disregard of the law challenge based on the improper reliance of its financial projections.

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[1] Inficon Inc. v. Verionix Inc., 15 Civ. 8044 (April 19)

Courts are often reluctant to overturn arbitrator awards since doing so can reduce the usefulness of arbitration as an alternative dispute resolution mechanism. Arbitration is less expensive, less time-consuming, and less formal than court-based dispute resolution. Even if a court would have decided the case differently under existing law, it will still usually enforce an award.

Members of Anchin, Block & Anchin's Litigation, Forensic and Valuation Services Group are well suited to serve as arbitrators in large corporate disputes. Often, the issue being arbitrated has to do with a post-closing purchase price adjustment or the calculation of a post-closing earn-out, an issue that requires deep financial understanding.

For more information, please contact Anthony Bracco, David Beckman, Margaret Kolb, Dennis Neier, or Raymond Dragon of Anchin's Litigation, Forensic and Valuation Services Group at 212.840.3456.

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