

News & Types: Commercial, Competition & Trade Update

Challenger to Arbitration Award in More Trouble

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Practices: Commercial, Competition & Trade, Litigation

In our December 4, 2017 Commercial, Competition & Trade Update, we discussed a recent 7th Circuit case in which the losing party in an arbitration unsuccessfully challenged the arbitration award. (*Hyatt Franchising, L.L.C. v. Shen Zhen New World I, LLC, and Shen Zhen New World Investment (USA) Inc.*, 7th Circuit Court of Appeals, No. 17-2071, decided November 28, 2017) As noted in the Update, Judge Easterbrook clearly showed impatience with a loser agreeing to binding arbitration and then needlessly prolonging the dispute by what seemed to be a frivolous challenge to the award.

There is an interesting postscript to this case. The 7th Circuit issued another opinion on January 12, 2018 in this same case regarding the imposition of attorneys' fees on the loser, Shen Zhen. (*Hyatt Franchising, L.L.C. v. Shen Zhen New World I, LLC, and Shen Zhen New World Investment (USA) Inc.*, 7th Circuit Court of Appeals, No. 17-2071, decided January 12, 2018). Recall in the first case that Judge Easterbrook said that the loser, Shen Zhen, should pay the legal fees of the winning party, Hyatt Franchising. But Judge Easterbrook did not think it necessary to include this provision in the decision, relying on a fee-shifting provision in the underlying contract that required the loser to pay the legal fees of the winner. But he went on to say that Hyatt should apply for a formal award if Shen Zhen did not pay.

Shen Zhen did not pay Hyatt's attorneys' fees, forcing Hyatt to apply for a formal award of attorneys' fees. Shen Zhen's excuse was that Hyatt had to prevail in a separate arbitration dealing with legal fees pending in the American Arbitration Association (AAA). But Shen Zhen had asked the AAA to dismiss the arbitration on legal fees claiming it was a judicial matter.

In addition to taking this dishonest and inconsistent position, Shen Zhen had filed an action with the federal court in the Central District of California to relieve it of the obligation to comply with the award. Noted Judge Easterbrook, ". . . [I]n other words, Shen Zhen thinks that a district court in California can and should countermand a final decision of the Seventh Circuit. . . . If one round of litigation on top of arbitral proceedings is too much, as our opinion concluded, it is hard to find words to describe the conduct of a party that refuses to accept not only the arbitrator's decision but also a final judicial outcome and scours the nation in search of a different opinion."

Judge Easterbrook came down hard on Shen Zhen. He ordered Shen Zhen to pay Hyatt's attorneys' fees as a sanction for "unnecessary and pointless litigation."

He also came down hard on Shen Zhen's counsel, the Los Angeles law firm of Cohen & Lord. Calling the legal strategy "scorched earth" tactics, Judge Easterbrook gave Shen Zhen's counsel until January 26, 2018 to show cause why they should not be held jointly and severally responsible for the legal fees.

In our previous Update, we concluded that challenging arbitration awards will become harder, at least in the 7th Circuit. But Shen Zhen and its counsel did not get the message and further infuriated Judge Easterbrook in prolonging the arbitration and litigation even more.