

ARBITRATION: TO DO OR NOT TO DO

In a recent U.S. Supreme Court decision, *Hall Street Associates, LLC v. Mattel, Inc.*, the Court imposed certain restrictions on arbitration provisions that businesses had been incorporating into their mandatory arbitration provisions.

Business arbitration provisions oftentimes expressly included expanded grounds for judicial review of arbitration awards where the findings of fact were not supported by substantial evidence, or if the arbitrator's conclusions of law were erroneous.

In the *Hall* case when the arbitrators ruled against the plaintiff based on an apparent error of law, the plaintiff moved the district court to vacate the award.

The Supreme Court ruled that vacatur was not available for errors of law. The Court held that under the Federal Arbitration Act ("FAA") the exclusive grounds to set aside an award were those contained in sections 10 and 11 of the FAA, and the parties' arbitration agreement improperly tried to expand upon those grounds.¹

Since expanded grounds for review is not available, state court grounds for setting aside an award, such as manifest disregard of the law, may be lost since the FAA trumps state arbitration law whenever issues of interstate commerce are involved. With the elimination of the parties' freedom to structure their arbitration agreement, arbitration provisions in business contracts need review to determine where jurisdiction to review arbitration awards should be challenged and whether mandatory agreements meet ones business needs. The attorneys at Mackall, Crouse & Moore PLC are available to assist you in reviewing your decision.

¹ Grounds for Vacating Arbitration Awards in Federal Court.

1. The award was procured by corruption, fraud, or undue means;
2. There is evident partiality or corruption in an arbitrator;
3. Arbitrators are guilty of misconduct in refusing to postpone the hearing, refusing to hear evidence material to the controversy, or any other misbehavior which prejudices a party's rights; or
4. The arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award was not made.



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