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CONFIRMATION OF OUT-OF-STATE ARBITRATION AWARDS UNDER MARYLAND'S UNIFORM ARBITRATION ACT

Gary I. Strausberg†

This Article examines the difficulties inherent in the confirmation of out-of-state arbitration awards under the Maryland Uniform Arbitration Act. The author recommends that either the General Assembly amend the Act to provide expressly for such confirmations in Maryland courts, or the courts, in the absence of such legislation, nevertheless should allow confirmation of such awards.

I. INTRODUCTION

The high cost and time consuming nature of court litigation have made the arbitration clause¹ an increasingly prevalent provision in commercial contracts and have made arbitrations between citizens of different states more common.² Under the Maryland Uniform Arbitration Act,³ a party may have an arbitration award reduced to judgment by petitioning a court to confirm the award.⁴ The Act, however, does not expressly proscribe or allow confirmation of out-of-state awards. Suppose, for example, a Pennsylvania seller and a Maryland buyer have placed an arbitration clause in their contract or purchase order. Further imagine that following a dispute between these parties and after the appropriate hearing, an arbitration award is made in Pennsylvania

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1. A standard arbitration clause as suggested by the Commercial Arbitration Rules of the American Arbitration Association provides:

Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any Court having jurisdiction thereof.

2. See generally Comisky & Comisky, *Commercial Arbitration — Panacea or Nightmare*, 47 TEMP. L.Q. 457 (1974). Arbitration agreements were regarded at common law as revocable. This revocability has been changed by legislation. See Lorenzen, *Commercial Arbitration — International and Interstate Aspects*, 43 YALE L.J. 716 (1934). For a Maryland case supporting the common law revocability doctrine, but holding that the doctrine has been statutorily abrogated, see *Bel Pre Medical Center, Inc. v. Frederick Contractors, Inc.*, 21 Md. App. 307, 320 A.2d 558 (1974), *rev'd on other grounds*, 274 Md. 307, 334 A.2d 526 (1975).

3. MD. CTS. & JUD. PROC. CODE ANN. §§3-201 to -234 (1974).

4. *Id.* §3-227. Jurisdiction is limited to "a court of equity." *Id.* §3-201(b).

in favor of the Pennsylvania seller. Will the Pennsylvania seller be able to enforce his award in Maryland by petitioning the Maryland court to confirm the award? The answer, undisclosed by the statutory language, is explored in this article.

II. BACKGROUND: GENERAL ENFORCEMENT OF ARBITRATION AGREEMENTS

Although the Federal Arbitration Act⁵ governs agreements to arbitrate where the contract evidences a transaction in interstate commerce,⁶ a federal court may nonetheless not have jurisdiction. In such event, the jurisdiction of a state court will have to be invoked. A federal court may lack jurisdiction because a party seeking enforcement of an arbitration agreement must have an independent basis of federal jurisdiction, separate from the arbitration agreement and the Federal Arbitration Act.⁷ In the example above, where jurisdiction would depend upon diversity, jurisdiction would be lacking were the contract amount to fail to exceed the \$10,000 jurisdictional amount requirement.⁸

Confronted by an absence of jurisdiction in the federal court, our hypothetical Pennsylvania seller would be forced to resort to a state court to enforce the award. He may, however, find that he is barred in the state court as well. The Maryland Uniform Arbitration Act provides:

An agreement providing for arbitration *under the law of the state* confers jurisdiction on a court to enforce the agreement and enter judgment on an arbitration award.⁹

If the agreement in our hypothetical provided that it were governed by Maryland law, then the section would clearly apply. On the other hand, if the agreement were to be governed by Pennsylvania law, or any other state's law, the applicability of the above provision would become questionable. But then the seller may be precluded from petitioning any court in Maryland to enforce the arbitration agreement. Could a state court tolerate such a result? The answer is probably, "no."

The current language in the Maryland Uniform Arbitration Act is derived from older language in the Maryland Code.¹⁰ Previously, Maryland courts had jurisdiction to enforce arbitration awards only if the agreement provided for arbitration "in this state."¹¹ The

5. 9 U.S.C. §§ 1-14 (1976).

6. *Id.* § 2.

7. *Id.* § 4. *Metro Indus. Painting Corp. v. Terminal Const. Co.*, 287 F.2d 382 (2d Cir.), *cert. denied*, 368 U.S. 817 (1961).

8. 28 U.S.C. § 1332(a) (1976) (specifically).

9. MD. CTS. & JUD. PROC. CODE ANN. § 3-202 (1974) (emphasis added).

10. MD. ANN. CODE art. 7, § 16 (1968).

11. *Id.*

present language gives Maryland courts jurisdiction if the agreement provides for arbitration "under the law of the state."¹² This may actually be a further restriction on jurisdiction in Maryland. It may even mean that Maryland courts do not have jurisdiction to enforce arbitration awards unless the contract specifies that in the event of arbitration, Maryland law will control. Yet, given the Federal Arbitration Act's seal of statutory approval of arbitration, the limited jurisdiction of the federal courts,¹³ and the supremacy clause of the United States Constitution,¹⁴ a Maryland court would most likely enforce the agreement in our hypothetical.¹⁵

As long ago as 1837, the Court of Appeals of Maryland acknowledged that "submissions to award . . . by agreement without suit, are familiar to the law since its earliest history."¹⁶ However, in *Bel Pre Medical Center, Inc. v. Frederick Contractors, Inc.*, the court of special appeals held that executory agreements for arbitration are not enforceable at common law.¹⁷ Perhaps, therefore, there can be no enforcement of the arbitration outside of the arbitration statute in Maryland.

III. CONFIRMATION OF THE ARBITRATION AWARD

Further hypothesize that the Maryland buyer, dissatisfied with the goods shipped, instituted action in Maryland against the Pennsylvania seller. The seller, in response, filed a petition to enforce the arbitration agreement. After the Maryland court ordered arbitration, which took place in Pennsylvania,¹⁸ an award was entered in favor of the Pennsylvania seller, who now seeks to convert his award to judgment in Maryland. The Maryland Uniform Arbitration Act provides that "[a] party may petition the court to confirm the award, . . . [t]he court shall confirm the award . . .,"¹⁹

12. MD. CTS. & JUD. PROC. CODE ANN. §3-202 (1974).

13. U.S. CONST. art. III, §1.

14. U.S. CONST. art. VI, cl. 2. The supremacy clause as used in the text, should be distinguished from the federal preemption doctrine. Under the former, where state and federal substantive policies conflict, the Federal Arbitration Act may govern a dispute in interstate commerce preempting potential applicability of a conflicting or nonconflicting state act. See *Bernhardt v. Polygraphic Co.*, 350 U.S. 198 (1950).

15. MD. CTS. & JUD. PROC. CODE ANN. §1-501 (1974). *Powles v. Dilley*, 9 Gill 222 (Md. 1850); *Bank of United States v. Merchants Bank of Baltimore*, 7 Gill 415 (Md. 1848).

16. *Shriver v. Maryland*, 9 G. & J. 1, 11 (Md. 1837).

17. *Bel Pre Medical Center, Inc. v. Frederick Contractors, Inc.*, 21 Md. App. 307, 320 A.2d 558 (1974).

18. The situs of the arbitration is determined by the place specified in the agreement of the parties. If no place is stated, the arbitrator may choose the place under the Rules of the American Arbitration Association. *Flower World of America, Inc. v. Whittington*, 39 Md. App. 187, 194, 385 A.2d 85, 89 (1978).

19. MD. CTS. & JUD. PROC. CODE ANN. §3-227 (1974).

and "[i]f an order confirming . . . an award is granted, a judgment shall be entered in conformity with the order. The judgment may be enforced as any other judgment."²⁰ From this language, it would appear that the Pennsylvania award holder can simply petition the Maryland court to confirm the award and enter judgment. But can he? The following discussion examines the viability of this conclusion.

IV. THE LEGISLATIVE ARENA

At this point, we are no longer dealing with invoking a Maryland court's jurisdiction to enforce an arbitration *agreement*, but rather the Pennsylvania seller is simply asking the court to confirm the out-of-state arbitration *award*. There is no common law prohibition against this type of suit. As has been previously mentioned, the Maryland Uniform Arbitration Act neither explicitly proscribes nor permits confirmation of awards rendered in other states. The pertinent language of the Act provides:

Confirmation of award by court.

- (a) *Petition*. — A party may petition the court to confirm the award.
- (b) *Action by court*. — The court shall confirm the award, unless the other party has filed an application to vacate, modify, or correct the award within the time provided in §§ 3-223 and 3-224.
- (c) *Proceedings when award not confirmed*. — If an application to vacate, modify or correct the award has been filed, the court shall proceed as provided in §§ 3-223 and 3-224.²¹

Two states have adopted statutory provisions explicitly authorizing the confirmation of out-of-state awards. The first state was Michigan;²² the second was California.²³ Michigan's provision provides that "a court of competent jurisdiction may confirm an arbitration award rendered in another state and enter judgment thereon."²⁴ California's provision states that "if a petition . . . is duly served and filed, the court shall confirm the award as made, whether rendered in this state or another state."²⁵

20. *Id.* § 3-228.

21. *Id.* at § 3-227. See also Md. Rule E2 (providing for conformation of awards rendered pursuant to agreements to arbitrate to which the Maryland Act "is inapplicable").

22. MICH. COMP. LAWS ANN. § 600.5033 (Supp. 1978).

23. CAL. CIV. PROC. CODE § 1286 (Supp. 1978).

24. See note 22 *supra*.

25. See note 23 *supra*.

It is possible to surmise that the Michigan and California Legislatures were reacting to a line of New York cases,²⁶ which held that an award obtained outside the state could not be reduced to judgment in the forum state by confirmation of the award in the absence of specific statutory authority. A distinction must be drawn between enforcement of an out-of-state award by a common law action for judgment on the award, and a statutory mechanism to confirm the award and then reduce it to judgment. The former has often been allowed as an ordinary common law action.²⁷ It is the latter procedure which the New York cases refused to follow when presented with an out-of-state award. Unfortunately, the reasoning of these cases falters upon close analysis.

V. THE JUDICIAL ARENA

In the first of the New York cases, *In re California Packing Corp.*,²⁸ the petitioner filed an application for an order that arbitration take place in California, pursuant to an agreement between the parties. The court refused to compel the respondent to arbitrate in California, "for the reason that no award taken without the state may be the basis of a judgment."²⁹ This holding is at odds with a recent Court of Special Appeals of Maryland decision, which held that a court may compel arbitration outside of the state in accordance with the parties' agreement.³⁰

In *United Artists' Corp. v. Gottesman*,³¹ a petition to confirm a Massachusetts award in New York was denied "[i]n view of the decision of *Skandinaviska Granit Aktiebolaget v. Weiss*."³² No other reason for the denial was given. One would assume that the *Skandinaviska* case held that an out-of-state award could not be confirmed and entered as a judgment within the state. A more detailed and precise analysis of the *Skandinaviska* decision,³³ however, reveals that the court was not dealing with the issue of confirmation of an out-of-state award as presented to the *Gottesman*

26. See notes 28, 31, 32, 38 & 40 and accompanying text *infra*.

27. *Edmundson v. Wilson*, 108 Ala. 118, 19 So. 367 (1896); *Gilbert v. Burnstine*, 255 N.Y. 348, 174 N.E. 706 (1931); *Taylor v. Basye*, 119 Wash. 263, 205 P. 16 (1922). *But see Wright Graham & Co. v. Hammond*, 41 Ga. App. 738, 154 S.E. 649 (1930); *Sanford Laundry v. Simon*, 285 N.Y. 488, 35 N.E.2d 182 (1941) (if the contract provides solely for statutory enforcement, then action on award is not allowed).

28. 121 Misc. 212, 201 N.Y.S. 158 (Sup. Ct. 1923).

29. *Id.*

30. *Flower World of America, Inc. v. Whittington*, 39 Md. App. 187, 194, 385 A.2d 85, 89 (1978).

31. 135 Misc. 92, 236 N.Y.S. 623 (Sup. Ct. 1929).

32. *Id.* at 93, 236 N.Y.S. at 624.

33. 226 A.D. 56, 234 N.Y.S. 202 (1929).

court. In *Skandinaviska*, the defendant, a New York resident, agreed to arbitration in Sweden. The Swedish award and judgment were held not to be enforceable in New York because the defendant was not personally served with notice of the proceedings in Sweden sufficient to comport with due process requirements.³⁴ The *Skandinaviska* case, therefore, can only be read to hold that foreign awards or judgments, improperly obtained in the jurisdictional sense, will not be confirmed by the forum state.³⁵ Whether a court will only examine an award to make sure that proper jurisdiction was established in the award rendering state, as with judgments of sister states under the full faith and credit clause,³⁶ is uncertain, because technically "[t]he award after all is not a judgment, and not entitled to full faith and credit."³⁷

The *Gottesman* court's reliance on *Skandinaviska* was unfounded. A similar error occurred in *United Electrical, Radio & Machine Workers v. General Electric Co.*,³⁸ in which the New York court stated that it was without power to enter a judgment upon an award rendered in a Massachusetts arbitration, and as authority for its ruling it relied on *California Packing Corp.* It will be recalled that the *California Packing Corp.* court reasoned that it could not enforce an agreement to arbitrate in another state because the out-of-state award could not serve as the basis for a judgment within the state. The enforcement of such an agreement, however, has been held appropriate in Maryland.³⁹

The point for discussion is that the *California Packing Corp.* court refused to enforce an agreement to arbitrate in another state. The rationale for the court's refusal was that an out-of-state award could not serve as a basis for a subsequent judgment within the forum state. That rationale, however, rests on a false premise because a court can enforce an agreement notwithstanding the parties' agreement to arbitrate the matter in another state. In *Landerton Co. v. Public Service Heat & Power Co.*,⁴⁰ for example, the parties agreed to a Connecticut arbitration. The arbitrator suggested that a more convenient locale for him would be New York because

34. *Id.* at 60, 234 N.Y.S. at 207.

35. See RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 220 (1971); Lorenzen, *Commercial Arbitration — Enforcement of Foreign Awards*, 45 YALE L.J. 39 (1935).

36. See *Williams v. North Carolina*, 325 U.S. 226, 229 (1945) (to make a sister state's judgment a judgment in another state, the sister must have jurisdiction).

37. Stanger, *Interstate Enforcement of Arbitration Awards and Judgments*, 8 CLEV. MAR. L. REV. 559 (1959).

38. 193 Misc. 146, 83 N.Y.S.2d 768 (1948), *aff'd*, 275 A.D. 908, 90 N.Y.S.2d 273 (1949).

39. *Flower World of America, Inc. v. Whittington*, 39 Md. App. 187, 385 A.2d 85 (1978).

40. 118 N.Y.S.2d 84 (Sup. Ct. 1952).

that was where his office was located. The parties agreed to have the arbitration held in New York, but concomitantly agreed that Connecticut was to have continuing jurisdiction. Because of this agreement, the New York court refused to confirm the award and stated that, as the parties agreed, it should have been confirmed in Connecticut.⁴¹

As has been shown, none of the cases intimating that a court cannot confirm an out-of-state award provides a sound rationale for such a prohibition. If these were the only cases that shed any light on the issue, one could conclude that the language of the Maryland Uniform Arbitration Act impliedly proscribes confirmation of out-of-state awards by failing explicitly to prescribe it. Michigan and California seemingly felt compelled to legislate on the matter given the existence of the New York cases as the sole judicial authority at that time. There exists, however, judicial authority more recent than the line of New York cases discussed above, on the basis of which one could conclude that confirmation of an out-of-state award under the Maryland Act is allowed.

Before discussing this judicial authority, the question arises whether the inability to confirm directly an out-of-state award actually poses serious difficulties for the award holder. The award holder could probably confirm the award and reduce it to a judgment in the award rendering state, and then seek to register the judgment in the sister state as a matter of full faith and credit.⁴² The dilemma, however, is that the award holder must take at least one extra procedural step, and it will require more time and may also be more expensive because of the requirement of retaining both local and out-of-state attorneys. In addition, to register a sister state's judgment in the circuit court for many Maryland counties, one must file a Declaration with a Motion for Summary Judgment giving the defendant notice and an opportunity to respond. This makes the procedure even more cumbersome and costly. In point of fact, such a multi-stepped procedure is counterproductive to the very purpose of arbitration — a speedy, informal, and inexpensive resolution of the dispute. Direct confirmation of out-of-state awards by a one-step procedure is thus much more desirable.

Recognizing the desirability of a reduction to judgment of an out-of-state award, some courts have approved it. Despite the line of New York cases to the contrary, a more recent New York case departs from those cases. In *Swan v. Sit'N Chat Restaurant, Inc.*,⁴³ the court held that an out-of-state New Jersey award could be

41. *Id.* at 86.

42. See MD. CTS. & JUD. PROC. CODE ANN. §§10-701 to -709 (1974).

43. 43 A.D.2d 949, 352 N.Y.S.2d 31 (1974).

confirmed in New York, where the agreement between the parties provided for New Jersey arbitration in accordance with the American Federation of Musicians Bylaws under which confirmation of the award could be made in New York. The departure from the previous line of cases is a slight one, if at all, because the case is distinguishable from its predecessors. By implicitly adopting the American Federation of Musicians Bylaws, the parties agreed in effect that the award, although obtained in New Jersey, could be confirmed in New York. Thus, the court was merely effectuating the contractual intent of the parties. Nevertheless, at least to the extent that the parties so agree, the case stands for the proposition that an out-of-state award could be confirmed by the court.

It is well established that parties can consent ahead of time to the personal jurisdiction of a particular tribunal. The Supreme Court in *National Equipment Rental, Ltd. v. Szukhent* declared that "parties to a contract may agree in advance to submit to the jurisdiction of a given court."⁴⁴ Consequently, the Second Circuit in *In re Reed & Martin, Inc.* held that parties to a contract can consent not only to arbitration but also to having a judgment upon an arbitration award in one state entered in any other state court.⁴⁵ At least when the parties so intended, a court otherwise reluctant to confirm an out-of-state award under the language of the Maryland Uniform Arbitration Act should have its reluctance dispelled.

VI. CONSTITUTIONAL OVERTONES

To resolve any doubts, the Maryland General Assembly, like the legislatures in Michigan and California, should amend the Maryland Uniform Arbitration Act expressly to allow confirmation of out-of-state arbitration awards. Even in the face of legislative inaction, the Maryland courts should sanction such a course, the dictum and judicial gloss in the New York cases to the contrary notwithstanding. Arguably, simple confirmation of out-of-state awards is mandated constitutionally. State action that impedes the efficient flow of commerce between the states could be in violation of the commerce clause.⁴⁶ Refusing to allow direct confirmation of out-of-state awards may discourage an otherwise willing merchant, when the contract amount is relatively small, from proceeding with the interstate transaction because he knows that a dispute may lead to a costly resolution procedure. A speedy and economical enforcement process will promote interstate commercial activities.

44. *National Equipment Rental, Ltd. v. Szukhent*, 375 U.S. 311, 316 (1964). It is *in personam* jurisdiction that the court addresses. A party can neither confer nor divest a court of subject matter jurisdiction. Either it exists, or doesn't exist.

45. *In re Reed & Martin, Inc.*, 439 F.2d 1268, 1276 (2d Cir. 1971).

46. *E.g.*, *International Packers, Ltd. v. Hughes*, 271 F. Supp. 430, 432 (S.D. Iowa 1967).

Confirming an out-of-state award directly is tantamount to according the arbitration award rendered in a sister state full faith and credit as if it were a judgment. There is no good reason why a sister state's award should be accorded any less recognition than a judgment. A judgment, jurisdictionally or constitutionally invalid where rendered, will not be recognized. An award, similarly invalid, will also not be recognized. There is some authority, however, suggesting that a sister state's award ought to be treated differently. In *Benton v. Singleton*,⁴⁷ pursuant to voluntary arbitration between the parties, an award was made in a dispute over an agreement to speculate in cotton futures. The award holder sought to enforce his award in a sister state where it was regarded as a gambling debt contrary to the forum's public policy. The court refused to accord the award recognition, stating that an "award rendered in a sister state is not to be regarded as having the sanctity of a judgment of that character."⁴⁸ The rationale for the pronouncement was never adequately explained, leaving the implication that arbitrators do not stand on equal footing with judges, and therefore their decisions ought not have as much force. The point is that the parties voluntarily chose the arbitral forum, and as long as the arbitrator had competent jurisdiction and due process notice requirements were fulfilled, the award should stand on an equal footing with a judgment. The courts have already stated that arbitration awards should be confirmed absent fraud or mistake. As was stated by one commentator:

An arbitration award rendered in accordance with a modern statute is considered by the rendering state a final determination of the controversy. Reduction to judgment is only a formalistic device to ensure enforcement through judicial processes if necessary. It would seem therefore, that the validity of the award should be determined by the law of the rendering state and that the award should be accorded as much finality as the judicial machinery of the enforcing state for reducing the award to judgment permits.⁴⁹

Although there are cases to the contrary,⁵⁰ it has been long established that a sister state's judgment must be enforced as a

47. 114 Ga. 548, 40 S.E. 811 (1902).

48. *Id.* at 557, 40 S.E. at 815. Assuming, arguendo, the validity of the court's argument that an award can be accorded less recognition than a judgment, the question could then arise whether, if such award was made after court ordered arbitration, the award was a culmination of "judicial proceedings" within the meaning of the full faith and credit clause, necessitating full recognition.

49. Note, *Commercial Arbitration and the Conflict of Laws*, 56 COLUM. L. REV. 902, 914 (1956).

50. *Somportex Ltd. v. Philadelphia Chewing Gum Corp.*, 318 F. Supp. 161, 168 (E.D. Pa. 1970), *aff'd*, 453 F.2d 435 (3d Cir. 1970), *cert. denied*, 405 U.S. 1017 (1971).

matter of full faith and credit, even though to do so would violate the forum's public policy.⁵¹ As long ago as 1833 the Court of Appeals of Maryland held that if an award can be mechanically reduced to judgment in a sister state, then such judgment is entitled to full faith and credit.⁵²

Assuming the forum state can confirm the out-of-state award, either because of a statutory mechanism for its confirmation, or because it is deemed otherwise appropriate, the forum court ought not regard the award as necessitating any greater scrutiny — or judicial review — than an out-of-state judgment.⁵³

VII. CONCLUSION

Given the extensive movement of commerce across the state boundaries, in instances when the parties have resolved to arbitrate their disputes, an award should be accorded the same status irrespective of where it was rendered. Whether the award was made within the confines of the forum state, or outside its geographical boundaries, should be of no significance to the court whose jurisdiction is invoked to confirm the award. As long as the court has proper in personam jurisdiction, and as long as the award could not be challenged for invalidity in the award rendering state, the award should be confirmed.⁵⁴ The arbitration process would thus be well served, yet within the framework of the judicial process.

51. *Estin v. Estin*, 334 U.S. 541, 545 (1947); *Fauntleroy v. Lum*, 210 U.S. 230, 237 (1908); *Miller v. Kingsley*, 194 Neb. 123, 126, 230 N.W.2d 472, 474 (1975).

52. *Wernwag v. Pawling*, 5 G. & J. 500, 507 (Md. 1833).

53. Another state's judgment confirming an award should be enforceable *qua* judgment. The award should be viewed as merged into the judgment. *But see* *Island Territory of Curacao v. Solitron Devices, Inc.*, 489 F.2d 1313, 1318 n.4 (2d Cir. 1973).

54. See text accompanying note 49 *supra*.