

Consenting to AAA Arbitration is also Consenting to Incorporation of Those Rules into Your Agreement

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Publication Date: February 07, 2011

Be careful of what you agree to. Parties should be aware that an agreement to submit their dispute to the American Arbitration Association ("AAA") for resolution not only subjects them to arbitration pursuant to the AAA rules, but more importantly, to incorporation of those rules into their agreement as well. The Second Circuit recently held that an agreement to submit disputes to the AAA is properly construed as agreeing to arbitration pursuant to the AAA's rules, and to the incorporation of those rules into the parties' agreement.

In *Idea Nuova, Inc. v. GM Licensing Group, Inc.*, 617 F.3d 177 (2d Cir. 2010), the Second Circuit affirmed the dismissal of the plaintiff's complaint to vacate and modify four arbitral awards. Instead, the court confirmed the awards. The court held that by agreeing to submit disputes to "AAA arbitration for resolution," parties have incorporated the AAA's Commercial Arbitration Rules into their agreement. In the case at hand, Rule 48(c), which provides for judicial confirmation of arbitral awards, was incorporated into the agreement.

Plaintiff Idea Nuova entered into a consulting agreement ("Agreement") with defendant GM Licensing. A dispute arose as to the renewal of the Agreement, and defendant initiated arbitration by invoking the Agreement's dispute resolution provision. Three years, extensive hearings, and four arbitral awards later, plaintiff moved for vacatur or modification of the arbitral awards. Plaintiff argued that Federal Arbitration Act ("FAA") Rule 9 required the parties to consent to judicial confirmation of awards.* Hence, since the parties did not expressly agree that the arbitration would be "final and binding," the district court should review the dispute de novo. The district court rejected plaintiff's argument. Instead, the court explicitly stated that Rule 48(c), which provides for judicial confirmation of arbitral awards, was incorporated into the agreement when the agreement provided for arbitration pursuant to the AAA rules. Plaintiff appealed the decision.

In its appeal, plaintiff advanced two arguments supporting a district court's de novo review of any arbitral awards. First, the Agreement does not contain express language stating the parties' intent for the arbitration award to be "final" or "binding." Second, the parties did not consent to judicial confirmation of

any arbitral award, as required by FAA Rule 9. Furthermore, plaintiffs conceded that even if the court were to agree with the lower court, its agreement with GM provided for AAA arbitration but not AAA rules.

In its holding, the Second Circuit acknowledged that one way of consenting to judicial confirmation of an arbitral award was by expressly stating in an agreement that the arbitration was "final and binding." Moreover, the court affirmed the holding of the district court, that including such language in an agreement was not essential and that there are other ways of agreeing to judicial confirmation. For example, agreeing to arbitration pursuant to the AAA rules is sufficient to incorporate those rules into the agreement, including rules indicating consent to confirmation. Additionally, the court held that consenting to AAA arbitration is consenting to AAA rules. Therefore, by agreeing to AAA arbitration, plaintiff Idea Nuova had also agreed to AAA rules, including Rule 48(c), which provides for judicial confirmation of arbitral awards.

In sum, when drafting an agreement, parties should be aware that a provision that consents to AAA arbitration also subjects the parties to the AAA rules, including Rule 48(c), which provides for judicial confirmation of arbitral awards.

* Under section 9 of the FAA, a court has authority to confirm an arbitral award "[i]f the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration." A court must have the consent of the parties in order to have the authority to review an arbitration award. If the parties so consent, "an arbitral award is entitled to strong deference, and confirmation ordinarily is a summary proceeding that merely makes what is already a final arbitration award a judgment of the court."

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