What Controversy? — Calculating Amount In Controversy For Petitions To Confirm Or Vacate Arbitration Awards

MARK A. SCHWARTZ
URSULA A. TAYLOR

While the Federal Arbitration Act (the "FAA") provides a mechanism for arbitration participants to seek confirmation or vacatur of arbitration awards, the FAA does not provide an independent basis for federal court jurisdiction over such petitions. Parties may rely upon diversity jurisdiction to obtain a federal forum, but must satisfy the $75,000 "amount in controversy" requirement to do so. In a typical case (that is, one not arising out of a prior arbitration), calculation of the amount in controversy is usually fairly straightforward. However, in the context of petitions to confirm or vacate arbitral awards under the FAA, the issue is often less clear. Is the amount in controversy the amount sought in the underlying arbitration, the amount of the arbitral award, or some other figure? The following discussion addresses the various approaches courts have taken in determining whether the threshold amount has been satisfied in such petitions.

Petitions to Vacate Arbitration Awards

Federal courts have long struggled with the issue of how to measure the amount in controversy in petitions to vacate arbitration awards. In 1934, the Ninth Circuit held that the jurisdictional amount was satisfied in a petition to vacate an award of $0 because "[i]t is the amount in controversy which determines jurisdiction, not the amount of the award." *Am. Guar. v. Caldwell*, 72 F.2d 211 (9th Cir. 1934). Because more than $100,000 had been at issue in the arbitration, it was that "amount in controversy" that governed the jurisdictional question. *Id.* Significantly, though, the Ninth Circuit also relied on the fact that the district court had previously acquired diversity jurisdiction when the petitioner sought to confirm a prior award that exceeded the jurisdictional amount. *Id.* at 211. It is not clear, therefore, whether the Ninth Circuit in *American Guaranty* would have concluded that diversity jurisdiction existed based solely upon the amount sought in the underlying arbitration if the district court had not originally acquired jurisdiction over the previous motion to confirm.

Indeed, at least one district court within the Ninth Circuit has distinguished *American Guaranty* on the basis of this procedural posture. *Goodman v. CIBC Oppenheimer & Co.*, 131 F. Supp. 2d 1180, 1184 (C.D. Cal. 2001) (court lacked jurisdiction over motion to vacate because amount of arbitral award was below jurisdictional amount). Opinions from the Sixth and Eleventh Circuits appear to rely solely upon the amount of the arbitration award, not the amount at issue in the underlying arbitration, to determine whether the amount in controversy requirement has been satisfied. *Baltin v. Alaron Trading Corp.*, 128 F.3d 1466, 1472 (11th Cir. 1997) (no diversity jurisdiction where amount of award was below jurisdictional amount); *Ford v. Hamilton Invs., Inc.,* 29 F.3d 255, 260 (6th Cir. 1994) (same). But the *Baltin* and *Ford* decisions both highlighted the fact that the petition to vacate did not also seek to reopen the underlying claim asserted in the arbitration. *Baltin*, 128 F.3d at 1472 n.16 ("The [petitioners] did not request an award modification that would provide [the petitioners] with money. Instead, the [petitioners] sought merely to reduce or eliminate the arbitration award against them."); *Ford*, 29 F.3d at 260 (petitioner "never asked the district court to order that the arbitrators reopen his claim against [respondent]; all he sought from the district court was the vacation of an award that fell short of the jurisdictional amount by almost $20,000.") Thus, the Sixth and Eleventh Circuits in *Ford* and *Baltin* suggested that they might have adopted a different, hybrid approach if the petitioner had sought to reopen the arbitration and reassert underlying claims in excess of the jurisdictional amount.

Several courts have adopted such a hybrid approach, finding the jurisdictional amount satisfied where the party petitioning to vacate an award seeks to "reopen" the

arbitration and assert claims in excess of the jurisdictional amount. *See Peebles v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 431 F.3d 1320, 1325 (11th Cir. 2005) (district court had jurisdiction where petitioner sought to vacate arbitration award of less than $75,000 but also sought a new arbitration in which he could seek an amount that exceeded $75,000); *Sirotzky v. N.Y. Stock Exch.*, 347 F.3d 985, 989 (7th Cir. 2003) (citing *Bull HN Info. Sys., Inc. v. Hutson*, 229 F.3d 321, 329 (1st Cir. 2000)) ("the amount in controversy in a suit challenging an arbitration award includes the matter at stake in the arbitration, provided the plaintiff is seeking to reopen the arbitration"). And in *Theis Research, Inc. v. Brown & Bain*, 400 F.3d 659, 664-65 (9th Cir. 2004), the Ninth Circuit held that the district court had jurisdiction over a motion to vacate an arbitration award for $0 where the motion was filed contemporaneously with a complaint reasserting the claims previously lost in the underlying arbitration.

Petitions to Confirm Arbitration Awards

Courts have also adopted varying approaches in analyzing the amount in controversy for petitions to confirm arbitration awards. The Ninth Circuit in *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Moore*, 171 Fed. Appx. 545 (9th Cir. 2006), followed the "arbitration demand" approach when determining whether there was diversity jurisdiction in the context of cross-petitions to confirm and vacate an arbitration award for exactly $75,000, reasoning that "the amount in controversy of the 'underlying litigation' exceeded $75,000." *Id*. at 546. Other courts have similarly held that the amount in controversy is measured by the "difference between winning and losing the underlying arbitration." *See e.g., Doctor's Assocs., Inc. v. Puskaritz*, No. Civ. 3:05CV1834 (PCD), 2006 WL 1102762, at *2 (D. Conn. Apr. 26, 2006); *see also Doctor's Assocs, Inc., v. Stuart*, 11 F. Supp. 2d 221, 224 (D. Conn. 2004) (amount in controversy requirement satisfied in petition to confirm award of $0 where petitioner had successfully defended against claims in excess of the jurisdictional amount).

The Northern District of Texas has adopted the opposite approach, focusing on the amount of the arbitration award when considering the amount in controversy requirement. *Mannesmann Dematic Corp. v. Phillips Getschow Co.*, No. Civ. A. 3:00-cv-2324-G, 2001 WL 282796, at *2 (N.D. Tex. March 16, 2001) (jurisdictional amount not satisfied where net arbitration award was less than $75,000 even though claims at issue in arbitration exceeded $75,000, and even though panel had awarded attorneys' fees to both sides totaling $112,061 and $48,026, respectively).

A series of New York district court cases suggests yet another method. In those cases, the courts considered "the value of the award itself to the petitioner" when determining whether the amount in controversy requirement was satisfied. *N. Am. Thought Combine, Inc. v. Kelly*, 249 F. Supp. 2d 283, 285 (S.D.N.Y. 2003); *Wise v. Marriott Int'l, Inc.*, No. 06 Civ. 11439 (LAP), 2007 WL 2200704, at *4 (S.D.N.Y. July 30, 2007); *Sierra v. Bally Total Fitness Corp.*, No. 1:06-cv-01688-ENV-MDG, 2007 WL 1028937, at *3 (E.D.N.Y. Mar. 30, 2007). Under the "value of the award" approach, the amount in controversy is the amount by which the petitioner will benefit from the requested relief, which is typically the amount of the award itself. Wise, 2007 WL 2200704, at *4. However, in order to avoid prejudice to prevailing defendants wishing to confirm $0 awards, those courts recognize an exception to the "value of the award" approach, and focus in such cases on the amount at issue in the underlying arbitration. *See N. Am. Thought Combine, Inc.*, 249 F. Supp. 2d at 285-86; *Wise*, 2007 WL 2200704 at *4.

As these cases illustrate, courts have taken differing approaches to determining the amount in controversy in the context of petitions to confirm and vacate arbitration awards under the FAA. For corporate counsel, familiarity with courts' varying treatment of this issue will go a long way toward successfully securing a federal forum to bring petitions to confirm or vacate arbitration awards.

Mark A. Schwartz is a partner and Ursula A. Taylor is an associate at the law firm of Butler Rubin Saltarelli & Boyd LLP, a national litigation boutique based in Chicago. They specialize in complex commercial litigation, and provide clients with a full spectrum of litigation services ranging from counseling to representation to in-house training. The views expressed are personal to the authors.

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