

The Finality of Arbitral Awards: The U.S. Practices*

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With the advent of the Free Trade Agreement between Korea and the U.S. and an increase in trade volume between the two countries, the possibility of commercial disputes has escalated among international merchants. It has been well-known that arbitration as an alternative dispute resolution is an efficient way to resolve international commercial disputes. When arbitral awards are enforced in the judicial system, the court will inevitably have to be involved with the enforcement procedures. The court is a typical legal entity to confirm arbitral awards. Through a confirmation process, the winning party obtains the same legal status of final judgment rendered by the court. However, a winning party in arbitration will have to overcome a legal hurdle in the enforcement process of arbitral awards. This article aims to investigate how the courts control the arbitration practices and what the basic legal issues in the enforcement of arbitral awards are. The US Federal Arbitration Act is investigated, while relevant cases are reviewed and updated for legal analysis.

Key Words : Enforceability, Court Intervention, Finality of Arbitral Award

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I . Introduction

With the advent of Free Trade Agreement with the United States, the importance of business relationship between Korea and the U.S. has been increased more than ever before. Such increase in trade volume between the two countries has escalated the possibility of commercial disputes among the international merchants.

It has been well known that arbitration as an alternative dispute resolution is an efficient way to resolve international commercial disputes. The arbitration award has the same effect as the final judgment of the court by the arbitration law, and the international effect is guaranteed by the UN Convention, which is complicated not only in international trade disputes but also in modern society.¹⁾ As an alternative to litigation, however, arbitration can not exist completely independently of judicial supports because arbitral awards still need to be enforced in the judicial system.

In U.S. arbitration proceedings, arbitration award is the core procedure of arbitration proceedings.²⁾ When arbitral awards are enforced in the judicial system, the court will inevitably have to be involved with the enforcement procedures. Though the degree to which the court intervenes with the enforcement procedure is typically stipulated in the arbitration acts of most countries, the practicality of such intervention may vary among countries.³⁾

1) Han-Dong Shin, "A case study on the arbitration awards canceled by Korean Supreme Court" , 「Korean Association Of Arbitration Studies」 vol.21 no.1, 2011, p.33.

2) Chin Hyon Kim · Yongkyun Chung, "A Study of Vacating Arbitral Awards in the Harmony of Case Law with Statutory Law of United States", 「Korean Association Of Arbitration Studies」, vol.22, no.2, 2012, p.125.

3) 9 U.S.C.A. 9. Award of arbitrators; confirmation; jurisdiction; procedure. "If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made. Notice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident, then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other

With such variability in the level of court intervention, it is highly predictable that the U.S. practices in the court's intervention with the enforcement of arbitral awards are somewhat different from those in Korea. Considering these variances of legal practices among countries, an intensive review of the finality of arbitral awards in the U.S. will be helpful to provide guidelines on how much of the finality of arbitral awards an arbitration party can expect from the U.S. courts in enforcement of arbitral awards.

When the finality of arbitral awards is discussed on the issue of interactions between the arbitral tribunal and the court, threshold questions emerge not only as to how much court intervention threatens arbitral autonomy but also as to legal stability of arbitral awards in terms of double burdens put on the dispute resolution, one in arbitration process the other in judicial process for enforcement.⁴⁾In addition, the enforceability of arbitral awards is an essential factor in the establishment of credibility and reliability in the arbitration system.

The process of litigation has two phases in realizing a private party's rights and duties: judgment and enforcement. Arbitration effectively serves both judgment and enforcement process. Judgment by arbitration is conducted by non-litigation process, while its enforcement is performed through the compulsory execution proscribed in the litigation process. For the execution and realization of parties' rights and duties, arbitration may be depicted as "a hybrid process which encompasses both non-litigation process for arbitral awards and litigation aspects of compulsory enforcement."⁵⁾

The court is a typical legal entity to confirm arbitral awards. Through confirmation process the winning party obtains the same legal status of final judgement as rendered by the court. However, a winning party in arbitration may have to overcome a final hurdle in the enforcement process of arbitral awards.

process of the court."; Korean Arbitration Act, Article 35 (Effect of Arbitral Awards) An arbitral award shall have the same effect on the parties as a final and conclusive judgement of a court; Choong Lyong Ha, "A Comparative Study on the Roles of the Courts in Enforcement of Domestic Arbitral Awards: Korea and The U.S.," [Journal of Arbitration], vol.15. no.3, 2005, p.106.

4) Sung Woo Lim, "Legal Issues in the Intersection of Arbitration and Litigation", Symposium Proceedings for Practical Issues Surrounding the Newly Revised Arbitration Act of Korea, Office of Court Administration, 2016, p.105.

5) Choong Lyong Ha, *supra* note 86.

This article aims to investigate how the courts control the arbitration practices and what are the basic legal issues in enforcement of arbitral awards. The US Federal Arbitration Act is investigated and relevant cases are reviewed and updated for legal analysis.

II. Finality of Arbitral Awards

1. Legal Characteristics

Arbitral awards rendered by the arbitral tribunal are protected as final by most arbitration acts such as Federal Arbitration Act⁶⁾ and Korean Arbitration Act.⁷⁾ As stipulated in 9 USCA §9, once a final arbitral award is rendered the court must grant the order to confirm the arbitral award to be enforced in a relevant jurisdiction. However, according to the Federal Arbitration Act, the court may vacate the arbitral awards as following:

"In either of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration - (a) Where the award was procured by corruption, fraud, or undue means. (b) Where there was evident partiality or corruption in the arbitrators, or either of them. (c) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced. (d) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made."⁸⁾

The court may intervene with arbitration process by the will of the parties if the parties try to invalidate the arbitration agreement by litigation in the court. This kind

6) 9 U.S.C.A. 9.

7) Korean Arbitration Act, Article 35.

8) 9 USCA §10.

of intervention is different from the intervention exerted in the enforcement of arbitral awards in that the former is purely ignited with the free will of the arbitration parties while the latter is guaranteed and guided by the arbitration acts.⁹⁾

It seems that bringing about the court's intervention by their own will is not to their interest because they may lose their time and resources in litigation while the arbitration is being processed. Instead it would be better for the parties to be focused on the arbitration for better outcome in arbitral awards.

The court's intervention with arbitration is strictly abstained from reviewing the substantive merits of the arbitration. As the principle of courts' non-intervention is said to be limited to substantive arbitral awards, most of the challenges to arbitral awards have been made concerning vacate of arbitral awards, especially concentrating the existence of arbitration agreements.¹⁰⁾

2. Related Cases

In *SENECA NATION OF INDIANS, Petitioner v. State of NEW YORK, Respondent*, "Indian tribe filed petition and motion to vacate arbitration awards in favor of state, with respect to dispute concerning whether tribe was required to pay state revenue-sharing payments under terms of parties' gaming compact during compact's renewal period. State cross-petitioned to confirm arbitration awards."¹¹⁾ The federal district court granted the state's petition with holding that "1. deadline for serving notice of motion to vacate arbitration award was measured with respect to final award,

9) 9 U.S.C.A. 9; Korean Arbitration Act 35-37; There are two ways that the Korean courts can intervene with arbitration, either through parties' applications for setting aside or confirming arbitral awards. A different path to control the arbitration is to apply the provisions of arbitration act that existence of arbitral agreements can be reviewed based on the law of contract. It has been held that while a party can challenge the existence of arbitral agreement before arbitral awards, it is not relevant for the courts to intervene with the normal procedure of arbitration, Korean Supreme Court Decision 96MA149 1996.

10) The courts' intervention covers judicial review of arbitral awards. As with court judgments, the Korean Arbitration Act grants arbitral awards two important effects of both the powers to preclude re-litigation (*res judicata* effect) and the eligibility of enforcement. Practically, confirmation of arbitral awards can be divided into two categories of the substantive and the procedural justification of arbitral awards. The substantive justification of arbitral awards covers legal decisions on the issues of parties' duties and rights, and the procedural justification requires certain arbitral awards not to fall on the vacatur under Article 36 (2).

11) *SENECA NATION OF INDIANS, State of NEW YORK*, 420 F.Supp.3d 89, (2019).

not the partial final award on liability; 2 partial final award on liability was not final award subject to review; 3 it was upon issuance of final award requiring tribe to make state contribution payments during compact renewal period that proceedings became subject to review; 4 tribe failed to demonstrate that panel acted in manifest disregard of the law; 5 resort to primary-jurisdiction doctrine was not necessary; and 6 award of attorney fees to the state was not warranted.”¹²⁾ Because the federal district court could not find any reasonable ground to vacate the arbitral awards, the arbitral award was confirmed.

A contrasting case is found in *Paula ANDREWS v. COUNTY OF ROCKLAND* where a bus passenger brought personal injury action against county and the Supreme Court, Rockland County, Jamieson, J., vacated arbitration award. Then the passenger appealed. The Supreme Court, Appellate Division, held that “award would be vacated, since it was neither definite nor final, and arbitrator failed to determine damages.”¹³⁾ The appellate court’s decision seems to be based on some errors committed by the arbitrator and a weak stance on the finality of the arbitration award.

III. Judicial Intervention

1. Review of Arbitral Awards

Legal standards under Federal Arbitration Act and in case laws are provided for the judicial reviews of arbitral awards in the U.S. As far as recognition and enforcement of arbitral awards are concerned, section 10 of the Federal Arbitration Act sets forth enumerated grounds upon which courts may vacate arbitral awards, allowing judicial intervention in arbitration.¹⁴⁾

While the Federal Arbitration Act (FAA) was enacted in 1924 with the purpose of terminating a long history of judicial hostility to arbitration and promoting tolerance toward arbitration, there are some inconsistent court decisions regarding the contractual

12) *SENECA NATION OF INDIANS, State of NEW YORK*, 420 F.Supp.3d 89, (2019)

13) *Paula ANDREWS, COUNTY OF ROCKLAND*, appellant., 120 A.D.3d 1227(2014).

14) 9 USCA §10.

expansion of judicial review of arbitral awards.¹⁵⁾ In light of this, courts are split on whether they uphold or reject the contractual expansion of the scope of judicial review.

Courts upholding the contractual expansion of judicial review maintain that the FAA's provisions constitute mere minimum rules so that parties may agree to modify the scope of judicial review of the arbitration agreement.¹⁶⁾ Moreover, it was noted that the FAA is designed not to limit the judicial jurisdiction but to regulate commercial affair;¹⁷⁾ accordingly, a stricter application of the FAA may result in a refusal to enforce parties' own agreements on the scope of judicial review.

On the other hand, courts and commentators who oppose permitting parties to expand judicial review of awards believe it would obliterate the distinction between arbitration and

litigation, thereby destroying one of the great advantages of arbitration, which is to provide a speedy and flexible process for dispute resolution.¹⁸⁾ The Tenth Circuit in *Bowen v. Amoco Pipeline Co.*¹⁹⁾ held against expanded judicial review, concluding that the purposes behind the FAA, as well as the principles announced in various Supreme Court cases, do not support a rule allowing parties to alter the judicial process by private contract. The court seemed to object particularly to parties' having the power to dictate to the courts as to the scope of review, with the concern that forcing courts to apply unfamiliar rules and procedures may cause additional sacrifice to the simplicity, expediency and cost-effectiveness of arbitration, thus making arbitration yet another step on the ladder of litigation.

The conflicting viewpoints in the courts on the scope of judicial review appear in

15) Choong Lyong Ha, "A Comparative Study on the Roles of the Courts in Enforcement of Domestic Arbitral Awards: Korea and The U.S.," [Journal of Arbitration], vol.15. no.3, 2005.

16) *Gateway Technologies, Inc v. MCI Telecommunications Corp.*, 64 F.3d 993, 997 (5th Cir.1995) (citing "There is no federal policy favoring arbitration under a certain set of procedural rules; the federal policy is simply to ensure the enforceability, according to their terms, of private agreements to arbitrate." *Volt Info. Sciences, Inc.*, 489 U.S. at 468, 469(1989); *Bowen v. Amoco Pipeline Co.*, 254 F.3d 925, 933 (10th Cir. 2001).

17) *LaPine Technology Corp. v. Kyocera Corp.*, 130 F.3d 884, 889 (9th Cir. 1997). ("Of course, an arbitration issue would not be in the federal courts at all were it not for the fact that they would have jurisdiction over and obligation to decide the whole matter in the absence of arbitration.),

18) Hans Smit, *Contractual Modification of the Scope of Judicial Review of Arbitral Awards*, 8 AM. REV. INT'L ARB. 147, 1997, p.148.

19) *Bowen v. Amoco Pipeline Co.*, 254 F.3d 925, 935 (10th Cir. 2001).

various jurisdictions differently. The court's position in *Bowen v. Amoco Pipeline Co.* seems to be in the side of supporting the limited judicial review. Although the courts are split on the viewpoints on the private agreement of judicial review on arbitral awards, the bottom line in deciding the scope of judicial review seems to be drawn along the fairness, credibility and efficiency in arbitration.²⁰⁾

In the U.S., courts generally view the judicial review as a threat to arbitration, noting that review of arbitral awards might not be expanded on a contractual basis but instead made only by the grounds under the FAA.²¹⁾ The statutory grounds stipulated in the FAA are not easy to be satisfied. FAA Section 10(a)(1) directs for an award to be vacated where the award is procured by corruption, fraud, or undue means, which is a rigorous standard. For example, fraud under this section “must (1) be established by clear and convincing evidence, (2) materially relate to an issue in the arbitration, [and] (3) neither have been brought to the attention of the arbitrator and the issue handled by them, nor have been discoverable upon the exercise of due diligence prior to the arbitration.”²²⁾

2. Grounds for Court Intervention

In *James W. BONAR and Beverly J. Bonar v. DEAN WITTER REYNOLDS, INC.*, the court affirmed that perjury of expert witness for investors required vacation of arbitrators' punitive damages award, and is a ground for vacate of arbitral awards, where securities broker sought to vacate or modify arbitration award in favor of investors.²³⁾ The circuit judge stated that “Arbitrators of a dispute between the Bonars and Dean Witter Reynolds awarded punitive as well as compensatory damages to the Bonars. Dean Witter claims that the district court abused its discretion in refusing to vacate the award of punitive damages because it was obtained through fraud”.

In respect of judicial review of vacate of arbitral awards, it is notable that the U.S.

20) Choong Lyong Ha, “A Comparative Study on the Roles of the Courts in Enforcement of Domestic Arbitral Awards: Korea and The U.S.”, 『Journal of Arbitration』, vol.15, no.3, 2005.

21) 9 USCA §10.

22) Richard C. Reubena1, PERSONAL AUTONOMY AND VACATUR AFTER HALL STREET, 113 Penn St. L. Rev. 1103 (2009).

23) *James W. BONAR and Beverly J. Bonar v. DEAN WITTER REYNOLDS, INC.*, 835 F.2d 1378, United States Court of Appeals, Eleventh Circuit.(1988).

courts leave room for courts' intervention to review the substantive portion of arbitral awards by application of the Manifest Disregard of the Law standard.²⁴⁾ While the “manifest disregard of the law” standard is yet to be more clarified, an useful definition was provided in *Merrill Lynch, Pierce, Fenner & Smith, Inc., v. Bobker*, in which the court stated an indirect definition of the standard that the arbitrator appreciates the existence of a clearly governing legal principle but decides to ignore or pay no attention to it. Vagueness of the language of the manifest disregard of law standards may be alleviated by introduction of such terms as arbitrator's understanding and intentional ignorance of the applicable law.²⁵⁾

The rule of ‘manifest disregard of the law’ was further clarified in *HALL STREET ASSOCIATES, L.L.C., Petitioner v. MATTEL, INC.*²⁶⁾ In this case, the plaintiff (lessor) sought order that defendant (lessee) was required to meet its contractual lease obligations. The district court refused to enforce the arbitration award and finally the U.S. Supreme Court confirmed the refusal by the district court. The U.S. Supreme Court held that “1 grounds stated in the Federal Arbitration Act (FAA) either for vacating, or for modifying or correcting, arbitration award constitute the exclusive grounds for expedited vacate and modification of arbitration award pursuant to provisions of the FAA; but 2 case had to be remanded for consideration of whether arbitration agreement, having been entered into by parties in course of district court litigation, having been submitted to district court as request to deviate from the standard sequence of trial procedure, and having been adopted by district court as order, should be treated as exercise of district court's authority to manage its cases.”²⁷⁾

In delivering the final decision, the Supreme Court stated that “although a Wilko statement—“the interpretations of the law by the arbitrators in contrast to manifest disregard are not subject, in the federal courts, to judicial review for error in interpretation,” arguably favors Hall Street's position, arguable is as far as it goes. Quite

24) *W.R. Grace & Co. v. Local Union 759*, 461 U.S. 757, 766 (1983); *Allied-Bruce Terminix Cos. Inc. v. Dobson*, 513 U.S. 265 (1995); *Wilko v. Swan*, 346 U.S. 427, 436 (1953).

25) *W.R. Grace & Co. v. Local Union 759*, 461 U.S. 757, 766 (1983); *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Bobker*, 808 F.2d 930 (1986); *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985).

26) *HALL STREET ASSOCIATES, L.L.C., v. MATTEL, INC.* 128 S.Ct. 1396, Supreme Court of the United States (2008).

27) *HALL STREET ASSOCIATES, L.L.C., v. MATTEL, INC.* 128 S.Ct. 1396, Supreme Court of the United States (2008).

apart from the leap from a supposed judicial expansion by interpretation to a private expansion by contract, Hall Street overlooks the fact that the Wilko statement expressly rejects just what Hall Street asks for here, general review for an arbitrator's legal errors. Moreover, Wilko's phrasing is too vague to support Hall Street's interpretation, since "manifest disregard" can be read as merely referring to the § 10 grounds collectively, rather than adding to them." This statement made by the U.S. Supreme Court denotes that the rule of "manifest disregard of the law" should not be functioned as separately from the FAA Section 10, but it should be interpreted in the context of the FAA grounds for vacate.²⁸⁾

The manifest disregard of the law standard provided by the FAA is not the only legal ground that the court may vacate the arbitral awards. The court may vacate arbitral awards on the ground of non-statutory public policies. In *Michael LESSIN v. Merrill LYNCH, Pierce, Fenner & Smith, Inc. and Brett Bernstein*, the plaintiff (investor) lost \$5.6 million and initiated arbitration against the defendant (broker). The arbitral tribunal delivered arbitration award of \$32,795 to the plaintiff. However, the plaintiff appealed to the D.C. circuit court and was denied the motion to vacate the arbitral award by holding that "1 investor was not deprived of a fair hearing; 2 district court did not err in confirming award of \$32,475; and 3 panel did not manifestly disregard the law on negligent supervision."²⁹⁾ The court added that "In addition to the grounds under the Federal Arbitration Act ("FAA") on which an arbitration award may be vacated, an award may be vacated only if it is in "manifest disregard of the law" or is contrary to an "explicit public policy."³⁰⁾

The Supreme Court notes that the public policy should not be overinclusive, and it should be specifically defined and based on legal precedents. The Supreme Court emphasized its commitment to this rule in *United Paperworkers International Union v. Misco, Inc.*, stating that a court's refusal to enforce an arbitrator's interpretation of such contracts is limited to situation where the contract as interpreted would violate some explicit public policy that is well defined and dominant, and is to be ascertained by reference to the laws and legal precedents and not from general considerations of

28) 9 USCA §10.

29) *Michael LESSIN v. Merrill LYNCH, Pierce, Fenner & Smith, Inc. and Brett Bernstein*, 481 F.3d 813, United States Court of Appeals, District of Columbia Circuit (2007).

30) *Id.* at 816. *LaPrade v. Kidder, Peabody & Co.*, 246 F.3d 702, 706 (D.C.Cir,2001).

supposed public interests.³¹⁾ The Supreme Court's strict interpretation of public policy may be viewed as granting the arbitral tribunal a heightened authority.

There seems to be the two patterns of judicial reviews. One is to expand the court's scope of review by the parties' intent for the court to intervene based on the law of contract concerning arbitration. The other is to protect the public justice by making sure the arbitration is not severely deviated from the public policy. While the courts tend to cut back on the contractual expansion of judicial review when conflicting in the context of contract law, they traditionally adhere to the strict examination into manifest disregard of the law and public policy grounds.³²⁾

The U.S. courts' substantive intervention may causes disruptions to the finality of arbitral awards. However, the standards of intentional disregard of the law and appreciation of the law would help prevent an abusive substantive intervention by the court.³³⁾ This means that minor mistakes like simple misapplication of law or minor ignorance can be shielded from vacate of arbitral awards.

When delivering arbitral awards in the U.S. the arbitral tribunal does not have to specify the reasons for decision. Therefore, it would not be easy to clarify whether the arbitral tribunal should be subject to the standard of "manifest disregard of the applicable laws" or not. As a result, vacate of arbitral awards based on substantive mistake by the tribunal would not expected to frequently occur in practice.

The U.S. courts may intervene the arbitral process to minimize the material mistakes that are to obstruct substantive duties and rights of both parties. If the courts intervene with the substantive merits of the arbitration awards, the substantive finality of arbitral award as *res judicata* is not recognized in the US based on the Supreme Court case noting that the arbitral awards may be vacated if the tribunal commits a manifest disregard of the law.

The court's avoidance or abstention from substantive review of arbitral awards will significantly enhance the finality of the arbitration and promote independence of arbitration. However if the court ignores the demand to cure the legal errors found in

31) *Brown v. ITT Consumer Fin. Corp.*, 211 F.3d 1217, 1223 (11th Cir. 2000); *United Paperworkers International Union v. Misco, Inc.* 484 U.S. 29, 43 (1987).

32) *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Bobker*, 808 F.2d 930, (1986); *Halligan v. Piper Jaffray, Inc.*, 148 F.3d 197, 201 (1998); *United Paperworkers International Union v. Misco, Inc.* 484 U.S. 29, 43 (1987).

33) *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Bobker*, 808 F.2d 930 (1986).

the arbitral award, such absence of judicial filtering is likely to hurt arbitral credibility. The court's intervention of arbitral awards due to 'evident and definite errors' by the arbitral tribunal is rather expected to enhance the credibility of arbitration, preventing a distortion of the real intent of arbitral awards.³⁴⁾

3. Enforcement Proceedings

In the United States, the winning party should initiate the process of enforcement of arbitral awards, which is "not self-executing".³⁵⁾ The winning party seeks enforcement, pursuant to the FAA Section 9 and must bring a motion to confirm the award by the appropriate court.

FAA Section 9 prescribes the process of enforcement of arbitration awards. The enforcement proceeding is commenced by the ex parte motion. Notice of the application shall be served upon the adverse party. Confirmation proceedings begin by the completion of such service similarly as prescribed by applicable civil procedure laws. Enforcement of arbitral awards through confirmation by a motion, unlike adversary proceeding in Korea, needs no further arguments or pleadings that are required in normal judicial procedures.³⁶⁾

The finality of arbitral awards is strengthened by protecting them as conclusive judgments as expressed in FAA Section 9. Such legal effects invoked by the finality of a decision are equivalent of both *res judicata*, also known as claim preclusion, and collateral estoppels, also known as issue preclusion.³⁷⁾ Section 84 of the Second Restatement of Judgments establishes that the doctrines of *res judicata* and collateral estoppels shall be applied to arbitration awards with the same exceptions and disqualifications, securing the same finality of arbitral awards as of litigations. These doctrines originate from common law to promote finality and judicial economy by bringing an end to a double litigation.³⁸⁾

34) Choong Lyong Ha, A Comparative Study on the Roles of the Courts in Enforcement of Domestic Arbitral Awards: Korea and The U.S., *Journal of Arbitration*, v.15, n.3, 2005.

35) Jacqueline M. Nolan-Haley, *ALTERNATIVE DISPUTE RESOLUTION, SECOND EDITION*, WEST GROUP, 2001, p180.

36) Choong Lyong Ha, "A Comparative Study on the Roles of the Courts in Enforcement of Domestic Arbitral Awards: Korea and The U.S.", *Journal of Arbitration*, vol.15, no.3, 2005.

37) The Restatement of Judgments, §84(1).

According to Federal Arbitration Act (Section 9), “the court must grant an order to confirm arbitral awards unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of the Act.”³⁹⁾ In *Florasynth, Inc. v. Pickholz*, the Second Circuit⁴⁰⁾ held that the confirmation of an arbitration award is a summary proceeding that merely makes what is already a final arbitration award a judgment of the court, noting that courts should be hesitant to modify or vacate an arbitration award and require a high burden of proof to avoid summary confirmation of an arbitral award. The court's limited review of arbitral awards has promoted the twin goals of arbitration, namely, settling disputes efficiently and avoiding long and expensive litigation.⁴¹⁾

A recent federal court of appeal case was delivered to enhance the position provided above by the Second Circuit. In *TEAMSTERS LOCAL 177 v. UNITED PARCEL SERVICE*, the plaintiff (TEAMSTERS LOCAL 177, Appellant) “petitioned for an order confirming arbitration award in union's favor pursuant to the Federal Arbitration Act and the Labor Management Relations Act (LMRA) with respect to grievances under collective bargaining agreement in connection with work assignments.”⁴²⁾ The federal district court denied the motion to confirm the arbitration award due to lack of subject matter jurisdiction. However, the federal court of appeals reversed the district court's decision holding that “the District Court had subject-matter jurisdiction to confirm the Award even in the absence of a new dispute about it, and agreed with the Second Circuit Court that the confirmation of an arbitration award is a summary proceeding that merely makes what is already a final arbitration award a judgment of the court.”⁴³⁾

In relation with the enforcement proceedings, the FAA(Section 11) lists three grounds on which courts may make an order modifying or correcting the award upon the application of any party to the arbitration.⁴⁴⁾ Allowing courts to modify or correct

38) Jacqueline, *Supra* note 44, p187.

39) 9 U.S.C.A. 9.

40) *Florasynth, Inc. v. Pickholz*, 750 F.2d 171, 176 (2d Cir. 1984); Pedro Menocal, *WE'LL DO IT FOR YOU ANY TIME: RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS AND CONTRACTS IN THE UNITED STATES*, 11 *St. Thomas L. Rev.* 317, 352 (1999).(Recited from Choong Lyong Ha,, *supra* note 101.)

41) *Ottley v. Schwartzberg*, 819 F.2d 373, 376 (2d Cir. 1987).

42) *TEAMSTERS LOCAL 177 v. UNITED PARCEL SERVICE*, 966 F.3d 245, (United States Court of Appeals, Third Circuit,2020).

43) *Florasynth, Inc. v. Pickholz*, 750 F.2d 171, 176 (2d Cir. 1984).

awards is a matter of judicial economy; this saves the unnecessary steps of remanding an award to the arbitral tribunal, ultimately assuring the conclusive effects of arbitral awards. Both the U.S. courts' attitudes toward finality of arbitral awards⁴⁵⁾ and limited statutory bases in FAA⁴⁶⁾ have prevented negative effects from a stretch of modification.

IV. Legal Implications

Arbitration can not exist separately from the litigation conducted by the court. In this paper, the legal relationship between the arbitral tribunal and the court was investigated through Federal Arbitration Act and related court cases. There are three basic channels that the court can intervene with arbitration. First, the court may intervene with arbitration by reviewing the validity of arbitration agreement. Because the formation of arbitration agreement is totally voluntary and founded on the parties' free intent, this kind of intervention should be initiated by the parties and typically resolved in the common law courts. The second type of intervention may occur when the arbitration party tries to vacate arbitration awards. As discussed previously, there are enumerated grounds prescribed in FAA where the court can vacate arbitration awards. The third type of intervention takes place in confirmation of arbitral award. This type of intervention is a court role specially mandated by the FAA in enforcement of arbitration award.

One of the main benefits of arbitration is speedy resolution of disputes. The reason why resolution in arbitration is speedy is that there is no appellate process in arbitration and the decision made by the arbitration tribunal is final. As discussed

44) 9 U.S.C.A. § 11, In either of the following cases the United States court in and for the district wherein the award was made may make an order modifying or correcting the award upon the application of any party to the arbitration-- (a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award. (b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted. (c) Where the award is imperfect in matter of form not affecting the merits of the controversy.

45) *Florasynth, Inc. v. Pickholz*, 750 F.2d 171, 176 (2d Cir. 1984); *Ottley v. Schwartzberg*, 819 F.2d 373, 376 (2d Cir. 1987).

46) 9 U.S.C. § 11 (1994).

earlier, the finality of arbitral awards may be shaken by the court intervention when the court reviews and vacates arbitral awards. Such intervention by the court may strengthen the justifiability of the arbitral awards, but it will lead to scepticism toward the effectiveness and stability of arbitration because the court intervention may function as an additional legal layer that the arbitration parties may have to go through.

The FAA requires only a motion for summary judgment for enforcement of arbitration award. The complexity of enforcing arbitral awards would differ whether the process requires pleadings from both parties or not. An *ex parte* motion for summary judgment will be a significantly easier tool for the winning party to enforce the arbitral awards. Moreover, *ex parte* motion to initiate confirmation proceedings will be helpful to avoid certain delay in confirmation proceedings due to the adverse party's disruptive behavior or the *post facto* challenge of vacate. The Court, with respect of the award, can complete the confirmation process without any kind of pleadings or jury trials, saving a lot of time for the winning party.

There have been diverse court decisions on the scope of court intervention. When the courts are unfavorable to the autonomy and independence of the arbitral tribunal, they tended to expand their role by an embroidered interpretation of the grounds for vacate, while they are favorable to independence and autonomy of the arbitral tribunal, they have shown stricter interpretation of the FAA thereby abstaining from unnecessary court interventions.

The legal impacts of the court intervention are not only had on the finality of arbitration awards but also on the credibility and stability of arbitral decisions. It may be impractical that the courts should completely abstain from the control and screening of the legal relevancy of arbitral award or vastly intervene with the arbitration process. The U.S. courts are found to take a balanced stance between the two extremes.

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