

[J-73-2007]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

FRANCO MOSCATIELLO AND	:	No. 6 WAP 2007
ANTIONETTA MOSCATIELLO,	:	
	:	
Appellants	:	Appeal from the Order of the Superior
	:	Court entered September 19, 2006, at No.
	:	224 WDA 2006, affirming the Order of the
	:	Court of Common Pleas of Allegheny
v.	:	County entered December 19, 2005, at
	:	GD 05-12910.
	:	
J.J.B. HILLIARD, W.L. LYONS, INC., AND	:	
MICHAEL E. KELMS AND EDMUND	:	
KOSAKOWSKY, INDIVIDUALLY AND AS	:	ARGUED: September 10, 2007
EMPLOYEES AND AGENTS THEREOF,	:	
	:	
Appellees	:	

CONCURRING OPINION

MR. CHIEF JUSTICE CAPPY

DECIDED: DECEMBER 27, 2007

I join the majority opinion in all respects, but two. I do not join the majority's description of the time limits for challenging an arbitration award found in 42 Pa.C.S. §7314(b) and 42 Pa.C.S. §7342(b) as simply procedural nor do I join the majority's discussion as to whether the three month time limit set forth in the Federal Arbitration Act, as opposed to the thirty day time limit set forth in 42 Pa.C.S. §7342(b), should apply.

Given the preemption question that is before the Court and the law that governs the issue, I believe that any characterization of Pennsylvania's statutory law governing the time within which challenges to an arbitration award must be brought is unnecessary to concluding that §12 of the Federal Arbitration Act, 9 U.S.C. §12, does not preempt the state rule in 42 Pa.C.S. §7342(b). See Volt Information Sciences, Inc. v. Board of Trustees of

Leland Stanford Junior University, 489 U.S. 468 (1989).¹ Further in light of the questions raised by the parties and addressed by the courts below, I do not believe that the choice-of-law issue that the majority opinion discusses on pages 7 and 8 was part of this case.²

Accordingly, I join the majority opinion, except for its characterization of 42 Pa.C.S. §7314(b) and 42 Pa.C.S. §7342(b), and its discussion and resolution of the choice-of-law issue.

¹ I observe that Pennsylvania decisions have suggested that 42 Pa.C.S. §7314(b) and at 42 Pa.C.S. §7342(b), in setting forth the time limit in which appeals from arbitration awards must be brought, may be jurisdictional in nature. See Emporium Area Joint Authority v. Anundson Building and Supply Co., 166 A.2d 269 (Pa. 1960); Maxton v. Philadelphia Housing Authority, 454 A.2d 618, 620 (Pa. Super. 1982); See also Joseph v. Advest, Inc. 906 A.2d 1205 (Pa. Super. 2006). For purposes of this opinion, however, I do not believe that that the nature of the state rules at issue are relevant.

² I also observe that when this Court granted allocatur, the state rule was described procedural and a question was posed to the parties, asking whether the Pennsylvania Courts should apply the state or federal procedure. Moscatiello v. J.J.B. Hillard, 919 A.2d 186, 187 (Pa. 2007). As stated, I do not believe that a characterization of the state rule is necessary. Further, upon reconsideration of the record, I concluded that a choice-of-law question was neither raised by the parties nor addressed by the courts below, and should not have been included in this Court's order granting review.