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

**CAPPY, C.J., CASTILLE, SAYLOR, EAKIN, BAER, BALDWIN, FITZGERALD, JJ.**

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| FRANCO MOSCATIELLO AND ANTIONETTA MOSCATIELLO, | : | No. 6 WAP 2007 |
| Appellants | : | Appeal from the Order of Superior Court entered September 19, 2006, at No. 224 WDA 2006, affirming the Order of the |
| v. | : | Court of Common Pleas of Allegheny County entered December 19, 2005, at |
| J.J.B. HILLIARD, W.L. LYONS, INC., AND MICHAEL E. KLEMS AND EDMUND KOSAKOWSKY, INDIVIDUALLY AND AS EMPLOYEES AND AGENTS THEREOF, | : | No. GD 05-12910. |
| | : | 911 A.2d 193 (Pa. Super. 2006) (Table) |
| Appellees | : | ARGUED: September 10, 2007 |

**OPINION**

**MR. JUSTICE EAKIN** **DECIDED: DECEMBER 27, 2007**

Appellants invested $1.5 million in a single mutual fund managed by appellees. Appellants signed customer agreements with appellees containing an arbitration clause and a choice of law provision. The arbitration clause stated any disputes would be settled in arbitration under National Association of Securities Dealers (NASD) rules, which the Federal Arbitration Act (FAA), 9 U.S.C. § 1 et seq., governs. The choice-of-law provision stated Pennsylvania law would govern.

After losing $574,000 in the mutual fund, appellants filed multiple claims with the NASD against appellees alleging fraud under the Securities and Exchange Act of 1934, common law fraud and deceit, breach of fiduciary duty, negligent supervision, and violation

of the Pennsylvania Unfair Trade Practice and Consumer Protection Law. A three-member NASD arbitration panel dismissed all claims March 14, 2005. NASD Dispute Resolution Award, 3/14/05, at 2. Appellants filed a petition to vacate June 3, 2005.

The trial court dismissed the petition as untimely, holding Pennsylvania's 30-day time limit for challenging arbitration awards was not preempted by the three-month FAA time limit in 9 U.S.C. § 12. Trial Court Opinion, 12/19/05, at 13. There are two arbitration acts in Pennsylvania, the Uniform Arbitration Act (UAA), 42 Pa.C.S. § 7301 et seq., governing statutory arbitration, and 42 Pa.C.S. § 7341 et seq., governing common law arbitration. Both the UAA and common law set forth a 30-day time limit for challenging arbitration awards. See 42 Pa.C.S. § 7314(b); id., § 7342(b). The trial court applied the UAA time limit in § 7314(b). The trial court concluded the FAA preempts only state substantive law which interferes with the enforcement of an agreement to arbitrate. See Trial Court Opinion, 12/19/05, at 2-4 (citing Doctor's Associates, Inc. v. Casarotto, 517 U.S. 681 (1996); Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University, 489 U.S. 468 (1989); Perry v. Thomas, 482 U.S. 483 (1987); Southland Corp. v. Keating, 465 U.S. 1 (1984)).

The Superior Court affirmed. Moscatiello v. J.J.B. Hilliard, No. 224 WDA 2006, unpublished memorandum at 5 (Pa. Super. filed September 19, 2006). However, it applied the common law procedural time limit in 42 Pa.C.S. § 7342(b). The court presumed the parties agreed to common law arbitration because the agreements did not expressly state statutory arbitration should apply. Moscatiello, at 3 n.2; 42 Pa.C.S. § 7302(a). The court relied on Joseph v. Advest, Inc., 906 A.2d 1205 (Pa. Super. 2006), incorporating the analysis and holdings of Joseph as its own. See Moscatiello, at 4.

Joseph held state rules governing the conduct of arbitration will not run afoul of the FAA as long as the state procedural rule does not undermine the FAA's goal, to encourage arbitration of matters to expedite litigation. See Joseph, at 1210. Joseph concluded,

"Pennsylvania's procedural rule providing for a thirty-day rather than a three-month time limit for challenging arbitration awards does not conflict with the FAA's purpose … rather, it reinforces that goal by more quickly rendering arbitration awards final." Id. Thus, Joseph held the federal procedural time limit does not preempt the state time limit allowing a party 30 days to challenge arbitration awards. See id., at 1210-13.

We granted allowance of appeal on the following questions:

> Does the Federal Arbitration Act's (FAA's) procedural provision which allows for a three-month time frame within which to challenge an arbitration award preempt the state procedural rule which sets the time limit at thirty days? If not, should Pennsylvania courts apply the state or federal procedures?

Moscatiello v. J.J.B. Hillard, 919 A.2d 186, 186-87 (Pa. 2007). Questions of law are subject to de novo review, and our scope of review is plenary. Craley v. State Farm Fire and Casualty Company, 895 A.2d 530, 539 n.14 (Pa. 2006).

Appellants argue because they contracted to arbitrate their claims under the FAA, they should be permitted to rely on the entire FAA in asserting their post-arbitration rights. Appellants' Brief, at 16. They assert the FAA is a substantive body of law applicable in federal and state courts, which includes the three-month time limit for filing challenges to arbitration awards in § 12. Id., at 9, 26. Appellants further argue the FAA preempts conflicting state law. Id., at 9-10, 22. They ask this Court to conclude that Pennsylvania's 30-day time limit provides less protection than the three-month time limit of the FAA. Id., at 22-23. Appellants point to the various time limits for bringing such challenges from state to state and argue for uniform application of the FAA in state courts. Id., at 22-23.

Appellees counter that the FAA only preempts substantive anti-arbitration state laws which prevent the enforceability of arbitration agreements. Appellees' Brief, at 5, 8-9. They assert Pennsylvania's 30-day limit is procedural, and it is not a substantive obstacle to the enforcement of arbitration agreements. Id., at 10. Appellees look to other courts which have applied their state's procedural time limit where the FAA governed the enforcement of

the arbitration clause. Id., at 12-13. They assert national uniformity will not be achieved if Pennsylvania courts apply the FAA's time limit because several other jurisdictions require challenges to be filed in less than three months. Id., at 16-17. Appellees also argue that applying the FAA time limit would unnecessarily change the established practice since Pennsylvania's 30-day rule is not preempted. Id., at 17.

Congress enacted the FAA to overrule the judiciary's longstanding refusal to enforce arbitration agreements; its purpose is to place arbitration agreements on equal legal ground with other contracts. Volt Information Sciences, Inc., at 474 (citations omitted). The FAA is "a body of federal substantive law of arbitrability, applicable to any arbitration agreement within the coverage of the Act." Moses H. Cone Memorial Hospital v. Mercury Construction Corporation, 460 U.S. 1, 24 (1983). The FAA rests on Congress's authority to enact substantive rules under the Commerce Clause. Southland Corp., at 11. It applies to any agreement affecting interstate commerce. Allied-Bruce Terminix Companies, Inc. v. Dobson, 513 U.S. 265, 273-74 (1995). Section 2 of the FAA provides:

> A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

9 U.S.C. § 2 (emphasis added). The FAA does not create independent federal question jurisdiction. Moses H. Cone, at 26 n.32.[1] Under the FAA, arbitration agreements are enforceable in federal and state courts. See Southland Corp., at 11-16.

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[1] Moses H. Cone provides:

> The Arbitration Act is something of an anomaly in the field of federal-court jurisdiction. It creates a body of federal substantive law establishing and regulating the duty to honor an agreement to arbitrate, yet it does not create

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The Supremacy Clause of the United States Constitution prohibits states from enacting laws contrary to the federal government's laws. It states: "This Constitution, and the Laws of the United States ... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2. The United States Congress may preempt state law through this clause. See Krentz v. Consolidated Rail Corporation, 910 A.2d 20, 31-32 (Pa. 2006). "The FAA contains no express pre-emptive provision, nor does it reflect a congressional intent to occupy the entire field of arbitration." Volt, at 477 (citation omitted).

Southland Corp. held a California statute violated the Supremacy Clause because it withdrew the power to enforce arbitration agreements, undermining the goal of the FAA. See Southland Corp., at 16.[2] Volt held the FAA did not preempt a California procedural rule authorizing a stay of arbitration where the parties agreed their arbitration agreement would be governed by California law. See Volt, at 477. The FAA governed the enforcement of the arbitration agreement in Volt, but the Court interpreted the choice-of-law

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> any independent federal-question jurisdiction under 28 U.S.C. § 1331 (1976 ed., Supp. V) or otherwise.

Id., at 26 n.32.

[2] Other cases in which the United States Supreme Court held the FAA preempted state law involved anti-arbitration substantive statutes or case law. See Doctor's Associates, Inc. (holding FAA preempted Montana statute conditioning enforceability of arbitration agreements on compliance with special notice provisions); Allied-Bruce Terminix Companies, Inc. (holding FAA preempted Alabama statute invalidating predispute arbitration agreements in consumer contracts); Mastrobuono v. Shearson Lehman Hutton, Inc., 514 U.S. 52 (1995) (holding FAA preempted New York law precluding arbitration awards of punitive damages); Perry (holding FAA preempted California law which stated wage collection actions may be maintained without regard to existence of any private agreement to arbitrate).

provision to mean California substantive contract law and procedural arbitration rules otherwise governed the arbitration agreement. See id., at 472-76. Volt stated federal law preempts conflicting state law only "to the extent that it 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" Id., at 477 (citing Hines v. Davidowitz, 312 U.S. 52, 67 (1941)).

Because Pennsylvania's arbitration acts provide for the enforcement of arbitration of contract and other disputes, they foster the federal policy favoring arbitration enforcement. The 30-day time limit found in both Pennsylvania arbitration acts does not undermine this policy or the FAA's goal. "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." Id., at 476 (emphasis added). Volt also stated:

> Interpreting a choice-of-law clause to make applicable state rules governing the conduct of arbitration -- rules which are manifestly designed to encourage resort to the arbitral process -- simply does not offend the rule of liberal construction set forth in Moses H. Cone, nor does it offend any other policy embodied in the FAA.

Id. The federal policy favoring arbitration, set forth in the FAA, is limited to Congress's intent to make arbitration agreements enforceable. The FAA does not preempt the procedural rules governing arbitration in state courts, as that is beyond its reach. Thus, we hold there is no preemption.

Appellants properly recognize the FAA does not confer an independent basis of federal jurisdiction. Appellants' Brief, at 20; Moses H. Cone, at 26 n.32. Because there is no federal question or diversity of citizenship, appellants properly filed their petition to vacate in state court. Appellants assert, however, that in the absence of an independent basis of federal jurisdiction, motions to vacate arbitration awards filed in state courts pursuant to the provisions of the FAA are also subject to its procedural provisions, specifically, § 12. Appellants' Brief, at 25-26. Appellants cite numerous federal decisions

to support their position.[3] These cases illustrate the three-month limit is the proper procedural time limit to challenge arbitration awards governed by the FAA in federal district courts. Here, there is no federal jurisdiction; the state procedural time limit thus applies, unless it stands in the way of the FAA's function, i.e., to enforce the arbitration agreement. It does not.

The remaining issue is whether Pennsylvania should apply the state or federal procedural time limit, as there is no preemption. The agreements do not specify whether the parties agreed to arbitrate under the procedural rules of common or statutory law. The UAA provides:

> (a) General rule.--An agreement to arbitrate a controversy on a nonjudicial basis shall be conclusively presumed to be an agreement to arbitrate pursuant to Subchapter B (relating to common law arbitration) unless the agreement to arbitrate is in writing and expressly provides for arbitration pursuant to this subchapter or any other similar statute, in which case the arbitration shall be governed by this subchapter.

42 Pa.C.S. § 7302(a). Because the agreements do not expressly provide for statutory arbitration, the agreements are conclusively presumed to be pursuant to the procedural rules of common law arbitration. Common law arbitration has a 30-day time limit for challenging arbitration awards. See id.; § 7342(b).[4]

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[3] See Robinson v. Champaign Landmark, Inc., 326 F.3d 767 (6th Cir. 2003); Decker v. Merrill Lynch, Pierce, Fenner, and Smith, Inc., 205 F.3d 906 (6th Cir. 2000); PaineWebber Inc. v. Bybyk, 81 F.3d 1193 (2d Cir. 1996); Corey Trust Fund v. New York Stock Exchange, 691 F.2d 1205 (6th Cir. 1982); Tamari v. Bache & Co., 565 F.2d 1194 (7th Cir. 1977); Kiewit/Atkinson/Kenny v. International Brotherhood of Electrical Workers, Local 103, 43 F. Supp. 2d 132 (D. Mass. 1999).

[4] Section 7342(b) provides:

> (b) Confirmation and judgment.--On application of a party made more than 30 days after an award is made by an arbitrator under section 7341 (relating to common law arbitration) the court shall enter an order confirming the award and shall enter a judgment or decree in conformity with the order. Section

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Regardless of whether an arbitration agreement provides for arbitration pursuant to the UAA or common law, application of a 30-day time limit for challenging arbitration awards is appropriate. See id.; 42 Pa.C.S. § 7314(b). As this presents no conflict with the FAA's goal, we hold Pennsylvania courts should apply its procedural rules for filing arbitration award challenges as it more quickly renders arbitration awards final.[5]

Order affirmed. Jurisdiction relinquished.

Messrs. Justice Castille, Saylor and Baer, Madame Justice Baldwin and Mr. Justice Fitzgerald join the opinion.

Mr. Chief Justice Cappy files a concurring opinion.

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> 7302(d)(2) (relating to special application) shall not be applicable to proceedings under this subchapter.

42 Pa.C.S. § 7342(b).

[5] This reasoning has been adopted in other states as well: See Simmons Company v. Deutsche Financial Services Corporation, 532 S.E.2d 436 (Ga. Ct. App. 2000); Atlantic Painting & Contracting, Inc. v. Nashville Bridge Co., 670 S.W.2d 841 (Ky. 1984); Weston Securities Corporation v. Aykanian, 703 N.E.2d 1185 (Mass. App. Ct. 1998); Manson v. Dain Bosworth Inc., 623 N.W.2d 610 (Minn. Ct. App. 1998); Jeppson v. Piper, Jaffray & Hopwood, Inc., 879 F. Supp. 1130 (D. Utah 1995).