

RECENT DEVELOPMENTS

ARBITRATION

CASE LAW ESTABLISHES THAT THE PRECLUSIVE EFFECT OF AN ARBITRAL AWARD IS AN ISSUE FOR THE ARBITRATOR TO DECIDE, NOT A FEDERAL COURT

Nat'l Cas. Co. v. Cont'l Ins. Co., 121 F.4th 1151 (7th Cir. 2024). <https://law.justia.com/cases/federal/appellate-courts/ca7/23-3373/23-3373-2024-11-22.html>

FACTS: Plaintiffs-Appellants National Casualty Company and Nationwide Mutual Insurance Company (hereinafter “National Casualty and Nationwide”) agreed to reinsure Defendant-Appellee Continental Insurance Company (hereinafter “Continental”). The reinsurance agreements each contained an arbitration clause. After a billing dispute arose, National Casualty and Nationwide maintained that prior arbitration proceedings over similar matters resolved the dispute. Continental disagreed and demanded arbitration. National Casualty and Nationwide instead initiated an action asserting that the prior arbitral awards precluded new arbitration proceedings and sought declaratory and injunctive relief on that basis.

Continental moved to compel arbitration and dismiss the action. The district court granted the motion. National Casualty and Nationwide appealed.

HOLDING: Affirmed.

REASONING: National Casualty and Nationwide argued that arbitral awards issued from a prior proceeding in 2017 should resolve the current issue and preclude new arbitration. The court disagreed. The court explained existing case law established that the preclusive effect of an arbitral award is an issue for the arbitrator rather than the court.

The court emphasized that arbitrators alone are entitled to decide procedural questions that may arise before the final decision, including the preclusive effect of any earlier awards. Additionally, the court noted that the decision was consistent with

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Supreme Court precedent, which held that the Federal Arbitration Act (“FAA”) enabled arbitrators to decide procedural issues that “grow out” of an arbitrable dispute and affect its final decision. Preclusion constitutes one such procedural issue.

The court further mentioned that Section 13 of the FAA does not require federal courts to determine the preclusive effect of arbitral awards. The provision, as interpreted by prior case law, was indeterminate regarding what forum or entity should determine the effect of the judgment in action. Its terms clarified that a district court’s order confirming an arbitral award should be just as binding as a judgment. Thus, the court declined to resolve the preclusive effect of arbitral awards and reaffirmed the district court’s holding to dismiss the action and compel arbitration.

AMEX DEFAULTED UNDER SECTION 3 OF THE FEDERAL ARBITRATION ACT WHEN THE COMPANY REFUSED TO PAY \$17 MILLION IN FEES

FEDERAL COURTS CANNOT COMPEL ARBITRATION IF A PARTY IS IN DEFAULT

AMEX CLEARLY WAS NOT “READY” AND “WILLING” TO ARBITRATE ON ANYONE’S TERMS BUT ITS OWN, AND THAT IS NOT HOW THE ARBITRATION SYSTEM WORKS

5-Star Gen. Store v. Am. Express Co., 759 F. Supp. 3d 317 (D.R.I. 2024).

<https://casetext.com/case/5-star-gen-store-v-am-express-co>

FACTS: Plaintiffs 5-Star General Store and other merchants (hereinafter, “Merchants”) entered into an agreement with Defendant credit card company American Express (hereinafter, “AMEX”) to accept Amex credit cards and follow the non-discrimination provisions (hereinafter, “NDPs”) in AMEX’s Merchant Operating Guide. The Merchants’ agreement with Amex included an agreement to arbitrate disputes.

Merchants later initiated arbitration to challenge the legality of Amex’s NDPs. When a dispute arose regarding arbitration fees, AMEX refused to pay the fees, and the claims were administratively closed due to nonpayment. Following arbitration, Merchants filed suit, alleging federal antitrust law violations under the Federal Arbitration Act. AMEX replied and filed a Motion to Compel Arbitration.

HOLDING: Denied.

REASONING: Merchants argued that AMEX waived their right to compel arbitration by failing to pay arbitration fees. The court agreed. The court determined that AMEX had defaulted under Section 3 of the Federal Arbitration Act by refusing to pay \$17 million in arbitration fees, establishing that federal courts cannot compel arbitration if a party is in default.

The court emphasized that AMEX’s refusal to comply with its financial obligations under its initiated arbitration agreement illustrated a disregard for the principles of mutual consent and fairness foundational to arbitration. By selectively adhering to the terms, AMEX acted contrary to the arbitration system’s intent to resolve disputes efficiently and equitably. This behavior rendered AMEX’s motion to compel arbitration untenable under the FAA, as the court commented “AMEX clearly is not ‘ready’ and ‘willing’ to arbitrate on anyone’s terms but its own, and that is not how the arbitration system works. . .” AMEX’s actions highlighted the statutory requirement that a party must not be in default of arbitration proceedings to compel arbitration. AMEX’s Motion to Compel Arbitration was, therefore, denied.