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To Vacate or Confirm? How Excessive Attorneys' Fees Award Brought Down an Entire Arbitration Award

Under CPLR 7510-11, judicial review of arbitration awards is limited. Because of our judicial system's partiality toward resolving issues through alternative dispute resolution mechanisms, courts can only vacate an arbitration award where the plaintiff proves with clear and convincing evidence that the award was irrational, against public policy, or that the arbitrator exceeded her powers. This limited judicial review may seem (and often is) insurmountable for a litigant seeking to challenge an award. But as a recent case from the Appellate Division, Second Department demonstrates, sometimes one piece of an arbitrator's decision is so irrational and violative of public policy that the only remedy is vacatur of the entire award.

The Case: *Briscoe Protective, LLC v. North Folk Surgery Center, LLC*

In the trial court, the petitioner, Briscoe Protective, commenced a proceeding to confirm a \$35,620.14 award, which included \$11,307 in attorneys' fees. The Supreme Court granted the petition, and the respondent, Surgery Center, appealed, contending the attorneys' fees award was irrational and contrary to public policy. The Second Department agreed, reversed the Supreme Court's decision, and vacated the entire award.

The appellate court reasoned that "the arbitrator's excessive award of attorneys' fees . . . was irrational because it was not supported by any proof." *Briscoe Protective*, 215 A.D.3d 956, 957 (N.Y. App. Div. 2d Dept. 2023). "The petitioner's counsel did not submit, and the arbitrator did not consider, any evidence as to the hours of legal work by the petitioner's counsel or the hourly rate." *Id.* at 957-58. The court further reasoned that awarding attorneys' fees violated the strong public policy against excessive fees, "where the amount becomes large enough to be out of all proportion to the value of the professional services rendered." *Id.* at 958 (internal citations omitted). Here, the fee award of approximately \$11,000 was almost 50% of the damages award, an excessive amount that the Appellate Division held unsustainable.

Interestingly, the Second Department did more than just strike the fee portion of the award. Under rare circumstances like the ones present here, "where the award of attorneys' fees was clearly irrational and contrary to public policy, vacatur of the entire arbitration award is warranted." *Id.* (internal citations omitted).

Key Takeaway

To ensure that an attorneys' fee award in [arbitration](#) does not invalidate an otherwise proper award, the attorneys seeking fees should substantiate the amount sought through proof of the fee arrangement with their client, including time entries of hours worked and rates charged for services. Although judicial review of the award is limited, without this information, it is easy for the

other side to argue and prove, by clear and convincing evidence, that the fee award is “irrational.”