WINSTON & STRAWN LLP

CLIENT ALERT

Supreme Court Rules on Federal Arbitration Act Jurisdiction: Federal Questions in Underlying Arbitration Provide No Basis for Federal Jurisdiction to Confirm or Vacate Arbitration Awards

APRIL 4, 2022

On Thursday, in *Badgerow v. Walters*, the Supreme Court clarified the limits of federal jurisdiction in Federal Arbitration Act (FAA) cases. The Court held that federal courts do not have jurisdiction to confirm or vacate arbitral awards unless an independent basis for federal jurisdiction—such as diversity of citizenship—appears on the face of the petition to confirm or vacate. As a result, parties seeking to confirm or vacate arbitral awards will sometimes be forced to rely on state courts, even if the underlying arbitration involves a federal question.

The FAA promotes arbitration as a means of resolving claims. Section 4 grants federal courts the power to compel arbitration while Sections 9, 10, and 11, respectively, grant federal courts the power to confirm, vacate, and modify arbitration awards. But the FAA does not itself confer jurisdiction to do these things; there must be an independent basis for federal jurisdiction. After all, arbitration agreements are contracts, which are usually creatures of state law, not federal, and do not themselves raise federal questions for purposes of 28 U.S.C. § 1331.

The question in *Badgerow* was whether the issues raised by the *underlying arbitration*—rather than the petition to confirm or vacate the award—can give rise to federal-question jurisdiction and thus permit a federal court to rule on a petition to confirm or vacate, even though the petition itself does not support federal jurisdiction. In other words, may federal courts "look through" a petition to find federal jurisdiction based on the underlying arbitration? The Court held that they may not.

Notably, the Court distinguished between federal jurisdiction to *compel* arbitration under Section 4 of the FAA and federal jurisdiction to *confirm or vacate* arbitral awards under Sections 9 and 10 of the act.

In 2009, in *Vaden v. Discover Bank*, the Court concluded that a federal court could "look through" a petition to compel arbitration under Section 4 to the underlying dispute to find a justiciable federal question. Following *Vaden*, the circuits split as to whether this look-through approach also applied to petitions to confirm, vacate, or modify arbitration awards under Sections 9, 10, and 11 of the FAA. The majority of circuits extended the look-through approach to these other sections, largely for consistency's sake. Other circuits, reasoning that the text of Section 4 was materially different from those other sections, refused to extend the doctrine beyond it.

The Court's 8–1 decision in *Badgerow* resolved this split, adopting the minority position and limiting the look-through doctrine to Section 4 petitions to compel arbitration. Writing for the majority, Justice Kagan emphasized that the *Vaden* court had "rel[ied] on [Section 4]'s express language," which permits a party to an arbitration agreement to

petition a federal court "which, save for [the arbitration] agreement, would have jurisdiction" over the parties' "underlying substantive controversy." By contrast, Sections 9 and 10 governing applications to confirm or vacate arbitration awards "contain none of th[is] statutory language."

In one way, *Badgerow* changed nothing: as always, jurisdiction to decide an FAA petition requires an independent basis. At the same time, however, the decision has either abrogated or called into question First, Second, Fourth, and Fifth Circuit precedent authorizing use of the look-through doctrine outside the context of petitions to compel arbitration under Section 4. While, under *Vaden*, litigants invoking Section 4 can still rely on the look-through doctrine, litigants petitioning to confirm or vacate an arbitration award under Sections 9 and 10 cannot.

Nor can the doctrine be safely relied on as to other sections of the FAA that *Badgerow* did not squarely address. Although the Court did not decide whether the look-through doctrine applies to Sections 5 (appointment of arbitrators), 7 (compelling evidence in arbitration), and 11 (modifying arbitration award) of the FAA, litigants should assume it does not. Those sections, like Sections 9 and 10, do not contain the specific language that, according to *Badgerow*, led the *Vaden* Court to permit the doctrine as to petitions brought under Section 4. As Justice Breyer warned in his dissent, *Badgerow*'s reasoning therefore "necessarily extends to Sections 5, 7, and 11 as well."

By limiting application of the look-through doctrine, *Badgerow* means that parties who want federal courts to hear their petitions to confirm or vacate an arbitral award will have to identify alternative bases for federal jurisdiction—for example, the international conventions and implementing statutes underpinning international arbitrations. Where no such independent jurisdictional basis exists, parties will generally be forced to rely on state courts and state arbitration-enforcement laws. Much ink has been spilled in recent years on the federalization of arbitration under the FAA, but *Badgerow* could signal the beginning of a shift in the opposite direction.

3 Min Read

Authors

Linda Coberly

Michael Stepek

Related Locations

Chicago | London | Washington, DC

Related Topics

Appellate | Appellate & Critical Motions | Appellate and Critical Motions | Arbitration | International Arbitration

Related Capabilities

International Arbitration | Appellate & Critical Motions | Financial Services

Related Regions

North America

Related Professionals

Linda Coberly

Michael Stepek