Client Alert

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Can I Dispute an Arbitrator's Arbitral Venue or Seat Decision?

Typically, you cannot. According to the Eleventh Circuit's recent decision in *Bamberger Rosenheim, Ltd. v. OA Development, Inc.*, questions of arbitral venue or seat of the arbitration are presumptively for arbitrators to decide, even in international arbitrations. So long as the arbitrator "arguably interpreted the arbitral-venue provision," courts will defer to his or her interpretation.

Background: *Bamberger Rosenheim, Ltd. v. OA Development, Inc.*

Profimex, a subsidiary of Israel-based Bamberger Rosenheim, agreed to engage in real estate business with OA Development (OAD). The relationship turned sour after Profimex believed that OAD shorted it on a sale. Pursuant to their arbitration agreement, Profimex commenced arbitration in Atlanta, Georgia, against OAD for breach of contract. However, OAD counterclaimed that Profimex had defamed OAD in statements to Israeli investors.

Profimex objected to the defamation counterclaim's arbitration in Atlanta, arguing that the parties' arbitration agreement directed disputes submitted by OAD to take place in Tel Aviv, Israel. Still, the arbitrator determined that Atlanta was a proper venue, in part because it found that Profimex submitted the dispute. In the end, the arbitrator found both parties liable, and the total awards for the claims resulted in a net payment owed by Profimex to OAD.

Profimex filed a petition to vacate the arbitrator's defamation award in the Northern District of Georgia. It alleged that the claims should have never been included in arbitration. Notwithstanding the argument, the District Court ultimately confirmed OAD's defamation award. Profimex appealed.

The Eleventh Circuit Defers to the Arbitrator's Interpretation

Although Profimex asserted that the arbitrator improperly applied the arbitral-venue provision, the Eleventh Circuit Court deferred to the arbitrator's interpretation. The court explained that *only* disputes about arbitrability—such as whether an arbitration clause is binding or whether the arbitration clause applies to a specific claim—are presumptively for courts to determine. On the other hand, disputes about the meaning and application of particular procedural preconditions, like the interpretation of an arbitral-venue provision, are presumptively for arbitrators to decide. The court held, consistent with the Second, Fourth, Tenth, and First Circuits, that interpretation disputes relating to forum selection clauses in arbitration agreements are presumptively arbitrable procedural questions.

Having established the arbitrable presumption, the court described the applicable standard of review as limited to "whether the arbitrator (even arguably) interpreted the parties' contract, not whether he got its meaning right or wrong." Satisfying this standard merely requires that the arbitrator took the "briefest glance" at the issue, which the arbitrator in this case easily satisfied by determining that the dispute was submitted by Profimex.

In sum, this case proclaims the narrow scope of questions of arbitrability reserved for courts and confirms that arbitral-venue or seat questions are beyond that scope. Crucially, it also advises parties that do not

want to arbitrate procedural questions, such as arbitral-venue disputes, to contractually limit the issues they choose to arbitrate.

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