
Hughes Hubbard & Reed

Hughes Hubbard Secures Sanctions for Frivolous Challenge to Arbitration Award

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One Battery Park Plaza • New York, New York 10004-1482 • +1 (212) 837-6000

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Hughes Hubbard & Reed successfully defended Swedish telecom operator Tele2 Sverige AB (Tele2) against a motion to vacate an arbitration award brought in federal court by its opponent in the International Centre for Dispute Resolution arbitration. The award was issued last September by arbitrators Alexis Mourre, Mark Kantor and Thomas Shillinglaw.

The opponent, DigiTelCom, is a former co-shareholder in two Russian telecommunications companies that alleged that Tele2 had breached agreements relating to the expansion of wireless phone service in Russia. In December, DigiTelCom and its affiliates filed a motion in the Southern District of New York, asking the court to vacate the award on the basis that the arbitration panel had allegedly misinterpreted the contracts at issue in its 117-page award.

Tele2 opposed the motion and asked the court to confirm the award. Tele2 also moved for the court to impose sanctions on opposing counsel under section 1927 of Title 28 of the United States Code for bringing an improper and meritless challenge to what should have been the final resolution to the case. While parties to United States litigations typically each bear their own costs, Section 1927 provides an exception to this rule, allowing the prevailing party to seek attorneys' fees when the opposing attorney "multiplies the proceedings in [a] case unreasonably and vexatiously...."

Following several rounds of written submissions and an oral argument in early June, in which John Fellas argued for Tele2, U.S. District Judge Richard J. Sullivan handed a victory to Tele2 on July 25, confirming the arbitration award and imposing sanctions on opposing counsel. In confirming the award, Judge Sullivan emphasized that it is not the job of district courts to second guess an arbitration panel's contract interpretation as long as the panel had a "barely colorable justification" for the award. The judge agreed with Tele2 that the 117-page arbitration award, which was replete with citations to the record, was easily supported by colorable interpretations of the contracts at issue.

Noting that sanctions must not be imposed lightly, Judge Sullivan nevertheless also agreed with Tele2 that sanctions were appropriate in the case since the plaintiffs had cited virtually no relevant authority in their submissions and had merely attacked the tribunal's findings and integrity "without providing any basis whatsoever" for their accusations. Finding that "[t]his kind of petition serves only to cause the parties to incur unnecessary expense and delay the implementation" of arbitration awards, Judge Sullivan granted Tele2's motion for sanctions in the form of attorneys' fees.

Where parties agree to arbitration "as an efficient and lower-cost alternative to litigation," Judge Sullivan wrote in the decision, "both the parties and the system itself have a strong interest in the finality of those arbitration awards."

Fellas told Global Arbitration Review that while courts have rarely imposed sanctions under section 1927, they have been increasingly willing to do so in arbitration matters.

"In recent years, US courts have been willing to impose sanctions in the form of an award of attorneys' fees and costs on parties or their counsel making baseless challenges to arbitration awards," he said.

The Hughes Hubbard team led by Fellas included Jennifer Alpern Hecht and Danny Grossman.

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John Fellas