

Nuances in the Development of Commercial Arbitration Law in the Commonwealth of Puerto Rico

By Richard C. Lorenzo and Maria Eugenia Ramirez

The Commonwealth of Puerto Rico ("Puerto Rico") adopted its Law of Commercial Arbitration in 1951 (the "Puerto Rico Law of Commercial Arbitration").¹ See 32 L.P.R.A. §3201 *et seq.* In great part, this law was modeled after the Federal Arbitration Act ("FAA"). See 9 U.S.C. §1 *et seq.* However, unlike the FAA, the Puerto Rico Law of Commercial Arbitration provides several additional provisions which regulate, in more detail, the commercial arbitration procedure itself.

Not surprisingly, as a United States territory, there is a strong public policy in favor of arbitration in Puerto Rico.² See *Concentrate Mfg. Operations v. Unión de Tronquistas de Puerto Rico*, No. KAC-2000-0050 (603), 2001 WL 1763250, at *3 (TCA P.R. Dec. 28, 2001). The parties who enter an arbitration agreement in Puerto Rico need to be aware that, by executing the arbitration agreement, they have substituted the courts for the arbitrator to determine all factual and legal controversies between them. See *Autoridad Sobre Hogares de P.R. v. Tribunal Superior de P.R.*, 82 D.P.R. 344, 353-354 (P.R. 1961).

As a result of the aforementioned, under the Puerto Rico Law of Commercial Arbitration, agreements to arbitrate are considered valid agreements. See 32 L.P.R.A. §3201. Thus, if any of the parties to an arbitration agreement commences a civil lawsuit against the other party to the arbitration agreement, the court before which the lawsuit has been filed will have the power to stay the judicial proceedings until the arbitration has been completed. See 32 L.P.R.A. §3203. Additionally, when one of the parties to an arbitration agreement is reluctant to commence arbitration, the Puerto Rico Law of Commercial Arbitration provides for the other party(ies) to the arbitration agreement to file a motion in court requesting the entry of an order compelling the parties to proceed with

the arbitration. See 32 L.P.R.A. §3204.

The Puerto Rico Law of Commercial Arbitration also provides for the selection and appointment of arbitrators,³ the time frame for the issuance of the arbitral award, and the admissibility and sufficiency of evidence, including the availability of the taking of depositions. See 32 L.P.R.A. §§3205-3210, 3214, 3217-3218. Further, arbitral awards can be confirmed by an order of the court at any time within one (1) year of the issuance of the award. See 32 L.P.R.A. §3221.

Finally, the Puerto Rico Law of Commercial Arbitration provides for the revocation, modification, or correction⁴ of arbitral awards. See 32 L.P.R.A. §§3222-3224. Specifically, the Puerto Rico Law of Commercial Arbitration provides six (6) statutory grounds under which a party may request the revocation of an arbitral award. See 32 L.P.R.A. §3222.⁵

The grounds for revocation of an arbitral award under the Puerto Rico Law of Commercial Arbitration are the following: (1) where the award has been procured by corruption, fraud, or undue means; (2) where there was evident partiality or corruption in the arbitrators, or either of them; (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy, or of any other misbehavior by which the rights of any party have been prejudiced; (4) where the arbitrators have exceeded their powers, or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made; and (5) where the arbitration agreement is not valid and the arbitration proceedings were instituted without the proper service of process of the demand for arbitration or the motion to compel arbitration.⁶ See 32 L.P.R.A. §3222.

In addition to the aforementioned statutory grounds, the Puerto Rico Supreme Court has created an additional non-statutory ground to request the revocation of an arbitral award in Puerto Rico. Under this additional ground, an arbitral award may be vacated when the parties themselves have explicitly stated in the arbitration agreement that the arbitral award is to be

"rendered in conformity with the parties' choice of substantive law,"⁷ and, even though the arbitrators recognize this and correctly state the law, they nevertheless ignore the applicable law. See *Rivera v. Samaritano*, 108 D.P.R. 604, 608 (P.R. 1979). See also *Univ. Católica de P.R. v. Triangle Engineering Corp.*, 136 D.P.R. 133, 142 n.7 (P.R. 1994); *Autoridad Sobre Hogares de P.R.*, 82 D.P.R. at 354.

The Puerto Rico Supreme Court has held that when the award is to be "rendered in conformity with the parties' choice of substantive law," and the arbitrator has simply ignored the applicable law, the lower court will have the authority to review the merits of the arbitral award. See *Rivera*, 108 D.P.R. at 608. Even though the court has the authority to review the merits of the award, the court can vacate the award *only* if it is *evident* that the arbitration panel did not resolve the arbitrable dispute according to applicable law, as explicitly stated in the parties' arbitration agreement. See *id.* at 609. Thus, mere errors or misunderstandings in applying the pertinent law or in evaluating the facts of the case, even serious errors, cannot be reviewed, unless, as previously stated, the parties agreed that the award must have been issued in accordance to applicable law and the arbitrator chose to ignore the law. See *Univ. Católica de P.R. v. Triangle Engineering Corp.*, 136 D.P.R. at 142 n.7. See also *Concentrate Mfg. Operations*, 2001 WL
continued, next page

PUERTO RICO

from preceding page

1763250, at *5.

Judicial inquiry under the “conformity with the law” standard is very limited simply because the burden it imposes in the moving party is very high. The process is not about relitigating the entire controversy in a judicial civil proceeding, and it certainly does not entail a *de novo* review of the award. See *Autoridad Sobre Hogares de P.R.*, 82 D.P.R. at 362. See also *Concentrate Mfg. Operations*, 2001 WL 1763250, at *5. The court, instead, is simply limited to verifying whether the award was rendered in conformity with the law, therefore satisfying the parties’ intent as recorded in the arbitration agreement. See *Concentrate Mfg. Operations*, 2001 WL 1763250, at *5.

Practitioners should be aware that this non-statutory ground to request the vacation of an arbitral award is also known as the “manifest disre-

gard of the law” standard. This standard has been adopted by multiple jurisdictions and federal circuit courts, including the First Circuit Court of Appeals of which Puerto Rico is part of. See, e.g. *Gupta v. Cisco Sys., Inc.*, 274 F.3d 1, *3 (1st Cir. 2001); *Prudential-Bache Sec., Inc. v. Tanner*, 72 F.3d 234, 237-38 (1st Cir. 1995) (applying Puerto Rican law); *Willemijn Houdstermaatschappij, B.V. v. Standard Microsystems Corp.*, 103 F.3d 9 (2d Cir. 1997); *United Transp. Union Local 1589 v. Suburban Transit Corp.*, 51 F.3d 376 (3d Cir. 1995); *Barnes v. Logan*, 122 F.3d 820 (9th Cir. 1997); *Montes v. Shearson Lehman Brothers, Inc.*, 128 F.3d 1456, 1461-62 (11th Cir. 1997).

In the end, despite the availability of the non-statutory ground to vacate an arbitral award, the high burden imposed upon the moving party serves as evidence that, in Puerto Rico, commercial arbitration continues to be a viable and effective alternative for the resolution of disputes.

Richard C. Lorenzo is a partner with the law firm of Hogan & Hartson, L.L.P., in Miami, Florida, and is a member of the firm’s international litigation and arbitration practice group. **Maria Eugenia Ramirez** is an associate with the law firm of Hogan & Hartson, L.L.P., in Miami, Florida, and is a member of the firm’s international litigation and arbitration practice group.

Endnotes:

1 The Puerto Rico Law of Commercial Arbitration does *not* apply to employer/employee arbitration agreements. See 32 L.P.R.A. §3229. The rules that govern arbitration agreements in Puerto Rico in the labor and employment law area are a product of Puerto Rican legislation and Puerto Rican and federal jurisprudence. Arbitration agreements in the labor and employment law area, however, will not be discussed in detail in this article.

2 Puerto Rico is considered a state for purposes of the Supremacy Clause of the United States Constitution. See *In re Dupont-Benlate Litig.*, 859 F. Supp. 619, 621 (D.P.R. 1994).

3 Arbitrators in Puerto Rico are under no obligation to issue conclusions of fact and law or explain the reasons why they have ruled in a particular way. See *Autoridad Sobre Hogares de P.R.*, 82 D.P.R. at 361-62.

4 There are three (3) grounds for a party to request the modification or correction of an award: (1) where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award; (2) where the arbitrators have awarded upon a matter not submitted to them; and (3) where the award is imperfect in matter of form not affecting the merits of the controversy. See 32 L.P.R.A. §3223.

5 Section 3222 of the Puerto Rico Law of Commercial Arbitration was modeled, in great part, after California’s and New York’s laws on vacating arbitral awards, as well as the FAA. See Cal. Civ. Proc. §1286.2 (West 2003); N.Y. C.P.L.R. §7511 (McKinney 2003); 9 U.S.C. §10.

6 The Puerto Rico Supreme Court, in accordance with the Puerto Rico Law of Commercial Arbitration, has summarized the grounds to vacate an arbitral award: (1) fraud; (2) improper conduct; (3) lack of due process during the arbitration hearing; (4) public policy violation; (5) lack of jurisdiction; and (6) the award has not resolved all of the issues in controversy submitted to the arbitration panel. See *Autoridad Sobre Hogares de P.R.*, 82 D.P.R. at 353.

7 “Rendered in conformity with the parties’ choice of substantive law” means that the arbitrator(s) is(are) precluded from ignoring the rules interpreting the applicable Puerto Rico substantive law issued by the United States and Puerto Rico Supreme Courts. See *Concentrate Mfg. Operations*, 2001 WL 1763250, at *4. Any decisions issued by the Puerto Rico Courts of First Instance and Puerto Rico administrative agencies will be considered persuasive authority. See *id.*



INTERNATIONAL LAW CERTIFICATION

The Board of Legal Specialization and Education and the International Law Certification Committee are pleased to announce the following attorneys are now Board Certified as of **June 1, 2004**:

Congratulations!

Jorge Kuri - Miami

Malcolm C. Riddell - Sarasota

Make It Your Goal Too!

For further information go to:

**[www.flabar.org/member_services/certification/
international_law](http://www.flabar.org/member_services/certification/international_law)**