Ambiguity Ruling Highlights Deference To Arbitral Process

By **Myrna Barakat Friedman** (July 23, 2024)

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On June 12, in Eletson Holdings Inc. v. Levona Holdings Ltd., the U.S. District Court for the Southern District of New York remanded an arbitral award to the arbitrator for clarification, requesting a breakdown of the punitive damages that had been awarded.[1]

Although the clarification will, in effect, likely lead to a change in the amount of damages awarded, U.S. District Judge Lewis Liman held that remand was warranted based on the ambiguity exception to the functus officio doctrine, which calls for the jurisdiction and mandate of an arbitrator to end once a final award is issued.

Key Facts

The underlying dispute in this matter revolved around actions taken in connection with interests held in a limited liability company agreement that Eletson claimed Levona had breached.

In the final award issued by the arbitrator, Ariel Belen, serving as sole arbitrator in a JAMS-administered arbitration, Levona was ordered to pay Eletson both compensatory and punitive damages. Belen reasoned that Lenova should pay punitive damages, in part, because Lenova and its affiliates had breached a status quo injunction that he had previously issued.

Before Judge Liman, Eletson sought to confirm the award while Lenova sought to have it vacated. Judge Liman found that the arbitrator exceeded his powers in awarding punitive damages for acts undertaken by an affiliate of Levona — in violation of the status quo injunction he had issued — a nonparty to the arbitration.[2]

The court therefore declined to confirm the portion of the award relating to punitive damages awarded as a result of the breach of the status quo injunction.

Since the award included one lump sum amount for all punitive damages, the court couldn't determine the amount of the punitive damages attributable to violations of the status quo injunction, as opposed to other wrongful conduct by Levona. Thus, in declining to confirm the punitive damages' portion of the award, Judge Liman characterized the award as "ambiguous."

On this basis, Judge Liman remanded the award for clarification citing General Re Life Corp. v. Lincoln National Life Insurance Co., a 2018 case in which the U.S. Court of Appeals for the Second Circuit had held that a district court could remand an ambiguous award to the arbitrator for the purpose of clarifying and not altering the award in any substantive way.[3]

Judge Liman rejected Levona's argument that the award must be vacated and should not be remanded. In so doing, he rejected the claim that the arbitrator was functus officio and thus no longer empowered to act on this matter.[4]

The Ambiguity Exception

Levona argued against the remand claiming that the award was unambiguous and that remand and clarification would lead to a substantive modification of the award and not a mere clarification.

Judge Liman held that as "in previous cases in this Circuit that have warranted remand, the Court is unable to discern what portion of the punitive damages award cannot be confirmed because it is based upon impermissible grounds. Levona fails to identify any case law that the Court overlooked in reaching such determination."[5]

The common-law doctrine of functus officio addresses the finality of the arbitral process and calls for an arbitrator's jurisdiction to end once the arbitrator issues a final award, at which point they are no longer permitted to revise their award.

While this doctrine aims to protect the integrity of the arbitral process and is widely understood to limit the arbitrator's powers postaward, it is subject to certain established exceptions.[6]

The Second Circuit had established the ambiguity exception in General Re and permitted a remand to the arbitrator when:

- The final award is ambiguous;
- The clarification merely clarifies the award and does not substantively modify it; and
- The clarification comports with the parties' intent in accordance with the underlying agreement giving rise to the arbitration.[7]

In examining the ambiguity of the award, Judge Liman cited a 1998 Southern District of New York case, Clarendon National Insurance Co. v. TIG Reinsurance Co., that ordered a similar remand requiring the arbitrator to break down principal and interest in the damages awarded.[8] This allowed the court to exclude the interest component, which it deemed to have been improperly added to the damages awarded under the relevant contractual arrangement.

Levona also argued that remand was not appropriate because the result of the remand inevitably would result in a change in the amount of the award. The court rejected that argument, emphasizing that the propriety of a remand under the ambiguity exception was determined by the task required of the arbitrator, not the result of the remand.

Here, the court was instructing the arbitrator simply to break down the amounts awarded and not provide any new or additional reasoning for the award.

The court reasoned that, if the final amount of punitive damages that it confirms is less than the total amount initially awarded by the arbitrator, such change would not be the result of any modification of the award by the arbitrator.

Rather, the change would stem from the court's refusal to confirm the portion of the award that the arbitrator identifies in the remand as attributable to the punitive damages that he had awarded in respect of the status quo injunction violation.

The court emphasized that the arbitrator's task is limited to breaking down the total amount of punitive damages and that he is not permitted to add any reasoning to his award or to modify it in any other way.

The objective of the remand is solely to provide the court with the breakdown of the punitive damages it seeks: "It will be the Court that declines to confirm a portion of the [a]ward that can only be identified upon clarification by the [a]rbitrator."[9]

Key Takeaways

The Eletson case is a good example of the deference afforded by the courts to the arbitral process and the parties' contractual agreement. It should not be read as a departure from the functus officio doctrine, an established core attribute of the arbitral process.

In this matter, the court did not permit Levona to escape the adjudication process to which it had contractually agreed. It upheld the authority of the arbitrator as it related to the arbitration parties who were bound by the dispute resolution provisions they had negotiated.

The remand order was for the limited purpose of aiding the court in quantifying the portion of the damages that were awarded for wrongful acts undertaken by nonparties, and thus beyond the jurisdiction of the arbitrator.

With respect to the application of the ambiguity exception to the functus officio doctrine, the court adopted a practical interpretation of the exception, which aims to respect the arbitrator's ruling.

The Eletson decision reflects the view that the analysis of the ambiguity exception is not static and may be applied even in cases where the award, when issued, was unambiguous, but portions of the award become unclear under court scrutiny.

It also reflects a broad view of the clarification limitation of the ambiguity exception that will apply so long as it is the court that ultimately modifies the award based on the arbitrator's clarification, and the arbitrator is not in any way substantively altering their award pursuant to the remand order.

Judge Liman's interpretation of the ambiguity exception reflects a common sense approach: In the absence of procedural defects requiring vacatur, the parties' agreement to arbitrate a dispute should be enforced even if it requires that the arbitrator clarify their award when uncertainty arises following court review.

Going forward, parties and arbitrators may want to exercise caution to ensure that awards clearly break down the various elements that are found to contribute to a damages award. Parties may also want to consider identifying specific circumstances for which they agree to extend the arbitrator's jurisdiction.

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[1] Eletson Holdings, Inc. et al v. Levona Holdings Ltd. (SDNY No. 23-cv-7331 (LJL)).

[2] All the other elements of the award were found to be enforceable.

[3] General Re Life Corp. v. Lincoln Nat'l Life Ins. Co., 909 F.3d 544 (2d Cir. 2018).

[4] Judge Liman initially had remanded with instructions that the arbitrator "limit his clarification simply to the questions of whether he would not have awarded punitive damages, but for the finding of a violation of the [s]tatus [q]uo [i]njunction, and whether he would have applied a different multiple of the compensatory damages in his calculation of the punitive damages award in the absence of the finding of a violation of the [s]tatus [q]uo [i]njunction." When confronted with Lenova's motion for reconsideration, Judge Liman modified the remand order to ensure that the arbitrator limits his task to offering a breakdown of the punitive amounts awarded without additional reasoning. Eletson Holdings, Inc. (SDNY No. 23-cv-7331 (LJL)) at 9-10.

[5] Id. at 7.

[6] For administered arbitrations, the rules of the administering institution governing the arbitration will generally address an arbitrator's power, if any, to review a final award after its issuance (for example, to rectify clerical errors); the Parties may also contractually agree to extend an arbitrator's jurisdiction for specific matters post-award.

[7] General Re Life Corp. (909 F.3d 544).

[8] Clarendon Nat'l Ins. Co. v. TIG Reinsurance Co., 990 F. Supp. 304, 311 (S.D.N.Y. 1998).

[9] Eletson Holdings, Inc. (SDNY No. 23-cv-7331 (LJL)) at 7-8.