

## Court Denies Petition to Vacate Arbitration Award Under Arbitrator Misconduct and “Exceeding Powers” Standards of Review

The federal court in Connecticut denied a former Subway franchisee’s motion to vacate an arbitration award, finding that the franchisee failed to show that the arbitrator was guilty of misconduct in refusing to continue a hearing and reserving judgment on two of the franchisee’s motions. The court also declined to find that the arbitrator exceeded his powers by issuing an ex parte award to the franchisor, and confirmed the arbitrator’s award. *Vyas v. Doctor’s Assocs., Inc.*, 2018 WL 1440179 (D. Conn. Mar. 21, 2018). Doctor’s Associates (DAI), the franchisor of Subway, had initiated arbitration proceedings to terminate three franchises operated by Vyas. The arbitration center initially applied its expedited commercial arbitration rules to the dispute, but later moved the matter to its regular commercial arbitration rules after Vyas filed counterclaims alleging up to \$500,000 in damages. Vyas did not initially respond to the list of proposed arbitrators, but objected to the appointed arbitrator after receiving his conflicts disclosures. Over Vyas’ objection, the selected arbitrator continued to oversee the case. After considering various motions filed by Vyas, the arbitrator declined to continue the date for the evidentiary hearing, compel a witness’ attendance, or preclude DAI from calling undisclosed witnesses, but reserved the right to revisit the latter two issues at a later date. Vyas responded with a notice claiming, among things, that (i) the initial application of the expedited rules was improper, and thus the arbitrator selection process was incorrect; and (ii) the arbitrator had repeatedly shown bias by excusing DAI’s noncompliance with discovery deadlines, but refusing to extend the same courtesy to Vyas. Vyas withdrew her consent to the arbitrator’s jurisdiction and did not participate in the hearing. As a result, the arbitrator issued an ex parte award terminating the three franchise agreements. Vyas appealed to the district court.

The court noted that a party bears a heavy burden to show that an arbitration award falls within the very limited grounds upon which a district court may vacate it. The court rejected Vyas’ arguments regarding arbitrator misconduct for failing to extend the hearing date, because she did not show how she was prejudiced. Moreover, the court stated that Vyas failed to explain any prejudice stemming from the arbitrator’s reservation of judgment on her two motions, particularly where she declined to participate in the hearing and did not describe how a particular witness’ testimony would have been pertinent and material to her case. Finally, observing that the Second Circuit had yet to recognize the methodology of arbitrator appointment as a basis for vacatur of an arbitration award, the court

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rejected Vyas' argument because she consented to the arbitration procedures in the franchise agreement.