

**BLOGS**

Attorneys' Fees

Eleventh Circuit Affirms Award of Attorneys' Fees Following Arbitration

The Eleventh Circuit Court of Appeals recently affirmed an award of fees incurred in seeking confirmation of an arbitral preliminary injunction. *Vital Pharm. v. Pepsico, Inc.*, 2022 WL 2066406 (11th Cir. Jun. 8, 2022).

The Eleventh Circuit Court of Appeals recently affirmed an award of fees incurred in seeking confirmation of an arbitral preliminary injunction. *Vital Pharm. v. Pepsico, Inc.*, 2022 WL 2066406 (11th Cir. Jun. 8, 2022). Vital, doing business as VPX Sports, entered into a distributor agreement for Pepsi to serve as the exclusive distributor of VPX's BANG energy drinks. VPX then unilaterally terminated the agreement to undertake distribution itself, and Pepsi initiated arbitration. VPX responded by suing Pepsi in federal court in Florida, seeking injunctive relief. In the arbitration, an emergency arbitrator enjoined VPX to continue performing the distribution agreement pending resolution, then Pepsi moved to confirm the interim award for injunctive relief in the Florida court. The court confirmed the interim award on Pepsi's motion and dismissed VPX's complaint, determining that VPX was collaterally estopped from seeking an injunction inconsistent with the interim award. The Florida court then granted Pepsi's request for the attorneys' fees it incurred in seeking confirmation. VPX appealed.

The Eleventh Circuit affirmed the award, rejecting VPX's argument that the phrase "confirmed by a court of competent jurisdiction" limited fee awards to those incurred after an award's confirmation. The court held that the plain terms of the distribution agreement required the party challenging an award to pay fees incurred in seeking confirmation if the award is confirmed by a court. The court also rejected VPX's argument that the distribution agreement did not authorize fee shifting for interim awards, pointing out that the relief granted by the interim award was sufficiently final to be confirmed under the Federal Arbitration Act.

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