APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19-30766

DENISE A. BADGEROW,
Plaintiff-Appellant,

v.

GREG WALTERS; THOMAS MEYER; RAY TROSCLAIR,
Defendants-Appellees.

Filed: September 15, 2020

Appeal from the United States District Court
for the Eastern District of Louisiana

Before JOLLY, GRAVES, and DUNCAN,
Circuit Judges.

OPINION

E. GRADY JOLLY, Circuit Judge:

A panel of arbitrators issued an arbitration award dismissing all of the plaintiff's claims against Ameriprise Financial Services, Inc. (Ameriprise) and three of its franchise advisors. The plaintiff then filed a petition in Louisiana state court to vacate that arbitration award, as to

certain defendant parties. The defendants in the Louisiana state-court proceeding removed the action to vacate to federal court. The plaintiff moved to remand, asserting that the federal court lacked subject-matter jurisdiction over the petition to vacate. The district court held that it did have subject-matter jurisdiction over the petition to vacate and thus denied remand. The district court, exercising that jurisdiction, then ruled on the removed petition to vacate, denying the plaintiff's claims with prejudice, the merits of which are not appealed. This appeal followed, appealing only the jurisdiction of the federal court over the petition to vacate.

We hold that the district court had subject-matter jurisdiction over the plaintiff's petition to vacate the arbitration award and thus correctly denied remand. Accordingly, we affirm the judgment of the district court.

I.

The background to the underlying employment dispute in this case is more fully laid out in our opinion in the related case *Badgerow v. REJ Properties Inc.*, No. 19-30584. In this separate case, we set out here only the procedural history relevant to the jurisdictional question implicated in this appeal.

Denise Badgerow was employed as an associate financial advisor by REJ Properties, Inc. (REJ), a Louisiana corporation whose three principals (collectively, "the Principals") were "independent franchise advisors" for Ameriprise.[1] She was employed at REJ from January 2014 until July 2016, when she was terminated.

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[1] The three principals of REJ were Thomas Meyer, Ray Trosclair, and Greg Walters.

During her employment with REJ, Badgerow signed an agreement to arbitrate any disputes that may arise between her and "Ameriprise Financial or its Affiliates." This agreement required her to arbitrate all claims against the Principals, who were all Ameriprise affiliates. After her termination, Badgerow initiated an arbitration proceeding against the three principals before an arbitration panel of the Financial Industry Regulatory Authority (FINRA). Later, after Ameriprise successfully moved to compel arbitration in a separate federal lawsuit, Badgerow added a declaratory judgment claim against Ameriprise to the FINRA arbitration.

In the FINRA arbitration, Badgerow sought damages from the Principals for tortious interference of contract and for a violation of Louisiana's "whistleblower" law. Her declaratory judgment claim against Ameriprise sought to hold Ameriprise jointly liable for the alleged discriminatory conduct of the Principals and REJ. In December 2018, the FINRA arbitration panel issued an award dismissing all of Badgerow's claims against both the Principals and Ameriprise with prejudice.

In May 2019, Badgerow brought a new action in Louisiana state court—a petition to vacate the FINRA arbitrators' award dismissing her claims against the Principals. She alleged that the FINRA arbitrators' dismissal of the whistleblower claim was obtained by fraud committed by the Principals on the FINRA arbitrators, and that this fraud required vacatur of the FINRA panel's dismissal of all her claims against the Principals. In her petition to vacate, Badgerow named only the Principals as defendants. The Principals removed the Louisiana action to vacate to the federal court of the Eastern District of Louisiana. Badgerow filed a motion to remand, asserting the

lack of federal subject-matter jurisdiction. The Principals filed their own motion to confirm the FINRA arbitration award.

The district court held that it had federal subject-matter jurisdiction over Badgerow's petition to vacate and thus denied remand to Louisiana state court. Ruling on the substance of the petition, the court held that no fraud had been perpetrated by the Principals on the FINRA arbitrators and therefore denied vacatur of the FINRA arbitration dismissal award. The court also confirmed the FINRA arbitration dismissal award with respect to all parties. Badgerow has timely appealed the denial of her motion to remand.

II.

A.

On appeal, Badgerow, we repeat, challenges only the finding of federal subject-matter jurisdiction over her petition to vacate and the denial of remand, not, in any instance, the merits of the confirmation of the FINRA arbitration dismissal award, nor the dismissal on the merits of the removed petition to vacate. Stated differently, the only issue for our review is whether the district court properly found that it had *jurisdiction* to rule on the merits of the removed petition to vacate and properly denied remand.

"[T]he proper standard of review of a district court's denial of a motion to remand is de novo." *Allen v. Walmart Stores, L.L.C.*, 907 F.3d 170, 182 (5th Cir. 2018).

B.

We start with the basics. The federal removal statute requires, among other things, that a removed case must

be a civil action "of which the district courts of the United States have original jurisdiction." 28 U.S.C. § 1441(a). When the action at issue is one brought under the Federal Arbitration Act (FAA), analyzing whether the district courts would have original jurisdiction over the action can become a nuanced question.[2]

In *Vaden v. Discover Bank*, 556 U.S. 49 (2009), the Supreme Court adopted the so-called "look-through" analysis for determining federal jurisdiction in actions to compel arbitration under section 4 of the FAA. Although the instant proceeding is a petition to vacate under FAA section 10, our court has held that "motions brought under

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[2] Badgerow notes that she brought her petition to vacate in state court under the Louisiana Arbitration Law, not the Federal Arbitration Act. But she presents no argument as to how the jurisdictional analysis would differ if we were to apply the Louisiana Arbitration Law rather than the FAA. In any event, the arbitration agreement between Badgerow and Ameriprise that covers this dispute explicitly states that it is "covered and enforceable under the terms of the Federal Arbitration Act." This arbitration agreement covers disputes between Badgerow and Ameriprise as well as disputes between Badgerow and the Principals, who are franchisees of Ameriprise. Furthermore, the First Circuit has held that "where the FAA applies, it may be displaced by state law (if at all) only if the parties have so agreed explicitly." *Ortiz-Espinosa v. BBVA Sec. of Puerto Rico, Inc.*, 852 F.3d 36, 42 (1st Cir. 2017) (citing *Hall St. Assocs. v. Mattel, Inc.*, 552 U.S. 576, 590 (2008)). Here, not only does the agreement lack an explicit agreement to invoke the Louisiana Arbitration Law, it in fact contains an agreement to apply the FAA. And finally, even if the Louisiana Arbitration Law were to apply, "Louisiana courts look to federal law in interpreting the Louisiana Arbitration Law because it is virtually identical to the United States Arbitration Act . . . ." *Chevron Phillips Chem. Co., LP v. Sulzer Chemtech USA, Inc.*, 831 So. 2d 474, 476 (La. App. 2002). We will therefore treat the petition as one brought under FAA section 10, the FAA equivalent of the Louisiana Arbitration Law provision Badgerow seeks to invoke.

sections 9, 10, and 11 [of the FAA], each of which provides the ability to seek a different remedy in district court following an arbitration award, are subject to the look-through approach endorsed in *Vaden*." *Quezada v. Bechtel OG & C Constr. Servs., Inc.*, 946 F.3d 837, 843 (5th Cir. 2020). Under this analysis, "a federal court should determine its jurisdiction by 'looking through' [an FAA] petition to the parties' underlying substantive controversy." *Vaden*, 556 U.S. at 62. If "looking through" to the claims involved in the underlying dispute (in this case, the claims brought in the FINRA arbitration proceeding) shows that the dispute itself (*i.e.* the dispute that was presented to the FINRA arbitrators) could have been brought in federal court, then federal jurisdiction lies over the FAA petition. *Id.*

III.

A.

The district court's application of the look-through analysis proceeded in the following steps: (1) Federal jurisdiction exists over the petition to vacate if at least one of Badgerow's claims in the FINRA arbitration was predicated on federal law; (2) Badgerow's joint-employer claim against Ameriprise in the FINRA arbitration was predicated on federal employment law; (3) The joint-employer claim against Ameriprise in the FINRA arbitration may confer federal jurisdiction, even though the dismissal of that claim is not a dismissal that Badgerow seeks to vacate with her petition to vacate; and (4) Federal jurisdiction therefore exists over the petition to vacate because of the federal claim against Ameriprise in the FINRA arbitration.

On appeal, Badgerow argues that the third step of the analysis was erroneous because only claims in the FINRA arbitration that were made against the Principals, the defendants in the petition to vacate, may be considered for the purposes of determining federal jurisdiction over the petition. She thus argues that because she does not seek to vacate the FINRA arbitrators' dismissal of her claim against Ameriprise and has not named Ameriprise as a defendant in this action, the claim against Ameriprise in the FINRA arbitration cannot be considered in the look-through analysis. We next move to the merits of this objection.[3]

B.

Badgerow argues that by not naming Ameriprise as a defendant in her state-court action to vacate, and by not challenging the FINRA panel's dismissal of her claim

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[3] Badgerow also argues that the second step of the court's analysis, *i.e.* that a federal claim is presented, was wrong because the joint-employer claim against Ameriprise in the FINRA arbitration did not arise under federal law and thus cannot confer federal jurisdiction. But Badgerow asserted in the FINRA arbitration that "Ameriprise tacitly participated in all the conduct Ms. Badgerow alleges herein and in the Federal Complaint with regard to discrimination and other employment issues described herein." Badgerow here refers to her complaint in a separate federal discrimination suit, where Badgerow brought several claims of Title VII liability against REJ. Thus, Badgerow sought a declaratory judgment establishing that Ameriprise was a joint employer with REJ, which would make Ameriprise liable for any injuries inflicted on Badgerow by REJ in violation of federal civil rights law. Adjudicating that claim requires applying Title VII (specifically the four factors laid out in *Trevino v. Celanese Corp.*, 701 F.2d 397, 403–04 (5th Cir. 1983)) and thus arises under federal law. The district court plainly was correct in finding that Badgerow's claim against Ameriprise in the FINRA arbitration was a federal-law claim.

against Ameriprise, she has disqualified her FINRA arbitration claim against Ameriprise as a potential source of federal jurisdiction over her petition to vacate. As Badgerow accurately notes, "the language in *Vaden* specifically requires looking through to the underlying controversy 'between the parties.'" The only parties to this case are Badgerow and the Principals, not Ameriprise. Badgerow thus argues that the look-through analysis "should only look at [the] controversy 'between the parties' to her action to vacate, and not the claims made in the arbitration against a third-party Ameriprise." The district court rejected this argument, holding that "Badgerow cannot deprive the Court of subject matter jurisdiction over an action to vacate the award by stripping off a single state law claim [*i.e.* the claim against the Principals] as a basis for attacking the award."

A careful reading of *Vaden* demonstrates that the district court's approach was correct. *Vaden* tells us that federal jurisdiction lies over an FAA petition "if, 'save for' the [arbitration] agreement, the entire, actual 'controversy between the parties,' as they have framed it, could be litigated in federal court." *Vaden*, 556 U.S. at 66 (citation omitted). *Vaden* emphasizes that our view of the "actual controversy between the parties" should not be too narrow. "The relevant question is whether the whole controversy between the parties—not just a piece broken off from that controversy—is one over which the federal courts would have jurisdiction." *Id.* at 67.

So we turn to engage *Vaden*'s look-through analysis to assess whether, "save for the arbitration agreement," a federal court would have had jurisdiction over an action raising the same claims against the Principals that

Badgerow brought in the FINRA arbitration proceeding—namely tortious interference and Louisiana "whistleblower"—the dismissal of which she now seeks to vacate.

Our look-through analysis here shows that Badgerow's claims against Ameriprise and the Principals all arose from the same common nucleus of operative fact, namely her employment claims of unfair treatment and discriminatory conduct while working at REJ, which claims include her state-law claims of interference of her employment contract and her whistleblower claims, the subject of her Louisiana motion to vacate. And, in an action arising out of this "whole controversy"—*i.e.* this "full-bodied controversy," *Vaden*, 556 U.S. at 68 n.16—the federal-law claim against Ameriprise would have been sufficient for federal jurisdiction to bestow its adjudicative powers over Badgerow's state-law claims against the Principals under supplemental jurisdiction principles. *See* 28 U.S.C. § 1367(a).

We thus hold that, applying the look-through analysis, the district court correctly found that the federal claim against Ameriprise in the FINRA arbitration proceeding meant that there was federal subject-matter jurisdiction over the removed petition to vacate the FINRA arbitration dismissal award. The district court therefore correctly denied Badgerow's motion to remand the action to vacate to Louisiana state court.

IV.

In this opinion, we have held that the district court had jurisdiction over Badgerow's petition to vacate, which was filed in, and removed from, the Louisiana state court. To resolve that question, we have first acknowledged that

we are bound by our court's *Quezada* decision to apply the look-through analysis as defined by the Supreme Court in *Vaden*. Applying the look-through analysis, we have held, first, that the district court correctly found that Badgerow's Title VII declaratory judgment claim against Ameriprise in the FINRA arbitration was a federal-law claim. We have held, second, that all of Badgerow's claims against the Principals and Ameriprise in the FINRA arbitration arose from the same common nucleus of operative fact, and that under the principle of supplemental jurisdiction, federal jurisdiction obtains over Badgerow's state-law tortious interference and whistleblower claims. The district court therefore properly held that Badgerow's federal claim against Ameriprise in the FINRA arbitration invested federal jurisdiction over Badgerow's Louisiana petition to vacate the FINRA arbitration award as to the Principals. Because there was federal jurisdiction over the removed petition to vacate, denial of remand back to the Louisiana state court was proper.

We therefore AFFIRM the denial of remand. Since Badgerow does not challenge the merits of the district court's order denying vacatur, confirming the FINRA arbitration award dismissing the claims against the Principals, and dismissing the case in its entirety with prejudice, the judgment of the district court is, in all respects,

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

CIVIL ACTION NO. 19-10353
SECTION: "A" (2)

DENISE A. BADGEROW,
Plaintiff

v.

GREG WALTERS, ET AL.,
Defendants

Filed: June 26, 2019

ORDER AND REASONS

Before JAY C. ZAINEY, United States District Judge.

The following motions are before the Court: **Motion to Remand to State Court (Rec. Doc. 15)** filed by Plaintiff, Denise Badgerow; **Motion to Confirm Arbitration Award (Rec. Doc. 5)** filed by Defendants, Greg Walters, Thomas Meyer, and Ray Trosclair. Both motions are opposed. The motions, noticed for submission on June 12, 2019, are before the Court on the briefs without oral argument.

This matter is related to Civil Action 17-9492, Badgerow versus REJ Properties, Inc. d/b/a Walters, Meyer, Trosclair & Associates ("WMT").[1]

In that related case, on January 10, 2018, the Court entered its Order and Reasons staying all claims against Ameriprise pending FINRA arbitration. (Rec. Doc. 47). The principals of WMT—Greg Walters, Thomas Meyer, and Ray Trosclair—were not parties to Civil Action 17-9492 but they were parties to the FINRA arbitration. On December 28, 2018, the FINRA arbitrators issued their award which dismissed all of Badgerow's claims against Ameriprise, Thomas Meyer, Ray Trosclair, and Gregory Walters with prejudice. (Rec. Doc. 5-2).

On May 29, 2019, the Court entered an extensive opinion addressing Badgerow's discrimination, Equal Pay Act, and breach of contract claims against WMT d/b/a REJ Properties, Inc. (Rec. Doc. 159). A final judgment was entered in favor of that defendant dismissing all claims with prejudice.

On June 12, 2019, the Court entered an Order and Reasons confirming the arbitration award without qualification on Ameriprise's motion, and in doing so the Court analyzed and rejected Badgerow's allegation of fraud

[1] Throughout this Order and Reasons the Court will assume the reader's familiarity with the prior opinions entered in Civil Action 17-9492.

with respect to the award. (Rec. Doc. 161). A final judgment was entered in favor of Ameriprise and against Badgerow based on the arbitration award.[2]

Having obtained no relief in either the arbitration or in this Court, which was Badgerow's chosen forum in 2017 when she first filed suit, Badgerow moved to the state courts. She filed a lawsuit in Lafourche Parish and a lawsuit in Orleans Parish. Defendants Walters, Meyer, and Trosclair (hereinafter collectively "the Principals") removed the latter action to this Court and it has been designated as Civil Action 19-10353, the captioned matter.

Civil Action 19-10353 is a petition to vacate the arbitration award that this Court has already confirmed, on the basis of fraud allegations that this Court has already determined to be legally frivolous. (17-9492-Rec. Doc. 161). Once the case was removed the Principals moved to confirm the arbitration award issued in their favor. Badgerow then moved to remand the case to state court.

Given that the Court has already considered and rejected Badgerow's fraud challenge to the arbitration award,[3] the sole question before the Court is whether it has subject matter jurisdiction over the removed action so as to grant the Principals' motion to confirm the award

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[2] Even though the award was confirmed without qualification, and even though the principals were parties to the arbitration and the favorable award, the Court could not enter a judgment in their favor because they were not parties to Civil Action 17-9492.

[3] In fact, as the Court has already pointed out on the record, the Court reviewed and considered Badgerow's extensive briefing in this action regarding her fraud challenge to the award when considering Ameriprise's motion to confirm the award. (17-9492-Rec. Doc. 161 at 5 n.6).

and enter a final judgment in their favor. Both parties have provided extensive briefing in conjunction with Badgerow's motion to remand the case to state court. Badgerow's position is straightforward: She asserts that under the well-pleaded complaint rule a federal court lacks jurisdiction over her petition to vacate because it raises only state law issues. After all, the fraud allegations that Badgerow raises in resisting the award are directed solely at her state law whistleblower claim. The Principals' position is likewise straightforward: They contend that federal question jurisdiction applies because the Louisiana whistleblower claim was premised on violations of federal law, and that the Court should apply the "look through" approach promulgated in *Vaden v. Discover Bank*, 556 U.S. 49 (2009), to essentially pierce Badgerow's artfully pleaded petition.[4]

Vaden v. Discover Bank addressed *inter alia* the question of subject matter jurisdiction when a party moves to compel arbitration under § 4 of the Federal Arbitration Act, which in and of itself does not confer jurisdiction—an independent basis for federal subject matter jurisdiction must exist. The Court held that a federal court may "look through" a § 4 petition to determine whether it is predicated on an action that arises under federal law. *Vaden*, 556 U.S. at 53, 62.

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[4] What the Court cannot do is exercise jurisdiction based on the All Writs Act, 28 U.S.C. § 1651(a), because it does not confer subject matter jurisdiction. *See Syngenta Crop Prot., Inc. v. Henson*, 567 U.S. 28 (2002). Likewise, the Court cannot assume jurisdiction in order to avoid the substantial waste and cost of involving another court in this matter at this juncture or in order to punish Badgerow for forum shopping.

In the aftermath of *Vaden*, courts have grappled with whether the "look through" approach applies to § 10 motions to vacate. Courts declining to extend *Vaden* to § 10 motions to vacate have pointed out that *Vaden*'s reasoning was grounded on specific text in § 4 that § 10 that does not contain. *See, e.g., Goldman v. Citigroup Global Mkts., Inc.*, 834 F.3d 242 (3rd Cir. 2016). Meanwhile in those circuits where *Vaden* has been extended to § 10 motions to vacate, the courts have provided persuasive reasoning explaining why the textual differences between the Federal Arbitration Act's § 4 and § 10 do not militate against recognizing consistent jurisdictional principles for both sections. *See, e.g., Ortiz-Espinosa v. BBVA Securities, Inc.*, 852 F.3d 36 (1st Cir. 2017); *Doscher v. Sea Port Grp. Securities, LLC*, 832 F.3d 372 (2nd Cir. 2016).

The Fifth Circuit has not yet entered into the fray of this circuit split to determine whether the *Vaden* look through approach applies to § 10 motions to vacate. This Court will err on the side of assuming that the Fifth Circuit would apply the same jurisdictional standards to a motion to vacate an arbitration award that would apply to a motion to compel arbitration.[5]

That said, Badgerow filed suit in state court relying on La. R.S. § 9:4210 to vacate the award.[6] Badgerow's position is that the petition only involves state law because

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[5] The Court errs on the side of assuming that the *Vaden* look through approach could apply to a petition to vacate because Badgerow can raise this issue on appeal but if the Court remands this matter for lack of subject matter jurisdiction then the Principals will have no appeal option.

[6] Section 4210 is part of Louisiana's Binding Arbitration Law and it tracks the vacatur language of § 10 of the FAA. The arbitration agreements at issue state that they are covered by the terms of the FAA.

she only seeks to vacate the award with respect to the state law whistleblower claim. To the contrary, the award was based on state law as well as federal law because Badgerow included as part of the arbitration her joint employer claims that were grounded on federal employment law. This Court is persuaded that Badgerow cannot deprive the Court of subject matter jurisdiction over an action to vacate the award by stripping off a single state law claim as a basis for attacking the award.[7] Because the award itself included federal claims, the Court is persuaded that federal question jurisdiction applies notwithstanding the artfully pleaded petition. Therefore, the motion to remand is denied.

For the reason given in Civil Action 17-9492, the Principals' motion to confirm the award is granted.

Accordingly;

IT IS ORDERED that the **Motion to Remand to State Court (Rec. Doc. 15)** filed by Plaintiff, Denise Badgerow is **DENIED**.

IT IS FURTHER ORDERED that the **Motion to Confirm Arbitration Award (Rec. Doc. 5)** filed by De-

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(17-9492-Rec. Doc. 26-2 at 5; Rec. Doc. 26-3 at 5). But because the FAA itself confers no jurisdiction on a federal court, the Court attaches no jurisdictional significance to Badgerow's avoidance of the FAA in her state court pleading.

[7] Of course, as the Principals point out, even as to the state law whistleblower claim Badgerow based it on an alleged violation of federal law. The Court does not determine whether the issues of federal law were substantial enough to confer jurisdiction, *see Venable v. La. Workers' Comp. Corp.*, 740 F.3d 937 (5th Cir. 2013), because the award itself included federal claims.

fendants, Greg Walters, Thomas Meyer, and Ray Trosclair is **GRANTED**. A final judgment will be entered in favor of these defendants, confirming the arbitration award and dismissing this action to vacate and all claims against them with prejudice.

June 26, 2019

/s/ *Jay C. Zainey*
JAY C. ZAINEY
UNITED STATES DISTRICT JUDGE

APPENDIX C

1. Section 4 of the Federal Arbitration Act, 9 U.S.C. 4, provides:

> **Failure to arbitrate under agreement; petition to United States court having jurisdiction for order to compel arbitration; notice and service thereof; hearing and determination**
>
> A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by the Federal Rules of Civil Procedure. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearing and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed. If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded by the party alleged to be in default, or if the matter in dispute is

within admiralty jurisdiction, the court shall hear and determine such issue. Where such an issue is raised, the party alleged to be in default may, except in cases of admiralty, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury in the manner provided by the Federal Rules of Civil Procedure, or may specially call a jury for that purpose. If the jury find that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury find that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

2. Section 9 of the Federal Arbitration Act, 9 U.S.C. 9, provides:

> **Award of arbitrators; confirmation; jurisdiction; procedure**
>
> If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district

within which such award was made. Notice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident, then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court.

3. Section 10 of the Federal Arbitration Act, 9 U.S.C. 10, provides:

Same; vacation; grounds; rehearing

(a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—

(1) where the award was 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; or

(4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

(b) If an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.

(c) The United States district court for the district wherein an award was made that was issued pursuant to section 580 of title 5 may make an order vacating the award upon the application of a person, other than a party to the arbitration, who is adversely affected or aggrieved by the award, if the use of arbitration or the award is clearly inconsistent with the factors set forth in section 572 of title 5.

4. Section 11 of the Federal Arbitration Act, 9 U.S.C. 11, provides:

Same; modification or correction; grounds; order

In either of the following cases the United States court in and for the district wherein the award was made may make an order modifying or correcting the award upon the application of any party to the arbitration—

(a) 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.

(b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.

(c) Where the award is imperfect in matter of form not affecting the merits of the controversy.

The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties.