

No. 21-7521

**In The
Supreme Court of the United States**

PAUL E. PIECZYNSKI,

Petitioner,

vs.

COMMONWEALTH OF PA, et al.,

Respondents.

**On Petition For A Writ Of Certiorari
To The United States Appeals Court
For The Third Circuit**

PETITION FOR REHEARING

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SUPREME COURT, U.S.**

PETITION FOR REHEARING

The question before the United States Supreme Court: Under the Federal Arbitration Act, when making a motion to confirm a "time barred" arbitration Award, is it a miscellaneous or civil action complaint filing? The district court is requiring a civil action complaint filing to confirm an arbitration award.

The FAA in Title 9 section 12 says all parties are timed barred to move to modify or vacate the Award after three months. Since state and federal courts can confirm arbitration awards, almost all courts in the country can face the question posed. Since the people are being disenfranchised, not by the law but by court rules, the Supreme Court should express an opinion and can do so without arguments, sua sponte. Technically there is no opposing party to the question posed. The Supreme Court has validated this statement by not requiring service to the parties and docketing the Petitioner's writ of certiorari. The Proof of Service invoked the FAA Title 9 section 12 and explained that service to other parties would be moot.

Should the Petitioner go back to the district court and seek confirmation under a civil action complaint, who would be the defendant? There exists no dispute between the Petitioner/Claimant and the Respondents. However, there is a way to make an opposing party "defendant" to the question. It appears that the district court would be the defendant for refusing to follow the mandates of the FAA and assuming the Award is not correct, in error or frivolous. There is no evidence or

complaint even alleging an error by any party involved in the Award. Actually, after the Petitioner's writ of certiorari was docketed at the Supreme Court the Respondents sealed the matter at the state court and removed it from the Petitioner's record, as ordered by the arbitrators. Arbitration awards are presumed to be correct, and the burden is on the party requesting vacatur to rebut this presumption by refuting "every rational basis upon which the arbitrator could have relied." *Robbins*, 954 F.2d at 684; *Schmidt v. Finberg*, 942 F.2d 1571, 1574-75 (11th Cir. 1991).

In this instant matter it took the Petitioner to seek some resolution at the United States Supreme Court to achieve another degree of compliance with the Award. But it took from August of 2019 till sometime in the summer of 2022, about three years to accomplish that compliance. Had the Petitioner not appealed to the Supreme Court the level of compliance achieved would not have occurred and justice would have continued to be delayed if not completely denied.

The following paragraph and footnotes in part are from Volume 23 of the William Mitchell Law Review. This is to evidence that the question presented is far reaching and involves state as well as federal courts and hints that courts disfavor arbitration.

"State courts must confirm arbitration awards rendered pursuant to the FAA because the United States Supreme Court has made it clear that federal law is supreme on this issue

and supersedes any contrary state laws.¹ This holding requires state court judges to enforce arbitration awards, even if the judge dislikes arbitration or the award would be unenforceable under a state law.² State court judges, therefore, cannot simply refuse to enforce arbitration awards governed by the FAA.”³

The Federal Arbitration Act and the agreement to arbitrate grant a state or federal court jurisdiction to modify, vacate or confirm an award. A court only has the jurisdiction to modify or vacate an award if a party moves to do so within three months of receiving the

¹ *Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681, 687 (1996); *Caley v. Gulfstream Aerospace Corp.*, 428 F.3d 1359, 1367–68 (11th Cir. 2005); *Oblix, Inc. v. Winiecki*, 374 F.3d 488, 492 (7th Cir. 2004); *Faber v. Menard, Inc.*, 367 F.3d 1048, 1052 (8th Cir. 2004).

² See, e.g., *Dobson*, 513 U.S. at 270 (“[T]he basic purpose of the Federal Arbitration Act is to overcome courts’ refusals to enforce agreements to arbitrate.”); *Southland Corp.*, 465 U.S. at 15–16 (holding that the FAA preempts state law and that state courts cannot apply state statutes that invalidate arbitration agreements); *Brake Masters Sys., Inc. v. Gabbay*, 78 P.3d 1081, 1085 (Ariz. Ct. App. 2003) (citing *First Options of Chicago v. Kaplan*, 514 U.S. 938 (1995)) (requiring that state courts follow the FAA’s substantive mandates on when arbitration awards shall be confirmed).

³ See *Doctor's Assocs.*, 517 U.S. at 688 (“The ‘goals and policies’ of the FAA, this Court’s precedent indicates, are antithetical to threshold limitations placed specifically and solely on arbitration provisions. Section 2 ‘mandate[s] the enforcement of arbitration agreements.’”) (citation omitted); *Hubert v. Turnberry Homes, LLC*, No. M2005-00955-COA-R3-CV, 2006 WL 2843449 (Tenn. Ct. App. Oct. 4, 2006) (interpreting *Doctor's Associates* as prohibiting states from enacting laws that single out arbitration clauses and inhibit their enforceability).

award. Absent that request, the jurisdiction contracts to only confirming the award and Title 9 section 9 says the court must grant that order. Considering the aforementioned, the district court requiring a civil action complaint filing would create a dispute. The court would lack the jurisdiction and be operating outside the law, making the court the defendant. This would be because neither the Claimant nor Respondents have the ability to modify, vacate or confirm the award. That authority and jurisdiction is left to the court which would breach that obligation which is mandated. The issue then would be with the court not the Respondents.

The Third Circuit in its opinion of this matter stated that there is scant information concerning the confirmation of arbitration awards. The lack of information and unfamiliarity of arbitration is one reason why the Supreme Court should address the question. Every state and federal court could conceivably address a time barred arbitration confirmation at some time. Absent an opinion by the Supreme Court, they will rely on the current scant information, and force a civil action complaint on the litigants. It is confusing since the District Court, Third Circuit Court and the U. S. Supreme Court all docketed the instant matter without requiring service to the other parties. That indicates compliance with the law Title 9 section 12. However, that compliance seems to be limited to filing and curtailed during the confirmation process making it a selective law.

Arbitration is going to become more popular and it would be beneficial for the people of this country for

the Supreme Court of America to render some opinion concerning the question asked.



CONCLUSION

I respectfully ask the United States Supreme Court of America to reconsider and render an opinion on the question asked.

Date: October 27, 2022

Respectfully submitted,

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CERTIFICATE OF GOOD FAITH

I, Paul E. Pieczynski, affirm this to be a true statement that this Petition for Rehearing is brought in good faith and not for the purpose of delaying time. Delay is a disadvantage to the Petitioner.

The petition is limited to a circumstance created and a circumstance not previously presented.

Date: October 27, 2022 by: /s/ _____
PAUL E. PIECZYNSKI