

## The Saiber Construction Law Column: May 2023

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Many construction contracts contain arbitration provisions because arbitration is a faster and less expensive way to resolve disputes as compared to litigation. Thus, New Jersey's public policy strongly favors arbitration as a means of dispute resolution. Accordingly, when a case has been arbitrated, a New Jersey court will only vacate an arbitration award under very limited circumstances as set forth in New Jersey's Uniform Arbitration Act. In December 2022, the Supreme Court of North Dakota, applying a law similar to that of New Jersey, confirmed an arbitration award in a construction case involving a homeowner's complaint against a general contractor hired to build a new home.

In *Shafer v. Scarborough*, a homeowner appealed the confirmation of an arbitration award in the owner's favor because he believed the monetary damages he was awarded for various breaches by the contractor was insufficient. The Supreme Court of North Dakota refused to vacate or modify the arbitration award, holding that the review of an arbitration award is limited "and will not be vacated unless it is completely irrational." The Court also looked at the North Dakota arbitration statute which sets forth the various grounds for vacating an arbitration award, none of which applied in *Shafer*. On that basis, the Court concluded it could not vacate the arbitration award at issue.

New Jersey's arbitration statute provides that a party must seek to confirm or vacate an arbitration award within three months after the award is delivered to the parties. Confirmation is mandatory unless the award is vacated, modified or corrected. As in North Dakota, there are only very limited grounds for vacating an arbitration award in New Jersey. These include, among other grounds, fraud by either party, bias or partiality on the part of the arbitrator, the arbitrator refusing a request to postpone a hearing, refusing to hear relevant evidence or engaging in other conduct prejudicial to a party, or if the arbitrator exceeds his/her powers.

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Each issue's Saiber Construction Law Column will discuss a recent decision by New Jersey courts or, like here, courts from other states which may be of interest to people in the construction industry. The information in each article is not intended to be legal advice and may not be used as legal advice. Legal advice must be tailored to the specific circumstances of each case. Every effort has been made to assure this information is up-to-date. The article is not intended to be a full and exhaustive explanation of the law in any area, nor should it be used to replace the advice of your own legal counsel. For any question relating to this article, please contact Robert B. Nussbaum, Esq. at Saiber LLC at [rnussbaum@saiber.com](mailto:rnussbaum@saiber.com).