

"Evident partiality" found to exist in "industry-insider" arbitration (or, when is such an arbitration proceeding so laden with attorney/client conflict it must be set aside)

07/17/2017

In 2002, Major League Baseball (MLB) purchased the Montreal Expos and in 2004 renamed the team the "Nationals" and relocated the franchise to Washington, D.C. The Baltimore Orioles objected to the relocation on the premise, among others, that its then existing regional sports network gave the Orioles the exclusive right to telecast baseball games in a seven-state television territory (that the Nationals were encroaching), the Nationals would dilute the market, cause fan attrition, and diminish the value of the Orioles' telecast rights. After the Orioles threatened to take legal action, MLB, the Nationals and Orioles entered into a complex fee rights agreement, which included the creation of a two-club regional sports network—Mid-Atlantic Sports Network (MASN). The agreement included a dispute resolution clause to be used in the event the Orioles, Nationals, and MASN could not reach an agreement on a fair market value of fee rights from 2012-2016. The relevant portion of the dispute resolution clause included the submission of disputes to arbitration before the MLB's Revenue Sharing Definitions Committee (RSDC) which would make a binding determination as to the fair market value of the clubs' rights. When a dispute arose after 2011 between the clubs on the fair market value, the parties submitted to binding arbitration. The three member arbitration panel was comprised of representatives of the Tampa Bay Rays, Pittsburgh Pirates, and New York Mets. Herein was the conflict:

The Nationals were represented by Proskauer Rose, LLP ("Proskauer") in the arbitration.

Proskauer represented the Pittsburgh Pirates as well as the Pirates' President, the representative on the RSDC, in other arbitration disputes; Proskauer represented the Rays in four separate salary arbitrations, one of which occurred during the arbitration; Proskauer defended the Mets' Chief Operating Officer and representative on the RSDC in a class action arising out of the Madoff Ponzi scheme which was ongoing during the arbitration; and, Proskauer concurrently represented MLB, its executives and closely-related entities in approximately 50 separate engagements.

Over multiple objections by the Orioles due to the obvious conflicts, the RSDC nonetheless issued an opinion on the rights fees fair market value—a fee greater than what the Orioles proposed. Naturally, the Orioles commenced a proceeding in New York state court to vacate the arbitration award. On November 4, 2015, the court vacated the RSDC's award on the basis of the "evident partiality" that resulted from the Nationals' representation by Proskauer. On July 13, 2017, The New York Supreme Court, Appellate

Division upheld the state court's order vacating the arbitration award. In doing so, the Appellate Court noted that to vacate an award due to evident partiality under the Federal Arbitration Act, the movant bears the burden of showing that a reasonable person, considering all the circumstances, would have to conclude that an arbitrator was partial to one party to the arbitration. Here, the Orioles did just that.