

Confirming Awards Part I | Post-Award Federal Arbitration Act Enforcement Litigation | Section 9 of the Federal Arbitration Act | Businessperson's Federal Arbitration Act FAQ Guide



Favorable arbitration awards are wonderful things, but they do not enforce themselves. Sometimes the other side voluntarily complies, but if not, there is little the arbitrator can do to help.

Arbitrators are not judges and do not have the authority to garnish wages, seize property, foreclose on encumbered property, freeze bank accounts, impose contempt sanctions, and so forth. Parties can delegate to arbitrators broad adjudicatory and remedial authority, but that is relevant only to the nature and scope of their awards and does not confer power on the arbitrators to enforce their awards coercively.

Apart from its potential preclusive effect in subsequent litigation or arbitration, an arbitration award stands on the same footing as any other privately prepared legal document, and for all intents and purposes it is a contract made for the parties by their joint agent of sorts—the arbitrator or arbitration panel. It may be intended by the arbitrator or panel, and at least one of the parties, to have legal effect, but it is up to a court to say what legal effect it has, and, if necessary, to implement that legal effect through coercive enforcement.

A judgment, by contrast, is an official decree by a governmental body (the court) that not only can be coercively enforced through subsequent summary proceedings in the same or other courts (including courts in other states and federal judicial districts), but is, to some extent, self-enforcing. A judgment, for example, can ordinarily be filed as a statutory lien on real property, and applicable state or federal law may, for example, authorize attorneys to avail their clients of certain judgment-enforcement-related remedies without prior judicial authorization.

The Federal Arbitration Act, and most or all state arbitration statutes, provide for enforcement of arbitration awards through a procedure by which a party may request a court to enter judgment on the award, that is to “confirm” it. Once an award has been reduced to judgment, it can be enforced to the same extent as any other judgment. See, e.g., 9 U.S.C. § 13 (Under Federal Arbitration Act, judgment on award “shall have the same force and effect, in all respects, as, and be subject to all the provisions of

law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered?); Fla. Stat. § 682.15(1)(?The judgment may be recorded, docketed, and enforced as any other judgment in a civil action.?); N.Y. Civ. Prac. L. & R. § 7514(a) (?A judgment shall be entered upon the confirmation of an award.?).

Chapter One of The **Federal Arbitration Act** (the ?FAA?), and most or all state arbitration statutes, authorize courts to confirm domestic awards in summary proceedings. State arbitration-law rules, procedures, limitation periods, and the like vary from state to state and frequently from the FAA, and state courts may apply them to FAA-governed awards (provided doing so does not frustrate the purposes and objectives of the FAA).

Chapter 2 of the FAA provides some different rules that apply to the confirmation of domestic arbitration awards that fall under the Convention on the Recognition of Foreign Arbitral Awards (the ?Convention?), and the enforcement of foreign arbitration awards falling under the Convention (i.e., awards made in territory of a country that is a signatory to the Convention).

Our focus here is on the Federal Arbitration Act's requirements for confirming arbitration awards made in the U.S., including awards that fall under Chapter 2 of the Federal Arbitration Act. These awards fall into two categories: (a) awards that fall under Chapter One of the Federal Arbitration Act only (?Chapter One Domestic Awards?); and (b) awards made in the U.S. that fall under the Convention, and thus under both Chapter One and Chapter Two of the Federal Arbitration Act (?Chapter Two Domestic Awards?).

This segment addresses FAQs concerning the confirmation of Chapter One Domestic Awards and focuses on the substantive requirements for confirming Chapter One Domestic Awards under the Federal Arbitration Act. The next segment will discuss the procedural requirements for confirming such Awards. Future posts will answer some additional FAQs concerning the confirmation of such Awards, and another future segment will review special requirements applicable to the confirmation of Chapter Two Domestic Awards.

What are the Requirements for Confirming Chapter One Domestic Awards under the Federal Arbitration Act?

Like most other issues arising under the FAA, whether a court should confirm an award depends on what the parties agreed. Section 9 of the FAA, which governs confirmation of awards, says?with bracketed lettering added, and in pertinent part: ?[A] If the parties in their agreement have [B] agreed that a judgment of the court shall be entered upon [C] the award made pursuant to the arbitration, and [D] shall specify the court, then [E] 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 [F] thereupon the court must grant such an order unless [G] the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title.? 9 U.S.C. § 9. Items [A] through [D] above each concern party consent as evidenced by the parties' arbitration agreement.

Section 9 also contains a default venue provision: "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." 9 U.S.C. § 9.

And it provides for different types of service of "[n]otice of the application[,]" depending on whether the person served is within or without the district:

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.
9 U.S.C. § 9.

What are the Substantive Requirements for Confirming a Chapter One Domestic Award?

The key substantive requirements for confirming arbitration awards are thus:

- The existence of a written pre- or post-dispute arbitration agreement falling under Section 2 of the FAA ([A, above; 9 U.S.C. § 2);
- Consent to confirmation in a particular court, or at least in any court of competent jurisdiction ([B-[D, above); and
- A final arbitration award resulting from the parties' submission of a dispute or disputes to arbitration pursuant to the arbitration agreement ([A and [C, above).

Existence of an Arbitration Agreement Falling Under Section 2 of the Federal Arbitration Act

Like all or virtually all other provisions of the Federal Arbitration Act, Section 9's objective is to promote arbitration by enforcing, that is, giving effect to, written arbitration agreements that Section 2 declares to "be valid, irrevocable, and enforceable. . . ." 9

U.S.C. § 2.

By authorizing courts to enter judgment on arbitration awards, Section 9 enforces not only the award, but also the arbitration agreement that authorized the arbitrator to make that award. Arbitration awards are the intended products of the arbitral process mandated by the parties' arbitration agreement, and the parties' submission of their disputes to arbitration.

Section 9 authorizes courts to confirm arbitration awards, but only those that were made under arbitration agreements falling under Section 2 of the Federal Arbitration Act. To paraphrase the United States Supreme Court in *New Prime Inc. v. Oliveira*, 139 S. Ct. 532, 537 (2019), before a court may invoke its statutory powers under [Section 9] to . . . [confirm an award made] according to a contract's terms, a court must first know whether the contract itself falls within or beyond the boundaries of §§ 1 and 2. 139 S. Ct. at 53. Section 9 itself is prefaced with the phrase "[i]f the parties in their agreement. . . [.]?" and Section 2 defines what "agreement[s] in writing?" and "written provision[s]?" in "maritime transaction[s]?" and "contract[s] evidencing. . . transaction[s] involving commerce. . ." are "valid, irrevocable, and enforceable?" under the Federal Arbitration Act. 9 U.S.C. §§ 2 & 9.

To confirm an award under Section 9, a party must therefore demonstrate: (a) that the parties concluded an arbitration agreement under which the award was made; and (b) the arbitration agreement falls under Section 2 of the Federal Arbitration Act.

In most cases, the existence of an arbitration agreement will not be in dispute, or by the time the arbitrator has made an award, any dispute about the existence of the agreement will have been resolved, for example, by a motion to compel arbitration. (See, e.g., [here](#)], [here](#)], [here](#)], and [here](#)].) But if the arbitration agreement is self-executing, and the other party does not participate in the arbitration, then there may well be a dispute about whether the parties ever entered into an agreement to arbitrate. (See [here](#)].) A dispute about the existence of the contract could also arise if a party participated in the arbitration but adequately reserved for judicial review its position that the parties did not conclude any agreement to arbitrate and that the party did not unreservedly submit any disputes to arbitration. See **First Options of Chicago, Inc. v. Kaplan**, 514 U.S. 938, 947-48 (1995).

In addition to showing that a contract exists, the party seeking confirmation must show that the agreement under which the award was made falls under Section 2 of the Federal Arbitration Act. As explained in detail in an **earlier segment**, that turns on whether the contract is a "maritime contract?" or a "contract evidencing a transaction involving commerce.?" (See [here](#)].)

Consent to Confirmation

As a condition to confirmation, Section 9 requires that "the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration. . . ." 9 U.S.C. § 9. The consent to confirmation requirement is supposed to "ensure that the parties have affirmatively agreed to the application of the federal substantive law contemplated by the [Federal Arbitration] Act.?" [Phoenix Aktiengesellschaft v. Ecoplas, Inc.](#)], 391 F.3d 433, 436 (2d Cir. 2004) (quoting [I/S Stavborg v. Nat'l Metal Converters, Inc.](#)], 500 F.2d 424, 426 (2d Cir. 1974)) (bracketed text in original).

Consent to confirmation may be express, including by incorporation by reference of arbitration provider rules that provide for it. [Idea Nuova, Inc. v. GM Licensing Grp., Inc.](#), 617 F.3d 177, 180-81 (2d Cir. 2010). It may be implied, such as when arbitration agreements provide for "final" or "binding" arbitration, or the "equivalent," and the parties' conduct in the arbitration or arbitration-related litigation suggests consent to application of federal substantive law imposed by the Federal Arbitration Act. See *I/S Stavborg*, 500 F.2d at 426-27; *Phoenix Aktiengesellschaft*, 391 F.3d at 437 n.2; *Idea Nuova*, 617 F.3d at 180-82; [Kallen v. Dist. 1199, Nat U. of Hosp. Health](#)], 574 F.2d 723, 725-26 (2d Cir. 1978).

In the Second Circuit, the consent to confirmation requirement may be disposed of in cases where trial court has granted pre-award Federal Arbitration Act relief ordering arbitration because the "court. . . retains jurisdiction to determine any subsequent application involving the same agreement to arbitrate, including an application to confirm the arbitration award." [Smiga v. Dean Witter Reynolds, Inc.](#)], 766 F.2d 698, 705 (2d Cir. 1985) (citing [Marchant v. Mead-Morrison Mfg. Co.](#)], 29 F.2d 40, 43 (2d Cir. 1928)).

Final Arbitration Award

To be confirmed, an arbitration award must be final. As respects what constitutes a final award, see L. Reins. & Arb. Law Forum post **here**. Generally, to be final, an award "must resolve all the issues submitted to arbitration, and. . . it must resolve them definitively enough so that the rights and obligations of the two parties, with respect to the issues submitted, do not stand in need of further adjudication." *Rocket Jewelry Box, Inc. v. Noble Gift Packaging, Inc.*, 157 F.3d 174, 176 (2d Cir. 1998) (emphasis in original).

Parties by their agreement may authorize arbitrators to make partial final awards, e.g., separate final awards on liability and damages. See *Trade & Transport, Inc. v. Natural Petroleum Charterers, Inc.*, 931 F.2d 191, 194-95 (2d Cir. 1991).

Interim awards that fully resolve independent claims (e.g., a claim for security) are also generally final. See [Metallgesellschaft A.G. v. M/V Capitan Constante](#)], 790 F.2d 280, 282-83 (2d Cir. 1986).

More to come. . .

The next segment of this series will focus on the procedural requirements for confirming Chapter One Domestic Awards.

Please note. . .]

This guide, including the instalments that will follow in later posts, and prior instalments, does not purport to be a comprehensive recitation of the rules and principles of arbitration law pertinent or potentially pertinent to the issues discussed. It is designed simply to give clients, prospective clients, and other readers general information that will help educate them about the legal challenges they may face in arbitration-related litigation and how engaging a skilled, trustworthy, and experienced arbitration attorney can help them confront those challenges more effectively.

This guide is not intended to be legal advice and it should not be relied upon as such. Nor is it a 'do-it-yourself?' guide for persons who represent themselves pro se, whether they are forced to do so by financial circumstances or whether they elect voluntarily to do so.

If you want or require arbitration-related legal advice, or representation by an attorney in an arbitration or in litigation about arbitration, then you should request legal advice from an experienced and skilled attorney or law firm with a solid background in arbitration law.

Contacting the Author

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Philip J. Loree Jr. is a partner and founding member of Loree & Loree. He has 30 years of experience handling matters arising under the Federal Arbitration Act and in representing a wide variety of clients in arbitration, litigation, and arbitration-related litigation.

Loree & Loree represents private and government-owned-or-controlled business organizations, and persons acting in their individual or representative capacities, and often serves as co-counsel, local counsel or legal adviser to other domestic, and international, law firms requiring assistance or support.

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