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Judge Upholds Arbitration Award in Partner Retirement Dispute

Gina Passarella

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A Philadelphia judge declined to vacate an arbitration award in a case brought against [Schnader Harrison Segal & Lewis](#) by a retired partner over interpretations of amendments to the partnership agreement.

In *Stuntebeck v. Schnader Harrison*, retired partner Clinton Stuntebeck asked Senior Judge Esther R. Sylvester to toss an arbitration award that found Schnader Harrison's changes to its pension plan, in which the firm moved away from a formula and lifetime benefits to a capped yearly payment and 10-year limit on payouts, was applicable to Stuntebeck.

Stuntebeck argued amendments to the firm's partnership agreement in 1999 became effective only after his retirement rights vested in 1993 and therefore did not apply to him. He officially retired from the firm in January 2004. Stuntebeck based his argument on the Superior Court's 2003 ruling in *Abbott v. Schnader Harrison*, in which the court held 1999 amendments to the firm's partnership agreement could not reduce retirement benefits of partners who retired prior to that year because their rights vested upon retirement, Sylvester said.

Stuntebeck hinged his argument on a section of the partnership agreement that said partners could retire from the firm once they reached 25 years of service.

"This issue clearly is not reviewable by this court because it involves the arbitrator's interpretation of contract," Sylvester said in a Feb. 2 opinion explaining why her ruling should be upheld. "Again, this court cannot vacate an arbitration award unless 'it is clearly shown that a party was denied a hearing or that fraud, misconduct, corruption or other irregularity caused the rendition of an unjust, inequitable or unconscionable award.'"

Sylvester said in this context the "irregularity" refers to the process used in getting to the result, not the arbitration result itself.

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"Additionally, petitioner cannot contend that the arbitrator ignored the *Abbott* case when she discussed her interpretation of *Abbott* at length in her 8 page opinion that accompanied the arbitration award," Sylvester said. "Instead, petitioner is left with the contention that the arbitrator's interpretation of the amendments of the Schnader partnership agreement is so wrong that it is a 'manifest disregard' of justice. This court disagrees."

Carol A. Mager of Console Law Offices served as an arbitrator in this case for the American Arbitration Association.

The 1999 amendment to the partnership agreement that Stuntebeck took issue with reduced the amount of maximum yearly benefits and limited the payments to 10 years post-retirement rather than for life, according to Mager's opinion and attorneys in the case. The amendment purported to apply retroactively to all partners who retired prior to Jan. 1, 2000, Mager said.

Under the agreement, once a partner reaches 25 years of service with the firm and is 65 years old, he can retire with "full retired partner benefits." Partners can also retire between the ages of 60 and 65, regardless of time at the firm, and still receive some benefit, according to Mager's opinion.

Stuntebeck was 60 in November 1997 and had worked 25 years with the firm. He was therefore eligible to retire as of Jan. 1, 1998, under the partnership agreement, albeit with limited benefits because he was not 65. When the 1999 amendments went into effect, he was 62.

"However, unlike the plaintiffs in *Abbott*, he had not yet elected to retire although he could have done so in 1998 [before the amendments went into effect] and would have been eligible for reduced retirement benefits pursuant to provision 7.01(b)," Mager said. "Rather, in December 1999, Mr. Stuntebeck remained an active partner of the firm. The issue is whether having not elected to retire prior to the enactment of the 1999 amendment he is bound by it."

Mager pointed out that the Superior Court analyzed the situation in *Abbott* with the understanding that both partners in that case had retired prior to the 1999 amendments. The court didn't look at the "performance" requirement of 25 years with the firm and how retirement benefits vest in relation to that criterion. Mager gave a hypothetical of a 25-year partner who died prior to electing retirement. She said the spouse in that case wouldn't have retirement rights.

"In sum, [Stuntebeck's] argument that twenty-five (25) years of service was the sole condition for vesting of entitlement to the disputed retirement benefit is not supported by either a plain reading of the 1984 partnership agreement or the agreement as amended subsequently," Mager said.

Abbott doesn't apply here, she added, because that case specifically stated rights under the agreement vested at retirement.

J. Freedley Hunsicker, now of Fisher & Phillips, represents Stuntebeck in the case and has appealed to the Superior Court.

He said that, with all due respect to Sylvester, he thought she misunderstood their argument. He said Stuntebeck's complaint is not that Mager misinterpreted the partnership agreement, but that her decision "flies in the face" of Pennsylvania law regarding pensions as well as *Abbott*, which he said deals with virtually the same partnership agreement.

Schnader Harrison Chairman Ralph G. Wellington and firm partner Anne E. Kane represented the firm in the case. The firm declined to comment.