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## Family law arbitration can be quick, but also damaging to loser

**D**ue to the unique and enduring dynamics between litigants in family law cases, practitioners have been developing myriad ways for clients to resolve disputes outside of court — both while a case is pending, but also for disputes that are likely to arise after the case concludes.

Often, dispute resolution procedures are part of the parties' final settlement agreement. Mediation appears to be the most popular discipline. However, following the 2nd District Appellate Court's recent opinion in *In re Marriage of Haleas*, 2017 IL App (2d) 160799, practitioners may begin to more seriously consider arbitration as an effective means to resolve family law disputes.

In a case of first impression, the *Haleas* court confirmed that an arbitrator's award concerning spousal maintenance and property division is enforceable in divorce proceedings. The court also highlighted implications of choosing to arbitrate — most notably the limited appellate review of arbitration awards.

The parties in *Haleas* were married for less than eight years when the husband initiated divorce proceedings. Prior to trial, the parties agreed to arbitrate with former judge Michele Lowrance concerning maintenance, property division (including the character of the husband's ownership interest in two banking entities) and other issues. After five days of hearing and "a substantial amount of evidence and testimony," the arbitrator issued a 70-page decision, awarding the husband the banking entities as his nonmarital property, rejecting the wife's arguments concerning the husband's income and awarding the wife maintenance for a fixed, nonreviewable term of 37 months.

The husband then petitioned the trial court to confirm the arbitrator's decision and the wife asked

the trial court to reject the maintenance award and the finding that the husband's business interests were nonmarital property.

Finding that the arbitration award was not unconscionable, the trial court confirmed the arbitration award and entered a final judgment for dissolution of marriage incorporating the award. The wife appealed.

In Illinois, the typical standard of review applicable to a trial court decision for an appeal is that a trial court would be reversed for making a material mistake of law or for abusing its discretion. Under the Illinois Uniform Arbitration Act, however, the standard of review of an arbitration award on appeal is significantly more limited.

Sections 12 and 13 of the Arbitration Act govern the standard for vacating or modifying arbitration awards (710 ILCS 5/12, 710 ILCS 5/13). Under Section 12, the court shall vacate the arbitrator's award only if (1) the award was procured by "corruption, fraud or other undue means"; (2) the arbitrator was corrupt or evidently partial to one party or some misconduct prejudiced the rights of a party; (3) the arbitrator exceeded his or her power; (4) the arbitrator refused to postpone the

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hearing upon good cause shown or failed to hear material evidence; or (5) there was no agreement to arbitrate.

Section 13 of the Arbitration Act provides that a court shall modify or correct the award only if (1) there was an obvious miscalculation of figures or erroneous description of any person, thing or property referenced in the award; (2) the arbitrator ruled on a matter not submitted to arbitration,

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and the award can be corrected without impacting the merits of the decision on the issues submitted; or (3) the award was imperfect in a matter of form, not affecting the merits of the controversy.

Emphasizing that when parties agree to binding arbitration, they "bargain for finality," the *Haleas* court ruled that a court cannot overturn an arbitrator's award even if "(1) it is illogical or inconsistent, (2) the arbitrator made errors of judgment or mistakes of law, or (3) the court would have reached a different result."

An arbitrator's decision may, however, be set aside if it contains a "gross mistake" — one so significant that a reviewing court may presume that the arbitrator would have reached a different result had he or she been informed of the mistake.

This limited scope of review of an arbitrator's award supports the legislative policy favoring arbitration as an expeditious, informal, inexpensive and final procedure

for resolving disputes.

Perhaps recognizing this more limited standard of review, the wife in *Haleas* did not attempt to argue that the award should be vacated or modified under Sections 12 or 13 of the Arbitration Act.

Instead, she argued that the appellate court's review need not be confined to the limited standard under the Arbitration Act; she also argued that since the matter concerned dissolution of marriage, the award should be vacated as a matter of public policy.

However, since *Haleas* did not involve child-related issues such as allocation of parenting responsibilities or child support, where the law significantly limits the ability of parties to contract away their rights on public policy grounds, her policy argument failed.

The wife in *Haleas* cited no authority supporting her suggestion that a more permissive judicial review should apply, nor did she expressly argue that an arbitration award resolving maintenance and property division is void of public policy.

Regardless, the court found no authority to support an argument against applying the Arbitration Act's limited standard of review to issues of maintenance and property division. Finding that none of the grounds in Sections 12 or 13 of the Arbitration Act existed to vacate or modify the award, the appellate court affirmed the trial court's decision.

The *Haleas* opinion provides guidance to family law practitioners inasmuch as it confirms that arbitration awards concerning maintenance and property division will be upheld with a limited standard of review.

Therefore, in a practice area where parties too often have ongoing differences and dispute resolution procedures are being utilized more frequently, arbitration can provide a swift and final process for resolution.