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# Summary of Casey v. Wells Fargo Bank, N.A., 128 Nev. Adv. Op. No. 64

Casey Seale
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*Casey v. Wells Fargo Bank, N.A.,* 128 Nev. Adv. Op. No. 64 (Dec. 13, 2012)[1]

CIVIL PROCEDURE

## Summary

An appeal of a motion to confirm an arbitration award that the Court summarily granted without reviewing the arbitration record and without giving the nonmovant an opportunity to file an opposition to the motion.

## Disposition/Outcome

The Supreme Court of Nevada reversed the district court's decision to summarily grant Wells Fargo Bank's ("Wells Fargo") motion to confirm its arbitration award against appellant Inger Casey ("Casey"). The Court held that as long as the losing party's 90-day period to vacate, modify, or correct the arbitration award has not expired, courts cannot summarily grant a motion to confirm an arbitration award and that courts must give a nonmovant an opportunity to oppose the motion pursuant to deadlines set forth in local court rules.

## Factual and Procedural History

The issue before the Court arose when Casey deposited four checks into her Wells Fargo checking account payable to "Inger Casey, Pat & Linda Dempsey." Because the Dempsey's did not endorse these checks, Wells Fargo froze Casey's funds and opened up a fraud investigation. Litigation ensued, and a three-day hearing before an arbitrator led to a written reward in Wells Fargo's favor.

Casey later moved to modify the arbitration award, but the arbitrator denied her motion. Subsequently, Wells Fargo moved for an entry of judgment and for an order confirming the arbitration award - a motion the court granted within hours.

Casey objected to these orders and moved to strike the Court's judgment and confirmation order, reasoning that she was denied the opportunity to oppose the motion to confirm and/or file a motion to vacate, modify, or correct the award. Disagreeing with Casey, the Court denied Casey's motion to strike, concluding that NRS 38.239 makes confirmation of an arbitration award mandatory when the arbitration loser has not already filed a motion to vacate, modify, or correct the award. Casey appealed this decision.

## Discussion

The Court, noting that matters of statutory interpretation include conclusions about court rules, conducted a de novo analysis of NRS 38.218(1) [2], NRS 38.239 [3], and Third Judicial

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[1] By Colin Seale

District Court Rule 7(B).[4]  Reasoning that a motion to confirm is an application for judicial relief that requires compliance with local court rules, the Court found that the District Court should have followed Third Judicial Court Rule 7(B), which gave Casey ten days to file an opposition to a motion.  Therefore, the District Court erred by granting Wells Fargo's motion to confirm just one day after Wells Fargo served Casey.

The District Court also erred by concluding that NRS 38.239 required a summary confirmation of an arbitration award.  Relying on NRS 38.242, which gave Casey 90 days to file a motion to vacate, modify, or correct an arbitration award, the Court held that because Casey was still within the timeline for filing this motion, the District Court was required to review the award and determine the appropriateness of a confirmation order.[5]  Comment 1 of section 22 of the Uniform Arbitration Act, which NRS 38.239 codifies, clarifies that "[if] the winning party files a motion to confirm prior to 90 days after the arbitrator gives notice of the award, the losing party can either (1) file a motion to vacate or modify at that time or (2) file a motion to vacate or modify within the 90-day statutory period."[6]

Thus, even though the District Court may grant a motion to confirm before Casey filed a motion to vacate, modify, or correct the arbitration award, it erred by not reviewing the arbitration record and award before confirming it.  Accordingly, the Court reversed and remanded the case, instructing that Casey must have an opportunity to oppose Wells Fargo's motion to confirm and an opportunity to file a motion to vacate, modify, or correct the arbitration order.

## Conclusion

Courts cannot summarily grant motions to confirm arbitration awards without first reviewing the arbitration records and awards.   Also, courts must allow a party to file an opposition to a motion to confirm as long as the party files the opposition within local court-specified timelines and before the 90-day period to file a motion to vacate, modify, or correct the arbitration award has expired.

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[2] NRS 38.218(1) provides that, "[e]xcept as otherwise provided in NRS 38.247, an application for judicial relief under NRS 38.206 to 38.248, inclusive, must be made by motion to the court and heard in the manner provided by rule of court for making and hearing motions."  NEV. REV. STAT. 38.218(1) (2001).

[3] NRS 38.239 states that "[a]fter a party to an arbitral proceeding receives notice of an award, the party may make a motion to the court for an order confirming the award at which time the court shall issue a confirming order unless the award is modified or corrected pursuant to NRS 38.237 or 38.242 or is vacated pursuant to NRS 38.241."  NEV. REV. STAT. 38.239 (2001).

[4] Third Judicial District Court Rule 7(B) states that, "[a]n opposing party . . . shall have ten (10) days after service of the moving party's memorandum within which to serve and file a memorandum of points and authorities in opposition to the motion."  RULES OF PRAC. FOR THE THIRD JUD. DIST. CT. OF THE STATE OF NEV. (1987).

[5] NEV. REV. STAT. 38.242 (2001).

[6] Unif. Arbitration Act (2000) § 22, 7 U.L.A. 76 (2009).