

**COURT OF APPEALS OF TEXAS, THIRTEENTH DISTRICT, CORPUS
CHRISTI–EDINBURG**

**In re Service Corporation International and SCI Texas Funeral
Services, Inc. d/b/a Mont Meta Memorial Park**

In re Service Corporation International · No. 13-10-00026-CV · Decided February 23, 2010

SUMMARY

The Thirteenth Court of Appeals of Texas denied a petition for writ of mandamus filed by Service Corporation International and SCI Texas Funeral Services, Inc. The court concluded that the relators had not shown entitlement to relief concerning the trial court’s appointment of an alternate arbitrator under the Federal Arbitration Act. The opinion discusses substitution of arbitrators when the agreed appointment process fails or cannot be followed.

CASE DETAILS

COURT	Court of Appeals of Texas, Thirteenth District, Corpus Christi–Edinburg
WRITING FOR THE COURT	Per curiam; Justice Rodriguez; Justice Garza; Justice Benavides
JURISDICTION	Texas
DECIDED	February 23, 2010
DOCKET	13-10-00026-CV
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Relators petitioned for a writ of mandamus challenging the trial court's appointment of an alternate arbitrator. The court of appeals denied mandamus relief.
STANDARD OF REVIEW	Mandamus relief was denied because relators failed to demonstrate entitlement to the extraordinary relief sought. The opinion applied the statutory framework governing substitution of arbitrators under the Federal Arbitration Act.
PRECEDENTIAL VALUE	Published memorandum opinion; precedential status is not otherwise specified in the opinion text.
PARTIES	Service Corporation International, SCI Texas Funeral Services, Inc. d/b/a Mont Meta Memorial Park v. Norma Linda Sandoval

TOPICS

arbitration

writ of certiorari

appellate procedure

civil procedure

commercial litigation

PRACTICE AREAS

Arbitration

Appellate procedure

Commercial litigation

Contracts

QUESTIONS PRESENTED

1. Whether the trial court properly exercised authority under section 5 of the Federal Arbitration Act to appoint an alternate arbitrator.
2. Whether relators demonstrated entitlement to mandamus relief challenging the arbitrator appointment.

HOLDINGS

1. Section 5 of the Federal Arbitration Act permits a trial court to choose an alternate set of arbitrators when the agreed appointment process fails through a mechanical breakdown or a party's refusal to comply, and relators did not show that the trial court's appointment warranted mandamus relief.

FACTUAL BACKGROUND

The underlying dispute involved the appointment or substitution of an arbitrator under an arbitration agreement. Relators challenged the trial court's authority to appoint an alternate arbitrator, and the court of appeals considered whether the circumstances satisfied the Federal Arbitration Act's substitution provisions. The opinion provides no further factual detail because it resolves the mandamus petition on the submitted filings.

PROCEDURAL HISTORY

Relators filed a petition for writ of mandamus on January 26, 2010. The court requested and received a response from real party in interest Norma Linda Sandoval on February 18, 2010, then denied the petition after considering the filings.

DISPOSITION

writ_denied

CASES CITED

- In re FirstMerit Bank, N.A., 52 S.W.3d 749, 757 (Tex. 2001) (orig. proceeding)
- In re La. Pac. Corp., 972 S.W.2d 63, 64–65 (Tex. 1998) (orig. proceeding)
- Royce Homes, L.P. v. Bates, No. 01-08-00121-CV, 2010 Tex. App. LEXIS 389, at *29–30 (Tex. App.—Houston [1st Dist.] Jan. 21, 2010, no pet. h.)
- In re Brock Specialty Servs., Ltd., 286 S.W.3d 649, 656 (Tex. App.—Corpus Christi 2009, orig. proceeding)

OPINION

PER CURIAM.

NUMBER 13-10-00026-CV COURT OF APPEALS THIRTEENTH DISTRICT OF TEXAS
CORPUS CHRISTI - EDINBURG IN RE SERVICE CORPORATION INTERNATIONAL AND
SCI TEXAS FUNERAL SERVICES, INC. D/B/A MONT META MEMORIAL PARK On Petition
for Writ of Mandamus. MEMORANDUM OPINION Before Justices Rodriguez, Garza, and
Benavides Per Curiam Memorandum Opinion (1) Relators, Service Corporation International and
SCI Texas Funeral Services, Inc. d/b/a Mont Meta Memorial Park, filed a petition for writ of
mandamus in the above cause on January 26, 2010.

The Court requested and received a response to the petition from the real party in interest, Norma
Linda Sandoval, and such response was duly filed on February 18, 2010. The Court, having
examined and fully considered the petition for writ of mandamus and the response thereto, is of
the opinion that relators have not shown themselves entitled to the relief sought.

See 9 U.S.C. § 5; In re FirstMerit Bank, N.A., 52 S.W.3d 749, 757 (Tex. 2001) (orig. proceeding)
(stating that the "FAA permits the trial court to choose an alternate set of arbitrators"); In re La.
Pac. Corp., 972 S.W.2d 63, 64-65 (Tex. 1998) (orig. proceeding) ("Courts interpreting the "fail to
avail" or "lapse" language of the FAA have generally held that the section 5 substitution process
should be invoked by the trial court only when some "mechanical breakdown in the arbitrator
selection process" occurs or when "one of the parties refuses to comply, thereby delaying
arbitration indefinitely."); see also Royce Homes, L.P. v. Bates, No. 01-08-00121-CV, 2010 Tex.
App.

LEXIS 389, at *29-30 (Tex. App.-Houston [1st Dist.] Jan. 21, 2010, no pet. h.) (op.) ("Here, the
trial court did not abuse its discretion by appointing an arbitrator because the record reflects that
there was a mechanical breakdown in the process of appointing CAS as arbitrator."). Cf. Tex. Civ.
Prac. & Rem. Code Ann. § 171.041(b) (Vernon 2005) (providing for the substitution of arbitrators
where the agreed method of appointment of arbitrators "fails or cannot be followed" under the
Texas Arbitration Act); In re Brock Specialty Servs., Ltd., 286 S.W.3d 649, 656 (Tex.

App.-Corpus Christi 2009, orig. proceeding) (applying section 5 of the FAA to allow the trial court
to choose an alternate arbitrator where the arbitrator specified by contract was no longer in
existence). Accordingly, the petition for writ of mandamus is DENIED. See Tex. R. App. P.
52.8(a). PER CURIAM Delivered and filed the 23rd day of February, 2010. 1. See Tex. R. App.

P. 52.8(d) ("When denying relief, the court may hand down an opinion but is not required to do
so."); Tex. R. App. P. 47.4 (distinguishing opinions and memorandum opinions).