

**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.

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).