ALERT MEMORANDUM

Second Circuit Rules That Chapter 2 Of The FAA Does Not Confer Subject Matter Jurisdiction Over Vacatur Of Foreign Arbitration Awards

July 17, 2025

On July 2, 2025, the United States Court of Appeals for the Second Circuit in *Molecular Dynamics, Ltd. v. Spectrum Dynamics Medical Ltd.* held that Chapter 2 of the Federal Arbitration Act ("FAA") implementing the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention") does not confer subject matter jurisdiction over petitions to vacate foreign arbitration awards.[1]

The decision limits the FAA to conferring subject matter jurisdiction over recognition and enforcement proceedings, as well as vacatur of arbitration awards that were seated in the United States but have a substantial international nexus. In holding that the FAA does not confer subject matter jurisdiction over proceedings to vacate awards in arbitrations that are seated outside the United States, the decision may make it more difficult for parties to bring such actions in the United States if there is no other basis for subject matter jurisdiction. The decision also leaves unanswered certain questions, including whether parties to an international arbitration may designate by contract that one country will serve as the seat of the arbitration and another country will provide the venue for vacatur proceedings.

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[1] *Molecular Dynamics, Ltd. v. Spectrum Dynamics Med. Ltd.*, --- F.4th ----, No. 24-2209, 2025 WL 1813185 (2d Cir. July 2, 2025).

Procedural History

This case arises out of a joint venture in medical imaging technology, Molecular Dynamics Ltd. ("Molecular Dynamics"), which was formed pursuant to a License Agreement and operated by SDBM Limited and Chauncey Capital Corporation (together, "Petitioners-Appellants"), established under the laws of Bermuda, and Biosensors, a company that was later acquired by Spectrum Dynamics Medical Limited ("Spectrum"), incorporated in the British Virgin Islands.[2] The joint venture partners' relationship eventually soured, and Spectrum sent notice of termination citing various breaches of the License Agreement, and initiated an arbitration before the Swiss Arbitration Center that was governed by New York law and seated in Geneva, Switzerland.[3]

In May 2022, the tribunal issued a Partial Final Award in favor of Spectrum.[4] Petitioners-Appellants moved to vacate the Partial Final Award in the U.S. District Court for the Southern District of New York under Section 10 of the FAA and the New York Convention, arguing that there was jurisdiction under the License Agreement, which provided "on matters [] concerning the Chosen Arbitration, the courts of New York, New York will have exclusive jurisdiction thereupon."[5]

The district court dismissed the case, concluding that it lacked subject matter jurisdiction to vacate the foreign award because "[u]nder the New York Convention, only a 'competent authority' of the country in which, or under the law of which, an award was made, may vacate or annul the award."[6] The district court found that Switzerland – as the seat of the arbitration – was the country with the competent authority to vacate the award under the New York Convention.[7] Even though the License Agreement provided for exclusive jurisdiction in New York courts for matters concerning the arbitration, the district court found that parties cannot "circumvent[ ]" the New York Convention through consent to a forum selection clause.[8]

The Second Circuit's Decision

Writing for the unanimous Second Circuit panel, Judge Robert D. Sack affirmed the district court's determination that it lacked subject matter jurisdiction, albeit on different grounds.[9] Whereas the district court had focused on vacatur as a remedy and found that the decision to set aside an award could only be determined by a court at the seat of arbitration, the Second Circuit instead focused on the statutory jurisdictional grant of the FAA. Considering whether petitions to vacate arbitral awards were within the scope of the New York Convention, the Second Circuit ultimately found that they were not.

Starting with the basic principle that federal courts have limited jurisdiction that can only be conferred by statute and may not be conferred by parties as a matter of consent, the Second Circuit acknowledged that Section 203 of the FAA, which states that district courts "shall have original jurisdiction" over "[a]n action or proceeding falling under the [New York] Convention," provides an "independent jurisdictional basis."[10] The Second Circuit concluded, however, that a petition to vacate a foreign arbitral award does not "fall under" the New York Convention, and therefore Section 203 "does not supply the necessary grant of subject-matter jurisdiction to the district court."[11]

Turning to the text of the New York Convention, the Court found that Article I was unambiguous in applying to the "recognition and enforcement" of foreign arbitration awards (*i.e.*, awards in arbitrations seated outside of the United States) and non-domestic arbitration awards (*i.e.*, awards in arbitrations seated in

[2] *Id*. at *1-2.
[3] *Id.* at *1-3.
[4] *Id.* at *4.
[5] *Id.* at *3. The petition to vacate was amended to include the Final Award that was issued in July 2022 and granted additional costs and attorneys' fees to Spectrum.
[6] *Molecular Dynamics, Ltd. v. Spectrum Dynamics Med. Ltd.*, No. 22 Civ. 5167, WL 3523414, at *6 (S.D.N.Y. July 23, 2024) (quoting N.Y. Convention, Art. V(1)(e)).
[7] *Id.* at *6-7.
[8] *Id.*
[9] *See Molecular Dynamics*, 2025 WL 1813185, at *4.
[10] *Id.* at *10 (quoting 9 U.S.C. § 203).
[11] *Id.* at *12.

the United States but that have a significant foreign nexus).[12] The Court recognized that the New York Convention "applies to '*necessary* ancillary proceedings that ensure the proper functioning of the underlying arbitration,'" which is "consistent with the Convention's 'provisions and its spirit' of ensuring enforcement of international commercial arbitration agreements."[13] The Court also acknowledged that the New York Convention "*does* address vacatur proceedings initiated by the losing party in arbitration, but it specifically envisions that they will be decided by a 'competent authority of the country in which, or under the law of which, that award was made.'"[14] Because the New York Convention was otherwise "silent on vacatur," however, the Court determined that the New York Convention "was not intended to provide a vehicle for the second-guessing and invalidation by one jurisdiction of arbitral awards generated in another."[15]

The Court found that the purpose of the New York Convention – which was enacted to "enhance the portability of awards by streamlining the process by which they could be recognized and enforced abroad" – supported the conclusion that the "general silence on vacatur" was a "clear indication that vacatur is not among the mechanisms that the [New York] Convention is designed to regulate."[16] Relying upon courts' power to review arbitration awards under the New York Convention depending on whether the proceeding is brought in the "primary jurisdiction" (*i.e.*, the seat of the arbitration) or the "secondary jurisdiction" (*i.e.*, any other place where the award could be enforced),[17] the Court found that the New York Convention "limits its scope to actions intended to enforce, not invalidate, arbitral awards."[18]

Because Plaintiffs-Appellants' motion to vacate the arbitration award seated in Switzerland was brought in New York – a court of "secondary jurisdiction" – the Court found that this was "not the type of proceeding that the [New York] Convention addresses."[19] As a result, the Court concluded that "the text of the [New York] Convention—which only describes vacatur by 'a competent authority of the country in which, or under the law of which, [an] award was made,'— offers nothing for Petitioners-Appellants' vacatur action to 'fall under.'"[20]

The Court also rejected Plaintiffs-Appellants' argument that Section 202 of the FAA, which states that "[a]n arbitration agreement or arbitral award arising out of a legal relationship, whether contractual or not, which is considered as commercial . . . falls under the [New York] Convention," confers subject matter jurisdiction.[21] Declining to read this provision "in a vacuum," the Court found that this language mirrored the language in Article I(3) of the New York Convention.[22] Because that article was intended to allow Contracting Parties to limit the New York Convention's reach to commercial relationships, and exclude arbitrations in the political and family law arena, the Court explained that Section 202 "limit[s] [the New York Convention's] application to commercial disputes within the classes of recognition and enforcement actions described in Article I(1), or vacatur actions described in Article V(1)(e)."[23] The Court declined to find, however, that Section 202 "expand[ed] the reach of" the New York Convention to cover any other categories of cases.[24]

Based on the forgoing, the Court held that Chapter 2 of the FAA conferred subject matter jurisdiction "over actions to recognize and enforce foreign or nondomestic arbitral awards, and to actions to vacate awards made in or under the laws of the United States that also have some significant foreign nexus, so long as the subject awards arise out of a legal relationship and are

[12] *Id.* at *5-6.
[13] *Id.* at *10 (emphasis in original) (citation omitted).
[14] *Id.* at *11 (emphasis in original) (quoting N.Y. Convention, Art. V(1)(e)).
[15] *Id.*
[16] *Id.*
[17] *See id.* at *7-8.
[18] *Id.* at *11.
[19] *Id.*
[20] *Id.* (quoting N.Y. Convention, Art. V(1)(e)).
[21] *Id.* (quoting 9 U.S.C. § 202).
[22] *Id.*
[23] *Id.* at *12.
[24] *Id.*

commercial in nature."[25] The Court held that Chapter 2 of the FAA does not provide subject matter jurisdiction over actions to vacate a foreign arbitration award.

Takeaways

The Second Circuit's holding is consistent with courts in other Circuits that have similarly found that Chapter 2 of the FAA does not provide subject matter jurisdiction over motions to vacate a foreign arbitration award.[26] The decision also clarifies – and limits – the types of proceedings that may be brought under the New York Convention before federal district courts in the United States. The decision confirms that Chapter 2 of the FAA, implementing the New York Convention, provides subject matter jurisdiction to recognize and enforce foreign and non-domestic arbitration awards, including with respect to ancillary proceedings to enforce summonses compelling witnesses and to issue preliminary injunctions in aid of an arbitration proceeding.[27] The decision also confirms that under Chapter 2, there will be subject matter jurisdiction over petitions to vacate awards that are seated in the United States but have a substantial international nexus.

The Second Circuit's decision limits the jurisdictional reach of the New York Convention, however, by decisively finding that Chapter 2 of the FAA will not provide subject matter jurisdiction over petitions to vacate where the award was issued in an arbitration seated outside of the United States (*i.e.*, in cases where the United States is a court of "secondary jurisdiction"). Practically speaking, a party that wishes to challenge a foreign arbitration award will not be able to initiate such action in a U.S. court, but will instead need to pursue vacatur, or set aside, in a court at the seat of the arbitration. Accordingly, in the United States, parties may only raise defenses to the recognition of the award under the New York Convention if and when an enforcement proceeding is brought in the United States.[28]

Although the decision provides guidance on the application and scope of Section 203 of the FAA, the Second Circuit expressly left unresolved whether "parties to an international arbitration may, consistent with the New York Convention, designate by contract one country as the arbitral seat and another as the venue for vacatur proceedings."[29] The Court noted the theoretical possibility that "[p]arties to an arbitration agreement could, in theory, designate country X as the venue for arbitration while designating country Y's arbitration law as the governing procedural authority," which could have an impact on how a court considers the "primary jurisdiction" and "secondary jurisdiction" for purposes of conferring under the New York Convention.[30] However, the Court acknowledged that this was "an exceedingly rare practice," and since no party claimed that it had occurred in this case, the Court resolved the appeal by designating the arbitration award as a foreign arbitration award and New York as a "secondary jurisdiction," so the Court did not need to weigh in on this issue.[31]

In addition, the Second Circuit's holding that Chapter 2 of the FAA does not confer subject matter jurisdiction over petitions to vacate in federal court may limit, or raise questions of, a party's ability to bring petitions to vacate foreign arbitration awards in state court, or in federal court where there is diversity jurisdiction.

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[25] *Id.*

[26] *See, e.g.*, *Gulf Petro Trading Co., Inc. v. Nigerian Nat. Petroleum Corp.*, 512 F.3d 742, 747 (5th Cir. 2008); *Int'l Trading & Indus. Inv. Co. v. DynCorp Aerospace Tech.*, 763 F. Supp. 2d 12, 23 (D.D.C. 2011). *Cf. Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 364 F.3d 274, 287-88 (5th Cir. 2004) (affirming summary judgment confirming award because the New York Convention and FAA "provide that a secondary jurisdiction court must enforce an arbitration award unless it finds one of the grounds for refusal or deferral of recognition or enforcement specified in the Convention").

[27] *Id.* at *11.

[28] *Molecular Dynamics* did not concern or address the issue of a prior U.S. court order compelling arbitration, which may leave the door open to a challenge of an award through an appeal of such order at the conclusion of the arbitration.

[29] *Id.*

[30] *Id.* at *12 n.10.

[31] *Id.*