

Florence Court of Appeal decision No. 1038, rendered on 27 June 2013

Headnote

The Court of Appeal of Florence rules on the difference between an error of law and the arbitrator's free evaluation of the evidence.

Summary

Facts of the case

In 2005 the parties – an Italian manufacturer and a Spanish distributor - entered a distribution agreement, containing an arbitration clause. A dispute arose on the performance of the agreement, which was brought before a Sole Arbitrator under the Rules of the Milan Chamber of Arbitration. A final award was rendered in 2009 condemning the distributor to pay damages in favor of the manufacturer. The Spanish company then challenged the award before the Court of Appeal of Florence.

Arguments of the Parties

The distributor challenged the award *inter alia* on the ground of error of law where the Sole Arbitrator considered not to be proven a given conduct as unfair competition, aiming at misleading the customers as per Article 2598 of the Italian Civil Code. The counterparty objected that the arbitral award could not be set aside on the ground of error of law, since the 2006 Italian regulation on arbitration applied to the case at hand: according to the 2006 provisions, error of law does not entail a ground for challenge of the award unless the parties so agreed in their arbitration clause, while the contract at hand did not provide for such an agreement.

Judgment of the Court

The Court of Appeal found that the regulation in force before that 2006 arbitration reform shall apply to the case at hand, since the contract containing the arbitration agreement was signed in 2005. According to the said regulation, an "opt out" mechanism on the challenge of the award for alleged error of law applied, so that the award could be set aside on error of law unless the parties agreed otherwise: hence, in principle, the award could be set aside on that ground, even if not so expressly provided for in the arbitration agreement. Nevertheless, the Court finally dismissed the recourse. In the Court's reasoning, here the recourse on the ground of error of law hid a challenge to the merits of the arbitrator's decision. In fact, the arbitrator's error shall be found on his lack of application (or misapplication) of the law, while such an alleged error could not affect the arbitrator's evaluation of the evidence, which falls within the merits of the case. In the case at hand, the arbitrator did not consider to be proved that a said behavior entailed an act of unfair competition, whereas no lack of application of any rule of law was objected.