Compelling and Staying Arbitration in Virginia

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A Practice Note explaining how to request judicial assistance in Virginia state court to compel or stay arbitration. This Note describes the issues counsel must consider before seeking judicial assistance and explains the steps counsel must take to obtain a court order compelling or staying arbitration in the Commonwealth of Virginia.

SCOPE OF THIS NOTE

When a party commences a lawsuit in defiance of an arbitration agreement, the opposing party may need to seek a court order to stay the litigation and compel arbitration. When a party starts an arbitration proceeding in the absence of an arbitration agreement, the opposing party may also need to seek a court order staying the arbitration. This Note describes the key issues counsel should consider when requesting a court to compel or stay arbitration in Virginia, including Virginia's statutory arbitration scheme and the procedures and forms applicable to applications to stay or compel arbitration in Virginia.

For information on compelling or staying arbitration in federal courts, see Practice Note, Compelling and Enjoining Arbitration in US Federal Courts (6-574-8707).

PRELIMINARY CONSIDERATIONS WHEN COMPELLING OR STAYING ARBITRATION

Before seeking judicial assistance to compel or stay arbitration, parties must determine whether the Federal Arbitration Act (FAA) or Virginia state law applies to the arbitration agreement (see Determine the Applicable Law). Parties also must consider:

- The threshold factual issues courts consider when evaluating a request to compel or stay arbitration (see Threshold Issues for the Court to Decide).
- The issues specific to requests to compel or stay arbitration (see Considerations When Seeking to Compel or Stay Arbitration).
- Whether to ask the court for any provisional remedies when seeking to compel or stay arbitration (see Considerations When Seeking Provisional Remedies).

DETERMINE THE APPLICABLE LAW

When evaluating a request for judicial assistance in arbitration proceedings, the court must determine whether the arbitration agreement is enforceable under the FAA or Virginia arbitration law.

The FAA

An arbitration agreement falls under the FAA if the agreement:

- Is in writing.
- Relates to a commercial transaction or maritime matter.
- States the parties' agreement to arbitrate a dispute.

(9 U.S.C. § 2.)

The FAA applies to all arbitrations arising from maritime transactions or to any other contract involving "commerce," a term the courts define broadly. Parties may, however, contemplate enforcement of their arbitration agreement under state law (see *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 590 (2008); *Marks v. Marks*, 548 S.E. 2d 919, 922-23 (Va. Ct. App. 2001)).

If the agreement falls under federal law, state courts apply the FAA, which preempts conflicting state law only "to the extent that [state law] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" (*Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468, 476-77 (1989) (there is no federal policy favoring arbitration under a certain set of procedural rules; the federal policy behind the FAA is simply to ensure that arbitration agreements are enforceable); see also *Amchem Prods., Inc. v. Newport News Circuit Court Asbestos Cases*, 563 S.E.2d 739, 743 (Va. 2002)).

For more information on compelling arbitration when an arbitration agreement falls under the FAA, see Practice Note, Compelling and Enjoining Arbitration in US Federal Courts: Agreement Must Fall Under Federal Arbitration Act (6-574-8707).

Virginia State Law

Virginia public policy favors arbitration (see *TM Delmarva Power, L.L.C. v. NCP of Va., L.L.C.*, 557 S.E.2d 199, 202 (Va. 2002)). Virginia's arbitration law, codified in Chapter 21 of Title 8.01 of the Virginia Code, consists of:

- Article 1, which sets out the general provisions identifying which parties may submit a dispute to arbitration (Va. Code Ann. §§ 8.01-577 to 8.01-581).
- Article 2, which sets out the Virginia Uniform Arbitration Act (VUAA) (Va. Code Ann. §§ 8.01-581.01 to 8.01-581.016).

The VUAA is based on the Uniform Arbitration Act of 1956, which the National Conference of Commissioners on Uniform State Laws revised in 2000 when it promulgated the Revised Uniform Arbitration Act (RUAA). To date, the Virginia legislature has not introduced legislation to adopt the RUAA. For more information on the RUAA and a list of states that have adopted it, see Practice Note, Revised Uniform Arbitration Act: Overview (w-004-5167).

INTERSECTION OF THE FAA AND VIRGINIA LAW

Although the FAA preempts state law to the extent that state law contradicts federal law, Virginia state courts apply state contract law to determine whether the parties have entered into an arbitration agreement (see *Amchem Prods.*, 563 S.E.2d at 743 (in determining whether a contractual dispute is arbitrable, court applies Virginia substantive contract law); *Mission Residential, LLC v. Triple Net Props., LLC*, 654 S.E.2d 888, 890 (Va. 2008)).

If an agreement falls under the FAA, the state court applies the federal standard for arbitrability when determining whether to compel or stay arbitration, rather than evaluating these threshold questions under state law (see *Southland v. Keating Corp.*, 465 U.S. 1, 12-13 (1984); see also Practice Note, Compelling and Enjoining Arbitration in US Federal Courts: Arbitrability (6-574-8707)).

For a further discussion of various states' procedural rules relating to arbitration, see Practice Note, Choosing an Arbitral Seat in the US (1-501-0913).

THRESHOLD ISSUES FOR THE COURT TO DECIDE

When deciding an application to stay or compel arbitration, the Virginia state court may not rule on the merits of the claims underlying the arbitration (Va. Code Ann. § 8.01-581.02(E)). The court instead plays a gatekeeping role that is limited to determining whether:

- A valid arbitration agreement exists (see Valid Arbitration Agreement).
- The arbitration agreement covers the parties' dispute (see Scope of Arbitration Agreement).

(See *Waterfront Marine Constr. v. N. End 49ers Sandbridge Bulkhead Groups A, B, and C*, 468 S.E.2d 894, 898 (Va. 1996); see also *BG Group PLC v. Argentina*, 134 S. Ct. 1198, 1206-07 (2014).)

Courts decide the question of arbitrability unless the parties' agreement expressly states that the arbitral tribunal has the power to rule on its own jurisdiction (see *Waterfront Marine*, 468 S.E.2d at 898-899 ("when entering into an agreement to arbitrate, the parties surrender the right to have a court determine the merits of a controversy") (quoting *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938 (1995)); *Kay Jennings Family Ltd. P'ship v. DAMN, LLC*, 2006 WL 2578366, at *2-3 (Va. Cir. Ct. Aug. 9, 2006)). Parties may state their intent for the arbitral panel to rule on its own jurisdiction by:

- Expressly granting this power to the arbitrator in their agreement.
- Incorporating by reference institutional arbitration rules that grant this power to the arbitrator, such as the Commercial Arbitration Rules of the American Arbitration Association (AAA) (see *Suntrust Secs., Inc. v. Marable*, 2004 WL 628213, at *2 (Va. Cir. Ct. Mar. 31, 2004)).

The arbitrator decides all other issues, such as issues of waiver, timeliness, and the satisfaction of conditions precedent (see Procedural Issues for the Arbitrator to Decide).

VALID ARBITRATION AGREEMENT

Under the VUAA, a written arbitration agreement is valid, enforceable, and irrevocable except where there are legal or equitable grounds for the revocation that applies to any contract (Va. Code Ann. § 8.01-581.02(A)). The court determines the existence of a valid arbitration agreement under Virginia contract law, which requires mutual assent (see *Phillips v. Mazyck*, 643 S.E.2d 172, 175 (2007)). For the court to find an arbitration agreement valid, the court must find the parties had a meeting of minds specifically on the arbitration provision (see *Brooks & Co. Gen. Contractors, Inc. v. Randy Robinson Contracting, Inc.*, 513 S.E.2d 858, 859 (Va. 1999)).

The legal and equitable grounds for invalidating an arbitration agreement include a finding that the agreement is either:

- Unconscionable.
- Against public policy.

(See *Philyaw v. Platinum Enter., Inc.*, 2001 WL 112107, at *2-3 (Va. Cir. Ct. Jan. 9, 2001); *Bandas v. Bandas*, 430 S.E.2d 706, 708 (Va. Ct. App. 1993) (the language of the VUAA "implies that arbitration agreements should be upheld unless the agreement is against public policy or unconscionable, which are two grounds to set aside a contract in equity").)

SCOPE OF ARBITRATION AGREEMENT

The court determines whether the scope of the parties' arbitration agreement covers the parties dispute unless the parties expressly empower the arbitrator to make this decision (see *Suntrust Securities*, 2004 WL 628213, at *2 (finding that the parties agreed the arbitrator should decide whether their arbitration agreement covered the defamation claim in light of the parties' agreement to arbitrate under AAA rules, which authorize an arbitrator to rule on the arbitrator's own jurisdiction and any objections related to the existence, scope, or validity of the arbitration agreement)). The court construes the plain language of the parties' agreement to determine the scope of the arbitration agreement (see *Decisive Analytics Corp. v. Chikar*, 2008 WL 6759965, at *7 (Va. Cir. Ct. July 15, 2008)).

As part of the analysis of whether the parties' arbitration agreement covers the dispute, courts also determine whether the parties have satisfied any conditions precedent to arbitration (see *ProBuild Co., L.L.C. v. DPR Constr.*, 2015 WL 11142817, at *2 (Va. Cir. Ct. July 3, 2015) (denying application to stay litigation and compel arbitration because

parties did not satisfy condition precedent of attempting mediation before movant sought to arbitrate)).

ADDITIONAL PROCEDURAL ISSUES FOR THE COURT TO DECIDE

In addition to determining the threshold issues of the existence and scope of a valid arbitration agreement, the court considering an application to compel or stay arbitration may also decide the procedural issues of waiver and the timeliness of the application.

Waiver

A party may avoid arbitration if the other party waived its right to arbitration. Waiver is a party's intentional relinquishment of a known right (see *Hensel Phelps Constr. Co. v. Thompson Masonry Contr., Inc.*, 791 S.E.2d 734, 737 (Va. 2016)). Waiver of the right to arbitration is a fact-specific inquiry and Virginia courts do not infer it lightly (see *Carrico v. Empire Today LLC*, 2011 WL 3870658, at *2 (Va. Cir. Ct. June 8, 2010)).

Under Virginia law, a party may waive its right to arbitration by its acts, omissions, or conduct (see *Carrico*, 2011 WL 3870658, at *2). For example, a party may waive its right to arbitration by acting in a manner that is inconsistent with enforcing its right to arbitration, such as litigating a claim in court without moving to compel arbitration (see *Integrity Auto Specialists, Inc. v. Meyer*, 2011 WL 8964509, at *3 (Va. Cir. Ct. June 28, 2011) (defendant sued by his employer waived right to arbitration by litigating the claim in court and waiting until after the trial to raise the issue of arbitration); *Shoosmith Brothers, Inc. v. Hopewell Nursing Home, LLC*, 2009 WL 7339891, at *2-3 (Va. Cir. Ct. July 24, 2009)).

To find waiver, the court must find the party seeking to enforce its right to arbitration prejudiced the other party by litigating the claim, for example by delaying the proceedings or increasing the other party's litigation costs (see *Carrico*, 2011 WL 3870658, at *2; *Britt Constr. Co. v. Westpack Realty Fund VII, LLC*, 2002 WL 32075220, at *1-2 (Va. Cir. Ct. Nov. 6, 2002) (finding party waived right to arbitration by actively litigating case and engaging in discovery, which increased other party's costs and complicated the case)). The court is more likely to find waiver by a party that starts or affirmatively employs the court processes to litigate the dispute, rather than by a party that either:

- Responds to a court case the other party files.
- Refrains from pursuing the claim.

(See *Winston v. Tingley Constr. Co.*, 2013 WL 7897910, at *2 (Va. Cir. Ct. Jan. 17, 2013).)

Timeliness

Parties sometimes provide in their arbitration agreement a time limit for a party to demand arbitration. Unlike a statute of limitations defense against the underlying claim (see Statute of Limitations), a contractual time limitation for a party to assert an arbitration demand is a matter that the court decides. Virginia courts enforce these contractual time limits and refuse to compel arbitration when the party seeking to arbitrate fails to demand arbitration in the time provided in the parties' agreement (see *Carrico*, 2011 WL 3870658, at *3 (refusing to compel arbitration where party did not seek to arbitrate "within a reasonable time" as required in the parties' agreement)).

PROCEDURAL ISSUES FOR THE ARBITRATOR TO DECIDE

Under Virginia law, if a court determines the parties have a valid arbitration agreement, the arbitrator:

- Decides issues requiring the construction of the parties' contract.
- Rules on the substantive issues in the case.

(See *United Paperworkers Int'l Union, AFL-CIO v. Chase Bag Co.*, 281 S.E.2d 807, 809 (Va. 1981) (arbitrator decides intertwined issues of substance and procedure that grow out of the dispute and raise the same questions on the same facts) (citing *John Wiley & Sons v. Livingston*, 376 U.S. 543, 557 (1964)); *Sullivan Mech. Contractors, Inc. v. Barlows, Inc.*, 1991 WL 11031424, at *3 (Va. Cir. Ct. Sep. 5, 1991).)

STATUTE OF LIMITATIONS

Although the court decides the procedural issue of whether a party's effort to start an arbitration is timely (see Timeliness), the statute of limitations applicable to the underlying arbitration claim governs whether the substantive claim is time-barred. Under Virginia law, the arbitrator decides whether a party's underlying arbitration claim is within the applicable state statute of limitations (see *Davis & Carter P.C. v. R.E. Lee & Sons, Inc.*, 1992 WL 884592, at *2-3 (Va. Cir. Ct. Mar. 20, 1992)).

For more information on the various statutes of limitations in Virginia, see State Q&A, Statutes of Limitations: Virginia (7-520-0104).

SATISFACTION OF CONDITIONS PRECEDENT

Parties sometimes include in their arbitration agreement procedural requirements a party must satisfy before it may start an arbitration, such as:

- Providing notice.
- Engaging in mediation.

Because the parties' satisfaction of a condition precedent to arbitration requires construction of the arbitration agreement, the arbitrator usually decides these issues (see *Sullivan Mechanical*, 1991 WL 11031424, at *3-4 (arbitrator should decide whether party complied with notice requirement in arbitration agreement)). However, at least one Virginia court refused to compel arbitration based on its finding that the party seeking arbitration did not comply with the arbitration agreement's requirement that the parties first mediate their dispute (see *ProBuild Co.*, 2015 WL 11142817, at *2).

For more on agreements that require the parties to mediate before starting an arbitration, see Practice Note, Hybrid, multi-tiered and carve-out dispute resolution clauses (9-384-8595).

CONSIDERATIONS WHEN PREPARING THE APPLICATION

Before making an application to compel or stay arbitration in Virginia court, counsel should take into account several factors.

CONSIDERATIONS WHEN SEEKING TO COMPEL OR STAY ARBITRATION

A party seeking to compel or stay arbitration may submit the request:

- If there is already a lawsuit pending between the parties, for example because the other party started a court case involving the claims subject to arbitration, by filing a motion in that case.

- If there is no lawsuit already pending, by filing an initial motion to start an action to make the request.

(Va. Code Ann. §§ 8.01-581.02(A), 8.01-581.013; see Application to Compel or Stay Arbitration.)

If there is a lawsuit already pending between the parties, the party moving to compel arbitration should also consider applying to stay the litigation. The court must stay any litigation involving an arbitrable issue if either:

- The court orders arbitration.
- A party moves to compel arbitration.

If the arbitrable issue is severable, the court may sever and stay the arbitrable issue and allow litigation of the non-arbitrable issues to proceed in court. (Va. Code Ann. § 8.01-581.02(D).)

CONSIDERATIONS WHEN SEEKING PROVISIONAL REMEDIES

Along with a request to compel arbitration, a party should consider whether it requires any provisional remedies. Virginia law permits a party to request pre-judgment provisional relief such as:

- An order of pre-judgment attachment (Va. Code Ann. § 8.01-534).
- A preliminary injunction or temporary restraining order (TRO) (Va. Code Ann. § 8.01-620).

For information on seeking interim relief in aid of arbitration generally, see Practice Note, Interim, Provisional, and Conservatory Measures in US Arbitration: Seeking Interim Relief before Courts and Arbitrators (0-587-9225).

Order of Pre-Judgment Attachment

In Virginia, attachment is a drastic remedy that deprives a party of the use of the party's property before judgment (see *Brin v. A Home Come True, Inc.*, 2007 WL 5961976, at * 4 (Va. Cir. Ct. Mar. 23, 2007)). A party is not entitled to a pre-judgment attachment of another party's property unless it can establish that it may not be able to collect on an eventual judgment without an attachment because, for example, the other party:

- Is a foreign corporation or non-resident of Virginia.
- Is engaged in a scheme to hinder, delay, or defraud creditors.
- Is about to or has absconded or concealed its property.

(Va. Code Ann. § 8.01-534.)

To date, no reported Virginia cases address the availability of an attachment in connection with an arbitration.

Preliminary Injunction

In an arbitral dispute, parties sometimes require an immediate injunction before the appointment of an arbitrator to restrain the other party from engaging in activity that is the subject of the dispute, such as preventing an employee from working for a competitor in violation of a non-compete clause. In this situation, counsel should consider asking the court for a preliminary injunction pending the appointment of an arbitrator.

Virginia circuit courts may award injunctions (Va. Code Ann. § 8.01-620). However, because the Supreme Court of Virginia has not set out the standard the court must use in deciding whether to grant a preliminary injunction, the Virginia courts have adopted the standard set out by the US Court of Appeals for the Fourth Circuit (see *Wings, LLC v. Capitol Leather, LLC*, 2014 WL 7686953, at *3 (Vir. Cir. Ct. Mar. 6, 2014) (citing *Real Truth About Obama, Inc. v. Fed Election Comm.*, 575 F.3d 342, 345 (4th Cir. 2009) cert. granted, judgment vacated, 559 U.S. 1089, 130 S. Ct. 2371, 176 L. Ed. 2d 764 (2010), and adhered to in part sub nom. *The Real Truth About Obama, Inc. v. F.E.C.*, 607 F.3d 355 (4th Cir. 2010))).

The movant seeking a preliminary injunction must demonstrate that:

- The movant is likely to:
  - succeed on the merits of its claim for permanent equitable relief; and
  - suffer irreparable harm if the court does not issue the preliminary injunction.
- The balance of the equities tips in the movant's favor.
- An injunction is in the public interest.

(See *Wings*, 2014 WL 7686953, at *3.)

To date, no reported Virginia cases address the availability of a preliminary injunction in aid of arbitration.

ADDITIONAL PROCEDURAL CONSIDERATIONS

Before commencing a litigation related to an arbitrable dispute in a Virginia court, counsel should consider other factors that may affect the contents of the request for judicial assistance, the manner in which they bring it, and the likelihood of obtaining the desired relief. These factors include:

- Whether the court has subject matter jurisdiction over the dispute and personal jurisdiction over the other party (see Court Jurisdiction).
- The proper venue in which to bring the request (see Venue).

Court Jurisdiction

The Virginia circuit courts or general district courts have subject matter jurisdiction over any application under the VUAA if that court has jurisdiction over the underlying dispute (Va. Code Ann. § 8.01-581.014; see also *Sohn v. Wasabi Sys.*, 2009 WL 7388837, at *2 (Va. Cir. Ct. Jan. 18, 2009) (VUAA provides court has subject matter jurisdiction over an arbitration-related proceeding if it has jurisdiction over the underlying controversy)).

Virginia courts may exercise personal jurisdiction over Virginia residents and businesses, as well as a party subject to the courts' general jurisdiction under the state's long-arm statute, including a party that:

- Transacts any business in Virginia.
- Contracts to supply services or things in Virginia.
- Causes tortious injury by an act or omission in Virginia.
- Has an interest in, uses, or possesses real property in Virginia.
- Causes an injury in Virginia by an act or omission outside Virginia if the party:
  - regularly does or solicits business in Virginia;
  - engages in any other persistent course of conduct in Virginia; or
  - derives substantial revenue from goods or services the party provides in Virginia.

(Va. Code Ann. § 8.01-328.1.)

Venue

Under the VUAA, venue for an initial application to compel or stay arbitration is proper in the circuit or general district court of the city or county where the parties either:

- Agreed to hold the arbitration hearing.
- Are conducting the hearing, if the arbitration proceeding is already underway.

(Va. Code Ann. § 8.01-581.015.)

If the parties have no forum selection agreement and the arbitration hearing is not already underway, the general Virginia venue statutes govern venue for an application to compel or stay arbitration (Va. Code Ann. § 8.01-581.015). Under Virginia's venue statues, there are both preferred and permissive venues, depending on the type of action and parties (Va. Code Ann. §§ 8.01-261 and 8.01-262).

The preferred venue statute usually applies when a party is a government actor or a fiduciary (Va. Code Ann. § 8.01-261). The permissive venue statute, which applies to most cases, generally determines venue based on, among other things:

- The defendant's residence.
- The defendant's principal place of business.
- The location of property in dispute.
- The location of witnesses and other parties.

(Va. Code Ann. § 8.01-262.)

APPLICATION TO COMPEL OR STAY ARBITRATION

A party applies to a court to compel or stay arbitration by filing a motion. If there is no court action between the parties already pending, the applicant files an initial motion, which it serves in the same manner as a summons. (Va. Code Ann. § 8.01-581.013.)

The moving party files an initial motion:

- In the circuit court, if the amount in controversy exceeds $25,000.
- In the general district court, if the amount in controversy is $25,000 or less.

(Va. Code Ann. §§ 16.1-77(1), 16.1-77(10).)

When bringing an application to stay or compel arbitration, counsel should be familiar with:

- The procedural and formatting rules relevant to case-initiating documents (see Procedural and Formatting Rules the Application)
- The documents necessary to bring the application to compel or stay arbitration (see Documents Required for Motion)
- How to file and serve the documents (see Filing the Motion and Serving the Motion)

PROCEDURAL AND FORMATTING RULES FOR THE APPLICATION

Counsel should be familiar with applicable procedure and formatting rules for motions in the Virginia courts. Virginia circuit courts and general district may promulgate their own court rules (Va. Code Ann. § 8.01-4). Counsel should therefore check the relevant court websites for additional information and guidance on procedural and formatting rules.

Procedural Rules

Virginia's procedural rules governing the making of a motion in the circuit and general district courts include:

- The Rules of the Supreme Court of Virginia, especially:
  - Rule 1:4, governing the general requirements for filing pleadings in all Virginia courts;
  - Rule 3:2, governing commencement of actions;
  - Rule 3:3, governing the filing of pleadings; and
  - Rule 3:18, providing general provisions regarding pleadings, including motions.
- Title 8.01 of the Virginia Code, especially Sections 8.01-271.01 through 8.01.273, governing the form and filing of pleadings and motions.
- The VUAA.
- The court's local rules.
- Individual judges' rules.

Formatting Rules

A motion a party submits to a Virginia court generally must:

- Be:
  - typed;
  - double-spaced; and
  - on white paper eight and one half by eleven inches.
- Have a case caption.
- State:
  - the jurisdictional and venue grounds for the application;
  - the basis for the motion; and
  - the relief the movant seeks.

(Va. Sup. Ct. R. 1:16, 1:4, 7A:7.)

DOCUMENTS REQUIRED FOR THE MOTION

The VUAA does not specify the documents that a party must submit with a motion to compel or stay arbitration. Best practice is for a party to submit, at a minimum:

- A copy of the arbitration agreement, if any.
- A memorandum of law in support of the motion.

FILING THE MOTION

Parties must file all motions with the court after serving them. Counsel should check the local rules for any court-specific filing requirements.

Electronic Filing

Some, but not all, Virginia courts offer electronic filing options. For courts that permit electronic filing, counsel must register for the electronic portal and submit all electronic files in PDF format (Va. Sup. Ct. R. 1:17).

Practitioners should check individual court rules and websites for further information about the electronic filing requirements and procedure.

Traditional Paper Filing

For courts that require a traditional paper filing, practitioners should file with the clerk of the court an original of the document along with a copy for the clerk to file-stamp and return.

SERVING THE MOTION

A party must serve a motion on all other parties in a case. In electronic filing cases, the electronic filing accomplishes service on all parties registered in the case (Va. Sup. Ct. R. 1:17(e)).

Under the VUAA, a party must serve an initial motion in the same way a party serves a summons in a civil action (Va. Code Ann. § 8.01-581.013; see also Va. Code Ann. § 8.01-286.1 (governing service of process)).

APPEALING AN ORDER TO COMPEL OR STAY ARBITRATION

In federal court, federal law, such as the prohibition on interlocutory appeals (28 U.S.C. § 1291), the final judgment rule (28 U.S.C. § 1292), and the FAA (see Practice Note, Compelling and Enjoining Arbitration in US Federal Courts: Appealing an Order to Compel or Enjoin Arbitration (6-574-8707)) limit when a party may appeal an order compelling FAA-governed arbitration. An order granting or denying a request to compel arbitration is not considered a final judgment. Under the FAA, however, litigants may immediately appeal federal court orders denying arbitration, but not orders favorable to arbitration. US appellate courts therefore have jurisdiction over orders:

- Denying requests to compel and stay litigation pending arbitration (9 U.S.C. § 16(a)(1)).
- Granting, continuing, or modifying an injunction against an arbitration (9 U.S.C. § 16(a)(2)).

Under the VUAA, like the FAA, a party may immediately appeal an order denying arbitration, but not an order favorable to arbitration. Therefore, a party may immediately appeal an order:

- Denying a request to compel arbitration.
- Granting an order to stay arbitration.

(Va. Code § 8.01-581.016; see also *Seguin v. Northrop Grumman Sys. Corp.*, 672 S.E.2d 877, 879 (Va. 2009)).

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