

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-002825-MR

MAS-HAMILTON GROUP

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE LEWIS PAISLEY, JUDGE
ACTION NO. 98-CI-02868

C & M TECHNOLOGY, INC.

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: KNOPF, MILLER, AND SCHRODER, JUDGES.

MILLER, JUDGE: Mas-Hamilton Group (Mas-Hamilton) brings this appeal from an order of the Fayette Circuit Court entered October 14, 1998, dismissing its complaint under Ky. R. Civ. P. (CR) 12.02(a) for a lack of subject matter jurisdiction. We affirm.

Mas-Hamilton manufactured and distributed a certain computerized combination lock upon which C & M Technology, Inc., (C&M) held a patent, all pursuant to an "Exclusive License Agreement" (agreement). The agreement contained the following arbitration clause:

2. Any controversy or claims arising out of this Agreement or performance hereunder shall be settled by arbitration in accordance with rules then obtaining of the American

Arbitration Association. Unless the parties agree otherwise, any such arbitration shall be conducted in Lexington, Kentucky. The decision of the arbitrator(s) shall be final and conclusive upon both parties and judgment based upon the award may be entered in any court of competent jurisdiction. The costs of arbitration, including attorney's fees, shall be awarded as the arbitrator(s) shall decide.

A dispute arose over the amount of royalties payable under the agreement. C&M initiated arbitration proceedings on December 2, 1996, claiming it was owed additional royalties. On August 20, 1997, the arbitrator issued an award. Although disagreeing with the award, Mas-Hamilton commenced compliance and continued for a period of several months. On May 7, 1998, C&M asked the arbitrator to clarify the award. Mas-Hamilton objected to the clarification request on the grounds that it was untimely under Ky. Rev. Stat. (KRS) 417.130. That statute provides in relevant part as follows:

417.130 Change of award by arbitrators. — On application of a party to the arbitrators . . . the arbitrators may modify or correct the award upon the grounds stated in paragraphs (a) and (b) of subsection (1) of KRS 417.170, or for the purpose of clarifying the award. The application shall be made within twenty (20) days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the opposing party, stating he must serve his objections thereto, if any, within ten (10) days from the notice. The award so modified or corrected is subject to the provisions of KRS 417.150, 417.160 and 417.170. . . .

Notwithstanding the objection, the arbitrator concluded he had authority to provide the requested clarification and so ruled on July 17, 1998. On August 6, 1998, Mas-Hamilton filed the instant action in the Fayette Circuit Court pursuant to KRS 417.060(2),

seeking to terminate the clarification proceeding and requesting declaratory judgment that the arbitrator lacked jurisdiction to consider C&M's untimely application for clarification as it was untimely under KRS 417.130. The circuit court dismissed the complaints on the grounds that it lacked subject matter jurisdiction, thus precipitating the instant appeal.

By its terms, KRS 417.130 addresses a "change" in an arbitrator's award by correction or modification. It is similar to CR 59.05, which provides for a motion to alter, amend, or vacate a judgment within ten-days of the entry. We do not perceive C&M as requesting an award change. Thus, we do not view Mas-Hamilton's "clarification" request as coming within the purview of the statute. We are of the opinion the circuit court properly dismissed the complaint. Jurisdiction to clarify the award remains with the arbitrator.

For the foregoing reasons, the order of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Douglas J. Hallock
Denise H. McClelland
Lexington, KY

David E. Schmit
Ann G. Robinson
Cincinnati, OH

BRIEF FOR APPELLEE:

Margaret A. Miller
Lexington, KY

J. Robert Chambers
Theodore R. Remaklus
Cincinnati, OH