IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

DARIUS S. MANSOORY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 3920-VCP
	)	
SC&A CONSTRUCTION, INC.,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

Submitted: March 16, 2009
Decided: July 9, 2009

James S. Green, Sr., Esquire, Kevin A. Guerke, Esquire, Jared T. Green, Esquire, SEITZ, VAN OGTROP & GREEN, P.A., Wilmington, Delaware; *Attorneys for Plaintiff*

Donald L. Logan, Esquire, Victoria K. Petrone, Esquire, LOGAN & ASSOCIATES, LLC, New Castle, Delaware; *Attorneys for Defendant*

PARSONS, Vice Chancellor.

This case involves a request for an order vacating an arbitration award related to a dispute over the renovation and expansion of a restaurant. Pursuant to the agreement, the parties submitted their underlying dispute to mediation, which failed, and then to arbitration. At the end of the arbitration hearing, the parties asked the arbitrator to "specifically address" five questions, which they later stipulated to and sent to the arbitrator through his case manager. The arbitrator issued an itemized award, constituting more than a standard concise statement, that did not provide a written explanation of the award or explicitly state the arbitrator's decisions on the specific questions. The unsuccessful party at the arbitration claims the arbitrator exceeded his authority and failed to conform to and abide by the parties' arbitration agreement, because he did not expressly answer or "address" each question. The party who prevailed at arbitration contends the arbitrator complied with the parties' agreement and seeks summary judgment and an order confirming the award.

For the reasons stated in this memorandum opinion, I grant summary judgment in favor of defendant and confirm the arbitrator's award.

I. FACTUAL BACKGROUND

A. The Parties

Plaintiff, Darius S. Mansoory, is a Delaware resident who, at all relevant times, owned a restaurant known as the Washington Street Ale House in Wilmington, Delaware.

Defendant, SC&A Construction, Inc. ("SC&A"), is a Delaware corporation with its principal place of business in Wilmington, Delaware. SC&A engages in the business of general construction and construction management.

B. The Facts

Sometime in 2003, Mansoory decided to expand and renovate the Washington Street Ale House. On July 21, 2003, SC&A signed a document in which it agreed to manage the construction of the expansion and all renovations. On February 24, 2004, Mansoory and SC&A executed a superseding agreement (the "Agreement") governing SC&A's duties as construction manager of the project. The Agreement incorporated by reference the American Institute of Architects General Conditions of the Contract for Construction (the "General Conditions") and provided that the parties would attempt to mediate any claims, disputes, or other matters in question arising out of the Agreement. Per the Agreement, any disputes not resolved in mediation would be determined by arbitration in accordance with the American Arbitration Association's ("AAA") Construction Industry Arbitration Rules (the "AAA Construction Industry Rules").

Mansoory and SC&A disputed several matters, which they could not resolve through mediation. Consequently, the parties submitted those disputes to arbitration before the AAA. The AAA appointed Joseph L. Abriola (the "Arbitrator") to arbitrate the disputes, and he held an arbitration hearing on January 22 and 25 and February 15, 2008. At the close of the hearing, the parties asked the Arbitrator to "address" certain questions as a part of his findings and decision. The parties consulted each other on the form of the questions and, on February 22, 2008, SC&A's attorney, Donald L. Logan, with the consent of Mansoory's attorney, James S. Green, Sr., submitted a letter (the

"February 22 Letter") to the AAA case manager, Craig Cerwonka, containing five questions for consideration by the Arbitrator in making his decision.[1]

---

[1] *See* Compl. Ex. C, Feb. 22 Letter, at 1. The February 22 Letter states in relevant part:

> At the completion of the arbitration hearing . . . Mr. Green and I requested that Mr. Abriola address certain questions as a part of his findings and decision. Mr. Green and I agreed to consult on the questions and send them to you, to be forwarded to Mr. Abriola. The following are the questions upon which Mr. Green and I are in agreement:
>
> 1. Was the Agreement between SC&A and Darius Mansoory a cost plus contract, a lump sum contract plus a fee for construction management services, or some other arrangement?
>
> 2. Was the work under "Phase III" part of the original scope of work, and is Mr. Mansoory entitled to recover the cost of completing that work under the provisions of the Agreement?
>
> 3. Is Mr. Mansoory's claim for additional financing a consequential damage subject to the mutual waiver in the General Conditions?
>
> 4. Did Mr. Mansoory properly follow the termination procedures in the General Conditions?
>
> 5. Is 6 *Del. C.* § 3501 et seq. applicable?
>
> The foregoing list is not to be construed as limiting the topics or arguments of the parties; only that the parties wish to have Mr. Abriola specifically address these questions as part of his overall findings. Please forward the questions to Mr. Abriola so that he may be considering them while the parties are conducting their closing argument briefing.

Id. at 1-2.

The Arbitrator issued his findings on May 1, 2008, and awarded $260,567.81 plus interest to SC&A. In the one-page award (the "Award"), the Arbitrator itemized the parties' claims and the corresponding monetary award, if any. The Arbitrator also stated that he had been "given seven questions dated February 22, 2008 to consider in determining the award" and that he had "agreed to consider same."[2] The Award did not recite or attach the five questions submitted by the parties in the February 22 Letter.

On May 30, 2008, in a letter to the case manager, Mansoory requested that the Award be set aside and "remanded to the Arbitrator to specifically consider and answer each of the five questions submitted to him in accordance with the [a]greement of the parties and the Arbitrator."[3] The case manager transmitted the letter to the Arbitrator, who construed it as an application for modification of the Award. On June 3, 2008, the Arbitrator refused to consider the letter because "it was not made within the twenty days following the date of the Award as required by R-47 of the AAA Construction Industry Arbitration Rules" and reaffirmed his original Award.[4] Next, Mansoory wrote the case manager asserting that the May 30 letter was not intended to be an application for modification of the Award under R-47, which permits a party to "request that the arbitrator correct any clerical, typographical, technical or computational errors in the

---

[2] Compl. Ex. D, Award.

[3] Pl.'s Resp. to Mot. for Summ. J. ("PAB") Ex. E at 2. The parties' other briefs will be referred to in similar fashion, *i.e.*, "DOB" for Defendant's opening brief and "DRB" for Defendant's reply.

[4] *See* PAB Ex. F at 2.

award," but also prohibits the arbitrator from redetermining the merits of claims that already have been decided.[5] The AAA did not respond.

On July 25, 2008, Mansoory commenced this action by filing a verified complaint (the "Complaint") pursuant to 10 *Del. C.* §§ 5714 and 5715, seeking to vacate the arbitration award issued on May 1. SC&A moved for summary judgment and an order confirming the Arbitrator's Award on August 12, 2008.

C. Parties' Contentions

Mansoory seeks an order that the Arbitrator so imperfectly executed his duties that the Award must be vacated. In support of his Complaint, Mansoory asserts that the Arbitrator failed to specifically address the five questions the parties had agreed on and provided in writing to the Arbitrator. Mansoory also alleges that the parties discussed the submission of the five questions with the Arbitrator at the hearing. SC&A moves for summary judgment in its favor and for an order confirming the Arbitrator's Award. SC&A contends that summary judgment is appropriate because the Arbitrator is not required by the AAA Construction Industry Rules to provide the reasons for his decision. Moreover, according to SC&A, even if the Arbitrator had agreed with the parties to address the five questions, he implicitly did so, and the answers can be inferred from the Award itself. Therefore, SC&A urges this Court to confirm the Award.

---

[5] *See* AAA Construction Industry Rules R-47, *available at* http://www.adr.org/sp.asp?id=22004#R47. Although neither party furnished the Court with a copy of the AAA Construction Industry Rules, I take judicial notice of them pursuant to Delaware Uniform Rule of Evidence 201(b).

II. ANALYSIS

A. Standard of Review

Summary judgment is an appropriate judicial mechanism for reviewing an arbitration award, because the complete record is before the court and no de novo hearing is permitted to determine whether the award should be vacated.[6] The court, however, may take appropriate steps if the arbitrator's actions are "in direct contradiction to the express terms of the agreement of the parties" because, then, "he has exceeded his authority."[7]

Section 5714(a)(3) of the Delaware Uniform Arbitration Act (the "DUAA")[8] provides that an arbitration award may be vacated if "the arbitrators exceeded their powers, or so imperfectly executed them that a final and definite award upon the subject matter submitted was not made." A party moving to vacate an arbitration award on the grounds that the arbitrators exceeded their powers pursuant to 10 *Del. C.* § 5714(a)(3) must show by strong and convincing evidence that the arbitrators clearly exceeded their authority.[9] There are two sources for the authority of an arbitrator: (1) the underlying agreement between the parties in which they agree to submit their disputes to arbitration and (2) the document containing the submission to the arbitrator of the issues to be

---

6 *City of Wilm. v. AFSCME*, 2005 WL 820704, at *3 (Del. Ch. Apr. 4, 2005) (citations and internal quotation marks omitted).

7 *Malekzadek v. Wyshock*, 611 A.2d 18, 21 (Del. Ch. 1992).

8 10 *Del. C.* §§ 5701-5725.

9 *Malekzadek*, 611 A.2d at 21.

decided.[10] The scope of the arbitrator's authority is defined by the "mutual assent of the parties to the terms of the submission."[11] If the arbitrator decides an issue beyond those contained in the submission, or if his actions directly contradict the express terms of the agreement of the parties, he has exceeded his authority.[12]

Furthermore, under the DUAA, a court reviewing an arbitration award may not consider or pass upon the merits of claims submitted to an arbitrator.[13] In considering an application to vacate an arbitration award, the court is limited to determining whether there exists any of the five statutory grounds for vacating an award, as set forth in 10 *Del. C.* § 5714.[14] If none of those grounds exist, and there is no pending motion to modify or correct the award, the court must affirm the award.[15]

---

[10] *Fagnani v. Integrity Fin. Corp.*, 167 A.2d 67, 70 (Del. Super. 1960).

[11] *Id.* at 73-74.

[12] *Coast Trading Co. v. Pac. Molasses Co.*, 681 F.2d 1195, 1198 (9th Cir. 1982); *Totem Marine Tug & Barge, Inc. v. N. Am. Towing, Inc.*, 607 F.2d 649, 651 (5th Cir. 1979).

[13] 10 *Del. C.* § 5701.

[14] *See Roberts v. Shelly's of Del.*, 1982 WL 17827, at *2 (Del. Ch. Nov. 9, 1982). The only ground Mansoory argues for vacating the Award at issue here is Section 5714(a)(3), regarding an arbitrator exceeding his powers or so imperfectly executing them as to warrant relief.

[15] 10 *Del. C.* § 5714(d). Paragraph 1 of the Complaint refers to Section 5715, but does not contain a request for modification or correction of the Award under that section. Nor has Plaintiff set forth any reason, argument, or evidence supporting modification or correction. Based on these facts and because Plaintiff has only asked this Court for an order vacating the Award, I do not consider there to be any motion for modification or correction pending before me.

B. Review of the Arbitrator's Award

The burden for vacating an arbitrator's award is a steep one in Delaware. Unless the party seeking to vacate the award demonstrates by strong and convincing evidence that the arbitrator clearly exceeded his authority, the Court assumes that an arbitrator acted within his granted authority, and will confirm the award.[16] In this case, the efficacy of Mansoory's challenge to the Arbitrator's Award hinges on the meaning of the parties' agreement that the Arbitrator would "specifically address [the five] questions as part of his overall findings."[17]

Mansoory argues that the Arbitrator failed to comply with the parties' agreement to "specifically address" the questions because he did not provide individual answers or explanations to each question. In the language of § 5714(a)(3), Mansoory asserts that the Arbitrator "exceeded his powers" or "so imperfectly executed his powers that a final and definite award upon the subject matter was not made."[18] SC&A, on the other hand, asserts that the Arbitrator sufficiently addressed the questions because the answers to them are clear from the itemized amounts in the Award. In particular, the Award lists five separate claims for relief (four by Mansoory and one by SC&A), the relief sought for each of them, and the corresponding amount granted, if any, for each. It also contains a standard concise statement summarizing the total award to SC&A of $260,567.81 plus

---

16 *Malekzadek v. Wyshock*, 611 A.2d 18, 21 (Del. 1992).

17 Feb. 22 Letter at 1.

18 PAB at 6.

interest. The Award does not state the Arbitrator's reasoning or explicitly recite and answer the five questions. Yet, it does include an apparent reference to those questions in the preamble, which notes that the Arbitrator was "given seven questions dated February 22, 2008 to consider in determining the award" and "agreed to consider" those questions.[19] The parties indisputably intended for the Arbitrator to address the five questions. Their disagreement essentially concerns the meaning of the word "address" in the context of their agreement with the Arbitrator and the Award he ultimately issued.

The verb "address" is commonly defined to mean "to direct the efforts or attention of (oneself)," and "to deal with: treat."[20] It also means "to speak or write directly to."[21] Consequently, the plain meaning of the word "address" is arguably broad enough to encompass both parties' interpretation of the word in the context of the Arbitrator's task. Although Mansoory plausibly interprets the word "address" to mean that the Arbitrator would explicitly answer each question and provide the reasons for his answers, an equally

---

19 *Id.* The Arbitrator's reference to seven questions, rather than five, simply may have been a mistake. Because he specifically mentioned that the parties gave him the questions "dated February 22, 2008," the same date as Logan's letter, there is no reason to think he meant any other questions. Another possibility, for example, is that the Arbitrator considered one or more of the five questions to be compound, and treated it as more than one question. In any event, nothing suggests that the Arbitrator directly contradicted or disregarded the agreement of the parties to have him address the five questions.

20 *Merriam-Webster's Collegiate Dictionary* 14 (11th ed. 2004).

21 *Id.*

plausible construction is that the Arbitrator would direct his attention to, or deal with, each question in reaching his conclusion.

According to the AAA Construction Industry Rules, the arbitration procedures may be varied after an arbitrator is appointed only by written agreement of the parties *and* consent of the arbitrator.[22] There is no indication that the Arbitrator consented to Mansoory's interpretation. Indeed, the form of the Award implies that the Arbitrator understood the agreement, as SC&A construes it, to mean that he would specifically consider or "deal with" and "treat" each of the questions. The only record of the Arbitrator's consent to the agreement is his statement in the Award that he was "given seven questions dated February 22, 2008 to consider in determining the award . . . [and] agreed to consider same . . . ."[23] Thus, Mansoory has failed to provide strong and convincing evidence that the Arbitrator directly contradicted the parties' agreement or otherwise exceeded his authority. Instead, the evidence demonstrates that the Arbitrator understood the agreement to require him to direct his efforts or attention to or to deal with the agreed questions, not provide a written explanation of his resolution of each.

The grounds for the Arbitrator's decision can be inferred from the Award itself, as can answers to the questions submitted by the parties. For example, the first question asks what type of contract the disputed agreement between the parties constitutes, a "cost

---

[22] *See* AAA Construction Industry Rules R-1(a), *available at* http://www.adr.org/sp.asp?id=22004#R47.

[23] Award at 1.

plus contract, lump sum contract plus a fee for construction management services, or some other arrangement."[24] SC&A contended the contract involved a "cost of work" payment arrangement and, therefore, claimed an amount of $260,567.81.[25] Mansoory argued the contract contemplated a "lump sum" payment arrangement, so nothing was due to SC&A.[26] The Award indicates that SC&A claimed $260,567.81 and, in the "Amount Allowed" column, awards precisely that amount. Therefore, it is reasonable to infer that the Arbitrator concluded the agreement between the parties was a cost of work or "cost plus" contract, thereby answering the first question. The second question asks whether "Phase III" construction work that SC&A did not perform fell under the original scope of work and whether Mansoory is entitled to recover the cost of completing that work. The Award listed Mansoory's claim for $372,700.00, the cost for completing that work, and awarded nothing to Mansoory. Thus, it can be inferred that the Arbitrator concluded the work was not part of the original scope of work and, therefore, denied Mansoory's claim to recover those costs from SC&A. The answers to the third and fourth questions also can be inferred from the Award, which grants no monetary relief to Mansoory and awards him $0.00 on his claim for $372,700.00 in connection with the "[c]ost to complete construction and extended financing." The clear implication of that ruling is that the Arbitrator found that Mansoory waived his claim for additional

---

[24] Feb. 22 Letter at 1.

[25] DRB ¶ 5.

[26] DRB Ex. A, Logan Aff., ¶ 7.

financing or improperly followed the termination procedures in the General Conditions. Finally, the fifth question asks whether the Delaware Prompt Pay Act[27] applied so as to allow SC&A to recover double damages and attorneys' fees. The Award answers this question by awarding $0.00 for SC&A's claims for "Attorney's Fees" and for "Double amount" of damages.

Although the answers to all five questions can be inferred from the Award, Mansoory argues that the Award fails to conform to the parties' agreement because the Arbitrator did not explicitly answer the five questions. If the parties wanted the Arbitrator to provide specific and detailed answers or a written statement of his reasoning on each of the questions, they could have asked him to agree to that. Yet, the parties never made that request; rather, they only "requested" that the Arbitrator "address" the questions. Therefore, I do not find Mansoory's argument persuasive.

Mansoory also relies heavily on two cases for the proposition that the Arbitrator in this case imperfectly executed his duties. In *Fagnani v. Integrity Finance Corp.*,[28] the court considered, on a motion for judgment on the pleadings, whether a provision in the parties' arbitration agreement limiting to thirty days the time for the arbitrator to make his decision was mandatory. The court did not decide the issue because it could not determine from the pleadings whether the defendant waived the time limitation. Nevertheless, the court noted that the majority of cases decided in the United States have

---

[27] 6 *Del. C.* §§ 3501-3509.

[28] 167 A.2d 67 (Del. Super. 1960).

found that failure to comply with a time limitation for an arbitration proceeding set forth in an agreement, rule of court, or statute is fatal because the arbitrator no longer has any power to act once the specified time has expired. Here, the parties' submission of the five questions to be addressed does not impose any time limit on the Arbitrator's power. It did not limit the power of the Arbitrator by requiring him to consider a limited set of issues or questions and decide explicitly each one with a written statement of his reasons. The parties' submission merely requested the Arbitrator to "address" the five questions in his overall findings. As discussed *supra*, however, one reasonably can infer from the Award itself that the Arbitrator did just that.

Mansoory also relies on *Vold v. Broin & Associates, Inc.*,[29] in which the Supreme Court of South Dakota affirmed a circuit court's decision to vacate an AAA arbitration award because the arbitrator exceeded his powers. In *Vold*, the arbitrator indicated before the arbitration hearing that he intended to issue a "reasoned award."[30] Ultimately, however, the arbitrator issued a two-page decision in favor of Vold itemizing the various dollar amounts of the award, but providing no reasoning for those amounts or for the rejection of Broin's counterclaims.[31] The court held that the arbitrator's award exceeded

---

[29] 699 N.W.2d 482 (S.D. 2005).

[30] *Id.* at 484. In fact, the AAA case manager sent a letter to the parties stating that "[t]he form of the Award to be issued in the above matter will be a reasoned award" and that "[t]his order shall continue in effect unless and until amended by subsequent order by the arbitrator." *Id.* at 484-85.

[31] *Id.* at 485.

his powers and ordered that the award be vacated, because the arbitrator violated the rules he agreed to follow. In its finding, the court relied on the arbitrator's written order indicating the award would be reasoned and the written letter from the case manager confirming this intention. Unlike the arbitrator in *Vold*, the Arbitrator here never consented to provide a reasoned award or committed to do so by a written order. Instead, the clearest evidence of the Arbitrator's intent appears in his Award, which states only that he would "consider" the questions submitted by the parties. Even if the Arbitrator orally consented to "address" the parties' questions at the end of the hearing, there is no evidence that he failed to do so under his and SC&A's understanding of that word. Although Mansoory complained in his May 30, 2008 letter to the case manager and in this Court that the Arbitrator failed to provide a written explanation, the Arbitrator never had agreed to do so. Addressing or considering the questions does not necessitate a written explanation.

Furthermore, to the extent Mansoory objected to the Arbitrator's form of award, he failed to lodge a timely request for correction. The Arbitrator, who expressly stated in the Award that he "consider[ed]" the questions in the February 22 Letter, viewed Mansoory's May 30, 2008 letter as a request for correction of the Award pursuant to Rule 47 of the AAA Construction Industry Rules. Rule 47 permits a party to ask the arbitrator to "correct any clerical, typographical, technical, or computational errors in the award." The Arbitrator reasonably construed Mansoory's letter as a Rule 47 request for correction

in the sense that Mansoory's complaint seemed to be about a technical error.[32] Thus, the request was subject to a twenty-day limitations period and properly rejected as untimely.

In sum, I find that the Arbitrator did more than consider the specified questions in that he dealt with each of them by the way in which he structured his Award. The agreement of the parties and the Arbitrator to "address" the five questions did not require him to provide a written explanation. Because the answers to the questions readily may be discerned, I find that the Arbitrator adequately addressed the questions and did not exceed his authority or directly contradict the parties' agreement. To avoid having this Award confirmed, Mansoory had to make a showing by strong and convincing evidence that the Arbitrator exceeded or imperfectly executed his powers. Mansoory failed to meet that high burden.

III. CONCLUSION

For the reasons stated, I grant SC&A's motion for summary judgment and confirm the Arbitrator's Award.

IT IS SO ORDERED.

---

[32] The AAA Construction Industry Rules do not define "technical error." In its entry for "technical error," *Black's Law Dictionary* refers to "harmless error," which is defined to mean "[a]n error that does not affect a party's substantive rights or the case's outcome." *Black's Law Dictionary* 582, 1503 (8th ed. 2004). In the circumstances of this case, there is no reason to believe the absence of individual answers to the five questions in the Award affected a substantive right of the parties or the outcome of the arbitration.