STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0735

Linden Place Villas Homeowner's Association, petitioner,
Respondent,

vs.

Advanced Innovative Management Corp.,
Appellant.

Filed February 14, 2022
Affirmed
Ross, Judge

Washington County District Court
File No. 82-CV-20-4572

David J. McGee, Natalie R. Walz, Tomsche, Sonnesyn & Tomsche, P.A., Minneapolis, Minnesota (for respondent)

Brandon M. Schwartz, Michael D. Schwartz, Schwartz Law Firm, Oakdale, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Jesson, Judge; and Cleary, Judge.[*]

NONPRECEDENTIAL OPINION

ROSS, Judge

A property manager withdrew over $150,000 from its client homeowner's association's account as compensation for managing the association's $1.6 million

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

capital-improvement project. The association objected to the amount and maintained that the parties had modified their original agreement to set a much lower fee. An arbitrator found that the property manager overcharged the association, and the district court confirmed the arbitration award. Because the record supports the district court's conclusion that the parties modified their original fee agreement orally and by their conduct, we affirm the district court's judgment confirming the arbitration award and denying the motion to vacate.

FACTS

A 2017 storm damaged White Bear Lake townhomes governed by Linden Place Villas Homeowner's Association. The association's insurer approved a $1,585,504.02 repair project. The association's preexisting written contract with its property manager, Advanced Innovative Management Corp., included a fee arrangement in which the association would pay Advanced Innovative "[a] fee of up to 10% of the total project cost . . . on all capital improvement projects exceeding $5,000.00." The contract allowed for modification "only in writing signed by both parties" and required the parties to arbitrate any dispute.

The association wanted Advanced Innovative to manage the storm-repair project, but it informed Jeremy Wistl, Advanced Innovative's representative, that the association would not authorize it to do so until the actual amount of the project-management fee was specified. Wistl spoke with David Graf, Advanced Innovative's then-owner, and the two agreed to set the fee at 2.5% of the total project cost. Work on the project began. When Graf later sold Advanced Innovative to Michael Whichello, Whichello wrote to the

association's board confirming that Advanced Innovative had "agreed upon 2.5%" as the fee.

At a June 2019 association board meeting, Whichello and Graf presented a financial statement revealing that Advanced Innovative had withdrawn $120,000 from the project account to cover Advanced Innovative's "Project [Management] Fee." The board objected and refused to approve the financial statement. A week later the association sent Advanced Innovative written notice that it was terminating the management agreement. At the next month's association board meeting, Advanced Innovative submitted a financial statement showing another $35,500 for "Misc. Administrative" fees, which Whichello described as Advanced Innovative's project-management fee. Advanced Innovative had therefore withdrawn $155,500 from the project account, about $3,000 shy of the 10% fee that it insisted it was entitled to collect.

The association accused Advanced Innovative of breach of contract and demanded arbitration, asserting that Advanced Innovative was entitled to a management fee of only $39,673.60, representing 2.5% of the project cost. Advanced Innovative countered, claiming that it was entitled to an additional amount of $3,000, representing the balance to reach 10% of the project cost.

The arbitrator sided with the association. She determined that, despite the integration clause in the contract, "the parties verbally agreed to modify the project management fee for [Advanced Innovative]'s work . . . from 10 percent to 2.5 percent of the total project costs." And she concluded that Advanced Innovative's withdrawing $155,500 from the association's bank account exceeded the agreed-upon fee of 2.5%. The

arbitrator awarded the association $115,862.40 in compensatory damages and, consequently, rejected Advanced Innovative's counterclaim and ordered it to pay the association's attorney fees and expenses of $10,212.50.

The association moved the district court to confirm the award, and Advanced Innovative moved to vacate it. The district court granted the association's motion and denied Advanced Innovative's. Advanced Innovative appeals.

DECISION

Advanced Innovative challenges the district court's judgment confirming the arbitration award and denying its motion to vacate. We review de novo the district court's decision confirming an arbitration award. *Seagate Tech., LLC v. W. Digit. Corp.*, 854 N.W.2d 750, 760 (Minn. 2014). The district court must make "every reasonable presumption" in favor of an arbitration award's validity and finality. *Id.* at 761. Advanced Innovative argues that we must reverse because the arbitrator exceeded her power. Under the Uniform Arbitration Act as codified in Minnesota, Minn. Stat. §§ 572B.01–.31 (2020), the district court must vacate an arbitration award if the arbitrator exceeded her power. Minn. Stat. § 572B.23(a)(4); *Seagate Tech., LLC*, 854 N.W.2d at 760–61. For the following reasons, we hold that the arbitrator did not exceed her power.

Advanced Innovative contends specifically that the arbitrator exceeded her power by ignoring the integration clause. The contention is unpersuasive. An arbitrator does not exceed her power if her award "draws its essence from the parties' agreement." *Wolfer v. Microboards Mfg., LLC*, 654 N.W.2d 360, 366 (Minn. App. 2002), *rev. denied* (Minn. Feb. 26, 2003). An award draws its essence from the parties' agreement if it is rationally

based on the contract's language, content, and indicia of intent. *Id.* The parties' agreement identifies Minnesota law as controlling the interpretation and application of its terms. And an integration clause is not an absolute bar to modification without a signed writing in Minnesota, where "a written contract can be varied or rescinded by oral agreement of the parties, even if the contract provides that it shall not be orally varied or rescinded." *Larson v. Hill's Heating and Refrigeration of Bemidji, Inc.*, 400 N.W.2d 777, 781 (Minn. App. 1987), *rev. denied* (Minn. Apr. 17, 1987). Applying this caveat to the circumstances presented during the arbitration, the arbitrator found that, "despite the integration clause . . . , the evidence demonstrated that through their conduct, the parties verbally agreed to modify the project management fee for [Advanced Innovative]'s work . . . from 10 percent to 2.5 percent of the total project costs." We need not address whether the arbitrator accurately treated the contract phrase "*up to* 10%" to mean that the parties had agreed to a 10% fee. Because the evidence revealed that the principals later specified that the management fee for the project would be 2.5% after agreeing in writing more generally that the fee might be "up to 10%," the arbitrator did not exceed her power by her treatment of the integration clause.

We are not persuaded otherwise by Advanced Innovative's attempts to distinguish *Larson* on the theory that *Larson* did not involve arbitration. The arbitration clause here is not as limited as Advanced Innovative suggests. It allows the arbitrator to resolve all disputes arising "with regard to the terms of this AGREEMENT." The "agreement" includes any amendments, making it impractical to forbid an arbitrator from applying *Larson* in the appropriate arbitration case. Because Minnesota law allows parties to amend

fully integrated contracts orally and through their conduct, the arbitrator acted within her express powers under the agreement when she found that this type of amendment occurred here based on the communication and actions of the parties.

We emphasize again that the district court reviewing an arbitration award must make "every reasonable presumption" favoring the award's validity and finality. *Seagate Tech., LLC*, 854 N.W.2d at 761. The district court did so here. Although the arbitrator did not expressly determine that the contract was ambiguous, the district court inferred that she had done so and confirmed the award. The district court recognized that the arbitrator cited caselaw related to interpreting ambiguous contracts, not caselaw bearing on contract modification, when she analyzed the contract's meaning. *See Hickman v. SAFECO Ins. Co. of Am.*, 695 N.W.2d 365, 369 (Minn. 2005); *Davis by Davis v. Outboard Marine Corp.*, 415 N.W.2d 719, 723–24 (Minn. App. 1987), *rev. denied* (Minn. Jan. 28, 1988). The arbitrator then presumably applied the cited caselaw to the facts and concluded that the parties' later words and conduct showed that the parties intended that Advanced Innovative would charge only 2.5% of the total contract price, not 10%. It is true, as Advanced Innovative argues, that the arbitrator did not expressly say that the fee term was ambiguous; but requiring that the arbitrator state expressly that it found the contract ambiguous runs counter to the limited standard of review requiring the district court to make every reasonable presumption in favor of the award's finality and validity, and we cannot say that the district court's inference was implausible.

Affirmed.