

[Cite as *Cuny v. PCI Auctions Group, L.L.C.*, 2016-Ohio-5631.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103920

JEFF CUNY

PLAINTIFF-APPELLEE

vs.

PCI AUCTIONS GROUP, L.L.C., ET AL.

DEFENDANTS-APPELLANTS

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-13-817318

BEFORE: Kilbane, J., E.A. Gallagher, P.J., and Laster Mays, J.

RELEASED AND JOURNALIZED: September 1, 2016

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MARY EILEEN KILBANE, J.:

{¶1} Defendants-appellants, PCI Auctions Group, L.L.C. (“PCI Auctions Group, L.L.C.”), appeals from the trial court’s judgment dismissing its notice of appeal de novo from an arbitrators’ decision in favor of plaintiff-appellee, Jeff Cuny (“Cuny”), and entering judgment in Cuny’s favor. For the reasons set forth below, we affirm.

{¶2} On November 18, 2013, Cuny filed a complaint for breach of a consignment agreement and unjust enrichment against PCI Auctions Group, L.L.C., Clare Cherry (“Cherry”), Jared Mizrahi d.b.a. PCI Mideast (“Mizrahi”), and PCI Mideast, L.L.C. (“PCI Mideast”). Cuny alleged that the defendants entered into an agreement to sell various items for him in exchange for a 25 percent commission. Cuny further alleged that the defendants took the property, failed to remit sale proceeds to him, and withheld a list of the inventory of sale. Cuny voluntarily dismissed his claims against Cherry, Mizrahi, and PCI Mideast. The remaining defendant, PCI Auctions Group, L.L.C., submitted an answer admitting that it is a limited liability company, but otherwise denying Cuny’s allegations for want of information.

{¶3} The matter was set for arbitration on July 30, 2015. On the day before the scheduled arbitration, counsel for PCI Auctions Group, L.L.C. filed a motion to withdraw. The arbitration proceeded as scheduled. An individual named Russell Cross (“Cross”), appeared and maintained that he was representing PCI Auctions Group, L.L.C., but Cross left without presenting evidence after the arbitrators informed him that limited liability companies cannot be represented by individuals who are not attorneys.

The arbitrators subsequently issued a finding for Cuny in the “amount of \$97,987.50, [but] subject to the limit of \$50,000 per local rule[.]”

{¶4} PCI Auctions Group, L.L.C., represented by the same law firm that had originally represented it, filed a notice of appeal de novo. Cuny filed a motion to strike the notice of appeal de novo, arguing that Cross, who was not a party to the litigation and not an attorney, was properly barred from representing PCI Auctions Group, L.L.C., a limited liability company. In opposition, PCI Auctions Group, L.L.C. maintained that it is not a limited liability company, but simply the name under which Cross operates his business. On December 1, 2015, the trial court granted Cuny’s motion to strike PCI Auctions Group, L.L.C.’s notice of appeal de novo and entered judgment for Cuny in the amount of \$50,000.

{¶5} PCI Auctions Group, L.L.C. now appeals, assigning the following interrelated errors for our review:

Assignment of Error One

The trial court erred by striking [PCI Auctions Group, L.L.C.’s] timely filed notice of appeal of the arbitrator’s decision.

Assignment of Error Two

The trial court erred by entering judgment in favor of [Cuny] and not returning the case to the active docket.

{¶6} Within its assignments of error, PCI Auctions Group, L.L.C. argues that the trial court erred in striking its notice of appeal de novo and entering judgment in accordance with the arbitrators’ decision. According to this argument, PCI Auctions

Group, L.L.C., is not actually a limited liability company, but rather, the business name used by the individual Cross. In opposition, Cuny argues that the claim that PCI Auctions Group, L.L.C. is not a limited liability company is a “new revelation” and is completely unsupported by the record. Therefore, since PCI Auctions Group, L.L.C. did not properly appear for arbitration, it waived its right to a de novo appeal. Cuny further argues that since Cross was not named as an individual party defendant, he could not invoke his individual right to act as his own advocate at the arbitration.

De Novo Appeal of Arbitration

{¶7} Under Loc.R. 29 Part VII(A)(1), when a party files a notice of appeal de novo, together with an affidavit that the appeal is not taken for delay but upon the belief an injustice has been done, that party has met the jurisdictional requirements for an appeal de novo. *Brown v. Ameritrust Co., N.A.*, 63 Ohio App.3d 130, 133, 578 N.E.2d 469 (8th Dist.1989). In accordance with Loc.R. 29 Part VI(B), unless a proper de novo appeal is taken, the arbitration award shall be final and the trial court must enter judgment on the award. *Huffman v. Valletto*, 15 Ohio App.3d 61, 63, 472 N.E.2d 740 (8th Dist.1984); *Thrower v. Bolden*, 8th Dist. Cuyahoga No. 97813, 2012-Ohio-3956, ¶ 12.

{¶8} Additionally, under Loc.R. 29 Part IV(B)(2), the failure of a party to appear either in person or by counsel and participate in an arbitration proceeding shall be considered as a waiver of the right to file an appeal de novo and a consent judgment on the report and award of the panel. However, for good cause shown, the court may grant the absent party leave to file an appeal de novo. Loc.R. 29 Part IV(B)(3). Review of

the trial court's decision as to whether the absent party has established good cause is subject to review for an abuse of discretion. *Brown v. Huff*, 8th Dist. Cuyahoga No. 67378, 1994 Ohio App. LEXIS 5794 (Dec. 22, 1994); *Duman v. Campbell*, 8th Dist. Cuyahoga No. 84490, 2005-Ohio-1168, ¶ 17.

{¶9} In this matter, PCI Auctions Group, L.L.C. argues that it met the jurisdictional requirements for an appeal de novo and was not an “absent party.” PCI Auctions Group, L.L.C. admits that non-lawyers may not engage in advocacy on behalf of limited liability companies. *See generally Campus Pitt Stop, L.L.C., v. Ohio Liquor Control Comm.*, 10th Dist. Franklin No. 13AP-622, 2014-Ohio-227, ¶ 13. PCI Auctions Group, L.L.C. argues, however, that it is not a limited liability company, but simply the name under which Cross operates his business, so pro se representation is permitted.

{¶10} In reviewing the record, we note as an initial matter, that Cuny's contract is entitled “PCI Auctions Group L.L.C. Consignment Agreement.” The agreement was signed by Cherry and PCI Auctions Group, L.L.C., and it was not signed by Cross. Additionally, the complaint does not name Cross or make reference to Cross anywhere. Further, in its answer, PCI Auctions Group, L.L.C. stated that it “admits that PCI Auctions Group, L.L.C. is an L.L.C.,” an admission that could not be clearer. The seven-page answer makes no mention of Cross. Similarly, in a motion filed with the court on February 23, 2015, Cross averred that he “was a co-owner of PCI Auctions Group, L.L.C.” Therefore, there is no evidence in the record that this entity is anything

other than a limited liability company. Likewise, there is no evidence that Cross's use of this name has been registered as a business name.

{¶11} PCI Auctions Group, L.L.C. cites to *Weber v. Castelli*, 8th Dist. Cuyahoga No. 92158, 2009-Ohio-1677, in support of the proposition that under Loc.R. 29 Part VIII(A)(1), any party may file a notice of appeal of the arbitration award within 30 days, and this is sufficient to require a "de novo trial of the entire case." We find *Weber* to be inapposite to this case, however, since Cross was not a party because he was not named personally as a defendant in this litigation, and Cuny never filed any claim against him individually. Therefore, in light of the evidence that the named party defendant, PCI Auctions Group, L.L.C. is a limited liability company, it may not be represented by Cross, an individual who is not an attorney. Additionally, PCI Auctions Group, L.L.C. did not offer evidence to establish good cause for leave to appeal. Accordingly, the trial court properly determined that PCI Auctions Group, L.L.C. did not properly appear and participate in the arbitration proceedings, and that it waived its right to file an appeal de novo in accordance with Loc.R. 29 Part IV(B)(2).

{¶12} In light of the foregoing, the trial court did not err in striking PCI Auctions Group, L.L.C.'s notice of appeal de novo and entering judgment in favor of Cuny in accordance with the arbitrators' report. Therefore, the first and second assignments of error are overruled.

{¶13} Judgment is affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, JUDGE

EILEEN A. GALLAGHER, P.J., and
ANITA LASTER MAYS, J., CONCUR