[Cite as *Arrow Uniform Rental, L.P. v. K & D Group, Inc.*, 2011-Ohio-6203.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

ARROW UNIFORM RENTAL, LP,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2010-L-152**
- vs -	:	
THE K & D GROUP, INC.,	:	
Defendant-Appellant.	:	

Civil Appeal from the Court of Common Pleas, Case No. 10 CV 002170.

Judgment: Affirmed.

Timothy N. Toma and *Shannon McCormick*, Toma & Associates, L.P.A., Inc., 33977 Chardon Road, #100, Willoughby Hills, OH 44094 (For Plaintiff-Appellee).

Thomas I. Michals and *Jeffrey J. Lauderdale*, Calfee, Halter & Griswold, L.L.P., 1400 Keybank Center, 800 Superior Avenue, Cleveland, OH 44114-2688 (For Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, The K & D Group, Inc. ("K & D"), appeals the judgment of the Lake County Court of Common Pleas granting the motion of appellee, Arrow Uniform Rental, LP ("Arrow"), to confirm an arbitration award issued in its favor and against K & D and denying K & D's motion to modify or vacate the award. At issue is whether the arbitrator exceeded his powers in construing the parties' contract. For the reasons that follow, we affirm the trial court's judgment.

{¶2} K & D operates and maintains various residential properties in the greater Cleveland area. On February 12, 2003, K & D and Arrow entered into a service contract pursuant to which Arrow agreed to supply all uniforms required by K & D for its maintenance employees assigned to its various properties. The 60-month contract was to remain in effect until February 12, 2008, with an automatic 60-month renewal period, unless K & D gave notice prior to the expiration of the initial term of the non-renewal of the contract.

{¶3} Following the termination of the initial contract term, the contract renewed automatically for another 60-month period. About one year into the renewal period, in March 2009, a dispute arose between the parties, and, pursuant to the service agreement, the matter was submitted to arbitration. The contract provided that "[a]ny claim arising out of this agreement shall be submitted to the American Arbitration Association for binding arbitration ***."

{¶4} Following a two-day evidentiary hearing, on June 22, 2010, the arbitrator issued his decision. K & D did not include in the record a transcript of the proceedings before the arbitrator or any of the exhibits admitted during those proceedings. Consequently, the statement of facts that follows is derived solely from the arbitrator's award.

{¶5} The services Arrow was to perform were briefly outlined in the contract, but were apparently further described in the testimony presented by the parties. The arbitrator found that the contract services were comprised of: (1) the use of 11 uniforms for each K & D maintenance employee at 30 covered locations; (2) weekly laundry and repair of five of those uniforms for each maintenance employee; (3) weekly pick-up and

return of such uniforms at each covered location; and (4) repair and replacement of uniforms at prices specified in the contract.

{¶6} Many of the details of the foregoing arrangements were not set forth in the contract. As a result, they were worked out by agreement of the parties over the years to their mutual satisfaction. As the initial contract term was about to expire, K & D did not give notice of non-renewal. Thus, the contract was automatically renewed for an extended term of 60 months from February 12, 2008, to February 12, 2013.

{¶7} Kerry Krizman, K & D's employee responsible for the administration of the contract, testified that Arrow's performance of services was excellent and that Arrow's response to service complaints was prompt and satisfactory. The arbitrator found that Arrow justifiably believed its performance was satisfactory to K & D in all material respects.

{¶8} Approximately one year after the contract was renewed, in February 2009, K & D held a meeting of its management personnel to discuss the economic downturn and ways to reduce its operating expenses. Nancy Raymond, K & D's Director of Human Resources, suggested that cancelling K & D's contract with Arrow might be a way to reduce K & D's operating expenses. K & D instructed her to explore this approach.

{¶9} Subsequently, Ms. Raymond sent an e-mail to K & D's property managers instructing them to report to her a minimum of three reasons for dissatisfaction with Arrow. Then, by letter, dated March 5, 2009, Ms. Raymond sent a letter to Arrow giving notice of K & D's intent to terminate its contract with Arrow, effective March 31, 2009. In her letter, she stated that this notice was made necessary by service problems with

Arrow, “underscored by a general lack of attention to detail and quality.” She said that K & D’s property managers had complained about inconsistent delivery times, occasional missing pieces of uniforms, missing buttons, and patches not re-sewn.

{¶10} After receiving Ms. Raymond’s letter, on March 12, 2009, Arrow sent a letter to K & D, requesting a meeting to discuss a resolution of the issues Ms. Raymond raised, but K & D refused to discuss the matter further.

{¶11} While K & D cited in its arbitration pleadings Arrow’s alleged poor performance as grounds for K & D’s cancellation of the contract, at the arbitration hearing, K & D argued that a requirements contract, such as the parties’ contract, is voidable simply by the customer’s later decision not to use the contract services.

{¶12} The arbitrator found that requirements contracts impose on the customer a duty of good faith to buy their requirements during the term of the contract. Thus, a subjective change of mind by the customer about the desirability of buying one’s requirements for goods or services is an insufficient justification for the customer’s non-performance of such a contract. The arbitrator found that if a customer was able to unilaterally cancel such a contract, it would be illusory. The arbitrator found that K & D entered a binding contract to have Arrow provide uniforms for its maintenance employees, and that K & D had no right to unilaterally terminate the contract except for a material breach by Arrow or the occurrence of an event that excused K & D’s performance.

{¶13} K & D also argued at the arbitration hearing that it terminated the contract due to adverse economic conditions, which caused it to experience a reduction in profit. Thus, it argued it was excused from performance under the contract. The arbitrator

found this alleged excuse for K & D's cancellation of the contract was inconsistent with the performance-related reasons K & D asserted in Ms. Raymond's March 5, 2009 letter to Arrow. The arbitrator found that the continuation of specific economic conditions was not a basic assumption of the contract. Thus, each party bore the risk of its continuing performance, despite adverse changes in economic conditions.

{¶14} Further, the arbitrator found that K & D's March 5, 2009 letter to Arrow did not satisfy the contract requirement that, in order to terminate the contract, K & D was required to give Arrow: (1) prompt, written notice of a specific material breach of the contract and (2) 14 days to cure any such breach. The arbitrator found that the notice did not give any specifics regarding Arrow's alleged breach, thus precluding corrective action by Arrow. As a result, the arbitrator found that K & D failed to prove that Arrow breached the contract.

{¶15} Further, the arbitrator found that K & D's March 5, 2009 letter constituted an unjustified repudiation and breach of the contract because the letter was an unconditional statement of its intent to terminate the contract, leaving Arrow with no opportunity to cure any alleged material breach.

{¶16} The arbitrator then calculated the damages owed to Arrow. The contract included a provision for liquidated damages in the event of K & D's breach, which provided: "In the event of breach by [K & D], [Arrow] shall be entitled to 50 % of the weekly service charge, times the number of weeks remaining in the term of this agreement *** and all accrued liabilities."

{¶17} The parties agreed that 200 weeks remained under the renewal term of the contract. The parties' only dispute about the liquidated-damages formula concerned the meaning of the term "weekly service charge."

{¶18} The arbitrator noted that the parties advanced competing interpretations of the term "weekly service charge." K & D interpreted it to mean $4.12, the unit price for one uniform without any adjustment for the amount of uniforms provided. In contrast, Arrow interpreted "weekly service charge" as the average weekly service charge as adjusted by price increases per the agreement for all uniforms provided to K & D's employees. K & D's interpretation resulted in liquidated damages of $412, while Arrow's interpretation resulted in $126,672 in liquidated damages.

{¶19} The arbitrator found Arrow's calculation to be a reasonable and rational interpretation of the agreement based on (1) the terms of the contract and (2) the parties' course of conduct. The arbitrator found that, pursuant to the contract, the weekly service charge was meant to refer to the average weekly service charge for all uniforms provided to K & D. The arbitrator also found this interpretation was supported by the parties' course of conduct. The arbitrator found that, each week, K & D's employees signed invoices for weekly service charges performed with respect to the maintenance employees during the applicable week, and K & D routinely paid Arrow's invoices on this basis for more than six years without any problem in determining any such amount. Moreover, the arbitrator found that K & D failed to present any rebuttal evidence showing an error in Arrow's calculation of the amount of liquidated damages.

{¶20} The arbitrator found the evidence showed: (1) that Arrow's actual damages are uncertain in amount and difficult to prove; (2) that the amount resulting

from Arrow's calculation is a reasonable approximation of the actual damages likely to be incurred by Arrow; and (3) that the intent of the provision was to compensate Arrow rather than to penalize K & D for its breach.

{¶21} The arbitrator noted that Arrow presented copies of unpaid invoices for services rendered under the contract, which state the unpaid weekly service charges. Arrow also produced exhibits showing the value of garments not returned by K & D in the amount of $10,772.95, for which K & D was also liable under the contract. As noted above, K & D failed to include any of these exhibits in the record. Gene Miller, Arrow's Service Director, testified that Arrow issued these weekly invoices for services performed by Arrow. Although it had an opportunity to do so, K & D failed to cross-examine Mr. Miller regarding these invoices. Moreover, K & D did not challenge the validity or accuracy of any of this evidence.

{¶22} With respect to Arrow's request for attorney fees, the contract provided that, "[s]hould [Arrow] prevail [in arbitration], in whole or in part, all actual attorneys' fees of [Arrow] shall be paid by [K & D], together with costs and interest at the judicial rate for written instruments from default date." Arrow presented in evidence a summary of the hours worked by its attorneys, their hourly rates, and expenses in the total amount of $17,476.71. K & D did not challenge Arrow's attorney fees and expenses as excessive. The arbitrator found the fees and charges to be reasonable.

{¶23} The arbitrator found Arrow was entitled to damages for breach of contract totaling $144,328.27, administrative and arbitrator fees of $11,175, and reasonable attorney fees and expenses in the amount of $17,476.71, for a total of $172,979.98.

{¶24} Thereafter, Arrow filed an application to confirm the arbitration award, and K & D filed a motion to modify or vacate the award. The only issue raised by K & D in the trial court was the arbitrator's calculation of liquidated damages.

{¶25} In ruling on the parties' competing motions, the trial court found that K & D raised the identical argument regarding the calculation of liquidated damages at the arbitration hearing. Thus, the court noted, the arbitrator considered K & D's argument and rejected it. The trial court found that because K & D failed to file a transcript of the arbitration hearing in the trial court, the court had "no way of determining how or why the arbitrator chose to interpret the contract the way it did." Consequently, the trial court found that the presumption of regularity applied, and it was required to presume the arbitrator's decision was rational and lawful. With respect to K & D's argument that the arbitrator's award should be vacated because he exceeded his powers, the trial court found that in reaching his award, the arbitrator was construing the contract and therefore did not exceed his powers. Concerning K & D's argument that the arbitration award should be modified because the arbitrator made a material miscalculation of figures, the trial court found that the arbitrator did not miscalculate damages. Rather, the arbitrator arrived at his award applying criteria different from that urged by K & D. The court therefore granted Arrow's motion to confirm the arbitration award; denied K & D's motion to modify or vacate the award; and entered judgment in favor of Arrow and against K & D in the amount of $172,979.98 plus interest.

{¶26} K & D appeals the trial court's judgment, asserting the following for its sole assignment of error:

{¶27} "The Trial Court erred when it denied Appellant's Motion to Modify, Correct or, in the Alternative, Vacate Arbitration Award and granted Appellee's Amended Application for Confirmation of Arbitration Award, ordering Appellant to pay to Appellee $172,978.98 plus interest."

{¶28} K & D argues that the trial court should have vacated or modified the arbitration award based on the arbitrator's interpretation of the weekly service charge. Since K & D only disputes the amount of the award based on this interpretation, it does not challenge the remaining $46,306.98 of the award.

{¶29} As noted above, K & D failed to supply the trial court, as well as this court, with a transcript of the two-day evidentiary hearing held by the arbitrator. An appellate court in determining the existence of error is limited to a review of the record. *State v. Sheldon* (Dec. 31, 1986), 11th Dist. No. 3695, 1986 Ohio App. LEXIS 9608, *2; *Schick v. Cincinnati* (1927), 116 Ohio St. 16, paragraph three of the syllabus. An appellant is required to provide a transcript for appellate review. *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199. This is so because an appellant has the burden of demonstrating error by reference to matters in the record. See *State v. Skaggs* (1978), 53 Ohio St.2d 162, 163.

{¶30} "When portions of the transcript necessary for resolution of assigned errors are omitted from the record, the reviewing court has nothing to pass upon and thus, as to those assigned errors, the court has no choice but to presume the validity of the lower court's proceedings, and affirm." *Knapp*, supra; accord *Warren v. Clay*, 11th Dist. No. 2003-T-0134, 2004-Ohio-4386, at ¶7.

{¶31} In the context of arbitration proceedings, this court in *Advanced Technology Incubator, Inc. v. Manning*, 11th Dist. No. 2001-P-0154, 2003-Ohio-2537, stated:

{¶32} "*** A common pleas court must base its decision solely upon the record of the arbitration proceeding, including a transcript of the arbitration hearing. *Chester Twp. v. Fraternal Order of Police* (1995), 102 Ohio App.3d 404, 408. Absent a complete transcript, both the trial court and this Court must presume regularity in both the arbitrational proceedings and the decision itself. See *McDonald Local School Dist. v. Dull* (Aug. 20, 1999), 11th Dist. No. 98-T-0078, 1999 Ohio App. LEXIS 3885, at *2, *3." *Advanced Technology*, supra, at ¶19.

{¶33} K & D argues in a footnote in its reply brief that a transcript of the arbitration hearing was not necessary for two reasons. First, it argues there was no transcript of the arbitration hearing. However the record does not support that argument. In any event, even if the arbitrator did not record the hearing, that would not relieve K & D of its responsibility to retain a court reporter to prepare a transcript of the hearing. If K & D intended to assign error, it was obligated to include in the record a transcript of all testimony and other evidence relevant to the arbitrator's findings and conclusion. Second, K & D argues a transcript was not necessary because the error is apparent on the face of the award. We do not agree. The trial court noted in its judgment that because K & D failed to file a transcript of the arbitration hearing, the court had "no way of determining how or why the arbitrator chose to interpret the contract the way it did." As noted above, the arbitrator stated in his award that the parties advanced competing interpretations of the provisions at issue. For all we know,

the parties may well have agreed at the arbitration that the subject provisions were subject to interpretation, and presented parol evidence in support of their respective positions. Without a transcript, we have no idea what testimony or other evidence was presented at the arbitration hearing.

{¶34} Because K & D failed to file a complete transcript of the proceedings before the arbitrator, this court must presume regularity in those proceedings and affirm. For this reason alone, K & D's assignment of error lacks merit.

{¶35} In any event, even if K & D had filed a transcript of the arbitration hearing, its argument would still lack merit. A reviewing court has a very limited role in reviewing a binding arbitration award. *Madison Local School Dist. Bd. of Edn. v. OAPSE/AFSCME Local 4*, 11th Dist. No. 2008-L-086, 2009-Ohio-1315, at ¶9. The arbitrator is the final judge of both the law and the facts, and a court may not substitute its judgment for that of the arbitrator. Id. Further, an arbitrator's decision is presumed valid and therefore enjoys great deference. Id., citing *United Paperworkers Internatl. Union v. Misco, Inc.* (1987), 484 U.S. 29, 36-38. When a provision in an arbitration agreement is subject to more than one reasonable interpretation, an arbitrator's interpretation, rather than that of the reviewing court, governs the rights of the parties. *Madison Local School Dist.*, supra.

{¶36} Judicial deference in arbitration cases is based on a recognition that the parties have agreed to have their dispute settled by an arbitrator rather than the courts and "to accept the arbitrator's view of the facts and the meaning of the contract regardless of the outcome of the arbitration." Id. at ¶10, citing *United Paperworkers*, supra, 37-38.

{¶37} Moreover, "'[c]ourts *** do not sit to hear claims of factual or legal error by an arbitrator as an appellate court does in reviewing decisions of lower courts. To resolve disputes about the application of [an arbitration] agreement, an arbitrator must find facts and a court may not reject those facts simply because it disagrees with them. The same is true of the arbitrator's interpretation of the contract. The arbitrator may not ignore the plain language of the contract; but the parties having authorized the arbitrator to give meaning to the language of the agreement, a court should not reject an award on the ground that the arbitrator misread the contract. *** If the courts were free to intervene on these grounds, the speedy resolution of grievances by private mechanisms would be greatly undermined.'" *Madison Local School Dist.*, supra, at ¶11, quoting *United Paperworkers*, supra, at 38; accord, *Southwest Ohio Regional Transit Auth. v. Amalgamated Transit Union, Local 627*, 91 Ohio St.3d 108, 109, 2001-Ohio-294.

{¶38} The request for judicial intervention should be resisted even where the arbitrator has ostensibly made "'"serious," "improvident" or "silly" errors in resolving the merits of the dispute.'" *Madison Local School Dist.*, supra, at ¶12, quoting *Michigan Family Resources, Inc. v. Serv. Employees Internl. Union Local 517M* (C.A.6, 2007), 475 F.3d 746, 753, citing *United Paperworkers*, supra.

{¶39} Even a grossly erroneous decision is binding in the absence of fraud. *Advanced Technology*, supra, at ¶12. Thus, an appellate court will not reverse the affirmance of an arbitration award on the basis that the award was against the manifest weight of the evidence or that the arbitrator's legal analysis was factually or legally wrong. *Hacienda Mexican Restaurant of Ohio v. Zadd* (Dec. 10, 1993), 11th Dist. No. 92-L-108, 1993 Ohio App. LEXIS 5923, *5. "'If the parties could challenge an arbitration

decision on the ground that the arbitrators erroneously decided legal or factual issues, no arbitration would be binding. *Binding arbitration precludes judicial review unless the arbitrators were corrupt or committed gross procedural improprieties.*'" (Emphasis added.) *Ecker v. Hanusosky* (Sep. 8, 1995), 11th Dist. No. 95-L-024, 1995 Ohio App. LEXIS 3900, *3-*4, quoting *Huffman v. Valletto* (1984), 15 Ohio App.3d 61, 63.

{¶40} Further, judicial review of arbitration awards is narrowly limited by R.C. 2711.10 and R.C. 2711.11. *Mike McGarry & Sons, Inc. v. Marous Bros. Constr., Inc.,* 11th Dist. No. 2009-L-056, 2010-Ohio-823, at ¶14. The Supreme Court of Ohio has held that "the vacation, modification or correction of an award may only be made on the grounds listed in R.C. 2711.10 and 2711.11 ***. The jurisdiction of the courts to review arbitration awards is thus statutorily restricted; it is narrow and it is limited." *Warren Edn. Assn. v. Warren City Bd. of Edn.* (1985), 18 Ohio St.3d 170, 173.

{¶41} R.C. 2711.10 limits the instances in which an arbitration award can be *vacated* to claims of fraud, corruption, misconduct, an imperfect award, or that the arbitrator exceeded his authority. *Madison Local School Dist.*, supra, at ¶13. K & D argues that the arbitration award should be vacated because the arbitrator exceeded his powers in construing the liquidated damages provision.

{¶42} R.C. 2711.11 provides that an arbitration award can only be judicially *modified* when there was an evident material miscalculation of figures; the arbitrators have awarded upon a matter not submitted to them; or the award is imperfect in matter of form. K & D argues the award should be modified because there was an evident material miscalculation of figures.

{¶43} While R.C. 2711.10 and R.C. 2711.11 pertain to the review of an arbitration award by the court of common pleas, the court of appeals undertakes the same limited review as the trial court. *Mike McGarry & Sons*, supra, at ¶26. "'The standard of review to be employed on appeal is whether the trial court erred as a matter of law in confirming the arbitration award.' *Dayton v. Internatl. Assn. of Firefighters*, 2nd Dist. No. 21681, 2007-Ohio-1337, at ¶11 (citations omitted). 'Thus, our review *** is narrowly confined "to an evaluation of the confirmation order of the common pleas court and we cannot review the substantive merits of the award absent evidence of material mistakes or extensive impropriety."' Id. (citations omitted)." *Portage Cty. Bd. of Mental Retardation and Dev. Disabilities v. Portage Cty. Educators Assn. for Mentally Retarded*, 11th Dist. No. 2006-P-0111, 2007-Ohio-2569, at ¶13. While Ohio courts have not defined the terms "material mistake" and "extensive impropriety," a review of pertinent case law authority indicates that these terms are generally considered synonymous for the grounds set forth in R.C. 2711.10. *Advanced Technology*, supra, at ¶15.

{¶44} Thus, the review of the trial court and of this court is limited to determining whether any of the grounds set forth in R.C. 2711.10 (regarding a motion to vacate) and R.C. 2711.11 (regarding a motion to modify) exist. While K & D makes the conclusory arguments that the arbitrator exceeded his powers and there was an evident material miscalculation of figures, K & D does not offer any reasons in support of such contentions with citations to pertinent authority and the record, in violation of App.R. 16(A)(7). For this additional reason, the assignment of error lacks merit.

{¶45} However, even if K & D's argument was properly supported, it would lack merit. K & D does not argue that the arbitrator lacked the authority to determine the amount of liquidated damages. Instead, it suggests that the arbitrator exceeded his powers in calculating liquidated damages. K & D argues that because, in its view, the plain language of the contract provided that the "weekly service charge" is $4.12, the arbitrator exceeded his powers by interpreting this term to take into account the average weekly number of uniforms provided by Arrow to K & D's employees.

{¶46} This court in *Mike McGarry & Sons*, supra, addressed the issue of when an arbitrator exceeds his powers, as follows:

{¶47} "'[A]n arbitrator exceeds his or her authority only when the award fails to draw its essence from the *** agreement. *** An award draws its essence from the agreement when it is not arbitrary, capricious, or unlawful and there is a rational nexus between the award and the agreement.' *Madison Local School Dist*., 2009-Ohio-1315, at ¶13 (citations omitted). '[A]fter it determines that an arbitrator's award "draws its essence" from the *** agreement and is not unlawful, arbitrary or capricious, a reviewing court's inquiry for purposes of vacating an arbitrator's award is at its end.' Id. at ¶9 (citation omitted). *So long as the arbitrator is arguably construing the contract, the trial court is obliged to affirm its decision*. *Summit Cty. Bd. of Mental Retardation & Developmental Disabilities v. Am. Fedn. of State, Cty. & Mun. Emp*. (1988), 39 Ohio App.3d 175, 176 (citation omitted). This is so because it is the arbitrator's determination for which the parties bargained. *Goodyear* [*Tire & Rubber Co. v. Local Union No. 200* (1975)], 42 Ohio St.2d [516,] at 520." (Emphasis added.) *Mike McGarry & Sons*, supra, at ¶29.

{¶48} As noted above, in determining liquidated damages, the arbitrator considered the parties' competing interpretations of "weekly service charge." While $4.12 was shown as the weekly service charge, the arbitrator found that, based on the contract itself, $4.12 was the unit price for *one uniform*. K & D advocated a literal interpretation, i.e., that $4.12 was the weekly service charge, ignoring any adjustment per the contract for the number of uniforms provided by Arrow each week. In contrast, Arrow argued the term "weekly service charge" should be interpreted to reflect price increases per the contract for all uniforms provided by Arrow each week. In order to arrive at the weekly service charge, Arrow argued it was necessary to multiply the unit price for one uniform ($4.12) by the average number of uniforms provided by Arrow per week. Thus, the term "weekly service charge" was subject to two reasonable interpretations on the face of the contract, i.e., that $4.12 was the unit price of one uniform or that it was the weekly service charge for all uniforms provided per week.

{¶49} The arbitrator found that Arrow's interpretation of the pertinent contract provisions was reasonable and rational and adopted it. In support of its finding, the arbitrator noted that the unit price of $4.12 is adjusted pursuant to the contract to reflect the total number of uniforms provided by Arrow to all of K & D's maintenance employees each week. Thus, in order to arrive at the weekly service charge, the unit charge for one uniform must be multiplied by the number of uniforms provided per week. We note that the term "Per 11/5" in the column directly following "weekly service charge" supports the arbitrator's finding because it indicates that in order to determine the weekly service charge for all uniforms provided by Arrow each week, the unit price for one uniform must be multiplied by 11/5, which refers to the number of uniforms

provided to each employee. In his award, the arbitrator found that Arrow provided to each of K & D's maintenance employees 11 uniforms and weekly cleaning and repairing of five of those uniforms for each employee. However, without a transcript or the hearing exhibits, it is impossible for us to determine the total number of uniforms provided to K & D's employees or how the arbitrator determined the exact amount of liquidated damages, i.e., $126,670. As a result, we must presume regularity in the arbitrator's decision.

{¶50} In any event, because the arbitrator's calculation of liquidated damages was based on his analysis of the contract terms, his decision was not arbitrary, capricious, or unlawful, and there was a rational nexus between the award and the agreement. *Mike McGarry & Sons*, supra. The award thus drew its essence from the service contract, and the arbitrator did not exceed his powers. Moreover, it is obvious that in calculating damages the arbitrator was construing the contract. As noted above, as long as the arbitrator is arguably construing the contract, we are obliged to affirm. Id.

{¶51} K & D alternatively argues that the arbitration award should be modified pursuant to R.C. 2711.11(A) because there was an evident miscalculation of figures. This court has held that an arbitration award can only be modified if the miscalculation is evident from the face of the award and can be corrected without fact-finding. *Mike McGarry & Sons*, supra, at ¶60-62. As the trial court found, the award issued by the arbitrator does not disclose any mathematical error on its face. The arbitrator simply based his award on different criteria than K & D would have preferred. K & D has failed to draw our attention to any evident material miscalculation of figures on the part of the arbitrator in arriving at his award. Consequently, K & D is challenging the arbitrator's

analysis of the contract, rather than any miscalculation of figures on the face of the award. K & D is therefore not entitled to modification of the award.

{¶52} As an aside, K & D argues at great length that this court should adopt the "manifest disregard" standard followed by some federal courts or the "plain language" rule as additional mechanisms to vacate the arbitration award. Under the "manifest disregard" standard, an arbitration award is set aside where no judge could conceivably come to the same legal determination as the arbitrator. *Storer Broadcasting Co. v. Am. Fedn. of Television and Radio Artists* (C.A.6, 1979), 600 F.2d 45. However, none of the Ohio cases cited by K & D have adopted this standard. After argument by Arrow in its answer brief that this standard has not been adopted in Ohio, in its reply brief K & D concedes that the manifest disregard standard is nothing more than a restatement of the well-settled arbitrary and capricious standard.

{¶53} Further, while an arbitrator may not ignore the plain language of an arbitration contract, *Madison*, supra, Ohio has not adopted such rule as separate grounds for a court to vacate an arbitration award. As noted above, R.C. 2711.10 provides the exclusive means by which an arbitration award may be vacated. Since Ohio courts, including the Supreme Court of Ohio, have not adopted a "plain language" rule and such rule is unnecessary to our analysis, we decline K & D's invitation to consider it as separate grounds to vacate the instant arbitration award.

{¶54} Since R.C. 2711.10 and R.C. 2711.11 provide the sole grounds of review of an arbitration award, and K & D has failed to demonstrate the existence of any of these grounds, we hold the trial court did not err in granting Arrow's application to

confirm the arbitration award and in denying K & D's motion to modify or vacate the award.

{¶55} For the reasons stated in this opinion, appellant's assignment of error is without merit. It is the judgment and order of this court that the judgment of the Lake County Court of Common Pleas is affirmed.

DIANE V. GRENDELL, J.,

MARY JANE TRAPP, J.,

concur.