

**NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37**

DAN ACHEK,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
DAVID & KAREN RIDDICK,	:	
	:	
Appellants	:	No. 138 EDA 2012

Appeal from the Judgment Entered February 28, 2012,  
in the Court of Common Pleas of Philadelphia County,  
Civil Division, at No(s): 4296 July Term, 2009.

BEFORE: LAZARUS, J., OTT, J., and STRASSBURGER, J.\*

MEMORANDUM BY STRASSBURGER, J.: Filed: April 26, 2013

David and Karen Riddick (collectively, "the Riddicks") appeal from the trial court's order denying Appellants' motion to amend an arbitration award. We affirm.

On or around May 26, 2006, Tiffany Gray (Gray), the administratrix of the estate of Lawrence Riddick, entered in to a contract to sell a property located at 1416-18 Point Breeze Avenue, in Philadelphia, to Appellee, Dan Achek (Achek). Gray subsequently transferred title to the Point Breeze Avenue property to her uncle, Appellant David Riddick. Achek filed suit to enforce that contract in August of 2006.

The parties agreed to submit their dispute to arbitration pursuant to the Rules of the American Arbitration Association (AAA). The case was heard by Charles Herman, Esq. (Herman), who decided in favor of Achek.

\*Retired Senior Judge assigned to the Superior Court.

Herman determined that a valid contract existed for the purchase of the Point Breeze Avenue property, and that Achek was entitled to recover under that contract. Specifically, he ordered

[the Riddicks to] transfer title of the property to [Achek] upon [Achek] paying to [Appellants] the full amount of the purchase price agreed to in the original contract plus all closing costs and all costs of improvements made to the property by [the Riddicks]. To establish the costs for improvements, [the Riddicks are] to present to a third party agreed to by both counsel valid evidence supporting such costs for improvement.

Arbitration Award, 7/7/2009.

Achek filed a petition to confirm the arbitrator's award. The Riddicks did not oppose the petition and, on October 7, 2009, the trial court entered an order confirming the award and its terms.

On January 4, 2010, Achek filed a motion for sanctions asserting that the Riddicks had failed to transfer title of the property to Achek and failed to name a third party to establish the costs for improvements. While that motion was pending, the parties selected a second arbitrator, Harris Bock, Esquire, to establish the costs for improvements to the Point Breeze Avenue property. Several arbitration hearings were held before Bock, during which hearings the parties were afforded the opportunity to present evidence and make oral arguments. The Riddicks testified that, from 2006 through 2009,

they spent an aggregate of \$105,986.00<sup>1</sup> on improvements to the Point Breeze Avenue property. Achek testified that the alleged improvements were actually maintenance costs and argued that the work performed was substandard, incomplete, overpriced, and not up to code. According to Achek, remedial repairs were necessary. He alleged the improvements cost the Riddicks \$16,438.00, but estimated that repairs to the property would cost \$50,000.00.

On September 15, 2010, Bock issued his award and findings of fact in support thereof in which Bock credited the testimony of Achek over that of the Riddicks. As a result, Bock ordered Achek to pay an aggregate sum of \$150,525.00 to the Riddicks, based on a purchase price of \$105,000.00 and \$45,525.00 for improvements made by the Riddicks. Bock noted that the Riddicks provided no estimate for closing costs, and thus, no closing costs were awarded.

On November 17, 2010, the Riddicks filed a motion with the trial court to amend Bock's award, arguing (1) that Bock's award was too low, (2) that Bock erred in determining that the Riddicks failed to offer proof of closing costs, and (3) that Bock erred in discounting the Riddicks' evidence as to the actual value of the improvements to the property. Achek filed his response on November 21, 2010.

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<sup>1</sup> The Riddicks claimed they spent \$28,826.00 in materials and \$77,160.00 in labor costs.

On December 2, 2010, the trial court entered an order which, *inter alia*, affirmed the \$45,525.00 cost of improvements awarded by Bock. Trial Court Opinion, 4/17/2012, at 3 (unnumbered).<sup>2</sup> On November 30, 2011, the trial court denied both the Riddicks' motion to amend and Achek's motion for sanctions. This appeal followed. Both the Riddicks and the trial court complied with Pa.R.A.P. 1925.

The Riddicks raise two issues for our review.

1. Is the award of the **original** arbitrator binding on the parties, and the [trial] court, without evidence of fraud, corruption, or other irregularity which would cause the arbitrator to render an unjust, inequitable or unconscionable award?
2. Are the parties required to abide by the letter of the award by the binding arbitrator without evidence of fraud, corruption, or other irregularity which would cause the arbitrator to render an unjust, inequitable or unconscionable award?

Riddicks' Brief at 4 (emphasis in original).

When considering a common law arbitration award, our standard of review is very limited.<sup>3</sup>

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<sup>2</sup> On February 28, 2012, judgment was entered on this order on the trial court docket as required by Pa.R.A.P. 301.

<sup>3</sup> The parties agree that this was a common law arbitration. Trial Court Opinion, 4/17/2012, at 4 (unnumbered). Moreover, by providing for arbitration pursuant to American Arbitration Association rules and by indicating the parties are bound by the arbitration decision, the language of the arbitration clause specifically denotes common law arbitration. *See U.S. Claims, Inc., supra* at 876, citing *Runewicz v. Keystone Ins. Co.*, 383 A.2d 189, 191 (Pa. 1978).

The award of an arbitrator in a nonjudicial arbitration which is not subject to (statutory arbitration) or [to] a similar statute regulating nonjudicial arbitration proceedings is binding and may not be vacated or modified unless it is clearly shown that a party was denied a hearing or that fraud, misconduct, corruption or other irregularity caused the rendition of an unjust, inequitable or unconscionable award.

**Sage v. Greenspan**, 765 A.2d 1139, 1142-1143 (Pa. Super. 2000). "The arbitrators are the final judges of both law and fact, and an arbitration award is not subject to reversal for a mistake of either." **F.J. Busse Co. v. Sheila Zipporah, L.P.**, 879 A.2d 809, 811 (Pa. Super. 2005) (citation omitted). "[A] trial court order confirming a common law arbitration award will be reversed only for an abuse of discretion or an error of law." **U.S. Claims, Inc. v. Dougherty**, 914 A.2d 874, 877 (Pa. Super. 2006) (citation and quotation omitted).

The Riddicks first argue that the trial court erred in affirming the order of Bock, who they claim was not an arbitrator, but a "third party," and as such was obligated to accept at face value the Riddicks' estimates and evidence as to cost of improvements to the property. Riddicks' Brief at 8-9. By engaging in hearings and weighing of the parties' evidence, the Riddicks argue, Bock disregarded his role as "third party evaluator" and the trial court erred in affirming his invalid award. *Id.*

Achek urges this Court to find this claim waived as the Riddicks have failed to raise it with the trial court in their concise statement pursuant to Pa.R.A.P. 1925(b).

In *Commonwealth v. Lord*, 553 Pa. 415, 719 A.2d 306 (1999), the Pennsylvania Supreme Court specifically held that “from this date forward, in order to preserve their claims for appellate review, Appellants must comply whenever the trial court orders them to file a Statement of Matters Complained of on Appeal pursuant to [Pa.R.A.P.] 1925.” *Lord*, 719 A.2d at 309. “Any issues not raised in a 1925(b) statement will be deemed waived.” *Id.*

*Tucker v. R.M. Tours*, 939 A.2d 343, 346 (Pa. Super. 2007) (quoting *Kanter v. Epstein*, 866 A.2d 394, 400 (Pa. Super. 2004)).

In their 1925(b) statement, the Riddicks contended (1) that the trial court “erred in upholding the arbitration award of the second arbitrator” because it was inconsistent with the award of the “first arbitrator” and was contrary to the evidence, (2) that the trial court erred in not amending the award of the “second arbitrator” which was “inconsistent with the original binding arbitrator, whose order was binding and specific,” and (3) that the trial court erred in not awarding closing costs to the Riddicks. Riddicks’ Concise Statement, 1/26/2012, at 1-2; *see also* Trial Court Opinion, 4/17/2012, at 4-5 (unnumbered). Now on appeal, the Riddicks argue that Bock was not a “second arbitrator,” but rather a “third party” without authority to issue a binding award. Due to the Riddicks’ failure to include

this claim in their 1925(b) statement, we are constrained to find such claim waived.

Even if the Riddicks' claim were not waived, they would not be entitled to relief. The Riddicks present no authority to support their claim that there is a distinction between an arbitrator and a third party, nor do they present support that Bock was not a valid arbitrator. Moreover, the Riddicks willingly submitted to Bock's arbitration. At no time during the multiple arbitration hearings did they object to Bock's qualifications, the hearing process, or Achek's ability to present evidence contradicting the Riddicks' calculations. Based on our review of the record, we cannot agree with the Riddicks' argument that they were unaware that Bock was an arbitrator. Additionally, the Riddicks are precluded from submitting an issue to an arbitrator, lose on that issue, and then later claim the arbitrator lacked the authority to decide that very issue. *See AGCO Corp. v. Anglin*, 216 F.3d 589, 593 (7th Cir. 2000) (stating "[i]f a party willingly and without reservation allows an issue to be submitted to arbitration, he cannot await the outcome and then later argue that the arbitrator lacked authority to decide the matter[]"). Accordingly, we hold that the Riddicks are not entitled to relief for this claim on appeal.

In their second claim, the Riddicks appear to argue that the trial court erred in affirming Bock's award because it contradicts the award of the first

arbitrator. Riddicks' Brief at 9. The trial court did address this claim and held as follows.

The record simply contains no indication that any procedural aspect of [Bock's] arbitration proceeding was irregular in any way, and [the Riddicks] do not even allege that it does. Neither is there any indication (or allegation) of fraud, misconduct or corruption. Since [the Riddicks] bear the burden to establish both the underlying irregularity and the resulting inequity by clear, precise and indubitable evidence, [the Riddicks] have not met their burden and [the trial] court properly denied [the Riddicks'] Motion to Amend.

Nor was Bock's award unjust, inequitable or unconscionable. [the Riddicks] argue that Bock erred in not including the value of bills and liens as "closing costs." Even if this had been an error however, it would not be sufficient [to warrant setting aside the award]. An unjust, inequitable or unconscionable award is something more than merely a mistake of law, or even several mistakes aggregated together. Nor is an arbitrator's misunderstanding of language in an agreement sufficient; an arbitration award is conclusive even if it has the effect of varying the terms of the contract. Thus, even if Bock had erred in not including liens and bills as "closing costs," or in weighing the evidence and arriving at a figure different from that requested by [the Riddicks], the award would not be unjust, inequitable or unconscionable. Because Bock's arbitration award was not the result of fraud, misconduct, corruption or other irregularity, nor was the award unjust, inequitable or unconscionable, [the trial court] could not second guess the decision of the arbitrator.

Trial Court Opinion, 4/17/2012, at 5-6 (unnumbered).

We agree with the reasoning of the trial court. Additionally, we note that Bock's award does not contradict Herman's, but instead supplements it, as ordered by Herman. We see no fraud, misconduct, or other irregularity



J-A01010-13

on the part of Bock. Accordingly, we affirm the trial court's order denying the Riddicks' motion to amend an arbitration award.

Order affirmed.