NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

WALTER FINCH Appellee v. ARNOLD Y. STEINBERG, P.C. AND ARNOLD Y. STEINBERG, ESQUIRE Appellants	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1884 WDA 2011

Appeal from the Order of November 7, 2011
In the Court of Common Pleas of Westmoreland County
Civil Division at No(s): 09-CI-09914

BEFORE: MUSMANNO, J., BOWES, J., and WECHT, J.

MEMORANDUM BY WECHT, J. Filed: February 21, 2013

Arnold Y. Steinberg, P.C., and Arnold Y. Steinberg, Esquire (collectively "Appellant"),[1] appeal the November 7, 2011 order denying Appellant's motion to vacate arbitration award and granting Walter Finch's ("Appellee") petition to confirm arbitration award entered in the Court of Common Pleas of Westmoreland County. We affirm.

On October 18, 2005, Appellee sought an attorney to assist him in a dispute arising from the purchase of securities and insurance policies from

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[1] Although both Arnold Y. Steinberg, Esquire, and Arnold Y. Steinberg, P.C., an entity, are listed as parties, for our purposes the case centers on Mr. Steinberg as an individual. Therefore, we will refer to both parties collectively as "Appellant."

Mutual of New York (MONY). Appellee hired Appellant and, as part of that process, executed a contingent fee agreement dated March 21, 2006. The agreement provides that any disputes between Appellee and Appellant would be resolved through the Commercial Division of the American Arbitration Association ("AAA"). On May 5, 2006, Appellee paid Appellant a retainer fee of $5,000.00. Appellant never filed an action against MONY on Appellee's behalf.

Appellant was disbarred in Pennsylvania on December 30, 2008, and later in the United States District Court for the Western District of Pennsylvania. Appellant never told Appellee of his disbarment. On November 4, 2009, Appellee filed suit against Appellant by Writ of Summons in the Court of Common Pleas of Westmoreland County. Following the filing of the suit, and pursuant to the fee agreement, Appellee filed a demand for arbitration with the AAA on claims of professional liability, breach of contract, and fraud. Appellee sought an award against Appellant in the amount of $38,000.00, plus interest, arbitration costs, and attorney fees. On August 16, 2011, the AAA arbitrator held a hearing. The parties agreed on a "standard" award, which identifies only the winning party and the relief granted.[2] Because the parties agreed to a standard award instead of a "reasoned" award, no transcript was taken.

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[2] Arbitrators generally need not disclose the rationale underlying their awards. ***United Steelworkers of Am. v. Enter. Wheel & Car Corp.***, 363

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On September 2, 2011, the AAA awarded Appellee $6,500.00 in damages and $2,225.00 in costs. As the arbitration was governed by the AAA's Consumer-Related Disputes Supplementary Procedures, the award constituted a common law arbitration, and therefore was "final and binding." AAA Consumer-Related Disputes Supplementary Procedures, C-7(c) (2005). On September 15, 2011, Appellant filed a motion to vacate arbitration award in the Court of Common Pleas of Westmoreland County. On October 13, 2011, Appellee filed his response. On October 17, 2011, Appellee filed a petition to confirm arbitration award and enter judgment. On November 2, 2011, Appellant filed his brief in response to Appellee's petition to confirm arbitration award and enter judgment. On November 7, 2011, the trial court

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U.S. 593, 598 (1960). Arbitration awards differ in specificity, depending on the type of award contracted for by the parties. ***Cat Charter, LLC v. Schurtenberger***, 646 F.3d 836, 844 (11th Cir.2011). The default award is a standard disposition, and the simplest, identifying the winning party and the relief granted. ***Id.*** "An arbitrator need not render a reasoned award unless the parties request such an award in writing prior to appointment of the arbitrator or unless the arbitrator determines that a reasoned award is appropriate." AAA Commercial Arbitration Rules and Mediation Procedures (June 2009). A "reasoned award" is "something short of findings and conclusions but more than a simple result." ***Holden v. Deloitte & Touche LLP***, 390 F. Supp. 2d 752, 780 (N.D. Ill. 2005) (citing ***ARCH Dev. Corp. v. Biomet,*** No. 02 C 9013, 2003 U.S. Dist. Lexis 13118, at *13 (N.D. Ill. July 28, 2003)). A "reasoned award" is not defined by the AAA, and therefore may vary in specificity. ***ARCH***, No. 02 C 9013, 2003 U.S. Dist. Lexis 13118, at *12. ***See generally*** AAA Commercial Arbitration Rules and Mediation Procedures.

issued an order denying Appellant's motion to vacate and granting Appellee's petition to confirm. This appeal followed.

On December 8, 2011, the trial court ordered Appellant to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). On December 12, 2011, Appellant timely filed his concise statement. The trial court filed its opinion on January 5, 2012, pursuant to Pa.R.A.P. 1925(a).

Appellant raises the following issues for review:

1. Whether the trial court erred in Denying the Appellant's Motion to Vacate and in Granting the Appellee's Motion to Confirm the subject of the arbitration award, by failing to recognize that the arbitrator who heard this case had imperfectly exceeded his power, as contemplated by 42 Pa.C.S. § 7314, by rendering an award in favor of the Claimant when doing so was factually, legally, and patently improper, thus requiring it to be vacated upon the filing of an appropriate Motion to do so.

2. Whether the trial court erred in Denying the Appellant's Motion to Vacate and in Granting the Appellee's Motion to Confirm the subject arbitration award, by failing to take into account that the time to act on the securities investment losses of the Appellee was already time-barred when he came to the office of the Appellant, and that his subsequent failure to address his other losses that concerned the unsuitable insurance policies that had been sold to him, which remained a valid cause of action, constituted contributory negligence which should have precluded any recovery, by the Appellee, from the Appellants.

3. Whether the trial court erred in Denying the Appellant's Motion to Vacate and in Granting the Appellee's Motion to Confirm the subject arbitration award, by failing to take into account the fact that the failure of the Appellee to go forward against the insurance company, against whom he had ongoing complaints, made it impossible for the Appellee to

demonstrate to either the arbitrator who heard this case, or to the Court of Common Pleas, had it held an evidentiary hearing, that his cause of action against the insurance company was time-barred, making it impossible for the Appellee to prove that the Appellant had caused him any harm, requiring the trial court to Deny the Motion to Confirm and to Grant the Motion to Vacate that award.

4. Whether the trial court erred in Denying the Appellant's Motion to Vacate and in Granting the Appellee's Motion to Confirm the subject arbitration award, by failing to recognize the requirement that in a legal malpractice case, that the Appellee must try a "case within a case" in order to prove that, but for the alleged breaches of duty of Appellant, he would have prevailed in his underlying action.

Brief for Appellant at 4-5.

In the beginning of his brief, Appellant lists four separate issues. However, in his argument, Appellant presents one issue, encompassing five "sub-issues." According to the Pennsylvania Rules of Appellate Procedure, "the argument shall be divided into as many parts as there are questions to be argued; and shall have at the head of each part . . . the particular point treated therein, followed by such discussion and citation of authorities as are deemed pertinent." Pa.R.A.P. 2119. It is within our discretion to quash an appeal for a violation of the Rules of Appellate Procedure. ***Commonwealth v. Stafford***, 749 A.2d 489 (Pa. Super. 2005); ***see also Universal Underwriters Ins. Co. v. A. Richard Kacin, Inc.***, 916 A.2d 686, 689 (Pa. Super. 2007) (finding violations of Pa.R.A.P. 2119 by appellant's failure to divide argument into sections corresponding to the issues stated and for an excessively lengthy statement of questions, but declining to quash appeal). Nonetheless, we will not find waiver in the case *sub judice*, as Appellant's

argument is discernible and our review is not impeded by Appellant's failure to comply with Pa.R.A.P. 2119.

"Public policy favors arbitration to settle disputes, quickly, fairly, and economically." ***Smay v. E.R. Stuebner, Inc.***, 864 A.2d 1266, 1272 (Pa. Super. 2004). According to 42 Pa.C.S. § 7341:

> [T]he award of an arbitrator in a nonjudicial arbitration which is not subject to Subchapter A (relating to statutory arbitration) or 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.

Judicial review of arbitration is limited. Were it not so, arbitration would lack finality. The benefits that alternative dispute resolution confers upon our judicial system and upon disputing parties would disappear. ***See F.J. Busse Co., Inc. v. Sheila Zipporah***, ***L.P.***, 879 A.2d 809, 811 (Pa. Super. 2005) (citing ***Boulevard Assoc. v. Seltzer Partnership***, 664 A.2d 983 (Pa. Super. 1995)). We have observed:

> In accordance with this provision, our scope of review is extremely narrow. The arbitrators are the final judges of both law and fact, and an arbitration award is not subject to a reversal for a mistake of either. Neither we nor the trial court may retry the issues addressed in arbitration or review the tribunal's disposition of the merits of the case. Rather, we must confine our review to whether the appellant was deprived of a hearing or whether fraud, misconduct, corruption or other irregularity tainted the award. The appellant bears the burden to establish both the underlying irregularity and the resulting inequity by clear, precise, and indubitable evidence. In this context, irregularity refers to the process employed in reaching the

> result of the arbitration, not to the result itself. A cognizable irregularity may appear in the conduct of either the arbitrators or the parties.

McKenna v. Sosso, 745 A.2d 1, 4 (Pa. Super. 1999) (internal citations and quotations 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." ***Andrew v. CUNA Brokerage Serv., Inc.***, 976 A.2d 496, 500 (Pa. Super. 2009) (citing ***U.S. Claims, Inc. v. Dougherty***, 914 A.2d 874, 877 (Pa. Super. 2006)). We have noted:

> To prevail on these grounds actual fraud must be shown, involving collusion with one of the parties, or misconduct intended to create a fraudulent result. An argument that the arbitrators were prejudiced or partial, or that they reached an award so unjust that it constitutes constructive fraud, will not be heeded. Similarly, an irregularity will not be found simply upon a showing that an incorrect result was reached. An irregularity which requires reversal of a common-law arbitration award refers to the process employed in reaching the result of the arbitration, not to the result itself.

Gwin Engineers, Inc. v. Cricket Club Estates Dev. Group, 555 A.2d 1328, 1329 (Pa. Super. 1989) (citations and internal quotation marks omitted).

Distilled to its essence, Appellant's challenge to the arbitration award is that Appellee failed to establish legal malpractice because Appellee's underlying securities claims were time-barred, precluding recovery for legal malpractice. By this argument, Appellant attempts to re-litigate the merits of his case. As set forth above, Appellant is not permitted to do so. ***McKenna***, 745 A.2d at 4.

Appellant contends that the arbitrator "imperfectly exceeded his powers" and "blatantly ignored the law," such that the award was "factually, legally, and patently improper," and should be vacated. Brief for Appellant at 4, 13. "But as the decisions of this Court have reiterated, mistakes of judgment and mistakes of either fact or law are among the contingencies parties assume when they submit disputes to arbitrators." ***Allstate Ins. Co. v. Fioravanti***, 299 A.2d 585, 589 (Pa. 1973); ***see also In re Amer. Arbitration Association's Award***, 311 A.2d 668 (Pa. Super. 1973). Without a showing of "fraud, misconduct, corruption, or other irregularity," this Court cannot vacate the award. ***See McKenna,*** *supra***.** "It is possible to hypothecate an arbitration award which imports such bad faith, ignorance of the law and indifference to the justice of the result as to cause us to give content to the phrase 'other irregularity' since it is the most definitionally elastic of the grounds for vacatur." ***See Fioravanti,*** 299 A.2d at 589. Appellant fails to demonstrate "the underlying irregularity and the resulting inequity by clear, precise and indubitable evidence. . . . The mere fact that the arbitrator found in favor of the Appellee does not demonstrate that an irregularity and a resulting inequity occurred." ***Gargano v. Terminix Int'l Co., L.P.***, 784 A.2d 188, 195 (Pa. Super. 2001).

As the parties agreed upon a standard award rather than a reasoned award, there is no record of the arbitration hearing. Appellant offers no specifics on how the arbitrator "imperfectly exceeded his powers" and "blatantly ignored the law." Brief for Appellant at 13. Even if Appellant

could do so, "[a]n error of law by the arbitrators is not a basis upon which a trial court, which is reviewing an arbitration decision, may modify that decision." ***F.J. Busse Co.***, 879 A.2d at 812.

Appellant does not meet his heavy burden. He fails to demonstrate any specific "irregularity" under the statute as required to establish a basis for relief. The subject of this appeal is not contemplated in Section 7341, because the arbitration award is final and binding absent a showing of "fraud, misconduct, corruption, or other irregularity." We will not vacate an award without a showing of abuse of discretion, which we do not discern in this case.

We may not retry the issues or review the merits of the case. ***McKenna***, 745 A.2d at 4. Yet this is what Appellant asks us to do. Appellant does not claim that he was denied a hearing, as he fully participated in proceedings. Appellant does not point to any "fraud, misconduct, corruption, or other irregularity" in the process to reach the conclusion that the award was unjust and unconscionable. Appellant does not meet the heavy burden required to obtain vacatur of an arbitration award. His claims fail.

Order affirmed. Jurisdiction relinquished.