

IN THE UTAH COURT OF APPEALS

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C.B. Richard Ellis,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner and Appellee,)	
)	Case No. 20080654-CA
v.)	
)	F I L E D
Walter G. Nelson Family Trust,)	(October 30, 2008)
)	
Respondent and Appellant.)	2008 UT App 399

Third District, Salt Lake Department, 080905060
The Honorable Denise P. Lindberg

Attorneys: B. Ray Zoll and Micah Bruner, Sandy, for Appellant
Russell C. Fericks and Zachary E. Peterson, Salt Lake
City, for Appellee

Before Judges Billings, Davis, and McHugh.

PER CURIAM:

Walter G. Nelson Family Trust (the Trust) appeals the district court's order affirming an arbitration award. This case is before the court on a motion for summary disposition filed by Appellee C.B. Richard Ellis (CBRE).

The district affirmed the arbitration award, noting that the standard for reviewing an arbitration award is highly deferential and that the grounds upon which an arbitration award can be set aside are limited by statute. See Utah Code Ann. § 78B-11-124 (Supp. 2008). A district court may vacate or modify an arbitration award if (a) the award was procured by "corruption, fraud, or other undue means;" (b) the arbitrator showed partiality or was guilty of misconduct; (c) the arbitrator exceeded his or her authority; (d) the arbitrator refused to postpone a hearing, hear material evidence, or otherwise conducted a hearing "to the substantial prejudice of the rights of a party;" or (e) there is no arbitration agreement. Id. "A trial court faced with a motion to vacate or modify an arbitration award is limited to determining whether any of the very limited grounds for modification or vacatur exist." Buzas Baseball, Inc. v. Salt Lake Trappers, Inc., 925 P.2d 941, 947 (Utah 1996). Accordingly, "the trial court may not substitute

its judgment for that of the arbitrator, nor may it modify or vacate an award because it disagrees with the arbitrator's assessment." Id. "Courts . . . do not sit to hear claims of legal or factual error by an arbitrator." Id. at 948. There is "one limited circumstance in which courts have found that an error in an award may amount to an arbitrator's exceeding his authority." Id. at 950. However, "under this principle, an arbitrator has not exceeded his authority unless [the award] is completely irrational." Id. "In other words, an award may not stand if it does not meet the test of fundamental rationality." Id. "[A]lthough the complete irrationality of an award is a basis for setting it aside, the irrationality principle must be applied with a view to the narrow scope of review in arbitration cases." Id.

The Trust argues that the statutory limitations on judicial review of arbitration awards should be disregarded. The Trust also contends for the first time on appeal that the award was irrational and therefore the arbitrator exceeded his authority. The contention that "an arbitrator's decision lacks any basis in reason or fact and is therefore 'completely irrational'" is "a judicially created doctrine derived from the statutory provision that an arbitrator's decision may be challenged if an arbitrator has exceeded his or her authority." Pacific Dev. v. Orton, 2001 UT 36, ¶ 7 n.3, 23 P.3d 1035. The Trust did not present this argument in the district court. In district court, the Trust argued that (1) the arbitrator lacked jurisdiction because the arbitration agreement had expired; (2) the arbitrator failed to consider evidence of fraud and deception; and (3) the arbitrator's findings were unsupported by the evidence and demonstrated bias or arbitrariness. The Trust asked the district court to review the arbitrator's findings "because they are wrong on their face." The Trust also asserted in district court that the law allows "such a review where [the Trust] can demonstrate that the [arbitrator] failed to consider evidence significant to proving [the Trust's] case." Thus, nowhere in its district court filings did the Trust argue for application of the irrationality principle as it does before this court.

CBRE moves for summary disposition on grounds that the Trust failed to articulate any permissible ground in the district court to support vacating the arbitration award. An appellate court reviews the trial court's order confirming an arbitration award to determine if the trial court correctly applied the statutory considerations. See Buzas, 925 P.2d at 947. We review the district court's conclusions of law for correctness and its factual findings under a clearly erroneous standard. See id. at 948. CBRE correctly notes that the Trust failed to articulate any of the statutory bases for vacating the arbitration award and instead requested the district court to reconsider the merits of

the award. The Trust argues that this court is permitted to review an arbitrator's finding when it has no basis in law or fact, arguing for the first time that the arbitrator's award was irrational and the arbitrator exceeded his authority. The Trust does not demonstrate that this argument was presented to the district court for consideration, and we will not consider it for the first time on appeal. See Gardner v. Board of County Comm'rs, 2008 UT 6, ¶ 32, 178 P.3d 893; Tschaggeny v. Milbank Ins. Co., 2007 UT 37, ¶ 22, 163 P.3d 615. Furthermore, the Trust does not demonstrate that the district court's findings are clearly erroneous or that the district court's conclusions of law are incorrect. Accordingly, we affirm the district court's ruling, which affirmed the arbitration award.

Judith M. Billings, Judge

James Z. Davis, Judge

Carolyn B. McHugh, Judge