

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MELVYN P. SALUCK : CIVIL ACTION
 :
 v. :
 :
 STEVEN ROSNER, HEAVEN SENT, LTD. :
 and CATHY ROSNER : No. 98-5718

MEMORANDUM AND ORDER

J. M. KELLY, J. **AUGUST** , **2001**

Presently before the Court are a Motion to Vacate and Modify Award of Arbitrators filed by Defendants, Steven Rosner ("Rosner") and Heaven Sent, Ltd. ("Heaven Sent") (collectively referred to as the "Defendants"), and a Motion to Enforce Award of Arbitrators filed by the Plaintiff, Melvyn P. Saluck ("Saluck"). Saluck, a minority shareholder of Heaven Sent, brought this diversity action seeking recovery for the financial injuries he suffered as a result of misconduct by Rosner and Heaven Sent. In a Memorandum and Order dated January 5, 1999, the Court ordered this matter to arbitration. Subsequently, on May 23, 2001, a panel of appointed arbitrators ("Arbitration Panel") issued its Arbitration Award ("Award"). The Defendants' Motion requests that the Court vacate a portion of the Award, while Saluck's Motion seeks a confirmation of the Award. For the following reasons, the Defendants' Motion is denied and Saluck's Motion is granted.

I. BACKGROUND

The motions before the Court relate to litigation that was initially filed in September of 1998. Saluck's Complaint alleged various types of misconduct by both Rosner and Heaven Sent. The Complaint was originally filed in United States District Court for the District of New Jersey. That Court transferred the action to the United States District Court for the Eastern District of Pennsylvania. This Court then determined that the disputes between the parties should be resolved by arbitration pursuant to a shareholders agreement between them.

The case was subsequently heard by the Arbitration Panel. After eight days of arbitration testimony and legal argument, the Arbitration Panel issued its Award. As part of the Award, the Arbitration Panel found that Saluck was a twenty percent minority shareholder of Heaven Sent. The Award requires that either Rosner or Heaven Sent buy out Saluck's shares for \$300,000.00. The Defendants now move the Court to vacate the portion of the Award which requires one of them to buy out Saluck's shares, while Saluck moves the Court to enforce the Award.

II. STANDARD OF REVIEW

A party asking a court to vacate an arbitration panel's award bears the burden of presenting "clear, precise, indubitable" evidence" that supports doing so. McKenna v. Sosso,

745 A.2d 1, 4 (Pa. Super. Ct. 1999). Under Pennsylvania law,¹ "the award of an arbitrator in a non-judicial arbitration . . . 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." 42 Pa. Cons. Stat. Ann. § 7341 (West 1998). Those elements typically refer to irregularities, fraud or corruption in the process utilized in reaching the arbitration award, and not the merits of the end result itself. McKenna, 745 A.2d at 4 ("A cognizable irregularity may appear in the conduct of either the arbitrators or the parties."). Accordingly, a court charged with reviewing an arbitration award must confine its examination to whether a party was "deprived of a hearing or whether fraud, misconduct, corruption or other irregularity tainted the award." Id. The arbitrators are therefore "the final judges of both law and fact, and an arbitration award is not subject to reversal for a mistake of either." Prudential Prop. & Cas. Ins. Co. v. Stein, 683 A.2d 683, 685 (Pa. Super. Ct. 1997). A court may not retry the issues presented at arbitration or review the arbitration panel's disposition of the merits of the case. McKenna, 745 A.2d at 4.

¹ The parties agree that Pennsylvania law applies in this case.

III. DISCUSSION

A. The Propriety of the Arbitration Panel's Legal Conclusions

Rosner and Heaven Sent contend that the Arbitration Panel had no basis in Pennsylvania law to award Saluck a forced buyout of his minority shares. They claim that this portion of the Award constitutes an "irregularity" and a manifest disregard for Pennsylvania law, and that the Court should vacate this aspect of the Award because it is unjust, inequitable, or unconscionable. See 42 Pa. Cons. Stat. Ann. § 7341. The Court disagrees. The Arbitration Panel based its decision on eight days of arbitration hearings and hundreds of pages of transcripts and exhibits. The Defendants do not deny that they were permitted to set forth all evidence, testimony, and legal arguments before the Arbitration Panel. Thus, the Court does not find any irregularity based on the process of the arbitration proceeding itself. McKenna, 745 A.2d at 4. Moreover, the Court is not free to reexamine issues already determined by the Arbitration Panel; to characterize an arbitration panel's legal conclusions as an "irregularity" in order to allow the Court to review the conclusions' merits would ignore the limited scope of the Court's role in these matters. See, e.g., 42 Pa. Cons. Stat. Ann. § 7341; McKenna, 745 A.2d at 4. Thus, the Defendants' argument that this portion of the Arbitration Panel's decision constitutes a manifest disregard for Pennsylvania law misses the mark and ignores the appropriate

standard of judicial review. Because the Arbitration Panel was the final judge of the law in this case, this Court may not revisit the legal issues that the Panel already determined. Prudential, 683 A.2d at 685. The Arbitration Panel was persuaded by Saluck's arguments that a forced buyout was an available remedy in this type of case and, even if the Court were inclined to revisit that issue, it could not do so. The Defendants have not carried their burden of proving either that an irregularity occurred in the process of the arbitration proceedings or that the Award is unjust, inequitable, or unconscionable. The Court will therefore not vacate or modify that portion of the Award.

B. The Arbitration Panel's Lack of Explicit Findings of Fact

The parties agree that, under Pennsylvania law, a finding of fraud, illegality or oppression is a necessary predicate for an award of relief in favor of a minority shareholder like Saluck. The Defendants therefore argue that the Court should vacate the forced buyout portion of the Award because the arbitrators made no explicit factual finding that Rosner committed any acts of fraud, illegality, or oppression. The Court is not persuaded to vacate or modify the Award simply because it contains no explicit finding of fact concerning the Defendants' fraud, illegality, or oppression. First, the Defendants have failed to direct the Court to any case law or statutory authority that supports their

argument that the lack of an explicit and detailed factual finding in an arbitration award is sufficient grounds to vacate or modify an award. Second, the Defendants have not presented any evidence that the parties agreed that the Award would contain all factual or legal findings. Finally, the arbitration proceeding lasted eight days, during which time Saluck presented the Arbitration Panel with substantial evidence to support a factual finding of oppressive conduct by Rosner towards Saluck. It is clear that the Arbitration Panel made many legal and factual conclusions in reaching its final conclusion that are not explicitly a part of the Award; the finding of oppression was implicit in the Award and can be logically inferred from the Arbitration Panel's legal conclusion that a forced buyout is appropriate in this case. That these conclusions are implicit in the Award does not provide grounds to vacate the Award. Therefore, the Court will not vacate or modify the Award based on its lack of an explicit finding of oppression or fraud.

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O R D E R

AND NOW, this day of August, 2001, in
consideration of the Motion to Vacate and Modify the Award of
Arbitrators, filed by the Defendants, Steven Rosner and Heaven
Sent, Ltd. (collectively referred to as the "Defendants") (Doc.
No. 15), and the Motion to Enforce the Award of Arbitrators filed
by the Plaintiff, Melvyn P. Saluck (Doc. No. 17), and the various
Responses thereto filed by the parties, it is **ORDERED** that:

1. The Defendants' Motion to Vacate and Modify Award of Arbitrators is **DENIED**.
2. The Plaintiff's Motion to Enforce Award of Arbitrators is **GRANTED**. The Arbitrators' Award, issued on May 31, 2001, is enforced.

BY THE COURT:

JAMES MCGIRR KELLY, J.