

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

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

**MEMORANDUM AND ORDER**

**J. M. KELLY, J.** **JANUARY** , **2002**

Presently before the Court is a Motion For Judgment On the Award of Arbitrators filed by the Plaintiff, Melvyn P. Saluck ("Saluck"). Saluck, a minority shareholder of Heaven Sent Ltd. ("Heaven Sent"), brought this diversity action seeking recovery for the financial injuries he suffered as a result of misconduct by Steven Rosner ("Rosner") and Heaven Sent. A three member panel of the American Arbitration Association issued an Award on May 23, 2001 ("Award"). This Court subsequently confirmed the Award on August 9, 2001. The Award does not include Defendant Cathy Rosner. As such, judgment will be entered in her favor. The remaining Defendants, Steven Rosner and Heaven Sent (collectively referred to as the "Defendants") oppose Plaintiff's present Motion For Judgment On the Award.

**I. BACKGROUND**

The Motion before the Court relates 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<sup>1</sup>. 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 filed a Motion seeking to have the Court vacate

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<sup>1</sup>Pertinent parts of the Award state as follows:

1. MELVYN SALUCK, hereinafter referred to as CLAIMANT, is awarded the bonuses for 1995, 1996 and 1997 in the amounts of \$8,000, \$20,000 and \$25,600 or a total of \$53,600.00.

2. HEAVEN SENT, LTD., AND STEVEN ROSNER, hereinafter referred to as RESPONDENTS, are awarded the legal fees for the Breach of the Arbitration Agreement in the amount of \$37,829.00. The other aspects of RESPONDENTS' counterclaims are dismissed on the merits.

4. CLAIMANT is awarded \$300,000.00 for his 20% interest in the shares of Heaven Sent, Ltd. and the arbitrators award the 20% of the shares of Heaven Sent, Ltd. to Heaven Sent Ltd. or to Steven Rosner, depending upon who pays for the shares.

5. CLAIMANT is awarded interest on the net sum of \$315,771.00, which represents the amounts awarded in items 1 and 4, less the amount awarded to RESPONDENT in item 2, at the rate of 6% per annum from the date of the commencement of the litigation in the state of New Jersey until the payment of the Award.

10. This award may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute together one and the same instrument.

the portion of the Award which requires one of them to buy out Saluck's shares, while Saluck moved the Court to enforce the Award. This Court agreed with Saluck and denied Defendants' Motion, confirming the Award. See Memorandum and Order, dated August 9, 2001.

Plaintiff now seeks to have judgment entered on the Arbitrator's Award pursuant to 42 Pa. Cons. Stat. Ann. § 7342(B) (West 2001), which provides that upon "application of any party made more than 30 days after an [arbitration] is made . . . the court shall enter an order confirming the award and shall enter judgment or decree on conformity with the order." Plaintiff seeks the following judgment:

1. Judgment entered in favor Plaintiff, Melvyn P. Saluck, against Defendant, Steven Rosner and Defendant, Heaven Sent, Ltd., jointly, severally, and in the alternative, in the amount of \$315,771.00 plus interest at the rate of 6% from September 4, 1998 to the present; and
2. Judgment against Defendants Steven Rosner and Defendant Heaven Sent, Ltd., jointly, severally for an additional amount of \$ 1,633.22 (administrative costs) for a total of \$317,404.22.

Both parties agree that the Defendants are jointly and severally liable for the \$1,633,22 of administrative costs awarded to Plaintiff under Paragraph 7 of the Award.

Defendants, however, object to the joint and several liability of the remaining \$315,771.00 owed to Plaintiff. Defendants request that judgment as to this amount be entered only against Defendant Heaven Sent which elected to buy out

Plaintiff's 20% interest in the shares of Heaven Sent. Defendants contend, after the Defendants make an election under Paragraph 4 of the Award as to which Defendant should buy the Plaintiff's shares, liability as to that amount attaches only to the Defendant who elects to buy out the shares. Plaintiff disagrees, arguing that entering judgment against only Heaven Sent allows Rosner to escape liability through election.

#### **STANDARD OF REVIEW AND DISCUSSION**

42 Pa. Cons. Stat. Ann. § 7342(b), which governs common law arbitrations such as the one before the Court, provides: "On application of a party made more than 30 days after an [arbitration] award is made . . . the court shall enter an order confirming the award and shall enter a judgment or decree in conformity with the order." Trial courts are not given much discretionary power under § 7342(b). If a party fails to challenge the award within 30 days or as here, the court has already ruled definitely on a motion to vacate or modify, the court is powerless to change the award. Sage v. Greenspan, 765 A.2d 1139, (Pa. Super. Ct. 2001).

Under Pennsylvania law, "the arbitrators are the final judges of law and fact." Hall v. Nationwide Mutual Ins. Co., 629 A.2d 954, 956 (Pa. Super. Ct. 1993)(citations omitted). Trial courts are to interpret common law arbitration awards under an abuse of discretion standard. That is, the interpretation must

be reasonable. Id. at 956-57. Where there has been no contention that the award is ambiguous and in need of clarification, the trial court is not required to seek clarification of the award. Id. at 957, n.4. Here, unlike Hall, the Defendants first argue the Award is ambiguous but still capable of enforcement. Later, however, Defendants argue the Award is not ambiguous because the express language of the Award compels this Court to enter judgment only against Heaven Sent.

Pennsylvania law is unclear as to whether under common law arbitration, courts have the discretion to seek clarification where the issue of ambiguity of the award itself is raised after the award has been confirmed but before judgment is entered. See Hall, 629 A.2d at 957, n.4; McIntosh v. State Farm, 625 A.2d 63, 64 (Pa. Super. Ct. 1993) (construing the Pennsylvania Uniform Arbitration Act). The Court need not address this issue at this time, however, because in the case before the Court, there is no ambiguity in the Award, despite the Defendants' attempt to create one. As such, the Court only needs to enter judgment based on a reasonable interpretation of the Award.

Although the facts differ slightly, Sage is instructive. See 765 A.2d 1139. In Sage, one of the issues was whether judgment should have been entered against all defendants when the plaintiff agreed not to seek satisfaction of any arbitration award against the individual defendants in an arbitration

agreement. Among other reasons, the court ruled that judgment against all defendants was proper because seeking satisfaction of an award was different from having a judgment entered against them. Id. at 1142.

Unlike Sage where the amended award clarified that judgment was against all defendants, the Award before the Court does not contain such an express clarification. There is no doubt, in considering the Award as a whole, the claims advanced against both Rosner and Heaven Sent, and the remedy of a forced buyout, that the arbitrators decided to hold both Defendants liable. It is also clear that the arbitrators decided not to assign separate liability as to each individual Defendant for each monetary claim. Moreover, reading the Award as argued by the Defendants would convolute the Award and add extra substantive language where none is indicated.

For example, while it may be reasonable to assume that only Heaven Sent, as the Plaintiff's employer, is liable for the retroactive bonuses awarded to Plaintiff in Paragraph 1, the arbitrators included this amount in calculating the net amount on which Saluck has been awarded interest. Under Paragraph 5, the total amount due to Saluck with interest (\$315,770.00) is derived from the cost of the forced buyout under paragraph 4 (\$300,000) plus the retroactive bonuses awarded under paragraph 1 (\$53,600) minus the legal fees awarded to both Defendants under Paragraph 2

(\$37,829.00). As such, Defendants are jointly and severally liable for this amount.

Were the Court to read the Award as argued by the Defendants, the net amount on which Saluck is entitled to interest would increase to \$353,600, which is the net amount derived from the retroactive bonus (\$53,600) plus the cost of the buyout (\$300,000). Then, in order to balance the amounts awarded to each party, the Court would have to assign interest on \$37,829.00, the amount awarded to both Defendants under Paragraph 2 where no interest is indicated. The need for this kind of convoluted recalculation by this Court of the arbitrator's monetary awards is clearly not the arbitrators' intent in issuing the Award as written.

Moreover, although Paragraph 4 gives the Defendants the right to choose which entity should pay for the forced buyout, it does not assign liability upon election. The language in Paragraph 4 merely indicates that whoever pays for the shares becomes the owner of the shares. In light of the irreparable damage to the relationship between the parties, the Arbitrators have decided that dissolution is the best solution here. Consequently, the Arbitrators chose the remedy of a forced buyout while adequately compensating Saluck for his 20% of the company in the face of a dissolution. It does not matter which entity pays Saluck nor whether the Defendants made the decision based on

possible tax benefit or otherwise.<sup>2</sup> It only matters that Saluck gets the amount awarded to him by the arbitrators, which is \$315,770.00 plus interest.

Lastly, Defendants are, in effect, attempting a second round of objections by raising the ambiguity issue at this time. In Defendants' Motion To Vacate And Modify The Award, the Defendants were mainly concerned with the remedy of the forced buyout. Knowing full well that this Court denied their Motion To Vacate And Modify The Award, the Defendants come before this Court again. Had the Defendants wanted to modify the Award to indicate separate liability upon election, they should have done so in their Motion To Vacate And Modify. Essentially, the Defendants are attempting to raise a new matter at this time. Under Pennsylvania law, matters not raised within the 30 day period are considered untimely, and therefore waived.

Accordingly, the Court will enter the following order.

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<sup>2</sup>Similarly, under Paragraph 2, the Arbitrators awarded both Defendants their legal fees. How the Defendants choose to apportion the award between themselves is irrelevant.

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O R D E R

**AND NOW**, this day of January, 2002, in consideration of the Motion For Judgment On Arbitrator's Award, filed by the Plaintiff, Melvyn P. Saluck and Brief In Opposition To Plaintiff's Motion For Judgment On Arbitrators' Award filed by Defendants, Steven Rosner, Heaven Sent, Ltd., and Cathy Rosner (collectively referred to as the "Defendants") (Doc. No. 25), it is **ORDERED** that Plaintiff's Motion is **GRANTED** and pursuant to the May 31, 2001 Arbitrator's Award, it is further **ORDERED**:

1. Judgment is entered in favor of Cathy Rosner and against Plaintiff, Melvyn P. Saluck, as to all counts.
2. Judgment is entered in favor of Plaintiff, Melvyn P. Saluck and against Defendants, Steven E. Rosner and Heaven Sent Ltd., jointly and severally, for reimbursement of administrative costs of arbitration, in the amount of \$1,633.22, without interest.
3. Judgment is entered in favor of Plaintiff, Melvyn P. Saluck and against Defendants, Steve Rosner and Heaven Sent Ltd., for the net sum of \$315,771.00, with

interest at the rate of 6% per annum from the date of the commencement of the litigation in the state of New Jersey until the payment of the Award.

4. Judgment is entered in favor of Plaintiff, Melvyn P. Saluck as to the Defendants' counterclaims except for the award of legal fees indicated in paragraph 5 of this order.
5. Judgment is entered in favor of Defendants, Steven Rosner and Heaven Sent Ltd. and against Plaintiff Melvyn P. Saluck for the sum of \$37,829.00, the legal fees for the Breach of the Arbitration Agreement, without interest.
6. All other terms of the May 23, 2001 Arbitration Award is to be enforced as stated.

BY THE COURT:

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JAMES MCGIRR KELLY, J.