

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE: HUGHESVILLE BOROUGH AUTHORITY  
and MIRA POINT, LLC.,

: 853 C D 2016  
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: CV-16-00,068  
:  
: APPEAL / 1925(a)

**OPINION AND ORDER**  
**Issued Pursuant to Pennsylvania Rule of Appellate Procedure 1925(a)**

This Court issues the following Opinion and Order pursuant to P.R.A.P. 1925(a) following an appeal from an Opinion and Order entered on April 22, 2016,<sup>1</sup> granting the motion to dismiss the appeal of Hughesville Borough Authority (HBA) and affirming the award of the arbitrator dated December 24, 2016. On June 7, 2016, Appellee filed a concise statement setting forth the matters complained of on appeal.

This Court summarizes its understanding of the matters complained of on appeal as follows. Appellant HBA contends that the trial court erred in applying the standard of review for common law arbitration as opposed to statutory arbitration because the right to arbitration was mandated by statute and not by agreement.<sup>2</sup> Appellant further contends that under the standard of review for statutory arbitrations, 42 Pa. C.S.A. § 7302 (d)(2) and 42 Pa. C.S.A. § 7315(a)(2) require overturning the arbitrator’s decision. Lastly, Appellant contends that the arbitrator’s decision should be overturned under the standard of review for common law arbitration because it constitutes an irregularity that renders an inequitable and unconscionable award.

This Court disagrees and respectfully relies upon its Opinion and Order entered on April 22, 2016 and the following supplemental opinion in support of affirmance.

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<sup>1</sup> Appellant’s notice of appeal indicates that the appeal is from the Order entered on May 2, 2016 denying post-trial relief. Since there was no trial or nonsuit in this case, the Court post-trial motions were not available under Pa. R.C.P. 227.1. The underlying order was entered April 22, 2016.

<sup>2</sup> The Pennsylvania Legislature provided for three types of arbitration: statutory arbitration (subchapter A), common law arbitration (subchapter B) and judicial arbitration (subchapter C). Subchapter C, judicial arbitration, is inapplicable and not relevant to this appeal. 42 Pa. C.S.A. Chapter 73.

## **BACKGROUND**

This matter arises from a billing dispute between the Hughesville Borough Authority (HBA) and Mira Point, LLC (Mira Point), a developer, as to charges for a full-time consultant inspector for the placement of water lines in the Mira Point development. HBA charged Mira Point for inspection contrary to its prior practice and without notice. As the parties could not agree on the amount of billings or an arbitrator, HBA filed a petition for Appointment of Arbitrator pursuant to 53 Pa.C.S. § 5607(30)(iv) on September 13, 2015. On November 5, 2015, the parties agreed to the appointment of Timothy Wentz, P.E., as the arbitrator. *See*, Order entered November 6, 2016, attached to Mira Point's reply brief as Exhibit "A". The arbitrator held a hearing on December 22, 2015.

After a hearing, the arbitrator concluded that HBA was responsible to pay the full amount of the disputed consultant engineering fees totaling \$7,320.00 and that Mira Point was not responsible for any late fees. In reaching his decision, the arbitrator found that the hourly rate for inspection and scope of work were reasonable, but that the imposition of such fees was not reasonable given the circumstances of this case. In particular, the arbitrator noted that it was unreasonable to pay for professional engineering services without first being informed that HBA would deviate from its prior practice and use a full-time consultant rather than its own staff to conduct the inspection and that consultant fees would be charged to them at a specified rate. The arbitrator further noted that without this information, Mira Point lost the opportunity to calculate the total cost of a pressurized water system (including inspection) and compare it to other water supply options to determine best water supply options for them.

On January 14, 2016, HBA filed an appeal to the Court of Common Pleas in which the HBA set forth its reasons for appeal in paragraphs A-H. In essence HBA contended that the

arbitrator's finding and conclusion that the expenses were unreasonable based upon the circumstances of this case was an error of law, abuse of discretion, internally inconsistent and beyond the scope of the arbitration. On February 4, 2016, Mira Point LLC (Mira Point) filed a motion to quash the appeal. On April 22, 2016, the Court granted the motion to dismiss the appeal and affirmed the award of the arbitrator. On May 20, 2016, HBA filed the instant appeal.

#### **DISCUSSION**

This Court will discuss the matters complained of on appeal in the order in which this Court summarized them.

As to the first issue raised, the Court applied the standard of review for common law arbitration as opposed to statutory arbitration where the right to arbitration was provided by the Municipal Authorities Act under 53 Pa.C.S. § 5607 which is silent as to the type of arbitration and where the parties did not expressly agree to statutory arbitration. The Pennsylvania Legislature specified the scope of statutory arbitration. The general rule is that “[an agreement to arbitrate a controversy on a nonjudicial basis shall be conclusively presumed to be an agreement to arbitrate pursuant to Subchapter B (relating to common law arbitration) unless the agreement to arbitrate is in writing and expressly provides for arbitration pursuant to this subchapter [for statutory arbitration]...” 42 Pa. C.S.A. § 7302 (a); *see also*, Armstrong World Industries vs. Travelers Indemnity Company, 115 A.3d 342, 346 (Pa. Super. 2015). “Unless an arbitration agreement expressly provides for statutory arbitration, the law presumes that the parties intended to submit their disputes to common law arbitration.” *See Derry Twp. Mun. Auth. v. Solomon & Davis, Inc.*, 372 Pa. Super. 213, 539 A.2d 405, 410 (Pa. Super. 1988). The Municipal Authorities Act is silent as to whether the right to arbitration calls for statutory or common law arbitration. 53 Pa.C.S. § 5607(30). The parties shall appoint an arbitrator by mutual agreement. 53 Pa.C.S. § 5607(30)(iv).

In the present case, the Court applied the standard of review for common law arbitration because the parties did not expressly agree to statutory arbitration and Municipal Authorities Act is silent as to whether the right was to statutory or common law arbitration. Since our Pennsylvania Legislature chose not to expressly provide for statutory arbitrations under the Municipal Authorities Act, and the parties chose not to expressly agree to statutory arbitration with respect to the right to arbitration under the Municipal Authorities Act, this Court concluded that the arbitration at issue in this case did not fall within the specified and limited scope set forth by the legislature for statutory arbitration. 42 Pa. C.S.A. § 7302. There is no exception to the presumption of common law arbitration for agreement to arbitrate arising from a right conferred by a statute such as the Municipal Authorities Act. Pursuant to that Act, the parties agreed upon a professional to be their arbitrator but did not expressly agree that the arbitration would be statutory. The parties entered into an “Improvements Guaranty Agreement for the Land Development Plans of the Mira Point Subdivision” but chose not to expressly agree that disputes as to fees that require arbitration would be governed by the subchapter for statutory arbitrations. For these reasons, the Court concluded that the standard of review for common law arbitration applied.

Appellants further contend that 42 Pa. C.S.A. § 7302 (d)(2) and 42 Pa. C.S.A. § 7315(a)(2) require overturning the arbitrator’s decision.<sup>3</sup> 42 Pa. C.S.A. § 7302 (d)(2) or 42 Pa. C.S.A. § 7315(a)(2) apply only to statutory arbitrations, not to common law arbitrations. Moreover, the requirements of 42 Pa. C.S.A. § 7302 (d)(2) or 42 Pa. C.S.A. § 7315(a)(2) are not met. 42 Pa. C.S.A. § 7302 (d)(2) only applies where the Commonwealth submitted the controversy or the controversy involves an employee of a political subdivision or the law

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<sup>3</sup> The Court notes that HBA did not file an application pursuant to 42 Pa. C.S.A. § 7315(a)(2) to modify or correct an award; it filed an appeal without citing that statute.

requires the parties to submit to statutory arbitration. 42 Pa. C.S.A. § 7302 (d). None of those criteria are present.

Similarly, the present case does not satisfy the requirements to modify an award pursuant to 42 Pa. C.S.A. § 7315(a)(2). The court may modify an award pursuant to 42 Pa. C.S.A. § 7315(a)(2) where “the arbitrators awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted[.]” *Id.* 53 Pa.C.S. § 5607(30)(i), (ii), and (iii) provide a right to arbitration to determine the amount of any billing in connection with inspections. To make that determination, the Municipal Authorities Act provides that the arbitrator “shall hear evidence and review the documentation as the professional in his or her sole opinion deems necessary[.]” 53 Pa.C.S. § 5607(30) (iii). In the present case, the arbitrator determined the amount of any billing in connection with inspections. The arbitrator rendered a decision in this case based upon the evidence and documentation he in is sole opinion deemed necessary to determine the amount of billing in connection with the inspection, which was the matter properly before him.

The last issue raised by Appellants is that the arbitrator’s decision should be overturned under the standard of review for common law arbitration used by the Court. In Derry Township Municipal Authority v. Solomon & Davis, Inc., 372 Pa. Super. 213, 224-225 (Pa. Super. 1988), the Superior Court synthesized the standard of review for common law arbitrations as follows.

Under common law arbitration, a court will vacate or modify an award only if an appellant shows "by clear, precise and indubitable evidence that he was denied a hearing, or that there was fraud, misconduct, corruption or some other irregularity of this nature on the part of the arbitrator which caused him to render an unjust, inequitable or unconscionable award . . . ." Chervenak, *Keane v. Hotel Rittenhouse Assoc.*, 328 Pa.Super. 357, 361-62, 477 A.2d 482, 485 (1984) (quoting *Harwitz v. Selas Corp. of America*, 406 Pa. 539, 542, 178 A.2d 617, 619 (1962) (emphasis added). Accord 42 Pa.C.S.A. § 7341. The irregularity refers to "the process employed in reaching the result of the arbitration, not the result itself." Chervenak, *supra*, 328 Pa.Super. at 362, 477 A.2d at 485 (citing *Press v. Maryland*

Casualty Co., 227 Pa.Super. 537, 540, 324 A.2d 403, 404 (1974)). In Chervenak we also stated that "[a]s to questions of law and fact, . . . [the arbitrators are] the final judge[s] and the award is not subject to disturbance of mistake either. [A] contrary holding would mean that arbitration proceedings instead of being a quick and easy mode of obtaining justice, would be merely an unnecessary step in the course of litigation, causing delay and expense, but settling nothing finally."Id. 328 Pa.Super. at 362, 477 A.2d at 485 (citations omitted). Derry Township Municipal Authority v. Solomon & Davis, Inc., 372 Pa. Super. 213, 224-225 (Pa. Super. 1988)

HBA contends the arbitration award constitutes an irregularity that renders an inequitable and unconscionable award. As this Court stated in its April 22, 2016 opinion, HBA has not raised the kind of irregularity which requires or permits reversal of the arbitration award. *See, Chervenak, Keane & Co. (CKC Associates) vs. Hotel Rittenhouse Associates, Inc.*, 477 A.2d 482, 485 (Pa. Super. 1984). The irregularity refers to process employed in reaching the results of the arbitration not to the result itself. *Id.*

For the above reasons and for those set forth in this Court opinion dated April 22, 2016, this Court respectfully requests that its decision be affirmed.

BY THE COURT,

August 1, 2016  
Date

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Richard A. Gray, J.

cc: Scott T. Williams, Esq. (for Appellant)  
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Commonwealth Court & 1  
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