NEBRASKA SUPREME COURT

Seldin v. Estate of Silverman

305 Neb. 185 (2020) · No. Nos. S-19-310, S-19-311 · Decided March 6, 2020

SUMMARY

The Nebraska Supreme Court reviewed consolidated appeals involving confirmation of a Federal Arbitration Act award arising from a commercial dispute among family members and related entities. The court addressed jurisdiction and notice requirements, challenges to the arbitration award, attorney-fee sanctions, and the acceptance-of-benefits rule. The judgment was affirmed as modified.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Heavican, C.J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	March 6, 2020
DOCKET	Nos. S-19-310, S-19-311
DISPOSITION	affirmed
PROCEDURAL POSTURE	Consolidated appeals and cross-appeals from the Douglas County District Court's confirmation of a Federal Arbitration Act arbitration award, denial of motions to vacate or modify the award, imposition of attorney-fee sanctions, and denial of a motion to alter or amend. The Nebraska Supreme Court granted bypass of the Nebraska Court of Appeals.
STANDARD OF REVIEW	Jurisdictional questions not involving factual disputes are reviewed as matters of law. Questions of law concerning confirmation, vacation, or modification of an arbitration award under the Federal Arbitration Act are reviewed independently, while factual findings are reviewed for clear error. Attorney-fee awards and rulings on motions to alter or amend are reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential
PARTIES	Millard R. Seldin, individually and as Trustee of the Millard R. Seldin Revocable Trust, Scott A. Seldin, individually and as Trustee of the Seldin 2002 Irrevocable Trust v. Estate of Stanley C. Silverman,

Theodore M. Seldin, individually and as Trustee of the Amended and Restated Theodore M. Seldin Revocable Trust, Omaha Seldins

TOPICS

arbitration | appellate procedure | standard of review | attorney fees | sanctions

PRACTICE AREAS

arbitration | appellate procedure | commercial litigation | contracts | attorney fees | sanctions | remedies

QUESTIONS PRESENTED

1. Whether the arbitration was governed by the Federal Arbitration Act rather than Nebraska's Uniform Arbitration Act.
2. Whether the Arizona Seldins' motion to vacate or modify the arbitration award was timely and properly served under the Federal Arbitration Act.
3. Whether the arbitrator's acceptance of Sky Financial constituted misconduct or evident partiality requiring vacatur.
4. Whether public policy could serve as a nonstatutory ground for vacating an arbitration award governed by the Federal Arbitration Act.
5. Whether the arbitrator exceeded his authority by awarding attorney fees and costs related to the Sky Financial claims.
6. Whether sanctions under Neb. Rev. Stat. § 25-824 were proper against the Arizona Seldins and Scott Seldin.
7. Whether the district court properly refused to supplement the appellate record after the appeal had been perfected.
8. Whether Scott Seldin was entitled to modification or correction of the award based on an evident material mistake or because the arbitrator exceeded his authority.
9. Whether the Omaha Seldins' registration of the judgment constituted acceptance of benefits barring their cross-appeal.
10. Whether the Omaha Seldins were entitled to increase the attorney-fee award from $131,184.45 to $342,860.95.

HOLDINGS

1. The Federal Arbitration Act governs arbitration arising from a contract involving interstate commerce. Because the dispute involved properties and companies located in multiple states, the arbitration was governed by the FAA.
2. Under the FAA, the statutory grounds in 9 U.S.C. §§ 10 and 11 are exclusive; courts may not vacate or modify an award on nonstatutory public-policy grounds.

3. The arbitrator's acceptance of Sky Financial did not constitute misconduct or evident partiality requiring vacatur because the Arizona Seldins expressly consented to the interpleader procedure, presented no evidence of improper motive, and were not deprived of a fair hearing.
4. The arbitrator did not exceed his authority by awarding attorney fees and costs related to the ancillary Sky Financial claims because he interpreted the Separation Agreement as permitting that award.
5. The district court did not abuse its discretion by awarding attorney fees and costs under Neb. Rev. Stat. § 25-824 because the Arizona Seldins' and Scott's challenges to the award and interim awards lacked rational factual or legal support.
6. Registration of the judgment did not bar the Omaha Seldins' cross-appeal because they conceded entitlement to the judgment received, sought only additional fees, and the opposing parties did not prove acceptance of benefits.
7. The Omaha Seldins were entitled to a total attorney-fee award of $342,860.95, and the Supreme Court could correct the amount without remanding because the record established that the fees were incurred and reasonable.

KEY QUOTATIONS

> *"We hold that under the FAA, a court is not authorized to vacate an arbitration award based on public policy grounds because public policy is not one of the exclusive statutory grounds set forth in § 10 of the FAA."* (305 Neb. at 207)

> *"Accordingly, we (1) affirm the district court's confirmation of the arbitration award, (2) affirm the district court's denial of the Arizona Seldins' and Scott's motions to vacate and/or modify the award, (3) affirm the district court's denial of the Arizona Seldins' motion to supplement the record, (4) affirm the district court's award of sanctions under § 25-824, (5) overrule the Arizona Seldins' motion to dismiss the Omaha Seldins' cross-appeal, and (6) sustain the Omaha Seldins' cross-appeal and order the fee judgment in favor of the Omaha Seldins be increased to $342,860.95."* (305 Neb. at 221)

FACTUAL BACKGROUND

The parties, referred to as the Omaha Seldins and Arizona Seldins, jointly owned and operated businesses and real-estate interests in multiple states. Their Separation Agreement required binding arbitration of ancillary claims and incorporated American Arbitration Association rules. After extensive arbitration proceedings, including 11 evidentiary hearings and 12 interim awards, the arbitrator issued a final award of $2,997,031 plus postaward interest against the Arizona Seldins. During the arbitration, the Omaha Seldins assigned Sky Financial Securities, LLC, to the arbitrator as an interpleader procedure, and counsel for the Arizona Seldins expressly agreed that the procedure was acceptable.

PROCEDURAL HISTORY

The parties arbitrated disputes arising from an agreement to separate jointly owned real-estate interests. The district court confirmed the arbitrator's final award of $2,997,031, denied the Arizona Seldins' and Scott Seldin's motions to vacate or modify, imposed sanctions under Neb. Rev. Stat. § 25-824, and awarded attorney fees. The district court later awarded only $131,184.45 in fees despite evidence of $342,860.95 in fees and denied a nunc pro tunc motion seeking correction of that amount. The Nebraska Supreme Court affirmed most rulings, increased the fee award to $342,860.95, and affirmed as modified.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

No remand. The judgment was modified directly to increase the attorney-fee award to $342,860.95.

CASES CITED

- J.S. v. Grand Island Public Schools, 297 Neb. 347, 899 N.W.2d 893 (2017)
- Ronald J. Palagi, P.C. v. Prospect Funding Holdings, 302 Neb. 769, 925 N.W.2d 334 (2019)
- Garlock v. 3DS Properties, 303 Neb. 521, 930 N.W.2d 503 (2019)
- Aramark Uniform & Career Apparel v. Hunan, Inc., 276 Neb. 700, 757 N.W.2d 205 (2008)
- Karo v. Nau Country Insurance Co., 297 Neb. 798, 901 N.W.2d 689 (2017)
- Hall Street Associates, L. L. C. v. Mattel, Inc., 552 U.S. 576, 128 S. Ct. 1396, 170 L. Ed. 2d 254 (2008)
- State v. Henderson, 277 Neb. 240, 762 N.W.2d 1 (2009)
- Oxford Health Plans LLC v. Sutter, 569 U.S. 564, 133 S. Ct. 2064, 186 L. Ed. 2d 354 (2013)
- Stolt-Nielsen S.A. v. AnimalFeeds International Corp., 559 U.S. 662, 130 S. Ct. 1758, 176 L. Ed. 2d 605 (2010)
- Medicine Shoppe International v. Turner Investments, 614 F.3d 485 (8th Cir. 2010)
- Dowd v. First Omaha Securities Corp., 242 Neb. 347, 495 N.W.2d 36 (1993)
- Moore v. Moore, 302 Neb. 588, 924 N.W.2d 314 (2019)
- TFF, Inc. v. SID No. 59, 280 Neb. 767, 790 N.W.2d 427 (2010)
- Samardick of Grand Island-Hastings, Inc. v. B.D.C. Corp., 183 Neb. 229, 159 N.W.2d 310 (1968)
- Henry Schein v. Archer and White Sales, ___ U.S. ___, 139 S. Ct. 524, 202 L. Ed. 2d 480 (2019)
- Cedars Corp. v. Sun Valley Development Co., 253 Neb. 999, 573 N.W.2d 467 (1998)
- Liming v. Liming, 272 Neb. 534, 723 N.W.2d 89 (2006)