

SUPREME COURT OF NEBRASKA

Sammie Jones, doing business as Jones Drywall v. Summit Limited Partnership Five, 262 Neb. 793

635 N.W.2d 267 (2001) · No. No. S-00-630 · Decided November 9, 2001

SUMMARY

The Nebraska Supreme Court reviewed whether an arbitration award in a construction contract dispute contained an evident miscalculation of figures warranting modification under Neb. Rev. Stat. § 25-2614(a)(1). The court held that an evident miscalculation requires an obvious and unambiguous mathematical error, and that the alleged inconsistency in the arbitrator’s damage categories did not meet that standard. The court affirmed confirmation of the arbitration award.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Hendry, C.J.; Wright, J.; Connolly, J.; Gerrard, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	November 9, 2001
DOCKET	No. S-00-630
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a district court order denying the appellants' request to modify or correct an arbitration award and confirming the award in favor of Jones.
STANDARD OF REVIEW	The Supreme Court reaches an independent conclusion on questions of law in reviewing a district court's decision to vacate, modify, or confirm an arbitration award. The district court's factual findings are not set aside unless clearly erroneous.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	Summit Limited Partnership Five, The Summit Group, Inc. v. Sammie Jones, doing business as Jones Drywall

TOPICS

- arbitration
- construction law
- contracts
- appellate procedure
- standard of review

PRACTICE AREAS

arbitration

construction law

contracts

appellate procedure

QUESTIONS PRESENTED

1. What constitutes an evident miscalculation of figures under Neb. Rev. Stat. § 25-2614(a)(1) for purposes of modifying or correcting an arbitration award?
2. Did the arbitrator's award contain an obvious and unambiguous mathematical error warranting modification or correction?
3. Was the district court clearly erroneous in finding that the Summit Group failed to establish an evident miscalculation?

HOLDINGS

1. An evident miscalculation of figures exists only when the arbitration award contains a mathematical error that is both obvious and unambiguous.
2. The award did not contain an evident miscalculation because any possible duplication or inconsistency was not clear, conclusive, or undisputable from the face of the award.

KEY QUOTATIONS

“Accordingly, we determine that under § 25-2614(a)(1) of the Uniform Arbitration Act, an “evident miscalculation of figures” occurs when there is a mathematical error in the arbitration award that is both obvious and unambiguous.” (at 271)

“This type of analysis is not permissible in reviewing an arbitration award for an evident miscalculation of figures.” (at 272)

FACTUAL BACKGROUND

Jones, doing business as Jones Drywall, contracted with The Summit Group to perform painting and drywall work on a hotel in Lincoln, Nebraska. The Summit Group became dissatisfied with Jones' work and staffing and terminated the contractual relationship. The arbitrator awarded Jones \$40,195.47 in damages, awarded The Summit Group \$10,019.40, and entered a net award of \$30,176.07 for Jones. The Summit Group claimed the award duplicated damages because of the relationship between the listed damages and amounts deducted for unpaid contract amounts, but the arbitration record did not establish that alleged duplication.

PROCEDURAL HISTORY

Jones filed a construction lien foreclosure petition after the Summit Group terminated his drywalling and painting contract. The parties stipulated to arbitration and agreed to stay the district court proceedings. The arbitrator awarded Jones a net amount of \$30,176.07, and the district court denied the Summit Group's motion to modify or correct the award under Neb. Rev. Stat. § 25-2614(a)(1), finding no evident miscalculation of figures, and confirmed the award. After an earlier appeal was dismissed by the Nebraska Court of Appeals on unrelated grounds, the district court entered final judgment for Jones, and the Summit Group appealed again.

DISPOSITION

affirmed

CASES CITED

- Dowd v. First Omaha Securities Corp., 242 Neb. 347, 495 N.W.2d 36 (1993)
- Father Flanagan's Boys' Home v. Agnew, 256 Neb. 394, 590 N.W.2d 688 (1999)
- FirstTier Bank v. Triplett, 242 Neb. 614, 497 N.W.2d 339 (1993)
- Stroh Container Co. v. Delphi Industries, Inc., 783 F.2d 743 (8th Cir. 1986)
- McIlroy v. PaineWebber, Inc., 989 F.2d 817 (5th Cir. 1993)
- Valentine Sugars, Inc. v. Donau Corp., 981 F.2d 210 (5th Cir. 1993)
- National Post Office v. U.S. Postal Service, 751 F.2d 834 (6th Cir. 1985)
- Apex Plumbing Supply v. U.S. Supply Co., 142 F.3d 188 (4th Cir. 1998)
- Atlantic Aviation, Inc. v. EBM Group, Inc., 11 F.3d 1276 (5th Cir. 1994)
- Foust v. Aetna Casualty & Insurance Co., 786 P.2d 450 (Colo. App. 1989)
- Fashion Exhibitors v. Gunter, 41 N.C. App. 407, 413, 255 S.E.2d 414, 419 (1979)
- Severtson v. Williams Construction Co., 173 Cal. App. 3d 86, 93, 220 Cal. Rptr. 400, 404 (1985)
- Laurin Tankers America v. Stolt Tankers, 36 F. Supp. 2d 645 (S.D.N.Y. 1999)
- Raiford v. Merrill Lynch, Pierce, Fenner & Smith, 903 F.2d 1410 (11th Cir. 1990)
- Cole v. Hiller, 715 So. 2d 451 (La. App. 1998)
- Babb v. United Food & Commercial Workers Local 271, 233 Neb. 826, 833, 448 N.W.2d 168, 172 (1989)
- Jones v. Summit Group, Inc., 8 Neb. App. lxvii, case No. A-99-1090 (Jan. 18, 2000)

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